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REPORTS OF CASES

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SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 5, 2018 TO FEBRUARY 13, 2018

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MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 9512. February 5, 2018]

ROBERTO P. MABINI, *complainant, vs.* **ATTY. VITTO A. KINTANAR,** *respondent.*

SYLLABUS

REMEDIAL LAW; 2004 RULES ON NOTARIAL PRACTICE; DISQUALIFICATIONS OF NOTARY PUBLIC; A LAWYER CANNOT BE HELD LIABLE FOR VIOLATION OF HIS DUTIES AS NOTARY PUBLIC WHEN THE LAW IN EFFECT AT THE TIME OF HIS COMPLAINED ACT DOES NOT PROVIDE ANY PROHIBITION TO THE SAME; CASE AT BAR.— It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face. However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench. In *Heirs of Pedro Alilano v. Atty. Examen*, the Court explicitly decreed that the Spanish Notarial Law of 1889 was repealed by the 1917 Revised Administrative Code. It added that it was only in 2004 that the Court passed the Revised Rules on Notarial Practice, x x x the 1917 Revised Administrative Code repealed the Spanish Notarial Law. In turn, the provisions anent notarial

practice embodied in the Revised Administrative Code were superseded by the passage of the 2004 Rules on Notarial Practice. This only means that any prohibition enumerated in the 2004 Rules on Notarial Practice does not cover the acts made by a Notary Public earlier, including those executed in 2002. All told, the Court holds that respondent did not violate any of his duties as Notary Public when he notarized the affidavit of his wife on April 25, 2002.

APPEARANCES OF COUNSEL

Benito B. Nate for the heirs of complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is an administrative Complaint[1] filed by Roberto P. Mabini (complainant) against Atty. Vitto A. Kintanar (respondent) for misconduct on the sole ground that he notarized a document executed by his wife, Evangeline C. Kintanar (Evangeline).

Factual Antecedents

In his Position Paper,[2] complainant stated, that sometime in November 2003, Regina Alamares (Regina) approached him and his wife, Mercedes M. Mabini (Mercedes), to sell her 3,317-square meter realty located in Daraga, Albay. Said property was identified as Lot No. 1959, and covered by Original Certificate of Title (OCT) No. 251 (1904). Regina made known to complainant and Mercedes that said title was lost but its duplicate certificate may be secured from the Register of Deeds (RD). Complainant and Mercedes nonetheless bought the property. Later, complainant filed a petition for issuance of second owner's duplicate copy of OCT 251 (1904), which the

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[1] *Rollo*, p. 1.

[2] *Id.*, unpaginated.

Regional Trial Court (RTC) granted. On March 2, 2005, the RD of Albay issued Transfer Certificate of Title No. T-133716 covering the property in the names of complainant and Mercedes over the property.

Complainant further averred that, in March 2012, however, respondent's wife, Evangeline, filed a complaint against him (complainant), among other persons, for reconveyance, annulment of title, damages with prayer for preliminary injunction or restraining order before the RTC of Legaspi City. Attached to said complaint was an Affidavit of Lost Owner's Duplicate Copy of Title[3] executed by Evangeline and notarized by respondent on April 25, 2002, and registered in his notarial book under Doc. No. 172, Page No. 35, Book No. 33, Series of 2002.

According to complainant, respondent knew that he (respondent) was not authorized to notarize a document of his wife, or any of his relative within the fourth civil degree, whether by affinity or consanguinity; thus, for having done so, respondent committed misconduct as a lawyer/Notary Public.

For his part, respondent countered that the subject Affidavit purportedly executed by his wife appeared to have been notarized on April 25, 2002; as such, it was governed by Revised Administrative Code of 1917, which did not prohibit a Notary Public from notarizing a document executed by one's spouse. He likewise stated that, granting for argument's sake that he indeed notarized said Affidavit, he did not violate the law as the document involved was a mere affidavit, not a bilateral document or contract.[4]

Because of his demise on July 24, 2013, complainant's spouse, Mercedes, substituted him as complainant in the case.[5] On

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[3] *Id*. at 2.

[4] See respondent's Mandatory Conference Brief, *id*., unpaginated.

[5] See Manifestation, Notice of Death and Substitution of Deceased Private Complainant with Motion for Resetting, *id*., unpaginated.

October 26, 2013, Mercedes died. Her and complainant's children[6] substituted her in the case.[7]

Report and Recommendation of the IBP Investigating Commissioner

On August 25, 2015, Commissioner Almira A. Abella-Orfanel (Investigating Commissioner) found respondent guilty of misconduct and recommended his suspension from the practice of law for six months.[8] She opined that relatives by affinity are relatives by virtue of marriage. She stressed that "[i]f the law prohibits notarization of acts done by relatives by affinity, it is but logical that the law also prohibit[s] the notarization of the root cause of such relationship, the spouse. Without the spouse, said prohibition will not exist."[9] She added that since the law treats spouses as one upon their marriage, it follows that the notarization of the spouse's act is disallowed considering that a person cannot notarize his or her own act.

Notice of Resolution of the IBP Board of Governors (IBP-BOG)

In its Resolution No. XXII-2015-98, the IBP-BOG resolved to modify the recommendation of the Investigating Commissioner in that respondent was imposed a stiffer penalty of six months' suspension from the practice of law; immediate revocation of his commission as Notary Public; and, a two-year disqualification as Notary Public.

Issue

Whether respondent committed misconduct by notarizing his wife's affidavit of loss in 2002.

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[6] Namely, Azucena M. Carimpong, Richard M. Mabini, Josephine M. Mata, Mary Jean M. Hallam, Remigia M. Bron, Susana M. Quismorio, Marlou M. Smith, and Rosalina M. Arevalo.

[7] See Manifestation and Substitution of Deceased Complainant, *rollo*, unpaginated.

[8] See Report and Recommendation dated August 25, 2015, *id.*, unpaginated.

[9] See p. 3 of the Report and Recommendation dated August 25, 2015.

Our Ruling

It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face.[10] However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.

In *Heirs of Pedro Alilano v. Atty. Examen*,[11] the Court explicitly decreed that the Spanish Notarial Law of 1889 was repealed by the 1917 Revised Administrative Code. It added that it was only in 2004 that the Court passed the Revised Rules on Notarial Practice, to wit:

> Prior to 1917, governing law for notaries public in the Philippines was the Spanish Notarial Law of 1889. However, the law governing Notarial Practice is changed with the passage of the January 3, 1916 Revised Administrative Code, which took effect in 1917. In 2004, the Revised Rules on Notarial Practice was passed by the Supreme Court.
>
> In *Kapunan, et al. v. Casilan and Court of Appeals*, the Court had the opportunity to state that enactment of the Revised Administrative Code repealed the Spanish Notarial Law of 1889. x x x[12]

In said case, respondent Atty. Examen was charged with violating the Notarial Law when he notarized in 1984 the absolute deed of sale executed by his brother and the latter's wife. The Court held that Atty. Examen was competent to notarize said document because the Revised Administrative Code did not prohibit a Notary Public from notarizing any document of a relative.[13]

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[10] *Spouses Chambon v. Atty. Ruiz,* A.C. No. 11478, September 5, 2017.

[11] 756 Phil. 608 (2015).

[12] *Id*. at 616.

[13] *Id*. at 612, 617.

Moreover, in *Aznar Brothers Realty Co. v. Court of Appeals*,[14] the Court reiterated that indeed the Spanish Notarial Law of 1889 was repealed by the Revised Administrative Code and its Chapter 11 governed notarial practice at the time the subject deed therein was notarized in 1964.[15]

Too, in *Ylaya v. Atty. Gacott*,[16] the Court made an express pronouncement that the subject documents therein notarized in 2000 and 2001 were not covered by the 2004 Rules on Notarial Practice, *viz.*:

> We note that the respondent has not squarely addressed the issue of his relationship with Reynold, whom the complainant alleges to be the respondent's uncle because Reynold is married to the respondent's maternal aunt. However, this is of no moment as the respondent cannot be held liable for violating Section 3 (c), Rule IV of A.M. No. 02-8-13-SC because the Deed of Absolute Sale dated June 4, 2001 and the MOA dated April 19, 2000 were notarized by the respondent prior to the effectivity of A.M. No. 02-8-13-SC on July 6, 2004. The notarial law in force in the years 2000-2001 was Chapter 11 of Act No. 2711 (the Revised Administrative Code of 1917) which did not contain the present prohibition against notarizing documents where the parties are related to the notary public within the 4th civil degree, by affinity or consanguinity. Thus, we must likewise dismiss the charge for violation of A.M. No. 02-8-13-SC.[17]

Considering the foregoing, there is indeed no basis to hold respondent liable for misconduct for notarizing his wife's Affidavit in 2002.

To recall, complainant alleged that respondent was guilty of misconduct because he notarized the affidavit of his wife on April 25, 2002. Nevertheless, at the time of such notarization, it was the 1917 Revised Administrative Code that covered notarial practice. As elucidated in *Alilano* and *Ylaya*, during the effectivity

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[14] 384 Phil. 95 (2000).

[15] *Id.* at 112-113.

[16] 702 Phil. 390 (2013).

[17] *Id.* at 414.

of said Code, a Notary Public was not disallowed from notarizing a document executed by a relative. Neither was there a prohibition for a Notary Public to notarize a document executed by his or her spouse.

As discussed, the 1917 Revised Administrative Code repealed the Spanish Notarial Law. In turn, the provisions anent notarial practice embodied in the Revised Administrative Code were superseded by the passage of the 2004 Rules on Notarial Practice. This only means that any prohibition enumerated in the 2004 Rules on Notarial Practice does not cover the acts made by a Notary Public earlier, including those executed in 2002.

All told, the Court holds that respondent did not violate any of his duties as Notary Public when he notarized the affidavit of his wife on April 25, 2002.

WHEREFORE, the Complaint against Atty. Vitto A. Kintanar is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193305. February 5, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **BANAL NA PAG-AARAL, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED SHALL NOT BE CONSIDERED; EXCEPTION;

CASE AT BAR.—Under Section 9 of Batas Blg. 129, as amended by R.A. No. 7902, the CA has the power to receive evidence and perform any and all acts necessary to resolve factual issues. However, in case of appeals, this authority is limited to instances where the CA has granted a new trial. In other words, the CA cannot unqualifiedly admit evidence on appeal, as it did with the document in question. The rule is that, evidence which has not been formally offered shall not be considered. Nevertheless, the Court, in the interest of justice and only for the most meritorious of reasons, has allowed the submission of certification in petitions of this kind, after the parties were granted the opportunity to verify the authenticity and due execution of such document. In view of the foregoing, the case is **REMANDED** to the Court of Appeals for further proceedings in order to determine the authenticity and due execution of the aforementioned document. The Court of Appeals is directed to hear and receive evidence from the parties in furtherance of this purpose and to forthwith submit its resolution to the Court for appropriate action.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Balgos Gumaru & Jalandoni for respondent.

R E S O L U T I O N

REYES, JR., *J.*:

In its Decision[1] dated July 6, 2009, the Court of Appeals (CA) dismissed Banal na Pag-aaral Inc.'s (Banal na Pag-aaral) application for land registration on the ground of its failure to prove that the land sought to be registered is alienable and disposable.[2] Subsequently, Banal na Pag-aaral filed a motion

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Josefina Guevara-Salonga and Romeo F. Barza, concurring; *rollo*, pp. 116-126.

[2] *Id*. at 123.

for reconsideration and submitted a Certification[3] issued by the Department of Environment and Natural Resources, declaring the subject land alienable and disposable. Considering that the Office of the Solicitor General posed no objection to such belated submission of document, the CA admitted the same. Thereafter, the CA, through its Amended Decision[4] dated January 8, 2010, reversed its previous ruling, thus, allowing registration of the subject land.

Under Section 9 of Batas Blg. 129, as amended by R.A. No. 7902, the CA has the power to receive evidence and perform any and all acts necessary to resolve factual issues. However, in case of appeals, this authority is limited to instances where the CA has granted a new trial.[5] In other words, the CA cannot unqualifiedly admit evidence on appeal, as it did with the document in question. The rule is that, evidence which has not been formally offered shall not be considered.[6] Nevertheless, the Court, in the interest of justice and only for the most meritorious of reasons, has allowed the submission of certification in petitions of this kind, after the parties were granted the opportunity to verify the authenticity and due execution of such document.

In view of the foregoing, the case is **REMANDED** to the Court of Appeals for further proceedings in order to determine the authenticity and due execution of the aforementioned document. The Court of Appeals is directed to hear and receive evidence from the parties in furtherance of this purpose and to forthwith submit its resolution to the Court for appropriate action.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[3] CA *rollo*; *id*. at 143-144.

[4] *Id*. at 36-40.

[5] *Crispino, et al. v. Tansay,* G.R. No. 184466, December 5, 2016.

[6] REVISED RULES ON EVIDENCE, Section 34, Rule 132.

FIRST DIVISION

[G.R. No. 204061. February 5, 2018]

EDMISAEL C. LUTAP, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (AS AMENDED BY REPUBLIC ACT NO. 8353 OR THE "THE ANTI-RAPE LAW OF 1997"); RAPE, AS AMENDED, CAN BE COMMITTED IN TWO WAYS: RAPE BY SEXUAL INTERCOURSE AND RAPE BY SEXUAL ASSAULT.— Rape, under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 or the "Anti-Rape Law of 1997" can be committed in two ways: Article 266-A paragraph 1 refers to rape through sexual intercourse, the central element of which is carnal knowledge which must be proven beyond reasonable doubt; and Article 266-A paragraph 2 refers to rape by sexual assault which must be attended by any of the circumstances enumerated in sub-paragraphs (a) to (d) of paragraph 1.

2. ID.; ID.; RAPE BY SEXUAL ASSAULT, EXPLAINED; NOT ESTABLISHED IN CASE AT BAR.— *People v. Mendoza*, explains that for a charge of rape by sexual assault with the use of one's fingers as the assaulting object, as in the instant case, to prosper, there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or a graze of its surface, being that rape by sexual assault requires that the assault be specifically done through the insertion of the assault object into the genital or anal orifices of the victim. x x x What was established beyond reasonable doubt in this case was that petitioner touched, using his middle finger, AAA's sexual organ which was then fully covered by a panty and a short pants. However, such is insufficient to hold petitioner liable for attempted rape by sexual assault. As above intimated, the mere touching of a female's sexual organ, by itself, does not amount to rape nor does it suffice to convict for rape at its attempted stage.

3. ID.; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— x x x

> [P]etitioner's direct overt act of touching AAA's vagina by constantly moving his middle finger cannot convincingly be interpreted as demonstrating an intent to actually insert his finger inside AAA's sexual organ which, to reiterate, was still then protectively covered, much less an intent to have carnal knowledge with the victim. An inference of attempted rape by sexual intercourse or attempted rape by sexual assault cannot therefore be successfully reached based on petitioner's act of touching AAA's genitalia and upon ceasing from doing so when AAA swayed off his hand. Instead, petitioner's lewd act of fondling AAA's sexual organ consummates the felony acts of lasciviousness. The slightest penetration into one's sexual organ distinguishes an act of lasciviousness from the crime of rape. x x x Since there was neither an insertion nor an attempt to insert petitioner's finger into AAA's genitalia, petitioner can only be held guilty of the lesser crime of acts of lasciviousness following the variance doctrine enunciated under Section 4 in relation to Section 5 of Rule 120 of the Rules on Criminal Procedure. Acts of lasciviousness, the offense proved, is included in rape, the offense charged. Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner. All of these elements are present in the instant case.

4. ID.; ID.; ID.; APPLICATION OF REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT) ON THE IMPOSABLE PENALTY SINCE THE MINOR VICTIM IS BELOW 12 YEARS OLD.— It is likewise undisputed that at the time of the commission of the lascivious act, AAA was six (6) years old which calls for the application of Section 5 (b) of the Republic Act No. 7610 defining sexual abuse of children and prescribing the penalty therefor x x x *Apropos*, Section 2 (h) of the rules implementing R.A. 7610 defines lascivious conduct x x x In *Quimvel v. People,* the Court

En Banc pronounced that Section 5 (b) covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Further, *Quimvel* instructs that the term "coercion and influence" as appearing under the law is broad enough to cover "force and intimidation." x x x Conclusively, the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Following *People v. Caoli*, petitioner should be convicted of the offense designated as acts of lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. 7610 since the minor victim in this case is below 12 years old and the imposable penalty is *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law (ISL), and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, *i.e., reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.

APPEARANCES OF COUNSEL

Artuz Bello Borja & Associates for petitioner.

D E C I S I O N

TIJAM, *J.*:

Through this petition for review on *certiorari*[1] under Rule 45, petitioner Edmisael C. Lutap seeks the reversal of the Decision[2] dated July 10, 2012 and Resolution[3] dated October 2, 2012 of

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[1] *Rollo*, pp. 8-33.

[2] *Id*. at 35-52.

[3] *Id*. at 54.

the Court of Appeals (CA)[4] in CA-G.R. CR No. 33630 finding petitioner guilty of attempted rape. The assailed CA Decision modified the Decision dated August 23, 2010 of the Regional Trial Court (RTC)[5] of Quezon City, Branch 94 which, in turn, found petitioner guilty of rape by sexual assault as charged.

The Antecedents

Petitioner was charged in an Information the accusatory portion of which reads:

> That on or about the 27th day of April 2004 in Quezon City, Philippines, the said accused by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously commit acts of sexual assault upon the person of [AAA],[6] 6 year[s] of age, a minor, by then and [there] inserting his finger into complainant's genital organ against her will and without her consent, to the damage and prejudice of said offended party.
>
> **CONTRARY TO LAW.**[7]

Upon petitioner's plea of not guilty, pre-trial and trial on the merits ensued.[8]

The prosecution presented as witnesses private complainant AAA, her younger brother BBB, her mother DDD and P/SUPT. Ruby Grace Sabino-Diangson. The evidence for the prosecution tends to establish the following facts:

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[4] Penned by Associate Justice Dantaon Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

[5] Penned by Presiding Judge Roslyn M. Rabara-Tria. *Id*. at 55-64.

[6] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used pursuant to the ruling of the Court in *People v. Cabalquinto* (533 Phil. 703 [2006] and A.M. No. 04-11-09-SC dated September 19, 2006).

[7] *Rollo,* p. 55.

[8] *Id*. at 56.

At the time of the incident, AAA was only six (6) years old having been born on September 11, 1997.[9] Petitioner, who was also known as "Egay," frequently visits the house of AAA's family, being the best friend of AAA's father. Around 6:30 o'clock in the evening of April 27, 2004, AAA and her younger siblings, BBB and CCC, were watching television in their *sala*, together with petitioner. Meanwhile, their mother DDD was cooking dinner in the kitchen separated only by a concrete wall from the *sala*.[10]

AAA was then wearing short pants[11] and was sitting on the floor with her legs spread apart while watching television and playing with "text cards." BBB, on the other hand, was seated on a chair beside CCC, some five steps away from AAA. Petitioner was seated on the sofa which was one foot away from AAA.[12]

Petitioner then touched AAA's vagina.[13] AAA reacted by swaying off his hand.[14]

BBB saw petitioner using his middle finger in touching AAA's vagina.[15] Upon seeing this, BBB said "*Kuya Egay, bad iyan, wag mong kinikiliti ang pepe ni Ate*."[16] BBB then went to where DDD was cooking and told her that petitioner is bad because he is tickling AAA's vagina.[17] DDD then called AAA, brought her inside the room and asked her if it were true that petitioner tickled her vagina. AAA answered, "but I swayed his hand,

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[9] *Id*. at 60.

[10] *Id*. at 57.

[11] *Id*. at 45.

[12] *Id*. at 57.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 41.

[16] *Id*. at 57.

[17] *Id*.

Mama." DDD again asked AAA how many times have petitioner tickled her vagina and AAA answered, "many times in [petitioner's] house" and that he also "let her go on the bed, remove her panty, open her legs and lick her vagina."[18]

As such, DDD confronted petitioner and asked why he did that to AAA. Petitioner said that it was because AAA's panty was wet and that he was sorry.[19]

The next day, or on April 28, 2004, DDD brought AAA to Camp Crame for medical examination but because the doctor was not available, AAA was examined only on April 30, 2004.[20]

In defense, petitioner denied the accusations against him. Petitioner testified that he merely pacified AAA and BBB who were quarreling over the text cards. When petitioner separated the children, BBB then said, "*bad yan, bad*."[21] After which, DDD talked to her two children in the kitchen and when she came out, she asked petitioner if he touched AAA. Petitioner denied having touched AAA and suggested that AAA be examined.[22]

The testimony of Melba Garcia, a Purok Leader, was also presented to the effect that she personally knows petitioner and that the latter enjoys a good reputation. DDD, on the other hand, was the subject of several complaints from the neighbors.[23]

The RTC found petitioner guilty as charged. The RTC gave full credit to AAA's and BBB's candid testimonies that petitioner inserted his finger in the vagina of AAA.[24] The RTC emphasized that BBB graphically demonstrated the act committed by

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[18] *Id*. at 57-58.

[19] *Id*. at 58.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 59.

[24] *Id*. at 60.

petitioner by moving his middle finger constantly. To prove its point, the RTC cited the following excerpt from BBB's testimony:

COURT:	I want to clarify. What was the finger doing?
WITNESS:	Pinaano po sa ano ni Ate.
COURT:	Ideretso muna. Pinaano ang ano.
WITNESS:	Inilulusot po niya.
COURT:	Sa ano?
WITNESS:	Dito po.
COURT:	Ang ano?
WITNESS:	Sa ano ni Ate, dito po.
ACP VILLALON:	Ano tawag diyan?
COURT:	Huwag kang mahiya, sabihin mo.
WITNESS:	Pepets po. xxx[25]

As such, the RTC disposed:

WHEREFORE, finding accused EDMISAEL LUTAP y CUSPAO GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A paragraph 2 in relation to Article 266-B of the Revised Penal Code, taking into consideration the aggravating circumstance that the victim was only six (6) years old at the time of the commission of the offense, he is hereby sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of PRISION MAYOR as minimum to TWELVE YEARS (12) YEARS and ONE (1) DAY of RECLUSION TEMPORAL as maximum and to pay the cost.

Accused is further ordered to pay private complainant [AAA] civil indemnity of ₱50,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00.

SO ORDERED.[26]

From this adverse decision, petitioner appealed.

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[25] *Id*. at 62.

[26] *Id*. at 64.

The Ruling of the CA

Revisiting the testimonies of AAA and BBB, the CA found that there was no insertion of petitioner's finger into AAA's vagina as it was merely slightly touched[27] or touched without too much pressure by petitioner.[28] The CA went on to conclude that since petitioner's finger merely touched AAA's vagina and that there was no penetration, petitioner can only be held liable for attempted rape.

The CA thus disposed:

> **WHEREFORE**, premises considered, the assailed August 23, 2010 Decision of the Regional Trial Court of Quezon City, Branch 94, is hereby **MODIFIED**. Accused-appellant Edmisael Lutap y Cuspao is found **GUILTY of Attempted Rape**, and is **SENTENCED** to suffer the indeterminate imprisonment of SIX (6) MONTHS of arresto mayor, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional medium, as maximum.
>
> Also, the accused-appellant is ordered to indemnify the victim in the sum of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages, and to pay the costs.
>
> **SO ORDERED.**[29]

Petitioner's motion for reconsideration was similarly denied by the CA. Hence, the instant recourse.

The Issue

Petitioner questions the CA's finding that the crime of attempted rape was committed considering that there is absolutely no showing in this case that petitioner's sexual organ had ever touched the victim's vagina nor any part of her body.[30] Petitioner likewise argues that there is no clear, competent, convincing

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[27] *Id*. at 43.

[28] *Id*. at 45.

[29] *Id*. at 51.

[30] *Id*. at 22.

and positive evidence that petitioner touched the vagina of the victim with the intention of forcefully inserting his finger inside. Petitioner directs the Court's attention to the fact that at the time of the alleged incident, AAA was well clothed, her vagina fully covered as she was then wearing a panty and a short pants.[31]

Thus, the core issue tendered in this petition is whether or not the CA erred in convicting petitioner for the crime of attempted rape on the basis of the evidence thus presented.

Our Ruling

The petition is partly meritorious.

We agree with the CA's ruling that the fact of insertion of petitioner's finger into AAA's sexual organ was not established beyond reasonable doubt to support petitioner's conviction of rape by sexual assault. We also agree with the CA that there was sexual molestation by petitioner's established act of touching AAA's vagina. Be that as it may, the act of touching a female's sexual organ, standing alone, is not equivalent to rape, not even an attempted one.[32] At most, therefore, petitioner's act of touching AAA's sexual organ demonstrates his guilt for the crime of acts of lasciviousness, an offense subsumed in the charge of rape by sexual assault.[33]

Rape, under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 or the "Anti-Rape Law of 1997" can be committed in two ways: Article 266-A paragraph 1[34] refers to rape through sexual intercourse, the

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[31] *Id*. at 24.

[32] *People v. Mendoza,* 595 Phil. 1197, 1211 (2008).

[33] *Id*.

[34] 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;

central element of which is carnal knowledge which must be proven beyond reasonable doubt; and Article 266-A paragraph 2[35] refers to rape by sexual assault which must be attended by any of the circumstances enumerated in sub-paragraphs (a) to (d) of paragraph 1.[36]

The direct examination of AAA and BBB, as well as the clarificatory questions interposed by the RTC, while convincingly prove that there was malicious touching of AAA's sexual organ, nevertheless invite doubts as to whether petitioner indeed inserted his finger inside AAA's vagina.

On point is the direct examination of AAA yielding the following:

Q: While you were playing text, what happened, if any?

A: **Tito Egay touched my vagina.**

Q: What were you wearing during that time?

A: Shorts, ma'am.

Q: **Where did he touch you?**

A: **My vagina, ma'am.**

Q: Did you say anything when your Tito Egay touched your vagina?

A: I swayed off his hands.[37] (Emphasis supplied)

(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.

[35] Article 266-A. Rape, When and How Committed. Rape is committed– xxx

(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.

[36] See *People v. Caoili,* G.R. No. 196342, August 8, 2017.

[37] *Rollo*, p. 45.

That the act done by petitioner was mere "touching" of AAA's sexual organ was further corroborated by BBB whose testimony is as follows:

Q On that particular day, April 27, 2004, you saw the accused and your Ate AAA. What did you see?

A Ginaganyan po.

COURT

The witness is demonstrating by moving his middle finger.

Q According to you, you demonstrated by moving your middle finger constantly. Who was the once [sic] doing that?

A Him, ma'am.

COURT INTERPRETER

Witness pointing to the accused.

COURT

I want to clarify. What was that finger doing?

WITNESS

Pinaano po sa ano ni Ate.

COURT

Ideretso muna [sic]. Pinaano ang ano.

WITNESS

Inilulusot po niya.

COURT

Sa ano?

WITNESS

Dito po.

COURT

Ang ano?

WITNESS

Sa ano ni Ate, dito po.

ACP VILLALON

Anong tawag diyan?

COURT

Huwag kang mahiya, sabihin mo.

WITNESS

Pepets po.

ACP VILLALON

Pinapasok.

ATTY. TOPACIO

He did not say pinapasok.

COURT

Ginagalaw.

ACP VILLALON

Ginaganun?

WITNESS

Opo.

COURT

Interpret the answer. Pepets is vagina.

ACP VILLALON

Iyung ginaganun, your honor.

COURT

Touching.

WITNESS (Court Interpreter's interpretation)

The accused was touching by his middle finger the vagina of my sister.

x x x x x x x x x

Okay, we will ask. Was the middle finger touching the pepets (vagina) of your sister?

WITNESS

Not too much. (Hindi po masyado.)

COURT

Hindi masyado. Pero umabot?

WITNESS

Umabot po.

COURT

So umabot. Touching. Umabot pero hindi masyado. Okay, I will. Supposed this is the pepe (vagina) of your sister, hanggang saan umabot? You demonstrate.

COURT INTERPRETER

Hanggang saan diyan sa daliri ni Judge?

WITNESS

Hanggang dito lang po.

COURT

Sa baba. Hindi umabot dito?

WITNESS

Hindi po.

COURT

So below the pepe.

ATTY. TOPACIO

No, your honor, he was only pointing to the thigh area.

COURT

Sige ulitin natin ang tanong. Sa binti ba niya...

ATTY. TOPACIO

Hita po.

COURT

Sa hita ba niya hinawakan o sa pekpek niya?

WITNESS

Sa pepe po.

x x x x x x x x x

COURT

Pero hindi masyadong idiniin?

WITNESS

Hindi po masyado.[38] (Emphasis supplied)

Thus, absent any showing that there was actual insertion of petitioner's finger into AAA's vagina, petitioner cannot be held liable for consummated rape by sexual assault.

People v. Mendoza,[39] explains that for a charge of rape by sexual assault with the use of one's fingers as the assaulting object, as in the instant case, to prosper, there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or a graze of its surface, being that rape by sexual assault requires that the assault be specifically done through the insertion of the assault object into the genital or anal orifices of the victim.[40]

Applying by analogy the treatment of "touching" and "entering" in penile rape as explained in *People v. Campuhan*,[41] *Mendoza* states:

> The touching of a female's sexual organ, standing alone, is not equivalent to rape, not even an attempted one. With regard to penile rape, *People v. Campuhan* explains:
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> xxx Thus, t*ouching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the

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[38] *Id.* at 41-45.

[39] *People v. Mendoza, supra* note 32.

[40] *Id.* at 1211-1212.

[41] 385 Phil. 912, 920-922 (2000). *People v. Mendoza, supra* note 32, *id.* at 1211.

> victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed *touched* the *labias* or *slid* into the female organ, and *not merely stroked the external surface thereof*, for an accused to be convicted of consummated rape. xxx
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> xxx Jurisprudence dictates that the *labia majora* must be *entered* for rape to be consummated and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness. (Italics in the original.)

What was established beyond reasonable doubt in this case was that petitioner touched, using his middle finger, AAA's sexual organ which was then fully covered by a panty and a short pants. However, such is insufficient to hold petitioner liable for attempted rape by sexual assault. As above intimated, the mere touching of a female's sexual organ, by itself, does not amount to rape nor does it suffice to convict for rape at its attempted stage.[42]

The Court's explanation of attempted penile rape in *Cruz v. People*[43] is instructive:

> In attempted rape, therefore, the concrete felony is rape, but the offender does not perform all the acts of execution of having carnal knowledge. If the slightest penetration of the female genitalia consummates rape, and rape in its attempted stage requires the commencement of the commission of the felony directly by overt acts without the offender performing all the acts of execution that should produce the felony, the only means by which the overt acts performed by the accused can be shown to have a causal relation to rape as the intended crime is to make a clear showing of his intent

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[42] *Id.* See also, *People v. Garcia*, 695 Phil. 576 (2012).

[43] 745 Phil. 54, 71-72 (2014).

to lie with the female. Accepting the intent, being a mental act, is beyond the sphere of criminal law, that showing must be through his overt acts directly connected with rape. He cannot be held liable for attempted rape without such overt acts demonstrating the intent to lie with the female. In short, the State, to establish attempted rape, must show that his overt acts, should his criminal intent be carried to its complete termination without being thwarted by extraneous matters, would ripen into rape, for, as succintly put in *People v. Dominguez, Jr.*: "The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption." (Italics and citations omitted.)

Applying by analogy the above pronouncements to attempted rape by sexual assault, petitioner's direct overt act of touching AAA's vagina by constantly moving his middle finger cannot convincingly be interpreted as demonstrating an intent to actually insert his finger inside AAA's sexual organ which, to reiterate, was still then protectively covered, much less an intent to have carnal knowledge with the victim. An inference of attempted rape by sexual intercourse or attempted rape by sexual assault cannot therefore be successfully reached based on petitioner's act of touching AAA's genitalia and upon ceasing from doing so when AAA swayed off his hand.

Instead, petitioner's lewd act of fondling AAA's sexual organ consummates the felony of acts of lasciviousness. The slightest penetration into one's sexual organ distinguishes an act of lasciviousness from the crime of rape. *People v. Bonaagua*[44] discussed this distinction:

> It must be emphasized, however, that like in the crime of rape whereby the slightest penetration of the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime, in like manner, if the tongue, in an act of cunnilingus, touches the outer lip of the vagina, the act should also be considered as already consummating the crime of rape through sexual assault, not the crime of acts of lasciviousness. Notwithstanding, in the present case, such logical interpretation could not be applied.

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[44] 665 Phil. 750, 769 (2011).

It must be pointed out that the victim testified that Ireno only touched her private part and licked it, but did not insert his finger in her vagina. This testimony of the victim, however, is open to various interpretation, since it cannot be identified what specific part of the vagina was defiled by Ireno. Thus, in conformity with the principle that the guilt of an accused must be proven beyond reasonable doubt, the statement cannot be the basis for convicting Ireno with the crime of rape through sexual assault.[45] (Emphasis supplied)

Since there was neither an insertion nor an attempt to insert petitioner's finger into AAA's genitalia can only be held guilty of the lesser crime of acts of lasciviousness following the variance doctrine enunciated under Section 4[46] in relation to Section 5[47] of Rule 120 of the Rules on Criminal Procedure. Acts of lasciviousness, the offense proved, is included in rape, the offense charged.[48]

Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under

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[45] *Id*.

[46] SEC. 4. Judgment in case of variance between allegation and proof.– When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[47] SEC. 5. When the offense includes or is included in another.– An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[48] *People v. Caoili*, *supra* note 36.

12 years of age.[49] As thus used, lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner.[50] All of these elements are present in the instant case.

It is likewise undisputed that at the time of the commission of the lascivious act, AAA was six (6) years old which calls for the application of Section 5(b) of Republic Act No. 7610 defining sexual abuse of children and prescribing the penalty therefor, as follows:

> Section 5. Child Prostitution and Other Sexual Abuse.– Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
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> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
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> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be persecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; xxx

Apropos, Section 2(h) of the rules implementing R.A. 7610 defines lascivious conduct as:

> [T]he **intentional touching, either directly or through clothing, of the genitalia**, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any

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[49] *People v. Lizada*, 444 Phil. 67, 97 (2003).

[50] *Id*.

person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (Emphasis suplied)

In *Quimvel v. People*[51], the Court *En Banc* pronounced that Section 5(b) covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Further, *Quimvel* instructs that the term "coercion and influence" as appearing under the law is broad enough to cover "force and intimidation."

In this case, the Information specifically stated that: (a) AAA was a 6-year old minor at the time of the commission of the offense; (b) that petitioner inserted his finger into AAA's genitalia; and (c) petitioner employed force, threats and intimidation. At the trial it was established that petitioner committed a lewd act by fondling AAA's vagina who, at the time of the incident, was alleged and proved to be only 6 years old. Here, it was also established that AAA, being of tender age, knew and trusted petitioner who frequents their house being the best friend of her father, thus, satisfying the element of "influence" exerted by an adult which led AAA to indulge in lascivious conduct. Petitioner's defense of denial, apart from being inherently weak,[52] is demolished by AAA's and BBB's testimonies which the RTC and the CA unanimously regarded as straightforward and credible.

Conclusively, the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Following *People v. Caoili*[53], petitioner should be convicted of the offense designated as acts of lasciviousness under Article 336 of the RPC in relation

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[51] G.R. No. 214497, April 18, 2017, citing *Malto v. People,* 560 Phil. 119 (2007).

[52] *People v. Candaza*, 524 Phil. 589 (2006).

[53] *People v. Caoili*, *supra* note 36.

to Section 5 of R.A. 7610 since the minor victim in this case is below 12 years old and the imposable penalty is *reclusion temporal* in its medium period.

Applying the Indeterminate Sentence Law (ISL), and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, *i.e.*, *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[54]

Accordingly, the prison term is modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period as maximum.

Further, in line with recent jurisprudence, petitioner is ordered to pay AAA moral damages, exemplary damages and fine in the amount of PhP15,000.00 each and civil indemnity in the amount of PhP20,000.00.[55]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 10, 2012 and Resolution dated October 25, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33630 finding petitioner Edmisael Lutap guilty of attempted rape is **REVERSED**. The Court finds herein petitioner Edmisael Lutap **GUILTY** beyond reasonable doubt of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 of R.A. No. 7610 and hereby sentences him to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum, to fifteen (15) years, six (6) months and twenty

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[54] *Quimvel v. People*, *supra* note 51.

[55] *People v. Padlan*, G.R. No. 214880, September 6, 2017.

(20) days of *reclusion temporal* in its medium period as maximum. Petitioner is **ORDERED** to **PAY** private complainant moral damages, exemplary damages and fine in the amount of PhP15,000.00 each and civil indemnity in the amount of PhP20,000.00.

Petitioner is also **ORDERED** to **PAY** interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid, to be imposed on the damages and civil indemnity.[56]

SO ORDERED.

Sereno, *C.J.* (*Chairperson*), *Leonardo-de Castro*, *del Castillo*, and *Reyes*, *Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 213972. February 5, 2018]

FELICITAS L. SALAZAR, *petitioner, vs.* **REMEDIOS FELIAS, on her own behalf and representation of the other HEIRS OF CATALINO NIVERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; EXECUTION OF JUDGMENT; THE COURT CANNOT REFUSE TO ISSUE A WRIT OF EXECUTION UPON A FINAL AND EXECUTORY JUDGMENT, OR QUASH IT, OR STAY ITS IMPLEMENTATION, NEITHER MAY THE

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[56] *People v. Veloso*, 703 Phil. 541, 544, 556 (2013).

[*] Designated additional Member as per Raffle dated November 29, 2017.

PARTIES OBJECT TO THE EXECUTION BY RAISING NEW ISSUES OF FACT OR LAW; EXCEPTIONS.— Nothing is more settled than the rule that a judgment that is final and executory is immutable and unalterable. It may no longer be modified in any respect, except when the judgment is void, or to correct clerical errors or to make *nunc pro tunc* entries. In the same vein, the decision that has attained finality becomes the law of the case, regardless of any claim that it is erroneous. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. Accordingly, the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or stay its implementation. Concomitantly, neither may the parties object to the execution by raising new issues of fact or law. The only exceptions thereto are when: "(i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has been submitted to the judgment of the court; (v) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (vi) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority."

2. **ID.; ID.; ID.; ID.; THE CLAIM THAT THE PROPERTY IS EXEMPT FROM EXECUTION FOR BEING A MOVANT'S FAMILY HOME MUST BE SET UP AND PROVED; EVIDENCE REQUIRED, CITED.—** In another attempt to thwart the execution of the RTC's final and executory judgment, Felicitas claims that the execution cannot proceed, as the subject property is her family home and is therefore exempt from execution. Indeed, the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated. It confers upon a particular family the right to enjoy such properties. It cannot be seized by creditors except in certain special cases. However, the claim that the property is exempt from execution for being the movant's family home is not a magic wand that will freeze the court's hand and forestall the execution of a

final and executory ruling. It must be noted that it is not sufficient for the claimant to merely allege that such property is a family home. Whether the claim is premised under the Old Civil Code or the Family Code, the claim for exemption must be set up and proved. x x x In addition, residence in the family home must be actual. The law explicitly mandates that the occupancy of the family home, either by the owner thereof, or by any of its beneficiaries must be actual. This occupancy must be real, or actually existing, as opposed to something merely possible, or that which is merely presumptive or constructive. x x x It bears emphasis that it is imperative that her claim must be backed with evidence showing that the home was indeed (i) duly constituted as a family home, (ii) constituted jointly by the husband and wife or by an unmarried head of a family, (iii) resided in by the family (or any of the family home's beneficiaries), (iv) forms part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or property of the unmarried head of the family, and (v) has an actual value of Php 300,000.00 in urban areas, and Php 200,000.00 in rural areas.

APPEARANCES OF COUNSEL

Decano Law Ofice for petitioner.
Asteria Balagat Felicen for respondents.

D E C I S I O N

REYES, JR., *J.*:

The movant's claim that his/her property is exempt from execution for being the family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and executory ruling. It is imperative that the claim for exemption must be set up and proven.

This treats of the petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of

[1] *Rollo,* pp. 8-17.

the Decision[2] dated December 6, 2013, and Resolution[3] dated August 7, 2014, rendered by the Court of Appeals (CA) in CA-G.R. CV No. 97309, which affirmed the execution of the final and executory judgment issued by the Regional Trial Court, Branch 55, Alaminos, Pangasinan (RTC Branch 55).

The Antecedent Facts

On February 28, 1990, private respondent Remedios Felias, representing the heirs of Catalino Nivera (Heirs of Nivera) filed a Complaint for Recovery of Ownership, Possession and Damages against the Spouses Romualdo Lastimosa (Romualdo) and Felisa Lastimosa (Felisa). The former sought to recover from the latter four parcels of land located in Baruan, Agno, Pangasinan (subject property).

On March 3, 1997, during the trial of the case, Romualdo died.

Consequently, on July 6, 1998, a Motion for Substitution[4] was filed by the decedent's wife, Felisa, and their children Flordeliza Sagun, Reynaldo Lastimosa, Recto Lastimosa (Recto), Rizalina Ramirez (Rizalina), Lily Lastimosa, and Avelino Lastimosa (Heirs of Lastimosa).

On March 16, 2004, the RTC Branch 55 rendered a Decision,[5] declaring the Heirs of Nivera as the absolute owners of the parcels of land in question, and thereby ordering the Heirs of Lastimosa to vacate the lands and to surrender possession thereof. The dispositive portion of the decision of the RTC Branch 55, reads:

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[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *id*. at 19-33.

[3] *Id*. at 36-41.

[4] *Id*. at 46-48.

[5] *Id*. at 50-55.

WHEREFORE, this Honorable Court renders judgment:

a. Declaring the [Heirs of Nivera] absolute owners of the parcels of land in question as described in the Amended Complaint, and ordering the [Heirs of Lastimosa] to surrender possession thereof and vacate the same;

b. Ordering the [Heirs of Lastimosa], jointly and severally, to pay the [Heirs of Nivera] actual damages in the amount of Php 270,000.00 for 1975 to 1995, and Php 10,000.00 annually from 1996 and through all the subsequent years until actual possession shall have been restored to the [Heirs of Nivera]; attorney's fees and litigation expenses in the amount of Php 21,000.00; and costs.

SO ORDERED.[6]

The Heirs of Lastimosa did not file an appeal against the trial court's ruling.

Meanwhile, Felicitas Salazar (Felicitas), daughter of Romualdo, along with Recto and Rizalina filed a Petition for Annulment of Judgment dated June 22, 2006 with the CA. Felicitas sought the nullification of the RTC Branch 55's Decision dated March 16, 2004, and the corresponding Writs of Execution and Demolition issued pursuant thereto.[7] In her Petition for Annulment of Judgment, Felicitas claimed that she was deprived of due process when she was not impleaded in the case for Recovery of Ownership, before the RTC Branch 55.[8]

On June 5, 2008, the Former Tenth Division of the CA rendered a Decision,[9] in CA-G.R. SP No. 95592, dismissing the Petition for Annulment of Judgment. The CA refused to give credence to the contention that the Heirs of Nivera are at fault for failing to implead Felicitas as a party defendant in the action for recovery of ownership. Rather, the failure to include Felicitas in the proceedings was due to the fault of the Heirs of Lastimosa,

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[6] *Id*. at 55.

[7] *Id*. at 25-26.

[8] *Id*. at 13.

[9] *Id*. at 82-93.

who neglected to include her (Felicitas) in their Motion to Substitute. The CA further ratiocinated that since the RTC acquired jurisdiction over the person of the original defendants Romualdo and Felisa, the outcome of the case is binding on all their heirs or any such persons claiming rights under them.[10]

On June 3, 2009, this Court affirmed the CA decision in the Petition for Annulment of Judgment.[11] This Court's ruling became final, as per Entry of Judgment of even date.

Meanwhile, the Heirs of Lastimosa filed with the RTC Branch 55 an Urgent Motion to Order the Sheriff to Desist from Making Demolition dated April 24, 2010. The Motion to Desist was premised on the fact that the Sheriff cannot execute the lower court's decision considering that Felicitas had an aliquot share over the property, which had not yet been partitioned.[12]

At about the same time, the Heirs of Nivera filed a Motion for Execution and Demolition dated May 28, 2010. The Motion for Execution was anchored on the fact that the Decision dated March 16, 2004, in the case for recovery of ownership, possession and damages had long attained finality.[13]

On July 9, 2010, the RTC Branch 55 issued an Order granting the Motion for Execution and Demolition, and denying the Motion to Desist.[14] The dispositive portion of the order reads:

> After going over the allegations in both motions, the Court resolves to deny the motion, to order the Sheriff to desist from making demolition filed by the defendants through counsel, it appearing that the grounds raised in the said motion are already mooted by the subsequent filing of the motion for execution and demolition filed by plaintiff through counsel.

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[10] *Id.* at 92.

[11] *Id.* at 26.

[12] *Id.*

[13] *Id.* at 27.

[14] *Id.*

The motion for execution and demolition is hereby granted.

Accordingly, let [a] Writ of Execution and Demolition issue to satisfy judgement rendered in this case.

SO ORDERED.[15]

Dissatisfied with the ruling, the Heirs of Lastimosa[16] filed an appeal before the CA, questioning the Writ of Execution and Demolition issued by the lower court.

On December 6, 2013, the Fifteenth Division of the CA rendered the assailed Decision[17] dismissing the appeal on the following grounds, to wit: (i) the Heirs of Lastimosa availed of the wrong remedy by filing an appeal, instead of a petition for *certiorari* under Rule 65; (ii) the matter pertaining to the non-inclusion of Felicitas is already barred by *res judicata,* as it has been settled with finality in CA-G.R. SP No. 95592, and affirmed by the Supreme Court in G.R. No. 185056; and (iii) the execution of the decision rendered by the RTC Branch 55 is proper considering that case has long attained finality. The dispositive portion of the assailed CA decision reads:

ACCORDINGLY, the appeal is DENIED. The assailed Order dated April 6, 2011 is AFFIRMED.[18]

Felicitas filed a Motion for Reconsideration against the same Decision, which was denied by the CA in its Resolution[19] dated August 7, 2014.

Undeterred, Felicitas filed the instant petition for review on *certiorari*[20] under Rule 45 of the Revised Rules of Court seeking the reversal of the assailed CA decision and resolution.

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[15] *Id*.

[16] The CA decision indicates that therein defendants-appellants were Spouses Romualdo and Felisa Lastimosa.

[17] *Rollo*, pp. 19-33.

[18] *Id*. at 32.

[19] *Id*. at 36-41.

[20] *Id*. at 8-17.

The Issue

The main issue for this Court's resolution rests on whether the CA erred in ordering the execution of the Decision dated March 16, 2004.

In seeking the reversal of the assailed decision, Felicitas claims that the Writ of Execution and Demolition issued by the RTC Branch 55 was executed against the wrong party.[21] She points out that she was not impleaded in the case for recovery of ownership and possession, and thus the decision cannot bind her.[22] Felicitas argues that she was deprived of her property as an heir without due process, as she was left out of the proceedings, "completely unable to protect her rights."[23] In addition, Felicitas contends that the execution cannot continue as the Writ of Execution is being enforced against property that is exempt from execution, as what is sought to be demolished is her family home. In this regard, Article 155 of the Family Code ordains that the family home shall be exempt from execution.[24]

On the other hand, the Heirs of Nivera counter that the petition for review on *certiorari* is nothing but a dilatory tactic employed by Felicitas to overthrow and delay the execution of the judgment rendered in as early as March 16, 2004.[25] The Heirs of Nivera maintain that Felicitas' claim that she was deprived of her property as an heir without due process of law has already been settled with finality in the Petition for Annulment of Judgement, which was dismissed by the CA, and this Court.[26] Likewise, anent the claim that the subject property is exempt from execution, the Heirs of Nivera aver that Felicitas failed to present an iota of evidence to prove her claim. On the contrary, Felicitas

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[21] *Id*. at 11.

[22] *Id*.

[23] *Id*. at 12.

[24] *Id*. at 11.

[25] *Id*. at 106.

[26] *Id*. at 107.

herself admitted in her pleadings that she does not reside in the subject property in Alaminos, but actually lives in Muñoz, Nueva Ecija.[27] Moreover, the subject property belonged to the Heirs of Nivera in as early as the 1950s, thereby negating Felicitas' claim that it is her family home.[28]

Ruling of the Court

The petition is bereft of merit.

Nothing is more settled than the rule that a judgment that is final and executory is immutable and unalterable. It may no longer be modified in any respect, except when the judgment is void, or to correct clerical errors or to make *nunc pro tunc* entries. In the same vein, the decision that has attained finality becomes the law of the case, regardless of any claim that it is erroneous. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[29] Accordingly, the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or stay its implementation.[30]

Concomitantly, neither may the parties object to the execution by raising new issues of fact or law. The only exceptions thereto are when: "(i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has been submitted to the judgment of the court; (v) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (vi) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong

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[27] *Id*. at 105.

[28] *Id*. at 106.

[29] *Mayor Vargas, et al. v. Cajucom*, 761 Phil. 43, 54 (2015).

[30] *Id*. at 53.

party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority."[31]

In the case at bar, there is no dispute that in as early as March 16, 2004, the RTC Branch 55 of Alaminos, Pangasinan rendered a Decision in the case for Recovery of Ownership, Possession and Damages, ordering the Heirs of Lastimosa to vacate the subject properties and surrender them to the Heirs of Nivera. There is no dispute that this ruling of the RTC had become final and executory. Pursuant thereto, the lower court issued a Writ of Execution and Demolition.

This notwithstanding, Felicitas seeks to prevent the execution of the same order, arguing that the writ was issued against the wrong party; and that the property sought to be executed is exempt from execution.

The Court is not persuaded.

It must be noted at the outset that the matter of whether Felicitas was deprived of due process of law for not having been impleaded in the case for recovery of ownership and possession has long been settled with finality.

In the decision of the CA in the case for Petition for Annulment of Judgment (CA-G.R. SP No. 95592),[32] the Former Tenth Division of the CA squarely and judiciously passed upon the issue of whether the judgment of the lower court in the action for recovery of ownership and possession was void for failure to implead Felicitas. The CA held that:

> Finally, the intimation of the petitioners that private respondent is at fault for failing to implead [Felicitas] as party defendant in this case is patently without basis. It must be recalled that the lower court acquired jurisdiction over the person of the original defendants Romualdo and Feliza Lastimosa. Hence, the outcome of this case is binding on all the heirs or persons

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[31] *Id*. at 56, citing *Philippine Economic Zone Authority v. Borreta*, 519 Phil. 637, 642-643 (2006).

[32] *Rollo*, pp. 82-93.

claiming rights under the said defendants. When [Romualdo] died on March 3, 1997, the defendants filed an Urgent Motion to Substitute Other Heirs of the said defendant listing the names of the heirs to be substituted. It is therefore crystal clear that if [Felicitas] was not impleaded in this case as party defendant being the daughter of [Romualdo], that omission could not be attributed to the private respondent but the defendants themselves.[33] (Underscoring in the original)

This ruling of the CA was affirmed by this Court in the Resolution dated June 3, 2009, and attained finality as per Entry of Judgment. Markedly, it is crystal clear that the issues pertaining to Felicitas' non-inclusion in the proceedings, and the consequent validity of the lower court's judgment have long attained finality. It bears reiterating that a judgment that is final and executory cannot be altered, even by the highest court of the land. This final judgment has become the law of the case, which is now immutable.

Additionally, as an heir of the original defendants in the action for recovery of ownership, Felicitas is bound by the decision rendered against her predecessors-in-interest. Thus, there is nothing that exempts her from the enforcement of the Writ of Execution.

In another attempt to thwart the execution of the RTC's final and executory judgment, Felicitas claims that the execution cannot proceed, as the subject property is her family home and is therefore exempt from execution.

Indeed, the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated. It confers upon a particular family the right to enjoy such properties.[34] It cannot be seized by creditors except in certain special cases.[35]

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[33] *Id.* at 92.

[34] *Ramos, et al. v. Pangilinan, et al.*, 639 Phil. 192, 198 (2010).

[35] *Josef v. Santos*, 592 Phil. 438, 445 (2008), citing *Taneo, Jr. v. CA*, 363 Phil. 652, 663 (1999).

However, the claim that the property is exempt from execution for being the movant's family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and executory ruling. It must be noted that it is not sufficient for the claimant to merely allege that such property is a family home. Whether the claim is premised under the Old Civil Code or the Family Code, the claim for exemption must be set up and proved.[36]

In fact, in *Ramos, et al. v. Pangilinan, et al.*,[37] the Court, citing *Spouses Kelley, Jr. v. Planters Products, Inc., et al.*,[38] laid down the rules relative to the levy on execution of the family home, *viz.:*

> No doubt, a family home is generally exempt from execution provided it was duly constituted as such. There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family. The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas.[39]

In addition, residence in the family home must be actual. The law explicitly mandates that the occupancy of the family home, either by the owner thereof, or by any of its beneficiaries must be actual. This occupancy must be real, or actually existing, as opposed to something merely possible, or that which is merely presumptive or constructive.[40]

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[36] *Honrado v. CA*, 512 Phil. 657, 666 (2005).

[37] 639 Phil. 192 (2010).

[38] 579 Phil. 763 (2008).

[39] *Ramos, et al. v. Pangilinan, et al.*, *supra* note 37, at 198.

[40] *Manacop v. CA*, 342 Phil. 735, 744 (1997), citing Moreno, *Philippine Law Dictionary*, 3rd Ed., p. 26.

Guided by the foregoing jurisprudential tenets, it becomes all too apparent that Felicitas cannot conveniently claim that the subject property is her family home, sans sufficient evidence proving her allegation. It bears emphasis that it is imperative that her claim must be backed with evidence showing that the home was indeed (i) duly constituted as a family home, (ii) constituted jointly by the husband and wife or by an unmarried head of a family, (iii) resided in by the family (or any of the family home's beneficiaries), (iv) forms part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or property of the unmarried head of the family, and (v) has an actual value of Php 300,000.00 in urban areas, and Php 200,000.00 in rural areas.

A perusal of the petition, however, shows that aside from her bare allegation, Felicitas adduced no proof to substantiate her claim that the property sought to be executed is indeed her family home.

Interestingly, Felicitas admitted in her Motion for Reconsideration dated December 23, 2013, and her Petition for Annulment of Judgment dated June 22, 2006, that she is, and has always been a resident of Muñoz, Nueva Ecija.[41] Similarly, the address indicated in Felicitas' petition for review on *certiorari* is Muñoz, Nueva Ecija.[42]

Equally important, the Court takes judicial notice of the final ruling of the RTC Branch 55 in the case for recovery of ownership, that the subject property has belonged to the Heirs of Nivera since the 1950s.[43] This automatically negates Felicitas' claim that the property is her family home.

Undoubtedly, Felicitas' argument that the property subject of the writ of execution is a family home, is an unsubstantiated

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[41] *Rollo*, p. 105.

[42] *Id*. at 8.

[43] *Id*. at 106.

allegation that cannot defeat the binding nature of a final and executory judgment. Thus, the Writ of Execution and Demolition issued by the RTC Branch 55 must perforce be given effect.

In fine, an effective and efficient administration of justice requires that once a judgment has become final, the winning party should not be deprived of the fruits of the verdict. The case at bar reveals the attempt of the losing party to thwart the execution of a final and executory judgment, rendered by the court thirteen (13) long years ago. The Court cannot sanction such vain and obstinate attempts to forestall the execution of a final ruling. It is high time that the case be settled with finality and the ruling of the RTC Branch 55 be given full force and effect.

WHEREFORE, premises considered, the instant petition is **DENIED for lack of merit.** Accordingly, the Decision dated December 6, 2013 and Resolution dated August 7, 2014, rendered by the Court of Appeals in CA-G.R. CV No. 97309 are **AFFIRMED *in toto.***

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 219955. February 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLENN DE GUZMAN *y* DELOS REYES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT 2002); FOR PROSECUTIONS INVOLVING DANGEROUS DRUGS, THE DANGEROUS DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE AND THE FACT OF ITS EXISTENCE IS VITAL TO SUSTAIN A JUDGMENT OF CONVICTION BEYOND REASONABLE DOUBT.— "For prosecutions involving dangerous drugs, the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt." Like the other elements of the offense/s charged, the identity of the dangerous drug must be established with moral certainty. Such proof requires "an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him."

2. ID.; ID.; SECTION 21, PARAGRAPH 1, ARTICLE II THEREOF PROVIDES FOR THE PROCEDURAL SAFEGUARDS THAT THE APPREHENDING TEAM MUST MANDATORILY OBSERVE IN THE HANDLING OF SEIZED ILLEGAL DRUGS; NOT COMPLIED WITH IN CASE AT BAR.— Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "As indicated by their *mandatory terms*, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case." x x x In this case, the records show that the buy-bust team had failed to *strictly* comply with the prescribed procedure under Section 21, par. 1. Although the seized items were marked at the police station, there is nothing on record to show that the marking had been done in the presence of appellant or his representatives. Clearly, this constitutes a major lapse that, when left unexplained, is *fatal* to the prosecution's case.

3. ID.; ID.; ID.; NON-COMPLIANCE THEREWITH MAY BE EXCUSED ONLY UNDER JUSTIFIABLE GROUNDS AND AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY

PRESERVED BY THE APPREHENDING TEAM/ OFFICER; CASE AT BAR.— To be sure, non-compliance with the prescribed procedures under Section 21, par. 1, does not, as it should not, *automatically* result in an accused's acquittal. The last sentence of Section 21(1), Article II of RA 9165, as amended, provides a saving mechanism, *viz.*: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. However, this saving mechanism operates only "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team." Thus, it is incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165. Unfortunately, the prosecution failed not only to recognize and explain the procedural lapses committed by the buy-bust team, but also to adduce evidence establishing the chain of custody of the seized items that would demonstrate that the integrity and evidentiary value of said items had been preserved.

4. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS; NOT ESTABLISHED IN CASE AT BAR .— [T]he following links must be established in order to ensure that the identity and integrity of the seized items had not been compromised: ***first***, the seizure and marking, if practicable, of the il1egal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. x x x The first crucial link in the chain of custody pertains to the time the marijuana was seized from appellant up to its delivery at the police station. [PO1 Reyes and SPO1 Delos Reyes] failed to disclose the identity of the person/s who had custody and possession of the confiscated items after their seizure, or that

they themselves had retained custody of the same from the place of arrest until they reached the police station. The prosecution's evidence relating to the third link in the chain of custody, *i.e.*, the turnover of the seized items from the investigating officer to the forensic chemist, also has loopholes. x x x The request for laboratory examination, as well as the specimens, were supposedly received by a certain "PO1 Menor." However, SPO1 Delos Reyes did not testify in this regard; neither did "PO1 Menor." Clearly, the prosecution failed to disclose the identity of the person who had custody of the seized items after its turnover by SPO1 Delos Reyes; the identity of the person who turned over the items to Forensic Chemist Dascil, and the identity of the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court. x x x The fourth link in the chain of custody, *i.e*. **the turnover of the seized items from the forensic chemist to the court**, presents an unusual twist in the prosecution's evidence in this case. Notably, the forensic chemist did not testify in court. x x x It appears, based on the prosecution's evidence no less, that for reasons unknown, the PNP Crime Laboratory agreed to turn over custody of the seized items to an *unnamed* receiving person at the City Prosecutor's Office *before* they were submitted as evidence to the trial court. It should be emphasized that the City Prosecutor's Office is not, nor has it ever been, a part of the chain of custody of seized dangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL ACTS; CANNOT ARISE IF THE QUESTIONED OFFICIAL ACTS ARE PATENTLY IRREGULAR.— Given the flagrant procedural lapses committed by the police in handling the seized marijuana and the *serious* evidentiary gaps in the chain of its custody, the lower courts clearly misapplied the presumption of regularity in the performance of official duties in the prosecution's favor. After all, it is settled that **a presumption of regularity cannot arise where the questioned official acts are *patently* irregular**, as in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the January 29, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05930 which affirmed the October 10, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 75, Olongapo City, finding Glenn De Guzman *y* Delos Reyes (appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with the illegal sale and possession of dangerous drugs, as well as the use of dangerous drugs under Sections 5, 11 and 15, Article II of RA 9165 in three Informations[3] dated November 16, 2009 which read:

Criminal Case No. 627-2009

That on or about the twelth [sic] (12th) day of November, 2009, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly deliver to PO1 Lawrence Reyes

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[1] *Rollo*, pp. 2-8; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Noel G. Tijam, now a member of this Court, and Myra V. Garcia-Fernandez.

[2] CA *rollo,* pp. 64-76; penned by Judge Raymond C. Viray.

[3] Records, pp. 1, 17 and 37.

Php100.00 (SN-S528347) worth of marijuana fruiting tops, which is a dangerous drug[,] in one (1) plastic sachet weighing Two Grams and Fifty Thousandths of a gram (2.050 gm.)

Criminal Case No. 628-2009

That on or about the twelfth (12th) day of November, 2009, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his effective possession and control, four (4) heat-sealed transparent plastic sachets containing marijuana fruiting tops weighing 8.645 gms. and one (1) pc. of ziplock containing small bricks of marijuana fruiting tops weighing 32.825 grams said accused not having the corresponding license or prescription to possess said dangerous drugs.

Criminal Case No. 629-2009

That on or about the twelfth (12th) day of November, 2009, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly, was found to be positive for use of THC metabolites, a dangerous drug after a confirmatory test.

During his arraignment on December 10, 2009, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

On November 12, 2009, at around 11:45 p.m., the Anti-Illegal Drugs Special Unit of Olongapo City, in coordination with the Philippine Drug Enforcement Agency (PDEA), conducted an entrapment operation against appellant along Balic-balic Street, Sta. Rita, Olongapo City. Prior surveillance had confirmed numerous reports that appellant was indiscriminately selling marijuana within the neighborhood.[5]

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[4] *Id*. at 52-54.

[5] *Rollo*, p. 2.

During the pre-operation briefing, P/Insp. Julius Javier designated PO1 Lawrence Reyes (PO1 Reyes) as poseur-buyer, SPO1 Allan Delos Reyes (SPO1 Delos Reyes) as case investigator and back-up, PO2 David Domingo as spotter, and three other policemen as perimeter security.[6]

At the target area, appellant approached PO1 Reyes and asked if he wanted to buy marijuana. PO1 Reyes accepted the offer and handed the ₱100.00 marked money to appellant who, in turn, gave him a sachet of marijuana fruiting tops. Once the exchange was completed, PO1 Reyes grabbed appellant's right hand which served as the pre-arranged signal that the transaction had been consummated.[7]

SPO1 Delos Reyes rushed to the scene and assisted PO1 Reyes in conducting a body search on appellant. They introduced themselves as police officers, informed appellant of his constitutional rights and placed him under arrest. After the body search, SPO1 Delos Reyes recovered the ₱100.00 marked money, four sachets of marijuana and one plastic pack containing a small brick of marijuana fruiting tops.[8]

The entrapment team immediately brought appellant to the police station after his relatives created a commotion and tried to interfere in appellant's arrest.[9]

At the police station, PO1 Reyes marked the sachet that was the subject of the buy-bust operation with his initials "LR" and turned it over to SPO1 Delos Reyes who also put his initials "ADR" thereon. SPO1 Delos Reyes separately marked the other four sachets and the plastic pack that he had confiscated from appellant during the body search with his initials "ADR."[10]

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[6] *Id*.

[7] *Id*. at 3.

[8] *Id*.

[9] *Id*.

[10] *Id*.

SPO1 Delos Reyes then prepared the Inventory Receipt, the Letter Request for Laboratory Examination, and the Request for Drug Test.[11] Photographs of the confiscated items were also taken. Notably, *only* two *barangay* officials were present during the conduct of a physical inventory of the seized items – there were no representatives from both the Department of Justice (DOJ) and the media.[12]

Later, SPO1 Delos Reyes personally turned over the seized items to the Regional Crime Laboratory in Olongapo City.[13] On November 13, 2009, Forensic Chemist Arlyn Dascil (Forensic Chemist Dascil) conducted a qualitative examination on the subject specimens to determine the presence of dangerous drugs. Based on Chemistry Report No. D-074-2009-OCCLO,[14] the seized items tested positive for the presence of marijuana, a dangerous drug.

Version of the Defense

Appellant raised the defenses of denial and frame-up and insisted that the evidence against him was planted. He narrated that, while on his way home from a party, some armed men alighted from a van and asked for the whereabouts of a certain "Bunso." After failing to provide an answer, he was frisked and brought to the police station where he was incarcerated and forced to point to the drugs on the table as pictures were taken.[15]

Ruling of the Regional Trial Court

In its Decision dated October 10, 2012, the RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165. It held that:

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[11] CA *rollo*, p. 100.

[12] *Rollo*, p. 3.

[13] *Id*.

[14] Records, p. 4.

[15] *Rollo*, pp. 3-4.

x x x In this case, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. This was further corroborated by the presentation of the marked money in evidence. Moreover, the failure of the accused to successfully impute false motive to the policemen who arrested him strengthens the presumption that they were in the regular discharge of duties when they entrapped the accused and later charged him with drug pushing x x x.[16]

The RTC also held that "the integrity and the evidentiary value of the drug involved were safeguarded,"[17] as the seized items were "immediately marked for proper identification by the seizing officers and turned over to SPO1 Delos Reyes who, in turn, prepared the receipt of evidence in the presence of the accused, members of the police and *barangay* representatives."[18]

Nevertheless, the RTC acquitted appellant of the charge of use of dangerous drugs under Section 15, Article II of RA 9165, considering that Section 15 is *inapplicable* where "the person tested is also found to have in his/her possession such quantity of any dangerous drug,"[19] as in this case.

Accordingly, the RTC sentenced appellant to suffer the penalties of: a) life imprisonment and a fine of ₱500,000.00 for violation of Section 5, Article II of RA 9165 in Criminal Case No. 627-09; and b) imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and a fine of ₱300,000.00 for violation of Section 11, Article II of RA 9165 in Criminal Case No. 628-09.[20]

Appellant thereafter appealed the RTC Decision before the CA.

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[16] CA *rollo,* pp. 70-71.

[17] *Id.* at 74.

[18] *Id.*

[19] *Id.* at 69.

[20] *Id.* at 75-76.

Ruling of the Court of Appeals

In its Decision dated January 29, 2015, the CA affirmed the assailed RTC Decision *in toto.* It upheld the RTC's findings that the prosecution was able to sufficiently establish all the elements of both the illegal sale and possession of dangerous drugs.[21]

The CA noted that appellant was positively identified by PO1 Reyes, the poseur-buyer, as the person who sold to him a sachet of marijuana that was presented in court for ₱100.00 during the entrapment operation.[22] It emphasized that "[i]n cases of illegal sale of dangerous drugs, the delivery of the contraband to the poseur-buyer and the receipt by the accused of the marked money consummate the transaction."[23]

In addition, the CA ruled that all the elements of illegal possession of marijuana were present in the case, considering that: *first*, four sachets of marijuana and one plastic pack containing a small brick of marijuana fruiting tops were found in appellant's possession after a lawful search on his person; and *second*, appellant failed to adduce evidence showing his legal authority to possess the contrabands recovered from him.[24]

Finally, the CA held that "the prosecution [had] adequately shown the unbroken possession and subsequent transfers of the confiscated items through the following links in the chain of custody:"[25]

(1) PO1 Reyes marked the plastic sachet that was subject of the buy-bust with "LR" and turned it over to case investigator SPO1 Delos Reyes who marked it with his own initials "ADR." On the other hand, the four other sachets and plastic pack searched from the person of the accused were separately marked by SPO1 Delos Reyes with his initials "ADR";

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[21] *Rollo*, pp. 5-6.

[22] *Id.* at 5.

[23] *Id.*

[24] *Id.* at 6.

[25] *Id.*

(2) A request for laboratory examination of the seized items was then prepared by SPO1 Delos Reyes;

(3) The request and the marked items were personally delivered by SPO1 Delos Reyes to the Regional Crime Laboratory;

(4) Chemistry Report No. D-074-2009-OCCLO confirmed that the specimens contained marijuana; and,

(5) The marked items were offered in evidence as Exhibits "I", "I-I" and "I-2".[26]

Aggrieved, appellant filed the present appeal.

The Issue

Appellant raises the sole issue of whether the chain of custody over the seized items had remained unbroken despite the arresting officers' failure to strictly comply with the requirements under Section 21, Article II of RA 9165, *i.e.*, the failure to mark the seized items at the crime scene, and the absence of the representatives from both the DOJ and the media during the conduct of the physical inventory and taking of photographs of said items.

The Court's Ruling

"For prosecutions involving dangerous drugs, the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt."[27] Like the other elements of the offense/s charged, the identity of the dangerous drug must be established with moral certainty. Such proof requires "an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him."[28]

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[26] *Id*. at 6-7.

[27] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[28] *Id*.

Thus, in prosecutions for the illegal sale of dangerous drugs, what is material "is the proof that the transaction or sale or [sic] had actually taken place, coupled with the presentation in court of evidence of [the] *corpus delicti.*"[29] Similarly, in illegal possession of dangerous drugs, aside from the elements of the offense, "the evidence of the *corpus delicti* must be established beyond [reasonable] doubt."[30]

Note, however, that the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165. In *People v. Denoman*,[31] the Court explained:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti.* In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti,* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. **Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails**.[32] (Emphasis supplied)

Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "As indicated by their *mandatory*

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[29] *People v. Partoza*, 605 Phil. 883, 890 (2009).

[30] *Id*.

[31] 612 Phil. 1165 (2009).

[32] *Id.* at 1175.

terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case."[33]

The procedure under Section 21, par. 1 of RA 9165, as amended by RA 10640,[34] is as follows:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In this case, the records show that the buy-bust team had failed to *strictly* comply with the prescribed procedure under Section 21, par. 1. Although the seized items were marked at

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[33] *Id.* Italics supplied.

[34] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

the police station, there is nothing on record to show that the marking had been done in the presence of appellant or his representatives.[35] Clearly, this constitutes a major lapse that, when left unexplained, is *fatal* to the prosecution's case.

To be sure, non-compliance with the prescribed procedures under Section 21, par. 1, does not, as it should not, *automatically* result in an accused's acquittal. The last sentence of Section 21(1), Article II of RA 9165, as amended, provides a saving mechanism, *viz.*:

> *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items.

However, this saving mechanism operates only "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."[36] Thus, it is incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165.[37]

Unfortunately, the prosecution failed not only to recognize and explain the procedural lapses committed by the buy-bust team, but also to adduce evidence establishing the chain of custody of the seized items that would demonstrate that the integrity and evidentiary value of said items had been preserved.

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[35] See TSN, April 13, 2010, pp. 3-4; records, pp. 108-109. See also TSN, May 31, 2011, pp. 11-12; records, pp. 220-221.

[36] *People v. Prudencio*, G.R. No. 205148, November 16, 2016.

[37] *People v. Denoman*, *supra* note 31 at 1178.

In *Derilo v. People*,[38] the Court laid down the guidelines in order to show an unbroken chain of custody of seized dangerous drugs, *viz.*:

> To show an unbroken link in the chain of custody, **the prosecution's evidence must include testimony about <u>every link</u> in the chain**, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witness would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have its possession. **It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused**.[39] (Emphasis in the original)

In simpler terms, the following links must be established in order to ensure that the identity and integrity of the seized items had not been compromised: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second,*** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[40]

a) The first and second links

The first crucial link in the chain of custody pertains to the time the marijuana was seized from appellant up to its delivery at the police station.

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[38] *Supra* note 27 at 687.

[39] *Id*. at 687.

[40] *Id*.

Although the records show that PO1 Reyes turned over the sachet of marijuana that was the subject of the sale to SPO1 Delos Reyes at the police station,[41] and SPO1 Delos Reyes himself was the one who confiscated the four sachets of marijuana and one plastic pack containing a brick of marijuana after conducting a lawful search on appellant,[42] their testimonies are glaringly silent on details regarding the *handling* and *disposition* of the seized items after appellant's arrest. They both failed to disclose the identity of the person/s who had custody and possession of the confiscated items after their seizure, or that they themselves had retained custody of the same from the place of arrest until they reached the police station.[43]

b) The third link

The prosecution's evidence relating to the third link in the chain of custody, *i.e.*, the turnover of the seized items from the investigating officer to the forensic chemist, also has loopholes. The pertinent portion of SPO1 Delos Reyes' direct testimony is quoted below:

[FISCAL M. F. BAÑARES]

Q: Mr. Witness, was the PNP Crime Laboratory able to examine the evidence recovered from [appellant]?
A: Yes, ma'am.

Q: Who turned over the sachets of marijuana to the PNP Crime Laboratory for examination?
A: I myself ma'am, and the other CAIDSOT members.

Q: What evidence do you have to prove that you were the one who turned over the marijuana with the PNP Crime Laboratory?
A: I signed the delivery receipt.

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[41] TSN, April 13, 2010, p. 3; records, p. 108.

[42] TSN, May 31, 2011, pp. 9-10; records, pp. 218-219.

[43] *People v. Kamad*, 624 Phil. 289, 304-305 (2010).

Q: Are you referring to the stamp receipt that you brought the specimen to the crime laboratory for examination?
A: Yes, sir [sic].[44]

The said request for laboratory examination, as well as the specimens, were supposedly received by a certain "PO1 Menor."[45] However, SPO1 Delos Reyes did not testify in this regard; neither did "PO1 Menor." Clearly, the prosecution failed to disclose the identity of the person who had custody of the seized items after its turnover by SPO1 Delos Reyes; the identity of the person who turned over the items to Forensic Chemist Dascil, and the identity of the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.

c) The fourth link

The fourth link in the chain of custody, *i.e.* **the turnover of the seized items from the forensic chemist to the court**, presents an unusual twist in the prosecution's evidence in this case. Notably, the forensic chemist did not testify in court. Instead, the prosecution and the defense stipulated on her testimony as follows:

1. That Arlyn Dascil is a Forensic Chemist assigned at the PNP Crime Laboratory in Olongapo City;
2. That she examined the specimen subject matter of [the] case;
3. That based on her examination, the specimen subject of [the] case was found positive for marijuana as shown by Chemistry Report No. D-074-2009, marked as Exhibit "H";
4. **That upon the request of the City Prosecutor's Office, the Evidence Custodian of [the] PNP Crime Laboratory turned over the specimen subject matter of [the] case to the Prosecutor's Office**.[46] (Emphasis supplied)

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[44] TSN, May 31, 2011, p. 19; records, p. 227.

[45] See records, p. 144.

[46] *Id*. at 135.

It appears, based on the prosecution's evidence no less, that for reasons unknown, the PNP Crime Laboratory agreed to turn over custody of the seized items to an *unnamed* receiving person at the City Prosecutor's Office *before* they were submitted as evidence to the trial court. It should be emphasized that the City Prosecutor's Office is not, nor has it ever been, a part of the chain of custody of seized dangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court.

Given the flagrant procedural lapses committed by the police in handling the seized marijuana and the *serious* evidentiary gaps in the chain of its custody, the lower courts clearly misapplied the presumption of regularity in the performance of official duties in the prosecution's favor. After all, it is settled that **a presumption of regularity cannot arise where the questioned official acts are *patently* irregular**,[47] as in this case.

All told, the totality of these circumstances leads the Court to inevitably conclude that the identity of the *corpus delicti* was not proven beyond reasonable doubt. The failure of the prosecution to establish an unbroken chain of custody over the seized marijuana is *fatal* to its cause.

WHEREFORE, premises considered, we hereby **REVERSE** and **SET ASIDE** the January 29, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05930. Appellant Glenn De Guzman *y* Delos Reyes is hereby **ACQUITTED** of the charges of violation of Sections 5 and 11, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. His immediate **RELEASE** from detention is hereby ordered unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate

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[47] See *People v. Kamad*, *supra* note 43 at 311. Emphasis and italics supplied.

implementation, who is then also directed to report to this Court the action he has taken within five days from his receipt of this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Caguioa,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 225022. February 5, 2018]

CAROLINA QUE VILLONGCO, ANA MARIA QUE TAN, ANGELICA QUE GONZALES, ELAINE VICTORIA QUE TAN and EDISON WILLIAMS QUE TAN, *petitioners, vs.* **CECILIA QUE YABUT, EUMIR CARLO QUE CAMARA and MA. CORAZON QUE GARCIA,** *respondents.*

[G.R. No. 225024. February 5, 2018]

CECILIA QUE YABUT, EUMIR CARLO QUE CAMARA and MA. CORAZON QUE GARCIA, *petitioners, vs.* **CAROLINA QUE VILLONGCO, ANA MARIA QUE TAN, ANGELICA QUE GONZALES, ELAINE VICTORIA QUE TAN and EDISON WILLIAMS QUE TAN,** *respondents.*

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[*] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[**] Designated as additional member per December 20, 2017 raffle vice *J.* Tijam who recused due to prior participation in the case before the Court of Appeals.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION OVER THE PERSON OF THE DEFENDANT; FILING OF A MOTION FOR EXTENSION OF TIME TO FILE AN ANSWER IS CONSIDERED VOLUNTARY APPEARANCE ON THE PART OF THE DEFENDANT, SUCH THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER HIS PERSON DESPITE THE DEFECT IN THE SERVICE OF SUMMONS; CASE AT BAR.—** It is well-settled that jurisdiction over the person of the defendant in a civil case is obtained through a valid service of summons. When there is no service of summons upon the defendant, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void. However, the invalidity of the service of summons is cured by the voluntary appearance of the defendant in court and their submission to the court's authority. As held in the case of *Carson Realty & Management Corporation v. Red Robin Security Agency, et al.*, this Court has repeatedly held that the filing of a motion of time to file answer is considered voluntary appearance on the part of the defendant, such that the trial court nevertheless acquired jurisdiction over his person despite the defectiveness of the service of summons, x x x In the instant case, Cecilia Que, et al., filed a motion for extension to file an answer. Thus, is deemed to be a voluntary submission to the authority of the trial court over their persons.

2. **POLITICAL LAW; JUDICIAL DEPARTMENT; DECISIONS OF THE COURT; THE CONSTITUTION MANDATES THAT DECISIONS RENDERED BY ANY COURT SHALL STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THE DECISION WAS BASED; VIOLATION IN CASE AT BAR.—** [S]ection 14, Article VIII of the Constitution mandates Us to craft Our decisions stating clearly and distinctly the facts and the law on which We based Our decisions. It should be emphasized that the mere fact that the defendant was not able to file an answer does not automatically mean that the trial court will render a judgment in favor of the plaintiff. The trial court must still determine whether the plaintiff is entitled to the reliefs prayed for. Thus, it is incumbent upon the RTC to clearly and distinctly state the facts and the legal basis on which it based its decision. This is

sadly not followed by the RTC in its Decision dated March 14, 2014. The RTC merely adopted the allegations of Carolina et al. without any rhyme or reason. The decision merely stated that quorum was not established during the annual stockholders meeting conducted by Cecilia Que, et al. and that only 98,428 shares were present during the said meeting without any explanation or justification as to why the trial court ruled that way. Therefore, We agree with the CA that the RTC decision is null and void for violating the constitutional provision.

3. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; QUORUM IN MEETINGS; FOR STOCK CORPORATIONS, THE QUORUM IS BASED ON THE NUMBER OF OUTSTANDING VOTING STOCKS WITHOUT DISTINCTION AS TO DISPUTED OR UNDISPUTED SHARES OF STOCK; CASE AT BAR.— The right to vote is inherent in and incidental to the ownership of corporate stocks. It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting. Only stocks actually issued and outstanding may be voted. Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks*. The distinction of undisputed or disputed shares of stocks is not provided for in the law or the jurisprudence. *Ubi lex non distinguit nec nos distinguere debemus* — when the law does not distinguish we should not distinguish. Thus, the 200,000 outstanding capital stocks of Phil-Ville should be the basis for determining the presence of a quorum, without any distinction. Therefore, to constitute a quorum, the presence of 100,001 shares of stocks in Phil-Ville is necessary.

4. ID.; ID.; ID.; STOCK AND TRANSFER BOOK; A TRANSFER OF SHARES OF STOCK NOT RECORDED IN THE STOCK AND TRANSFER BOOK OF THE CORPORATION IS NON-EXISTENT AS FAR AS THE CORPORATION IS CONCERNED; CASE AT BAR.— Section 63 of the Corporation Code states that "*No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.*" As held in the case of *Interport Resources Corporation v. Securities Specialist, Inc.*, held that: A transfer

> of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. x x x The contention of Cecilia Que, et al., that they should not be faulted for their failure to present the stock and transfer book because the same is in the possession of the corporate secretary, Ana Maria Que Tan, who has an interest adverse from them, is devoid of merit. It is basic that a stockholder has the right to inspect the books of the corporation, and if the stockholder is refused by an officer of the corporation to inspect or examine the books of the corporation, the stockholder is not without any remedy. The Corporation Code grants the stockholder a remedy—to file a case in accordance with Section 144. In this case, there is no evidence that the 3,140 shares of the late Geronima were recorded in the stocks and transfer book of Phil-Ville. Thus, insofar as Phil-Ville is concerned, the 3,140 shares of the late Geronima allegedly transferred to several persons is non-existent. Therefore, the transferees of the said shares cannot exercise the rights granted unto stockholders of a corporation, including the right to vote and to be voted upon.

APPEARANCES OF COUNSEL

Francisco Law Office for Villongco, Tan, *et al.*
Ponce Enrile Reyes & Manalastas for Yabut, Camara, *et al.*

D E C I S I O N

TIJAM, *J.*:

Before Us are separate Petitions for Review on *Certiorari*[1] assailing the Decision[2] dated September 4, 2015 and Amended

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[1] *Rollo* (225024), pp. 18-51; *rollo* (225022), pp. 21-143.

[2] Penned by CA Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Carmelita Salandanan Manahan, *rollo* (G.R. No. 225022), pp. 145-170.

Decision[3] dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 134666 declaring the annual stockholder's meeting held by Cecilia Que Yabut, Eumir Carlo Que and Ma. Corazon Que Garcia (Cecilia Que, et al.) on January 25, 2014 void for lack of quorum and declared all acts performed by Cecilia Que, et al. as *ultra vires* acts as they were not legally clothed with corporate authority to do so.

The pertinent facts of the case as found by the CA are as follows:

> Phil-Ville Development and Housing Corporation (Phil-Ville) is a family corporation founded by Geronima Gallego Que (Geronima) that is engaged in the real estate business. The authorized capital stock of Phil-Ville is Twenty Million Pesos (₱20,000,000) divided into Two Hundred Thousand (200,000) shares with a par value of One Hundred Pesos (₱100.00) per share. During her lifetime, Geronima owned 3,140 shares of stock while the remaining 196,860 shares were equally distributed among Geronima's six children, namely: Carolina Que Villongco, Ana Maria Que Tan, Angelica Que Gonzales, Cecilia Que Yabut, Ma. Corazon Que Garcia, and Maria Luisa Que Camara, as follows:
>
> (a) Carolina Que Villongco- 32,810 shares;
>
> (b) Ana Maria Que Tan- out of her 32,810 shares, she retained 17,710 shares and transferred the rest to her six children, thus: Edmund Williams Que Tan- 2,600 shares; Edward Williams Que Tan- 2,500 [shares]; Edison Williams Que Tan- 2,500 shares; Elaine Victoria Que Tan[-] 2,500 shares; Eloisa Victoria- 2,500 shares; and Elinor Victoria- 2,500 shares;
>
> (c) Angelica Que Gonzales- 32,810;
>
> (d) Cecilia Que Yabut- out of her 32,810 shares, she retained 22,810 shares and transferred the rest to her four children, thus: Geminiano Que Yabut III- 2,500 shares; Carlos Que Yabut- 2,500 shares; Geronimo Que Yabut- 2,500 shares; and Jose Elston Que Yabut- 2,500 shares;
>
> (e) Ma. Corazon Que Garcia- out of her 32,810 shares, she retained 21,460 shares and transferred the rest to her four

[3] *Id*. at pp. 172-174.

children, thus: Anthony Que Garcia- 2,500 shares; Geronima Que Garcia- 2,950 shares; Michelle Que Garcia- 2,950 shares; and Ma. Christina Que Garcia- 2,950 shares;

(f) Maria Luisa Que Camara- upon her death, her shares were divided among her children: Eumir Que Camara- 10,936.67 shares; Pablo Que Camara- 10,936.67 shares; and Abimar Que Camara- 10,936.66 shares.

Geronima died on August 31, 2007. By virtue of the *Sale of Shares of Stocks* dated June 11, 2005 purportedly executed by Cecilia as the attorney-in-fact of Geronima, Cecilia allegedly effected an inequitable distribution of the 3,140 shares that belonged to Geronima, to wit:

(a) Carolina's children were given a total of 523 shares distributed as follows: Francis Villongco- 131 shares; Carlo Villongco- 131 shares; Michael Villongco- 131 shares; and Marcelia Villongco- 130 shares;

(b) Ana Maria's daughter Elaine Victoria Que Tan was given 523 shares;

(c) Angelica- 523 shares;

(d) Cecilia's children were given a total of 524 shares distributed as follows: Geminiano Yabut- 131 shares; Carlos Yabut- 131 shares; Geronimo Yabut- 131 shares; and John Elston Yabut- 131 shares;

(e) Ma. Corazon's son Anthony Garcia was given 523 shares;

(f) Maria Luisa's children were given a total of 524 shares distributed as follows: Eumir Carlo Camara- 174 shares; Paolo Camara- 175 shares; Abimar Camara-175 shares[.]

Accordingly, the distribution of Geronima's shares in accordance with the *Sale of Shares of Stocks* was reflected in the General Information Sheets filed by Phil-Ville in 2010 and 2011, x x x

On January 18, 2013, Cecilia, Eumir Carlo Que Camara and Ma. Corazon [Cecilia Que, et. al.] wrote a letter to Ana Maria, Corporate Secretary of Phil-Ville, to send out notices for the holding of the annual stockholders' meeting. However, before Ana Maria could reply thereto, on January 21, 2013, several letters were sent to Phil-Ville's stockholders containing a document captioned "Notice of Annual

Stockholders' Meeting" signed by Cecilia and Ma. Corazon as directors, x x x

x x x x x x x x x

Thereafter, Carolina, Ana Maria, and Angelica, comprising the majority of the Board of Directors of Phil-Ville held an emergency meeting and made a decision, by concensus, to postpone the annual stockholders' meeting of Phil-Ville until the issue of the distribution of the 3,140 shares of stocks in the name of certain stockholders is settled. All the stockholders were apprised of the decision to postpone the meeting in a letter dated January 21, 2013. Ana Maria, in her capacity as Corporate Secretary and Director of Phil-Ville likewise gave notice to the Securities and Exchange Commission (SEC) with regard to the postponement of the meeting.

x x x x x x x x x

Despite the postponement, however, [Cecilia Que, et al.] proceeded with the scheduled annual stockholder's meeting participated only by a few stockholders. In the said meeting, they elected the new members of the Board of Directors and officers of Phil-Ville namely: Cecilia, Ma. Corazon and Eumir, Chairman/Vice President/Treasurer, President/General Manager, and Secretary, respectively.

Meantime, two days prior to the stockholders' meeting, Carolina, Ana Maria, and Angelica, together with several others, had already filed a *Complaint for Annulment of Sale/Distribution or Settlement of Shares of Stock/Injunction* against Cecilia, Eumir Carlo and Ma. Corazon. They subsequently filed an *Amended and Supplemental Complaint for Annulment of Sale/Distribution or Settlement of Shares of Stock/Annulment of Meeting/Injunction (with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Prohibitory and Mandatory Injunction).* x x x

x x x x x x x x x

While Civil Case No. CV-940-MN was still pending, on January 15, 2014, Eumir Carlo sent a Notice of Annual Stockholders' Meeting to all the stockholders of Phil-Ville, notifying them of the setting of the annual stockholders' meeting on January 25, 2014 at 5:00 P.M. at Max's Restaurant, Gov. Pascual corner M.H. Del Pilar Streets, Tugatog, Malabon City. During the meeting, Cecilia, Ma. Corazon and Eumir Carlo were elected as directors and later elected themselves to the following positions: Cecilia as Chairperson/Vice President/

Treasurer; Ma. Corazon as Vice-Chairperson/President/General Manager; and Eumir Carlo as Corporate Secretary/Secretary.

x x x x x x x x x

Consequently, on February 10, 2014, Carolina, Ana Maria, Angelica, Elaine and Edison Williams [Carolina, et al.] filed the instant election case against [Cecilia Que, et al.] before the RTC of Malabon City docketed as SEC Case No. 14-001-MN. The Complaint prayed that the election of Cecilia, Ma. Corazon and Eumir Carlo as directors be declared void considering the invalidity of the holding of the meeting at Max's Restaurant for lack of *quorum* therein, the questionable manner by which it was conducted, including the invalid inclusion in the voting of the shares of the late Geronima, the questionable validation of proxies, the representation and exercise of voting rights by the alleged proxies representing those who were not personally present at the said meeting, and the invalidity of the proclamation of the winners. [Carolina, et al.] also questioned the election of Cecilia, Ma. Corazon and Eumir Carlo as officers of the corporation. They likewise prayed that all the actions taken by the petitioners in relation to their election as directors and officers of the corporation be declared void, including but not limited to the filing of the General Information Sheet with the Securities and Exchange Commission on January 27, 2014.[4]

Cecilia Que, et al., filed a *Motion for Additional Time to file Answer* on March 7, 2014 arguing that the summons was not properly served on them. The RTC however denied said motion since it should have been filed within ten (10) days or on March 2, 2014, in accordance with Section 5, Rule 6[5] of the Interim Rules of Procedure for Intra-Corporate Controversies.[6]

Thus, On March 14, 2014, the RTC rendered a Decision[7] declaring the election of Cecilia Que, et al. as void and of no

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[4] *Id*. at pp. 146-152.

[5] **SEC. 5.** ***Answer.*** – The defendant shall file his answer to the complaint, serving a copy thereof on the plaintiff, within ten (10) days from service of summons and the complaint. The answer shall contain the matters required in Section 6, Rule 2 of these Rules.

[6] *Rollo* (G.R. No. 225022), p. 152.

[7] Promulgated by RTC Judge Celso R.L. Magsino, Jr.; *id.* at pp. 819-820.

effect considering the lack of quorum during the annual stockholders' meeting conducted by the latter, thus:

WHEREFORE, judgment is hereby rendered:

a. On the First Cause of Action, declaring as null and void and of no effect whatsoever the election of defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara as Directors of Phil-Ville considering the lack of quorum during the alleged annual meeting of the stockholders on 25 January 2014 at Max's Restaurant, Gov. Pascual cor. M.H. Del Pilar, Tugatog, Malabon City at 5:00 o'clock in the afternoon;

b. On the Second Cause of Action, declaring as null and void and of no effect whatsoever the election of defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara to the positions of Chairperson, Vice-Chairperson and Corporate Secretary, respectively in the Board of Directors of Phil-Ville, as well as their election as Vice-President/Treasurer, President/General Manager and Secretary, respective[ly], of Phil-Ville, considering the invalidity of the proclamation of the winners in the election supposedly conducted on that date, the alleged "Annual Meeting of the Board of Directors of Phil-Ville held at Max's Restaurant, Gov. Pascual cor. M.H. Del Pilar, Tugatog, Malabon City on 25 January 2014 at 6:30 o'clock in the evening being null and void; and

c. On the Third Cause of Action, declaring as null and void and of no effect whatsoever any and all actions taken by defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara in relation to their alleged election as Directors, their alleged elecion to certain positions in the Board of Directors, and their alleged election as officers of Phil-Ville including but not limited to the filing of the General Information Sheet with the Securities and Exchange Commission on 27 January 2014.

SO ORDERED.[8]

On appeal to the CA, the latter in its Decision dated September 4, 2015, while it declared the RTC decision void for violating Section 14, Article VIII of the Constitution[9], the

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[8] *Id*. at p. 820.

[9] **Section 14.** No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

CA however declared the annual stockholders meeting conducted by Cecilia Que, et al. void for lack of quorum. The dispositive portion reads:

> WHEREFORE, the instant Petition for Review is DENIED for lack of merit. The Decision dated March 14, 2014 Decision[sic] of the Regional Trial Court of the City of Malabon, Branch 74, in SEC Case No. SEC14-001-MN is declared VOID for failure to comply with the constitutional requirement of a valid judgment and a new one is ENTERED declaring as invalid for lack of quorum the Phil-Ville Development and Housing Corporation's stockholders annual meeting conducted by petitioners Cecilia Que Yabut, Eumir Carlo Que Camara and Ma. Corazon Que Garcia on January 14, 2014. The election of the members of the board of directors and officers of Phil-Ville that emanated from the said invalid meetings is likewise struck as void.
>
> SO ORDERED.[10]

On the parties' separate Motions for Partial Reconsideration, the CA issued an Amended Decision dated June 8, 2016 ruling as follows:

> WHEREFORE, petitioner's Motion for Partial Reconsideration is DENIED for lack of merit while that of respondents' is PARTLY GRANTED with respect to the *ultra vires* acts committed by petitioners after the invalidation of the election conducted on January 25, 2014. The dispositive portion of the assailed Decision dated September 4, 2015 is hereby amended to reflect the following modifications and shall read as follows:
>
> > WHEREFORE, the instant Petition for Review is DENIED for lack of merit. The Decision dated March 14, 2014 Decision[sic] of the Regional Trial Court of the City of Malabon, Branch 74, in SEC Case No. SEC14-001-MN is declared VOID for failure to comply with the constitutional requirement of a

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No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[10] *Rollo* (G.R. No. 225022), p. 169.

valid judgment and a new one is ENTERED declaring as invalid for lack of quorum the Phil-Ville Development and Housing Corporation's stockholders annual meeting conducted by petitioners Cecilia Que Yabut, Eumir Carlo Que Camara and Ma. Corazon Que Garcia on January 25, 2014. The election of the members of the board of directors and officers of Phil-Ville that emanated from the said invalid meetings is likewise struck as void. All acts performed by petitioners by reason of said election, including but not limited to the filing of the General Information Sheet with the SEC on January 27, 2014, were *ultra vires* as they were not legally clothed with corporate authority to do so.

SO ORDERED.

SO ORDERED.[11]

Both parties filed before Us their separate Petitions for Review on *Certiorari*.

Carolina, et al., raised in their petition the following assignment of errors:

I. The Honorable Court of Appeals committed manifest error in not upholding that the applicability of Section 14, Article VIII of the Constitution ensconed in Section 1, Rule 36 of the Revised Rules of Court was adhered to by the RTC-Malabon City, Branch 74 in the rendition of its decision as warranted by the facts alleged in the complaint.

II. The Honorable Court of Appeals committed manifest error in not upholding the applicability of the exception to the general rule in the determination of a quorum.[12]

While Cecilia Que, et al., raised the following in their petition, to wit:

I. The Court of Appeals gravely erred when it ruled that petitioners were barred from filing an answer.

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[11] *Id.* at pp. 173-174.

[12] *Id.* at pp. 115-116.

II. The Court of Appeals gravely erred in ruling on the merits, despite the finding that there was a need to remand the case.

III. At any rate, the issues raised in the case are being litigated in another case, barring its resolution on the merits here.[13]

Ultimately, the issues to be resolved are: 1) whether the CA was correct in holding that the RTC decision violated Section 14, Article VIII of the Constitution; 2) whether the total undisputed shares of stocks in Phil-Ville should be the basis in determining the presence of a quorum; and 3) whether Cecilia et al., were barred from filing an answer.

Both petitions are unmeritorious.

The Procedural Aspect

The Motion for Extension of Time to file Answer is a voluntary appearance on the part of Cecilia, et al.

Cecilia Que, et al., alleged the CA erred in holding that the *Motion for Extension of Time to File Answer* filed by them was a voluntary appearance on their part.[14] We do not agree.

It is well-settled that jurisdiction over the person of the defendant in a civil case is obtained through a valid service of summons. When there is no service of summons upon the defendant, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.[15]

However, the invalidity of the service of summons is cured by the voluntary appearance of the defendant in court and their submission to the court's authority. As held in the case of *Carson Realty & Management Corporation v. Red Robin Security*

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[13] *Rollo* (225024), pp. 31-32.

[14] *Rollo* (G.R. No. 225024), p. 34.

[15] *Prudential Bank v. Magdamit, Jr., et al.*, 746 Phil. 649, 659 (2014) citing *Spouses Belen v. Judge Chavez, et al.*, 573 Phil. 58, 67 (2008).

Agency, et al.,[16] this Court has repeatedly held that the filing of a motion of time to file answer is considered voluntary appearance on the part of the defendant, such that the trial court nevertheless acquired jurisdiction over his person despite the defectiveness of the service of summons, to wit:

> We have, time and again, held that the filing of a motion for additional time to file answer is considered voluntary submission to the jurisdiction of the court. If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court. Seeking an affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the Court's jurisdiction.[17]

In the instant case, Cecilia Que, et al., filed a motion for extension to file an answer. Thus, is deemed to be a voluntary submission to the authority of the trial court over their persons.

The Substantive Aspect

The RTC Decision dated March 14, 2014 is void for violating Section 14, Article VIII of the Constitution.

Carolina, et al., alleged in their petition that the RTC Decision did not violate Section 14, Article VIII of the Constitution since the decision clearly stated the facts and the law on which it was based. They alleged that "the decision thoroughly passed upon all the allegations in the complaint, *vis-a-vis* the Judicial affidavit of x x x Carolina x x x, which remains unrebutted."[18] We are not persuaded.

The RTC decision is hereby quoted *in toto:*

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[16] G.R. No. 225035, February 8, 2017.

[17] *Id*.

[18] *Rollo* (G.R. No. 225022), p. 117.

Before the Court is the Election Contest filed by plaintiffs stockholders/board members/officers of Phil-Ville Housing and Development Corporation – questioning the validity of the election held by defendants on January 25, 2014 at Max's Restaurant, Malabon City.

Having been served with Summons on February 20, 2014, and not having filed an Answer but instead filed a Motion for Extension of Time to file Answer on March 7, 2014 by registered mail, which was received by this Court only on March 13, 2014, the Court is duty bound to render judgment *motu proprio* within ten (10) days from the lapse of the period to file an Answer, as may be warranted by the allegations of the Complaint, as well as the affidavits, documentary and other evidence on record, awarding relief, if any, only as prayed for.

After thoroughly passing upon all and[sic] the allegations in the Complaint, vis-a-vis the Judicial Affidavit of plaintiff Carolina Que Villongco, which remains unrebutted, the Court finds that plaintiffs have fully established that there was no quorum during the annual stockholder's meeting held on 25 January 2014 at Max's Restaurant, Malabon City. Only 98,428 voting shares out of the 200,000 outstanding shares were represented. Therefore, no valid election of board members/officers of Phil-Ville could have taken place.

Necessarily, the organizational meeting supposedly conducted thereafter is likewise null and void and could not possibly binding[sic] to the said corporation.

WHEREFORE, judgment is hereby rendered:

a. On the First Cause of Action, declaring as null and void and of no effect whatsoever the election of defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara as Directors of Phil-Ville considering the lack of quorum during the alleged annual meeting of the stockholders on 25 January 2014 at Max's Restaurant, Gov. Pascual cor. M.H. Del Pilar, Tugatog, Malabon City at 5:00 o'clock in the afternoon;

b. On the Second Cause of Action, declaring as null and void and of no effect whatsoever the election of defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara to the positions of Chairperson, Vice-Chairperson and Corporate Secretary, respectively in the Board of Directors of Phil-Ville, as well as their election as Vice-President/Treasurer, President/General Manager and Secretary,

respectively, of Phil-Ville, considering the invalidity of the proclamation of the winners in the election supposedly conducted on that date, the alleged "Annual Meeting of the Board of Directors of Phil-Ville held at Max's Restaurant, Gov. Pascual cor. M.H. Del Pilar, Tugatog, Malabon City on 25 January 2014 at 6:30 o'clock in the evening being null and void; and

c. On the Third Cause of Action, declaring as null and void and of no effect whatsoever any and all actions taken by defendants Cecilia Que Yabut, Ma. Corazon Que Garcia and Eumir Que Camara in relation to their alleged election as Directors, their alleged elecion to certain positions in the Board of Directors, and their alleged election as officers of Phil-Ville including but not limited to the filing of the General Information Sheet with the Securities and Exchange Commission on 27 January 2014.

SO ORDERED.[19]

In the case of *De Leon v. People,*[20] this Court held that:

Under Section 14, Article VIII of the Constitution, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. Section 1 of Rule 36 of the Rules of Court provides that a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of the court.

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in arriving at a judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit.*

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[19] *Rollo* (G.R. No. 225022), pp. 819-820.

[20] G.R. No. 212623, January 11, 2016, 779 SCRA 84.

The standard "expected of the judiciary" is that the decision rendered makes clear why either party prevailed under the applicable law to the facts as established. Nor is there any rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. The discretion of the particular judge in this respect, while not unlimited, is necessarily broad. There is no sacramental form of words which he must use upon pain of being considered as having failed to abide by what the Constitution directs.[21]

Thus, Section 14, Article VIII of the Constitution mandates Us to craft Our decisions stating clearly and distinctly the facts and the law on which We based Our decisions. It should be emphasized that the mere fact that the defendant was not able to file an answer does not automatically mean that the trial court will render a judgment in favor of the plaintiff. The trial court must still determine whether the plaintiff is entitled to the reliefs prayed for. Thus, it is incumbent upon the RTC to clearly and distinctly state the facts and the legal basis on which it based its decision. This is sadly not followed by the RTC in its Decision dated March 14, 2014. The RTC merely adopted the allegations of Carolina et al. without any rhyme or reason. The decision merely stated that quorum was not established during the annual stockholders meeting conducted by Cecilia Que, et al. and that only 98,428 shares were present during the said meeting without any explanation or justification as to why the trial court ruled that way. Therefore, We agree with the CA that the RTC decision is null and void for violating the constitutional provision.

Total outstanding capital stocks, without distinction as to disputed or undisputed shares of stock, is the basis in determining the presence of quorum.

Carolina et al., claimed that the basis for determining quorum should have been the total number of undisputed shares of stocks of Phil-Ville due to the exceptional nature of the case since the

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[21] *Id.* at 97-98.

3,140 shares of the late Geronima and the fractional .67, .67, and .66 shares of Eumir Que Camara, Paolo Que Camara and Abimar Que Camara are the subject of another dispute filed before the RTC. Thus, excluding the 3,142 shares from the 200,000 outstanding capital stock, the proper basis of determining the presence of quorum should be 196,858 shares of stocks.[22] We do not agree.

Section 52 of the Corporation Code states that:

Section 52. **Quorum in meetings.** – Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations.

While Section 137 of the same Code defines "outstanding capital stock," thus:

Section 137. **Outstanding capital stock defined.** – The term "outstanding capital stock", as used in this Code, means the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares.

The right to vote is inherent in and incidental to the ownership of corporate stocks. It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting. Only stocks actually issued and outstanding may be voted.[23] Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks*.[24] The distinction of undisputed or disputed shares of stocks is not provided for in the law or the jurisprudence. *Ubi lex non distinguit nec nos distinguere debemus* —when the law does not distinguish we should not distinguish. Thus, the 200,000

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[22] *Rollo* (G.R. No. 225022), pp. 126-127.

[23] *Tan v. Sycip, et al.,* 530 Phil. 609, 621 (2006).

[24] *Mary E. Lim, et al. v. Moldex Land, et al.,* G.R. No. 206038, January 25, 2017.

outstanding capital stocks of Phil-Ville should be the basis for determining the presence of a quorum, without any distinction.

Therefore, to constitute a quorum, the presence of 100,001 shares of stocks in Phil-Ville is necessary.

We agree with the CA when it held that only 98,430 shares of stocks were present during the January 25, 2014 stockholders meeting at Max's Restaurant, therefore, no quorum had been established.

There is no evidence that the 3,140 shares which allegedly had been transferred to 1) Carolina's children, namely: Francis Villongco, Carlo Villongco, Michael Villongco and Marcelia Villongco; 2) Ana Maria's daughter, namely: Elaine Victoria Que Tan; 3) Angelica Que; 4) Cecilia's children, namely: Geminiano, Carlos, Geronimo and John Elston; 5) Ma. Corazon's son, Anthony; and, 6) Maria Luisa's children, namely: Eumir Carlo Camara, Paolo Camara, and Abimar Camara; where transferred and recorded in the stocks and transfer book of Phil-Ville.

Section 63[25] of the Corporation Code states that "*No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.*"

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[25] **Section 63.** *Certificate of stock and transfer of shares*. – The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer**. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (Emphasis Ours)

As held in the case of *Interport Resources Corporation v. Securities Specialist, Inc.*,[26] held that:

A transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.[27]

The contention of Cecilia Que, et al., that they should not be faulted for their failure to present the stock and transfer book because the same is in the possession of the corporate secretary, Ana Maria Que Tan, who has an interest adverse from them, is devoid of merit. It is basic that a stockholder has the right to inspect the books of the corporation,[28] and if the

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[26] G.R. No. 154069, June 6, 2016, 792 SCRA 155.

[27] *Id.* at 168-169.

[28] **Section 74.** *Books to be kept; stock transfer agent.* – Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the *yeas* and *nays* must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

stockholder is refused by an officer of the corporation to inspect or examine the books of the corporation, the stockholder is not without any remedy. The Corporation Code grants the stockholder a remedy — to file a case in accordance with Section 144.[29]

In this case, there is no evidence that the 3,140 shares of the late Geronima were recorded in the stocks and transfer book of Phil-Ville. Thus, insofar as Phil-Ville is concerned, the 3,140 shares of the late Geronima allegedly transferred to several persons is non-existent. Therefore, the transferees of the said shares cannot exercise the rights granted unto stockholders of a corporation, including the right to vote and to be voted upon.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

[29] **Section 144.** *Violations of the Code.* – Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or office of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

WHEREFORE, premises considered, the instant Petitions for Review on *Certiorari* are **DENIED**. The Decision dated September 4, 2015 and Amended Decision dated June 8, 2016 of the Court of Appeals in CA-G.R. SP No. 134666 are hereby **AFFIRMED *in toto***.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

EN BANC

[A.M. No. P-11-2959. February 6, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ALMA P. LICAY**, **Clerk of Court II, Municipal Circuit Trial Court, San Juan-San Gabriel, La Union**, *respondent.*

[A.M. No. P-14-3230. February 6, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ALMA P. LICAY, Clerk of Court, Municipal Circuit Trial Court, San Juan, La Union,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CLERKS OF COURT; DUTY OF THE CLERKS OF COURT TO SUBMIT MONTHLY REPORTS FOR THREE FUNDS: JUDICIARY DEVELOPMENT FUND (JDF), SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ), AND FIDUCIARY FUND (FF); SUSTAINED.—Under Administrative Circular No. 3-2000, the duty of the clerk of

court is to receive JDF collections in their respective courts, issue the proper receipts and maintain a separate cash book properly marked as "CASH BOOK FOR JUDICIARY DEVELOPMENT FUND." The clerk of court shall then deposit such collections every day and render the proper Monthly Report of Collections and Deposits for said Fund within ten (10) days after the end of every month. Section 3-C of the JDF and SAJ procedural guidelines in Administrative Circular No. 35-2004, as amended, provides that the daily remittance of JDF and SAJ collections is required. OCA Circular No. 50-95 provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the Land Bank of the Philippines by the clerk of court concerned. The deposit must be made within 24 hours from receipt. In localities where there are no Land Bank of the Philippines branches, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer. To implement these circulars, OCA Circular No. 113-2004 requires clerks of court to submit monthly reports for three funds: JDF, SAJ, and FF.

2. **ID.; ID.; ID.; ID.; THE CLERK OF COURT COMMITS THE GRAVE OFFENSE OF GRAVE MISCONDUCT FOR OBSTINATE REFUSAL TO COMPLY WITH THE REPEATED DIRECTIVES OF THE COURT REQUIRING THE SUBMISSION OF MONTHLY FINANCIAL REPORTS; CASE AT BAR.—**In the present case, Licay not only failed to fully comply with her duty as Clerk of Court based on the provisions of law, but likewise continuously ignored the reminders and stern warnings of the OCA and the Court to submit the missing Monthly Financial Reports. Even if she partially complied on some months, the 15 June 2011, 14 December 2011, 13 February 2013 and 23 October 2013 Court Resolutions still went unheeded and she deliberately failed to submit the Monthly Financial Reports. Evidently, Licay committed the grave offense of grave misconduct for her obstinate refusal to comply with the repeated directives of the Court requiring her to submit the Monthly Financial Reports.

3. **ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; THE REPEATED FAILURE OF THE CLERK OF COURT TO SUBMIT THE MONTHLY FINANCIAL REPORTS, WITHOUT JUSTIFICATION, A CASE OF.—**For her inexcusable non-submission of the Monthly Financial Reports,

Licay is also guilty of gross neglect of duty. As distinguished from simple neglect of duty, which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. In this case, Licay, despite repeated directives from the Court to submit the Monthly Financial Reports, deliberately ignored the Resolutions showing her manifest indifference to the serious repercussions of her omissions.

4. ID.; ID.; ID.; GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY; PROPER PENALTY; DISMISSAL.—The Court consistently reminds that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Judiciary demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which violates the norms of public accountability, and diminishes, or even tends to diminish, the faith of the people in the justice system. Thus, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public. Accordingly, in A.M. No. P-14-3230, the Court finds Licay guilty of grave misconduct for her defiance and stubbornness to obey legitimate directives of this Court and gross neglect of duty for non-submission of the Monthly Financial Reports, both of which are classified as grave offenses under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service with the corresponding punishment of dismissal from the service.

D E C I S I O N

***PER CURIAM*:**

A.M. No. P-14-3230 stemmed from the continuous failure of respondent Alma P. Licay (Licay), Clerk of Court, to comply with the regular submission of the Monthly Financial Reports of the Municipal Circuit Trial Court of San Juan, La Union,

while A.M. No. P-11-2959 arose from the shortages in the judiciary collections and undocumented withdrawal of cash bonds.

In its Resolution dated 10 July 2017,[1] the Court consolidated A.M. No. P-14-3230 with A.M. No. P-11-2959 from the First Division, upon the recommendation of the Office of the Court Administrator (OCA) in its 1 March 2017 Memorandum which stated that the audit team who conducted the examination of the books of accounts of the Municipal Circuit Trial Court, San Juan-San Gabriel, La Union had already submitted to the Court their financial audit in A.M. No. P-11-2959 on 21 June 2011.

A.M. No. P-14-3230

In its Memorandum dated 10 May 2011,[2] the OCA reported that the Financial Management Office (FMO) of the OCA found that Licay failed to regularly submit her Monthly Financial Reports.

The OCA stated that on 27 February 2007, the FMO, OCA sent a letter[3] to Licay requiring her to submit the Monthly Financial Reports for (1) the Judiciary Development Fund (JDF) from July 2006, (2) the Special Allowance for the Judiciary (SAJ) from July 2006, (3) the Fiduciary Fund (FF) from May 2006, and (4) the Sheriff's Trust Fund (STF).

The OCA sent another letter[4] to Licay on 6 July 2007. The letter required her to show cause within a non-extendible period of five (5) days from notice why her salaries should not be withheld for failure to comply with the rules on the submission of the Monthly Financial Reports.

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[1] *Rollo* (A.M. No. P-14-3230), pp. 34-35.

[2] *Id*. at 1-2.

[3] *Id*. at 12.

[4] *Id*. at 11.

In August 2007, the FMO received from Licay a partial compliance for the mentioned periods up to February 2007.

Another letter was sent again to Licay reminding her to submit the other unsubmitted reports but Licay failed to do so.

The FMO sent a final letter[5] to Licay on 17 October 2007 reminding her to submit the other reports she did not submit: (1) the JDF from March 2007, (2) the SAJ for the months of December 2006 and March 2007, (3) the FF from March 2007 and (4) the STF. However, she failed to submit the reports as ordered.

In a Memorandum dated 17 January 2008,[6] then Chief Justice Reynato S. Puno approved the request of the FMO that the salaries of Licay be withheld due to her continuous non-submission of the required Monthly Financial Reports.

The FMO was likewise prompted to conduct a financial audit of the books of account of the Municipal Circuit Trial Court of San Juan-San Gabriel, La Union. The financial audit is the subject of A.M. No. P-11-2959.

In its Resolution dated 15 June 2011,[7] the Court directed Licay to explain in writing why she should not be administratively dealt with for the non-submission of her Monthly Financial Reports and to submit said reports both within ten (10) days from notice.

In its Resolution dated 14 December 2011,[8] the Court required Licay to show cause why she should not be disciplinarily dealt with or held in contempt for her failure to give an explanation on her non-submission of the Monthly Financial Reports and on her failure to submit the reports required in the 15 June 2011 Resolution.

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[5] *Id*. at 10.

[6] *Id*. at 9.

[7] *Id*. at 13-14.

[8] *Id*. at 15.

In its 13 February 2013 Resolution,[9] the Court resolved to impose a fine on Licay due to her failure to comply with the show cause Resolution dated 14 December 2011. The Resolution fined Licay Five Hundred Pesos (₱500.00) and ordered her to comply with the Resolutions dated 15 June 2011 and 14 December 2011, within ten (10) days from notice.

In its 23 October 2013 Resolution,[10] the Court imposed on Licay an additional fine of Five Hundred Pesos (₱500.00) for failure to comply with the 13 February 2013 Resolution. Again, Licay was required to comply with the Resolution dated 15 June 2011 by submitting the required Monthly Financial Reports, also within ten (10) days from notice.

Licay paid the fine of One Thousand Pesos (₱1,000.00), under Official Receipt No. 1513547B dated 9 December 2013. However, the 23 January 2014 Certification from the Accounting Division of the FMO showed that Licay had not submitted the following Monthly Financial Reports: (1) JDF for the months of July 2007 to December 2010, (2) SAJ for the months of July 2007 to December 2010, (3) FF for the months of July 2007 to December 2010, (4) STF from her date of assumption to December 2010 and (5) General Fund for the first quarter of 2009 to the fourth quarter of 2010.[11]

In its 7 April 2014 Memorandum, the OCA recommended the following:

a) the administrative complaint be RE-DOCKETED as a regular administrative case against respondent Clerk of Court Alma P. Licay, Municipal Circuit Trial Court, San Juan, La Union;

b) respondent Clerk of Court Licay be found LIABLE for Gross Insubordination and Refusal to Perform Official Duty and be SUSPENDED from office for one (1) year effective immediately, with a STERN WARNING that a repetition of the same or similar offense shall be dealt with more severely;

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

[10] *Id*. at 18-19.

[11] *Id*. at 23.

c) to IMPOSE on respondent Clerk of Court Licay a FINE of Five Thousand Pesos (Php 5,000.00) payable to the Court within ten (10) days from notice or a penalty of imprisonment of ten (10) days if such fine is not paid within the prescribed period, for her deliberate and continuous failure and refusal to comply with the Resolutions dated 15 June 2011, 14 December 2011, 13 February 2013 and 23 October 2013 of the Court; and

d) Clerk of Court Licay be REQUIRED anew to COMPLY with the Resolutions dated 15 June 2011 and 14 December 2011 by submitting to the Court the required Monthly Financial Reports and explanation for such failure, both within a non-extendible period of ten (10) days from notice.[12]

The OCA stated in the Memorandum that:

x x x [T]he Court has already given Clerk of Court Licay more than enough opportunity to explain her side. With her obstinate defiance and incessant refusal to submit her compliance to the Court despite the latter's repeated directives and stern admonitions, she displayed her insolence and disrespect for the lawful orders of the Court. A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply betrays not only a recalcitrant streak in character, but also a disrespect for the Court's lawful order and directive. Furthermore, this contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered an utter lack of interest to remain with, if not contempt of, the system. Her transgression is highlighted even more by the fact that she is an employee of the Judiciary. More than an ordinary citizen, she should be aware of her duty to obey the orders and processes of the Supreme Court without delay. Her willful disobedience to and disregard for the directive of this Court constitute grave and serious misconduct which cannot be tolerated.

Insubordination or unwillingness to submit to authority and refusal to perform official duty are glaring in the actuations of Clerk of Court Licay. They are grave offenses with the corresponding penalty of suspension of six (6) months and one (1) day to one (1) year. The Revised Rules on Administrative Cases in the Civil Service is instructive. If the respondent is found guilty of two (2) or more charges

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[12] *Id.* at 24-25.

or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered aggravating circumstances. Moreover, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. Thus, as insubordination and refusal to perform official duty are both grave offenses, the latter shall be considered as aggravating to impose the maximum penalty of suspension of one year.[13]

In its 7 July 2014 Resolution,[14] the Court redocketed the case as a regular administrative complaint against Licay.

A.M. No. P-11-2959

In its Memorandum dated 28 April 2011,[15] the audit team, after conducting an examination of the books of account of the Municipal Circuit Trial Court, San Juan-San Gabriel, La Union, found that Licay incurred shortages in the judiciary collections.

In its Resolution dated 25 July 2011,[16] the Court, upon the recommendation of the OCA, resolved as follows:

(1) x x x.

(2) to DOCKET the report as a regular administrative complaint against Mrs. Alma P. Licay, Clerk of Court II, Municipal Circuit Trial Court, San Juan-San Gabriel, La Union for appropriating for personal use her judiciary collections for the period March 2007 to July 2009 and for violation of OCA Circular No. 13-92, Circular No. 50-95, and other existing rules and regulations relevant to the handling of judiciary funds;

(3) to SUSPEND Mrs. Alma P. Licay from office for six (6) months without pay effective upon notice hereof, and to impose on her a FINE in the amount of Five Thousand Pesos (₱5,000.00) for the delayed remittances of her judiciary collections for the period March 2007 to July 2009, payable to this Court within ten (10) days from notice;

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[13] *Id*. at 24.

[14] *Id*. at 27.

[15] *Id*. (A.M. No. P-11-2959), pp. 3-10.

[16] *Id*. at 24-26.

(4) to DIRECT Mrs. Alma P. Licay:

(4.a) to RESTITUTE within fifteen (15) days from notice the following shortages by depositing the computed amounts to their respective savings accounts, to wit:

FUND	SAVINGS ACCOUNT NO.	AMOUNT
General Fund		₱ 637.00
Judiciary Development Fund (JDF)	0591-0116-34	194.20
Mediation Fund (MF)	3472-1000-08	1,000.00
Fiduciary Fund (FF)	1391-0015-41	2,376.18
TOTAL		₱ 4,207.38

(4.b) to SUBMIT within fifteen (15) days from notice copies of machine validated deposit slips or Land Bank of the Philippines certification showing that the computed shortages above had been deposited to their respective accounts;

(4.c) to REQUEST from the Land Bank of the Philippines a snap shot or bank statement of the court's Fiduciary Savings Account No. 1391-0015-41 covering the period 01 January 2005 to 30 September 2005 and to SUBMIT the said snap shot or bank statement to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, for examination, both within fifteen (15) days from notice hereof; and

(4.d) to SUBMIT within fifteen (15) days from notice valid documents, e.g., court orders, acknowledgment receipts, etc., and to SURRENDER the original copy/ies of official receipt/s to support the withdrawals of the attached List of Undocumented Withdrawn Cash Bonds (Schedule 1) amounting to ₱872,175.00; otherwise, to RESTITUTE the same;

x x x x x x x x x[17]

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[17] *Id.* at 24-25.

In a Certification dated 13 October 2011,[18] the Cash Division, SC-OCA certified that Licay has paid ₱5,000.00 as fine.

In a Letter dated 19 October 2011,[19] Licay appealed for an extension for the submission of the required documents in the Resolution of 25 July 2011. In another Letter bearing the same date, Licay stated that she was submitting the documents required in paragraphs 4.b and 4.c of the Resolution. She attached orders and acknowledgment receipts to the Letter.

In its 21 November 2011 Resolution,[20] the Court noted Licay's payment of the fine and her Letter submitting documents relative to paragraph 4.d of the 25 July 2011 Resolution. The Court granted her another 15 days to comply with the 25 July 2011 Resolution.

In a Letter dated 17 November 2011,[21] Licay stated that she was submitting official receipts, orders, and acknowledgment receipts as partial compliance with the 25 July 2011 Resolution. In its 15 February 2012 Resolution, the Court noted the Letter.

In its 14 November 2012 Resolution,[22] the Court noted the certification dated 16 April 2012 of Presiding Judge Alan M. Ordono, Municipal Circuit Trial Court, San Juan-San Gabriel, La Union, stating that Licay has reassumed her duties and responsibilities as Clerk of Court II effective 16 April 2012 after having served her six months suspension which took effect on 5 October 2011 pursuant to the Resolution of 25 July 2011.

In its 18 February 2013 Resolution,[23] the Court resolved to await Licay's full compliance with the Resolution of 25 July 2011.

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[18] *Id*. at 33.

[19] *Id*. at 29.

[20] *Id*. at 145-146.

[21] *Id*. at 147.

[22] *Id*. at 202.

[23] *Id*. at 203.

In its 28 July 2014 Resolution,[24] the Court resolved to require Licay to submit her full compliance with the Resolution of 25 July 2011 within ten days from notice of the Resolution.

A.M. Nos. P-11-2959 and P-14-3230

In its 10 July 2017 Resolution,[25] the Court consolidated A.M. No. P-14-3230 with A.M. No. P-11-2959. As stated, this Resolution was based on the 1 March 2017 Memorandum of the OCA recommending the consolidation of the cases since the audit team who conducted the examination of the books of accounts of the Municipal Circuit Trial Court, San Juan-San Gabriel, La Union had already submitted their financial audit on 21 June 2011 in A.M. No. P-11-2959.

In its Resolution dated 2 August 2017,[26] the Court found that Licay has partially complied with the Resolution dated 25 July 2011 in A.M. No. P-11-2959, thus:

> First, respondent has served her [six months] suspension from office which took effect on 5 October 2011. She has reassumed her duties and responsibilities as Clerk of Court II on 16 April 2012. Likewise, respondent has already paid the fine imposed on her. x x x.
>
> Second, in compliance with paragraphs (4.a) and (4.b) of the Resolution, respondent restituted the amount of her shortages and submitted copies of the deposit slips for the payment of her shortages totalling ₱4,207.38.
>
> Third, in compliance with paragraph (4.c) of the Resolution, respondent has submitted a snapshot of Land Bank of the Philippines' statement in lieu of the lost passbook for the year 2005.
>
> As regards paragraph (4.d) of the Resolution, respondent has submitted partial or incomplete official receipts, orders and acknowledgment receipts to support the withdrawals of the cash bonds amounting to ₱872,175.00.[27]

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[24] *Id*. at 204.

[25] *Id*. at 205-206.

[26] *Id.* at 208-210.

[27] *Id*. at 209-210.

The Court reiterated in the same Resolution its previous order for Licay to submit her full compliance with the Resolution dated 25 July 2011 within a non-extendible period of ten (10) days from notice. The Court required Licay to submit valid documents, e.g., court orders, acknowledgment receipts, etc. and to surrender the original copy/ies of official receipt/s to support the withdrawals of the cash bonds amounting to ₱872,175.00; otherwise, to restitute the same.[28]

In a Letter dated 17 October 2017,[29] Licay stated that she "is having a hard time [complying] with the resolution of the Court due to her health conditions for she had suffered stroke, diabet[es] and [asthma]."[30] Licay further stated that she "had submitted all the x x x documents in her monthly reports from the year 1996 to 1999 but unfortunately she could not locate anymore her files because the Court had transferred twice."[31] She added that she is "very much willing that the amount of ₱413,500.00 computed in the List of Fiduciary Fund with lacking documents be deducted from her salary which was withheld from February 2008 up to the present since it is hard for her to produce the said amount x x x."[32]

In A.M. No. P-11-2959, as stated, Licay has already partially complied with the Resolution of the Court dated 25 July 2011; thus, the remaining unsettled matter is her full compliance with regard to the submission of the supporting documents for the withdrawn cash bonds amounting to ₱872,175.00.

In A.M. No. P-14-3230, the issue is whether Licay is guilty of the administrative offenses of gross insubordination and refusal to perform official duty for her continuous refusal to comply

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[28] *Id*. at 210.

[29] *Id*. at 213.

[30] *Id*.

[31] *Id*.

[32] *Id*.

with the Court's directives to submit her Monthly Financial Reports.

A.M. No. P-11-2959

In A.M. No. P-11-2959, the Court imposed on Licay the penalty of suspension of six months without pay and a ₱5,000.00 fine for the delayed remittances of her judiciary collections for the period of March 2007 to July 2009; directed the restitution of her shortages; and ordered the submission of the supporting documents for the withdrawn cash bonds amounting to ₱872,175.00. The remaining unsettled matter is the submission of the supporting documents for the withdrawn cash bonds amounting to ₱872,175.00.

Licay failed to comply fully with the Court's order to submit the required supporting documents. She partially complied by submitting some, but not all, of the supporting documents. Licay claims that she is suffering from stroke, diabetes, and asthma which prevent her from complying with the Court's directive to submit the required supporting documents. She further alleges that she could no longer locate her files because the court had transferred twice. She suggests that the amount of ₱413,500.00 computed in the List of Fiduciary Fund with lacking documents be deducted from her salary which was withheld since February 2008.

This Court commiserates with Licay for the ailments that she is presently suffering. However, these do not exonerate her from the consequences of her omissions that took place before she became ill. In the absence of any showing that her medical problems prevented her from working,[33] Licay had no valid excuse for not faithfully performing her duties and responsibilities as Clerk of Court. Accordingly, she must restitute the amount of the remaining undocumented withdrawn cash bonds, after a determination of the exact amount thereof taking

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[33] *Office of the Court Administrator v. Judge Lopez*, 723 Phil. 256, 268 (2013).

into account that she submitted official receipts, orders, and acknowledgment receipts in partial compliance with the Court's 25 July 2011 Resolution in A.M. No. P-11-2959.

A.M. No. P-14-3230

In A.M. No. P-14-3230, the Court disagrees with the recommendation of the OCA. Licay is guilty of grave misconduct and gross neglect of duty.

Under Administrative Circular No. 3-2000,[34] the duty of the clerk of court is to receive JDF collections in their respective courts, issue the proper receipts and maintain a separate cash book properly marked as "CASH BOOK FOR JUDICIARY DEVELOPMENT FUND." The clerk of court shall then deposit such collections every day and render the proper Monthly Report of Collections and Deposits for said Fund within ten (10) days after the end of every month. Section 3-C of the JDF and SAJ procedural guidelines in Administrative Circular No. 35-2004, as amended,[35] provides that the daily remittance of JDF and SAJ collections is required.

OCA Circular No. 50-95[36] provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the Land Bank of the Philippines by the clerk of court concerned. The deposit must be made within 24 hours from receipt. In localities where there are no Land Bank of the Philippines branches, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer.

To implement these circulars, OCA Circular No. 113-2004[37] requires clerks of court to submit monthly reports for three funds: JDF, SAJ, and FF.

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[34] Dated 15 June 2000.

[35] Dated 20 August 2004.

[36] Took effect on 1 November 1995.

[37] Took effect on 1 October 2004.

In the present case, Licay not only failed to fully comply with her duty as Clerk of Court based on the provisions of law, but likewise continuously ignored the reminders and stern warnings of the OCA and the Court to submit the missing Monthly Financial Reports. Even if she partially complied on some months, the 15 June 2011, 14 December 2011, 13 February 2013 and 23 October 2013 Court Resolutions still went unheeded and she deliberately failed to submit the Monthly Financial Reports. Evidently, Licay committed the grave offense of grave misconduct for her obstinate refusal to comply with the repeated directives of the Court requiring her to submit the Monthly Financial Reports.

In *Office of the Court Administrator v. Ganzan*,[38] the Court stated that a resolution of the Court should not be construed as a mere request and should be complied with promptly and completely.

In *Alday v. Cruz, Jr.,*[39] the Court reiterated that directives issued by this Court are not to be treated lightly, certainly not on the pretext that one has misapprehended the meaning of said directives. Effective and efficient administration of justice demands nothing less than a faithful adherence to the rules and orders laid down by this Court.

In *Office of the Court Administrator v. Reyes*,[40] a clerk of court was dismissed for his propensity to defy the directives of the Court. The Court stated that such attitude betrays not only a recalcitrant streak of character, but also disrespect for the lawful orders and directives of the Court.

In *Grefaldeo v. Lacson*,[41] the Court held that respondent's obstinate refusal to abide by the lawful directives of the Court must similarly be taken to mean as her own utter lack of interest

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[38] 616 Phil. 15, 23 (2009).

[39] 426 Phil. 385, 390 (2002).

[40] 635 Phil. 490, 496, 502 (2010). See *Office of the Court Administrator v. Ganzan, supra*.

[41] 355 Phil. 266, 272-273 (1998).

to remain with, if not her contempt of, the system to which she unfittingly belongs.

For her inexcusable non-submission of the Monthly Financial Reports, Licay is also guilty of gross neglect of duty.

As distinguished from simple neglect of duty, which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[42]

In this case, Licay, despite repeated directives from the Court to submit the Monthly Financial Reports, deliberately ignored the Resolutions showing her manifest indifference to the serious repercussions of her omissions. Licay's repeated failure to submit the Monthly Financial Reports, without any explanation or justification, clearly constitutes gross neglect of duty.

In *Office of the Court Administrator v. Reyes*,[43] the Court found a clerk of court guilty of gross neglect of duty for, among others, non-submission of financial reports, undeposited collections, and delayed remittances. The Court held that:

> The undeposited collections and delayed remittances resulted to loss of interests that should have accrued had the collections been deposited promptly to their respective fund accounts. x x x. Indubitably, Reyes violated the trust reposed in her as collecting officer of the judiciary. The Court cannot tolerate non-submission of financial reports, non-reporting and non-deposit of collections, undue delay in the deposit of collections, unauthorized withdrawal, and non-explanation of incurred shortages and undeposited collections. x x x.[44]

The Court consistently reminds that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their

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[42] *Office of the Court Administrator v. Viesca*, 758 Phil. 16, 26 (2015).

[43] 754 Phil. 572 (2015).

[44] *Id*. at 576.

part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Judiciary demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which violates the norms of public accountability, and diminishes, or even tends to diminish, the faith of the people in the justice system. Thus, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public.[45]

Accordingly, in A.M. No. P-14-3230, the Court finds Licay guilty of grave misconduct for her defiance and stubbornness to obey legitimate directives of this Court and gross neglect of duty for non-submission of the Monthly Financial Reports, both of which are classified as grave offenses under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service with the corresponding punishment of dismissal from the service.[46]

WHEREFORE, the Court finds respondent Alma P. Licay, Clerk of Court, Municipal Circuit Trial Court, San Juan, La Union, **GUILTY** of grave misconduct and gross neglect of duty in A.M. No. P-14-3230. She is hereby **DISMISSED** from the service effective immediately, and all her employment benefits, except accrued leave benefits, are **FORFEITED** with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

In A.M. No. P-11-2959, Licay is **DIRECTED** to **RESTITUTE** the amount of the remaining undocumented withdrawn cashbonds within a non-extendible period of one (1) month from receipt of the final computation of the exact amount thereof taking into account Licay's partial submission of the original supporting documents.

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[45] *Office of the Court Administrator v. Viesca*, *supra* note 42.

[46] See *Bascos v. Ramirez*, 700 Phil. 120, 128 (2012).

The Legal Office, Office of the Court Administrator is **DIRECTED** to **IMMEDIATELY FILE** the appropriate civil and criminal cases against Licay upon receipt of a Report from the Fiscal Monitoring Division, Court Management Office that she failed to restitute the final amount of the remaining undocumented withdrawn cash bonds.

Let a copy of this Decision be attached to the records of Licay in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Bersamin, J., on leave.

Martires, J., on official business.

EN BANC

[A.M. No. P-17-3705. February 6, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PAULINO I. SAGUYOD, Branch Clerk of Court, Regional Trial Court, Branch 67, Paniqui, Tarlac,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CLERKS OF COURT; REQUIREMENTS WHEN THE CLERKS OF COURT OF VARIOUS REGIONAL TRIAL COURTS ARE

AUTHORIZED TO NOTARIZE NOT ONLY DOCUMENTS RELATING TO THEIR OFFICIAL FUNCTIONS, BUT ALSO PRIVATE DOCUMENTS UNDER A.M. NO. 02-8-13-SC (2004 RULES ON NOTARIAL PRACTICE), ENUMERATED.— Inefficiency involves specific acts or omission on the part of the employee which results in the damage to the employer or to the latter's business. It is akin to neglect of duty, which is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference. In this case, BCC Saguyod readily admitted to notarizing hundreds, if not thousands, of various documents which were submitted before the RTC where he is stationed. As a Clerk of Court, BCC Saguyod's acts of notarization should comply with Section (f) of the Resolution dated August 15, 2006 in A.M. No. 02-8-13-SC, x x x Under this provision, Clerks of Court of various Regional Trial Courts are authorized to notarize not only documents relating to their official functions, but also private documents; provided, that: (a) the notarial fees received in connection thereto shall be for the account of the Judiciary; and (b) they certify in said documents that there are no available notaries public within the territorial jurisdiction of the Regional Trial Court where they are stationed.

2. **ID.; ID.; ID.; INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES, A GRAVE OFFENSE; ONE YEAR SUSPENSION, PROPER PENALTY; CASE AT BAR.—** Anent the proper penalty to be meted on BCC Saguyod, Section 46 (B) (4) of the Revised Rules on Administrative Cases in the Civil Service classifies inefficiency and incompetence in the performance of official duties as a grave offense, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second offense. Since it appears that this is just BCC Saguyod's first offense of such nature, the Court deems it appropriate to impose on him the penalty of suspension for a period of one (1) year, with a stern warning that a repetition of the same or similar offense shall result in his dismissal from service.

RESOLUTION

PERLAS-BERNABE, *J.*:

This administrative case arose from a Memorandum[1] dated May 29, 2017 submitted by the complainant Office of the Court Administrator (OCA), which adopted the Audit Team's Report[2] dated May 9, 2017 in connection with A.M. No. RTJ-15-2404,[3] recommending, *inter alia*, that respondent Branch Clerk of Court Paulino I. Saguyod (BCC Saguyod) of the Regional Trial Court of Paniqui, Tarlac, Branch 67 (RTC) be directed to explain why he should not be held administratively liable for notarizing several documents submitted to the court without observing the provisions of A.M. No. 02-8-13-SC (*Re: 2004 Rules on Notarial Practice*).[4]

The Facts

In the Report, the Audit Team examined 1,194 cases decided by former Judge Liberty O. Castañeda (Judge Castañeda) of the RTC where BCC Saguyod was also stationed.[5] After the conduct of investigation, not only did the Audit Team find fault with the way Judge Castañeda proceeded with the cases she handled, they also discovered that BCC Saguyod had been notarizing a multitude of documents filed before the RTC in connection with the various cases before it without properly

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[1] *Rollo*, pp. 1-2. Signed by Court Administrator Jose Midas P. Marquez and OCA Chief of Legal Office Wilhelmina D. Geronga.

[2] *Id*. at 3-241. Signed by Audit Team Members Albert N. Lavandero, Eduardo C. Tolentino, Rex Allen R. Gregorio, Simon Peter G. Palma, Maria Fiona S. Calderon, Mary Joy Lavilla-Mina, Jenifer M. Gabrillo-Salvador, and Alwin M. Tumalad. Noted by OCA Assistant Chief of Legal Office James D.V. Navarrete.

[3] Entitled "*Office of the Court Administrator v. Former Judge Liberty O. Castañeda.*"

[4] (August 1, 2004).

[5] *Rollo*, p. 4.

observing the Court's appropriate guidelines.[6] Particularly, the Audit Team observed that BCC Saguyod violated Section (f) of the Resolution dated August 15, 2006 in A.M. No. 02-8-13-SC as he notarized said documents without any certification that there are no available notaries public within the Municipality of Paniqui, Tarlac.[7] Thus, the Audit Team recommended – with such recommendation being adopted by the OCA – that BCC Saguyod be made to explain as to why he should not be held administratively liable for such act.[8]

In his Explanation[9] dated July 31, 2017, BCC Saguyod claimed that he performed said act in good faith and without any monetary consideration.[10] Citing Section 41,[11] Chapter 10, Book I of the Administrative Code of 1987 which authorizes clerks of court to administer oaths, he thought that he was doing an important function which is vital to the prompt and sound administration of justice.[12] Nonetheless, BCC Saguyod profusely apologized for notarizing documents without strictly adhering to the provisions of the Rules on Notarial Practice, and even manifested that after the Audit Team called his attention on the matter, he had already refrained from subscribing any other document filed before the RTC out of fear of committing the same mistake.[13]

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[6] See *id*. at 238-240.

[7] See *id*. at 239-240.

[8] See *id*. at 2 and 240-241.

[9] *Id*. at 244-245.

[10] *Id*. at 244.

[11] Pertinent portions of Section 41, Chapter 10, Book I of Executive Order No. 292, also known as the ADMINISTRATIVE CODE OF 1987 (August 3, 1988) read:

Section 41. *Officers Authorized to Administer Oath*. – The following officers have general authority to administer oath: x x x clerks of courts, x x x.

[12] *Rollo*, p. 244.

[13] *Id*. at 245.

The OCA's Report and Recommendation

In a Memorandum[14] dated December 14, 2017, the OCA recommended that BCC Saguyod be found guilty of inefficiency and incompetence in the performance of official duties, and accordingly, be meted the penalty of suspension from the service for a period of one (1) year, with a warning that a repetition of the same or similar offense shall warrant dismissal from service.[15]

The OCA found that BCC Saguyod readily admitted to notarizing various documents filed before the RTC without complying with Section (f) of the Resolution dated August 15, 2006 in A.M. No. 02-8-13-SC, and even when some of these documents were not completely accomplished by the concerned parties.[16] In this regard, the OCA found that BCC Saguyod's defenses that he did not charge notarization fees and that there are no available notaries public in Paniqui, Tarlac do not deserve credence, because: (*a*) his act of notarizing without compliance with the Court's aforesaid resolution directly makes him liable thereunder; and (*b*) there are other petitions filed before the RTC which are notarized by notaries public based in Paniqui, Tarlac.[17]

Finally, in recommending the proper penalty, the OCA pointed out that a mere fine would not suffice, considering the number of times BCC Saguyod repeatedly violated A.M. No. 02-8-13-SC, and the fact that he even went out of his way to notarize documents that were incomplete or sorely lacking in material details. Thus, the OCA recommended that a suspension from service for one (1) year be meted on him, pursuant to the Revised Rules on Administrative Cases in the Civil Service.[18]

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[14] *Id*. at 253-257. Signed by Court Administrator Jose Midas P. Marquez.

[15] *Id*. at 257.

[16] See *id*. at 254-255.

[17] See *id*. at 255.

[18] See *id*. at 257.

The Issue Before the Court

The essential issue in this case is whether or not BCC Saguyod should be held administratively liable for notarizing various documents submitted to the RTC in connection with the cases filed before it.

The Court's Ruling

The Court adopts the findings and the recommendation of the OCA that BCC Saguyod must be held administratively liable for inefficiency and incompetence in the performance of official duties.

Inefficiency involves specific acts or omission on the part of the employee which results in the damage to the employer or to the latter's business.[19] It is akin to neglect of duty,[20] which is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.[21]

In this case, BCC Saguyod readily admitted to notarizing hundreds, if not thousands, of various documents which were submitted before the RTC where he is stationed. As a Clerk of Court, BCC Saguyod's acts of notarization should comply with Section (f) of the Resolution dated August 15, 2006 in A.M. No. 02-8-13-SC, which reads:

A.M. No. 02-8-13-SC (Re: 2004 Rules on Notarial Practice). The Court resolved to:

x x x x x x x x x

(f) AUTHORIZE the Clerks of Court of the Regional Trial Courts to notarize not only documents relating to the exercise of their official

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[19] *Sasing v. Gelbolingo*, 704 Phil. 251, 257 (2013), citing *St. Luke's Medical Center, Inc. v. Fadrigo*, 620 Phil. 745, 755 (2009).

[20] See *Sasing v. Gelbolingo*, *id.*, citing *St. Luke's Medical Center, Inc. v. Fadrigo*, *id*.

[21] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013), citing *Republic of the Philippines v. Canastillo*, 551 Phil. 987, 996 (2007).

functions but also private documents, subject to the following conditions: (i) all notarial fees charged in accordance with Section 7(o) of the Rule 141 of the Rules of Court, and, with respect to private documents, in accordance with the notarial fee that the Supreme Court may prescribe in compliance with Section 1, Rule V of the Rules on Notarial Practice, shall be for the account of the Judiciary; and (ii) they certify in the notarized documents that there are no notaries public within the territorial jurisdiction of the Regional Trial Court[.]

Under this provision, Clerks of Court of various Regional Trial Courts are authorized to notarize not only documents relating to their official functions, but also private documents; provided, that: (*a*) the notarial fees received in connection thereto shall be for the account of the Judiciary; and (*b*) they certify in said documents that there are no available notaries public within the territorial jurisdiction of the Regional Trial Court where they are stationed.

Here, aside from maintaining that he did not receive compensation for notarizing documents, BCC Saguyod claims that he only did so because: (*a*) there are no notaries public available within the Municipality of Paniqui, Tarlac; and (*b*) he believed in good faith that he was authorized to do so. However, and as correctly pointed out by the OCA, such claim is belied by the fact that there are other documents filed before the RTC which are duly subscribed by notaries public based in the same municipality. Furthermore, BCC Saguyod cannot feign good faith in performing the aforesaid acts of notarization, as he repeatedly did so even on those documents which were not completely accomplished by the concerned parties. In light of BCC Saguyod's repeated violations of Section (f) of the Resolution dated August 15, 2006 in A.M. No. 02-8-13-SC, the OCA correctly recommended that he be found administratively liable for inefficiency and incompetence in the performance of official duties.

Anent the proper penalty to be meted on BCC Saguyod, Section 46 (B) (4) of the Revised Rules on Administrative Cases in the Civil Service[22] classifies inefficiency and incompetence in the performance of official duties as a grave offense, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second offense. Since it appears that this is just BCC Saguyod's first offense of such nature, the Court deems it appropriate to impose on him the penalty of suspension for a period of one (1) year, with a stern warning that a repetition of the same or similar offense shall result in his dismissal from service.

As a final note, it must be stressed that "Public officers must be accountable to the people at all times and serve them with the utmost degree of responsibility and efficiency. Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. It is the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice,"[23] as in this case.

WHEREFORE, judgment is hereby rendered finding respondent Branch Clerk of Court Paulino I. Saguyod (BCC Saguyod) of the Regional Trial Court of Paniqui, Tarlac, Branch 67 **GUILTY** of inefficiency and incompetence in the performance of official duties. He is hereby **SUSPENDED** from service for a period of one (1) year, with a **STERN WARNING** that a repetition of the same or similar offense shall warrant a more serious penalty, *i.e.*, dismissal from service.

Let copies of this Resolution be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to BCC Saguyod's records.

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[22] Resolution No. 1101502, promulgated on November 18, 2011.

[23] *Alano v. Sahi*, 737 Phil. 17, 23 (2014), citing *Domingo-Regala v. Sultan*, 492 Phil. 482, 491 (2005).

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Bersamin, J., on leave.

Martires, J. on official business.

EN BANC

[G.R. No. 224162. February 6, 2018]

JANET LIM NAPOLES, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; THE STAGE AT WHICH THE ACCUSED MAY DEMUR TO THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE IS DURING THE TRIAL ON THE MERITS ITSELF, PARTICULARLY, AFTER THE PROSECUTION HAS RESTED ITS CASE.— In a demurrer to evidence, as in the case of *Macapagal-Arroyo*, the accused imposes a challenge on the sufficiency of the prosecution's *entire* evidence. This involves a determination of whether the evidence presented by the prosecution has established the guilt of the accused beyond reasonable doubt. Should the trial court find the prosecution's evidence insufficient in this regard, the grant of the demurrer to evidence is equivalent to the acquittal of the accused. The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself—particularly, after the prosecution has rested its case. This should be distinguished

from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case. Neither does it speculate on the ultimate outcome of the criminal charge. The Court has judiciously explained in *Atty. Serapio v. Sandiganbayan* the difference between the preliminary determination of the guilt of the accused in a petition for bail, and the proceedings during the trial proper.

2. ID.; ID.; BAIL; IN A PETITION FOR BAIL, THE TRIAL COURT'S INQUIRY IS LIMITED TO WHETHER THERE IS EVIDENT PROOF THAT THE ACCUSED IS GUILTY OF THE OFFENSE CHARGED; CASE AT BAR.— The Court has previously discussed in our Decision dated November 7, 2017 that the trial court is required to conduct a hearing on the petition for bail whenever the accused is charged with a capital offense. While mandatory, the hearing may be summary and the trial court may deny the bail application on the basis of evidence less than that necessary to establish the guilt of an accused beyond reasonable doubt. In this hearing, **the trial court's inquiry is limited to whether there is evident proof that the accused is guilty of the offense charged**. This standard of proof is clearly different from that applied in a demurrer to evidence, which measures the prosecution's entire evidence against the required moral certainty for the conviction of the accused. x x x The issue that the Court resolved in its Decision dated November 7, 2017 was whether the Sandiganbayan gravely abused its discretion in denying Napoles' application for bail. This involved a preliminary determination of her eligibility to provisional liberty. The resolution of this issue does not involve an inquiry as to whether there was proof beyond reasonable doubt that Napoles, or her co-accused as the case may be, was the main plunderer for whose benefit the ill-gotten wealth was amassed or accumulated. These are matters of defense best left to the discretion of the Sandiganbayan in the resolution of the criminal case. It was sufficient that the denial of her bail application was based on evidence establishing a *great presumption of guilt* on the part of Napoles.

APPEARANCES OF COUNSEL

David Buenaventura & Ang Law Offices for petitioner.
The Solicitor General for respondent.

RESOLUTION

REYES, JR., *J.*:

On December 20, 2017, petitioner Janet Lim Napoles (Napoles) filed a motion for the reconsideration[1] of the Court's Decision[2] dated November 7, 2017, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is DISMISSED. The Resolutions dated October 16, 2015 and March 2, 2016 of the Sandiganbayan in SB-14-CRM-0238 are AFFIRMED, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.
>
> SO ORDERED.[3]

The assailed decision of this Court upheld the Sandiganbayan's Resolutions dated October 16, 2015 and March 2, 2016 denying Napoles' application for bail, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.

Napoles now invokes the ruling in *Macapagal-Arroyo v. People*,[4] which was promulgated on July 19, 2016. The Court in that case reversed the Sandiganbayan's denial of the demurrer to evidence in the plunder case against former President Gloria Macapagal-Arroyo (GMA) based on the prosecution's failure to specify the identity of the main plunderer, for whose benefit the ill-gotten wealth was amassed, accumulated, and acquired. According to Napoles, the ruling in *Macapagal-Arroyo* should have been applied to her case.[5]

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[1] *Rollo*, pp. 1590-1600.

[2] *Id*. at 1569-1589.

[3] *Id*. at 1588.

[4] G.R. No. 220598, July 19, 2016, 797 SCRA 241.

[5] *Rollo*, p. 1594.

The Court finds this argument unmeritorious.

In a demurrer to evidence, as in the case of *Macapagal-Arroyo*, the accused imposes a challenge on the sufficiency of the prosecution's *entire* evidence. This involves a determination of whether the evidence presented by the prosecution has established the guilt of the accused beyond reasonable doubt. Should the trial court find the prosecution's evidence insufficient in this regard, the grant of the demurrer to evidence is equivalent to the acquittal of the accused.[6]

The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself – particularly, after the prosecution has rested its case.[7] This should be distinguished from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case. Neither does it speculate on the ultimate outcome of the criminal charge.[8] The Court has judiciously explained in *Atty. Serapio v. Sandiganbayan*[9] the difference between the preliminary determination of the guilt of the accused in a petition for bail, and the proceedings during the trial proper, *viz.*:

> It must be borne in mind that in *Ocampo vs. Bernabe*, this Court held that in a petition for bail hearing, the court is to conduct only a summary hearing, meaning such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of evidence for purposes of bail. The court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein. **It may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses, and reducing to a reasonable minimum the amount of**

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[6] *Bautista, et al. v. Cuneta-Pangilinan*, 698 Phil. 110, 126 (2012).

[7] RULES OF COURT, Rule 119, Section 23.

[8] *People v. Amondina*, 292-A Phil. 86, 91 (1993).

[9] 444 Phil. 499 (2003).

corroboration particularly on details that are not essential to the purpose of the hearing.

A joint hearing of two separate petitions for bail by two accused will of course avoid duplication of time and effort of both the prosecution and the courts and minimizes the prejudice to the accused, especially so if both movants for bail are charged of having conspired in the commission of the same crime and the prosecution adduces essentially the same evident against them. However, in the cases at bar, the joinder of the hearings of the petition for bail of petitioner with the trial of the case against former President Joseph E. Estrada is an entirely different matter. For, with the participation of the former president in the hearing of petitioner's petition for bail, the proceeding assumes a completely different dimension. The proceedings will no longer be summary. As against former President Joseph E. Estrada, **the proceedings will be a full-blown trial which is antithetical to the nature of a bail hearing**. x x x With the joinder of the hearing of petitioner's petition for bail and the trial of the former President, the latter will have the right to cross-examine intensively and extensively the witnesses for the prosecution in opposition to the petition for bail of petitioner. If petitioner will adduce evidence in support of his petition after the prosecution shall have concluded its evidence, the former President may insist on cross-examining petitioner and his witnesses. The joinder of the hearing of petitioner's bail petition with the trial of former President Joseph E. Estrada will be prejudicial to petitioner as it will unduly delay the determination of the issue of the right of petitioner to obtain provisional liberty and seek relief from this Court if his petition is denied by the respondent court. x x x[10] (Citations omitted and emphasis Ours)

The Court has previously discussed in our Decision dated November 7, 2017 that the trial court is required to conduct a hearing on the petition for bail whenever the accused is charged with a capital offense. While mandatory, the hearing may be summary and the trial court may deny the bail application on the basis of evidence less than that necessary to establish the guilt of an accused beyond reasonable doubt. In this hearing, **the trial court's inquiry is limited to whether there is evident proof that the accused is guilty of the offense charged**.[11]

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[10] *Id.* at 540-541.

[11] RULES OF COURT, Rule 114, Section 7.

This standard of proof is clearly different from that applied in a demurrer to evidence, which measures the prosecution's entire evidence against the required moral certainty for the conviction of the accused.[12]

The distinction between the required standards of proof precludes the application of *Macapagal-Arroyo* to the present case. The Sandiganbayan's denial of the demurrer to evidence in *Macapagal-Arroyo* was annulled based on the paucity of the evidence of the prosecution, which failed to prove *beyond reasonable doubt* that former President GMA was the mastermind of the conspiracy to commit plunder. In other words, there was a final determination of former President GMA's innocence of the crime charged.

This is not the case for Napoles. The issue that the Court resolved in its Decision dated November 7, 2017 was whether the Sandiganbayan gravely abused its discretion in denying Napoles' application for bail. This involved a preliminary determination of her eligibility to provisional liberty.

The resolution of this issue does not involve an inquiry as to whether there was proof beyond reasonable doubt that Napoles, or her co-accused as the case may be, was the main plunderer for whose benefit the ill-gotten wealth was amassed or accumulated. These are matters of defense best left to the discretion of the Sandiganbayan in the resolution of the criminal case. It was sufficient that the denial of her bail application was based on evidence establishing a *great presumption of guilt* on the part of Napoles.

Lastly, the other issues raised in Napoles' Motion for Reconsideration merely reiterated the earlier arguments that this Court has already resolved. For this reason, the reconsideration of the Court's earlier Decision is unwarranted under the circumstances.

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[12] See *People v. Hon. Cabral*, 362 Phil. 697 (1999); *Siazon v. Hon. Presiding Judge of the Circuit Criminal Court, etc., et al.*, 149 Phil. 241, 249 (1971); *Pareja v. Hon. Gomez and People*, 115 Phil. 820 (1962).

WHEREFORE, the Court resolves to **DENY** the present Motion for Reconsideration.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Tijam, and *Gesmundo, JJ.*, concur.

Jardeleza, Caguioa, and *Martires, JJ.,* no part.

Bersamin, J., on leave.

EN BANC

[G.R. No. 235935. February 6, 2018]

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, AND EMMANUEL A. BILLONES, *petitioners, vs.* **SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO**, *respondents.*

[G.R. No. 236061. February 6, 2018]

EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, ATTY. NERI JAVIER COLMENARES, DR. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., CRISTINA E. PALABAY, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN'S PARTY

REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS' REPRESENTATIVES ANTONIO L. TINIO, AND FRANCISCA L. CASTRO, AND KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, *petitioners, vs.* **PRESIDENT RODRIGO DUTERTE, SENATE PRESIDENT AQUILINO PIMENTEL III, HOUSE SPEAKER PANTALEON ALVAREZ, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF GEN. REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD DELA ROSA,** *respondents.*

[G.R. No. 236145. February 6, 2018]

LORETTA ANN P. ROSALES, *petitioner, vs.* **PRESIDENT RODRIGO R. DUTERTE, REPRESENTED BY EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, MARTIAL LAW ADMINISTRATOR SECRETARY DELFIN N. LORENZANA, MARTIAL LAW IMPLEMENTER GENERAL REY L. GUERRERO, AND PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL RONALDO M. DELA ROSA, AND THE CONGRESS OF THE PHILIPPINES, CONSISTING OF THE SENATE OF THE PHILIPPINES REPRESENTED BY SENATE PRESIDENT AQUILINO Q. PIMENTEL III, AND THE HOUSE OF REPRESENTATIVES, REPRESENTED BY HOUSE SPEAKER PANTALEON D. ALVAREZ,** *respondents.*

[G.R. No. 236155. February 6, 2018]

CHRISTIAN S. MONSOD, DINAGAT ISLANDS REPRESENTATIVE ARLENE J. BAG-AO, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA,

NICOLENE S. ARCAINA, AND JOSE RYAN S. PELONGCO, *petitioners, vs.* **SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO**, **PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; DEFINED; RESOLUTION OF BOTH HOUSES NO. 4 IS AN OFFICIAL ACT OF CONGRESS WHICH THE SUPREME COURT CAN TAKE JUDICIAL NOTICE OF; FAILURE TO ATTACH A COPY OF THE RESOLUTION IS NOT FATAL TO THE PETITION IN CASE AT BAR.— Section 1, Rule 129 of the Rules of Court provides that a court can take judicial notice of the official acts of the legislative department without the introduction of evidence. "Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support." Resolution of Both Houses No. 4 is an official act of Congress, thus, this Court can take judicial notice thereof. The Court also notes that respondents annexed a copy of the Resolution to their Consolidated Comment. Hence, We see no reason to consider petitioners' failure to submit a certified copy of the Resolution as a fatal defect that forecloses this Court's review of the petitions.

2. POLITICAL LAW; PRESIDENTIAL IMMUNITY FROM SUIT; THE PRESIDENT MAY NOT BE SUED DURING HIS OR HER TENURE IN RECOGNITION OF THE PRESIDENT'S VAST AND SIGNIFICANT FUNCTIONS

WHICH CAN BE DISRUPTED BY COURT LITIGATIONS; CASE AT BAR.— Presidential privilege of immunity from suit is a well-settled doctrine in our jurisprudence. The President may not be sued during his tenure or actual incumbency, and there is no need to expressly grant such privilege in the Constitution or law. This privilege stems from the recognition of the President's vast and significant functions which can be disrupted by court litigations. x x x It is, thus, clear that petitioners in G.R. Nos. 236061 and 236145 committed a procedural misstep in including the President as a respondent in their petitions.

3. **REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTIES; JOINDER OF INDISPENSABLE PARTIES IS MANDATORY, BEING A REQUIREMENT OF DUE PROCESS; CONGRESS MUST BE IMPLEADED AS PARTY-RESPONDENT IN CASE AT BAR.—** Section 7, Rule 3 of the Rules of Court requires that "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." x x x In these consolidated petitions, petitioners are questioning the constitutionality of a congressional act, specifically the approval of the President's request to extend martial law in Mindanao. Petitioners in G.R. No. 235935 and 236155 have also put in issue the manner in which the Congress deliberated upon the President's request for extension. Clearly, therefore, it is the Congress as a body, and not just its leadership, which has interest in the subject matter of these cases. Consequently, it was procedurally incorrect for petitioners in G.R. Nos. 235935, 236061 and 236155 to implead only the Senate President and the House Speaker among the respondents. x x x It is true that a party's failure to implead an indispensable party is not *per se* a ground for the dismissal of the action, as said party may be added, by order of the court on motion of the party or *motu propio*, at any stage of the action or at such times as are just. However, it remains essential - as it is jurisdictional - that an indispensable party be impleaded before judgment is rendered by the court, as the absence of such indispensable party renders all subsequent acts of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. Joining indispensable parties into an action is mandatory, being a requirement of due process. In their absence, the judgment cannot attain real finality. We are, thus, unprepared to trivialize the necessity to implead the entire Congress as party-respondent

in this proceeding, especially considering that the factual scenario and the concomitant issues raised herein are novel and unprecedented.

4. ID.; ID.; JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; ELEMENTS; ELEMENT OF IDENTITY OF ISSUES, NOT ESTABLISHED IN CASE AT BAR.— Reliance on the doctrine of conclusiveness of judgment is misplaced. Conclusiveness of judgment, a species of the principle of *res judicata*, bars the re-litigation of any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits. In order to successfully apply in a succeeding litigation the doctrine of conclusiveness of judgment, mere identities of parties and issues is required. In this case, despite the addition of new petitioners, We find that there is substantial identity of parties between the present petitions and the earlier *Lagman* case given their privity or shared interest in either protesting or supporting martial law in Mindanao. It is settled that for purposes of *res judicata*, only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case. As to the second requirement, We do not find that there is identity of issues between the *Lagman* and *Padilla* cases, on one hand, and the case at bar. x x x Although there are similarities in the arguments of petitioners in the earlier *Lagman* case and the petitions at bar, We do not find that petitioners are seeking to re-litigate a matter already settled in the *Lagman* case with respect to the existence of rebellion. A reading of the consolidated petitions reveals that petitioners do not contest the existence of violence committed by various armed groups in Mindanao.

5. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER OF REVIEW; TWO CONCEPTS.— Section 1, Article VIII of the Constitution pertains to the Court's judicial power to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. The first part is to be known as the traditional concept of judicial

power while the latter part, an innovation of the 1987 Constitution, became known as the court's expanded jurisdiction. Under its expanded jurisdiction, courts can now delve into acts of any branch or instrumentality of the Government traditionally considered as political if such act was tainted with grave abuse of discretion. In seeking the Court's review of the extension of Proclamation No. 216 on the strength of the third paragraph of Section 18, Article VII of the Constitution, petitioners in G.R. No. 235935 alternately invoke the Court's expanded (*certiorari*) jurisdiction under Section 1, Article VIII.

6. ID.; ID.; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; THE SUPREME COURT'S POWER TO REVIEW THE EXTENSION OF THE PROCLAMATION OF MARTIAL LAW IS LIMITED TO THE DETERMINATION OF THE SUFFICIENCY OF THE FACTUAL BASIS THEREOF; *CERTIORARI* IS NOT A PROPER REMEDY.— With regard to the extension of the proclamation of martial law or the suspension of the privilege of the writ, the same special and specific jurisdiction is vested in the Court to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis thereof. Necessarily, and by parity of reasoning, a *certiorari* petition invoking the Court's expanded jurisdiction is not the proper remedy to review the sufficiency of the factual basis of the Congress' extension of the proclamation of martial law or suspension of the privilege of the writ. Furthermore, as in the case of the Court's review of the President's proclamation of martial law or suspension of the privilege of the writ, the Court's judicial review of the Congress' extension of such proclamation or suspension is limited only to a determination of the sufficiency of the factual basis thereof. By its plain language, the Constitution provides such scope of review in the exercise of the Court's *sui generis* authority under Section 18, Article VII, which is principally aimed at balancing (or curtailing) the power vested by the Constitution in the Congress to determine whether to extend such proclamation or suspension.

7. ID.; ID.; ID.; ID.; CONGRESS HAS THE POWER TO SHORTEN OR EXTEND THE PRESIDENT'S PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; AN EXTENSION OF THE PROCLAMATION

OR SUSPENSION APPROVED BY CONGRESS BECOMES A "JOINT EXECUTIVE AND LEGISLATIVE ACT."— The 1987 Constitution grants the Congress the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. x x x Congressional check on the President's martial law and suspension powers thus consists of: **First.** The power to review the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, and to revoke such proclamation or suspension. The review is "automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension is made." The Congress' decision to revoke the proclamation or suspension cannot be set aside by the President. **Second.** The power to approve any extension of the proclamation or suspension, upon the President's initiative, for such period as it may determine, if the invasion or rebellion persists and public safety requires it. x x x When approved by the Congress, the extension of the proclamation or suspension, as described during the deliberations on the 1987 Constitution, becomes a "joint executive and legislative act" or a "collective judgment" between the President and the Congress.

8. **ID.; ID.; LEGISLATIVE DEPARTMENT; CONGRESS HAS THE RIGHT TO PROMULGATE ITS OWN RULES TO GOVERN ITS PROCEEDINGS; THE MANNER IN WHICH CONGRESS DELIBERATED ON THE PRESIDENT'S REQUEST FOR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW IS NOT SUBJECT TO JUDICIAL REVIEW.—** Petitioners question the manner that the Congress approved the extension of martial law in Mindanao and characterized the same as done with undue haste. Petitioners premised their argument on the fact that the Joint Rules adopted by both Houses, in regard to the President's request for further extension, provided for an inordinately short period for interpellation of resource persons and for explanation by each Member after the voting is concluded. x x x No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings. x x x [T]he Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

9. ID.; ID.; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; CONGRESS IS GRANTED THE POWER TO DETERMINE THE PERIOD OF EXTENSION OF THE PROCLAMATION OF MARTIAL LAW AND OF THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.— [Section 18, Article VII of the 1987 Constitution] is indisputably silent as to how many times the Congress, upon the initiative of the President, may extend the proclamation of martial law or the suspension of the privilege of *habeas corpus*. Such silence, however, should not be construed as a vacuum, flaw or deficiency in the provision. While it does not specify the number of times that the Congress is allowed to approve an extension of martial law or the suspension of the privilege of the writ of *habeas corpus*, Section 18, Article VII is clear that the only limitations to the exercise of the congressional authority to extend such proclamation or suspension are that the extension should be upon the President's initiative; that it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and that it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen. x x x Section 18, Article VII did not also fix the period of the extension of the proclamation and suspension. However, it clearly gave the Congress the authority to decide on its duration; thus, the provision states that that the extension shall be "***for a period to be determined by the Congress***." If it were the intention of the framers of the Constitution to limit the extension to sixty (60) days, as petitioners in G.R. No. 235935 theorize, they would not have expressly vested in the Congress the power to fix its duration.

10. ID.; ID.; ID.; ID.; TWO FACTUAL BASES FOR THE EXTENSION OF THE PROCLAMATION OF MARTIAL LAW AND OF THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; PERSISTENCE OF REBELLION, ESTABLISHED IN CASE AT BAR.— Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or of the suspension of the privilege of the writ of *habeas corpus*: (a) the invasion or rebellion persists; and (b) public safety requires the extension. x x x Rebellion x x x exists when "(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." The President issued Proclamation No. 216 in response to the series of attacks launched by the Maute Group and other rebel groups in Marawi City. The President reported to the Congress that these groups had publicly taken up arms for the purpose of removing Mindanao from its allegiance to the Government and its laws and establishing a DAESH/ISIS *wilayat* or province in Mindanao. x x x The data presented by the AFP during the oral arguments bolstered the President's cause for extension and clarified what the government remains up against in the aftermath of the Marawi crisis.

11. ID.; ID.; ID.; ID.; ID.; PUBLIC SAFETY; DEFINED; CONTINUED IMPLEMENTATION OF MARTIAL LAW IS NECESSARY TO PROTECT PUBLIC SAFETY IN CASE AT BAR.— In *Lagman*, the Court defined "public safety" as follows: 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**." 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. The question, therefore, is whether the acts, circumstances and events upon which the extension was based posed a significant danger, injury or harm to the general public. The Court answers in the affirmative. The x x x events and circumstances, x x x disclosed by the President, the Defense Secretary and the AFP, strongly indicate that the continued implementation of martial law in Mindanao is necessary to protect public safety. x x x The magnitude of the atrocities already perpetrated by [the] rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest

determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

12. ID.; ID.; ID.; ID.; THE PRESIDENT HAS THE PREROGATIVE TO DETERMINE WHICH MILITARY POWER SHOULD BE EXERCISED IN A GIVEN SET OF FACTUAL CIRCUMSTANCES; CASE AT BAR.— We refuse to be tempted by petitioner Rosales' prodding that We set two tests in reviewing the constitutionality of a declaration or extension of martial law. x x x It is sufficient to state that this Court already addressed the same argument in Our decision in *Lagman*. The determination of which among the Constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President. The Court's power of review, as provided under Section 18, Article VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised.

13. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PURPOSE; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— The purpose of a preliminary injunction under Section 3, Rule 58 of the Rules of Court, is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully. *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy. By jurisprudence, to be entitled to an injunctive writ, petitioners have the burden to establish the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. x x x The alleged violations of the petitioners' civil liberties do not justify the grant of injunctive relief. The petitioners failed to prove that the alleged violations are directly attributable to the imposition of martial law. They likewise failed to establish the nexus between the President's exercise of his martial law powers and their unfounded apprehension that the imposition "*will target civilians who have no participation at*

all in any armed uprising or struggle". Incidentally, petitioners failed to state what the "*civil liberties*" specifically refer to, and how the extension of martial law in Mindanao would threaten these "*civil liberties*" in derogation of the rule of law. Evidently, petitioners' right is doubtful or disputed, and can hardly be considered a clear legal right, sufficient for the grant of an injunctive writ.

VELASCO, JR., *J.*, *concurring opinion*:

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ESTABLISHED IN CASE AT BAR.— At the threshold of this opinion, I do not find it amiss to note that the Martial Law in Mindanao was extended for the first time up to December 31, 2017. And yet, not one of the petitioners questioned the validity of that extension. This neglect now estops the petitioners from questioning the basis for the presently assailed extension since it is merely a continuation of the extended Martial Law covered by Proclamation No. 216.

2. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; REBELLION, BEING A CONTINUING CRIME WARRANTS THE EXTENSION OF MARTIAL LAW; CASE AT BAR.— Even petitioners at bar, as properly observed in the *ponencia*, concede the existence of rebellion that led to the declaration of Martial Law under Proclamation No. 216. The core of petitioners' contention is confined merely to the propriety of the further extension of the Martial Law in Mindanao. In substantiating their argument, however, petitioners neglect that **rebellion is a continuing crime**, the ultimate goal of which is to overthrow the government. The nature of rebellion as a continuing crime has often been repeated by this Court. x x x [T]he Armed Forces of the Philippines (AFP) has sufficiently shown that the remaining members of the Maute group, which commenced the rebellion, has not dwindled. Far from it, they have regrouped, increased in number, have been augmented by foreign terrorist fighters and have established linkages with other terrorists and rebel groups.

3. ID.; ID.; ID.; ID.; RESOLUTION OF BOTH HOUSES NO. 4 IS PRESUMED CONSTITUTIONAL ABSENT CLEAR AND CONVINCING EVIDENCE OF UNEQUIVOCAL

INFRACTION OF THE CONSTITUTION; CASE AT BAR.— If this Court is to accord due regard to the principle of comity that should exist among the three branches of the Government, it must observe utmost restraint. It must not modify, much less annul, the action of the other two branches of government as embodied in the assailed Resolution of Both Houses No. 4, unless there is hard and strong evidence that the extension has no factual basis. As no such evidence was presented by the petitioners, there is nothing to offset the "presumption of constitutionality" of Resolution of Both Houses No. 4. Surely, as an act of both the executive and the legislative branches, Resolution of Both Houses No. 4 has in its favor the presumption of constitutionality, which was explained by this Court as follows: . . . . This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, **being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law**. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. **In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.** The burden of proving the invalidity of this joint exercise of discretion that is the extension of Martial Law rests on those who challenge it. In this case, petitioners failed to present any proof, much less clear and convincing evidence, that will convince this Court beyond reasonable doubt of the nullity of the assailed Resolution. Hence, in the absence of the required proof of the unequivocal infraction of the Constitution committed by the President and both houses of Congress, this Court will indulge the presumption of constitutionality of the assailed Resolution of Both Houses No. 4. The validity of the extension of Martial Law embodied therein must perforce prevail.

LEONARDO-DE CASTRO*, J.*, *concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; ONE OF THE APPROPRIATE PROCEEDINGS TO QUESTION THE FACTUAL BASIS OF A DECLARATION OF MARTIAL LAW OR THE

SUSPENSION OF THE WRIT OF *HABEAS CORPUS*.— [F]or the same reason that I adduced in my Separate Concurring Opinion in the case of *Lagman v. Medialdea*, I wish to restate here that a special civil action such as a petition for *certiorari* is one of the appropriate proceedings to question the factual basis of a declaration of martial law or the suspension of the writ of *habeas corpus* or the extension of such declaration and/or suspension. In the said Separate Concurring Opinion I stated: As for concerns that a petition for *certiorari*, prohibition or *habeas corpus* imposes procedural constraints that may hinder the Court's factual review of the sufficiency of the basis for a declaration of martial law or the suspension of the privilege of *habeas corpus*, these may all be addressed with little difficulty. In the hierarchy of legal authorities binding on this Court, constitutional provisions must take precedence over rules of procedure. It is Section 18, Article VII of the 1987 Constitution which authorizes the Court to review factual issues in order to determine the sufficiency of the factual basis of a martial law declaration or a suspension of the privilege of the writ of *habeas corpus* and, as discussed above, the Court may employ the most suitable procedure in order to carry out its jurisdiction over the issue as mandated by the Constitution. Time and again, the Court has stressed that it has the inherent power to suspend its own rules when the interest of justice so requires.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; UNEQUIVOCALLY EMPOWERS CONGRESS, UPON THE INITIATIVE OF THE PRESIDENT, TO EXTEND THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE WRIT OF *HABEAS CORPUS*; THREE REQUIREMENTS; ESTABLISHED IN CASE AT BAR.—** x x x Section 18, Article VII [of the 1987 Constitution] unequivocally empowers Congress, upon the initiative of the President, to extend the proclamation of martial law or the suspension of the writ of *habeas corpus* under the following conditions: (1) the invasion or rebellion shall persist or continue; (2) the public safety requires it; and (3) the extension is decided, by a joint majority vote of Congress in a regular or special session. x x x There is evident constitutional basis to sustain the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* as well as their

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

3. ID.; REPUBLIC ACT NO. 9372 (HUMAN SECURITY ACT OF 2007); REBELLION IS CONSIDERED AS AN ACT OF TERRORISM.— Rebellion in contemporary times has acquired a graver complexion. In Section 3(b) of Republic Act No. 9372, the "Human Security Act of 2007," rebellion is considered as an act of terrorism. Acts of terrorism can be directed towards the attainment of political objectives just as in the case of rebellion namely, to remove the allegiance to the State of any part of the national territory or to overthrow the duly constituted authorities. It is within the context of the ever increasingly ominous global threat posed by terrorism to national sovereignty and public safety that the sufficiency of the factual grounds invoked by the President and sustained by Congress must be evaluated by the Court.

BERSAMIN*, J.*, *separate opinion*:

1. POLITICAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; SPECIFICALLY GRANTS TO THE SUPREME COURT THE AUTHORITY 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*.— It is settled that jurisdiction over the subject matter is conferred only by the Constitution or by the law. Unless jurisdiction 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. It must appear clearly from the law or it will not be held to exist. 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*.

2. ID.; ID.; ID.; ID.; THE PHRASE "IN AN APPROPRIATE PROCEEDING" IN PARAGRAPH 3, SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION DOES NOT REFER TO A PETITION FOR *CERTIORARI* WHERE COURTS EXERCISE JUDICIAL POWER PURSUANT TO SECTION 1 OR SECTION 5 OF ARTICLE VIII WHERE THE STANDARD OF REVIEW IS WHETHER RESPONDENT HAS COMMITTED ANY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— 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. In my Separate Opinion in *Lagman I*, I agreed with the proposition that the *appropriate proceeding* mentioned in the third paragraph of Section 18, Article VII of the 1987 Constitution is different and distinct from the proceeding relating to the Court's exercise of the power of judicial review, whether traditional or expanded.

3. ID.; ID.; ID.; ID.; ID.; REQUIREMENT JOINDER OF INDISPENSABLE PARTY; RULE THEREON IS NOT APPLICABLE IN THE PROCEEDING IN CASE AT BAR WHEREIN THE SUPREME COURT IS CALLED UPON BY THE 1987 CONSTITUTION TO FOCUS ONLY IN THE

DETERMINATION OF THE SUFFICIENCY OF THE FACTUAL BASIS FOR THE EXTENSION OF MARTIAL LAW.— [T]he requirement of the *Rules of Court* for the joinder of the indispensable party is not applicable in this kind of proceeding wherein the Court is called upon by the 1987 Constitution to exercise a special and exclusive jurisdiction that is different from the exercise of the Court's judicial power vested under either Section 1, Article VIII or Section 5(1), Article VIII of the 1987 Constitution. The requirement of impleading an indispensable party, which is found in Section 7, Rule 3 of the *Rules of Court*, demands that a party in interest without whom no final determination can be had of an action *shall be* joined either as a plaintiff or a defendant. Hence, the joinder of the indispensable party is mandatory. x x x Yet, the requirement of impleading the indispensable party can be true only in proceedings in which the courts exercise judicial power under either Section 1, Article VIII or Section 5(1), Article VIII of the 1987 Constitution, not to the present proceedings under the third paragraph of Section 18, Article VII of the 1987 Constitution. The distinction arises from the fact that the former are proceedings instituted to resolve actual controversies between litigants holding or asserting adverse rights and interests in property or other matters, while the latter are proceedings that focus only on the determination of the sufficiency of the factual basis for the extension of the declaration of martial law made by the Congress and do not involve any actual controversy or dispute about rights and interests of parties in interest. In short, the present proceedings are not concerned with rights and interests, thereby removing the need for the mandatory impleading of any person or entity.

DEL CASTILLO*, J.*, *concurring opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; EXISTENCE OF ACTUAL REBELLION; ESTABLISHED IN CASE AT BAR.—** I am convinced that it does as the "liberation of Marawi" did not end the rebellion. Marawi, as found by the Court in *Lagman* was only the staging point of the rebellion as the target was the whole of Mindanao. The fact that the surviving members

of the Maute group have not surrendered and are even recruiting new members despite the death of Hapilon and the Maute brothers clearly proves that the rebellion persists. The violent incidents perpetrated by the Bangsamoro Islamic Freedom Fighters (BIFF) in Mindanao likewise negate petitioners' position that the rebellion has been quelled by the "liberation of Marawi." Thus, I believe that while the government may have won the battle in Marawi, the war against the rebellion is still ongoing. Moreover, I agree with the *ponencia* that the inclusion of the New Peoples Army (NPA) as basis for the further extension will not render void Resolution of Both Houses No. 4. Although the NPA group was not expressly included in Proclamation No. 216 as one of the "other rebel groups," their attacks may nevertheless be used as factual bases tor the extension considering that these contributed to the violence and even aggravated the situation in Mindanao. x x x In this case, the attacks carried out by the NPA are but additional factual bases which may be used to support the findings of the President and the Congress that the rebellion persists in the whole of Mindanao. In fact, whether or not the NPA group was used as a basis for the extension does not change the fact that the rebellion started by Hapilon and the Maute brothers continues to exist in Mindanao.

2. ID.; ID.; ID.; ID.; SCOPE OF MARTIAL LAW IS NOT LIMITED TO THE ACTUAL "THEATER OF WAR"; SUBJECT TO THE SAFEGUARDS LAID DOWN, THE DETERMINATION OF THE TERRITORIAL COVERAGE OF MARTIAL LAW LIES WITH THE PRESIDENT.— Considering that the framers of the 1987 Constitution only mentioned the term "theater of war" in the context of describing and defining the powers of the President during martial law, it is highly specious for petitioners to use the same to support its theory. In fact, the Court in *Lagman* quoted the same portions of the deliberations only to describe what happens during a state of martial law. Thus, contrary to the view of petitioners, there is nothing in the 1987 Constitution that limits the scope of martial law to the actual "theater of war." As the Court has declared in *Lagman*, the discretion to determine the territorial coverage of martial law lies with the President, subject of course to the safeguards laid down in Section 18, Article VII of the 1987 Constitution.

3. ID.; ID.; ID.; ID.; PUBLIC SAFETY REQUIREMENT; DEFINED; ESTABLISHED IN CASE AT BAR.— [I]n *Lagman*, the Court defined public safety simply as one that "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." With this definition and in light of the factual circumstances indicated in the letter of the President and the Resolution of Both Houses No. 4, I believe that public safety requires the extension of martial law. Undeniably, the acts of violence committed, and being committed, by the rebels in various areas in Mindanao continue to endanger the lives of the people in Mindanao.

4. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE PERIOD OF EXTENSION AND THE NUMBER OF EXTENSIONS OF THE PROCLAMATION OR SUSPENSION LIES WITH THE CONGRESS.— [A]s to the period of extension, Section 18, Article VII of the 1987 Constitution states that, "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 provision is clear: the determination of the period of the extension, as well as the number of extensions, lies with the Congress.

PERLAS-BERNABE*, J.*, *separate concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; WHEN THE OBJECT OF REVIEW IN THE PRESENT CASE IS DIFFERENT FROM THAT OF THE FIRST CASE, PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT FINDS NO APPLICATION; CASE AT BAR.— Although the parameter of review remains the same, the object of review in this case is different. Here, the object of review is not the President's initial proclamation of martial law – as in Proclamation No. 216 decided in *Lagman v. Medialdea* – but rather, the Congress' extension of the President's martial law proclamation, as embodied in Resolution of Both Houses No. 4 dated December 13, 2017. As such, there is no reason

to apply the principle of conclusiveness of judgment as respondents would suppose.

2. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; POWER TO EXTEND MARTIAL LAW BELONGS TO CONGRESS; THERE IS NO LIMITATION AS TO THE NUMBER OF TIMES AN EXTENSION MAY BE MADE, OR AS TO THE DURATION OF TIME FOR WHICH A PARTICULAR EXTENSION MAY BE MADE.— Notably, while Congress had, in fact, earlier extended Proclamation No. 216 through Resolution of Both Houses No. 2, dated July 22, 2017, the Constitution does not proscribe any limitation on either *(a)* the number of times an extension may be made, or *(b)* the duration of time for which a particular extension may be made. Thus, contrary to petitioners' postulation, Congress is not precluded from either extending martial law for a second time or extending martial law for a period of more than sixty (60) days. Pursuant to Section 18, Article VII, the power to extend martial law belongs to Congress; however, the exercise of this power is "[u]pon the initiative of the President". x x x Being a power specifically conferred unto Congress, it is not bound by the recommendation of the President regarding any proposed extension; thus, it may engage in its own independent examination on the matter, and consequently, may arrive at its own reasons in deciding on whether or not to extend martial law. In this sense, Congress - being composed of the duly-elected representatives of the people - acts as a legislative body in deciding whether or not to extend martial law in our country, and necessarily, if an extension is so decided, sets the extension's terms as it deems fit.

3. ID.; ID.; ID.; ID.; ENTIRE PROCESS OF EXTENDING MARTIAL LAW IS A JOINT EXECUTIVE AND LEGISLATIVE ACT WHEREIN CONGRESS' DECISION-MAKING PROCESS IS NECESSARILY IN CONSULTATION WITH THE PRESIDENT. — [A]s observed during the deliberations on the 1987 Constitution, Congress' decision-making process would necessarily be in consultation with the President. This is because it is the President who not only seeks the proclamation's extension but also ultimately possesses the information and expertise to deal with

a persisting invasion or rebellion. x x x While Congress makes the final decision, this necessary interaction between the political branches of government shows that the entire process of extending the proclamation of martial law is - as described by the Framers - a "joint executive and legislative act," animated by the "principle of collective judgment."

4. **ID.; ID.; ID.; ID.; ID.; TO PROPERLY DECREE A MARTIAL LAW EXTENSION, CONGRESS SHOULD DETERMINE THE SUFFICIENCY OF FACTUAL BASIS SHOWING THAT INVASION OR REBELLION STILL PERSISTS AND THAT PUBLIC SAFETY REQUIRES IT.—** [S]ame as reviewing the President's power to proclaim martial law, the Court acts as a check to the Congress' power to extend martial law. In the latter respect, the Court's task, upon the institution of the appropriate proceeding by any citizen, is to determine if there is sufficient factual basis to show that: (*a*) the invasion or rebellion still persists; and (*b*) public safety requires the extension. Pursuant to Section 18, Article VII of the 1987 Constitution, these two (2) requirements ought to be satisfied by Congress before it may properly decree a martial law extension.

5. **ID.; ID.; ID.; ID.; ID.; REBELLION SURVIVES IN LEGAL EXISTENCE UP UNTIL THE REBELLIOUS MOVEMENT STOPS; CASE AT BAR.—** [I]t has been my position that a rebellion, because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops, such as when the rebels have already surrendered or that they are caught by government operatives. x x x In this case, however, there is no evidence to show that the rebel movement in Mindanao, comprised of the Maute-Hapilon Group and other rebel groups under the DAESH/ISIS front, has been substantially inactive or has lost the capability to mount a public uprising. On the contrary, respondents have competently proven that these rebels have, in fact, regrouped, thereby demonstrating that the rebellion still persists.

6. **ID.; ID.; ID.; ID.; ID.; ID.; PUBLIC SAFETY REQUIRES THE EXTENSION OF MARTIAL LAW; CASE AT BAR.—** In my Separate Opinion in *Lagman v. Medialdea*, I have discussed that "the second requirement [on public safety] 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." However, I have qualified that "our deference x x x must be circumscribed within the bounds of truth and reason[:]" truth relates to the Court's duty to ascertain the veracity of the facts presented by the government, whereas reasonableness may be determined through an overall appreciation of the surrounding circumstances. With respect to the latter, the Court may consider "the reported armed capabilities, resources, influence, and connections of the rebels"; "the historical background of the rebel movement"; and further, "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 case, the President requested Congress to extend martial law over the entire Mindanao from January 1, 2018 to December 31, 2018 based on his prudential estimation that it would take such period of time to quell the rebellion. x x x The *ponencia* finds that "[t]he facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it."

MARTIRES*, J.*, *separate opinion*:

1. POLITICAL LAW; PRESIDENTIAL IMMUNITY FROM SUIT; THE PRESIDENT MAY NOT BE SUED DURING HIS OR HER TENURE TO ASSUME THE EXERCISE OF PRESIDENTIAL DUTIES AND FUNCTIONS FREE FROM ANY HINDRANCE OR DISTRACTION.— We note that in G.R. Nos. 236061 and 236145, President Duterte was named as a respondent. Jurisprudence dictates that the presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J., observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The President is granted the privilege of immunity from suit to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that the position of Chief Executive of the Government requires all of the office-holder's

time and demands undivided attention to his duties as Head of State. x x x Considering the foregoing, President Duterte should be dropped as respondent in G.R. Nos. 236061 and 236145.

2. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; THE ACT OF DECLARING MARTIAL LAW DIFFERS FROM THE ACT OF EXTENDING MARTIAL LAW.— The act pertaining to the declaration of martial law differs from the extension of martial law. The act of declaring martial law is an executive act, i.e., *the President as the Commander in Chief of all armed forces of the Philippines, whenever it becomes necessary, may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion*. The act of declaring martial law is the sole prerogative of the President. The act of extending martial law on the one hand, is a joint executive-legislative act brought into motion by the initiative of the President. The extension of martial law is given life because the Congress voting jointly, by a vote of at least a majority of all its Members in regular or special session, has determined that actual invasion or rebellion persists, and that public safety requires it. This conforms to the constitutional requirement that it should be "*in the same manner*" that the Congress undertook its legislative review of the declaration of martial law that it should determine whether or not to extend martial law. It must be stressed, however, that Congress cannot *motu proprio* extend martial law as it must first await the request of the President stating the need for the extension, i.e., *upon the initiative of the President.*

3. ID.; ID.; ID.; EXTENSION OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS*; REQUIREMENT OF "ACTUAL REBELLION PERSISTS"; ESTABLISHED IN CASE AT BAR.— It must be emphasized that in extending martial law, the President and the legislators need only to convince themselves that there is probable cause or evidence showing that more likely than not the rebellion persists. x x x At this point, there is a need to repeat the ruling in *Lagman* 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." That same purpose applies to the present judicial review insofar as it would determine the sufficiency of the factual basis as to convince the President and the Congress that there is probable cause that rebellion persists. The records confirm that the President and the Congress have separately determined and were convinced that rebellion persists in Mindanao. The Court cannot supplant its own findings with those made by the President and the Congress because to do so would be tantamount to encroaching on the well-safeguarded and independent dominion of the executive and the legislature.

4. ID.; ID.; ID.; ID.; ELEMENT OF "PUBLIC SAFETY REQUIRES THE EXTENSION"; ESTABLISHED IN CASE AT BAR.— The volatile situation in Mindanao right now spawns a good breeding ground for terrorists and their coddlers, supporters, and financiers. The government cannot sit idly by and wait for these terrorist groups to make their move. The arduous task of crushing the terrorist groups must start posthaste otherwise, another victory, though bittersweet it may be, may not be possible at all for the government if these groups are allowed to proliferate all over the country. The Court has emphasized that time is paramount in situations necessitating the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Considering that an extension of martial law is ineludibly moored on the existence of an actual rebellion that persists and that public safety requires it, there is a paramount urgency for the President and Congress to act quickly to protect the country.

5. ID.; ID.; ID.; PROBABLE CAUSE THAT ACTUAL REBELLION PERSISTS; ESTABLISHED IN CASE AT BAR.— Records will confirm that both the President and the Congress have separately determined whether actual rebellion persists in Mindanao, and in the process are convinced that there exists probable cause that actual rebellion persists. Worth noting, the President has a wide range of information available to him, and that he 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. The President has the prerogative to share these information with Congress in fortifying his request for the extension of martial law, which information the Court may not even be privy to.

Likewise, the Court does not have the same resources available to the President; thus, it is restrained in the exercise of its judicial review power not to "undertake an independent investigation beyond the pleadings." In stark contrast, petitioners have miserably failed to present evidence that would controvert the records that have swayed the President and the Congress to conclude that rebellion persists.

6. ID.; ID.; ID.; "APPROPRIATE PROCEEDING" DOES NOT REFER TO PETITION FOR *CERTIORARI*; CASE AT BAR.— Jurisprudence has settled that the "appropriate proceeding" referred to in Sec. 18, Art. VII of the 1987 Constitution does not refer to a petition for certiorari pursuant to Sec. 1 or 5 of Art. VIII, *viz*: 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. x x x Clearly, petitioners erred when they invoked Sections 1 or 5, Article VIII of the 1987 Constitution in mooring their assertion that the Senate and the House of Representatives committed grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of their functions.

7. ID.; ID.; LEGISLATIVE DEPARTMENT; CONGRESS IS CONSTITUTIONALLY AUTHORIZED TO DETERMINE ITS RULES OF PROCEEDINGS; CASE AT BAR.— It was obviously pursuant to Section 16 (3), Article VI of the 1997 Constitution that the Congress had adopted the rules that governed the Joint Session when it resolved to extend martial law from 1 January to 31 December 2018. Accordingly, the issues raised by the petitioners insofar as they are specifically anchored on the propriety of the rules, are beyond the judicial review of this Court. x x x Petitioners can very well raise the issue on the propriety of the rules of Congress or violation thereof by its members in a proper proceeding, but definitely

the present petitions filed pursuant to the Sec. 18, Art. VII of the 1987 Constitution could not be the proper vehicle. It is for this reason that the Court necessarily has to defer to its above¬quoted ruling and decline to rule on whether Congress committed grave abuse of discretion in extending martial law.

8. ID.; ID.; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; SAFEGUARDS AND PARAMETERS ESTABLISHED TO PREVENT GOVERNMENT ABUSE DURING MARTIAL LAW.— The 1987 Constitution has already established sufficient safeguards and parameters to prevent government abuse during martial law from happening again. *First*, the 1987 Constitution mandates that any declaration of martial law shall be valid only for sixty (60) days and any extension thereof shall require the concurrence of Congress voting jointly, by a vote of at least a majority of all its members. The present martial law in Mindanao was extended twice following this rule. *Second*, the President, even during the effectivity of martial law, cannot assume the legislative powers of Congress, or give the military courts jurisdiction over civilians because a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts, 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.* 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 offenses connected with invasion.

GESMUNDO*, J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; REQUIREMENTS OF SUFFICIENT FACTUAL BASIS IN THE EXTENSION OF THE PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, ESTABLISHED IN CASE AT BAR.— I submit that there is sufficient factual basis to justify the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao for one (1) year. x x x [T]he approval of the extension

of martial law in Mindanao is not arbitrary but has sufficient factual basis. It must be remembered that in *Lagman v. Medialdea* (*Lagman*), the Court held that there was sufficient factual basis that actual rebellion exists in Mindanao and that public safety requires martial law, particularly in Marawi where there was intensive firefighting initiated by the Maute Group. Notably, even after President Duterte declared the liberation of Marawi City on October 17, 2017, the Maute Group was still able to recruit new members and increase their number to 250 as of December 2017. Other terrorist groups in Mindanao were able to increase their memberships as well. x x x The petitioners failed to impeach the factual basis and *prima facie* case presented by the respondents. Notably, in this *sui generis* petition to determine the sufficiency of the factual basis for an extension of martial law or suspension of the privilege of the writ of *habeas corpus*, the movants should focus on assailing the factual basis to support such declaration. Regrettably, instead of citing specific factual allegations to counter the respondents' position, the petitioners resorted to raising questions of law and even questions regarding the wisdom in extending martial law. Such issues, however, should not be raised in this present *sui generis* proceeding.

2. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION, WHICH IS A CONTINUING OFFENSE, ESTABLISHED IN CASE AT BAR.— As stated in *Umil v. Ramos* (*Umil*), a case decided under the 1987 Constitution, 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. Unlike other so-called "common" offenses, such as adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base, which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained. x x x In spite of the cessation of firefighting, the crime of rebellion is continuing because the ideological base persists, which requires the repetition of the acts of lawlessness and violence until the objective of overthrowing organized government is realized. Thus, hostilities and acts of terrorism committed afterwards,

pursuant to the ideological purpose, continue to form part of the crime of rebellion. In this case, while the firefighting in Marawi City have ceased, the goal of the Maute Group to overthrow the government remains. Their continuing goal is evident in the incessant recruitment of members in the Lanao area and the financing of the rebel group. While non-violent, these acts are still considered in the furtherance of rebellion. Indeed, these acts are part and parcel of the crime of rebellion seeking to achieve their illegitimate purpose. Thus, as of December 2017, General Guerrero reported to the Court that the Maute Group has recruited a total of 250 members, a significant number capable of committing other atrocities against the civilian population.

3. ID.; ID.; ID.; ID.; ID.; TRADITIONAL CONCEPT OF REBELLION WHERE THERE MUST BE ACTUAL USE OF WEAPONS CONCENTRATED IN A SINGLE PLACE IS NOT THE SOLE CONCEPT OF ACTUAL REBELLION ENVISIONED UNDER THE 1987 CONSTITUTION.— The petitioners argue that the US cases of *Ex Parte Milligan* (*Milligan*) and *Duncan v. Kahanamoku, Sheriff* (*Duncan*), which required that there must be an actual theater of war to justify the President's declaration of martial law, must be applied by the Court. I disagree. x x x In the case at bench, the concept of actual invasion or rebellion is not the same as that of *Milligan*, decided in 1866, and *Duncan*, decided in 1946. During those times, the actual invasion or rebellion was appreciated in the traditional sense where the enemies use bayonets, cannons, commando raids or submarine attacks and conflicts were concentrated within a specific location or state. However, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion.

4. ID.; ID.; ID.; ID.; SAFEGUARDS IN PLACE TO LIMIT THE PRESIDENT'S POWER TO DECLARE MARTIAL LAW.— [T]he following safeguards are now in place to limit the Chief Executive's power to declare martial law: 1. The initial declaration of martial law has a time limit of sixty (60) days; 2. The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law; 3. There is a process for its review and possible revocation

of Congress; 4. There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis; 5. The removal of the phrases "imminent danger thereof" and "insurrection" as grounds for declaring martial law; 6. 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. Thus, during the martial law, the President can neither promulgate proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open. 7. The declaration of martial law does not automatically suspend the privilege of the writ of *habeas corpus*; 8. During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. 9. The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it. The numerous safety measures embodied under the present Constitution ensure that the President cannot abuse its power anymore to the detriment of the citizens. The said measures defanged martial law. As can be gleaned in *Lagman*, the safeguards and processes were fully operational and the declaration of martial law by President Rodrigo Duterte over the whole Mindanao was thoroughly scrutinized by Congress and the Court. In said case, the Court concluded that the President, in issuing Proclamation No. 216, had sufficient factual bases to show that actual rebellion exists and that public safety requires the declaration of martial law and suspension of the writ of *habeas corpus.*

5. ID.; ID.; ID.; ID.; EXTENSION OF MARTIAL LAW IS DIFFERENT FROM THE INITIAL PROCLAMATION OF MARTIAL LAW; CONGRESS HAS THE FLEXIBILITY TO EXTEND MARTIAL LAW AND DETERMINE THE PERIOD OF THE EXTENSION.— The petitions at bench also question the procedural validity of the extension of martial law. Under the Constitution, the said extension is different from the initial proclamation of martial law. x x x In the initial declaration of martial law, it is the President as the Commander-

in-Chief of all armed forces of the Philippines that declares martial law for a maximum period of sixty (60) days. Upon its declaration, it shall become immediately effective. It is subject to a review by Congress within forty-eight (48) from its declaration. With respect to the extension of martial law, the last sentence of the first paragraph of Section 18 clearly states that Congress is empowered to extend the duration of martial law. The President's only role in such an extension is that he is the one who initiates it. Notably, even if the President initiates the said extension, it is not immediately effective. It is only when Congress grants the extension, after determining that invasion or rebellion persists and public safety requires it, that it becomes operational. Evidently, the power of Congress is more potent than that of the President when it comes to the extension of martial law. x x x The framers of the Constitution gave Congress flexibility on the period of the declaration of martial law. It was emphasized therein that the final decision to extend the said declaration rests with Congress. Whether the President states a specific period of extension or not, Congress ultimately decides on the said period. Until it grants the extension, the sixty (60) day period of the initial declaration of martial law prevails. In effect, by becoming the granting authority, Congress limits the President's power to extend the period of martial law.

6. **ID.; ID.; LEGISLATIVE DEPARTMENT; RULE-MAKING POWER; A GRANT OF FULL DISCRETIONARY AUTHORITY IN THE FORMULATION, ADOPTION AND PROMULGATION OF ITS OWN RULES GENERALLY EXEMPT FROM JUDICIAL INTERFERENCE, EXCEPT ON A CLEAR SHOWING OF ARBITRARINESS IN ITS USE CONSTITUTING A DENIAL OF DUE PROCESS; CASE AT BAR.—** The role of Congress in granting the extension of martial law is vital. Due to the essential authority of Congress, it is proper to examine the review it can undertake to determine the propriety of granting such extension initiated by the President. It was thoroughly discussed in *Lagman* that the power of Congress to review a declaration of martial law is independent from that of the Court. x x x I concur with the *ponencia* that Congress complied with its constitutional duty

to review the extension of martial law before granting the same. From the onset, the Constitutional framers intended that the procedure of review by Congress under Section 18 should be accelerated and simplified due to the pressing need of the President and the people when there is actual invasion or rebellion and public safety requires it. x x x The three-minute rule provided for each member of Congress to speak before the Joint Session is reasonable pursuant to the constitutional intent to accelerate the proceedings for review under Section 18. x x x [T]he procedure laid down by the Joint Session Rules of Congress is pursuant to its power to determine its own rules of proceedings. The rule-making power of Congress is a grant of full discretionary authority in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process. Pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate or the House of Representatives is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication. Here, the petitioners failed to specify how Congress, in the joint session, violated its own rules of procedure or how the said rules were violative of the right to due process even though each member of Congress was given the opportunity to be heard. Absent any evidence of arbitrariness, the proceedings during the joint session of Congress on December 13, 2017 must be upheld. Pursuant thereto, Congress properly issued the Resolution of Both Houses No. 4.

SERENO*, C.J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; DOCTRINE OF NECESSITY; DURING A STATE OF INVASION OR REBELLION, THE NECESSITY POSED BY PUBLIC SAFETY SERVES AS THE GAUGE FOR THE PROCLAMATION OF MARTIAL LAW, ITS SCOPE AND DURATION; A CALIBRATION EXERCISE MUST BE UNDERTAKEN TO DETERMINE

WHETHER THE CRISIS AT HAND POSES SUCH A DANGER TO PUBLIC SAFETY AND GOOD ORDER THAT MARTIAL LAW BECOMES NECESSARY.— Martial Law is "the law of necessity in national emergency." This doctrine of necessity was translated into the Philippine concept of Martial Law through the second requisite for its proclamation as specified by the text of the 1987 Constitution: "public safety requires it." In other words, during a state of invasion or rebellion, the necessity posed by public safety serves as the gauge for the proclamation of Martial Law, as well as its scope and duration. As explained by Fr. Bernas: **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 condition. x x x It is in the context of invasion or rebellion that the doctrine of necessity is considered. More aptly called the "necessity of public safety test," a calibration exercise must be undertaken to determine whether the crisis at hand poses such a danger to public safety and good order that Martial Law becomes necessary. If so, this exercise further requires a determination of the degree of Martial Law powers necessary to address the threat to public safety. This task entails a determination of the scope, coverage, and duration of Martial Law.

2. ID.; ID.; ID.; ID.; IN EXERCISING THE POWER OF REVIEW, THE SUPREME COURT MUST UNDERTAKE A CALIBRATION EXERCISE TO ADDRESS THE QUESTIONS OF NECESSITY, PROPORTIONALITY AND COVERAGE OF MARTIAL LAW.— While the President and Congress are expected to engage in a calibration exercise in the process of deciding whether or not to declare or extend Martial Law, this exercise is of utmost importance to this Court, which exercises the power of review over the sufficiency of the factual bases of the proclamation or its extension. x x x To perform this duty is to engage in the same kind of calibration exercise that the *Sterling* Court undertook. Hence, the Court herein is required not only to determine the existence of an

actual invasion or rebellion, but also, to analyze and determine whether the nature and intensity of the invasion or rebellion endanger public safety in a way that makes Martial Law necessary. The calibration would necessitate a determination not just of the propriety of a Martial Law declaration, but likewise its territorial coverage. In the case of an extension of Martial Law, the Court is called upon to take one step further and likewise calibrate whether the danger posed is commensurate with the period of extension fixed by Congress. In so doing, this Court needs to apply a trial judge's reasonable mind and common sense as honed by relevant experiences and legal proficiency. It must be emphasized that this kind of exercise is no longer new to this Court, as it has in fact undertaken a similar calibration in *Lansang v. Garcia*.

3. **ID.; ID.; ID.; ID.; DETERMINATION OF THE PERIOD OF EXTENSION OF THE PROCLAMATION OF MARTIAL LAW IS A JOINT EXECUTIVE-LEGISLATIVE ACT.—** The extension *per se* of Martial Law involves a two-step process. First, there must be an initiative from the President addressed to Congress requesting the extension of his prior proclamation of Martial Law. Second, Congress determines as a joint body whether or not the extension is proper. If it approves of the extension, it then likewise determines the period thereof. The wording of the Constitution leaves an initial impression that the determination of the extension period is an exclusive congressional prerogative. However, a look into the constitutional deliberations seems to show that the determination of the period was intended to remain a joint executive-legislative act. x x x The principle of collective judgment, as stated by Commissioner Ople, is retained through the following process: the President provides the facts showing the persistence of invasion or rebellion and its perceived threat to public safety. In turn, Congress evaluates the facts provided by the President and on the basis of those facts determines the period of extension.

4. **ID.; ID.; ID.; ID.; ID.; PARAMETERS FOR THE DETERMINATION OF THE PERIOD OF EXTENSION OF THE PROCLAMATION OF MARTIAL LAW.—** Indeed, Congress has been granted final authority in the determination of the period of extension. But as any grant of discretion goes, it is not unbridled. There are parameters that must be taken into consideration in the exercise of this discretion. It is clear

from the constitutional deliberations that there was no intention to completely leave that exercise to Congress. Fr. Bernas himself said that the determination only "gives Congress a *little* flexibility on just how long the extension should be." There was no complete or unlimited flexibility granted. Rather, Congress must be mindful of the following parameters in fixing the period of extension. *First*, the extension cannot be for an indefinite period of time – there must be a definite period fixed by Congress. This interpretation is apparent from the provision in Section 18, Article VII, which states that Congress may extend the proclamation of Martial Law "for a period to be determined by congress." x x x Otherwise, to effect the extension for an indefinite period would amount to Congress' abdication of the foregoing positive duty imposed upon it by the Constitution. x x x *Second*, the extension must be for a reasonable period. x x x [T]o come up with a reasonable period, Congress has to conduct an independent investigation and evaluation of the persistence of invasion or rebellion and the requirement of public safety. Admittedly, there must be due consideration of what is happening on the ground, which is possible only if Congress is in close coordination with the President. It is in this manner that the determination of the period of extension remains a joint judgment of the President and Congress.

5. ID.; ID.; ID.; ID.; THE SUPREME COURT'S POWER OF REVIEW IS NOT LIMITED TO A RESOLUTION OF THE FACTUAL SUFFICIENCY OF THE EXTENSION *PER SE* BUT ALSO INCLUDES A REVIEW OF THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PERIOD OF EXTENSION.— [T]he extension of a proclamation of Martial Law necessarily entails a determination of the period of its extension. Therefore, the Court's exercise of its review power is not limited to a resolution of the factual sufficiency of the extension *per se*. That power likewise includes a review of the sufficiency of the factual basis of the period of extension. While the question that faces the Court is whether or not such period is reasonable, this question can be answered through an examination of the factual basis of the extension *per se*. Specifically, the Court has to look into the public safety element – whether the period fixed is commensurate with the necessity of public safety. This determination essentially involves a calibration exercise as previously discussed. Therefore, in the same way that this duty inevitably requires a delineation of

the areas to be validly covered by Martial Law, the Court also has the duty to determine the length of period necessary to quell the existing threat to public safety. There must be a calibration based on the proportionality of the danger at hand to the period of extension. As a result, the Court may do one of three things: affirm the period fixed by Congress, extend it, or shorten it.

6. ID.; ID.; ID.; ID.; BURDEN OF PROOF THAT REBELLION PERSISTS REMAINS WITH THE GOVERNMENT; CASE AT BAR.— In response to petitioners' claim that the President bears the burden of proving the sufficiency of the factual basis for the Martial Law extension, respondents argue that petitioners are the ones who must prove that rebellion has already been completely quelled. According to respondents, the Court in *Lagman v. Medialdea* has already ruled that rebellion exists in Mindanao and, following the doctrine of conclusiveness of judgment, the resolution of the instant case must be confined to the issue of whether or not the rebellion has been completely quelled. In effect, respondents argue that instead of them proving that rebellion persists, the burden of proof has already shifted to petitioners to show that rebellion no longer exists. That contention is erroneous. To justify the extension of the period of Martial Law, the Constitution provides two requisites: (1) invasion or rebellion persists, and (2) public safety requires it. The persistence of rebellion is a factual issue that must be proven. The initial proclamation of Martial Law is distinct from its extension, and respondents cannot base their claim of the existence of rebellion merely on *Lagman v. Medialdea*. Certainly, *Lagman* was decided based on the circumstances surrounding the time of the initial proclamation of Martial Law. That actual rebellion was found to have existed then does not automatically lead to a conclusion that rebellion still persisted at the time the period was extended. In fine, it can be concluded that the burden of proof remains with the Government. For purposes of fulfilling the constitutional requirements of a valid declaration of Martial Law and its extension, the burden of proof never shifts to petitioners. It is the constitutional duty of the Government to show that the requirements of the Constitution have been met.

7. ID.; ID.; ID.; ID.; APPLICATION OF THE PERMISSIVE APPROACH IN WEIGHING THE EVIDENCE SHOULD BE ABANDONED IN CASE AT BAR.— In my Dissenting

Opinion in *Lagman v. Medialdea*, I espoused a permissive approach in weighing the evidence or drawing from interpretative sources. I adopted that approach considering that this was the first post-Marcos examination of Martial Law undertaken by the Court under the 1987 Constitution. No rule or jurisprudence existed then that sufficiently guided the President in crafting the Martial Law proclamation under the present Constitution. x x x It is important, however, to emphasize that the application of the permissive approach was *pro hac vice* in view of the paucity of rules and jurisprudence to guide an evidentiary determination of the sufficiency of the factual basis for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus*. Considering the views expressed in *Lagman v. Medialdea*, a permissive approach in considering the evidence in this *sui generis* proceeding cannot remain to be the rule.

8. ID.; ID.; ID.; ID.; FACTUAL BASES FOR THE EXTENSION OF MARTIAL LAW IN MINDANAO, NOT ESTABLISHED IN CASE AT BAR.— [T]he question posed to this Court in the instant cases is whether or not rebellion persists and public safety requires the extension. Considering the facts alluded to by the President, Secretary of Defense Lorenzana, General Guerrero, and ultimately Congress, the answer is no. Their pronouncements in fact show that there is no armed public uprising that justifies the conclusion that rebellion persists. With respect to RBH No. 4, the fact that the rebel groups have "continued to rebuild their organization through recruitment and training of new members and fighters to carry on the rebellion," or that the Turaifie Group was "monitored to be planning to conduct bombings," or that the remnants of the ASG "remain a serious security concern" shows that there is no armed public uprising or taking up of arms against the Government. At most, what the facts show is that there is danger of an armed public uprising that may turn out to be imminent. The President can always call on the armed forces to suppress an imminent danger of rebellion.

9. ID.; ID.; ID.; ID.; ID.; INCLUSION OF A NEW ACTOR, THE CPP-NPA-NDF, AS FACTUAL BASIS FOR ARGUING THAT A REBELLION PERSISTS IS SELF-CONTRADICTORY AND CANNOT BE ACCEPTED.— Even if we were to accept the argument that the atrocities of

the NPA were already included among the grounds justifying the issuance of Proclamation No. 216, the reality is that when the Court upheld the sufficiency of the factual basis for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in *Lagman v. Medialdea*, no facts involving the NPA were examined by this Court for the determination of probable cause or of evidence showing that, more likely than not, a rebellion had been committed or was being committed. Clearly, for the purposes of the Court in *Lagman v. Medialdea*, Proclamation No. 216 did not include the "decades-long rebellion" of the NPA as factual basis. Thus, for the Court now to determine that rebellion "persists," it can only do so by answering the question of whether or not the rebellion of the ISIS-inspired Maute Group or of the DAESH-inspired DIWM persists. The addition of a new actor as factual basis for arguing that a rebellion persists is self-contradictory and cannot be accepted.

CARPIO*, J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; A STATE OF MARTIAL LAW DOES NOT SUSPEND THE OPERATION OF THE CONSTITUTION; *EX PARTE MILLIGAN'S* DEFINITION OF MARTIAL LAW IS NOT APPLICABLE IN THIS JURISDICTION FOR BEING IN CONFLICT WITH THE CONSTITUTION.— Preliminarily, I shall address petitioners' invocation of *Ex Parte Milligan* as basis to define martial law as "the assumption of jurisdiction by the military over the civilian population x x x." Petitioners view martial law "in the context of a theater of war, wherein the government civilian functions such as the civil courts and other civil services cannot function x x x." I disagree. Decided by the United States (US) Supreme Court in 1866, *Ex Parte Milligan* involved Lambden P. Milligan who was charged with acts of disloyalty and faced trial before a military commission in Indiana during the civil war. He was found guilty on all charges and sentenced to death by hanging. He then sought release through *habeas corpus* from a federal court. While trials of civilians by presidentially created military commissions were invalidated, the US Supreme Court recognized martial law as a necessary substitute for the civil authority in

the theater of active military operations. x x x This pronouncement of the US Supreme Court has no application in this jurisdiction because *Ex Parte Milligan* conflicts with the Philippine Constitution. x x x [A] state of martial law does not suspend the operation of the Constitution. Contrary to the theory of petitioners, the clause "nor supplant the functioning of the civil courts or legislative assemblies" already precludes the "existence of a vacuum in civilian authority in a theater of war." Not even the phrase "conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function" can serve as basis for the military to immediately acquire jurisdiction. Under Section 2, Article VIII of the Constitution, "Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts." Applied to military courts, this means that Congress needs to enact a law vesting military courts with jurisdiction. In other words, a state of martial law does not *ipso facto* confer jurisdiction on military courts over civilians. Rather, the conferment comes from Congress through a separate law.

2. ID.; ID.; ID.; ID.; THE AUTHORITY OF CONGRESS TO EXTEND MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS LIMITED TO THE SAME REBELLION PERSISTING AT THE TIME OF EXTENSION; CASE AT BAR.— The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ "**if the x x x rebellion shall persist**." Literally and without need of constitutional construction, the word "persist" means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended. In the deliberations of the Constitutional Commission, the framers understood that the extension could be justified "if the invasion (or rebellion) is **still going on**." **The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension.** In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President. x x x **Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216. Any extension pursuant thereto**

is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City. To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.

3. **ID.; ID.; ID.; ID.; ID.; CAPABILITY TO REBEL, ABSENT AN ACTUAL REBELLION OR INVASION, IS NOT A GROUND TO EXTEND THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; CASE AT BAR.—** [T]he twin requirements of actual rebellion or invasion, and public safety imposed on the initial proclamation and suspension are continuing requirements for any subsequent extension of the proclamation or suspension. As aptly put by the petitioners, "what persists must be actual." x x x Respondents cannot rely on the **capability** of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, **capability** to rebel, **absent an actual rebellion or invasion**, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law 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. This is a gross violation of the clear letter and intent of the Constitution, as gleaned from the following deliberations of the Constitutional Commission.

4. **ID.; ID.; ID.; ID.; ID.; MERE IDENTITY OF PURPOSE AND CAPACITY FOR VIOLENCE BETWEEN THE NEW PEOPLE'S ARMY (NPA) AND THE DAESH/ISIS-INSPIRED REBELS CANNOT JUSTIFY THE INCLUSION OF THE NPA REBELLION AS FACTUAL BASIS FOR THE EXTENSION OF PROCLAMATION NO. 216.— By belatedly invoking the NPA rebellion as factual basis for the extension of Proclamation No. 216, the government effectively circumvented the temporal limitation set by the Constitution that the initial proclamation of martial law or suspension of the privilege of the writ can only last for 60**

days. Worse, the extension set a maximum period of one year. When the Court reviewed in *Lagman v. Medialdea* the sufficiency of the factual basis of Proclamation No. 216, the Court ruled in the affirmative on the sole basis of the Maute rebellion. x x x Contrary to the holding of the *ponencia,* mere identity of purpose and capacity for violence between the NPA and the DAESH/ISIS-inspired rebels cannot justify the inclusion of the NPA rebellion as factual basis for the extension of Proclamation No. 216. The Constitution limits the initial martial law declaration or suspension of the privilege of the writ to a period of 60 days. Only when this period is not enough to quell the rebellion can an extension be sought. By citing the NPA rebellion as factual basis for the extension, the government bypassed the mandatory 60-day period prescribed by the Constitution for the initial declaration of martial law and suspension of the privilege of the writ. The government can cite the NPA rebellion as a ground for the imposition of martial law and suspension of the privilege of the writ, but the initial 60-day period prescribed by the Constitution must first be observed before the government can ask for an extension of such emergency measures.

LEONEN*, J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; THE HEIGHTENED SCRUTINY THEREIN INCLUDES THE POWER TO REVIEW WHETHER THE PRESIDENT IN HIS PROCLAMATION OR REQUEST FOR EXTENSION, OR THE CONGRESS IN ITS DECISION TO EXTEND, HAS GRAVELY ABUSED ITS DISCRETION; GRAVE ABUSE OF DISCRETION, COMMITTED BY THE PRESIDENT AND CONGRESS IN CASE AT BAR.— Martial law generally allows more powers to the AFP. The clear intent of the Constitution is for the sovereign through both its elected representatives as well as the Supreme Court to do an exacting review of a declaration of martial law. The heightened scrutiny in Article VII, Section 18 already includes the power to review whether the President in his proclamation or request for extension, or the Congress in its decision to extend, has gravely abused its discretion. The Supreme Court does not lose its powers under Article VIII,

Section 1 simply with an invocation of Article VII, Section 18. The result would be the absurd situation of hobbling judicial review when the Constitution requires the Court to exercise its full powers. x x x Both the President and Congress also gravely abused their discretion when they failed to make public the powers that are to be exercised by the military, the remedies, and the strategy. Public participation in quelling the rebellion, assuming that it exists, should always be encouraged. There should no longer be any secret decrees. Congress gravely abused its discretion in that it extended the proclamation of a state of martial law and the suspension of the privilege of the writ of habeas corpus (a) without a proper presentation of all the facts in their proper context; (b) without examining the basis of the conclusions inherent in the allegations of facts by the military; (c) without knowing the powers that will be exercised that are unique to the declaration of a state of martial law; and (d) without ascertaining why there needed to be a longer extension in the same area even with the declaration of continued victories by the military. All these were unexamined because of the existence of the fifth ground that rendered the extension unconstitutional. There was (e) a lack of deliberation.

2. **ID.; ID.; ID.; ID.; ISSUES OF REASONABILITY OF THE EXTENSION OF THE STATE OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS AND SUFFICIENCY OF THE FACTUAL BASIS FOR THE DECLARATION OR SUSPENSION ARE SUBJECT TO CONGRESSIONAL AND JUDICIAL INQUIRY; THE EXTRAORDINARY POWERS, AS WELL AS THEIR SCOPE AND LIMITATIONS, SHOULD BE CLEAR AND CANNOT BE CONFIDENTIAL.—** Article VII, Section 18, when properly invoked, raises issues with respect to (a) the reasonability of the extension of the declaration of the state of martial law or the suspension of the privilege of the writ of habeas corpus, and (b) the sufficiency of the factual basis for the declaration of the state of martial law and the suspension of the privilege of the writ of *habeas corpus*. These two relate to each other. Both must past both congressional and judicial inquiry. x x x In both general inquiries, the extraordinary powers-as well as their scope and limitations-should be clear. Apart from making them clear to those that will review, they should be made public

and transparent. They cannot be confidential. Both Congressional and judicial reviews include these two (2) basic inquiries: whether there are clear, transparent, and necessary powers articulated under martial law, and whether the declaration of such kind of martial law is supported by sufficient factual basis.

3. **ID.; ID.; ID.; ID.; THE PRESENT CONSTITUTION REQUIRES MORE STRINGENT CONDITIONS BEFORE THE PRESIDENT CAN DECLARE MARTIAL LAW OR SUSPEND THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS.—** Compared with the provisions in the earlier Constitutions, more stringent conditions are needed before the President can declare martial law or suspend the privilege of the writ of habeas corpus. First, the conditions of invasion, insurrection, or rebellion, or imminent danger thereof' found in past Constitutions are narrowed down and limited to actual "invasion or rebellion." Second, there is an added requirement that "public safety requires" the declaration or suspension. Third, a time element is also introduced. The President may, "for a period not exceeding sixty days," suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

4. **ID.; ID.; ID.; ID.; CONGRESS AND THE JUDICIARY PLAY ACTIVE ROLES TO CHECK ON THE POSSIBLE EXCESS OF THE EXECUTIVE.—** [T]he 1987 Constitution grants a more active role to the other branches of government as a check on the possible excesses of the executive. Article VII, Section 18 specifically delineates the roles of Congress and the Judiciary when the President exercises his Commander-in-Chief powers. The President and the Congress, as held in *Fortun v. Macapagal-Arroyo*, must "act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*." Congress is given "a much wider latitude in its power to revoke the proclamation or suspension." The President is left powerless to set aside or contest the revocation of Congress. This Court, on the other hand, is directed to review "the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof." The propriety of the declaration of martial law and the suspension of the privilege of the writ is therefore "justiciable and within the ambit of judicial review." This Court is further mandated to promulgate its decision within a period of 30 days from the filing of an "appropriate proceeding" by "any citizen."

5. ID.; ID.; ID.; ID.; PUBLIC SAFETY REQUIREMENT FOR THE EXTENSION OF MARTIAL LAW, NOT ESTABLISHED IN CASE AT BAR.— Public respondents failed to address the requirement that public safety requires for the extension of martial law. The first paragraph of Article VII, Section 18 of the Constitution mentions the phrase "public safety requires it" twice. The frrst reference in the constitutional text refers to the original proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. The second reference to the requirement of public safety refers to the extension of any proclamation. x x x The Constitution requires that martial law may be imposed not only if there is rebellion or invasion. It also requires that ***it is indispensable to public safety***. The resulting damage or injuries cannot simply be the usual consequences of rebellion or invasion. It must be of such nature that the powers to be exercised under the rubric of martial law or with the suspension of the writ of habeas corpus are indispensable to address the scope of the conflagration. The mere allegation of the existence of rebellion is not enough.

6. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ULTIMATE FACTS DISTINGUISHED FROM EVIDENTIARY FACTS.— This Court often discusses the difference between ultimate and evidentiary facts in relation to pleadings, and what must be alleged to establish a cause of action. Ultimate facts are the facts that constitute a cause of action. Thus, a pleading must contain allegations of ultimate facts, so that a court may ascertain whether, assuming the allegations to be true, a pleading states a cause of action. Of course, the veracity of the ultimate facts will be established during trial, generally through the presentation of evidence that will prove evidentiary facts. In *Tantuico, Jr. v. Republic*, this Court explained: The rules on pleading speak of two (2) kinds of facts: the first, the "ultimate facts", and the second, the "evidentiary facts." In Remitere vs. Vda. de Yulo, the term "ultimate facts" was defined and explained as follows: "The term 'ultimate facts' as used in Sec. 3, Rule 3 of the Rules of Court, means the essential facts constituting the plaintiff's cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient . . . ." (Moran, Rules of Court, Vol. 1, 1963 ed., p. 213). x x x while the term "evidentiary fact" has been defined in the following

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

7. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; TWO (2) *FACTA PROBANDA* OR ULTIMATE FACTS NECESSARY TO ESTABLISH THAT MARTIAL LAW WAS PROPERLY EXTENDED; NOT ESTABLISHED IN CASE AT BAR.— There are two (2) *facta probanda*, or ultimate facts, necessary to establish that martial law was properly extended, namely: (1) the persistence of an actual rebellion; and (2) that public safety requires the extension of martial law. Of course, no single piece of evidence can establish these ultimate facts. There must be an attempt to establish them through evidentiary facts, which must, in turn, be proved by evidence-not bare allegations, not suspicion, not conjecture. Letters stating that rebellion persists and that public safety requires the extension of martial law do not prove the *facta probanda*. The letters only prove that the writers thereof wrote that rebellion persists and public safety requires the extension of martial law. Lists of violent incidents do not prove the *facta probanda*; they only tend to prove the *factum probans* that there were, in fact, violent incidents that occurred. But, assuming the evidence is credible to prove the *factum probans* that violent incidents have occurred, this *factum probans*, without context, is insufficient to show that rebellion persists.

8. ID.; ID.; ID.; ID.; THE FACTS ALLEGED BY THE GOVERNMENT DO NOT ADEQUATELY SHOW THAT THERE IS THE KIND OF REBELLION REQUIRING A DECLARATION OF MARTIAL LAW OR THE SUSPENSION OF THE WRIT OF HABEAS CORPUS.— The facts even only as alleged by the government, assuming them to be true, do not adequately show that there is the kind of rebellion that requires a declaration of martial law or the suspension of the writ of habeas corpus. First, by the Executive's own admission, the neutralization of at least "920 DAESH-inspired fighters" as well as their leaders fast-tracked the clearing of Marawi City, hastened its liberation, and paved the way for its rehabilitation. The numbers of the purported DAESH-inspired

groups have gone down and as a result, "remnants" of these groups are now only in the process of rebuilding through recruitment operations. In other words, the government, in so far as the purpose for declaring martial law through Proclamation No. 216, Series of 2017 is concerned, already achieved its target.

9. ID.; ID.; JUDICIAL DEPARTMENT; THE COURT WILL NOT INTERFERE WITH THE PROCEEDINGS OF CONGRESS EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION; CASE AT BAR.— As a general rule, this Court will not interfere with the proceedings of Congress. In *Baguilat, Jr. v. Alvarez*, this Court recognized Congress' sole authority to promulgate rules to govern its proceedings. However, this is not equivalent to an unfettered license to disregard its own rules. Further, the promulgated rules must not violate fundamental rights. As loathe as this Court is to examine the internal workings of a co- equal branch of government, there are circumstances where this Court's constitutional duty needs such examination. In *Baguilat*, I stressed the need for this Court to fulfill its duty to uphold the Constitution even if it involves inquiring into the proceedings of a co-equal branch. I pointed out the danger in refusing this duty, where the proceedings are designed to stifle dissent. x x x In this case, the rules of the Joint Session of Congress appear to have been designed to stifle discourse and genuine inquiry into the sufficiency of factual basis for the extension of martial law. They give a member of Congress no more than three (3) minutes to interpellate resource persons during the Joint Session.

10. ID.; ID.; ID.; THE SUPREME COURT IS CONSTITUTIONALLY-BOUNDED TO EXAMINE NOT ONLY GRAVE ABUSE OF DISCRETION BUT THE FACTUAL SUFFICIENCY OF THE EXERCISE OF EXTRAORDINARY COMMANDER-IN-CHIEF POWERS; CASE AT BAR.— Accepting the allegations of the government, without any effort to determine its quality in terms of the evidence supporting it and to examine its logic in its entirety, amounts to a failure to do our constitutional duty to examine not only grave abuse of discretion but the factual sufficiency of the exercise of extraordinary Commander-in-Chief powers. To be blind to the kind of deliberation that was done in Congress is to fail our covenant with the sovereign Filipino people. x x x The majority's decision in this case aligns us towards the same

dangerous path. It erodes this Court's role as our society's legal conscience. It misleads our people that the solution to the problems of Mindanao can be solved principally with the determined use of force. It is a path to disempowerment. Contrary to the text and spirit of the Constitution, the decision in this case provides the environment that enables the rise of an emboldened authoritarian. This is far from the oath to the Constitution that I have taken.

JARDELEZA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; TWO CONDITIONS THAT MUST CONCUR BEFORE THE PRESIDENT CAN SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* OR DECLARE MARTIAL LAW.— The text of the Constitution is clear. Two conditions must concur before a President can suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law: (1) actual rebellion or invasion; and (2) when public safety requires it.

2. ID.; ID.; ID.; ID.; ID.; THE PUBLIC SAFETY REQUIREMENT OPERATES TO LIMIT THE EXERCISE OF THE PRESIDENT'S EXTRAORDINARY POWERS ONLY TO REBELLIONS OR INVASIONS OF A CERTAIN SCALE AS TO SUFFICIENTLY THREATEN PUBLIC SAFETY.— It is my view that the second requirement of "when public safety requires it" introduced a level of **scale** as to qualify the first requirement of the existence of an actual rebellion or invasion. "Scale" is defined as "the relative size or extent of something." It is synonymous with "scope, magnitude, dimensions, range, breadth, compass, degree, reach, spread, sweep." The public safety requirement under Section 18, Article VII operates to limit the exercise of the President's extraordinary powers only to rebellions or invasions *of a certain scale* as to sufficiently threaten public safety. This conclusion, I find, is supported by: (a) the deliberations of the Constitutional Commission; (b) our law and jurisprudence on the concept of public safety as used in specific relation to the exercise of government powers which result in an impairment of civil rights;

and (c) the experience of the Court both in this case and in *Lagman v. Medialdea* where it upheld the President's original declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

3. ID.; ID.; ID.; ID.; ID.; PROPOSED INDICATORS OF SCALE TO REASONABLY MEET THE PUBLIC SAFETY REQUIREMENT.— I believe a proper and principled approach to deciding this and future cases require this Court to identify some *reasonable indicators* which can be used as guides to determine scale for purposes of the public safety requirement. Certainly, we will not be able to catalogue all indicators with mathematical precision. Such an endeavor, while difficult, is nevertheless doable using all aids available to us, including interpretative aids and knowledge derived from past experience. Surely, in deciding this and future cases, the Court is not limited in determining the sufficiency of the factual basis of the requirements of public safety to the extremes of an "*I know it when I see it*" and "*the President knows better*" analysis. x x x Building on the indicators provided in *Lagman v. Medialdea*, there appears to be two **minimum** indicators of scale as to reasonably meet the public safety requirement necessary for a declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. These are: (1) the presence of hostile groups engaged in *actual and sustained armed hostilities* with government forces; and (2) these groups have actually *taken over, and are holding*, territory.

4. ID.; ID.; ID.; ID.; ID.; THREE TYPES OF MARTIAL LAW; MARTIAL LAW UNDER THE CONSTITUTION IS SIMPLY MARTIAL RULE.— Quoting Willoughby, Father Bernas enumerates three types of "martial law:" (1) Military Law Proper, that is, the body of administrative laws created by Congress for the government of the army and navy as an organized force; (2) the principles governing the conduct of military forces in time of war, and in the government of occupied territory; and (3) Martial Law in *sensu strictiore*, or that law which has application when the military arm does not supersede civil authority but is called upon to aid it in the execution of its civil functions. According to Father Bernas, martial law as it is understood in our jurisdiction cannot refer to the first meaning because it "refers to a body of administrative laws which are operative all the time, whereas martial law in the Constitution

can be operative only 'in case of invasion or rebellion, when the public safety requires it."' After differentiating between the second (military government) and third (martial rule) types of martial law, he concludes that martial law *under our Constitution* is simply martial rule, that is, the military "takes the place of certain governmental agencies which tor the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty." It is a "public exigency which may rise in time of war or peace" and "ceases when the district is sufficiently tranquil to permit the ordinary agencies of government to cope with existing situations."

5. ID.; ID.; ID.; ID.; ID.; THERE IS NO SUFFICIENT FACTUAL BASIS TO SHOW THAT PUBLIC SAFETY REQUIRES THE CONTINUED IMPLEMENTATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN MINDANAO.— I have examined the written submissions of the Government and listened closely to the briefing provided by representatives from the AFP on the factual bases behind the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. As earlier stated, the Government, through the AFP, sought to prove the "**magnitude of scope**" of the threat to public safety was such as to put the security of Mindanao at stake. Aside from the data on manpower, arms, and controlled barangays, the following 2017 statistics were also presented: (1) total of 116 BIFF-initiated violent incidents; (2) total of 44 ASG-initiated violent incidents; (3) total of 53 Dawlah Islamiyah-initiated violent incidents; and (4) total of 422 communist-initiated incidents of rebellion in Mindanao. When tested, however, against the *minimum reasonable indicators* above proposed, none of the evidence presented were similar to, or at least somewhat approximating, the scale of the situation which obtained in Marawi City during the initial Proclamation. There is nothing in the record to show that there are hostile groups engaged in actual and sustained armed hostilities with government forces. Neither are there allegations, much less, proof of hostile groups actually taking over and holding territory, or otherwise causing a significant breakdown of the general peace and order situation as to prevent local civilian authorities from going about their regular duties. Neither is there evidence presented to support the claimed linkages with foreign terrorist groups.

CAGUIOA*, J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION; EXTRAORDINARY POWERS OF THE PRESIDENT ENSHRINED THEREIN; POWER TO EXTEND MARTIAL LAW IS SUBJECT TO CONSTITUTIONAL CONDITIONS, THE EXISTENCE OF WHICH THE SUPREME COURT MUST DETERMINE.— Article VII, Section 18 of the Constitution contains the standards with which all three coordinate branches of government must comply in relation to the declaration or extension of martial law, and its review. It enshrines the extraordinary powers of the President as Commander-in-Chief of the Armed Forces of the Philippines (AFP) — (i) the power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion; (ii) the power to suspend the privilege of the writ of *habeas corpus*; and (iii) the power to proclaim martial law. In *Lagman v. Medialdea* (*Lagman*) the Court characterized these powers as graduated in nature, such that each may only be resorted to under specified conditions. x x x Several points become instantly clear from a plain reading of the above text: (1) the invasion or rebellion furnishing the first requirement for the extension indubitably refers to the invasion or rebellion that triggered the declaration sought to be extended, and (2) the requirement of public safety must require the extension. The mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be basis for the extension. The Court's power and duty to review under Section 18 contemplates the determination of the existence of the conditions upon which the President's extraordinary powers may be exercised. In the context of an extension of a prior proclamation or suspension, the Court's duty thus equates to the determination of whether the factual basis therefor, then "sufficient, truthful, accurate, or at the very least, credible," persists.

2. ID.; ID.; ID.; ID.; THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS BEAR THE BURDEN OF PROVING THE SUFFICIENT FACTUAL BASIS FOR THE EXTENSION OF MARTIAL LAW; PRESUMPTIONS OF

CONSTITUTIONALITY AND REGULARITY DO NOT APPLY TO THEM IN A SECTION 18 PROCEEDING.— The question of burden of proof in the review of the declaration of martial law has been settled in *Lagman*— the Executive bears the burden of proof. For the same reasons I stated in my *Dissent* in that case, given the nature of a Section 18 proceeding as a neutral fact-checking mechanism, the Executive and Legislative departments continually bear the burden of proving sufficient factual basis for the extension. The Court has recognized that martial law poses a severe threat to civil liberties; fittingly, a review of its declaration or extension must require proof. Even the less stringent review in *Lansang v. Garcia* required that minimum. Consequently — and I reiterate to the point of being tedious — the presumptions of constitutionality or regularity do not apply to the Executive and Legislative departments in a Section 18 proceeding. These presumptions cannot operate to require the petitioners to prove a lack or insufficiency of factual basis or to produce countervailing evidence because this amounts to an undue shifting of the burden of proof absent in the language of the provision, and clearly was not the intendment of the framers.

3. ID.; ID.; ID.; ID.; EXISTENCE OF AN ACTUAL REBELLION; ELEMENT OF AN ARMED PUBLIC UPRISING NO LONGER EXISTS IN CASE AT BAR.— A valid declaration of martial law presupposes the existence of rebellion as a matter of fact and law. As defined in the Revised Penal Code (RPC), the following elements are necessary for the crime of rebellion to exist: *First*, that there be (a) a public uprising and (b) taking arms against the government; and *Second*, that the purpose of the uprising or movement is either (a) to remove from the allegiance to said 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 or prerogatives. x x x My dissent is largely premised on a simple fact: there is no more armed public uprising — thus, it cannot be said that the rebellion necessitating the declaration persists. x x x Among the data presented by respondents are lists of violent incidents in Mindanao. It must be stressed, however, that most of the data presented are **irrelevant** for the simple reason that most of the attacks listed

occurred during periods irrelevant to the controversy at hand. Evidence, to be admissible, must be relevant to the fact in issue, that is, it must have a relation to the fact in issue as to induce belief in its existence or non-existence.

4. ID.; ID.; ID.; ID.; ID.; COMPONENT OF SPECIFIC PURPOSE, NOT PROVEN IN CASE AT BAR.— As admitted by respondents themselves, the motivations of (i) clannish culture, (ii) revenge for their killed relatives, and (iii) financial gain, are **not** among the purposes contemplated in the RPC, which are, to repeat: (a) to remove from the allegiance to said 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 or prerogatives. I also submit that the reliance of the *ponencia* on the atrocities committed by the New People's Army (NPA) in extending martial law stands on shaky ground. x x x The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if **the same** rebellion necessitating such proclamation shall **persist**. However, despite the express parameters of Section 18, the *ponencia* finds no error in the inclusion of the NPA in the Subject Letter as basis for the extension. **Indeed, it is incredible how a "decades-long rebellion" can be used as basis for extending Martial Law triggered by a rebellion that took place only months ago, especially considering that both movements were mounted by different groups inspired by distinct ideologies.** If there is indeed an actual rebellion by the NPA as contemplated in Section 18, it must be covered by a new declaration.

5. ID.; ID.; ID.; ID.; ID.; THE THREAT OF REBELLION, NO MATTER HOW IMMINENT, CANNOT BE A GROUND TO DECLARE OR EXTEND MARTIAL LAW.— The foregoing discussion does not mean, however, that I am turning a blind eye to the situation in Mindanao. The facts, as they stand, while falling short of establishing an existing rebellion, indicate a threat thereof. However, under the framework of our present Constitution, it is only in cases of an **actual** rebellion or insurrection that the President may, when public safety requires it, place the Philippines or any part thereof, under martial law. The threat of a rebellion, no matter how imminent, cannot be a ground to declare martial law. The intent of the framers of

the Constitution to limit the President's otherwise plenary power only to cases of actual rebellion is discernible from the deliberations of the Constitutional Commission of 1986. x x x The demonstrable capacity to launch a rebellion, absent an overt act in pursuance thereof, is **not** actual rebellion. As well, it is only if the actual rebellion or insurrection persists that the declaration of martial law may be extended. The evidence presented by the respondents do not sufficiently prove the existence or persistence of an actual rebellion. It is in this light that I register my dissent to the finding of sufficiency of factual basis as to the first requirement.

6. ID.; ID.; ID.; ID.; REQUIREMENT OF PUBLIC SAFETY NECESSITATES THE EXTENSION OF MARTIAL LAW; NOT ESTABLISHED IN CASE AT BAR.— Even assuming that the evidence presented by the respondents constitute sufficient proof of the existence of rebellion, I emphasize, as I did in my *Dissent in Lagman*, 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 The rationale behind the lofty standard of "necessity" is clear — the President is already equipped with sufficient powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through calling out the AFP to prevent or suppress such lawless violence. The necessity of martial law therefore requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety.

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; THE CONTINUED IMPLEMENTATION OF MARTIAL LAW WITHOUT SUFFICIENT BASIS CONSTITUTES A VIOLATION THEREOF.— There appears to be no right more fundamental in a modern democracy than the right to due process. x x x In essence, the right to due process had been specifically adopted by the framers of the Constitution to protect individual citizens from the abuses of government. The importance that the Constitution ascribes to the right to due process is clear. As well, the need to afford primacy to due process in the resolution of this Petition is evident, if not compelling. To recall, martial law operates to grant the AFP jurisdiction over civilians when

and where the civil government is unable to function as a consequence of an actual rebellion or invasion. As exhaustively discussed, the imposition of martial law operates as a matter of necessity. The conditions necessary to authorize its imposition are not only fixed but also exacting, for the imposition of martial law constitutes an encroachment on the life, liberty and property of private individuals. To me, this is the significance of this case: as earlier stated, the imposition of martial law in the absence of the exigencies justifying the same reduces such extraordinary power to a mere tool of convenience and expediency. The baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses and renders nugatory the explicit conditions and limitations clearly spelled out in the Constitution for the protection of individual citizens.

APPEARANCES OF COUNSEL

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National Union of Peoples' Lawyers for petitioners in G.R. No. 236061.

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Ateneo Human Rights Center for petitioners in G.R. No. 236155.

The Solicitor General for public respondents.

D E C I S I O N

TIJAM, *J.*:

***Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates.* – Alexander Hamilton**

There is an ongoing rebellion in the Philippines. NPA rebels, Maute rebels, ASG rebels, BIFF rebels, Islamic fundamentalists and other armed groups are on the loose. They are engaged in armed conflict with government forces; they seek to topple the government; and they sow terror and panic in the community.

To ignore this reality and to claim that these are non-existent is to court consequences that endanger public safety.

A state of martial law is not the normative state. Neither does it take a perpetual form. It is an extraordinary power premised on necessity meant to protect the Republic from its enemies. Territorial and temporal limitations germane to the Constitutional prerequisites of the existence or persistence of actual rebellion or invasion and the needs of public safety severely restrict the declaration of martial law, or its extensions. The government can lift the state of martial law once actual rebellion no longer persists and that public safety is amply ensured. Should the government, through its elected President and the Congress, fail in their positive duties prescribed by the Constitution or transgress any of its safeguards, any citizen is empowered to question such acts before the Court. When its jurisdiction is invoked, the Court is not acting as an institution superior to that of the Executive or the Congress, but as the champion of the Constitution ordained by the sovereign Filipino people. For, after all, a state of martial law, awesome as it is perceived to be, does not suspend the operations of the Constitution which defines and limits the powers of the government and guarantees the bill of rights to every person.

The Case

These are consolidated petitions,[1] filed under the third paragraph, Section 18 of Article VII of the Constitution, assailing the constitutionality of the extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year from January 1 to December 31, 2018. Petitioners in G.R. No. 235935 alternatively, but not mandatorily, invoke the Court's expanded jurisdiction under Section 1 of Article VIII of the Constitution. Petitioners in G.R. Nos. 235935, 236061 and 236155 pray for a temporary

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[1] *Rollo* (G.R. No. 235935), pp. 3-31; *rollo* (G.R. No. 236061), pp. 3-52; *rollo* (G.R. No. 236145), pp. 9-41; *rollo* (G.R. No. 236155), pp. 3-46.

restraining order (TRO) and/or writ of preliminary injunction to enjoin respondents from implementing the one-year extension.

The Antecedents

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216,[2] declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period not exceeding sixty (60) days, to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG).

On May 25, 2017, within the 48-hour period set in Section 18, Article VII of the Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the events and reasons that impelled him to issue Proclamation No. 216. Thereafter, the Senate adopted P.S. Resolution No. 388[3] while the House of Representatives issued House Resolution No. 1050,[4] both expressing full support to the Proclamation and finding no cause to revoke the same.

Three separate petitions[5] were subsequently filed before the Court, challenging the sufficiency of the factual basis of Proclamation No. 216. In a Decision rendered on July 4, 2017, the Court found sufficient factual bases for the Proclamation and declared it constitutional.

On July 18, 2017, the President requested the Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2[6] extending Proclamation No. 216 until December 31, 2017.

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[2] *Rollo* (G.R. No. 235935), pp. 123-124.

[3] *Id*. at 125-126.

[4] *Id*. at 130-131.

[5] G.R. Nos. 231658, 231771 and 231774.

[6] *Rollo* (G.R. No. 235935), pp. 34-35.

In a letter[7] to the President, through Defense Secretary Delfin N. Lorenzana (Secretary Lorenzana), the Armed Forces of the Philippines (AFP) Chief of Staff, General Rey Leonardo Guerrero (General Guerrero), recommended the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year beginning January 1, 2018 "for compelling reasons based on current security assessment." On the basis of this security assessment, Secretary Lorenzana wrote a similar recommendation to the President "primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters and financiers, and to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao."[8]

Acting on said recommendations, the President, in a letter[9] dated December 8, 2017, asked both the Senate and the House of Representatives to further extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018, or for such period as the Congress may determine. Urging the Congress to grant the extension based on the "essential facts" he cited, the President wrote:

> A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will help the AFP, the Philippine National Police (PNP), and all other law enforcement agencies to quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country. Public safety indubitably requires such further extension, not only for the sake of security and public order,

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[7] *Id*. at 42-45.

[8] *Id*. at 42.

[9] *Id*. at 36-40.

but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.[10]

Attached to the President's written request were the letters of Secretary Lorenzana[11] and General Guerrero[12] recommending the one-year extension.

On December 13, 2017, the Senate and the House of Representatives, in a joint session, adopted Resolution of Both Houses No. 4[13] further extending the period of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018. In granting the President's request, the Congress stated:

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

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[10] *Id.* at 40.

[11] *Id.* at 41.

[12] *Id.* at 42-45.

[13] *Id.* at 467-468.

warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao; Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session Assembled, To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018.[14]

The Parties' Arguments

A. Petitioners' case

Based on their respective petitions and memoranda and their oral arguments before this Court on January 16, 2018 and January 17, 2018, petitioners' arguments are summarized as follows:

(a) The petitioners' failure to attach the Congress' Joint Resolution approving the extension is not fatal to the consolidated petitions. Such failure is justified by the non-availability of the Resolution at the time the petition was filed. In any case,

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[14] *Id*. at 468.

the Rules on Evidence allow the Court to take judicial notice of the Resolution as an official act of the legislative.[15]

(b) The doctrine of presidential immunity does not apply in a *sui generis* proceeding under Section 18, Article VII as such immunity pertains only to civil and criminal liability.[16] In this proceeding, the President is not being held personally liable for damages, or threatened with any punishment. If at all, he is being held to account for non-compliance with a constitutional requirement.[17]

(c) The principle of conclusiveness of judgment is not a bar to raising the issue of the sufficiency of the factual basis of the extension, being different from the factual and legal issues raised in the earlier case of *Lagman v. Medialdea.*[18] At any rate, the Court's decision in *Lagman* is transitory considering the volatile factual circumstances.[19] Commissioner Joaquin G. Bernas (Fr. Bernas) emphasized during the deliberations on the 1987 Constitution that the evaluation of the Supreme Court in a petition which assails such factual situation would be "transitory if proven wrong by subsequent changes in the factual situation."[20]

(d) As to the scope and standards of judicial review, petitioners in G.R. No. 236145 assert that the standard for scrutiny for the present petitions is sufficiency of factual basis, not grave abuse of discretion. The former is, by constitutional design, a stricter scrutiny as opposed to the latter. Moreover, the Court is allowed to look into facts presented before it during the pendency of the litigation. This includes, for example, admissions made by

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[15] *Id*. at 616-617; *rollo* (G.R. No. 236061), pp. 597-598; *rollo* (G.R. No. 236061), pp. 779-781.

[16] *Rollo* (G.R. No. 236061), pp. 593-594.

[17] *Rollo* (G.R. No. 236145), pp. 780-782.

[18] G.R. No. 231658, July 4, 2017; *rollo* (G.R. No. 236061), pp. 595-597.

[19] *Rollo* (G.R. No. 235935), pp. 624-625.

[20] *Rollo* (G.R. No. 236155), pp. 26-27; *rollo* (G.R. No. 236061), pp. 812-813.

the Solicitor General and the military during oral arguments, as they attempted to show compliance with the constitutional requirements.[21]

In contrast, petitioners in G.R. No. 235935 argue that the standard to be used in determining the sufficiency of the factual basis for the extension is limited to the sufficiency of the facts and information contained in the President's letter dated December 8, 2017 requesting for the extension and its annexes.[22]

(e) As to the quantum of proof, petitioners in G.R. No. 236061 insist that clear and convincing evidence is necessary to establish sufficient factual basis for the extension of martial law instead of the "probable cause" standard set in *Lagman*. In comparison to the initial exercise of the extraordinary powers of proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, their extension must have had the benefit of sufficient time to gather additional information not only on the factual situation of an actual rebellion, but also the initial exercise of the Executive during its initial implementation.[23] Petitioners further argue that given its critical role in the system of checks and balance, the Court should review not only the sufficiency of the factual basis of the re-extension but also its accuracy.[24]

(f) As to the *onus* of showing sufficiency of the factual bases for extending martial law, petitioners in G.R. Nos. 235935 and 236145 contend that the President bears the same. Petitioners in G.R. No. 236155, however, argues that both the President and the Congress bear the burden of proof.

(g) In relation to the Court's power to review the sufficiency of the factual basis for the proclamation of martial law or any extension thereof, the military cannot withhold information from

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[21] *Rollo* (G.R. No. 236145), pp. 778-779.

[22] *Rollo* (G.R. No. 235935), pp. 631-636.

[23] *Rollo* (G.R. No. 236061), pp. 791-794.

[24] *Rollo* (G.R. No. 236155), pp. 26-28.

the Court on the basis of national security especially since it is the military itself that classifies what is "secret" and what is not. The Court's power to review in this case is a specific and extraordinary mandate of the Constitution that cannot be defeated and limited by merely invoking that the information sought is "classified."[25]

(h) The Congress committed grave abuse of discretion for precipitately and perfunctorily approving the extension of martial law despite the absence of sufficient factual basis.[26] In G.R. No. 235935, petitioners impute grave abuse of discretion specifically against the "leadership and supermajority" of both Chambers of Congress, arguing that the extension was approved with inordinate haste as the Congress' deliberation was unduly constricted to an indecent 3 hours and 35 minutes. The three-minute period of interpellation (excluding the answer) under the Rules of the Joint Session of Congress was inordinately short compared to the consideration of ordinary legislation on second reading. Further, a member of Congress was only allowed a minute to explain his/her vote, and although a member who did not want to explain could yield his/her allotted time, the explanation could not exceed three minutes.[27] Petitioners in G.R. No. 236061 highlighted the limited time given to the legislators to interpellate the AFP Chief, the Defense Secretary and other resource persons and criticized the Congress' Joint Resolution for not specifying its findings and justifications for the re-extension.[28]

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[25] *Rollo* (G.R. No. 236145), p. 779; *rollo* (G.R. No. 236061), pp. 785-788.

[26] *Rollo* (G.R. No. 236061), pp. 30-32; *rollo* (G.R. No. 236061), pp. 616-618.

[27] *Rollo* (G.R. No. 235935), pp. 19-20, 26-27; *rollo* (G.R. No. 235935), pp. 552-556.

[28] *Rollo* (G.R. No. 236155), pp. 33-34.

(i) The Constitution allows only a one-time extension of martial law and/or suspension of the privilege of the writ of *habeas corpus*, not a series of extensions amounting to perpetuity. As regards the Congress' discretion to determine the period of the extension, the intent of the Constitution is for such to be of short duration given that the original declaration of martial law was limited to only sixty (60) days.[29] In addition, the period of extension of martial law should satisfy the standards of necessity and reasonableness. Congress must exercise its discretion in a stringent manner considering that martial law is an extraordinary power of last resort.[30]

(j) The one-year extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* lacked sufficient factual basis because there is no actual rebellion in Mindanao. The Marawi siege and the other grounds under Proclamation No. 216 that were used as the alleged bases to justify the extension have already been resolved and no longer persist.[31] In his letter of request for further extension, the President admits that the Maute rebellion has already been quelled and the extension is to prevent the scattered rebels from gathering and consolidating their strength.[32] Moreover, the President himself had announced the liberation of Marawi and the cessation of armed combat.[33]

(k) The President and his advisers' justifications, which were principally based on "threats of violence and terrorism," "security concerns" and "imminent danger to public safety," do not amount to actual invasion or rebellion as to justify the extension of

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[29] *Rollo* (G.R. No. 235935), pp. 22-26; *rollo* (G.R. No. 235935), pp. 628-630.

[30] *Rollo* (G.R. No. 236061), pp. 813-816.

[31] *Rollo* (G.R. No. 235935), pp. 12-17; *rollo* (G.R. No. 235935), pp. 540-544; *rollo* (G.R. No. 236061), pp. 10-13; *rollo* (G.R. No. 236061), pp. 540-543.

[32] *Rollo* (G.R. No. 236145), pp. 31-37.

[33] *Rollo* (G.R. No. 236155), pp. 32-35.

martial law. They merely constitute "imminent danger." Since the framers of the 1987 Constitution removed the phrase "imminent danger" as one of the grounds for declaring martial law, the President can no longer declare or extend martial law on the basis of mere threats of an impending rebellion.[34]

(l) The extension should not be allowed on the basis of alleged NPA attacks because this reason was not cited in the President's original declaration.[35]

(m) The alleged rebellion in Mindanao does not endanger public safety. The threat to public safety contemplated under Section 18, Article VII of the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.[36]

(n) Martial law should be operative only in a "theater of war" as intended by the drafters of the Constitution. For a "theater of war" to exist, there must be an area where actual armed conflict occurs which necessitate military authorities to take over the functions of government due to the breakdown, inability or difficulty of the latter to function. The insurrection must have assumed the status of a public and territorial war, and the conditions must show that government agencies within the local territory can no longer function.[37] Without any of the four objectives that comprise the second element of rebellion,[38]

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[34] *Rollo* (G.R. No. 235935), pp. 20-22; *rollo* (G.R. No. 236145), p. 38; *rollo* (G.R. No. 236155), pp. 32-35.

[35] *Rollo* (G.R. No. 236061), p. 20; *rollo* (G.R. No. 236145), p. 39; *rollo* (G.R. No. 236145), p. 791; *rollo* (G.R. No. 236061), pp. 34-35.

[36] *Rollo* (G.R. No. 235935), pp. 625-628; *rollo* (G.R. No. 236061), pp. 13-21; *rollo* (G.R. No. 236061), pp. 601-609; *rollo* (G.R. No. 236155), p. 33.

[37] *Rollo* (G.R. No. 236155), pp. 21-24; *rollo* (G.R. No. 236061), pp. 795-807.

[38] 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

the acts of "regrouping", "consolidation of forces", "recruitment" and "planning" stages, or the continuing commission of the crimes of terrorism, robbery, murder, extortion, as cited by the President in his December 8, 2017 letter, cannot be said to be the "theater of war" referred to by the framers of the Constitution.[39]

(o) There is no need to extend martial law to suppress or defeat remnants of vanquished terrorist groups, as these may be quelled and addressed using lesser extraordinary powers (*i.e.*, calling out powers) of the President. Moreover, respondent General Guerrero failed to state during the oral arguments what additional powers are granted to the military by virtue of the proclamation and suspension and instead limited himself to the "effects" of martial law. Respondents simply failed to demonstrate how martial law powers were used. In short, there is no necessity for martial law.[40]

In their Memorandum, petitioners in G.R. No. 236145 propounded two tests (*i.e.*, proportionality and suitability*)* in determining whether the declaration or extension of martial law is required or necessitated by public safety. The *Proportionality Test* requires that the situation is of such gravity or scale as to demand resort to the most extreme measures. Petitioners cited AFP's own admission that there are only 537 out of 8,813 barangays or 6.09% that are currently being controlled by rebel groups in Mindanao. On the other hand, the *Suitability Test* requires that the situation is such that the declaration of martial law is the correct tool to address the public safety problem. Considering that the AFP Chief of Staff could not cite what martial law powers they used in the past, and

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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.

[39] *Rollo* (G.R. No. 236145), pp. 24-26, 32-37; *rollo* (G.R. No. 236145), pp. 784-787.

[40] *Rollo* (G.R. No. 235935), pp. 28-29; *rollo* (G.R. No. 235935), pp. 636-638; *rollo* (G.R. No. 236145), pp. 39-40; *rollo* (G.R. No. 236155), p. 33; *rollo* (G.R. No. 236061), p. 808.

what martial law powers they intend to use moving forward, the present circumstances fail both tests.[41]

(p) Petitioners in G.R. No. 235935 allege that martial law and the suspension of the writ trigger the commission of human rights violations and suppression of civil liberties. In fact, the implementation of the same resulted to intensified human rights violations in Mindanao.[42] In support of the same allegations, petitioners in G.R. No. 236061 attached a letter-report from *Salinlahi* on human rights violations committed as a consequence of martial law in Mindanao. They emphasize that martial law is a scare tactic, one that is not intended for the armed groups mentioned but actually against the dissenters of the government's policies.[43]

(q) Finally, in support of their prayer for a TRO or a writ of preliminary injunction, petitioners in G.R. No. 235935 allege that they are Representatives to Congress, sworn to defend the Constitution, with the right to challenge the constitutionality of the subject re-extension. They claim that petitioner Villarin, who is a resident of Davao City, is personally affected and gravely prejudiced by the re-extension as it would spawn violations of civil liberties of Mindanaoans like him, a steadfast critic of the Duterte administration. They also assert that the injunctive relief will foreclose further commission of human rights violations and the derogation of the rule of law in Mindanao.[44] Petitioners in G.R. No. 236061 likewise prays for a TRO or writ of preliminary injunction in order to protect their substantive rights and interests while the case is pending before this Court.[45]

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[41] *Rollo* (G.R. No. 236145), pp. 787-791.

[42] *Rollo* (G.R. No. 235935), pp. 27-28; *rollo* (G.R. No. 235935), pp. 630-631.

[43] *Rollo* (G.R. No. 236061), pp. 21-30; *rollo* (G.R. No. 236061), pp. 610-616.

[44] *Rollo* (G.R. No. 235935), pp. 29-30.

[45] *Rollo* (G.R. No. 236061), pp. 32-33.

B. Respondents' case

Respondents, through the Office of the Solicitor General, argue that:

a) Petitioners' failure to submit the written Joint Resolution extending the martial law and suspension of the privilege of the writ of *habeas corpus* is fatal since it is indispensable to the Court's exercise of its review power.[46]

b) The Cullamat and Rosales Petitions were filed against the President in violation of the doctrine of presidential immunity from suit.[47]

c) The Court already ruled in *Lagman* that there is actual rebellion in Mindanao. Thus, the principle of conclusiveness of judgment pursuant to Section 47(c),[48] Rule 39 of the Rules of Court bars the petitioners from re-litigating the same issue.[49]

d) Given that the Court had already declared in *Lagman* that there is rebellion in Mindanao, the *onus* lies on the petitioners to show that the rebellion has been completely quelled.[50]

e) The invocation of this Court's expanded jurisdiction under Section 1, Article VIII of the Constitution is misplaced. As held in *Lagman*,[51] the "appropriate proceeding" in Section

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[46] *Rollo* (G.R. No. 235935), pp. 747-748.

[47] *Id.* at 745-747.

[48] Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

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(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[49] *Rollo* (G.R. No. 235935), pp. 772-774.

[50] *Id.* at 753-755.

[51] *Lagman v. Medialdea, supra* note 18.

18, Article VII does not refer to a petition for *certiorari* filed under Section 1 or 5 of Article VIII, as it is not the proper tool to review the sufficiency of the factual basis of the proclamation or extension.[52]

f) Petitioners failed to allege that rebellion in Mindanao no longer exists, which is a condition precedent for the filing of the instant petition. They only pointed out the President's announcement regarding the liberation of Marawi from "terrorist influence." They did not mention the rebellion being waged by DAESH-inspired Da'awatul Islamahiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), remnants of the groups of Hapilon and Maute, the Turaifie Group, the Bangsamoro Islamic Freedom Fighters (BIFF), the ASG, and the New People's Army (NPA), as cited in the President's December 8, 2017 letter to Congress.[53]

g) The determination of the sufficiency of the factual basis to justify the extension of martial law became the duty of Congress after the President's request was transmitted. The question raised had assumed a political nature that can only be resolved by Congress.[54]

h) The manner in which Congress approved the extension is a political question, outside the Court's judicial authority to review. Congress has full discretion on how to go about the debates and the voting. The Constitution itself allows the Congress to determine the rules of its proceedings. The Court does not concern itself with parliamentary rules, which may be waived or disregarded by the legislature.[55]

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[52] *Rollo* (G.R. No. 235935), pp. 748-753.

[53] *Id.* at 259-265.

[54] *Id.* at 256.

[55] *Id.* at 797-801.

i) Proclamation No. 216 and the subsequent extensions granted by Congress enjoy the presumption of constitutionality, which petitioners failed to overcome by proving that the extension is without basis. The presumption cannot be ignored, especially since the Court held in *Lagman*, that it considers only the information and data available to the President prior to or at the time of the declaration and will not undertake an independent investigation beyond the pleadings.[56]

j) Even if the Court were to entertain the allegation of grave abuse of discretion on the part of Congress in approving the one-year extension, the same is without merit. Both houses of Congress gave due consideration to the facts relayed by the President which showed that rebellion persists in Mindanao and that public safety requires the extension. The extension was approved because of the stepped-up terrorist attacks against innocent civilians and private entities.[57]

k) The period for deliberation on the President's request for further extension was not unduly constricted. The extension or revocation of martial law cannot be equated with the process of ordinary legislation. Given the time-sensitive nature of martial law or its extension, the time cap was necessary in the interest of expediency. Furthermore, an explanation of one's vote in the deliberation process is not a constitutional requirement.[58]

l) The Constitution does not limit the period for which Congress can extend the proclamation and the suspension, nor does it prohibit Congress from granting further extension. The 60-day period imposed on the President's initial proclamation of martial law does not similarly apply to the period of extension. The clause "in the same manner" must be understood as referring to the manner by which Congress may revoke the proclamation or suspension, *i.e.*, Congress must also observe the same manner

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[56] *Id.* at 254-257.

[57] *Id.* at 248-254.

[58] *Id.* at 793-797.

of voting: "voting jointly, by a vote of at least a majority of all its Members in regular or special session." Furthermore, in the absence of any express or implied prohibition in the Constitution, the Court cannot prevent Congress from granting further extensions.[59]

m) The burden to show sufficiency of the factual basis for the extension of martial law is not with the President. Section 18, Article VII of the Constitution states that the extension of martial law falls within the prerogative of Congress.[60]

n) Even assuming that the burden of proof is on the President or Congress, such burden has been overcome. Although the leadership of the Mautes was decimated in Marawi, the rebellion in Mindanao persists as the surviving members of the militant group have not laid down their arms. The remnants remain a formidable force to be reckoned with, especially since they have established linkage with other rebel groups. With the persistence of rebellion in the region, the extension of martial law is, therefore, not just for preventive reasons. The extension is premised on the existence of an ongoing rebellion. That the rebellion is ongoing is beyond doubt.[61]

o) In the context of the Revised Penal Code, even those who are merely participating or executing the commands of others in a rebellion, as coddlers, supporters and financiers, are guilty of the crime of rebellion.[62]

p) As a crime without predetermined boundaries, the rebellion in various parts of Mindanao justified the extension of martial law, as well as the suspension of the privilege of the writ of *habeas corpus*.[63]

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[59] *Id*. at 771-780.

[60] *Id*. at 759.

[61] *Id*. at 259-265.

[62] *Id*. at 280.

[63] *Id*. at 765.

q) Under the Constitution, the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* are justified as long as there is rebellion and public safety requires it. The provision does not require that the group that started the rebellion should be the same group that should continue the uprising. Thus, the violence committed by other groups, such as the BIFF, AKP, ASG, DI Maguid, and DI Toraype (Turaifie) should be taken into consideration in determining whether the rebellion has been completely quelled, as they are part of the rebellion.[64]

r) The President has the sole prerogative to choose which of the extraordinary commander-in-chief powers to use against the rebellion plaguing Mindanao. Thus, petitioners cannot insist that the Court impose upon the President the proper measure to defeat a rebellion. In light of the wide array of information in the hands of the President, as well as the extensive coordination between him and the armed forces regarding the situation in Mindanao, it would be an overreach for the Court to encroach on the President's discretion.[65]

s) Among the differences between the calling out power of the President and the imposition of martial law is that, during the latter, the President may ask the armed forces to assist in the execution of civilian functions, exercise police power through the issuance of General or Special Orders, and facilitate the mobilization of the reserve force, among others.[66]

t) While the Anti-Terrorism Council (ATC) has powers that can be used to fight terrorism, the ATC, however, becomes relevant only in cases of terrorism. Thus, for the purpose of involving itself during a state of martial law, the ATC must first associate an act of rebellion with terrorism, as rebellion is only one of the means to commit terrorism.[67]

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[64] *Id*. at 763-768.

[65] *Id*. at 769-770.

[66] *Id*. at 806-807.

[67] *Id*. at 808-811.

u) The phrase "theater of war" in relation to martial law should be understood in a traditional Groatian sense, which connotes that "war" is "an idea of multitude" and not limited to the concept between two nations in armed disagreement.[68] Nevertheless, the Constitution does not require the existence of a "theater of war" for a valid proclamation or extension of martial law.[69]

v) There is no need to show the magnitude of rebellion, as placing the requirement of public safety on a scale will prevent the application of laws and undermine the Constitution.[70]

w) The alleged human rights violations are irrelevant in the determination of whether Congress had sufficient factual basis to further extend martial law and suspend the privilege of the writ of *habeas corpus*. As ruled in *Lagman*, petitioners' claim of alleged human rights violations should be resolved in a separate proceeding and should not be taken cognizance of by the Court.[71] Moreover, the alleged human rights violations are unsubstantiated and contradicted by facts. According to the AFP Human Rights Office, no formal complaints were filed in their office against any member or personnel of the AFP for human rights violations during the implementation of martial law in Mindanao. The online news articles cited in the Cullamat Petition have no probative value, as settled in *Lagman*.

x) Martial law does not automatically equate to curtailment and suppression of civil liberties and individual freedom. A state of martial law does not suspend the operation of the Constitution, including the Bill of Rights. The Constitution lays down safeguards to protect human rights during martial law. Civil courts are not supplanted. The suspension of the writ of *habeas corpus* applies only to persons judicially charged

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[68] *Id*. at 815.

[69] *Id*. at 820-822.

[70] *Id*. at 823-825.

[71] *Id*. at 281-282.

for rebellion or offenses inherent or directly connected with the invasion. Any person arrested or detained shall be judicially charged within three days. Various statutes also exist to protect human rights during martial law, such as, but not limited to, Republic Act (R.A.) No. 7483 on persons under custodial investigation, R.A. No. 9372 on persons detained for the crime of terrorism, and R.A. No. 9745 on the non-employment of physical or mental torture on an arrested individual.[72]

y) A temporary restraining order (TRO) or a writ of preliminary injunction to restrain the implementation or the extension of martial law is not provided in the Constitution. Although there are remedies anchored on equity, a TRO and an injunctive relief cannot override, prevent, or diminish an express power granted to the President by no less than the Constitution. If a TRO or injunctive writ were to be issued, it would constitute an amendment of the Charter tantamount to judicial legislation, as it would fashion a shortcut remedy other than the power of review established in the Constitution.[73]

z) Petitioners' allegations do not meet the standard proof required for the issuance of injunctive relief. Neither can the application for injunctive relief be supported by the claim that an injunction will foreclose further violations of human rights, as injunction is not designed to protect contingent or future rights. Petitioners also failed to show that the alleged human rights violations are directly attributable to the President's imposition of martial law and suspension of the privilege of the writ of *habeas corpus*.[74]

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[72] *Id*. at 282-284.

[73] *Id*. at 827, 831-832.

[74] *Id*. at 825-830.

Ruling of the Court

Procedural Issues:

Failure to attach Resolution of Both Houses No. 4 is not fatal to the petitions.

Section 1,[75] Rule 129 of the Rules of Court provides that a court can take judicial notice of the official acts of the legislative department without the introduction of evidence.

"Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support."[76]

Resolution of Both Houses No. 4 is an official act of Congress, thus, this Court can take judicial notice thereof. The Court also notes that respondents annexed a copy of the Resolution to their Consolidated Comment.[77] Hence, We see no reason to consider petitioners' failure to submit a certified copy of the Resolution as a fatal defect that forecloses this Court's review of the petitions.

The President should be dropped as party respondent

Presidential privilege of immunity from suit is a well-settled doctrine in our jurisprudence. The President may not be sued

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[75] **Section 1.** *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[76] *CLT Realty Development Corp. v. Hi-grade Feeds Corp., et al.*, 768 Phil. 149, 163 (2015).

[77] *Rollo* (G.R. No. 235935), pp. 308-309.

during his tenure or actual incumbency, and there is no need to expressly grant such privilege in the Constitution or law.[78] This privilege stems from the recognition of the President's vast and significant functions which can be disrupted by court litigations. As the Court explained in *Rubrico v. Macapagal-Arroyo, et al.*:[79]

> It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[80]

Accordingly, in *David*, the Court ruled that it was improper to implead former President Gloria Macapagal-Arroyo in the petitions assailing the constitutionality of Presidential Proclamation No. 1017, where she declared a state of national emergency, and General Order No. 5, where she called upon the AFP and the Philippine National Police (PNP) to prevent and suppress acts of terrorism and lawless violence in the country.

It is, thus, clear that petitioners in G.R. Nos. 236061 and 236145 committed a procedural misstep in including the President as a respondent in their petitions.

The Congress is an indispensable party to the consolidated petitions.

Of the four petitions before the Court, only G.R. No. 236145 impleaded the Congress as party-respondent.

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[78] *Rubrico, et al. v. Macapagal Arroyo, et al.*, 627 Phil. 37, 62 (2010).

[79] 627 Phil. 37 (2010).

[80] *Id*. at 62-63, citing *Prof. David v. Pres. Macapagal-Arroyo,* 522 Phil. 705, 764 (2006).

Section 7, Rule 3 of the Rules of Court requires that "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." In *Marmo, et al. v. Anacay*,[81] the Court explained that:

> [A] party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[82] (Citation omitted)

In these consolidated petitions, petitioners are questioning the constitutionality of a congressional act, specifically the approval of the President's request to extend martial law in Mindanao. Petitioners in G.R. No. 235935 and 236155 have also put in issue the manner in which the Congress deliberated upon the President's request for extension. Clearly, therefore, it is the Congress as a body, and not just its leadership, which has interest in the subject matter of these cases. Consequently, it was procedurally incorrect for petitioners in G.R. Nos. 235935, 236061 and 236155 to implead only the Senate President and the House Speaker among the respondents.

Arguably, Senator Aquilino Pimentel III and House Speaker Pantaleon Alvarez can be said to have an interest in these cases, as representatives of the Senate and the House of Representatives, respectively. However, considering that one of their main contentions is that the "supermajority" of the Congress gravely abused their discretion when they allegedly railroaded the adoption of Resolution of Both Houses No. 4, it stands to reason and the requirements of due process that petitioners in G.R. Nos. 235935 and 236061 should have impleaded the Congress

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[81] 621 Phil. 212 (2009).

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

as a whole.[83] Needless to say, the entire body of Congress, and not merely the respective leaders of its two Houses, will be directly affected should We strike down the extension of martial law. Thus, We hold that in cases impugning the extension of martial law for lack of sufficient factual basis, the entire body of the Congress, composed of the Senate and the House of Representatives, must be impleaded, being an indispensable party thereto.

It is true that a party's failure to implead an indispensable party is not *per se* a ground for the dismissal of the action, as said party may be added, by order of the court on motion of the party or *motu proprio,* at any stage of the action or at such times as are just. However, it remains essential – as it is jurisdictional – that an indispensable party be impleaded before judgment is rendered by the court, as the absence of such indispensable party renders all subsequent acts of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[84] Joining indispensable parties into an action is mandatory, being a requirement of due process. In their absence, the judgment cannot attain real finality.[85]

We are, thus, unprepared to trivialize the necessity to implead the entire Congress as party-respondent in this proceeding, especially considering that the factual scenario and the concomitant issues raised herein are novel and unprecedented.

Nevertheless, inasmuch as the Congress was impleaded as a respondent in G.R. No. 236145 and the OSG has entered its appearance and argued for all the respondents named in the four consolidated petitions, the Court finds that the "essential" and "jurisdictional" requirement of impleading an indispensable party has been substantially complied with.

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[83] See *Pimentel, Jr., et al. v. Senate Committee of the Whole*, 660 Phil. 202 (2011).

[84] *People v. Go, et al.,* 744 Phil. 194, 199 (2014).

[85] *Valdez-Tallorin v. Heirs of Juanito Tarona*, 620 Phil. 268, 274 (2009).

The Court is not barred by the doctrine of conclusiveness of judgment from examining the persistence of rebellion in Mindanao

Citing the doctrine of conclusiveness of judgment, respondents contend that petitioners could no longer raise the issue of the existence of rebellion in Mindanao, in light of this Court's ruling in *Lagman*[86] and *Padilla v. Congress.*[87]

Reliance on the doctrine of conclusiveness of judgment is misplaced.

Conclusiveness of judgment, a species of the principle of *res judicata*, bars the re-litigation of any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits.[88] In order to successfully apply in a succeeding litigation the doctrine of conclusiveness of judgment, mere identities of parties and issues is required.

In this case, despite the addition of new petitioners, We find that there is substantial identity of parties between the present petitions and the earlier *Lagman* case given their privity or shared interest in either protesting or supporting martial law in Mindanao. It is settled that for purposes of *res judicata*, only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case.[89]

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[86] *Lagman v. Medialdea*, *supra* note 18.

[87] G.R No. 231671, July 25, 2017.

[88] See *Spouses Antonio v. Sayman Vda. De Monje*, 646 Phil. 90 (2010).

[89] See *Sps. Layos v. Fil-Estate Golf and Dev't., Inc., et al.,* 683 Phil. 72, 106 (2008).

As to the second requirement, We do not find that there is identity of issues between the *Lagman*[90] and *Padilla*[91] cases, on one hand, and the case at bar.

In *Padilla*, petitioners sought to require the Congress to convene in a joint session to deliberate whether to affirm or revoke Presidential Proclamation No. 216, and to vote thereon. After consideration of the arguments of the parties, We ruled that under Section 18, Article VII of the 1987 Constitution, the Congress is only required to vote jointly to revoke the President's proclamation of martial law and/or suspension of the privilege of the *writ of habeas corpus*. We clarified that there is no constitutional requirement that Congress must conduct a joint session for the purpose of concurring with the President's declaration of martial law.

In *Lagman*, the constitutionality of Proclamation No. 216 was the primary issue raised before Us. We held that the Proclamation was constitutional as the President had sufficient factual basis in declaring martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao. We found that based on the facts known to the President and the events that transpired before and at the time he issued the Proclamation, he had probable cause to believe that a rebellion was or is being committed, and reasonable basis to conclude that public safety was endangered by the widespread atrocities perpetrated by the rebel groups.

In contrast, the consolidated petitions at hand essentially assail the Congress' act of approving the President's December 8, 2017 request and extending the declaration of martial law in Mindanao from January 1 to December 31, 2018. In support of their case, petitioners argue that rebellion no longer persists in Mindanao and that public safety is not endangered by the existence of mere "remnants" of the Maute group, ASG, DAESH-inspired DIWM members.

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[90] *Lagman v. Medialdea*, *supra* note 18.

[91] *Padilla v. Congress*, *supra* note 87.

Although there are similarities in the arguments of petitioners in the earlier *Lagman* case and the petitions at bar, We do not find that petitioners are seeking to re-litigate a matter already settled in the *Lagman* case with respect to the existence of rebellion. A reading of the consolidated petitions reveals that petitioners do not contest the existence of violence committed by various armed groups in Mindanao, to wit:

LAGMAN PETITION (G. R. No. 235935)

> 43. It is very unfortunate that in their contrived efforts to justify the extension of martial law in Mindanao, President Duterte and his military and police advisers with the support of partisans in the Congress have molded the so-called remnants or residue, miniscule as they are, into apparent menacing ogres.
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> 53. A litany of alleged "skirmishes" does not necessarily constitute armed public uprising against the government.
>
> 54. They may only indicate banditry, lawless violence and terroristic acts of remnants or residure of vanquished combatants.

CULLAMAT PETITION (G.R. No. 236061)

> 58. The question now therefore is, the instant case, does the actual rebellion being perpetrated by the armed groups enumerated in the 08 December 2017 letter of President Duterte to the House of Representatives and the Senate, compromise public safety that would warrant the imposition of martial law?

ROSALES PETITION (G.R. No. 236145)

> 67. In short, the bases (for the extension of martial law in Mindanao) were: first, the supposed continuous rebuilding of the remaining members of the Daesh-inspired DIWM, who are "in all probability,...presently regrouping and consolidating their forces" or are, at the very least, continuing their efforts and activities 'geared towards the conduct of intensified atrocities and armed public uprisings"; *second*, the supposed "plan" by members of the Turaifie group to conduct bombings; *third*, the supposed continuing acts of violence of the Bangsamoro Islamic Freedom Fighters; *fourth,* the continuous commission of acts of terrorism by members of the Abu Sayaff Group; and *fifth,* the intensification of the "decades-long rebellion" by the New People's Army (NPA).

68. With all due respect, and without diminishing the threat posed by any of the foregoing, none of these constitute *actual* rebellion or *actual* invasion. Moreover, it mistakes the distinction between the need for military force which is effected through the use of the calling out powers of the President, on one hand, and the need for imposing martial law on the civilian population, on the other.

69. Since the five (5) identified groups were/are in the "regrouping", "[consolidation] of forces", "recruitment", "planning" stages, or are continuing the commission of crimes (terrorism, robbery, murder, extortion) without any of the four (4) objectives that comprise the second element of rebellion, there cannot be said to be a "theatre of war" already contemplated by the framers of the Constitution as would cripple the normal operation of civilian law.'

MONSOD PETITION (G.R. No. 236155)

72. There is no indication that "public safety requires" the further imposition of martial law. The instances cited as justification for the extension requested do not demonstrate gravity such that ordinary powers and resources of the government cannot address these. What Marawi needs at this point is effective and responsive rehabilitation in an atmosphere of freedom and cooperation. It does not need martial law to rise from the ashes of war and turmoil.

73. At most, these incidents show several protracted incidents of violence and lawlessness that is well within the powers and authority of the government armed forces and police force to suppress without resort to extraordinary powers, which the government has been continuously doing for decades as well. Martial law is neither a commensurate measure to address these incidents, nor preventive measure to thwart the spread of lawless violence in the country. The mere invocation, therefore, of rebellion or invasion, will not be the sufficient factual basis for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus if it cannot be factually demonstrated that it is actually happening and necessitated by the requirements of public safety in a theater of war.

From the foregoing, it appears that petitioners merely question the gravity and extent of these occurrences as to necessitate the continued implementation of martial law in Mindanao. In other words, the issue put forth by petitioners in the earlier

Lagman case, which this Court already settled, refers to the existence of a state of rebellion which would trigger the President's initial declaration of martial law, whereas the factual issue in the case at bar refers to the persistence of the same rebellion in Mindanao which would justify the extension of martial law.

That petitioners are not barred from questioning the alleged persistence of the rebellion in these consolidated petitions is also supported by the transitory nature of the Court's judgment on the sufficiency of the factual basis for a declaration of martial law. The following exchange during the deliberations of the 1986 Constitutional Commission is instructive:

MR. BENGZON. I would like to ask for clarification from the Committee, and I would like to address this to Commissioner Bernas.

Suppose there is a variance of decision between the Supreme Court and Congress, whose decision shall prevail?

FR. BERNAS. The Supreme Court's decision prevails.

MR. BENGZON. If Congress, decides to recall before the Supreme Court issues its decision, does the case become moot?

FR. BERNAS. Yes, Madam President.

MR. BENGZON. And if the Supreme Court promulgates its decision ahead of Congress, Congress is foreclosed because the Supreme Court has 30 days within which to look into the factual basis. If the Supreme Court comes out with the decision one way or the other without Congress having acted on the matter, is Congress foreclosed?

FR. BERNAS. **The decision of the Supreme Court will be based on its assessment of the factual situation. Necessarily, therefore, the judgment of the Supreme Court on that is a transitory judgment because the factual situation can change.** So, while the decision of the Supreme Court may be valid at that certain point of time, the situation may change so that Congress should be authorized to do something about it.

MR. BENGZON. Does the Gentleman mean the decision of the Supreme Court then would just be something transitory?

FR. BERNAS. Precisely.

MR. BENGZON. It does not mean that if the Supreme Court revokes or decides against the declaration of martial law, **the Congress can no longer say, "no, we want martial law to continue" because the circumstances can change.**

FR. BERNAS. The Congress can still come in because the factual situation can change.

Verily, the Court's review in martial law cases is largely dependent on the existing factual scenario used as basis for its imposition or extension. The gravity and scope of rebellion or invasion, as the case may be, should necessarily be re-examined, in order to make a justiciable determination on whether rebellion persists in Mindanao as to justify an extension of a state of martial law.

The Court's power to review the extension of martial law is limited solely to the determination of the sufficiency of the factual basis thereof.

Section 1, Article VIII of the Constitution pertains to the Court's judicial power to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. The first part is to be known as the traditional concept of judicial power while the latter part, an innovation of the 1987 Constitution, became known as the court's expanded jurisdiction. Under its expanded jurisdiction, courts can now delve into acts of any branch or instrumentality of the Government traditionally considered as political if such act was tainted with grave abuse of discretion.

In seeking the Court's review of the extension of Proclamation No. 216 on the strength of the third paragraph of Section 18, Article VII of the Constitution, petitioners in G.R. No. 235935 alternately invoke the Court's expanded *(certiorari)* jurisdiction under Section 1, Article VIII.

In *Lagman*,[92] We emphasized that this Court's jurisdiction under the third paragraph of Section 18, Article VII is special and specific, different from those enumerated in Sections 1[93] and 5[94] of Article VIII. It was further stressed therein that the

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[92] *Lagman v. Medialdea*, *supra* note 18.

[93] 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.

[94] 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*.

(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.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

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, whereas 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. Hence, the Court concluded that a petition for *certiorari* pursuant to Section 1 or Section 5 of Article VIII is not the proper tool 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.* We held that to apply the standard of review in a petition for *certiorari* will emasculate the Court's constitutional task under Section 18, Article VII, which was precisely meant to provide an additional safeguard against possible martial law abuse and limit the extent of the powers of the Commander-in-Chief.

With regard to the extension of the proclamation of martial law or the suspension of the privilege of the writ, the same special and specific jurisdiction is vested in the Court to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis thereof. Necessarily, and by parity of reasoning, a *certiorari* petition invoking the Court's expanded jurisdiction is not the proper remedy to review the sufficiency of the factual basis of the Congress' extension of the proclamation of martial law or suspension of the privilege of the writ.

Furthermore, as in the case of the Court's review of the President's proclamation of martial law or suspension of the privilege of the writ, the Court's judicial review of the Congress' extension of such proclamation or suspension is limited only to a determination of the sufficiency of the factual basis thereof. By its plain language, the Constitution provides such scope of review in the exercise of the Court's *sui generis* authority under Section 18, Article VII, which is principally aimed at balancing (or curtailing) the power vested by the Constitution in the

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(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Congress to determine whether to extend such proclamation or suspension.

Substantive Issues

Congressional check on the exercise of martial law and suspension powers

Under the 1935[95] and 1973[96] Constitutions, the Congress had no power to review or limit the Executive's exercise of the authority to declare martial law or to suspend the privilege of the writ of *habeas corpus*. Borne of the country's martial law experience under the Marcos regime, such power was subsequently established in the 1987 Constitution as part of a system of checks and balance designed to forestall any potential abuse of an extraordinary power lodged in the President as Commander-in-Chief of the country's armed forces.

The 1987 Constitution grants the Congress the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Section 18, Article VII of the 1987 Constitution, in pertinent part, states:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary,

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[95] Section 10, Article VII (Executive Department) of the 1935 Constitution states: "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."

[96] Section 12, Article IX (The Prime Minister and the Cabinet) of the 1973 Constitution reads: "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, 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."

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. (Emphasis ours)

Congressional check on the President's martial law and suspension powers thus consists of:

> **First.** The power to review the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus, and to revoke such proclamation or suspension. The review is "automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension is made."[97] The Congress' decision to revoke the proclamation or suspension cannot be set aside by the President.
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> **Second.** The power to approve any extension of the proclamation or suspension, upon the President's initiative, for such period as it may determine, if the invasion or rebellion persists and public safety requires it.

Joint executive and legislative act

When approved by the Congress, the extension of the proclamation or suspension, as described during the deliberations

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[97] *Lagman v. Medialdea*, *supra* note 18.

on the 1987 Constitution, becomes a "joint executive and legislative act" or a "collective judgment" between the President and the Congress:

THE PRESIDENT. Commissioner Azcuna is recognized.

MR. AZCUNA. Thank you, Madam President.

I would like to offer an amendment to Section 15, line 7 of page 7. After the word "or," insert a comma (,) and add the phrase: AT THE INSTANCE OF THE PRESIDENT, so that the amended portion will read: "may revoke such proclamation or suspension which revocation shall not be set aside by the President, or AT THE INSTANCE OF THE PRESIDENT extend the same if the invasion or rebellion shall persist and public safety requires it.

May we know the reaction of the Committee? The reason for this Madam President, is that the extension should not merely be an act of Congress but should be requested by the President. Any extension of martial law or suspension of the privilege of the writ of *habeas corpus* should have the concurrence of both the President and Congress. Does the Committee accept my amendment?

MR. REGALADO. The Committee accepts that amendment because it will, at the same time solve the concern of Commissioner Suarez, aside from the fact that this will now be a **joint executive and legislative act.**

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MR. OPLE. May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that [sic] point was going to be a **collective judgment** between the President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS. Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by about 300 Members.

MR. OPLE. Yes, but still the idea is to **preserve the principle of collective judgment** of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS. Yes, the participation of the President is there but by giving the final decision to Congress, we are also preserving the idea that the President may not revoke what Congress has decided upon.[98] (Emphasis ours)

At the core of the instant petitions is a challenge to the "joint executive and legislative act," embodied in the President's December 8, 2017 initiative and in the latter's Resolution of Both Houses No. 4, which further extended the implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1 to December 31, 2018. Petitioners assail not only the sufficiency of the factual basis of this extension, but also the manner in which it was approved.

The manner in which Congress deliberated on the President's request for extension is not subject to judicial review

Petitioners question the manner that the Congress approved the extension of martial law in Mindanao and characterized the same as done with undue haste. Petitioners premised their argument on the fact that the Joint Rules adopted by both Houses, in regard to the President's request for further extension, provided for an inordinately short period for interpellation of resource persons and for explanation by each Member after the voting is concluded.

The assailed provisions refer to Section 7 of Rule V and Section 14 of Rule VIII of the Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 2017, which provide:

Rule V (CONSIDERATION OF THE LETTER OF THE PRESIDENT DATED DECEMBER 9, 2017 CALLING UPON THE CONGRESS OF THE PHILIPPINES TO "FURTHER EXTEND THE PROCLAMATION OF MARTIAL LAW AND

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[98] Record of the Constitutional Commission (1986), Vol. II, pp. 508-509.

THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO FOR A PERIOD OF ONE YEAR, FROM 01 JANUARY 2018 TO 31 DECEMBER 2018, OR FOR SUCH OTHER PERIOD OF TIME AS THE CONGRESS MAY DETERMINE, IN ACCORDANCE WITH SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION)

> Section 7. Any Member of the Congress may interpellate the resource persons for not more than three minutes excluding the time of the answer of the resource persons.
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Rule VIII (VOTING ON THE MOTION TO FURTHER EXTEND THE PERIOD OF THE PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS)

> Section 14. After the conclusion of voting, the Senate President and the Speaker of the House shall forthwith announce the results of the voting. Thereafter, any Member of the Congress who wishes to explain his/her vote may consume a maximum of one (1) minute: *Provided*, that a Member who does not want to explain may yield his/her allotted time to another Member of the same House: *Provided*, *further,* that any Member of the Congress shall be allowed a maximum of three (3) minutes.

No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings, to wit:

> Section 16. (3)) **Each House may determine the rules of its proceedings**, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days. (Emphasis ours)

In *Pimentel, Jr., et al. v. Senate Committee of the Whole*,[99] this constitutionally-vested authority is recognized as a grant of full discretionary authority to each House of Congress in

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[99] 660 Phil. 202 (2011).

the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

This freedom from judicial interference was explained in the 1997 case of *Arroyo v. De Venecia*,[100] wherein the Court declared that:

> But the cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.[101]

In other words, the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

Construing the full discretionary power granted to the Congress in promulgating its rules, the Court, in the case of *Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations, et al.*[102] explained that the limitation of this unrestricted power deals only with the imperatives of quorum, voting and publication. It should be added that there must be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.[103]

The rules in question do not pertain to quorum, voting or publication. Furthermore, deliberations on extending martial

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[100] 343 Phil. 42 (1997).

[101] *Id.* at 61.

[102] 598 Phil. 981 (2009).

[103] *See* Dissenting Opinion of Chief Justice Reynato Puno in *Neri v. Senate Committee on Accountability of Public Officers & Investigations*, 586 Phil. 135, 286 (2008).

law certainly cannot be equated to the consideration of regular or ordinary legislation. The Congress may consider such matter as urgent as to necessitate swift action, or it may take its time investigating the factual situation. This Court cannot engage in undue speculation that members of Congress did not review and study the President's request based on a bare allegation that the time allotted for deliberation was too short.[104]

Legislative rules, unlike statutory laws, do not have the imprints of permanence and obligatoriness during their effectivity. In fact, they may be revoked, modified or waived at the pleasure of the body adopting them. Being merely matters of procedure, their observance are of no concern to the courts.[105] Absent a showing of "violation of a constitutional provision or the rights of private individuals," the Court will not intrude into this legislative realm. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the Congress.[106]

Furthermore, it has not escaped this Court's attention that the rules that governed the Joint Session were in fact adopted, without objection, by both Houses of Congress on December 13, 2017.[107] So also, the Transcript of the Plenary Proceedings of the Joint Session showed that Members of Congress were, upon request, granted extension of their time to interpellate.

Congress has the power to extend and determine the period of martial law and the suspension of the privilege of the writ of habeas corpus

Section 18, Article VII of the 1987 Constitution provides:

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[104] See *Malonzo, et al. v. Hon. Zamora, et al.*, 380 Phil. 845 (2000).

[105] *Representative Teddy Brawner Baguilat, Jr., et al. v. Speaker Pantaleon D. Alvarez, et al.*, G.R. No. 227757, July 25, 2017.

[106] *Id*.

[107] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 13-14.

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

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

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

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis ours)

The provision is indisputably silent as to how many times the Congress, upon the initiative of the President, may extend the proclamation of martial law or the suspension of the privilege

of *habeas corpus*. Such silence, however, should not be construed as a vacuum, flaw or deficiency in the provision. While it does not specify the number of times that the Congress is allowed to approve an extension of martial law or the suspension of the privilege of the writ of *habeas corpus*, Section 18, Article VII is clear that the only limitations to the exercise of the congressional authority to extend such proclamation or suspension are that the extension should be upon the President's initiative; that it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and that it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only for application.[108] Thus, whenever there is a determination that the invasion or rebellion persists and public safety requires the extension of martial law or of the suspension of the privilege of the writ, the Congress may exercise its authority to grant such extension as may be requested by the President, even if it be subsequent to the initial extension.

Section 18, Article VII did not also fix the period of the extension of the proclamation and suspension. However, it clearly gave the Congress the authority to decide on its duration; thus, the provision states that that the extension shall be "***for a period to be determined by the Congress***." If it were the intention of the framers of the Constitution to limit the extension to sixty (60) days, as petitioners in G.R. No. 235935 theorize, they would not have expressly vested in the Congress the power to fix its duration.

The Court cannot accept said petitioners' argument that the 60-day limit can be deduced from the following clause in Section 18, Article VII: *"the Congress may, in the same manner, extend such proclamation or suspension."* The word "manner"

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[108] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

means a way a thing is done[109] or a mode of procedure;[110] it does not refer to a period or length of time. Thus, the clause should be understood to mean that the Congress must observe the same manner of voting required for the revocation of the initial proclamation or suspension, as mentioned in the sentence preceding it, i.e. *"voting jointly, by a vote of at least a majority of all its Members in regular or special session."* This is clear from the records of the 1986 Constitutional Commission:

MR. REGALADO. xxx

So I will repeat from line 26: "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, CONGRESS MAY extend SUCH PROCLAMATION for a period to be determined by Congress . . ."

MR. AZCUNA. Madam President.

THE PRESIDENT. Commissioner Azcuna is recognized.

MR. AZCUNA. May I suggest the insertion of the words CONGRESS MAY **IN THE SAME MANNER**, so as **to emphasize that will also be Congress voting jointly and there would also be a need of at least majority vote of all its Members for extension**.

THE PRESIDENT. Does the Committee accept the amendment?

MR. REGALADO. Yes, the amendment is accepted it makes the provision clearer.[111] (Emphasis ours)

United States Supreme Court Justice Antonin Scalia, in his book entitled *"Reading the Law: The Interpretation of Legal Texts,"*[112] succinctly explained the dangers of construction that departs from the text of a statute, particularly as to the allocation of powers among the branches of government. He stated:

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[109] <https://en.oxforddictionaries.com> (visited February 4, 2018).

[110] <https://www.merriam-webster.com> (visited February 4, 2018).

[111] Records of the Constitutional Commission (1986), Vol. II, p. 732.

[112] Co-authored with Bryan Bryan A. Garner, pp. 4-6.

Some judges, however, refuse to yield the ancient judicial prerogative of making the law, improvising on the text to produce what they deem socially desirable results-usually at the behest of an advocate for one party to a dispute. The judges are also prodded by interpretative theorists who avow that courts are "better able to discern and articulate basic national ideals than are the people's politically responsible representatives". On this view, judges are to improvise "basic national ideals of individual liberty and fair treatment, even when the content of these ideals is not expressed as a matter of positive law in the written Constitution."

To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Harlan warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a **lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government."** Why these alarming outcomes? *First,* when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures – in the appointment process, in their retention, and in the arguments made to them. *Second,* every time a court constitutionalizes a new sliver of law – as by finding a "new constitutional right" to do this, that, or the other – that sliver becomes thenceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution – even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of larger and larger swaths of territory that ought to be settled legislatively.

It used to be said that judges do not "make" law – they simply apply it. In the 20th century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. Consider the following statement by John P. Dawson, intended to apply to statutory law:

> It seems to us inescapable that judges should have a part in creating law – creating it as they apply it. In deciding the multifarious disputes that are brought before them, we believe

> that judges in any legal system invariably adapt legal doctrines to new situations and thus give them new content.
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> Now it is true that in a system such as ours, in which judicial decisions have a *stare decisis* effect, a court's application of a statute to a "new situation" can be said to establish the law applicable to that situation – that is, to pronounce definitively whether and how the statute applies to that situation. But establishing this retail application of the statute is probably not what Dawson meant by "creating law," "adapting legal doctrines," and "giving them new content." Yet beyond that retail application, good judges dealing with statutes do not make law. They do not "give new content" to the statute, but merely apply the content that has been there all along, awaiting application to myriad factual scenarios. To say that they "make law" without this necessary qualification is to invite the taffy-like stretching of words – or the ignoring of words altogether." *(Emphasis ours)*

Even on the assumption that there is a gap in our Constitution anent the frequency and period of the Congress' extension, and there is a need for this Court to exercise its power to interpret the law, We undertake the same in such a way as to reflect the will of the drafters of the Constitution. "While We may not read *into* the law a purpose that is not there, We nevertheless have the right to read *out of it* the reason for its enactment."[113] We refer thus to the Constitutional Commission's deliberations on the matter, *viz*:

> MR. SUAREZ. Thank you, Madam President. I concur with the proposal of Commissioner Azcuna but **may I suggest that we fix a period for the duration of the extension**, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. **So if Commissioner Azcuna could put a certain limit to the extended period**, I would certainly appreciate that, Madam President.
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> MR. SUAREZ. Thank you Madam President. **May we suggest that on line 7, between the words "same" and "if", we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS,**

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[113] *People v. Lacson*, 459 Phil. 330, 348-349 (2003).

which would equal the initial period for the first declaration just so it will keep going.

THE PRESIDENT. What does the Committee say?

MR. REGALADO. May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of the Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. **If we put it at 60 days only, then thereafter, they have to meet again to agree jointly on a further extension.**

MR. SUAREZ. That is precisely intended to safeguard the interests and protect the lives of citizens.

MR. REGALADO. In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. S**o, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.**

MR. SUAREZ. We are afraid of a situation that may develop where the extended period would be even longer than the initial period, Madam President. It is only reasonable to suggest that we have to put a restriction on the matter of the exercise of this right within a reasonable period.

MR. REGALADO. Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on. But there is already the cut-off 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ. That is correct. I think the two of them must have to agree on the period; but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension

may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that there must by a reasonable period for the extension. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it Madam President.

FR. BERNAS. Madam President, may I just propose something because I see the problem. Suppose we were to say: **"or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" – that gives Congress a little flexibility on just how long the extension should be.**

x x x x x x x x x

THE PRESIDENT. Is that accepted by Commissioner Suarez?

MR. SUAREZ. Yes, Madam President.

MR. OPLE. May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that point was going to be a collective judgment between the President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS. Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by 300 Members.

MR. OPLE. Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS. Yes, the participation of the President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and 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. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way.

Thank you, Madam President.

MR. SUAREZ. We will accept the committee suggestion, subject to style later on.

x x x x x x x x x

MR. PADILLA. According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

FR. BERNAS. I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION. If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. **Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary**.[114] (Emphasis ours)

Commissioner Jose E. Suarez's proposal to limit the extension to 60 days was not adopted by the majority of the Commission's members. The framers evidently gave enough flexibility on the part of the Congress to determine the duration of the extension. Plain textual reading of Section 18, Article VII and the records of the deliberation of the Constitutional Commission buttress the view that as regards the frequency and duration of the extension, the determinative factor is as long as "the invasion or rebellion persists and public safety requires" such extension.

The President and the Congress had sufficient factual basis to extend Proclamation No. 216

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[114] Record of the Constitutional Commission (1986), pp. 508-512.

Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or of the suspension of the privilege of the writ of *habeas corpus*: (a) the invasion or rebellion persists; and (b) public safety requires the extension.

A. Rebellion persists

Rebellion, as applied to the exercise of the President's martial law and suspension powers, is as defined under Article 134 of the Revised Penal Code,[115] *viz*:

> 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.

Rebellion thus exists when "(l) 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."[116]

The President issued Proclamation No. 216 in response to the series of attacks launched by the Maute Group and other rebel groups in Marawi City. The President reported to the Congress that these groups had publicly taken up arms for the purpose of removing Mindanao from its allegiance to the Government and its laws and establishing a DAESH/ISIS *wilayat* or province in Mindanao.

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[115] See *Lagman v. Medialdea, supra* note 18.

[116] *Lagman v. Medialdea, supra* note 18.

In *Lagman*,[117] the Court sustained the constitutionality of Proclamation No. 216, holding that the President had probable cause to believe that actual rebellion exists and public safety required the Proclamation. The Court held:

> 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.
>
> 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*. x x x

On July 22, 2017, upon the President's initiative, Congress extended Proclamation No. 216 until December 31, 2017.

The ensuing question, therefore, is whether the rebellion persists as to satisfy the first condition for the extension of martial law or of the suspension of the privilege of the writ of *habeas corpus.*

The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on."[118] It is the opposite of the words "cease," "discontinue," "end," "expire," "finish," "quit," "stop" and "terminate."[119]

The reasons cited by the President in his request for further extension indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of

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[117] *Supra* note 18.

[118] <https://www.merriam-webster.com> (visited January 22, 2018).

[119] *Id*.

new members, financial and logistical build-up, consolidation of forces and continued attacks. Thus, in his December 8, 2017 letter to Congress, the President stated:

> First, despite the death of Hapilon and the Maute brothers, the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-large and, in all probability, are presently regrouping and consolidating their forces.
>
> More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. **These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and of a *Wilayat* not only in the Philippines but also in the whole of Southeast Asia.**
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> x x x x x x x x x
>
> Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.[120] (Emphasis ours)

In recommending the one-year extension of Proclamation No. 216 to the President, AFP General Guerrero cited, among others, the continued armed resistance of the DAESH-inspired DIWM and their allies, thus:

> 1. The DAESH-Inspired DIWM groups and allies **continue to visibly offer armed resistance** in other parts of Central, Western

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[120] *Rollo* (G.R. No. 235935), pp. 37-38.

and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;[121] (Emphasis ours)

The data presented by the AFP during the oral arguments bolstered the President's cause for extension and clarified what the government remains up against in the aftermath of the Marawi crisis. According to the AFP:

> The Dawlah Islamiyah is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi.
>
> x x x x x x x x x
>
> After the successful Marawi Operation, the Basilan-based ASG is left with **74** members; the Maute Group with **30** members; the Maguid Group has **11**; and the Turaifie Group has **22** members with a total of **166** firearms.
>
> However, manpower increased by more or less **400**, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.
>
> ASG Basilan-based recruited more or less **43** new members in Basilan; more or less **250** by the Maute Group in the Lanao provinces; **37** by the Maguid Group in Sarangani and Sultan Kudarat, and more or less **70** by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from **PhP15,000.00** to **50,000.00**; and, as radicalized converts.
>
> These newly recruited members are undergoing trainings in tactics, marksmanships and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

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[121] *Id.* at 44.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, **48** FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with **@Abu DAR** who has historically established link with **Turaifie.**

On Dawlah Islamiyah-initiated violent incidents, these have increased to **100%** for the 2nd Semester.[122] (Emphasis ours)

The AFP's data also showed that Foreign Terrorist Fighters (FTFs) are now acting as instructors to the new members of the Dawlah Islamiyah.[123]

These accounts ineluctably show that the rebellion that spawned the Marawi crisis persists, and that its remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ ISIS territory.

Petitioners in G.R. No. 235935 argue that "remnants" or a residue of a rebel group cannot possibly mount a rebellion. The argument, however, fails to take into account the 185 persons identified in the Martial Law Arrest Orders who are still at large; the 400 new members whom said remnants were able to recruit; the influx of 48 FTFs who are training the new recruits in their ways of terrorism; and the financial and logistical build-up which the group is currently undertaking with their sympathizers and protectors. It likewise fails to consider that the new Dawlah Islamiyah members number nearly the same as the group that initially stormed Marawi City, and while the government succeeded in vanquishing 1,010 rebels following the siege,[124] it took several months to accomplish this even under

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[122] AFP's "Briefing" Narrative (January 17, 2017 Oral Arguments), pp. 6-7.

[123] *Id*. at 8.

[124] *Id*. at 3. Transcript of the Oral Argument, December 13, 2017, p. 54.

martial law. Thus, it will be imprudent nay reckless to downplay or dismiss the capacity of said remnants to relentlessly pursue their objective of establishing a seat of DAESH/ISIS power in Mindanao.

Petitioners in G.R. Nos. 236061 and 236155 have asserted that the rebellion no longer persists as the President himself had announced the liberation of Marawi City, and armed combat has ceased therein. Petitioners in G.R. No. 236061 added that Col. Romeo Brawner, Deputy Commander of the Joint Task Force Ranao, was also quoted as saying that the Maute-ISIS problem was about to be over. The statements, however, were admittedly made on October 17, 2017,[125] nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through their monitoring[126] efforts. It is not inconceivable that remnants of the Dawlah Islamiyah would indeed regroup, recruit new members and build up its arsenal during the intervening period. The termination of a rebellion is a matter of fact. Rebellion does not cease to exist by estoppel on account of the President's or the AFP's previous pronouncements. Furthermore, it is settled that rebellion is in the nature of a continuing crime.[127] Thus, members of the Dawlah Islamiyah who evaded capture did not cease to be rebels.

So also, it does not necessarily follow that with the liberation of Marawi, the DAESH/ISIS-inspired rebellion no longer exists. Secretary Lorenzana, during the Congress' Joint Session on December 13, 2017, explained that while the situation in Marawi has substantially changed, the rebellion has not ceased but simply moved to other places in Mindanao, thus:

Senator Drilon. Meaning, the question that we raised, Mr. President, are the declarations of the President, His Excellency, and the secretary of national defense changed since the time that the

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[125] *Rollo* (G.R. No. 236061), p. 12; *rollo* (G.R. No. 236145), p. 13.

[126] *Rollo* (G.R. No. 235935), p. 38.

[127] *In the Matter of the Petition for Habeas Corpus of Roberto Umil v. Ramos,* 265 Phil. 325, 336 (1990).

situation was described on October 23 of this year? Has the situation changed or is it the same situation today that the Marawi City has been liberated from terrorists [sic] influence that there has been a termination of combat operations in Marawi City?

Hon. Lorenzana. May I answer that, Mr. President. Mr. President, the situation in Marawi has substantially changed from the time that our troops were fighting the ISIS-inspired Maute Group and that's the reason why there is now this post-conflict need assessment as being conducted in Marawi. However, as situations developed later on, the ISIS-inspired other groups in Mindanao are also active like the BIFF in Central Mindanao and also in some other parts of the BaSulTa islands.

Now, the reports now, Mr. President, is that they are **actively recruiting again**, recruiting actively, recruiting some of the Muslim youths in the area and that is what we are saying that **the rebellion has not stopped**. **It just moved to another place**.

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Representative Tinio. x x x

Mr. Speaker, *hindi po ba sinabi ni Presidente sa kanyang sulat* that the AFP has achieved remarkable progress in putting the rebellion under control at *hindi po ba sinabi ni* Executive Secretary *na* substantially neutralized *na raw and* Maute-Daesh? *Pwede po bang ipaliwanag ito ng mga* resource persons?

The Speaker. The panel may respond.

Hon. Lorenzana. Mr. President, *ang sagot po doon sa G.* Congressman *ay ganito – ang sinasabi po naming* substantially reduced *na iyong* strength or clear na *iyong* Marawi of any terrorists *ay* ***Marawi lang po iyon***. **It does not include the whole of, the other parts of Mindanao that are also subject to the influence of these terroristic groups**. *Sabi nga ng* Supreme Court *ay, ang nangyayari sa* Marawi *ay nag*-spill over *na rin sa ibang lugar doon sa* Mindanao *kaya nga sinustain nila iyong* declaration *ng* Martial Law.

x x x x x x x x x[128]

(Emphasis ours)

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[128] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 26 and 43.

In *Lagman,* We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in *one* place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*,[129] 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 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. x x x.[130]

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[129] 158-A Phil. 1 (1974).

[130] *Id.* at 48-49.

Furthermore, as We explained in *Lagman*, "(t)he crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots." Thus:

> Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion. Rebellion *absorbs* "other acts committed in its pursuance." Direct assault, murder, homicide, arson, robbery, kidnapping 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." 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] which are perpetrated in furtherance of the political offense." "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." (Citations omitted)

In any case, Secretary Lorenzana has stressed that notwithstanding the termination of armed combat in Marawi, clashes between the rebels and government forces continue to take place in other parts of Mindanao. Thus, during an interpellation at the December 13, 2017 Joint Session in Congress, he stated:

> **Senator Pangilinan.** x x x
>
> It would have been a very different situation altogether if the fighting was still ongoing. If there is still that siege, then we can see that the situation is extreme and therefore, we can proceed with an extension.
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> x x x x x x x x x
>
> **Hon. Lorenzana.** Mr. President, may I reply to the good senator.
>
> **Sir, maybe your perception here is not as bad as what is happening on the ground, but the troops report otherwise.**
>
> **You know, *wala na sigurong bakbakan diyan sa* Marawi, but there are still clashes almost everyday in other parts of Mindanao.** The clash with the BIFF in Central Mindanao continues almost everyday. *Iyong mga engkwentro din sa mga ibang lugar sa* Eastern

Mindanao with the CPP-NPA *ay nandoon pa rin.* Basilan, Jolo *ay ongoing pa rin iyan.*

x x x x x x x x x[131]
(Emphasis ours)

During the oral arguments, AFP General Guerrero also confirmed that there were actually armed encounters with the remnants of the DAESH/ISIS-inspired DIWM.[132]

Accordingly, it would be error to conclude that the rebellion ceased to exist upon the termination of hostilities in Marawi.

Other rebel groups

The extension has also been challenged on the ground that it did not refer to the same rebellion under Proclamation No. 216.

It is true that the Bangsamoro Islamic Freedom Fighters (BIFF), the Turaifie Group and the New People's Army (NPA) were not expressly mentioned either in Proclamation No. 216 or in the President's Report to Congress after he issued the Proclamation. However, in *Lagman*, the government clearly identified the BIFF, based in the Liguasan Marsh, Maguindanao, as one of the four ISIS-linked rebel groups that had formed an alliance for the unified mission of establishing an ISIS territory in Mindanao, led by ASG-Basilan leader, Isnilon Hapilon, who had been appointed *emir* of all ISIS forces in the Philippines. The other three rebel groups were the ASG from Basilan, Ansarul Khilafah Philippines (AKP), also known as the Maguid Group, from Saranggani and Sultan Kudarat, and the Maute Group from Lanao del Sur.

Furthermore, while it named only the Maute Group and the ASG, the President's Report made express reference to "lawless armed groups" as perpetrators of the Marawi siege resolved to

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[131] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 50-51.

[132] Transcript of the Oral Arguments, January 17, 2018, pp. 117-118.

unseat the duly-constituted government and make Mindanao a DAESH/ISIS province. The Report also indicated, as additional reasons for the Proclamation, the "extensive networks or linkages of the Maute Group with foreign and local armed groups" and the "network and alliance-building activities among terrorist groups, local criminals, and lawless armed men" in Mindanao.[133] Thus, though not specifically identified in the Proclamation or the President's Report, the BIFF and the Turaifie Group are deemed to have been similarly alluded to.

Indeed, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation. Under the circumstances, the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern. The following pronouncement in *Lagman,* thus, finds relevance:

> 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". 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.

In the same vein, to require the President to render a meticulous and comprehensive account in his Proclamation or Report will be most tedious and will unduly encumber his efforts to immediately quell the rebellion.

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[133] *Lagman v. Medialdea, supra* note 18, citing the President's Report to Congress.

The efforts of the Turaifie Group and its allies[134] in the ISIS-inspired[135] BIFF to wrest control of Mindanao continued even as the government was able to put the Marawi crisis under control.

In his December 8, 2017 letter to the Congress, the President stated:

> Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and the Southeast Asia.[136]

Furthermore, as the AFP reported during the oral arguments, the BIFF "continues to inflict violence and sow terror in central Mindanao," and as one of the AFP's primary targets for disbandment, "the group will likely continue its hostile operations in a bid to retaliate, fight for its relevance and demonstrate its resiliency."[137]

The AFP has likewise confirmed that the Turaifie Group is one of several terrorist groups responsible for the Marawi siege, and that it has so far successfully recruited 70 new members in its unwavering pursuit of a DAESH/ISIS *wilayat* in Mindanao.

The Court, thus, finds that the government has sufficiently established the persistence of the DAESH/ISIS rebellion.

The inclusion of the rebellion of the New People's Army (NPA) as basis for the further extension of martial law in Mindanao will not render it void. Undeniably, the NPA aims to establish communist rule in the country while the DAESH/ISIS-inspired rebels intend to make Mindanao the seat of ISIS power in Southeast Asia. It is obvious, however, that even as they differ in ideology, they have the shared purpose of overthrowing the duly constituted government. The violence

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[134] Transcript of the Oral Argument, January 17, 2018, p. 56.

[135] Transcript of the December 13, 2017 Plenary Proceedings of the Joint Session of the Congress of the Philippines, p. 26.

[136] *Rollo* (G.R. No. 235935), p. 38.

[137] Transcript of the Oral Argument, January 17, 2018, p. 56.

the NPA has continued to commit in Mindanao, as revealed by the Executive, hardly distinguish its rebels from the architects of the Marawi siege. Both have needlessly and violently caused the death of military forces and civilians, and the destruction of public and private property alike. Thus, in his request for the further extension of Proclamation No. 216, the President informed the Congress that:

> Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist attacks against innocent civilians and private entities, as well as guerilla warfare against the security sector and public government infrastructure, **purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.**
>
> This year, the NPA has perpetrated a total of at least three hundred eight-five (385) atrocities (both terrorism and guerilla warfare) in Mindanao, which resulted in forty-one (41) Killed-in-Action and sixty-two (62) Wounded-in-Action (WIA) on the part of government forces. On the part of the civilians, these atrocities resulted in the killing of twenty-three (23) and the wounding of six (6) persons. The most recent was the ambush in Talakag, Bukidnon on 09 November 2017, resulting in the killing of one (1) PNP personnel and the wounding of three (3) others, as well as the killing of a four (4)-month-old infant and the wounding of two (2) civilians.
>
> Apart from these, at least fifty-nine (59) arson incidents have been carried out by the NPA in Mindanao this year, targeting businesses and private establishments and destroying an estimated ₱2.2 billion-worth of properties. Of these, the most significant were the attack on Lapanday Food Corporation in Davao City on 09 April 2017 and the burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental on 06 May 2017, which resulted in the destruction of properties valued at ₱1.85 billion and ₱109 million, respectively.[138] (Emphasis ours)

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[138] *Rollo* (G.R. No. 235935), pp. 38-39.

Given the scale of the attacks perpetrated by the communist rebels, it is far from unreasonable for the President to include their rebellion in his request for the further extension of martial law in Mindanao. The NPA's "intensified" insurgence clearly bears a significant impact on the security of Mindanao and the safety of its people, which were the very reasons for the martial law proclamation and its initial extension.

It will also be noted that when Proclamation No. 216 was issued, the Government and the NPA were undergoing peace negotiations. Thus, the President could not have included the NPA's rebellion in the Proclamation even granting he had cause to do so. The Office of the Solicitor General declared during the oral arguments that because of the peace negotiations, the NPA was "not explicitly included" as a matter of comity.[139] The Executive's data showed that despite the peace talks, the NPA continued its hostilities and intensified its tactical offensives, prompting the President to terminate the peace negotiations on November 23, 2017. In his December 8, 2017 letter to Congress, the President wrote:

> As a direct result of these atrocities on the part of the NPA, I was constrained to issue Proclamation No. 360 on 23 November 2017 declaring the termination of peace negotiations with the National Democratic Front-Communist Party of the Philippines-New People's Army (NDF-CPP-NPA) effective immediately. I followed this up with Proclamation No. 374 on 05 December 2017, where I declared the CPP-NPA as a designated/identified terrorist organization under the Terrorism Financing Prevention and Suppression Act of 2012, and the issuance of a directive to the Secretary of Justice to file a petition in the appropriate court praying to proscribe the NDF-CPP-NPA as a terrorist organization under the Human Security Act of 2007.[140]

It is readily apparent that the inclusion of the NPA's rebellion in the President's request for extension was precipitated by these turn of events, as well as the magnitude of the atrocities

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[139] Transcript of the Oral Argument, January 17, 2018, p. 177.

[140] *Rollo* (G.R. No. 235935), pp. 39-40.

attributed to the communist rebels. It would make no sense to exclude or separate the communist rebellion from the continued operation of martial law in Mindanao when it also persists in the same region. Thus, the Court finds that the President's decision to add the NPA's "intensified" insurgence to the DAESH/ISIS rebellion, as further basis to request for the extension, was not uncalled for.

In any event, seeking the concurrence of the Congress to use martial law to quell the NPA's rebellion, instead of issuing a new martial law proclamation for the same purpose, appears to be more in keeping with the Constitution's aim of preventing the concentration of the martial law power in the President. The extension granted by the Congress upon the President's request has become a joint action or a "collective judgment"[141] between the Executive and the Legislature, thereby satisfying one of the fundamental safeguards established under Section 18, Article VII of the 1987 Constitution.

B. Public safety requires the extension

In *Lagman*, the Court defined "public safety" as follows:

> 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."** 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. (Emphasis ours)

The question, therefore, is whether the acts, circumstances and events upon which the extension was based posed a significant danger, injury or harm to the general public. The Court answers in the affirmative.

The following events and circumstances, as disclosed by the President, the Defense Secretary and the AFP, strongly indicate

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[141] Records of Constitutional Commission (1986), Vol. II, p. 509.

that the continued implementation of martial law in Mindanao is necessary to protect public safety:

(a) No less than 185 persons in the Martial Law Arrest Orders have remained at large. Remnants of the Hapilon and Maute groups have been monitored by the AFP to be reorganizing and consolidating their forces in Central Mindanao, particularly in Maguindanao, North Cotabato, Sulu and Basilan, and strengthening their financial and logistical capability.[142]

(b) After the military operation in Marawi City, the Basilan-based ASG, the Maute Group, the Maguid Group and the Turaifie Group, comprising the DAESH-affiliate Dawlah Islamiyah that was responsible for the Marawi siege, was left with 137 members and a total of 166 firearms. These rebels, however, were able to recruit 400 new members, more or less, in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.[143]

(c) The new recruits have since been trained in marksmanship, bombing and tactics in different areas in Lanao del Sur. Recruits with great potential are trained in producing Improvised Explosive Devices (IEDs) and urban operations. These new members are motivated by their clannish culture, being relatives of terrorists, by revenge for relatives who perished in the Marawi operations, by money as they are paid ₱15,000.00 to ₱50,000.00, and by radical ideology.[144]

(d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits.[145] Foreign terrorists from Southeast Asian countries, particularly from Indonesia and Malaysia, will continue to take advantage of the porous borders of the Philippines and enter the country illegally to join the remnants of the DAESH/ISIS-inspired rebel groups.[146]

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[142] *Rollo* (G.R. No. 235935), pp. 37-38, 43.

[143] Transcript of the Oral Argument, January 17, 2018, p. 59.

[144] *Id*.

[145] *Id*. at 60.

[146] *Id*. at 62.

(e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Saragani province. In December 2017, 16 Indonesian DAESH-inspired FTFs entered the Southern Philippines to augment the ASG-Basilan and Maute groups in the Lanao province. In January 2018, an unidentified Egyptian DAESH figure was monitored in the Philippines.[147]

(f) At least 32 FTFs were killed in the Marawi operations.[148] Other FTFs attempted to enter the main battle area in Marawi, but failed because of checkpoints set up by government forces.[149]

(g) "The DAESH-inspired DIWM groups and their allies continue to visibly offer armed resistance in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City."[150] There were actually armed encounters with the remnants of said groups.[151]

(h) "Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato."[152]

(i) The Turaifie group conducts roadside bombings and attacks against government forces, civilians and populated areas in Mindanao.[153] The group plans to set off bombings in Cotabato.[154]

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

[148] *Id*. at 54.

[149] *Id*. at 60.

[150] *Rollo* (G.R. No. 235935), p. 44.

[151] Transcript of the Oral Argument, January 17, 2018, p. 118.

[152] *Id*.

[153] *Id*.

[154] *Rollo* (G.R. No. 235935), pp. 38, 43.

(j) The Maute Group, along with foreign terrorists, were reported to be planning to bomb the cities of Zamboanga, Iligan, Cagayan de Oro and Davao.[155]

(k) The remaining members of the ASG-Basilan have initiated five violent attacks that killed two civilians.[156]

(l) In 2017, the remnants of the ASG in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula, conducted 43 acts of violence, including IED attacks and kidnapping which resulted in the killing of eight innocent civilians, three of whom were mercilessly beheaded.[157] Nine kidnap victims are still held in captivity.[158]

(m) Hapilon's death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve the common goal of establishing a DAESH-ISIS *wilayat* in Mindanao. This likely merger may spawn retaliatory attacks such as IED bombings, in urban areas, particularly in the cities of Zamboanga, Isabela and Lamitan.[159]

(n) By AFP's assessment, the ISIS' regional leadership may remain in the Southern Philippines and with the defeat of ISIS in many parts of Syria and Iraq, some hardened fighters from the ASEAN may return to this region to continue their fight. The AFP also identified four potential leaders who may replace Hapilon as *emir* or leader of the ISIS forces in the Philippines. It warned that the Dawlah Islamiyah will attempt to replicate the Marawi siege in other cities of Mindanao and may conduct terrorist attacks in Metro Manila and Davao City as the seat of power of the Philippine Government. With the spotlight on terrorism shifting from the Middle East to Southeast Asia following the Marawi siege, the AFP likewise indicated that

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[155] Transcript of the Oral Argument, January 17, 2018, p. 65.

[156] *Id*.

[157] *Rollo* (G.R. No. 235935), p. 38; Transcript of the Oral Argument, January 17, 2018, p. 65.

[158] *Id*. at 43.

[159] Transcript of the Oral Argument, January 17, 2018, p. 58.

the influx of FTFs in the Southern Philippines will persist. The AFP further referred to possible lone-wolf attacks and atrocities from other DAESH-inspired rebel groups in vulnerable cities like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.[160]

The rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. The country had been witness to these groups' capacity and resolve to engage in combat with the government forces, resulting in severe casualties among both soldiers and civilians, the displacement of thousands of Marawi residents, and considerable damage to their City. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

(o) Furthermore, in 2017 alone, the BIFF initiated 116 hostile acts in North Cotabato, Sultan Kudarat and Maguindanao, consisting of ambuscade, firing, arson, IED attacks and grenade explosions. 66 of these violent incidents were committed during the martial law period and by the AFP's assessment, the group will continue to inflict violence and sow terror in central Mindanao.[161]

(p) In 2017, the ASG, which is the predominant local terrorist group in the Southern Philippines based in Tawi-Tawi, Sulu, Basilan and Zamboanga, with its 519 members, 503 firearms, 66 controlled barangays and 345 watch-listed personalities, had perpetrated a total of 13 acts of kidnapping against 37 individuals,

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[160] *Id.* at 52, 61-63.

[161] Transcript of the Oral Argument, January 17, 2018, pp. 55, 66.

11 of whom (including 7 foreigners) remain in captivity. Their kidnap-for-ransom activities for last year alone have amassed a total of ₱61.2 million.[162]

(q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerrilla fronts are in this region.[163] Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.[164]

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks.[165] In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, landmine/IED attacks, arson and sabotage, that resulted in the death of 47 government forces and 31 civilians.[166] An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. 59 incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed ₱2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business establishments from 2015 to the first semester of 2017 has been estimated at ₱2.6 billion.[167]

(s) Among the most significant attacks by the communist rebels on business establishments took place in April and May 2017 when they burned the facilities of Lapanday Food Corporation in Davao City and those of Mil-Oro Mining and

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[162] *Id*. at 56-58.

[163] *Rollo* (G.R. No. 235935), p. 43.

[164] *Id*. at 43.

[165] Transcript of the Oral Argument, January 17, 2018, p. 63.

[166] *Id*. at 66-67.

[167] *Id*. at 67.

Frasec Ventures Corporation in Mati City, Davao Oriental, which resulted in losses amounting to ₱1.85 billion and ₱109 million, respectively. According to the AFP, business establishments in the area may be forced to shut down due to persistent NPA attacks just like in Surigao del Sur.[168]

(t) By AFP's calculation, the aforesaid rebel groups (excluding the 400 newly recruited members of the Dawlah Islamiyah) are nearly 2,781-men strong, equipped with 3,211 firearms and control 537 barangays in Mindanao.

The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

In *Lagman,* the Court recognized that the President, as Commander-in-Chief, has possession of intelligence reports, classified documents and other vital information which he can rely on to properly assess the actual conditions on the ground, thus:

> 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." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."
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> 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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[168] *Id*.

As his December 8, 2017 letter to the Congress would show, the President's request for further extension had been based on the security assessment of the AFP and the PNP. Notably, the President also acknowledged that the grounds or "essential facts" cited in his letter were of his "personal knowledge" as Commander-in-Chief of the armed forces. The President's request to Congress also referred to the monitoring activities that led to the Executive's findings, which the AFP confirmed during the January 17, 2018 oral argument.

According to Executive Secretary Salvador Medialdea, the President made his request to the Congress after "a careful personal evaluation" of the reports from the Martial Law Administrator, Martial Law Implementor, the PNP, the National Security Adviser and the National Intelligence Coordinating Agency (NICA), as well as information gathered from local government officials and residents of Mindanao.[169]

On December 12, 2017, the AFP separately gave the Senate and the House of Representatives a briefing on the Executive Department's basis for requesting the further extension of Proclamation No. 216.[170]

At the Joint Session, of the Congress held on December 13, 2017 Executive Secretary Salvador Medialdea, Defense Secretary Delfin Lorenzana, AFP General Guerrero, PNP Chief Ronald Dela Rosa, the head of the NICA, the National Security Adviser, as well as the Secretaries of the Department of Justice, the Department of Public Works and Highways, Department of Labor and Employment, Transportation and Communication, and the Chairman of the Task Force Bangon Marawi, were present and sworn in as resource persons.[171] Secretary Medialdea highlighted

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[169] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, p. 20.

[170] Transcript of the Oral Argument, January 17, 2018, p. 99.

[171] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 23-24.

to the Congress the reasons cited by the President in his request, and during the course of the session, he, Secretary Lorenzana, AFP General Guerrero and Senior Deputy Executive Secretary Menardo Guevarra responded to interpellations from a number of Senators and Representatives on the propriety and necessity of further extending martial law in Mindanao.

The Joint Session also provided an occasion for the Representative from the Second District of Lanao del Sur to confirm the recruitment activities of the "remnants" of the Maute and Hapilon groups, thus:

> **Representative Papandayan**. x x x
>
> *Kami po sa* Lanao del Sur, *ako ay umuwi* last week, *aking kinausap ang aking mga* barangay *at mga* barangay chairman *sa aming distrito*. *Pinahanap ko kung mayroon pang natitirang* remnants *o mga kasamahan ng* Maute *at saka* Hapilon. *Ang mga* barangay chairman *po ay nag*-report *sa akin na mayroon po at sila po ay nagre*-recruit *ngayon, na nag-aalok din sila ng pera sa mga nare*-recruit *nila*.[172]

Following its deliberation on the request for further extension, the Congress, in joint session, resolved to further extend Proclamation No. 216 for one year, with 240 members voting for, and 27 against,[173] the President's initiative. In approving the extension, Congress agreed with the factual considerations of the Executive, as can be gleamed from the 4th and 6th *Whereas* clauses of Resolution of Both Houses No. 4.

The information upon which the extension of martial law or of the suspension of the privilege of the writ of *habeas corpus* shall be based principally emanate from and are in the possession of the Executive Department. Thus, "the Court will have to rely on the fact-finding capabilities of the [E]xecutive [D]epartment; in turn, the Executive Department will have to open its findings to the scrutiny of the Court."[174]

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[172] *Id*. at 55.

[173] *Id*. at 131.

[174] See *Lagman v. Medialdea*, *supra* note 18.

The Executive Department did open its findings to the Court when the AFP gave its "briefing" or "presentation" during the oral arguments, presenting data, which had been vetted by the NICA, "based on intelligence reports gathered on the ground," from personalities they were able to capture and residents in affected areas, declassified official documents, and intelligence obtained by the PNP.[175] According to the AFP, the same presentation, save for updates, was given to the Congress.[176] As it stands, the information thus presented has not been challenged or questioned as regards its reliability.

The facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it. The Court, thus, holds that there exists sufficient factual basis for the further extension sought by the President and approved by the Congress in its Resolution of Both Houses No. 4.

Necessarily, We do not see the merit to the petitioners' theory in the Cullamat petition that the extent of threat to public safety as would justify the declaration or extension of the proclamation of martial law and the suspension of the privilege of the writ must be of such level that the government cannot sufficiently govern, nor assure public safety or deliver government services. Petitioners posit that only in this scenario may martial law be constitutionally permissible.

Restrained caution must be exercised in adopting petitioners' theory for several reasons. To begin with, a hasty adoption of the suggested scale, level or extent of threat to public safety is to supplant into the plain text of the Constitution. An interpretation of the Constitution precedes from the fundamental postulate that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons,

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[175] Transcript of the Oral Argument, January 17, 2018, pp. 95, 97, 100, 102, 108-109 and 116.

[176] *Id*. at 103.

including the highest officials of the land, must defer.[177] The consequent duty of the judiciary then is 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.[178] This must be so considering that the Constitution is the mother of all laws, sufficient and complete in itself. For the Court to categorically pronounce which kind of threat to public safety justifies the declaration or extension of martial law and which ones do not, is to improvise on the text of the Constitution ideals even when these ideals are not expressed as a matter of positive law in the written Constitution.[179] Such judicial improvisation finds no justification.

For another, if the Court were to be successful in disposing of its bounden duty to allocate constitutional boundaries, the Constitutional doctrines the Court produces must necessarily remain steadfast no matter what may be the tides of time.[180] The adoption of the extreme scenario as the measure of threat to public safety as suggested by petitioners is to invite doubt as to whether the proclamation of martial law would be at all effective in such case considering that enemies of the State raise unconventional methods which change over time. It may happen that by the time government loses all capability to dispose of its functions, the enemies of the government might have already been successful in removing allegiance therefrom. Any declaration then of martial law would be of no useful purpose and such could not be the intent of the Constitution. Instead, the requirement of public safety as it presently appears in the

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[177] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES; A COMMENTARY, 1996 ed., p. XXXIV, citing* Miller, *Lectures on the Constitution of the United States* 64 (1893); 1 Schwartz, *The Powers of Government 1* (1963).

[178] *Angara v. The Electoral Commission*, 63 Phil. 139, 158 (1936).

[179] Justice Scalia, *READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS*.

[180] Cruz, *PHILIPPINE POLITICAL LAW*, 2002 ed., p. 12.

Constitution admits of flexibility and discretion on the part of the Congress.

So too, when the President and the Congress ascertain whether public safety requires the declaration and extension of martial law, respectively, they do so by calibrating not only the present state of public safety but the further repercussions of the actual rebellion to public safety in the future as well. Thus, as persuasively submitted by Fr. Bernas in his *Amicus Curiae* Brief[181] in *Fortun v. Gloria Macapagal-Arroyo*:[182]

> 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. (Emphasis ours)

The requirement of the Constitution is therefore adequately met when there is sufficient factual basis to hold that the present and past acts constituting the actual rebellion are of such character that endanger and will endanger public safety. This permissive approach is sanctioned not only by an acknowledgment that the Congress is and should be allowed flexibility but also because the Court is without the luxury of time to determine accuracy and precision.

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[181] *See* Justice Presbitero Velasco's Dissenting Opinion in *Fortun v. Macapagal-Arroyo.*

[182] 684 Phil. 526 (2012).

No necessity to impose tests on the choice and manner of the President's exercise of military powers

We refuse to be tempted by petitioner Rosales' prodding that We set two tests in reviewing the constitutionality of a declaration or extension of martial law. In her memorandum,[183] she clarifies the two tests, as follows:

> 1. Proportionality Test requires that a situation is of such gravity or scale as to demand resort to the most extreme of measures, *i.e.* a situation where the ordinary police powers of the State are no longer sufficient to restore, secure or preserve public safety; and
>
> 2. Suitability Test requires that a situation is such that the declaration of martial law is the correct tool to address safety problem.

It is sufficient to state that this Court already addressed the same argument in Our decision in *Lagman*. The determination of which among the Constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President. The Court's power of review, as provided under Section 18, Article VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised.

Safeguards against abuse

Martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial law."[184] Thus, when the need for which Proclamation No. 216 was further extended no longer exists, the President can lift the martial law imposition even before the end of the one-year period. Under the same circumstances, the Congress

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[183] *Rollo* (G.R. No. 236145), pp. 788-789.

[184] Bernas, *THE 1987 CONSTITUTION OF THE PHILIPPINES, A COMMENTARY*, 2009 ed., p. 903.

itself may pass a resolution pre-terminating the extension. This power emanates from the Congress' authority, granted under the Constitution, to approve the extension and to fix its duration. The power to determine the period of the extension necessarily includes the power to shorten it. Furthermore, considering that this Court's judgment on the constitutionality of an extension is "transitory," or "valid at that certain point of time," any citizen may petition the Court to review the sufficiency of the factual basis for its continued implementation should the President and the Congress fail or refuse to lift the imposition of martial law. During the deliberations on the 1987 Constitution, it was explained:

> FR. BERNAS. The decision of the Supreme Court will be based on its assessment of the factual situation. Necessarily, therefore, the judgment of the Supreme Court on that is a **transitory judgment** because the **factual situation can change**. So, while the decision of the Supreme Court may be **valid at that certain point of time**, **the situation may change so that Congress should be authorized to do something about it**.[185] (Emphasis Ours)

Petitioners fear that the one-year extension of martial law will only intensify the human rights violations committed by government forces against civilians. To place a territory under martial law is undeniably an immense power, and like all other powers, it may be abused.[186] However, the possibility of abuse and even the country's martial law experience under the Marcos regime did not prevent the framers of the 1987 Constitution from including it among the Commander-in-Chief powers of the President. This is in recognition of the fact that during critical times when the security or survival of the state is greatly imperiled, an equally vast and extraordinary measure should be available for the President to protect and defend it.

Nevertheless, cognizant of such possibility of abuse, the framers of the 1987 Constitution endeavored to institute a system

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[185] Records of the Constitutional Commission (1986), Vol. II, p. 494.

[186] See *Republic v. Roque*, 718 Phil. 294 (2013).

of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties. Thus, pursuant to Section 18, Article VII of the 1987 Constitution:

> (a) The President may declare martial law or suspend of the privilege of the writ of the privilege of *habeas corpus* only when there is an invasion or rebellion and public safety requires such declaration or suspension.
>
> (b) The President's proclamation or suspension shall be for a period not exceeding 60 days.
>
> (c) Within 48 hours from the proclamation or suspension, the President must submit a Report in person or in writing to Congress.
>
> (d) The Congress, voting jointly and by a vote of at least a majority of all its Members, can revoke the proclamation or suspension.
>
> (e) The President cannot set aside the Congress' revocation of his proclamation or suspension.
>
> (f) The President cannot, by himself, extend his proclamation or suspension. He should ask the Congress' approval.
>
> (g) Upon such initiative or request from the President, the Congress, voting jointly and by a vote of at least a majority of all its Members, can extend the proclamation or suspension for such period as it may determine.
>
> (i) The extension of the proclamation or suspension shall only be approved when the invasion or rebellion persists and public safety requires it.
>
> (j) The Supreme Court may review the sufficiency of the factual basis of the proclamation or suspension, or the extension thereof, in an appropriate proceeding filed by any citizen.
>
> (k) The Supreme Court must promulgate its decision within 30 days from the filing of the appropriate proceeding.

(l) Martial law does not suspend the operation of the Constitution.

Accordingly, the Bill of Rights[187] remains effective under a state of martial law. Its implementers must adhere to the principle that civilian authority is supreme over the military and the armed forces is the protector of the people.[188] They must also abide by the State's policy to value the dignity of every human person and guarantee full respect for human rights.[189]

(m) Martial law does not 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.

(n) The suspension of the privilege of the writ applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

(o) Finally, during the suspension of the privilege of the writ, any person thus arrested or detained should be judicially charged within three days, otherwise he should be released.

As Commissioner De Los Reyes explained during the deliberations on the 1987 Constitution:

MR. DE LOS REYES. May I explain my vote, Madam President.

My vote is yes. 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 the actual basis; and

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[187] 1987 Constitution, Article III.

[188] 1987 Constitution, Section 3, Article II.

[189] 1987 Constitution, Section 11, Article II.

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 [sic] 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. I vote yes.[190] (Emphasis ours)

Human rights violations and abuses in the implementation of martial law and suspension powers cannot by any measure be condoned. The Court lauds petitioners' vigilance to make sure that the abuses of the past are not repeated and perceived abuses of the present will not go unnoticed. However, as the Court settled in *Lagman,* alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of *habeas corpus* should be resolved in a separate proceeding. It, thus, bears noting some of the remedies, requirements and penalties imposed under existing laws, meant to address abuses by arresting or investigating public officers.

In *Lacson v. Perez*,[191] the Court had occasion to rule:

Moreover, petitioners' contention in G.R. No. 147780 (*Lacson Petition*), 147781 (*Defensor-Santiago Petition*), and 147799 (*Lumbao Petition*) that they are under imminent danger of being arrested without warrant do not justify their resort to the extraordinary remedies of *mandamus* and prohibition, since an individual subject to warrantless arrest is not without adequate remedies in the ordinary course of law. Such an individual may ask for a preliminary investigation under Rule 112 of the Rules of Court, where he may adduce evidence in his defense, or he may submit himself to inquest proceedings to determine whether or not he should remain under custody and correspondingly be charged in court. x x x Should the detention be

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[190] *Id.* at 485.

[191] G.R. No. 147780, May 10, 2001, 357 SCRA 756.

without legal ground, the person arrested can charge the arresting officer with arbitrary detention. All this is without prejudice to his filing an action for damages against the arresting officer under Article 32 of the Civil Code. Verily, petitioners have a surfeit of other remedies which they can avail themselves of, thereby making the prayer for prohibition and *mandamus* improper at this time (Sections 2 and 3, Rule 65, Rules of Court).[192]

R.A. No. 7438,[193] which defines the rights of persons arrested, detained or under custodial investigation, imposes the following penalties on errant arresting or investigating officers:

Section 4. ***Penalty Clause.*** – (a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of six thousand pesos (₱6,000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

(b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the

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[192] *Id*. at 763-764.

[193] AN ACT DEFINING CERTAIN RIGHTS OF PERSONS ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (₱4,000.00).

Under R.A. No. 9372 or the Human Security Act of 2007, rebellion may be subsumed in the crime of terrorism; it is one of the means by which terrorism can be committed.[194] R.A. No. 9372 imposes specific penalties for failure of the law enforcement personnel to deliver the suspect to the proper judicial authority within the prescribed period, for violating the rights of the detainee, and for using torture in the interrogation or investigation of a detainee, *viz*:

SEC. 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.

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SEC. 22. ***Penalty for Violation of the Rights of a Detainee.*** – Any police or law enforcement personnel, or any personnel of the police or other law enforcement custodial unit that violates any of the aforesaid rights of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Unless the police or law enforcement personnel who violated the rights of a detainee or detainees as stated above is duly identified, the same penalty shall be imposed on the police officer or hear or leader of the law enforcement unit having custody of the detainee at the time the violation was done.

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SEC. 25. ***Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person.*** – Any

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[194] *Lagman v. Medialdea*, *supra* note 18.

person or persons who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of twelve (12) years and one day to twenty (20) years of imprisonment.

When death or serious permanent disability of said detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him of such physical pain or torment, or as a consequence of the infliction on him of such mental, moral, or psychological pressure, the penalty shall be twelve (12) years and one day to twenty (20) years of imprisonment.

R.A. No. 9372 also gave the Commission on Human Rights the following authority and duty:

SEC. 55. ***Role of the Commission on Human Rights.*** – The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism.

R.A. No. 9745 or the Anti-Torture Act of 2009 provides that: "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."[195]

The same law also expressly prohibits secret detention places, solitary confinement, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity. For this purpose, it requires the Philippine National Police (PNP),

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[195] Section 6.

the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned to make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. The list is to be made available to the public at all times.[196]

R.A. No. 9745 likewise defined the following rights of a torture victim in the institution of a criminal complaint for torture:

(a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein,

(b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

(c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

It further imposes the following penalties on perpetrators of torture as defined therein:

Section 14. *Penalties.*– (a) The penalty of *reclusion perpetua* shall be imposed upon the perpetrators of the following acts:

(1) Torture resulting in the death of any person;

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[196] Section 7.

(2) Torture resulting in mutilation;
(3) Torture with rape;
(4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
(5) Torture committed against children.

(b) The penalty of *reclusion temporal* shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.

(c) The penalty of *prision correccional* shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described 1n paragraph (b) of this section.

(d) The penalty of *prision mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; Or shall have become permanently incapacitated for labor.

(e) The penalty of *prision mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.

(f) The penalty of *prision correccional* in its maximum period to prision mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for mare than thirty (30) days but not more than ninety (90) days.

(g) The penalty of *prision correccional* in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.

(h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of this Act.

(i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of this Act where torture may be carried out with impunity.

(j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of this Act.

This Court has likewise promulgated rules aimed at enforcing human rights. In A.M. No. 07-9-12-SC,[197] this Court made available the remedy of a writ of *amparo* to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. Similarly, in A. M. No. 08-1-16-SC,[198] this Court also crafted the rule on the writ of *habeas data* to provide a remedy for any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

It also bears to note that the Philippines, is a signatory to the Universal Declaration of Human Rights (UDHR),[199] which is embodied in the International Bill of Human Rights.[200] As such, it recognizes that everyone has the right to liberty and

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[197] THE RULE ON THE WRIT OF AMPARO.

[198] THE RULE ON THE WRIT OF *HABEAS DATA*.

[199] The United Nations General Assembly as adopted on December 10, 1948.

[200] <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (visited January 31, 2018).

security of one's person.[201] That no one shall be subjected to arbitrary arrest or detention; or that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law, are just among the thirty (30) articles, mentioned in the UDHR setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

Significantly, during the Congress' December 13, 2017 Joint Session, the Executive Department, through Secretary Lorenzana, made an express commitment to submit a monthly report to the Congress regarding the extended implementation of martial law in Mindanao.[202] Although not required under Section 18, Article VII of the 1987 Constitution, the submission of such report is an ideal complement to the system of checks and balance instituted therein. It will clearly assist the Congress in evaluating the need to maintain or shorten the period of extension of martial law in Mindanao; it will also serve as an additional measure to check on possible abuses or human rights violations in the Executive's enforcement of martial law.

Petitioners failed to comply with the requisites for the issuance of an injunctive writ

The purpose of a preliminary injunction under Section 3, Rule 58 of the Rules of Court,[203] is to prevent threatened or

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[201] *Barbieto v. CA, et al.*, 619 Phil. 819, 840 (2009).

[202] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, p. 67.

[203] SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring

continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated.[204] Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully.[205] *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy.[206] By jurisprudence, to be entitled to an injunctive writ, petitioners have the burden to establish the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage;[207] and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[208]

Petitioners anchored their prayer for the issuance of an injunctive writ on respondents' gross transgressions of the Constitution when they extended the martial law in Mindanao for one year. The Lagman petition likewise alleges that petitioner Villarin, a Davao City resident, is personally prejudiced by the extension or martial law in Mindanao "*which would spawn violations of civil liberties of Mindanaoans like petitioner Villarin who is a steadfast critic of the Duterte administration and of the brutalities committed by police and military forces.*"

These grounds, however, cannot carry the day for the petitioners. Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[209] These allegations cannot

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or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[204] *Bank of the Philippine Islands v. Santiago*, 548 Phil. 314, 329 (2007).

[205] *First Global Realty and Development Corporation v. San Agustin,* 427 Phil. 593, 601 (2002).

[206] *Preysler, Jr. v. Court of Appeals*, 527 Phil. 129, 136 (2006).

[207] *Medina v. Greenfield Development Corporation,* 485 Phil. 533 (2004).

[208] *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452 (2010).

[209] *ECE Realty and Development Inc. v. Mandap*, 742 Phil. 164, 171 (2014).

constitute a right *in esse,* as understood in jurisprudence. A right *in esse* is a clear and unmistakable right to be protected,[210] one clearly founded on or granted by law or is enforceable as a matter of law.[211] The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established.[212]

The alleged violations of the petitioners' civil liberties do not justify the grant of injunctive relief. The petitioners failed to prove that the alleged violations are directly attributable to the imposition of martial law. They likewise failed to establish the nexus between the President's exercise of his martial law powers and their unfounded apprehension that the imposition "*will target civilians who have no participation at all in any armed uprising or struggle.*" Incidentally, petitioners failed to state what the "*civil liberties*" specifically refer to, and how the extension of martial law in Mindanao would threaten these "*civil liberties*" in derogation of the rule of law. Evidently, petitioners' right is doubtful or disputed, and can hardly be considered a clear legal right, sufficient for the grant of an injunctive writ.

In *Dynamic Builders & Construction Co. (PHIL.), Inc. v. Hon. Ricardo P. Presbitero, Jr., et al.*,[213] this Court held that no automatic issuance of an injunctive relief will result by the mere allegation of a constitutionally protected right. We explained, thus:

> Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision.

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[210] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, 574 Phil. 340, 346 (2008).

[211] *Tomawis v. Tabao-Caudang*, 559 Phil. 498, 500 (2007).

[212] *Duvaz Corporation v. Export and Industry Bank*, 551 Phil. 382, 391 (2007).

[213] 757 Phil. 454 (2015).

Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.[214]

Indeed, this Court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances.[215] We emphasize that the grant or denial of an injunctive writ cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the procedural rules of admissibility and proof. In *The Executive Secretary v. Court of Appeals*,[216] this Court stressed the indispensability of establishing the requirements for injunctive writ:

> To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that *it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor*. The higher standard reflects judicial deference toward "legislation or regulations developed through presumptively reasoned democratic processes." Moreover, an injunction will alter, rather than maintain, the *status quo*, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, *the courts must sensitively assess all the equities of the situation, including the public interest*. In litigations between governmental and private parties, courts go much further both to

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[214] *Id.* at 473.

[215] *Consolidated Industrial Gases, Inc. v. Alabang Medical Center,* 721 Phil. 155, 180 (2013).

[216] 473 Phil. 27 (2004).

give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved. Before the plaintiff may be entitled to injunction against future enforcement, he is burdened to show some substantial hardship.[217] (Citations omitted and italics in the original)

Incidentally, there is nothing in the Constitution, nor in any law which supports petitioners' theory. Such purported human right violations cannot be utilized as ground either to enjoin the President from exercising the power to declare martial law, or the Congress in extending the same. To sanction petitioners' plea would result into judicial activism, thereby going against the principle of separation of powers.

As discussed above, petitioners are not left without any recourse. Such trangressions can be addressed in a separate and independent court action.[218] Recall that the imposition of martial law does not result in suspending the operation of the Constitution, nor supplant the functioning of the civil courts nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. Hence, petitioners can lodge a complaint-affidavit before the prosecutor's office or file a direct complaint before the appropriate courts against erring parties.

A Final Word

The imperative necessity of Martial Law as a tool of the government for self-preservation is enshrined in the 1935, 1973 and 1987 Constitutions. It earned a bad reputation during the Marcos era and apprehensions still linger in the minds of doubtful and suspicious individuals. Mindful of its importance and necessity, the Constitution has provided for safeguards against its abuses.

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[217] *Id*. at 57-58.

[218] *Lagman v. Medialdea, supra* note 18.

Martial law is a constitutional weapon against enemies of the State. Thus, Martial law is not designed to oppress or abuse law abiding citizens of this country.

Unfortunately, the enemies of the State have employed devious, cunning and calculating means to destabilize the government. They are engaged in an unconventional, clandestine and protracted war to topple the government. The enemies of the State are not always quantifiable, not always identifiable and not visible at all times. They have mingled with ordinary citizens in the community and have unwittingly utilized them in the recruitement, surveillance and attack against government forces. Inevitably, government forces have arrested, injured and even killed these ordinary citizens complicit with the enemies.

Admittedly, innocent civilians have also been victimized in the cross fire as unintended casualties of this continuing war.

These incidents, however, should not weaken our resolve to defeat the enemies of the State. In these exigencies, We cannot afford to emasculate, dilute or diminish the powers of government if in the end it would lead to the destruction of the State and place the safety of our citizens in peril and their interest in harm's way.

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Resolution of Both Houses No. 4 and **DECLARES** it as **CONSTITUTIONAL.** Accordingly, the consolidated Petitions are hereby **DISMISSED.**

SO ORDERED.

Peralta and *Reyes, Jr., JJ.,* concur.

Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, and *Gesmundo, JJ.,* see separate concurring opinions.

Martires, J., the *C.J.* certifies that *J.* Martirez left his separate opinion voting to "dismiss all petitions."

Sereno, C.J., Carpio, Leonen, Jardeleza, and *Caguioa, JJ.,* see dissenting opinions.

CONCURRING OPINION

VELASCO, JR., *J.*:

I adhere to the dismissal of the petitions and concur with the declaration of Resolution of Both Houses No. 4 as constitutional. I would, however, like to make some additional observations in connection with my concurrence.

At the threshold of this opinion, I do not find it amiss to note that the Martial Law in Mindanao was extended for the first time up to December 31, 2017. And yet, not one of the petitioners questioned the validity of that extension. This neglect now estops the petitioners from questioning the basis for the presently assailed extension since it is merely a continuation of the extended Martial Law covered by Proclamation No. 216.

But be that as it may, in *Lagman v. Medialdea*,[1] this Court found that **rebellion** exists in Mindanao and that public safety requires the exercise of the Martial Law powers. Thus, it concluded that Proclamation No. 216, declaring Martial Law in the region, has sufficient factual basis. This Court held:

> …[T]he 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:
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> x x x x x x x x x
>
> 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."
>
> 2) "[L]awless armed groups have taken up arms and committed public uprising against the duly constituted government and against

[1] G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

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."

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."

4) "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."

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."

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."

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."

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."

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."

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.[2]

Even petitioners at bar, as properly observed in the *ponencia*, concede the existence of rebellion that led to the declaration of Martial Law under Proclamation No. 216.[3] The core of

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[2] Emphasis and underscoring supplied.

[3] *See* pp. 29-31 of the *ponencia*.

petitioners' contention is confined merely to the propriety of the further extension of the Martial Law in Mindanao. In substantiating their argument, however, petitioners neglect that **rebellion is a continuing crime**, the ultimate goal of which is to overthrow the government. The nature of rebellion as a continuing crime has often been repeated by this Court. In *Parong v. Enrile*,[4] this Court characterized rebellion as a continuing offense, *viz*:

> The last argument of petitioner, namely that the detainees were not caught in flagrante delicto and therefore the arrest was illegal was refuted in the Comment thus: "Again petitioner simply misses the point. As this Court correctly observed, the crimes of subversion and **rebellion are continuing offenses**. Besides this point involves an issue of fact."

A similar ruling was made in *Umil v. Ramos*[5] where this Court observed that:

> …. [H]e (Dural) was committing an offense, when arrested, because Dural was arrested for being a member of the New People's Army, an outlawed organization, where membership is penalized, and for subversion which, like **rebellion is**, under the doctrine of Garcia vs. Enrile, **a continuing offense**, thus:
>
> > **The crimes of insurrection or rebellion**, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance (sic) 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 . . .
>
> x x x Unlike other so-called "common" offenses, i.e. adultery, murder, arson, etc., which generally end upon their commission, subversion and **rebellion are anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence**

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[4] 222 Phil. 170, 180 (1985).

[5] 279 Phil. 266-344 (1991).

until the overriding objective of overthrowing organized government is attained.[6]

Further, while rebellion is the crime of the masses or multitudes, it is not perpetrated in one crowd action or in a single battle. And while the crime of rebellion consists of many acts, involving a vast movement of men and a complex net of intrigues and plots,[7] these acts are not usually committed in a single instance. Rather, rebellion is pursued and committed in sporadic crimes—murders, kidnappings, arsons, sabotages, raids, hit-and-run tactics, and small skirmishes with the military—– mostly by a small group of combatants by what is termed as guerilla warfare.

Rarely is rebellion now committed by a large group of identified men engaging the government in an all-out conventional war in accordance with the Geneva Conventions. It would then be simply naive to dismiss, as the petitioners have, the remaining armed groups in Mindanao as but "phantom remnants" of the defeated terrorists and rebels. The fact that they do exist and still continue fighting is by itself proof of the subsistence of the condition that compelled the administration to proclaim Martial Law in Mindanao.

More importantly, the Armed Forces of the Philippines (AFP) has sufficiently shown that the remaining members of the Maute group, which commenced the rebellion, has not dwindled. Far from it, they have regrouped, increased in number, have been augmented by foreign terrorist fighters and have established linkages with other terrorists and rebel groups. During the oral arguments, the AFP stated thus:

> After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.

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[6] Emphasis and underscoring supplied.

[7] *People v. Dasig*, G.R. No. 100231, April 28, 1993.

However, **manpower increased** by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.

ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 members by the Maute Group in the Lanao provinces; 37 by the Maguid Group in Sarangani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to PhP50,000.00; and, as radicalized converts.

These newly recruited members are undergoing trainings in tactics, markmanships and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and businessmen. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with @Abu DAR who has historically established links with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester.[8]

Consequently, the burden is upon the petitioners to prove that the rebellion has been quelled by the government forces and has ceased to exist. Petitioners, however, failed to discharge this burden. Instead, petitioners have presented nary a competent and adequate evidence that could refute the facts presented by the AFP and relied upon by the President in requesting the extension of Martial Law. Bare allegations and unfounded conclusions, without more, cannot debunk the finding of both

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[8] AFP's briefing presented during the January 17, 2018 Oral Arguments, pp. 6-7.

the executive and legislative branches of the government that rebellion continues to pose a danger to the public safety in Mindanao and requires the imposition of Martial Law.

If this Court is to accord due regard to the principle of comity that should exist among the three branches of the Government, it must observe utmost restraint.[9] It must not modify, much less annul, the action of the other two branches of government as embodied in the assailed Resolution of Both Houses No. 4, unless there is hard and strong evidence that the extension has no factual basis. As no such evidence was presented by the petitioners, there is nothing to offset the "presumption of constitutionality"[10] of Resolution of Both Houses No. 4.

Surely, as an act of both the executive and the legislative branches, Resolution of Both Houses No. 4 has in its favor the presumption of constitutionality,[11] which was explained by this Court as follows:

> ….This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, **being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law.** This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. **In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.**[12]

The burden of proving the invalidity of this joint exercise of discretion that is the extension of Martial Law rests on those

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[9] *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, *etc*., August 25, 1994.

[10] See *Ermita-Malate Hotel and Motel Operations Association, Inc. v. City Mayor of Manila*, 128 Phil. 473-484 (1967).

[11] *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524-537 (2001).

[12] *Id*. Emphasis supplied.

who challenge it.[13] In this case, petitioners failed to present any proof, much less clear and convincing evidence, that will convince this Court beyond reasonable doubt of the nullity of the assailed Resolution.[14] Hence, in the absence of the required proof of the unequivocal infraction of the Constitution committed by the President and both houses of Congress, this Court will indulge the presumption of constitutionality of the assailed Resolution of Both Houses No. 4. The validity of the extension of Martial Law embodied therein must perforce prevail.

Past experiences under Martial Law may have led the petitioners to doubt its necessity, efficacy, and the good that it may serve. However, the stark realities of the moment should temper our wariness of the Martial Law powers. We need not fear employing them when necessary for the promotion of public safety and the promotion of public welfare. After all, **it is not a power that can be employed without corresponding responsibility**.[15] In the vein of my opinion in *Lagman*, **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.

To assuage the fears stoked by the implementation of Martial Law, I deem it proper to restate my opinion in *Lagman* discussing some of the safeguards and constraints that bind the hands of the President and the military that employ the Martial Law powers:

> … 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

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[13] *Spouses Lim v. People*, 438 Phil. 749-756 (2002).

[14] See also *Board of Optometry v. Colet*, 328 Phil. 1187-1208 (1996).

[15] *Martin v. Mott*, 12 Wheat., 19 (25 U.S.); *Vanderheyden v. Young*, 11 Johns., N.Y., 150, cited in *Barcelona v. Baker, Jr.*, 5 Phil. 87-120 (1905).

said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation." 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**, the authorities may resort to warrantless arrests of *persons suspected of rebellion* under the foregoing provision of the Rules of Court. 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." 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**. 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; and (8) search of vessels and aircraft, 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. 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. Otherwise stated, in the absence of clear and present danger, the military is bound by the rules of maximum tolerance 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.*, held that ***police power*** justifies a temporary "take over [of] the operation of any business affected with public interest" by the State in times of national emergency:

x x x x x x x x x

This Court, however, has held that it is the legislature, not the executive, which is the constitutional repository of police power, 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:

x x x x x x x x x

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:

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)*
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.

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;
(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.

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" are criminally and civilly liable. 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.

In view of the foregoing, I vote to **DISMISS** the petitions.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur with the Decision penned by the Honorable Justice Noel Gimenez Tijam dismissing the consolidated petitions which

assail the constitutionality of Resolution No. 4 adopted on December 13, 2017 by the Senate and the House of Representatives in joint session, resolving "To further extend Proclamation No. 216, Series of 2017, entitled Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for a period of one (1) year from January 1, 2018 to December 31, 2018."

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

> As for concerns that a petition for *certiorari*, prohibition or *habeas corpus* imposes procedural constraints that may hinder the Court's factual review of the sufficiency of the basis for a declaration of martial law or the suspension of the privilege of *habeas corpus*, these may all be addressed with little difficulty. In the hierarchy of legal authorities binding on this Court, constitutional provisions must take precedence over rules of procedure. It is Section 18, Article VII of the 1987 Constitution which authorizes the Court to review factual issues in order to determine the sufficiency of the factual basis of a martial law declaration or a suspension of the privilege of the writ of *habeas corpus* and, as discussed above, the Court may employ the most suitable procedure in order to carry out its jurisdiction over the issue as mandated by the Constitution. Time and again, the Court has stressed that it has the inherent power to suspend its own rules when the interest of justice so requires.
>
> 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

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

Constitution to empower our citizens and the Judiciary as a vital protection against potential abuse of the executive power to declare martial law and suspend the privilege of the writ of *habeas corpus*. (Citation omitted.)

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

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any 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 provision of Section 18, Article VII unequivocally empowers Congress, upon the initiative of the President, to extend the proclamation of martial law or the suspension of the writ of *habeas corpus* under the following conditions: (1) the invasion or rebellion shall persist or continue; (2) the public safety requires it; and (3) the extension is decided, by a joint majority vote of Congress in a regular or special session.

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

The concept of rebellion in our penal law was explained in the leading case of *People v. Hernandez*, where the Court ruled that the word "rebellion" evokes, not merely a challenge to the constituted authorities, but, also, civil war, on a bigger or lesser scale, with all the evils that go with it; and that all other crimes, which are committed either **singly** or **collectively** and as a necessary means to attain the purpose of rebellion, or in connection therewith and in furtherance thereof, constitute only the simple, not complex, crime of rebellion. The Court also underscored that political crimes are those directly aimed against the political order and that the decisive factor in determining whether a crime has been committed to achieve a political purpose is the **intent** or **motive** in its commission.

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

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

> All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves. Thus:
>
> > "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 Constitution does not require precision in establishing the fact of rebellion. In support of this, he cites an excerpt from the Brief of *Amicus Curiae* Fr. Joaquin Bernas, S.J., as follows:

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past*. But the concern of the Constitution is to counter threat to public safety both *in the*

present and in the future arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.

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

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

for rebellion under the Constitution. x x x.[2] (Emphasis supplied; citation omitted.)

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

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

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

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but neverthess reported the following essential facts, which as

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[2] *Id*.

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

Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain a serious security concern; and last, the new People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule[.]

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

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

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

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

Both the Senate and the House of Representatives decisively resolved to extend Presidential Proclamation No. 216 by two hundred forty (240) affirmative votes. The collective decision of the Executive and the Legislative Branches of the Government to extend for one (1) year the said proclamation, which was arrived at through a constitutionally mandated process can be the long awaited strong political will that will restore the elusive peace and promote prosperity in the whole of Mindanao.

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

SEPARATE OPINION

BERSAMIN, *J.*:

I **CONCUR.**

The Majority opinion ably written for the Court by Justice Tijam reflects my personal persuasion that sufficient facts existed

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

to justify the extension for a period of one year of the proclamation of martial law over Mindanao made by the Congress. The continuing existence of actual rebellion has justified the extension.

I write this Separate Opinion to express my views on the nature and coverage of the term *appropriate proceedings* used in the third paragraph of Section 18, Article VII of the 1987 Constitution, as well as on certain procedural matters dealt with in the Majority opinion that I believe need to be clarified.

Section 18, Article VII of the 1987 Constitution provides:

> x x x 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. [Emphasis Supplied]

In explaining the nature and scope of this power of the Court to review the factual sufficiency of the Presidential declaration of martial law and the Congressional concurrence to any extension thereto, the Court said in *Lagman v. Medialdea (Lagman I)*:[1]

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*. It is a special and specific jurisdiction of the Supreme Court different from those enumerated in Sections 1 and 5 of Article VIII.

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. Unless jurisdiction has been

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

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. It must appear clearly from the law or it will not be held to exist.

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.

In my Separate Opinion in *Lagman I*, I agreed with the proposition that the *appropriate proceeding* mentioned in the third paragraph of Section 18, Article VII of the 1987 Constitution is different and distinct from the proceeding relating to the Court's exercise of the power of judicial review, whether traditional or expanded. I explicitly indicated then:

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.

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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.

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.

The Majority opinion adopts several procedural steps that, to me, are not relevant or controlling in this kind of proceedings.

The Majority opinion takes issue with the fact that all petitions except that in G.R. No. 2236145 (Rosales petition) did not implead the Congress despite its being an indispensable party. The Majority opinion states that impleading an indispensable party is jurisdictional, and insists that any proceeding undertaken without an indispensable party is null and void for want of authority to act, not only as to the unimpleaded party but even as to the party impleaded; and that impleading an indispensable party is not a trivial matter.

I do not share the view stated in the Majority opinion.

In my humble view, the requirement of the *Rules of Court* for the joinder of the indispensable party is not applicable in this kind of proceeding wherein the Court is called upon by the 1987 Constitution to exercise a special and exclusive jurisdiction that is different from the exercise of the Court's judicial power vested under either Section 1, Article VIII or Section 5(1), Article VIII of the 1987 Constitution.

The requirement of impleading an indispensable party, which is found in Section 7, Rule 3 of the *Rules of Court*, demands that a party in interest without whom no final determination can be had of an action *shall be* joined either as a plaintiff or a defendant. Hence, the joinder of the indispensable party is mandatory. Without the presence of the indispensable party, no judgment of a court exercising judicial power can attain real finality because the controversy is not at all thereby resolved, or because the relief proper for the case is not granted. The absence of the indispensable party renders all subsequent acts of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

Yet, the requirement of impleading the indispensable party can be true only in proceedings in which the courts exercise judicial power under either Section 1, Article VIII or Section 5(1), Article VIII of the 1987 Constitution, not to the present proceedings under the third paragraph of Section 18, Article VII of the 1987 Constitution. The distinction arises from the fact that the former are proceedings instituted to resolve actual controversies between litigants holding or asserting adverse

rights and interests in property or other matters, while the latter are proceedings that focus only on the determination of the sufficiency of the factual basis for the extension of the declaration of martial law made by the Congress and do not involve any actual controversy or dispute about rights and interests of parties in interest. In short, the present proceedings are not concerned with rights and interests, thereby removing the need for the mandatory impleading of any person or entity.

NONETHELESS, I vote to **DISMISS** the petitions.

CONCURRING OPINION

DEL CASTILLO, *J.*:

I concur with the findings and conclusions of the *ponencia* upholding the constitutionality of Resolution of Both Houses No. 4, which extended the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao from January 1 to December 31, 2018.

In the earlier case of *Lagman v. Medialdea*,[1] the Court upheld the constitutionality 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. The Court, in that case, found that "parameters for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* [i.e. 1] actual rebellion or invasion, and 2) public safety requirement have been properly and fully complied with."[2] Hence the court ruled that, "Proclamation No. 216 has sufficient factual basis, there being probable cause to believe that the rebellion exists, and that public safety requires the martial law declaration and the suspension of the privilege of the writ of *habeas coprus*."[3]

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[1] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

[2] *Id*.

[3] *Id*.

Using the same parameters as in *Lagman*, the Court is now tasked to review the sufficiency of the factual bases of Resolution of Both Houses No. 4, further extending the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao from January 1 to December 31, 2018, to wit:

> First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion;
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> Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area;
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> Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato;
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> Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern;
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> and last the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;[4]

Existence of Actual Rebellion

In *Lagman*, the Court found that actual rebellion existed in the whole of Mindanao. In this case, the question is whether the same rebellion still exists.

I am convinced that it does as the "liberation of Marawi" did not end the rebellion. Marawi, as found by the Court in *Lagman* was only the staging point of the rebellion as the target was the whole of Mindanao.[5] The fact that the surviving members

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[4] Resolution of Both Houses No. 4, dated December 13, 2017.

[5] *Supra* note 1.

of the Maute group have not surrendered and are even recruiting new members despite the death of Hapilon and the Maute brothers clearly proves that the rebellion persists. The violent incidents perpetrated by the Bangsamoro Islamic Freedom Fighters (BIFF) in Mindanao likewise negate petitioners' position that the rebellion has been quelled by the "liberation of Marawi." Thus, I believe that while the government may have won the battle in Marawi, the war against the rebellion is still ongoing.

Moreover, I agree with the *ponencia* that the inclusion of the New Peoples Army (NPA) as basis for the further extension will not render void Resolution of Both Houses No. 4. Although the NPA group was not expressly included in Proclamation No. 216 as one of the "other rebel groups," their attacks may nevertheless be used as factual bases tor the extension considering that these contributed to the violence and even aggravated the situation in Mindanao.

To put things in perspective, let us say Country A invades Mindanao and immediately thereafter, the President issues a proclamation declaring martial law in the entire Mindanao. After two weeks, Country B then decides to join the war in the hope of taking over a portion of Mindanao. Under the circumstances, is the President still required to make another proclamation for the invasion by Country B? Obviously not - as it would be superfluous and impractical considering the President already declared martial law to stop the invasion of Mindanao. So, instead of promulgating a separate declaration of martial law, the President may just ask Congress for an extension based on the original invasion, which continues to exist, with the invasion by Country B as an additional factual basis for the extension.

In this case, the attacks carried out by the NPA are but additional factual bases which may be used to support the findings of the President and the Congress that the rebellion persists in the whole of Mindanao. In fact, whether or not the NPA group was used as a basis for the extension does not change the fact that the rebellion started by Hapilon and the Maute brothers continues to exist in Mindanao.

Theater of War

Citing portions of the deliberations of the framers of the 1987 Constitution, petitioners Rosales, et al. and Monsod, et al. advance the theory that for martial law to be valid, it must be in the context of an actual "theater of war" due to a rebellion or invasion.[6] Under this theory, martial law can only be declared in an area where there is actual armed conflict.[7]

There is, however, nothing in the deliberations to support their theory. Quoted below are the pertinent portions of the deliberations:

SR. TAN: Yes. Thank you.

The other question is also on the same section. Would martial law automatically give the President the power of legislation through decrees?

MR. SUMULONG: We will ask Commissioner Concepcion to answer.

MR. CONCEPCION: It is stated in Section 15:

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 . . .

The Commissioner's question is whether martial law decreases or increases the power of the President?

SR. TAN: Decreases?

MR. CONCEPCION: Not necessarily.

SR. TAN: So, what specific power is necessary before the President can proclaim martial law?

MR. CONCEPCION: In general, in case of invasion, the President would have all the powers of a general in the army.

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[6] Memorandum for Petitioners Rosales, *et al*., pp. 14-16 and Memorandum for Petitioners Monsod, *et al*., pp. 50-54.

[7] *Id*.

MR. SUMULONG: We ask Commissioner Bernas to answer.

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**.

SR. TAN: Thank you.[8]

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MR. FOZ: Thank you, Madam President.

May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause "where civil courts are able to function"? In the earlier portion of the same sentence, it says, "nor supplant the functioning of the civil courts x x x" I was just thinking

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[8] II RECORD, CONSTITUTIONAL COMMISSION 398 (July 29, 1986).

that if this provision states the effects of the declaration of martial law – one of which is that it does not supplant the functioning of the civil courts – I cannot see how civil courts would be unable to function even in a state of martial law.

MR. SUMULONG: May we refer that interpellation to Commissioner Bernas?

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 opened 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.

MR. FOZ: Thank you, Madam President.[9]

It appears that Father Bernas mentioned the concept of the "theater of war" twice during the deliberations.

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[9] II RECORD, CONSTITUTIONAL COMMISSION 401-402 (July 29, 1986).

First was in answer to the question of "[whether] martial law automatically give[s] the President the power of legislation through decrees,"[10] to which Father Bernas answered in the negative. He explained that, "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 [Marcos] martial law."[11] Simply put, Father Bernas mentioned the "theater of war" only to make it clear that under the 1987 Constitution, a declaration of martial law does not automatically grant the President the power to legislate, as the 1987 Constitution expressly provides that "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."[12]

Second was in response to the suggestion of deleting the phrase "where civil courts are able to function." Father Bernas rejected this suggestion as the phrase delimits the effects of martial law so that the "practice under the Marcos regime where military courts were given jurisdiction over civilians"[13] would not happen again. He explained that during martial law, the Commander-in-Chief has no power to confer jurisdiction on military courts and agencies over civilians, except in a "theater of war" or in the area where there is actual war because of which the civil courts are unable to function.

Considering that the framers of the 1987 Constitution only mentioned the term "theater of war" in the context of describing

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[10] *Supra* note 8.

[11] *Id*.

[12] Paragraph 4 of Section 18, Article VII of the 1987 Constitution.

[13] *Supra* note 9 at 402.

and defining the powers of the President during martial law, it is highly specious for petitioners to use the same to support its theory. In fact, the Court in *Lagman* quoted the same portions of the deliberations only to describe what happens during a state of martial law. Thus, contrary to the view of petitioners, there is nothing in the 1987 Constitution that limits the scope of martial law to the actual "theater of war." As the Court has declared in *Lagman*, the discretion to determine the territorial coverage of martial law lies with the President,[14] subject of course to the safeguards laid down in Section 18, Article VII of the 1987 Constitution.

Public Safety Requirement

As to the second requirement, petitioners assert that the public safety contemplated in Section 18, Article VII of the 1987 Constitution "entails a breakdown of civilian government"[15] or "a vacuum in civilian authorities."[16] Such assertion has no legal basis as there is nothing in the 1987 Constitution and in the records of the deliberations of the Constitutional Commission to indicate that such was the intended definition of the framers. Besides, unless technical terms are employed, words used in the Constitution should be given their ordinary meaning and as much as possible its language should be understood in its common usage.[17] Thus, in *Lagman*, the Court defined public safety simply as one that "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."[18]

With this definition and in light of the factual circumstances indicated in the letter of the President and the Resolution of Both Houses No. 4, I believe that public safety requires the

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[14] *Supra* note 1.

[15] Memorandum for Petitioners Monsod, *et al*., pp. 51-54.

[16] Memorandum for Petitioners Rosales, *et al*., pp. 17-19.

[17] *Bayan v. Zamora*, 396 Phil. 623, 657 (2000).

[18] *Supra* note 1.

extension of martial law. Undeniably, the acts of violence committed, and being committed, by the rebels in various areas in Mindanao continue to endanger the lives of the people in Mindanao.

Period of Extension

Finally, as to the period of extension, Section 18, Article VII of the 1987 Constitution states that, "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 provision is clear: the determination of the period of the extension, as well as the number of extensions, lies with the Congress.

In view of the foregoing, I vote to **DISMISS** the Petitions and **AFFIRM** the constitutionality of Resolution of Both Houses No. 4.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

Before the Court are consolidated petitions[1] which assail the sufficiency of the factual basis of Resolution of Both Houses No. 4[2] dated December 13, 2017,[3] that further extended the

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[1] There are four (4) petitions filed assailing the martial law extension. The Petition in G.R. No. 235935 was filed on December 27, 2017, while the Petition in G.R. No. 236061 was filed on January 8, 2018. Petitions in G.R. No. 236145 and G.R. No. 236155 were both filed on January 12, 2018.

[2] Entitled "RESOLUTION OF BOTH HOUSES FURTHER EXTENDING PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED "DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO" FOR A PERIOD OF ONE (1) YEAR FROM JANUARY 1, 2018 TO DECEMBER 31, 2018."

[3] See Annex "A" of Memorandum for the Petitioner in G.R. No. 236145 dated January 24, 2018.

effectivity of Proclamation No. 216,[4] entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao,"[5] from January 1, 2018 to December 31, 2018. Pertinent portions of this Resolution read:

> WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines "to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution";
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> WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;
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[4] Issued on May 23, 2017.

[5] See Annex "1" of the Comment of respondents dated January 8, 2018.

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao: Now, therefore, be it

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

I. Parameters of Review.

At the onset, it should be pointed out that the Court's parameter of review over this case remains the same as its parameter of review over President Rodrigo Roa Duterte's (the President) initial proclamation of martial law, as was undertaken by this Court in the consolidated cases of *Representatives Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea*, *Executive Secretary*, *et al*., G.R. Nos. 231658, 231771, and 231774 (*Lagman v. Medialdea*).[6] Section 18, Article VII of the 1987 Constitution (Section 18, Article VII) vests unto this Court special jurisdiction to review, in an appropriate proceeding filed by any citizen, not only the **sufficiency of the factual basis** of the proclamation of martial law, but also "the extension thereof," *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

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[6] See Decision in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, July 4, 2017. The Resolution on the motion for reconsideration was promulgated on December 5, 2017.

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. (Emphases and underscoring supplied)

In my Separate Opinion in *Lagman v. Medialdea*, I have explained that the term "sufficient factual basis" under Section 18, Article VII is a conceptually novel and distinct parameter of review, which should not be equated to the gauge of arbitrariness (as in the standard of grave abuse of discretion in *certiorari* cases) but should, instead, be construed in its generic sense – that is, adequate proof of compliance with the constitutional requisites. Thus, insofar as reviewing the President's proclamation of martial law, the parameter and its underlying considerations were summed up as follows:

> [T]he 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.
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> 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.[7]

Although the parameter of review remains the same, the object of review in this case is different. Here, the object of review is not the President's initial proclamation of martial law – as

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[7] See my Separate Opinion in *Lagman v. Medialdea*, *id*., p. 22.

in Proclamation No. 216 decided in *Lagman v. Medialdea* – but rather, the Congress' extension of the President's martial law proclamation, as embodied in Resolution of Both Houses No. 4 dated December 13, 2017. As such, there is no reason to apply the principle of conclusiveness of judgment as respondents would suppose.[8]

Notably, while Congress had, in fact, earlier extended Proclamation No. 216[9] through Resolution of Both Houses No. 2[10] dated July 22, 2017,[11] the Constitution does not proscribe any limitation on either (*a*) the number of times an extension may be made, or (*b*) the duration of time for which a particular extension may be made. Thus, contrary to petitioners' postulation,[12] Congress is not precluded from either extending martial law for a second time or extending martial law for a period of more than sixty (60) days.

Pursuant to Section 18, Article VII, the power to extend martial law belongs to Congress; however, the exercise of this power is "[u]pon the initiative of the President":

> 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

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[8] See Comment of respondents dated January 8, 2018; pp. 8-10; and Memorandum for the Respondents dated January 24, 2018, pp. 38-40.

[9] Proclamation No. 216 was to end on July 22, 2017, or the last day of the sixty (60)-day period provided under Section 18, Article VII. Pursuant to Resolution of Both Houses No. 2 dated July 22, 2017, Proclamation No. 216 was originally extended until December 31, 2017.

[10] Entitled "RESOLUTION OF BOTH HOUSES EXTENDING UNTIL 31 DECEMBER 2017 PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED "DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO."

[11] See Annex "B" of the Petition in G.R. No. 235935.

[12] See discussions in the Petitions: G.R. No. 235935, pp. 20-25; and G.R. No. 236061, pp. 28-30.

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**.

x x x x x x x x x (Emphasis and underscoring supplied)

Being a power specifically conferred unto Congress, it is not bound by the recommendation of the President regarding any proposed extension; thus, it may engage in its own independent examination on the matter, and consequently, may arrive at its own reasons in deciding on whether or not to extend martial law. In this sense, Congress – being composed of the duly-elected representatives of the people – acts as a legislative body in deciding whether or not to extend martial law in our country, and necessarily, if an extension is so decided, sets the extension's terms as it deems fit.

However, as observed during the deliberations on the 1987 Constitution, Congress' decision-making process would necessarily be in consultation with the President.[13] This is because

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[13] THE PRESIDENT. Commissioner Azcuna is recognized.

MR. AZCUNA. Thank you, Madam President.

I would like to offer an amendment to Section 15, line 7 of page 7. After the word "or," insert a comma (,) and add the phrase: AT THE INSTANCE OF THE PRESIDENT, so that the amended portion will read: "may revoke such proclamation or suspension which revocation shall not be set aside by the President, or AT THE INSTANCE OF THE PRESIDENT extend the same if the invasion or rebellion shall persist and public safety requires it.

it is the President who not only seeks the proclamation's extension but also ultimately possesses the information and expertise to deal with a persisting invasion or rebellion. As pointed out in *Lagman v. Medialdea*:

"It is for the President as Commander-in-Chief 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." Significantly, respect to these so-called classified documents is accorded even "when the authors of or witnesses to these documents may not be revealed."

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.[14]

While Congress makes the final decision, this necessary interaction between the political branches of government shows

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May we know the reaction of the Committee? The reason for this, Madam President, is that the extension should not merely be an act of Congress but should be requested by the President. Any extension of martial law or the suspension of the privilege of the writ of *habeas corpus* should have the concurrence of both the President and Congress. Does the Committee accept my amendment?

MR. REGALADO. The Committee accepts that amendment because it will, at the same time, solve the concern of Commissioner Suarez, aside from the fact that this will now be a **joint executive and legislative act**.

x x x x x x x x x

MR. OPLE. May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that [sic] point was going to be a collective judgment between the President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS. Not really, Madam President, **because Congress would be doing this in consultation with the President**, and the President would be outvoted by about 300 Members.

MR. OPLE. Yes, but still **the idea is to preserve the principle of collective judgment** of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

[14] See *Lagman v. Medialdea*, *supra* note 6, p. 68.

that the entire process of extending the proclamation of martial law is – as described by the Framers – a "joint executive and legislative act,"[15] animated by the "principle of collective judgment."[16]

Meanwhile, same as reviewing the President's power to proclaim martial law, the Court acts as a check to the Congress' power to extend martial law. In the latter respect, the Court's task, upon the institution of the appropriate proceeding by any citizen, is to determine if there is sufficient factual basis to show that: (*a*) the invasion or rebellion still persists; and (*b*) public safety requires the extension. Pursuant to Section 18, Article VII of the 1987 Constitution, these two (2) requirements ought to be satisfied by Congress before it may properly decree a martial law extension.

II. Persistence of Rebellion.

In my Separate Opinion in *Lagman v. Medialdea*, I have discussed the unique nature of rebellion and in such light, broached how the concept of "actual rebellion" should be understood under the Constitution's martial law provision:

> [I]n 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**.
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> x x x x x x x x x
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> [T]he crime of rebellion defies our ordinary impression that a crime's occurrence can be pinpointed to a definite territory, much less its

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[15] II RECORD, CONSTITUTIONAL COMMISSION, 508 (July 31, 1986).

[16] *Id*. at 509.

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.[17]

As above-highlighted, it has been my position that a rebellion, because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops, such as when the rebels have already surrendered or that they are caught by government operatives. As it may, however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then a satisfactory showing of the rebel movement's substantial inactivity or loss of capability to mount a public uprising would reasonably suffice.

In this case, however, there is no evidence to show that the rebel movement in Mindanao, comprised of the Maute-Hapilon Group and other rebel groups under the DAESH/ISIS[18] front, has been substantially inactive or has lost the capability to mount a public uprising. On the contrary, respondents have competently proven that these rebels have, in fact, regrouped, thereby demonstrating that the rebellion still persists.

Records show that respondents' determination was arrived at based on field reports and technical data coming from no less than the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). The information gathered by our troops on the ground was then conveyed by the President in his December 8, 2017 letter to Congress:

On 04 December 2017[,] I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator,

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[17] See my Separate Opinion in *Lagman v. Medialdea*, *supra* note 6, pp. 16 and 18.

[18] Acronym of the group's full Arabic name, *al-Dawla al-Islamiya fi al-Iraq wa al-Sham*, translated as "Islamic State in Iraq and Syria." (See Letter to Congress of the President dated July 18, 2017, Annex "D" of the Petition in G.R. No. 236145).

stating that "based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers x x x." A copy of Secretary Lorenzana's letter (together with a copy of the letter of AFP Chief Guerrero) is attached for your convenient reference.[19]

In the same letter, the President summed up the security assessment of the AFP, as supported by the PNP, into five (5) integral points. These points constitute the reasons which impelled the President to seek a further extension of martial law from January 1, 2018 to December 31, 2018:

The security assessment submitted by the AFP, supported by a similar assessment by the Philippine National Police (PNP), highlights certain essential facts that I, as Commander-in-Chief of all armed forces of the Philippines, have personal knowledge of.

First, despite the death of Hapilon and the Maute brothers, the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-large and, in all probability, are presently regrouping and consolidating their forces.

More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/ reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support

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[19] See Letter dated December 8, 2017 of the President; Annex "E" of the Petition in G.R. No. 236145, p. 2.

of their objective of establishing the foundation of a global Islamic caliphate and of a *Wilayat* not only in the Philippines but also in the whole of Southeast Asia.

Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH [*Wilayat*] in the Philippines and Southeast Asia.

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) [continues] to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.

Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.

x x x x x x x x x[20] (Emphases and underscoring supplied)

Notably, Congress adopted these same considerations as evinced from the text of Resolution of Both Houses No. 4:

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[20] See *id*. at 2-3.

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting, the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters [continues] to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule[.]

As correctly observed by the *ponencia*, "[t]he reasons cited by the President in his request for further extension [of martial law] indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its 'remnants' have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces[,] and continued attacks."[21] These "remnants", as explained by the respondents, "are capable of launching retaliatory attacks against the Government and sowing acts of terrorism against the civilian population to wrest control of Mindanao and continue their bid to establish a *wilayah* in the region. In addition, they have established linkages with other rebel groups such as the BIFF, AKP, ASG, DI Maguid, DI Turaifie who are capable of perpetrating strategic and well-

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[21] *Ponencia*, p. 40.

coordinated mass casualty attacks to overthrow the present government."[22]

As further elaborated upon by the AFP during the oral arguments of this case, the manpower of the *Dawlah Islamiyah*, which is the DAESH-affiliate organization in the Philippines responsible for the Marawi Siege and is composed of several local terrorist groups, "increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the [DAESH]-inspired groups at their respective areas of concentration."[23] "These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives and parents during the Marawi operations; financial gain as new recruits were given an amount ranging from Php15,000.00 to Php50,000.00; [and] as radicalized converts."[24] Furthermore, the AFP has expressed concerns that "the situation has [in fact] become [more] complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 [FTFs] were monitored joining the [DAESH]-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with Abu DAR who has historically established link with Turaifie."[25]

Based on this information, it is thus highly apparent that the rebellion subject of Proclamation No. 216 still persists. Petitioners did not only fail to refute the data presented to this Court by the government, but more so, have mistakenly equated the end of the rebellion with the so-called liberation of Marawi City. While it is true that the President had himself declared the

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[22] See Memorandum for the Respondents dated January 24, 2018, p. 30.

[23] Statement of AFP Deputy Chief of Staff for Intelligence Major General Fernando Trinidad during a Power Point briefing in the Oral Arguments, TSN, January 17, 2018, pp. 58-59.

[24] *Id*.

[25] *Id*. at 60.

liberation of Marawi City on October 17, 2017,[26] this declaration only signifies the fact that the actual firefighting between the rebels and government forces in the said city had been halted. However, as stated in my Separate Opinion in *Lagman v. Medialdea*, the rebellion survives in legal existence up until the rebellious movement stops.[27] The cessation of the actual exchange of fire between the rebels and government forces is not enough to declare an end to the rebellion as these rebels may as well regroup and shore up their strength, as in fact, what happened in this case. Besides, as aptly noted by the *ponencia*, the announced liberation of Marawi City (on October 17, 2017) was made "nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through its monitoring efforts."[28] As held in *Lagman v. Medialdea*, "Congress may take into consideration not only data available prior to, but likewise events supervening the declaration."[29]

To clarify, these supervening events should not only pertain to the regrouping efforts of the aforestated rebel "remnants" but also the inclusion of other rebel groups, such as the BIFF, the Turaifie Group and the NPA, whose rebellious activities during the supervening period may have amplified – if not, complicated – the situation. As the Constitution reads, the persistence of an invasion or rebellion (together with the public requirement) is sufficient for an extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation. If such were the case, then (*a*) the Constitution would have so stated or the Framers would have so discussed this requirement; or (*b*) the President would

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[26] Petition (G.R. No. 235935), p. 4; Petition (G.R. No. 236061), p. 10; Petition (G.R. No. 236145), p. 5; and Petition (G.R. No. 236155), p. 12.

[27] See my Separate Opinion in *Lagman v. Medialdea*, *supra* note 6, p. 16.

[28] *Ponencia*, p. 43.

[29] See *Lagman v. Medialdea*, *supra* note 6, p. 28.

have to impractically issue a separate martial law proclamation just to cover the supervening activities of other rebel groups when, in reality, the government has to deal with the entire impact of a state of rebellion.

Besides, while not specifically identified in Proclamation No. 216, the President mentioned of "other rebel groups" therein and had, in fact, considered the siege of Marawi City as a demonstration of the capability of the Maute Group, as well as of these "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."[30] As such, it can be reasonably inferred that the identification of the Maute Group in Proclamation No. 216 was not meant to be exclusive. In this relation, the Court in *Lagman v. Medialdea*, had, in fact, recognized "the widespread atrocities in Mindanao and the linkages established among rebel groups," concluding that "the armed uprising that was initially staged in Marawi cannot be justified as confined only to Marawi."[31] Thus, the President and the Congress' consideration of these other rebel groups, while not specifically named in Proclamation No. 216, should be deemed as reasonable. Finally, while the NPA has been recognized to be a "decades-long rebellion," the *ponencia* correctly states that its "'intensified' insurgence clearly bears a significant impact on the security of Mindanao and the safety of its people, which were the very reasons for the martial law proclamation and its initial extension."[32] Thus, the NPA's inclusion should not render the subject extension void.

III. Public Safety Requires the Extension of Martial Law.

The Constitution not only requires the persistence of rebellion but also, that public safety still requires its extension. As earlier

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[30] 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. (See Proclamation No. 216.)

[31] See *Lagman v. Medialdea*, *supra* note 6, p. 78.

[32] *Ponencia*, p. 49.

stated, not only does Congress have the power to decide whether or not to extend a proclamation of martial law, it also has the power to dictate the terms of extension, which includes, of course, the extension's length.

In my Separate Opinion in *Lagman v. Medialdea*, I have discussed that "the second requirement [on public safety] 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."[33] However, I have qualified that "our deference x x x must be circumscribed within the bounds of truth and reason[:]"[34] truth relates to the Court's duty to ascertain the veracity of the facts presented by the government, whereas reasonableness may be determined through an overall appreciation of the surrounding circumstances. With respect to the latter, the Court may consider "the reported armed capabilities, resources, influence, and connections of the rebels"; "the historical background of the rebel movement"; and further, "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."[35]

In this case, the President requested Congress to extend martial law over the entire Mindanao from January 1, 2018 to December 31, 2018 based on his prudential estimation that it would take such period of time to quell the rebellion:

> A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will help the AFP, the [PNP], and all other law enforcement agencies to quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country. Public safety indubitably requires such further extension,

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[33] See my Separate Opinion in *Lagman v. Medialdea*, *supra* note 6, p. 12.

[34] See *id*. at 20.

[35] See *id*. at 21.

not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.

For all these reasons, I ask the Congress of the Philippines to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution.[36]

After due deliberation, Congress had overwhelmingly acceded to this request, thereby showing its deference to the President as this country's chief military strategist:

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao: Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session Assembled, To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018.[37]

As explained by Associate Justice Marvic M.V.F Leonen in his Dissenting Opinion in *Lagman v. Medialdea*, "Congress deals primarily with the wisdom behind the proclamation x x x" and "**[m]uch deference is x x x accorded to [it] x x x when**

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[36] See Letter dated December 8, 2017 of the President, Annex "E" of the Petition in G.R. No. 236145, p. 5.

[37] See Resolution of Both Houses No. 4 dated December 13, 2017, Annex "A" of the Memorandum for the Petitioner in G.R. No. 236145.

it comes to determining the wisdom behind the imposition or continued imposition of martial law or the suspension of the writ."[38]

The *ponencia* finds that "[t]he facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it."[39] As detailed in the *ponencia*, the following circumstances and events demonstrate the public necessity to extend martial law over the entire Mindanao:

> (a) No less than 185 persons in the Martial Law Arrest Orders have remained at large. Remnants of the Hapilon and Maute groups have been monitored by the AFP to be reorganizing and consolidating their forces in Central Mindanao, particularly in Maguindanao, North Cotabato, Sulu and Basilan, and strengthening their financial and logistical capability.
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> (b) After the military operation in Marawi City, the Basilan-based ASG, the Maute Group, the Maguid Group and the Turaifie Group, comprising the DAESH-affiliate Dawlah Islamiyah that was responsible for the Marawi siege, was left with 137 members and a total of 166 firearms. These rebels, however, were able to recruit 400 new members, more or less, in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.
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> (c) The new recruits have since been trained in marksmanship, bombing and tactics in different areas in Lanao del Sur. Recruits with great potential are trained in producing Improvised Explosive Devices (IEDs) and urban operations. These new members are motivated by their clannish culture, being relatives of terrorists, by revenge for relatives who perished in the Marawi operations, by money as they are paid ₱15,000.00 to ₱50,000.00, and by radical ideology.
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> (d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits. Foreign terrorists, from Southeast Asian countries, particularly from Indonesia and Malaysia, will continue to take advantage of the porous borders of the Philippines and enter

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[38] See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen in *Lagman v. Medialdea*, *supra* note 6, p. 20; emphasis and underscoring supplied.

[39] *Ponencia*, p. 57.

the country illegally to join the remnants of the DAESH/ISIS-inspired rebel groups.

(e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Sarangani province. In December 2017, 16 Indonesian DAESH-inspired FTFs entered the Southern Philippines to augment the ASG-Basilan and Maute groups in the Lanao province. In January 2018, an unidentified Egyptian DAESH figure was monitored in the Philippines.

(f) At least 32 FTFs were killed in the Marawi operations. Other FTFs attempted to enter the main battle area in Marawi, but failed because of checkpoints set up by government forces.

(g) "The DAESH-inspired DIWM groups and their allies continue to visibly offer armed resistance in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City." There were actually armed encounters with the remnants of said groups.

(h) "Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype [Turaifie], and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga, and Cotabato."

(i) The Turaifie [G]roup conducts roadside bombings and attacks against government forces, civilians and populated areas in Mindanao. The group plans to set off bombings in Cotabato.

(j) The Maute Group, along with foreign terrorists, were reported to be planning to bomb the cities of Zamboanga, Iligan, Cagayan de Oro and Davao.

(k) The remaining members of the ASG-Basilan have initiated five violent attacks that killed two civilians.

(l) In 2017, the remnants of the ASG in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula, conducted 43 acts of violence, including IED attacks and kidnapping which resulted in the killing of eight innocent civilians, three of whom were mercilessly beheaded. Nine kidnap victims are still held in captivity.

(m) Hapilon's death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve the common goal of establishing a

DAESH-ISIS *wilayat* in Mindanao. This likely merger may spawn retaliatory attacks such as IED bombings, in urban areas, particularly in the cities of Zamboanga, Isabela and Lamitan.

(n) By AFP's assessment, the ISIS' regional leadership may remain in the Southern Philippines and with the defeat of ISIS in many parts of Syria and Iraq, some hardened fighters from the ASEAN may return to this region to continue their fight. The AFP also identified four potential leaders who may replace Hapilon as emir or leader of the ISIS forces in the Philippines. It warned that the Dawlah Islamiyah will attempt to replicate the Marawi siege in other cities of Mindanao and may conduct terrorist attacks in Metro Manila and Davao City as the seat of power of the Philippine Government. With the spotlight on terrorism shifting from the Middle East to Southeast Asia following the Marawi siege, the AFP likewise indicated that the influx of FTFs in the Southern Philippines will persist. The AFP further referred to possible lone-wolf attacks and atrocities from other DAESH-inspired rebel groups in vulnerable cities like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.[40]

Petitioners, for their part, have failed to disprove the occurrence of the foregoing circumstances and events. They instead, harp on the allegation that due to the liberation of Marawi City, martial law is not anymore necessary to preserve the public's safety.[41] Clearly, such narrow reasoning cannot prevail over the President and the Congress' holistic appreciation of the case. With intelligence reports showing that the Maute Group has, in fact, regrouped and that other rebel groups have either linked with the DAESH/ISIS front or have taken advantage of the situation and intensified their operations, the threat to public safety undoubtedly remains present. As to whether or not the objective of resolving such threat can be achieved in one (1) year – to my mind – this Court is hardly competent to provide a precise estimation. The Court's task is to determine the sufficiency of the extension's factual basis and in so doing,

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[40] *Id.* at 50-53.

[41] See Petition (G.R. No. 235935), p. 4; Petition (G.R. No. 236061), p. 10; Petition (G.R. No. 236145), p. 5; and Petition (G.R. No. 236155), p. 12.

(*a*) vet if the facts presented are true, and (*b*) assess if the decreed extension is reasonable. As earlier intimated, if the President's estimation does not appear to be implausible or farfetched, then this Court should defer to his plan of action, especially so since Congress has further given its assent. Notably, AFP Chief of Staff General Rey Leonardo Guerrero asked this Court during the oral arguments of this case to trust their years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions which may spell the difference between life and death.[42] In this case, no cogent cause has been shown for this Court to deny this trust to its co-equal branches of government.

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[42] General [Rey Leonardo] Guerrero:

Thank you, Your Honor. If I may be allowed to respond[.]

Yes, Your Honor, it has been a challenge[.] [I]t's been challenging to answer to [*sic*] your questions propounded here before me because, clearly, Your Honor, what is expected of me is to try to dissect definitions of sections about how the military operates[,] [w]hen in truth and in fact, Sir, the military operates in a manner that is hard to explain to legal minds, [and] to people from the other professions. We based our decisions partly on information that we gather[.] [I]n some instances, [they] are imperfect. We take risks [–] calculated risks, and normally we also rely on our gut feel, which is for many people probably would not understand. But our gut feel is based on our years of experience in the field, in combat[,] or we make decisions in a split of a second. Our decision could necessarily result in the loss of lives, destruction of property. This afternoon, Your Honors, we presented to you the reasons why we [are] recommending for the extension of martial law. We provided you with the factual basis of the existence of rebellion in Mindanao. And as to the powers that you are referring to, the powers that we need, it is upon you, what powers you will give us. We are not asking for any powers, Your Honor. But clearly[,] with the implementation of martial law, you have been abled us, you have been able to provide us with the much needed support that we have been longing for, for us to be successful in our campaign and we have done that in Marawi. And if you will allow us, we will continue to do that and finish our job. We are not asking for any extra powers, Your Honors.

x x x x x x x x x

What we are asking is for you to trust us[, t]he people in Marawi, the people in Mindanao[, t]hat we have been able to talk to clearly understand the situation of the military in so far as our performance of our mission is concerned. We hope that your will also understand our situation. x x x. (TSN, Oral Arguments dated July 17, 2018, pp. 157-158.)

Thus, considering that there exists sufficient factual basis to show that the rebellion still persists and that public safety requires the extension of martial law under the terms stated in Resolution of Both Houses No. 4 dated December 13, 2017, I vote to **DISMISS** the consolidated petitions.

SEPARATE OPINION

MARTIRES, *J.*:

I vote to dismiss all the petitions.

In his letter[1] addressed to President Rodrigo Roa Duterte (*President Duterte)*, thru the Secretary of the Department of National Defense (*DND*), the Armed Forces of the Philippines (*AFP*) Chief of Staff General Rey Leonardo B. Guerrero (*Gen. Guerrero*) recommended, for compelling reasons based on current security assessment, the further extension of martial law and the suspension of the privilege of the writ of habeas corpus for twelve (12) months beginning 1 January until 31 December 2018 in the whole island of Mindanao. The reasons cited by Gen. Guerrero in his letter to justify his recommendation were as follows:

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

2. Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraifie, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga, and Cotabato;

3. The CTs have been pursuing and intensifying their political mobilization (army, party, and mass base building, rallies, pickets and demonstrations, financial and logistical buildup), terrorism against innocent civilians and private entities, and guerilla warfare against the security sector and public government infrastructures;

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[1] Annex "C-2" of the Petition in G.R. No. 235935.

4. The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;

5. The threats being posed by the CTs, the ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery, and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development, and prosperity in Mindanao;

6. The second extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of habeas corpus in Mindanao will significantly help not only the AFP, but also the other stakeholders in quelling and putting an end to the ongoing DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety and stability in Mindanao; and

7. In seeking another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done for the whole duration of Martial Law to date, without any reported human rights violation and/or incident of abuse of authority.

On 1 December 2017, DND Secretary Delfin N. Lorenzana (*Sec. Lorenzana*) wrote President Duterte recommending the further extension of martial law for a period of one year beginning 1 January until 31 December 2018 "covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), the communist terrorists (CTs) and their coddlers, supporters, and financiers, to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development, and prosperity in Mindanao."[2]

In his letter[3] dated 8 December 2017, President Duterte informed the Senate and the House of Representatives about

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[2] Annex "C-1" of the Petition in G.R. No. 235935.

[3] Annex "E" of the Petition in G.R. No. 236145.

the letters he received from Sec. Lorenzana and Gen. Guerrero. President Duterte stated in his letter that, as Commander in Chief, he has personal knowledge of the security assessment submitted by the AFP and which was supported by a similar assessment by the Philippine National Police (PNP), to wit:

> First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at large and, in all probability, are presently regrouping and consolidating their forces.
>
> More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters, and sympathizers, have been monitored in their continued efforts towards the radicalization/recruitment, financial and logistical build up, as well as in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. **These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and a Wilayat not only in the Philippines but also in the whole of Southeast Asia.**
>
> Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia.
>
> Third, the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government by perpetrating at least fifteen (15) violent incidents during the martial law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassment and roadside bombings against government troops.
>
> Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings

which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, **purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.**

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Corollary to the above assessments, President Duterte asked that the Congress further extend martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) year, i.e., from 1 January to 31 December 2018, or for such other period of time as the Congress may determine in accordance with Section (*Sec.*) 18, Article (*Art.*) VII of the 1987 Constitution. President Duterte offered the following explanation:

A further extension of the implementation of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao will help the AFP, the x x x PNP, and all other law enforcement agencies to quell completely and put an end to the ongoing rebellion in Mindanao and prevent the same from escalating to other parts of the country. Public safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.

In the Resolution of Both Houses (*RBH*) No. 4,[4] dated 13 December 2017, the Senate and the House of Representatives approved President Duterte's request for another extension of

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[4] Annex "5" to the Consolidated Comment of the Office of the Solicitor General in G.R. Nos. 236061, 236145, and 236155.

martial law and the suspension of the privilege of the writ of habeas corpus for the period 1 January to 31 December 2018.

Hence, the present petitions.

In G.R. No. 235935, petitioners anchored their petition on the following:

I.

The leadership and supermajority of both chambers of the Congress of the Philippines baselessly and with brazen alacrity acceded to the President's initiative of extending the duration of martial law in Mindanao for one full year by relying on the mere say-so of the military and police authorities on the purported "continuing rebellion" by remnants of terrorist groups in Mindanao.

II.

The leadership of the House of Representatives and of the Senate, as supported by the supermajority, unduly constricted the period of deliberation and interpellation on the President's request for extension of martial law to an indecent three hours and 35 minutes for considering favorably an extension which will endure for 8,760 hours in 2018 in the entire Mindanao.

III.

The threats of violence and terrorism alleged by the President, Philippine National Police (PNP) and Armed Forces of the Philippines (AFP) from remnants of the terrorist groups do not constitute a constitutional ground for the re-extension of martial law in Mindanao.

IV.

The extension of one year from January 1, 2018 to December 31, 2018 of the period of martial law in Mindanao defies the Constitution's unmistakable mandate of a limited duration of the declaration of martial law and its extension.

V.

The leadership and supermajority of both Chambers of the Congress of the Philippines wantonly violated and exceeded the congressional authority under the Constitution for a one-time extension of the original proclamation (Proclamation No. 216), and not to re-extend a previous extension or grant a series of extensions amounting to "perpetuity."

VI.

Verily, the approval of the extension of martial law and the suspension of the writ of habeas corpus in Mindanao utterly lacks sufficient factual basis because there is no actual rebellion in Mindanao and the re-extension is extremely long even as the approval was made with undue haste and unscrupulous imprudence.

VII.

The leadership and supermajority of both Chambers of the Congress of the Philippines in extending martial law and the suspension of the writ of habeas corpus in Mindanao committed grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII.

While martial law does not confer any significant additional powers to the President as well as to the military and police establishments, its imposition and extension emboldens government forces to indiscriminately attack and kill perceived enemies of the State and conduct warrantless arrests, searches and seizures even as the civilian courts are functioning.

IX.

Without extending martial law in Mindanao, the President has the constitutional power as Commander in Chief to call out all the armed forces to prevent or suppress lawless violence, invasion or rebellion in Mindanao.

In G.R. No. 236061, petitioners raised this sole issue:

THE PRIMORDIAL ISSUE IS WHETHER THERE IS SUFFICIENT FACTUAL BASIS FOR THE ONE-YEAR EXTENSION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE ENTIRE MINDANAO.

Petitioners in G.R. No. 236145 tried to fortify their petition through the following premises:

I.

THE INSTANT PETITION SATISFIES THE REQUISITES FOR THE EXERCISE OF THE HONORABLE COURT'S POWER OF JUDICIAL REVIEW.

II.

THE HONORABLE COURT MUST TEST THE CONSTITUTIONALITY OF THE EXTENSION OF PROCLAMATION NO. 216 IN ACCORDANCE WITH THE MEANING AND PURPOSE OF MARTIAL LAW AS INTENDED BY THE CONSTITUTIONAL COMMISSION, AND AS ARTICULATED BY THE HONORABLE COURT IN *LAGMAN V. MEDIALDEA*.

III.

ABSENT AN ACTUAL INVASION OR REBELLION, THERE CAN BE NO SUFFICIENT FACTUAL BASIS FOR THE CONTINUED IMPOSITION OF MARTIAL LAW IN MINDANAO

In G.R. No. 236155, the petitioners raised the following justifications to grant their petition, to wit:

A.

THE HONORABLE COURT HAS THE POWER AND CONSTITUTIONAL MANDATE TO INDEPENDENTLY DETERMINE THE SUFFICIENCY OF THE FACTUAL BASES FOR THE EXTENSION OF PROCLAMATION NO. 216 AND IF IT SO DETERMINES, NULLIFY THE SAME.

B.

THE PRESIDENT'S REQUEST FOR, AND CONGRESS' SUBSEQUENT JOINT RESOLUTION TO FUTHER EXTEND THE EFFECTIVITY OF PROCLAMATION NO. 216 UNTIL 31 DECEMBER 2018, LACK SUFFICIENT FACTUAL BASIS, AND ARE THEREFORE NULL AND VOID.

DISCUSSION

The President is immune from suit during his tenure.

We note that in G.R. Nos. 236061 and 236145, President Duterte was named as a respondent.

Jurisprudence dictates that the presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987

Constitution.[5] Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J., observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure.[6] The President is granted the privilege of immunity from suit to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that the position of Chief Executive of the Government requires all of the office-holder's time and demands undivided attention to his duties as Head of State.[7] This ruling was further amplified in *David v. Macapagal-Arroyo*,[8] *viz*:

> Incidentally, it is not proper to implead President Arroyo as respondent. Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in *any* civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.

Considering the foregoing, President Duterte should be dropped as respondent in G.R. Nos. 236061 and 236145.

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[5] *Aguinaldo v. Aquino*, G.R. No. 224302, 29 November 2016.

[6] *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37 (2010).

[7] *Aguinaldo v. Aquino*, *supra* note 5.

[8] 522 Phil. 705 (2006).

The act of declaring martial law differs from the act of extending martial law.

Sec. 18, Article VII of the 1987 Constitution reads:

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 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.

The act pertaining to the declaration of martial law differs from the extension of martial law. The act of declaring martial law is an executive act, i.e.*, the President as the Commander in Chief of all armed forces of the Philippines, whenever it becomes necessary, may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion*. The act of declaring martial law is the sole prerogative of the President.

The act of extending martial law on the one hand, is a joint executive-legislative act brought into motion by the initiative of the President. The extension of martial law is given life because the Congress voting jointly, by a vote of at least a majority of all its Members in regular or special session, has determined that actual invasion or rebellion persists, and that public safety requires it. This conforms to the constitutional requirement that it should be "*in the same manner*" that the Congress undertook its legislative review of the declaration of martial law that it should determine whether or not to extend martial law. It must be stressed, however, that Congress cannot *motu proprio* extend martial law as it must first await the request of the President stating the need for the extension, i.e., *upon the initiative of the President*.

On record is Proclamation No. 216[9] issued by President Duterte, on 23 May 2017, through Executive Secretary Salvador Medialdea, declaring the state of martial law in the Mindanao group of islands for a period not exceeding sixty days.[10] On the one hand, in view of the President's initiative, the Congress issued RBH Nos. 2 and 4[11] whereby the Senate and the House

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[9] Entitled "Declaring a State of Martial Law and Suspending the Writ of *Habeas Corpus* in the whole of Mindanao."

[10] Annex "1" to the Comment of the Office of the Solicitor General in G.R. No. 235935.

[11] Entitled "Resolution of both Houses Further Extending Proclamation No. 216, series of 2017, Entitled 'Declaring a State of Martial Law and

of Representatives resolved to further extend Proclamation No. 216 until 31 December 2017, and from 1 January to 31 December 2018, respectively.

The act of declaring martial law is subject to an automatic review by Congress, i.e., *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.* Hence, extant from the records are Senate Resolution No. 49[12] and House Resolution No. 1050[13] which documented the final determination of both bodies, in the exercise of their automatic review power, not to revoke Proclamation No. 2016.

Since the matter of extending martial law is an act of Congress, it would be absurd that the same body would subject its determination to its own review. It is only logical to deduce that the Congress, voting jointly, had already threshed out all the issues and concerns before coming to a decision on whether or not to extend martial law.

The duration of martial law as declared by the President should not exceed sixty (60) days, while the life span of an extension of martial law would be subject to its determination by Congress. But whether it is an executive or joint executive-legislative act, martial law can only be justified by the existence of an actual invasion or rebellion and that public safety should require it. It is in this stage that the wisdom of the Court is summoned when it is asked to review, in an appropriate proceeding filed

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Suspending the Writ of *Habeas Corpus* in the whole of Mindanao' for a period of one year from January 1, 2018 to December 31, 2018."

[12] Entitled "Resolution expressing the sense of the Senate not to revoke at this time Proclamation No. 216, series of 2017 Entitled 'Declaring a State of Martial Law and Suspending the Writ of *Habeas Corpus* in the whole of Mindanao.'"

[13] Entitled "Resolution 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 Writ of *Habeas Corpus* in the whole of Mindanao.'"

by any citizen, the sufficiency of the factual basis for the proclamation of martial law or the extension thereof. Thus, whether it is an executive act of declaration of martial law or the executive-legislative act for the extension thereof, the Court can always be called upon to review the sufficiency of the factual basis of the proclamation or extension of martial law.

The requisites for the extension of martial law

Considering that the term "rebellion" has not been defined in the Constitution, the Court has deferred to the definition in the Revised Penal Code, *viz*:

> 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 *Lagman v. Medialdea*,[14] the Court held that for rebellion to exist the following must be present: (l) 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.

The Court has ruled that 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. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers."[15] It merely necessitates

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

[15] *Id*.

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. 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."[16] It is in view of this required standard that the Court established the metes and bounds to determine the sufficiency of the factual basis of martial law, *viz*: l) 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.[17]

Having ascertained that it is upon the initiative of the President that Congress undertake a determination on whether the extension of martial law is warranted, the issue that comes to the fore is the resolution of the parameter that should be observed by the august body in making such determination.

To restate, Sec. 18, Art. VII of the 1987 Constitution provides: "x x x 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.**" In observing this provision, there is certainty that the same parameter used in determining the sufficiency of factual basis in the declaration of martial law equally applies to its extension, i.e., l) actual rebellion or invasion persists as required by the Constitution; 2) public safety requires the extension, with the first two requirements present; and 3) there is probable cause for the President and the Congress to believe that actual rebellion or invasion persists.

a. Actual rebellion persists.

Petitioners invariably claim that there is no actual rebellion to support the extension of martial law.

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[16] *Id*., citing the dissenting opinion of J. Carpio in *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526 (2012).

[17] *Id*.

It must be emphasized that in extending martial law, the President and the legislators need only to convince themselves that there is probable cause or evidence showing that more likely than not the rebellion persists.

In his letter dated 8 December 2017, President Duterte stated that the grounds on which he anchored his request for the extension of martial law from 1 January to 31 December 2018 were based on the security assessment submitted by the AFP and the PNP. He claims that he has personal knowledge of the circumstances constituting the security assessment. He clearly acknowledged the persistence of rebellion when he stated that the extension of martial law and the suspension of the writ of habeas corpus will help the AFP, the PNP, and other law enforcement agencies to quell completely the ongoing rebellion in Mindanao and prevent its escalation to other parts of the country. Additionally, the recent developments involving the National Democratic Front, the Communist Party of the Philippines, and the New People's Army (NDF-CPP-NPA) portend intensified armed hostilities, which together with the other security concerns continue to make Mindanao a hotbed for rebellion.

On the one hand, after four hours of discussion and extensive debate, the Congress, in a joint session with two hundred forty affirmative votes comprising the majority of all its members, determined that rebellion persists and that public safety indubitably required the further extension of martial law.[18]

At this point, there is a need to repeat the ruling in *Lagman* 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." That same purpose applies to the present judicial review insofar as it would determine the sufficiency of the factual basis as to convince the President

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[18] RBH No. 4, *supra* note 4.

and the Congress that there is probable cause that rebellion persists.

The records confirm that the President and the Congress have separately determined and were convinced that rebellion persists in Mindanao. The Court cannot supplant its own findings with those made by the President and the Congress because to do so would be tantamount to encroaching on the well-safeguarded and independent dominion of the executive and the legislature.

The contention of the petitioners that the President should have exercised his extraordinary power of calling out the armed forces instead of requesting the extension of martial law, has no basis. The Court cannot tread on this issue as it clearly recognizes that its power of judicial review does *not* extend to calibrating the President's decision as to which extraordinary power to avail of given a set of facts or conditions. To do so would be an incursion into the exclusive domain of the executive and an infringement on the prerogative that solely, at least initially, lies with the President.[19]

In the same vein, the issue as to the duration of the martial law extension is better left to the decision of the Congress considering that the Constitution plainly provides that the august body, in resolving whether or not to extend martial law, shall likewise determine the period for the extension.

The contention that the congressional authority is for a one-time extension of the original proclamation, is without basis. A reading of Sec. 18, Art. VII of the 1987 Constitution evinces that there is nothing that would indicate such limitation. For sure, even the contention that the series of extensions may amount to "perpetuity" is specious considering that there are established parameters for Congress in extending martial law, which extension may even be subject to the Court's judicial review.

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[19] *Lagman v. Medialdea*, *supra* note 14.

b. Public safety requires the extension of martial law.

"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.' 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."[20]

The letter of Pres. Duterte detailing the security assessment by the AFP and the PNP satisfies the public safety requirement for the extension, *viz*:

> First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. *You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at large and, in all probability, are presently regrouping and consolidating their forces.*
>
> *More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters, and sympathizers, have been monitored in their continued efforts towards the radicalization/recruitment, financial and logistical buildup, as well as in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan.* **These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and a Wilayat not only in the Philippines but also in the whole of Southeast Asia.**
>
> *Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area.* Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia.

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[20] *Id*.

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government by perpetrating at least fifteen (15) violent incidents during the martial law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.

Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, ***purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.*** (italics supplied)

Petitioners averred that even President Duterte, in his letter requesting for the extension of martial law, referred to "remnants" of the terrorist groups purportedly recruiting fighters to launch new attacks. Petitioners claimed that "(A)lmost comically, martial law is extended in Mindanao to subdue residual phantoms."

True, the word "remnants" was used by President Duterte in his letter, but this does not mean that the remaining forces of the terrorist groups were not as powerful, or even more powerful as its founders and original fighters. It cannot even be validly claimed that the resolve of the "remnants" to establish a global Islamic caliphate and a *Wilayat* had lessened or was completely shattered when the DAESH-inspired fighters and their leaders were neutralized. On the contrary, the death of their fighters and leaders could even have wrongly enlightened the remnants of the alleged nobleness of their cause and would have converted

this belief into a stronger resolve to continue to fight the government.

The remnants are not specters who do not deserve any attention from the government. The immense havoc created by the DAESH-inspired DIWM, BIFF, and ASG in Marawi is real. The huge number of dead civilians and military personnel, and the vast amount of funds needed to rebuild Marawi cannot be denied. There is the lingering plausibility that greater massive destruction would result after these groups would have regrouped and consolidated their forces. There is even the possibility that the NDF-CPP-NPA, which have successfully sown acts of terrorism in different parts of the country, and the Turaifie group, the potential successor of Hapilon as Amir of DAESH Wilayat in the Philippines and in Southeast Asia, would join the remnants, albeit these groups do not gravitate towards the same goal. And with the assistance of well-funded and highly equipped foreign terrorist groups, it is undeniable that the "remnants" would be a formidable force to reckon with.

Equally significant is the actual need of the government to forthwith contain these terrorist groups in specific areas rather than allow them all over the country. It cannot be denied that it took the government five months to neutralize the DAESH-inspired fighters despite the fact that the terrorist attacks were mostly confined in Marawi. The number of dead civilians and military personnel as well as the huge amount of funds needed to weed out the terrorist groups easily defused whatever victory the government had claimed in neutralizing this terrorist group. Indeed, the ruins in Marawi are painful reminders to the government that its success sadly mirrors the great failures behind it.

The volatile situation in Mindanao right now spawns a good breeding ground for terrorists and their coddlers, supporters, and financiers. The government cannot sit idly by and wait for these terrorist groups to make their move. The arduous task of crushing the terrorist groups must start posthaste otherwise, another victory, though bittersweet it may be, may not be possible at all for the government if these groups are allowed to proliferate all over the country.

The Court has emphasized that time is paramount in situations necessitating the proclamation of martial law or suspension of the privilege of the writ of habeas corpus.[21] Considering that an extension of martial law is ineludibly moored on the existence of an actual rebellion that persists and that public safety requires it, there is a paramount urgency for the President and Congress to act quickly to protect the country.

c. There is probable cause for the President and the Congress to believe that actual rebellion persists.

Records will confirm that both the President and the Congress have separately determined whether actual rebellion persists in Mindanao, and in the process are convinced that there exists probable cause that actual rebellion persists. Worth noting, the President has a wide range of information available to him, and that he 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.[22] The President has the prerogative to share these information with Congress in fortifying his request for the extension of martial law, which information the Court may not even be privy to. Likewise, the Court does not have the same resources available to the President; thus, it is restrained in the exercise of its judicial review power not to "undertake an independent investigation beyond the pleadings."[23]

In stark contrast, petitioners have miserably failed to present evidence that would controvert the records that have swayed the President and the Congress to conclude that rebellion persists.

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[21] *Id*.

[22] *Id*.

[23] *Id*.

In fine, the President and the Congress have successfully discharged their burden as to the sufficiency of the factual basis that convinced them that there was probable cause that rebellion persists.

Judicial review of the declaration of martial law and its extension is pursuant to Sec. 18, Art. VII of the 1987 Constitution.

Jurisprudence[24] has settled that the "appropriate proceeding" referred to in Sec. 18, Art. VII of the 1987 Constitution does not refer to a petition for certiorari pursuant to Sec. 1 or 5 of Art. VIII, *viz*:

> 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.

Clearly, petitioners erred when they invoked Sections 1 or 5, Article VIII of the 1987 Constitution in mooring their assertion that the Senate and the House of Representatives committed grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of their functions.

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[24] *Id*.

Congress is clothed by the Constitution with the authority to determine its rules of proceedings.

Sec. 16(3), Art. VI of the 1987 Constitution reads:

> (3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

It was obviously pursuant to this constitutional provision that the Congress had adopted the rules that governed the Joint Session when it resolved to extend martial law from 1 January to 31 December 2018. Accordingly, the issues raised by the petitioners insofar as they are specifically anchored on the propriety of the rules, are beyond the judicial review of this Court, viz:

The Constitutional right of the Senate to promulgate its own rules of proceedings has been recognized and affirmed by this Court. Thus:

First. Section 16(3), Article VI of the Philippine Constitution states: *"Each House shall determine the rules of its proceedings."*

This provision has been traditionally construed as a grant of full discretionary authority to the House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

x x x. The issue partakes of the nature of a political question which, under the Constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Further, pursuant to his constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.

The only limitation to the power of Congress to promulgate its own rules is the observance of quorum, voting, and publication when required. As long as these requirements are complied with, the Court will not interfere with the right of Congress to amend its own rules.[25] (emphasis supplied)

Petitioners can very well raise the issue on the propriety of the rules of Congress or violation thereof by its members in a proper proceeding, but definitely the present petitions filed pursuant to the Sec. 18, Art. VII of the 1987 Constitution could not be the proper vehicle.

It is for this reason that the Court necessarily has to defer to its above-quoted ruling and decline to rule on whether Congress committed grave abuse of discretion in extending martial law.

Finally, the query: Who is afraid of martial law?

The fear that the present martial rule in Mindanao may lead to a dictatorial regime similar to what transpired when the late President Ferdinand Marcos declared martial law in the entire Philippines in 1972 is speculative and unfounded. The factual milieu and legal environment surrounding the present martial law in Mindanao are totally different from those prevailing during martial rule in 1972.

The declaration of martial law in 1972 was premised on the alleged intensified communist insurgency and perceived threat by the NPA as shown by the alleged series of bombings and assassination attempts throughout the country.[26] This was permitted by Article VII, Section 11 of the 1935 Constitution which provided for justifications for declaration of martial law not present under the 1987 Constitution. In particular, under the 1935 Constitution, the President of the Philippines, as Commander in Chief of the armed forces, may suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law when there is lawless

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[25] *Pimentel v. Senate Committee of the Whole,* 660 Phil. 202 (2011).

[26] Proclamation No. 1081, series of 1972.

violence, invasion, insurrection, or rebellion, when the public safety requires it.

On the other hand, the present martial law in Mindanao is based on the actual threat presented by a local terrorist group aligned with a foreign terrorist organization when they attacked government and other vital facilities, and took over Marawi City. These facts led President Duterte to believe that there was an armed public uprising with the purpose of removing a portion of the territory of the Republic of the Philippines from its allegiance thereto.[27]

Further, while Article VII, Section 11 of the 1935 Constitution gave the President virtually unbridled powers under Martial Law, the same cannot be said under the present Constitution.

Indeed, the unrestricted commander in chief powers under the 1935 Constitution allowed then President Marcos to, among others, place the entire Philippines under martial law for more than eight (8) years from 23 September 1972, until it was officially lifted on 17 January 1981, with the issuance of Proclamation No. 2045, series of 1981; to arrogate unto himself the powers of the legislature; and to authorize military courts to have jurisdiction over civilians. The opportunities for such abuses have been curtailed by the present Constitution.

The 1987 Constitution has already established sufficient safeguards and parameters to prevent government abuse during martial law from happening again.

First, the 1987 Constitution mandates that any declaration of martial law shall be valid only for sixty (60) days and any extension thereof shall require the concurrence of Congress voting jointly, by a vote of at least a majority of all its members.[28] The present martial law in Mindanao was extended twice following this rule.

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[27] *Lagman v. Medialdea*, *supra* note 14.

[28] 1987 Constitution, Article VII, Section 18, par. 1.

Second, the President, even during the effectivity of martial law, cannot assume the legislative powers of Congress, or give the military courts jurisdiction over civilians because a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts, 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.[29] 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 offenses connected with invasion.[30]

The President, through the DND, recognized such limitation and even reminded the Armed Forces of the Philippines, through its Chief of Staff, that "any arrest, search, and seizure executed or implemented in the area or place where Martial Law is effective, including the filing of charges, should comply with the Revised Rules of Court and applicable jurisprudence."[31] This directive only indicates the disposition and willingness of the present administration to follow the rule of law despite the declaration of martial law, and there is no reason for the Court to believe otherwise, unless convincing evidence to the contrary is shown.

In fine, the extraordinary powers enjoyed by President Marcos during the 1972 martial law are no longer available under the 1987 Constitution and therefore could not be applied by President Duterte. Any submission that the present martial rule in Mindanao may just be the means to start a dictatorial regime is speculative at best.

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[29] Sec. 18, par. 4, Art. VII of the 1987 Constitution.

[30] *Lagman v. Medialdea*, *supra* note 14.

[31] Department of National Defense Memorandum, dated 24 May 2017.

CONCURRING OPINION

GESMUNDO, *J.*:

I concur with the *ponencia.*

There is sufficient factual basis for extending the period of martial law

I submit that there is sufficient factual basis to justify the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao for one (1) year.

Congress approved the extension of martial law pursuant to the letter dated December 8, 2017, of President Rodrigo R. Duterte *(President Duterte)*. The said letter, in turn, was based on the letters of AFP General Rey Leonardo B. Guerrero *(General Guerrero)* and Secretary of National Defense Delfin Lorenzana[1] *(Secretary Lorenzana)*, which state:

The AFP strongly believes that on the basis of the foregoing assessment, the following are cited as justification for the recommended extension, to wit:

> The DAESH-Inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western, and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;
>
> Other DAESH-inspired and like-minded threat groups such as [the] BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato;
>
> The CTs have been pursuing and intensifying their political mobilization (army, party and mass base building, rallies, pickets and demonstrations, financial and logistical build up), terrorism against

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[1] Memorandum of the OSG, pp. 4-5.

innocent civilians and private entities, and guerilla warfare against [both] the security sector, and public government infrastructures;

The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;

The threats being posed by the CTs, ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;

The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of *habeas corpus* in Mindanao will significantly help not only the AFP, but also the other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and

In seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial law to date, without any report of human rights violation and/or incident of abuse of authority.[2]

During the oral arguments, General Guerrero presented data which justified the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao, to wit:

After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.

However, manpower increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective area[s] of concentration.

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[2] *Id*.

ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 by the Maute Group in Lanao provinces; 37 by the Maguid Group in Saranggani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain[s] as new recruits were given an amount ranging from Php15,000.00 to 50,000.00; and as radicalized converts.

These newly recruited members are undergoing trainings in tactics, marksmanships and bombing operations at different area of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and businessmen. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with Abu Dar who was historically established link[s] with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester.[3]

As gleaned above, the approval of the extension of martial law in Mindanao is not arbitrary but has sufficient factual basis. It must be remembered that in *Lagman v. Medialdea*[4] *(Lagman),* the Court held that there was sufficient factual basis that actual rebellion exists in Mindanao and that public safety requires martial law, particularly in Marawi where there was intensive firefighting initiated by the Maute Group. Notably, even after President Duterte declared the liberation of Marawi City on October 17, 2017, the Maute Group was still able to recruit new members and increase their number to 250 as of December

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[3] Oral Arguments – *En Banc*, January 17, 2018, pp. 59-60.

[4] G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

2017. Other terrorist groups in Mindanao were able to increase their memberships as well.

General Guerrero stated that the said increase in membership was due to several factors, such as the clannish culture of the groups; revenge for their fallen relatives; and financial gain ranging from ₱15,000.00 to ₱50,000.00. He also pointed out that foreigners have been joining these terrorists group in guise of businessmen or tourists, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao.

Indeed, with these factual bases, the military needs to intensify their efforts against these terrorist groups through the continued imposition of martial law. Lifting martial law would remove the leverage of the military against these terror groups during their on-going operations and would weaken the rigorous campaign against them and allow them to continuously threaten the civilian population. These facts establish a *prima facie* case in justifying the extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao because actual rebellion persists and public safety requires it.

The petitioners failed to impeach the factual basis and *prima facie* case presented by the respondents. Notably, in this *sui generis* petition to determine the sufficiency of the factual basis for an extension of martial law or suspension of the privilege of the writ of *habeas corpus,* the movants should focus on assailing the factual basis to support such declaration. Regrettably, instead of citing specific factual allegations to counter the respondents' position, the petitioners resorted to raising questions of law and even questions regarding the wisdom in extending martial law. Such issues, however, should not be raised in this present *sui generis* proceeding.

Rebellion as a continuing offense

As stated in *Umil v. Ramos*[5] *(Umil),* a case decided under the 1987 Constitution, the crimes of rebellion, subversion,

[5] 265 Phil. 325 (1990).

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. Unlike other so-called "common" offenses, such as adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base, which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained.[6]

It was also established in *Umil* that 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.**[7]

The Court stressed in *Umil* that 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.[8] Consequently, even if the firefighting stopped temporarily,

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[6] *Umil v. Ramos* (Resolution), 279 Phil. 266, 295 (1991).

[7] *Supra* note 5 at 336-337.

[8] *Id*. at 336.

offenders could still be arrested by State agents if they continue to perform non-violent acts in furtherance of the rebellion, such as recruitment of members, financing of rebellious groups, or planning the next unlawful attack.

In spite of the cessation of firefighting, the crime of rebellion is continuing because the ideological base persists, which requires the repetition of the acts of lawlessness and violence until the objective of overthrowing organized government is realized. Thus, hostilities and acts of terrorism committed afterwards, pursuant to the ideological purpose, continue to form part of the crime of rebellion.

In this case, while the firefighting in Marawi City have ceased, the goal of the Maute Group to overthrow the government remains. Their continuing goal is evident in the incessant recruitment of members in the Lanao area and the financing of the rebel group. While non-violent, these acts are still considered in the furtherance of rebellion. Indeed, these acts are part and parcel of the crime of rebellion seeking to achieve their illegitimate purpose. Thus, as of December 2017, General Guerrero reported to the Court that the Maute Group has recruited a total of 250 members, a significant number capable of committing other atrocities against the civilian population.

Aside from the Maute Group, the Turaifie Group in the Cotabato Area; the Bangsamoro Islamic Freedom Fighters in Maguindanao and North Cotabato; the Abu Sayaff Group in Basilan, Sulu and Tawi-Tawi; and the New People's Army are continuing their rebellious goals through their rampant recruitment and clashes with the military. Notably, the New People's Army engaged in armed conflict with the government even though there were on-going peace negotiations. These continued firefighting threaten the general populace in Mindanao, which affects public safety.

In the course of the oral arguments, General Guerrero stated that rebellion in Mindanao is still on-going in spite of the culmination of the Marawi siege, *viz:*

JUSTICE BERNABE:

Now, why is the second extension significantly longer than the first when in fact it was already publicly declared that Marawi City has been liberated from the Maute?

GENERAL GUERRERO:

As I've said, Your Honor, Marawi is just a part of the whole problem. After the liberation of Marawi, there are still other areas that we need to address.

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JUSTICE BERNABE:

I mean, Marawi City had already been liberated so there is this escalating conflict already, shouldn't this diminish the public safety needed to continue with martial law over the entire Mindanao?

GENERAL GUERRERO:

The conflict in Marawi is distinct and separate from what is happening in the other parts of the area, in the Lanao, particularly. Although, as I have said, the conflict in Marawi has already been resolved but still there are some elements there that continue to operate. As I have said, we had just addressed the armed component and for as long as we have not addressed the other factors that have brought this conflict into existence they will still be able to continue to recruit other rebels and continue with the atrocities, Your Honor.

x x x x x x x x x

JUSTICE BERNABE:

What is the objective behind this extension of martial law, the one-year extension? Is it still to quell the Maute-Japilon led rebellion?

GENERAL GUERRERO:

Yes...

JUSTICE BERNABE:

Or is it generally put an end to all communist or terrorist activities in the entire Mindanao?

GENERAL GUERRERO:

The rebellion has not been quelled, Your Honor. What we have done is we have been able to resolve the Marawi conflict but the rebellion continues to exist.

JUSTICE BERNABE:

So, the objectives are both, to still quell the Maute-Japilon led Rebellion and as well as to put an end to all communist or terroristic activities?

GENERAL GUERRERO:

That is the objective, Your Honor, to address the other rebel groups.[9]

Certainly, with these set of facts and with the concept of rebellion as a continuing offense, there is sufficient factual basis that actual rebellion in Mindanao persists and public safety requires the extension of the period of martial law and the suspension of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, as reasonably authorized by Congress.

Current concept of rebellion

The petitioners argue that the US cases of *Ex Parte Milligan*[10] *(Milligan)* and *Duncan v. Kahanamoku, Sheriff*[11] *(Duncan),* which required that there must be an actual theater of war to justify the President's declaration of martial law, must be applied by the Court.

I disagree.

In *Milligan*, martial law was declared because there was an on-going rebellion in the Confederate states. The US Court held that martial law is the will of the commanding officer of an armed force or of a geographical military department, expressed in time of war, within the limits of his military jurisdiction, as necessity demands and prudence dictates,

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[9] Oral Arguments – *En Banc*, January 17, 2018, pp. 154-155.

[10] 71 U.S. 2 (1866)

[11] 327 U.S. 304 (1946).

restrained or enlarged by the orders of his military or supreme executive chief. It was also ruled therein that the military tribunals only have jurisdiction where civil courts are not functioning. But where the civil courts are functioning and there is no need for bayonets or military aid to execute its jurisdiction, military tribunals cannot try civilians.

Similarly, in *Duncan,* martial law was declared because Hawaii was in an actual theater of war arising from the Japanese armed invasion on December 7, 1941 and there was, at all times, a danger of invasion in the nature of commando raids or submarine attacks. The US Court ruled therein that since the civil courts were opened later on February 24, 1944, the petitioners could not be tried by military courts under martial law.

In the case at bench, the concept of actual invasion or rebellion is not the same as that of *Milligan*, decided in 1866, and *Duncan,* decided in 1946. During those times, the actual invasion or rebellion was appreciated in the traditional sense where the enemies use bayonets, cannons, commando raids or submarine attacks and conflicts were concentrated within a specific location or state. However, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion, to wit:

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 as a tumultuous disturbance.

MR. DE LOS REYES: The public uprising are not concentrated in one place, which use to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consists of isolated attacks in several places – for example in one camp here; another in the province of Quezon; then in another camp in Laguna; no attack in Malacañang – but there is complete paralysis of the industry of the whole country. If we place these things together, the impression is clear – 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 rebellion.**[12] (emphases supplied)

The Constitutional framers foresee the possibility that modern rebellion will involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places but would be orchestrated to paralyze the country and destabilize the government. In such case, Justice Regalado suggested it would be a matter of factual appreciation and evaluation of the President, based on the circumstances, in determining if rebellion exists. Thus, the traditional concept of rebellion where there must be actual use of weapons concentrated in a single place is not the sole concept of actual rebellion envisioned under the 1987 Constitution.

Defanged Martial Law

Martial law, while it has no precise definition, is employed to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the State

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[12] Record of the Constitutional Commission Proceedings and Debates, Vol. II, pp. 412-413.

against actual rebellion or invasion.[13] In the Philippines, the power to declare martial law rests in the hands of the President. History dictates that the 1935 and 1973 Constitutions allowed the President to exploit its power in declaring martial law due to the following reasons:

1. That the proclamation of martial law automatically suspends the privilege of the writ of *habeas corpus;*
2. That the President as Commander-in-Chief can promulgate proclamations, orders and decrees during the period of martial law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people, and to the institution of reforms to prevent resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a world recession, inflation or economic crisis;
3. That the President, as legislator during the period of martial law, can legally create military commission or court martials to try not only members of the armed forces but also civilian offenders for specified offenses.[14]

Thus, when the framers of the present Constitution discussed the power of the President to declare martial law and suspend the privilege of the writ of *habeas corpus*, they ensured that such abuses would not be repeated. Commissioner Monsod even noted that the martial law of then President Marcos was an aberration in history and that the grounds for the imposition of martial law and suspension of the privilege were reduced, and that **should a second Marcos arise, there would be enough safeguards in the new Constitution to take care of such eventuality.** Accordingly, the following safeguards are now in place to limit the Chief Executive's power to declare martial law:

1. The initial declaration of martial law has a time limit of sixty (60) days;

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[13] *Duncan v. Sheriff Kahanamoku*, *supra* note 10.

[14] See *Gumaua v. Espino,* 185 Phil. 283 (1980); and Bernas*, Constitutional Structure and Powers of Government* Part I, 2010 ed., p. 473.

2. The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law;
3. There is a process for its review and possible revocation of Congress;
4. There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis;
5. The removal of the phrases "imminent danger thereof" and "insurrection" as grounds for declaring martial law;
6. 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. Thus, during the martial law, the President can neither promulgate proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open.
7. The declaration of martial law does not automatically suspend the privilege of the writ of *habeas corpus*;
8. During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.
9. The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it.

The numerous safety measures embodied under the present Constitution ensure that the President cannot abuse its power anymore to the detriment of the citizens. The said measures defanged martial law. As can be gleaned in *Lagman,* the safeguards and processes were fully operational and the declaration of martial law by President Rodrigo Duterte over the whole Mindanao was thoroughly scrutinized by Congress and the Court. In said case, the Court concluded that the President, in issuing Proclamation No. 216, had sufficient factual bases to show that actual rebellion exists and that public safety requires the declaration of martial law and suspension of the writ of *habeas corpus.*

During the oral arguments, it was confirmed by Commissioner Monsod, one of the petitioners, that martial law under the Constitution has been restricted, to wit:

JUSTICE BERSAMIN:

Okay, I will agree for the moment with you. But the thing is, you have a version of martial law that does not replicate the Marcos version, it is now emasculated. Is that, will you agree with that?

CHAIRMAN MONSOD:

Yes.

JUSTICE BERSAMIN:

Emasculated.

CHAIRMAN MONSOD:

Not *emasculated,* there's a narrowed discretion of the President because…

JUSTICE BERSAMIN:

Narrowed, restricted to tie the hands of the President, if I may put it that way. It cannot be anymore as pervasive as the martial law that was under the 1935 Constitution because we had no other experience in martial law since that time, since that time.

CHAIRMAN MONSOD:

Yes, Your Honor.[15]

It was also discussed that martial law under the present Constitution is unique because it does not confer additional powers to the President, the Constitution is continuously upheld, the agencies of the government and the courts continue to function, and human rights and international humanitarian laws are still observed.[16] General Guerrero also shared his view that the only benefits generated by the present declaration of martial law are the immediate arrest of the rebels;[17] civilian authorities

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[15] Oral Arguments – *En Banc*, January 16, 2018, p. 115.

[16] Oral Arguments – *En Banc*, January 17, 2018, pp. 146-147.

[17] *Id*. at 136.

are readily compliant with the requests of the AFP;[18] increased military presence;[19] and logistical benefit due to the increased information gathering and dissemination.[20]

Flexibility in Extending Martial Law

The petitions at bench also question the procedural validity of the extension of martial law. Under the Constitution, the said extension is different from the initial proclamation of martial law, 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. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.** (emphasis and underscoring supplied)

As stated above, in the initial declaration of martial law, it is the President as the Commander-in-Chief of all armed forces of the Philippines that declares martial law for a maximum period of sixty (60) days. Upon its declaration, it shall become immediately effective. It is subject to a review by Congress within forty-eight (48) from its declaration.

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[18] *Id*. at 148.

[19] *Id*. at 150.

[20] *Id*. at 151.

With respect to the extension of martial law, the last sentence of the first paragraph of Section 18 clearly states that Congress is empowered to extend the duration of martial law. The President's only role in such an extension is that he is the one who initiates it. Notably, even if the President initiates the said extension, it is not immediately effective. It is only when Congress grants the extension, after determining that invasion or rebellion persists and public safety requires it, that it becomes operational. Evidently, the power of Congress is more potent than that of the President when it comes to the extension of martial law. Stated differently, when there is an extension of the duration of martial law, the Constitution confers on Congress the authority to grant or deny it. If Congress does not find any basis to grant the requested extension, then it shall not exceed the sixty (60) day period of its initial declaration.

Congress' power to extend the proclamation of martial law is observed in the following Constitutional deliberations:

> MR. REGALADO — In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.[21]
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> x x x x x x x x x

[21] Record of the Constitutional Commission Proceedings and Debates, Vol. II, p. 507.

MR. SUAREZ — That is correct. I think the two of them must have to agree on the period; but it is theoretically possibly that when the President writes a note to the Congress because it would be at the instance of the President that the extension have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that **there must be a reasonable period for the extension.** So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it, Madam President.

FR. BERNAS — Madam President, may I just propose something because I see the problem. **Suppose we were to say "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" – that gives Congress a little flexibility on just how long the extension should be.**

MR. OPLE — Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS — Yes, participation of the President is there but **by giving the final decision to Congress**, we are also preserving the idea that the President may not revoke what Congress has decided upon.

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 and 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. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way. Thank you. Madam President.[22] xxx

MR. CONCEPCION If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. **He is the one who is supposed to know how long it will take him to fight. Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.**[23] (emphases supplied)

The framers of the Constitution gave Congress flexibility on the period of the declaration of martial law. It was emphasized therein that the final decision to extend the said declaration rests with Congress. Whether the President states a specific period of extension or not, Congress ultimately decides on the said period. Until it grants the extension, the sixty (60) day period of the initial declaration of martial law prevails. In effect, by becoming the granting authority, Congress limits the President's power to extend the period of martial law.

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[22] *Id*. at 508-509.

[23] *Id*. at 510.

During the Constitutional deliberations, it was recognized that there are many limitations and encumbrances in the President's power to declare martial law. Commissioner Ople even raised apprehension that the encumbrances of martial law under the constitutional provision may compel the President to simply declare a revolutionary government. However, such apprehension did not prevail because the present wording of the Constitution grants Congress the ultimate authority to decide whether the period of martial law should be extended. Manifestly, there is no specific period stated in the extension of the period of martial law because the Constitution leaves it to Congress to decide the reasonable period for such an extension. In the event that the President requires more time to quell a rebellion or invasion beyond the granted period of extension, then his remedy is to ask for another extension from Congress. Manifestly, as discussed by Commissioner Concepcion, the framers also considered the possibility that there will be more than one (1) extension should the first extension be insufficient.

Thus, Congress has the prerogative to determine for itself the period of the extension of martial law. In this case, it used the flexibility granted to it by the Constitution to determine that the reasonable period of extension of martial law over Mindanao should be for one (1) year or until December 31, 2018. The petitioners cannot deny the flexibility of Congress in determining the extended period for martial law. They should have focused on assailing the sufficiency of the factual basis for extending the period of martial law. However, as discussed *supra,* the petitioners failed to assail the said factual basis. In the absence of compelling evidence to the contrary, the reasonable period of extension as determined by Congress must stand.

Extent of review of Congress and the Supreme Court differs

The role of Congress in granting the extension of martial law is vital. Due to the essential authority of Congress, it is proper to examine the review it can undertake to determine the propriety of granting such extension initiated by the President. It was thoroughly discussed in *Lagman* that the power of

Congress to review a declaration of martial law is independent from that of the Court. Congress has a greater scope of review compared to the Court, to wit:

> 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 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.[24]

In this case, the President sent a letter dated December 8, 2017, to the Senate President and House Speaker requesting further extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao for an additional year. The letter contained several grounds justifying the extension.

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[24] *Id*.

On December 12, 2017, the AFP officials presented and explained the different justifications of the request for the extension of martial law before the Senate and the House of Representatives.[25] On December 13, 2017, Congress held a joint session to discuss whether the extension of martial law in Mindanao was warranted. Each member of Congress was granted a maximum of three (3) minutes to explain his allotted time pursuant to Section 7 of Rule IV of the Joint Session of Congress.[26] The said three (3) minute rule excluded the time given to resource persons. After thorough discussion and extensive debates, two hundred forty (240) members of Congress affirmed that rebellion persists and that public safety requires the further extension of martial law and the suspension of the writ of *habeas corpus* for one (1) year in Mindanao.

I concur with the *ponencia* that Congress complied with its constitutional duty to review the extension of martial law before granting the same. From the onset, the Constitutional framers intended that the procedure of review by Congress under Section 18 should be accelerated and simplified due to the pressing need of the President and the people when there is actual invasion or rebellion and public safety requires it, to wit:

> FR. BERNAS — I quite realize that there is this recourse to the Supreme Court and there is a time limit, but at the same time because of the extraordinary character of this event when martial law is imposed, **I would like to make it easier for the representatives of the people to review this very significant action taken by the President**.[27] (emphasis supplied)

The three-minute rule provided for each member of Congress to speak before the Joint Session is reasonable pursuant to the

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[25] Oral Arguments – *En Banc*, January 17, 2018, p. 99.

[26] Petition in G.R. No. 235935, p. 17.

[27] Record of the Constitutional Commission Proceedings and Debates, Vol. II, p. 494.

constitutional intent to accelerate the proceedings for review under Section 18. The said congressional rule even excluded the time allocated to resource speakers invited by Congress. To hold otherwise, where each member of Congress is given an unlimited time to interpolate, will no longer serve the purpose of expediently resolving the extension of martial law. Verily, as long as the members of Congress are all given equal opportunity to voice their opinions, then they can effectively review the significant action taken by the President.

Moreover, the procedure laid down by the Joint Session Rules of Congress is pursuant to its power to determine its own rules of proceedings.[28] The rule-making power of Congress is a grant of full discretionary authority in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.[29] Pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate or the House of Representatives is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.[30]

Here, the petitioners failed to specify how Congress, in the joint session, violated its own rules of procedure or how the said rules were violative of the right to due process even though each member of Congress was given the opportunity to be heard. Absent any evidence of arbitrariness, the proceedings during

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[28] SECTION 16. xxx

(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

[29] *Pimentel, Jr. v. Senate Committee on the Whole*, 660 Phil. 202, 220 (2011).

[30] *Spouses Dela Paz v. Senate Committee on Foreign Relations,* 598 Phil. 981, 986 (2009).

the joint session of Congress on December 13, 2017 must be upheld. Pursuant thereto, Congress properly issued the Resolution of Both Houses No. 4,[31] *viz:*

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines "to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution[;]"

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayaff Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with communist rule;

x x x x x x x x x

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority

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[31] Memorandum of the OSG, pp. 23-24.

of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas corpus* in the Whole Mindanao:

Now, therefore, be it *Resolve by the Senate and the House of Represenatives in a Joint Session Assembled,* To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas *corpus* in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018.[32]

For failure of the petitioners to overcome the *prima facie* case establishing the factual basis presented by the respondents in necessitating the extension of the period of martial law and the suspension of the writ of *habeas corpus* in the whole Mindanao for one (1) year, I vote to **DISMISS** the consolidated petitions.

DISSENTING OPINION

SERENO, *C.J.*:

The Court is still adrift, unable in the Majority Decision, to find its mooring either on a well-reasoned interpretation of the text of the Constitution, or to present a logical continuum of this Court's jurisprudence. Instead, it has taken an extreme view, ceding all substantive points to respondents and allowing thereby no significant quarters to petitioners. In demonstrating its serious lack of balance, it has made itself even more vulnerable to political forces, rendering itself inert in exercising the power of judicial review.

With all due respect, I refer most especially to the *ponencia*'s inability to establish sufficient parameters to determine whether the first or the second requirement under the Constitution is present to support a valid extension of the declaration of Martial Law and suspension of the privilege of the writ of *habeas corpus*.

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[32] *Id*.

These two requirements are that actual rebellion persists, and that public safety requires the imposition of Martial Law or the suspension of the writ.

The *ponencia* has additionally defaulted by providing no limits to the length or the number of extensions that Congress may allow for Martial Law to take hold. The limitations on the power of extension are so insubstantial as to be invisible. It holds that "Section 18, Article VII is clear that the only limitation[s] to the exercise of the congressional authority to extend such proclamation or suspension are that the extension should be upon the President's initiative; that it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and that it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen."[1]

The *ponencia* then proceeds to cite the factual allegations of both the Executive and Congress and without any further test, yields to the spirit of deference and justifies its conclusion in this wise:

> The information upon which the extension of martial law or of the suspension of the privilege of the writ of *habeas corpus* shall be based principally emanate from and are in the possession of the Executive Department. Thus, "the Court will have to rely on the fat-finding capabilities of the [E]xecutive [D]epartment; in turn, the Executive Department will have to open its findings to the scrutiny of the Court."
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> x x x x x x x x x
>
> The facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it. The Court, thus, holds that there exists sufficient factual basis for the further extension sought by the President and approved by the Congress in its Resolution of Both Houses No. 4.

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[1] Decision, p. 34.

Necessarily, we do not see the merit in petitioner's theory in the Cullamat petition that the extent of threat to public safety as would justify the declaration or extension of the proclamation of martial [law] and the suspension of the privilege of the writ must be of such level that the government cannot sufficiently govern, cannot assure public safety and cannot deliver government services. Petitioners posit that only in this scenario may martial law be constitutionally permissible.

Restrained caution must be exercised in adopting petitioners' theory for several reasons. To begin with, a hasty adoption of the suggested scale, level, or extent of threat to public safety is to supplant into the plain text of the Constitution. An interpretation of the Constitution precedes from the fundamental postulate that the Constitution is the basic and paramount law to which all other laws must conform to and to which all persons, including the highest officials of the land, must defer. The consequent duty of the judiciary is 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 must be so considering that the Constitution is the mother of all laws, sufficient and complete in itself. For the court to categorically pronounce which kind of threat to public safety justifies the declaration or extension of martial law and which ones do not, is to improvise on the text of the Constitution ideals even when these ideals are not expressed as a matter of positive law in the written Constitution. Such judicial improvisation finds no justification.

For another, if the Court were to be successful in disposing of its bounden duty to allocate constitutional boundaries, the Constitutional doctrines the Court produces must necessarily remain steadfast no matter what may be the tides of time. The adoption of the extreme scenario as the measure of threat to public safety as suggested by petitioners is to invite doubt as to whether the proclamation of martial law would at all be effective in such case considering that enemies of the State raise unconventional methods which change over time. It may happen that by the time govermnent loses all capability to dispose of all its functions, the enemies of the government might have already been successful in removing allegiance therefrom. Any declaration then of martial law would be of no useful purpose and such could not be the intent of the Constitution. Instead, the requirement of public safety as it presently appears in the Constitution admits of flexibility and discretion on the part of the Congress.

So too, when the President and the Congress ascertain whether public safety requires the declaration and extension of martial law, respectively, they do so by calibrating not only the present state of public safety but the further repercussions of the actual rebellion to public safety in the future as well. x x x.[2]

It is difficult to see how the *ponencia* can consider as inevitable its conclusion disagreeing with the Cullamat proposal that the danger posed to public safety must necessitate the imposition of Martial Law, and that only then can Martial Law be justifiable. Neither the difficulty posed by the process of examining necessity nor the need to adapt to different approaches in the future is sufficient reason for the Court to refuse to review the question of necessity. The automatic conclusion that as Government has established the existence and persistence of rebellion, therefore Martial Law is justifiable by its self-evident claims, is, sadly, gratuitous. It is not wrong to suspect that this halfhearted conclusion is rooted in the refusal to take seriously the doctrine of necessity.

The Doctrine of Necessity

To put texture into this discussion, it would help to recall the conversations in *Lagman v. Medialdea*,[3] where the Solicitor General called the declaration of Martial Law a "*Gulpi de Gulat*,"[4] an "exclamation point," and as the "calling out powers on

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[2] *Id*. at 57-59. The *ponencia* justifies this preemptive approach by using the language in the *amicus curiae* brief of Fr. Joaquin Bernas in *Fortun v. Gloria Macapagal-Arroyo*.

[3] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, 4 July 2017.

[4] TSN, 14 June 2017, p. 122

JUSTICE CARPIO:

x x x You earlier said that there is not much difference between the martial law powers of the president and his calling out powers under the present Constitution. x x x

steroids."[5] Note that the struggle to find a definition of Martial Law under the 1987 Constitution is, in turn, due to the need for Government to justify why it needs that kind of Martial Law. This is because, in essence, Government cannot escape facing the question of necessity.

An examination of the deliberations of the 1987 Constitutional Commission shows that our framers drew the Philippine concept of Martial Law from American law, with certain differences. As explained by Father Joaquin Bernas:

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x x x x x x x x x

What is that difference?

SOLICITOR GENERAL CALIDA:

It's like a sentence, instead of a period there's an exclamation point, Your Honor.

x x x x x x x x x

JUSTICE CARPIO:

Psychological?

SOLICITOR GENERAL CALIDA:

Psychological probably. It's an exclamation point.

JUSTICE CARPIO:

"Gulpi de gulat?"

SOLICITOR GENERAL CALIDA:

Yes, Your Honor. *So you better listen to me now because I'm imposing martial law*. (TSN, 14 June 2017, 117-122).

[5] *Id*. at 138.

CHIEF JUSTICE SERENO:

I [am] very much enlightened by the new phrase that you have pronounced this afternoon which was martial law. As we understand it is the calling out powers on steroids.

SOLICITOR GENERAL CALIDA:

Thank you, Your Honor.

Since the Philippine Constitution is traceable to American origins and was formulated by jurists reared in the tradition of American constitutional law, it is legitimate to start the quest for a definition of martial law in the Constitution by looking back to the difference nuances which the term carries in American law.[6]

American cases on the concept of Martial Law show the doctrine of necessity at its very heart. The United States (US) Supreme Court's first look at Martial Law was in 1848 in *Luther v. Borden*.[7] The controversy centered on the state militia's warrantless forced entry into the home of Martin Luther[8] during a state of Martial Law in Rhode Island.[9] The case was dismissed for being a political question. Chief Justice Taney wrote that the decision whether or not to impose Martial Law to combat a crisis is left to the State.[10] Nevertheless, *Luther* touched on the substantive issue regarding the state's authority to invoke Martial Law and thereby laid the early foundations of Martial Law in the US. In describing this power, *Luther* went on to explain:

> And, unquestionably, a State may use its military power to put down an armed insurrection too strong to be controlled by the civil authority. The power is essential to the existence of every government, essential to the preservation of order and free institutions, and is as necessary to the States of this Union as to any other government. The State itself must determine what degree of force the crisis demands. And if the government of Rhode Island deemed the armed opposition so formidable and so ramified throughout the State, as to require the use of its military force and the declaration of martial law, we see no ground upon which this court can question its authority.[11]

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[6] Joaquin Bernas, *The 1987 Constitution of the Philippines: A Commentary* 898 (2009).

[7] 48 U.S. 1 (1849).

[8] No relation to the German religious leader Martin Luther (circa 1483).

[9] Jason Collins Weida, *A Republic of Emergencies: Martial Law in American Jurisprudence*, 36 Conn. L. Rev. 1397, 1403 (2004).

[10] *Luther*, 48 U.S. at 45-47.

[11] *Id.* at 45.

A conclusion that may be drawn from the foregoing dictum is that the state can determine when an internal unrest necessitates the declaration of Martial Law, a determination that then becomes conclusive upon the courts. Nevertheless, *Luther* went on to explain that **the power to make that determination is limited by the necessity of the situation** involved, *viz.*:

> And in that state of things, the officers engaged in its military service might lawfully arrest anyone who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection, and might order a house to be forcibly entered and searched when there were reasonable grounds for supposing he might be there concealed. Without the power to do this, martial law and the military array of the government would be mere parade, and rather encourage attack than repel it. No more force, however, can be used than is necessary to accomplish the object. And if the power is exercised for the purposes of oppression, or any injury wilfully done to person or property, the party by whom, or by whose order, it is committed would undoubtedly be answerable.[12]

Subsequently, it was in *Ex Parte Milligan*[13] where the US Supreme Court was able to substantively explore Martial Law. The case stemmed from the arrest of Lamdin Milligan while the state was under Martial Law. Milligan was later on tried by a military commission, whose ruling was struck down by the Court. In that case, the imposition of Martial Law in Indiana was analyzed, to wit:

> It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. 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

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[12] *Id.* at 45-46.

[13] 71 U.S. 2 (1866).

are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.[14]

Justice Davis, speaking for the majority, clarified **that there could be no Martial Law unless there is an actual need for it**:

Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration.[15]

Luther and *Ex Parte Milligan* were decided within the context of war emergencies.[16] However, there were questions that remained unanswered. After the Civil War, several cases that subsequently arose allowed the US Supreme Court to further define Martial Law, this time within the context of turmoil rooted in economic crisis.[17] Still, the doctrine of necessity persisted.

In *Moyer v. Peabody*,[18] the Court reviewed the Colorado governor's declaration of Martial Law to address a labor dispute in the state. It also looked into the exercise of Martial Law powers, such as the arrest of Charles Moyer. The opinion of the Court penned by Justice Holmes mirrored Chief Justice Taney's dictum in *Luther*. It ruled that the governor had the power to declare Martial Law sans a significant judicial review, as long as the declaration was done in good faith. Nevertheless, **necessity was still deemed the primary consideration**, to wit:

When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process.[19]

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[14] *Id*. at 127.

[15] *Id.*

[16] Weida, *supra* at 1412.

[17] *Id*.

[18] 212 U.S. 78 (1909).

[19] *Id*. at 85.

Twenty-three years later, *Sterling v. Constantin*[20] allowed the US Supreme Court to again review a governor's authority to declare Martial Law. This time, the governor of Texas had proclaimed Martial Law over several oil-producing counties of the state, declaring that insurrection and riot beyond civil control existed there due to the wasteful production of oil. The military force shut down the oil wells thereafter, an act the Court found to be excessive. It affirmed *Luther* and *Moyer* in that the governor's decision to declare Martial Law was conclusive upon the courts.[21] However, ***Sterling*** **went one step further and qualified the governor's power with the so — called "proportionality test"**[22] **— that the means employed by the governor in his exercise of Martial Law powers must bear a direct relation to the disturbance being faced**.[23] Finding the state's actions in *Luther* and *Moyer* to be in line with the proportionality test, the Court likewise concluded that the doctrine of necessity was still at the core of its considerations. In effect, *Sterling* affirmed its authority to review the executive's declaration of Martial Law.[24]

Duncan v. Kahanamoku[25] again provided the Court an opportunity to deal with the imposition of Martial Law during wartime. Set during the bombing of Pearl Harbor, the issue centered on Duncan's arrest and subsequent trial and conviction by the military commission. While the Court, through Justice Black, struck down the military tribunal's authority to try and convict Duncan, it still upheld the declaration of Martial Law in Hawaii. Nevertheless, it tested the extent of authority of the military commission against the doctrine of necessity enunciated

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[20] 287 U.S. 378 (1932).

[21] *Id*. at 399.

[22] William Feldman, *Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege*, 38 Cornell Int'l. L.J. 1021, 1034 (2005).

[23] *Sterling*, 287 U.S. at 399-400.

[24] Feldman, *supra* at 1034.

[25] 327 U.S. 304 (1946).

in *Ex Parte Milligan*,[26] again confirming the centrality of that doctrine in US Martial Law jurisprudence.

All of the above pronouncements, **taken together, lead to the understanding that Martial Law is "the law of necessity in national emergency."**[27]

This doctrine of necessity was translated into the Philippine concept of Martial Law through the second requisite for its proclamation as specified by the text of the 1987 Constitution: "public safety requires it."

In other words, during a state of invasion or rebellion, the necessity posed by public safety serves as the gauge for the proclamation of Martial Law, as well as its scope and duration. As explained by Fr. Bernas:

> **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 condition.[28] (Emphasis supplied)

Calibration Exercise and the Proportionality Test

Unlike the US concept of Martial Law, which did not define the specific circumstance of unrest that would trigger Martial Law, the Philippine Constitution specifies actual invasion or rebellion as the requisite factual antecedents, without which Martial Law cannot be proclaimed.

It is in the context of invasion or rebellion that the doctrine of necessity is considered. More aptly called the "necessity of public safety test," a calibration exercise must be undertaken

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[26] *Id.* at 325-326.

[27] J.W. Brabner Smith, *Martial Law and the Writ of Habeas Corpus*, 30 Geo. L.J. 697, 697 (1942).

[28] Bernas, *supra* 903.

to determine whether the crisis at hand poses such a danger to public safety and good order that Martial Law becomes necessary. If so, this exercise further requires a determination of the degree of Martial Law powers necessary to address the threat to public safety. This task entails a determination of the scope, coverage, and duration of Martial Law.

The proportionality test that the US Supreme Court instituted in *Sterling* can serve as a guide in undertaking a calibration exercise. The Court in *Sterling*, after reviewing the factual bases of the governor's declaration of Martial Law, found that the overproduction of oil was not serious enough to warrant the declaration of Martial Law and the exercise of Martial Law powers.[29] In analyzing the proportionality between the internal unrest and the government powers invoked to address the unrest, the Court therein examined the factual findings of the district court, as follows:

> It was conceded that at no time has there been any actual uprising in the territory. At no time has any military force been exerted to put riots or mobs down. At no time, except in the refusal of defendant Wolters to observe the injunction in this case, have the civil authorities or courts been interfered with, or their processes made impotent. Though it was testified to by defendants that, from reports which came to them, they believed that, if plaintiffs' wells were not shut in, there would be dynamiting of property in the oil fields, and efforts to close them and any others which opened by violence, and that, if that occurred, there would be general trouble in the field, no evidence of any dynamite having been used, or show of violence practiced or actually attempted, or even threatened against any specific property in the field, was offered. We find, therefore, that not only was there never any actual riot, tumult, or insurrection which would create a state of war existing in the field, but that, if all of the conditions had come to pass, they would have resulted merely in breaches of the peace, to be suppressed by the militia as a civil force, and not at all in a condition constituting, or even remotely resembling, a state of war.[30]

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[29] *Sterling*, 287 U.S. at 403-404.

[30] *Id.* at 390-391.

In was then found that the above circumstances did not amount to an "exigency which justified the Governor in attempting to enforce by executive or military order the restriction."[31] The US Court reasoned:

> By virtue of his duty to "cause the laws to be faithfully executed," the Executive is appropriately vested with the discretion to determine whether an exigency requiring military aid for that purpose has arisen. x x x The nature of the power also necessarily implies that there is a permitted range of honest judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order, for, without such liberty to make immediate decisions, the power itself would be useless. Such measures, conceived in good faith, in the face of the emergency, and directly related to the quelling of the disorder or the prevention of its continuance, fall within the discretion of the executive in the exercise of his authority to maintain peace.
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> x x x x x x x x x
>
> It does not follow from the fact that the executive has this range of discretion, deemed to be a necessary incident of his power to suppress disorder, that every sort of action the Governor may take, no matter how unjustified by the exigency or subversive of private right and the jurisdiction of the courts, otherwise available, is conclusively supported by mere executive fiat. The contrary is well established. What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions. Thus, in the theater of actual war, there are occasions in which private property may be taken or destroyed to prevent it from falling into the hands of the enemy or may be impressed into the public service, and the officer may show the necessity in defending an action for trespass. "But we are clearly of opinion," said the Court, speaking through Chief Justice Taney,
>
> > "that, in all of these cases, the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. . . . Every case must depend on its own circumstances. It is the emergency that gives the right, and the

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[31] *Id*. at 404.

> emergency must be shown to exist before the taking can be justifted."*Mitchell v. Harmony*, 13 How. 115, 134. *See also United States v. Russell*, 13 Wall. 623, 628.

There is no ground for the conclusion that military orders in the case of insurrection have any higher sanction or confer any greater immunity.[32]

The *Sterling* Court examined the previous case, *Moyer*, which also upheld the temporary detention of one believed to be a participant in the insurrection launched during Martial Law. The *Sterling* Court applied the proportionality test and agreed that the action of the governor in *Moyer* had a direct relation to the crushing of the insurrection.[33] Applying that model to the Texas governor's actions, the Court ultimately found that the declaration of Martial Law was not a proportional response to the crisis caused by the overproduction of oil.

Necessity of Public Safety as a Required Precursor of Martial Law

There is no dire lack of guidance or parameters in determining what sort of public safety necessity calls for a proclamation of Martial Law. It is *Sterling* that gives a clearer insight into what kind of necessity entails a Martial Law declaration. As deduced from the quoted portions above, there must be a semblance of a "state of war." Moreover, there must be a perceived inability of the civilian authority to address the crisis brought about by the "state of war." The logical consequence is the existence of a serious threat to public safety.

This finding was reiterated in *Duncan*, which ruled that Martial Law was "intended to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the island against actual or threatened rebellion or invasion."[34] This pronouncement essentially maintained the

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[32] *Id.* at 399-401.

[33] *Id.* at 399.

[34] *Duncan*, 327 U.S. at 324.

concept of Martial Law as defined in *Ex Parte Milligan* — that Martial Law is proper during war when civil institutions are paralyzed to a certain extent and military operations are necessary to preserve public safety and order.

War. Military operations. Crippled civilian functions. It was along these lines that the US Supreme Court has determined the propriety of Martial Law. It is apparent from the deliberations of the 1986 Constitution Commission that the framers somehow intended to define and characterize Philippine Martial Law along the same lines. Fr. Bernas himself used the term "theater of war" to define Martial Law:

> 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 opened 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.[35] (Emphasis supplied)

It would therefore be helpful for the Court to undertake its calibration exercise in weighing necessity *vis-a-vis* public safety along similar lines as well. To my mind, **the intensity of an invasion or a rebellion that endangers public safety must be discerned within the context of a state of significant armed conflict. In other words, the circumstances on the ground must be so severe that they entail the invocation of an extreme measure.**

A balancing act is called for, specifically between the gravity of the situation and the extraordinary measure meant to address it, which is Martial Law. It is the established intent of the framers of our Constitution for Martial Law to be

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[35] II RECORD, CONSTITUTIONAL COMMISSION 402 (29 July 1986).

a measure that would be utilized only in extremely urgent circumstances as the following deliberation shows:

> 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 martiallaw.[36] (Emphasis supplied)

This intent leads to the general understanding that Martial Law is an extraordinary power to be wielded only in extraordinary circurnstances.[37] That is the fundamental principle that must guide the Court in the conduct of its review powers.

The Court's Power of Review

While the President and Congress are expected to engage in a calibration exercise in the process of deciding whether or not to declare or extend Martial Law, this exercise is of utmost importance to this Court, which exercises the power of review over the sufficiency of the factual bases of the proclamation or its extension.

As emphasized in my dissent in *Lagman v. Medialdea*, it is the duty of the Court to inquire into the necessity of declaring Martial Law to protect public safety. I pointed out:

> **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 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." This means that greater powers are needed only when other less intrusive measures

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[36] *Id*. at 412.

[37] *Lagman v. Medialdea*, *supra*.

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.[38] (Emphasis supplied)

To perform this duty is to engage in the same kind of calibration exercise that the *Sterling* Court undertook. Hence, the Court herein is required not only to determine the existence of an actual invasion or rebellion, but also, to analyze and determine whether the nature and intensity of the invasion or rebellion endanger public safety in a way that makes Martial Law necessary.

The calibration would necessitate a determination not just of the propriety of a Martial Law declaration, but likewise its territorial coverage. In the case of an extension of Martial Law, the Court is called upon to take one step further and likewise calibrate whether the danger posed is commensurate with the period of extension fixed by Congress. In so doing, this Court needs to apply a trial judge's reasonable mind and common sense as honed by relevant experiences and legal proficiency.

It must be emphasized that this kind of exercise is no longer new to this Court, as it has in fact undertaken a similar calibration in *Lansang v. Garcia*.[39] In that case, the Court upheld the nationwide suspension of the privilege of the writ of *habeas corpus*, but only after a careful examination and calibration of the danger posed by the nationwide acts of rebellion.

To refrain from undertaking a similar calibration exercise this time around would amount to an abdication of this Court's obligation under Section 18, Article VII of the Constitution. To reiterate my dissent in *Lagman v. Medialdea*:

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,**

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[38] Dissenting Opinion, *C.J.* Sereno, *Lagman v. Medialdea*, *supra* at 7.

[39] *In re Lansang v. Garcia*, 149 Phil. 547 (1971).

proportionality, and coverage. Such luxury is not allowed this Court by express directive of the Constitution.[40] (Emphasis supplied

Help to Government

In the exchange between the undersigned and General Guerrero, an effort was made to elicit the operational necessity for Martial Law. Below is the exchange:

CHIEF JUSTICE SERENO:
Can you answer for us General, can you just answer for us what particular power do you want under a martial law system? You have already concluded that it was effective, immediate but what specific aspect is important for you?
GENERAL GUERRERO:
For now, Your Honor, what martial law [has] given us is the power for us to be able to effect immediate arrest of rebels because of the suspension of the privilege of *habeas corpus*.

CHIEF JUSTICE SERENO:
But there are jurisprudence already that authorize you to do that?
GENERAL GUERRERO:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
Yes. Are these jurisprudence not enough for you?
GENERAL GUERRERO:
I cannot say for now, Your Honor, exactly what other powers could be avail[ed] to apply to in the Armed Forces for us to be able to perform our mission effectively, Your Honor.

CHIEF JUSTICE SERENO:
Because that's precisely the question we need to answer and we spend a lot of time yesterday afternoon saying what particular aspect of martial law do you need that you cannot use already under your present, under the ordinary powers of the President and the military because you see, you can already conduct surveillance on terrorists, all terrorists. You only need actually the declaration, the arrest, you only need, the arrest rather, you only need the declaration of the Anti-Terrorism Council, is that not correct? x x x
GENERAL GUERRERO:
Your Honor...

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[40] Dissenting Opinion, *C.J.* Sereno, *Lagman v. Medialdea*, *supra* at 8.

CHIEF JUSTICE SERENO:

Why are you not using that? [The] Anti-Terrorism Council[,] has it convene[d] since President Duterte became president?

GENERAL GUERRERO:

I cannot answer for the Anti-Terrorism Council, Your Honor.

x x x x x x x x x

CHIEF JUSTICE SERENO:

Okay. So, only martial law can bring [everybody on board]? Why? Can you explain to us that ideological theory or operational justification?

GENERAL GUERRERO:

Your Honor, let me just cite my experience as System Mindanao Commander being the implement[e]r of martial law in my area of responsibility.

x x x x x x x x x

Before the implementation of martial law, I had to request, to invite other heads of agencies for them to participate in our security engagements.

x x x x x x x x x

It was a difficult task at that time.

CHIEF JUSTICE SERENO:

But the President can just give a directive through the Executive Secretary, *All calls from General Guerrero must be immediately obeyed.*

GENERAL GUERRERO:

It's not as easy as that, Your Honor.

x x x x x x x x x

So, we have to understand that compliance needs to be improved.

x x x x x x x x x

CHIEF JUSTICE SERENO:

Okay. So, what makes it easier, is it psychological? That's why I've been asking since yesterday, is it psychological, the calling out powers on steroids?

GENERAL GUERRERO:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

So, it's psychological?

GENERAL GUERRERO:

It's partly psychological, Your Honor.

CHIEF JUSTICE SERENO:

Okay, partly psychological. What do you think makes people more cooperative in a martial law setting?

GENERAL GUERRERO:

It's that fact that [a] strong authority is in charge.

x x x x x x x x x

A picture, an image of a strong...

CHIEF JUSTICE SERENO:

It's an image?

GENERAL GUERRERO:

Yes.

CHIEF JUSTICE SERENO:

So, the President issuing an order to civilians without anyone being a martial law administrator or implement[e]r is a weak message. But if you are the martial law implement[e]r, that's a strong message to comply?

GENERAL GUERRERO:

Your Honor, the President is the Commander-in-Chief.

x x x x x x x x x

CHIEF JUSTICE SERENO:

x x x This is what martial law does. Because even in my dissenting opinion, x x x I said, *Until now nobody has really answered the question of what martial law is for*? So, finally we have this chance, can you tell us, candidly, why do we need martial law? Because I'm open to any idea, at this point. Why?

GENERAL GUERRERO:

As I have said, the problem in Mindanao as in the other parts of the country is multi-dimensional, the armed conflict, Ma'am, is just a manifestation of a deeper problem in society.

CHIEF JUSTICE SERENO:

So, there is a deeper problem in society. So, the SOLGEN is a, there is paranoia, or I'm sorry, one of the theories propounded is there is paranoia on the part of the petitioners. But you are now presenting to us that there is a deep problem that must be addressed and we need martial law as a psychological mooring because, first, we have observed greater compliance on the part of all government entities. What else? Can you enumerate for us? Because you only concluded that it was very good but you never in your presentation and J2 never presented why it was effective? So, that's first, *there is more, there's easier compliance*. The second reason?

GENERAL GUERRERO:
It enhances climate of safety; safety and security, Your Honor.

CHIEF JUSTICE SERENO:
It enhances how?
GENERAL GUERRERO:
The people, especially in the affected areas of rebellion, (inaudible) and I was able to talk to the (inaudible), that they appreciate the implementation of martial law in their respective localities.
x x x x x x x x x x x x

CHIEF JUSTICE SERENO
Yeah, I know, and how do they describe it?
GENERAL GUERRERO:
For instance, I was just there the other day in Basilan and I was able to talk to some of the residents there.

CHIEF JUSTICE SERENO:
Yes.
GENERAL GUERRERO:
And they said that they prefer the presence of the soldiers in the area and that they would not want the soldiers to pull out. And in fact they are supporting the implementation of martial law.

CHIEF JUSTICE SERENO:
So, *martial law enhances the presence of the military*, that's your second reason. And because it enhances the presence of the military there is greater safety on the part of the civilian population?
GENERAL GUERRERO:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
Okay. What else?
x x x x x x x x x x x x
Because you know, if we are able to define really why you need martial law, we would have a breakthrough in this case. So, help me here. Third reason?
GENERAL GUERRERO:
To be honest with you, Your Honor, we have not really fully exploited the possibilities, but we can gain from the declaration of martial law, the present martial law.
x x x x x x x x x x x x

CHIEF JUSTICE SERENO:
So, there is still an ephemeral, undefinable element to martial law which you think is very effective but to some it is being characterized

as paranoia, but there is fear. So, in other words, is it not the yin and yang concept here, there is the fear element, the fear enhances or the fear paralyzes and makes it possible that the civilian population will believe that their democratic rights are being endangered. Is that two sides of the same face, is it a janus situation here?

GENERAL GUERRERO:

Yes, Your Honor, and that is something that we, in the military, [are] also trying to balance in terms of perception and in terms of our actuations.

CHIEF JUSTICE SERENO:

So, fear can be used positively and fear is being said as [imposing] the cause of martial law in a negative way. So, is it not just an information campaign that needs to be done if you are going to be strong adheren[ts] to human rights that there is an information gap between the two interpretations? You agree?

GENERAL GUERRERO:

It could be, Your Honor. But I could not say for a fact because as I have said, if it would be an informational campaign then definitely it is not purely a military effort, Your Honor.

CHIEF JUSTICE SERENO:

Okay. So, what I see so far, what you have said is that there is a psychological impact on civilian authorities, there is a psychological impact on the civilian authorities in the areas where rebellion or terrorism abounds. So, [those are] the things that you have enumerated to the Court so far. So, we need these because it creates a favorable mindset for us to address the security problem in Mindanao, is that what you're saying?

GENERAL GUERRERO:

Yes, Your Honor.

x x x x x x x x x

CHIEF JUSTICE SERENO:

So, you are actually asking this Court to say that there is factual basis sufficient to justify the extension of martial law because you have noted effectivity in your operations because of the martial law and you have noticed that its effectivity is brought about by the psychological impact it has on the authorities in the areas as well in the civilian population. That's a good summation?

GENERAL GUERRERO:

Partly, Your Honor. But as I have said, it's not only psychological, Your Honor. We have to look at the added dimensions as well.

CHIEF JUSTICE SERENO:
Logistical, is there a logistical efficiency?
GENERAL GUERRERO:
Yes, Your Honor. Financial.

CHIEF JUSTICE SERENO:
Why? *Logistical and financial*, why?
GENERAL GUERRERO:
Again, with the martial law authority, with the authority, enhanced authority given to us by martial law we are able to enjoin other agencies to cooperate with us and help us in addressing...

CHIEF JUSTICE SERENO:
So, without martial law, they wouldn't be fast in helping provide you with necessary transportation, fuel, etc.?
GENERAL GUERRERO:
Not necessarily fuel and transportation, Your Honor.

CHIEF JUSTICE SERENO:
But like what?
GENERAL GUERRERO:
Information, Your Honor.

CHIEF JUSTICE SERENO:
Information. Information is one. They are able to relay information faster because of martial law?
GENERAL GUERRERO:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
Evacuation is helped?
GENERAL GUERRERO:
Mobilization, Your Honor.

CHIEF JUSTICE SERENO:
Mobilization. Financial, you said financial, what financial efficiencies are being effected because of martial law?
GENERAL GUERRERO:
The rebels are able to channel in us report to conduits to the various channels in the localities.

x x x x x x x x x

CHIEF JUSTICE SERENO:
But you just happened to be of the impression that things are made easier for you?

GENERAL GUERRERO:

It's not the impression, Your Honor. We have been actually able to apply this, Your Honor, in my area when I was Eastern Mindanao Commander.[41]

Nowhere in the exchange or the pleadings is there any indication of the factual or legal basis for claiming that Martial Law makes addressing public safety in the midst of rebellion easier, other than an undocumented experiential claim. But against this experiential claim of ease in military operations are the apparently documented claims of enhanced abuses under the existing Martial Law regime in Mindanao.[42] These claims bring this Court to a point of transcendental importance, one that goes into its very reason for existence when petitioners make out a case of probable excess in the exercise of power that leads to the violation of constitutional rights, and when Government is unable to categorically put its finger on why it needs Martial Law, then this Court must define the parameters

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[41] TSN, 17 January 2018, pp. 136-153.

[42] Violation of Civil and Political Rights in Mindanao under the Rodrigo Duterte Government, May 23, 2017 to November 30, 2017, Based on reports gathered by Karapatan (Document "b" attached to Compliance dated 17 January 2018 submitted by Petitioners Cullamat, *et al.*).

During the oral arguments, General Guerrero admitted that there is at least one documented case of looting committed by a military personnel:

JUSTICE TIJAM:

Were there cases of abuses committed by military personnel and PNP personnel, as far as you know, whether it be a matter of torture, or killing, or looting, or destruction of property not arising from the war in Marawi?

GENERAL GUERRERO:

There were reports about looting, Sir, and about maltreatment but all of these were investigated and so far, Sir, there are records there is only one case of human rights violation and that is of looting that was filed against one.

JUSTICE TIJAM:

Under existing rules and regulation governing the Martial Law in Maguindanao, are these erring culpable military personnel exempt from liability?

GENERAL GUERRERO:

No, Sir. no, Your Honor. (TSN, 17 January 2018, pp. 75-76).

according to the tests of necessity; otherwise, it ceases to genuinely exist as a bastion of democracy.

Determination of the Period of Extension

Distinction must be made between the examination by this Court of the basis for the extension of Martial Law *per se* on the one hand, and the period of extension on the other hand. This distinction is clear in the following constitutional deliberations:

> MR. SUAREZ: Madam President.
>
> THE PRESIDENT: Commissioner Suarez is recognized.
>
> MR. SUAREZ: Thank you, Madam President.
>
> I concur with the proposal of Commissioner Azcuna but may I suggest that we fix a period for the duration of the extension, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. So if Commissioner Azcuna could put a certain limit to the extended period, I would certainly appreciate that, Madam President.
>
> THE PRESIDENT: What does Commissioner Azcuna say?
>
> MR. AZCUNA: Madam President, **I believe that that is a different concept and should be voted on separately so as not to confuse the issue on the limitation of the period with the extension. My amendment would merely require that any extension should have the concurrence of both the President and the Congress. Commissioner Suarez may propose an amendment to limit the period of the extension**.[43] (Emphasis supplied)

The extension *per se* of Martial Law involves a two-step process. First, there must be an initiative from the President addressed to Congress requesting the extension of his prior proclamation of Martial Law. Second, Congress determines as a joint body whether or not the extension is proper. If it approves of the extension, it then likewise determines the period thereof.

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[43] II RECORD, CONSTITUTIONAL COMMISSION 508 (31 July 1986).

The wording of the Constitution leaves an initial impression that the determination of the extension period is an exclusive congressional prerogative. However, a look into the constitutional deliberations seems to show that the determination of the period was intended to remain a joint executive-legislative act. This conclusion may be drawn from the following deliberations, which came about as a solution to Commissioner Suarez's proposal to fix a 60-day period of extension:

FR. BERNAS: **Madam President, may I just propose something because I see the problem. Suppose we were to say: "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" - that gives Congress a little flexibility on just how long the extension should be.**

MR. REGALADO: Is the Gentleman placing his amendment after "same" and before "if"?

FR. BERNAS: Yes.

MR. SUAREZ: Maybe that can be added after the final word "it" so that the clause would read: "if the invasion or rebellion shall persist and public safety requires it, FOR A PERIOD AS MAY BE [DETERMINED] BY CONGRESS."

FR. BERNAS: It is a question of style, Madam President. It seems to be very far from the verb.

THE PRESIDENT: **Is that accepted by Commissioner Suarez?**

MR. SUAREZ: **Yes, Madam President.**

MR. OPLE: May I just pose a question to the Committee in connection with the Suarez amendment? Earlier, Commissioner Regalado said that that point was going to be a collective judgment between the President and the Congress. **Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?**

FR. BERNAS: **Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by about 300 Members.**

MR. OPLE: **Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the**

60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS: **Yes, the participation of the President is there but by giving the final decision to Congress, we are also preserving the idea that the President may not revoke what Congress has decided upon.**[44] (Emphases supplied)

The principle of collective judgment, as stated by Commissioner Ople, is retained through the following process: the President provides the facts showing the persistence of invasion or rebellion and its perceived threat to public safety. In turn, Congress evaluates the facts provided by the President and on the basis of those facts determines the period of extension.

Parameters for the Determination of the Period of Extension

Indeed, Congress has been granted final authority in the determination of the period of extension. But as any grant of discretion goes, it is not unbridled. There are parameters that must be taken into consideration in the exercise of this discretion. It is clear from the constitutional deliberations that there was no intention to completely leave that exercise to Congress. Fr. Bernas himself said that the determination only "gives Congress a little flexibility on just how long the extension should be."[45] There was no complete or unlimited flexibility granted. Rather, Congress must be mindful of the following parameters in fixing the period of extension.

First, the extension cannot be for an indefinite period of time - there must be a definite period fixed by Congress. This interpretation is apparent from the provision in Section 18, Article VII, which states that Congress may extend the proclamation of Martial Law "for a period to be determined by congress." A *period* is defined as "any point, space, or division of time."[46]

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[44] *Id*. at 509.

[45] *Id*.

[46] *Black's Law Dictionary* 1138 (6th Ed. 1990).

From Section 18 itself, it is clear that this period must be "*determined*." That is, the start and end points must be "limited," "fixed," "decided," or "settled" conclusively by Congress.[47] Otherwise, to effect the extension for an indefinite period would amount to Congress' abdication of the foregoing positive duty imposed upon it by the Constitution.

Further, the following discussion shows that prior to the approval of Fr. Bernas' amendment, Commissioner Suarez suggested a fixed period for the extension, supposedly to protect the interest of the citizens:

> MR. SUAREZ: x x x.
>
> May we suggest that on line 7, between the words "same" and "if," we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration just so it will keep on going.
>
> THE PRESIDENT: What does the Committee say?
>
> MR. REGALADO: May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. **If we put it at 60 days only, then thereafter, they have to meet again to agree jointly on a further extension.**
>
> MR. SUAREZ: **That is precisely intended to safeguard the interests and protect the lives of citizens.**
>
> MR. REGALADO: In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President

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[47] *Merriam-Webster.com*, 2018 <https://www.merriam-webster.com/dictionary/determine> (visited 26 January 2018).

acted alone without prior concurrence. The reason fbr the limitation in the first does not apply to the extension.[48] (Emphases supplied)

The 60-day period, however, was not approved for its perceived impracticality. Nevertheless, the commissioners did not disagree on the validity of the point made by Commissioner Suarez — that there must be a fixed period. This was apparently the reason why Fr. Bernas did not negate the need for determining or fixing the period when he proposed his amendment, which was subsequently approved by the body. Only, the amendment specified Congress as the entity that shall fix the period.

Second, the extension must be for a reasonable period. This is clear from the following deliberations:

MR. REGALADO: **Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on.** But there is already the cutoff of 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ: That is correct. **I think the two of them must have to agree on the period;** but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. **That is the reason why we want to make it clear that there must be a reasonable period for the extension.** So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it, Madam President.[49] (Emphases supplied)

The question now is *what would make the period of extension reasonable*? The term "reasonable" is defined as "fair, proper, just, moderate, suitable under the circumstances."[50] It is also

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[48] II RECORD, CONSTITUTIONAL COMMISSION 508-509 (31 July 1986).

[49] *Id*. at 509.

[50] *Black's Law Dictionary*, *supra* at 1265.

to be understood as "rational; governed by reason."[51] As can be gathered from the deliberations quoted above, and in light of the definitions provided, the question of reasonableness is closely related to the existence of the two requisites for the exercise of the authority to extend - that the invasion or rebellion persists, and public safety requires it. That is, there must be a rational match between the existence of the two requisites and the period of extension.

Therefore, to come up with a reasonable period, Congress has to conduct an independent investigation and evaluation of the persistence of invasion or rebellion and the requirement of public safety. Admittedly, there must be due consideration of what is happening on the ground, which is possible only if Congress is in close coordination with the President. It is in this manner that the determination of the period of extension remains a joint judgment of the President and Congress. It was acknowledged during the deliberations that the President has the most accurate idea of how long it would take to quell the persisting invasion or rebellion and secure the public. For Congress to conduct its own investigation of the matter would necessitate consulting the Chief Executive.

Nevertheless, a close coordination with the President does not amount to a blind submission to him – rather, Congress has to independently determine the length of extension, so that it can even reduce or increase the period proposed by the President. The following deliberations are enlightening:

MR. DAVIDE: I would like to propose that instead of "AT THE INSTANCE OF," we use UPON THE PETITION OF. It will be upon the petition of the President to confirm the fact that any extension is just a matter of his request, not his prerogative.

THE PRESIDENT: Not on his own initiative?

MR. DAVIDE: No, not on his own initiative, Madam President.

MR. AZCUNA: I believe the word "petition" is more proper for the courts, Madam President.**Maybe with the intention put on the**

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[51] *Id*.

record that this is not mandatory upon Congress to grant an extension simply because the President is requesting it, I am willing to change it to INITIATIVE instead of "INSTANCE" but not "PETITION" because "petition" has more relevance to courts. So it will be "UPON THE INITIATIVE of the President."[52]

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MR. OPLE: May I just pose a question to the Committee in cmmection with the Suarez amendment? Earlier, Commissioner Regalado said that that point was going to be a collective judgment between the President and the Congress. **Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?**

FR. BERNAS: **Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by about 300 Members.**

MR. OPLE: Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS: **Yes, the participation of the President is there but by giving the final decision to Congress, we are also preserving the idea that the President may not revoke what Congress has decided upon.**[53]

x x x x x x x x x

MR. PADILLA: According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

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[52] II RECORD, CONSTITUTIONAL COMMISSION 508 (31 July 1986).

[53] *Id*. at 509.

FR. BERNAS: I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION: If I may add a word. **The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.**[54] (Emphases supplied)

Ultimately, Congress must be able to clearly demonstrate the reasonableness of the period in its resolution approving the extension and fixing the period thereof.

Judicial Power of Review of Martial Law Extension and the Period Thereof

The third paragraph of Section 18, Article VII of the Constitution, provides that the sufficiency of the factual basis for the extension of Martial Law may be reviewed by the Court:

> 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. (Emphasis supplied)

As can be gleaned from the discussions above, the extension of a proclamation of Martial Law necessarily entails a determination of the period of its extension. Therefore, the Court's exercise of its review power is not limited to a resolution of the factual sufficiency of the extension *per se*. That power likewise includes a review of the sufficiency of the factual basis of the period of extension.

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[54] *Id*. at 510.

While the question that faces the Court is whether or not such period is reasonable, this question can be answered through an examination of the factual basis of the extension *per se*.

Specifically, the Court has to look into the public safety element – whether the period fixed is commensurate with the necessity of public safety. This determination essentially involves a calibration exercise as previously discussed. Therefore, in the same way that this duty inevitably requires a delineation of the areas to be validly covered by Martial Law,[55] the Court also has the duty to determine the length of period necessary to quell the existing threat to public safety. There must be a calibration based on the proportionality of the danger at hand to the period of extension. As a result, the Court may do one of three things: affirm the period fixed by Congress, extend it, or shorten it.

Burden of Proof

Lagman v. Medialdea established that the President carried the burden of proof to show that there was sufficient factual basis for the proclamation of Martial Law.[56] The Court ruled that "the President satisfactorily discharged his burden of proof. 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*."[57]

As discussed above, the extension of the period of effectivity of the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* is a joint executive-legislative act. The Constitution has vested both the President and Congress with the power of extending the Martial Law period, with the President initiating it and Congress actually extending or not extending the period. The President provides Congress with the necessary factual basis to justify his request

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[55] Dissenting Opinion, *C.J.* Sereno, *Lagman v. Medialdea*, *supra*.

[56] *Lagman v. Medialdea*, *supra*.

[57] *Id.* at 61.

for the extension of the Martial Law period. Congress must then assess the sufficiency of the factual basis. Both the executive and the legislative branches of Government bear the burden of proving the sufficiency of the factual basis.

In response to petitioners' claim that the President bears the burden of proving the sufficiency of the factual basis for the Martial Law extension, respondents argue that petitioners are the ones who must prove that rebellion has already been completely quelled. According to respondents, the Court in *Lagman v. Medialdea* has already ruled that rebellion exists in Mindanao and, following the doctrine of conclusiveness of judgment, the resolution of the instant case must be confined to the issue of whether or not the rebellion has been completely quelled.

In effect, respondents argue that instead of them proving that rebellion persists, the burden of proof has already shifted to petitioners to show that rebellion no longer exists.

That contention is erroneous.

To justify the extension of the period of Martial Law, the Constitution provides two requisites: (1) invasion or rebellion persists, and (2) public safety requires it. The persistence of rebellion is a factual issue that must be proven. The initial proclamation of Martial Law is distinct from its extension, and respondents cannot base their claim of the existence of rebellion merely on *Lagman v. Medialdea*. Certainly, *Lagman* was decided based on the circumstances surrounding the time of the initial proclamation of Martial Law. That actual rebellion was found to have existed then does not automatically lead to a conclusion that rebellion still persisted at the time the period was extended.

Furthermore, respondents cannot shift the burden of proof to petitioners. As held by Justice Caguioa in his Dissenting Opinion in *Lagman v. Medialdea*:

> [C]onsidering 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 of 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**. (Emphasis supplied)

In fine, it can be concluded that the burden of proof remains with the Government. For purposes of fulfilling the constitutional requirements of a valid declaration of Martial Law and its extension, the burden of proof never shifts to petitioners. It is the constitutional duty of the Government to show that the requirements of the Constitution have been met.

Abandonment of the Permissive Approach

In my Dissenting Opinion in *Lagman v. Medialdea*, I espoused a permissive approach in weighing the evidence or drawing from interpretative sources. I adopted that approach considering that this was the first post-Marcos examination of Martial Law undertaken by the Court under the 1987 Constitution. No rule or jurisprudence existed then that sufficiently guided the President in crafting the Martial Law proclamation under the present Constitution.

Pursuant to this permissive approach, I examined the available evidence more closely in order to understand what the correct description of the realities in Mindanao should have been - beyond what was described in Proclamation No. 216, the President's Report to Congress, and the Comment of the Office of the Solicitor General filed before this Court.

After adopting the permissive approach, I concluded that Martial Law was valid not only in Marawi City, but in the entire province of Lanao del Sur, as well as in the provinces of Maguindanao and Sulu.

It is important, however, to emphasize that the application of the permissive approach was *pro hac vice* in view of the paucity of rules and jurisprudence to guide an evidentiary

determination of the sufficiency of the factual basis for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus*. Considering the views expressed in *Lagman v. Medialdea*, a permissive approach in considering the evidence in this *sui generis* proceeding cannot remain to be the rule.

Allow me to point out that contrary to the majority's position in *Lagman v. Medialdea* that they are unable to rule on the appropriate coverage of Martial Law, I was able to demonstrate in my dissent that it was possible for this Court to undertake an **independent factual review of the coverage of Martial Law**. While I agree that the Court could recognize the unique fact-finding capabilities of the executive department, it did not follow that the conclusions derived by the President from these facts were to be adopted blindly by this Court. Rather, the Court should have been able to arrive at an independent conclusion after a careful review of the facts provided.

In the Resolution dated 5 December 2017 in *Lagman v. Medialdea*, the majority dabbled in surmises and conjectures by saying that "there is always a possibility that the rebellion and other accompanying hostilities will spill over."[58] Behind a sweeping generalization that "martial law is a flexible concept,"[59] the majority opinion posited that the precise extent or range of the rebellion and the public safety requirement could not be measured by exact metes and bounds.

However, this is not really the case. The elements of actual rebellion and public safety are inflexible requirements for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus*. They also provide a sufficient guide for this Court to determine the sufficiency of the factual basis for that declaration.

Worse than the Court's act of effectively abdicating its duty to fully review the President's action under Article VII,

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[58] *Lagman v. Medialdea*, *supra* at 7.

[59] *Id*.

Section 18 of the Constitution, is its failure to lay down parameters for the future review of the President's same or similar actions. Weak, sweeping statements today can encourage their misuse as precedents in future cases.

Factual Basis for the Extension of Martial Law in Mindanao

In Resolution of Both Houses (RBH) No. 4 dated 13 December 2017,[60] the Congress of the Philippines determined that rebellion persists, and that public safety indubitably requires the further extension of Proclamation No. 216[61] declaring a state of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao. In a joint session that yielded 240 affirmative votes, Congress approved the extension for a period of one year from 1 January to 31 December 2018.

Congress took note of the following essential facts:

1. Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion.
2. The Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area.
3. The Bangsamoro Islamic Freedom Fighters (BIFF) continues to defy the Government by perpetrating at least 15 violent incidents during the Martial Law period in Maguindanao and North Cotabato.

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[60] Resolution of Both Houses Further Extending Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for a Period of One (1) Year from January 1, 2018 to December 31, 2018.

[61] 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.

4. The remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and the Zamboanga Peninsula remain a serious security concern.

5. The New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the Government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and to supplant the country's democratic form of government with Communist rule.

RBH No. 4 was issued by Congress in connection with the President's letter dated 8 December 2017 requesting the further extension of Proclamation No. 216 for a period of one year or for such other period of time as Congress may determine. The report of the President in his letter gave the following particulars of the foregoing essential facts narrated in RBH No. 4:

1. At least 185 persons listed in the Martial Law Arrest Orders have remained at large and, in all probability, are presently regrouping and consolidating their forces.

2. The remnants, together with their protectors, supporters, and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical buildup, as well as in their consolidation/ reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also Sulu and Basilan. Their activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and a *Wilayat* not only in the Philippines, but also in the whole of Southeast Asia.

3. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia.

4. In 2017, the BIFF initiated at least 89 violent incidents consisting mostly of harassments and roadside bombings directed at government troops.

5. In 2017, the ASG conducted at least 43 acts of terrorism including attacks using improvised explosive devices, harassments, and kidnappings. These acts resulted in the killing of 8 civilians, 3 of whom were beheaded.

6. In 2017, the NPA perpetrated at least 385 atrocities in Mindanao, which resulted in 41 killed and 62 wounded in action on the part of the government forces. These incidents also resulted in the killing of 23 and the wounding of 6 other civilians. The most recent incident was the ambush on 9 November 2017 that resulted in the killing of 1 and wounding of 3 Philippine National Police (PNP) personnel, as well as in the killing of a four-month-old infant and the wounding of 2 other civilians.

7. Apart from perpetrating these atrocities, the NPA also committed at least 59 arson incidents in Mindanao targeting businesses and private establishments and destroying an estimated ₱2.2 billion worth of properties. The most significant attacks were launched against the Lapanday Food Corporation in Davao City on 9 April 2017 and the Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental, on 6 May 2017, resulting in the destruction of properties valued at ₱1.85 billion and ₱109 million, respectively.

8. These activities of the NPA constrained the President to issue Proclamation No. 360[62] on 23 November 2017 declaring the termination of peace negotiations with the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP- NPA-NDF).

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[62] Entitled "Declaring the Termination of Peace Negotiations with the National Democratic Front-Communist Party of the Philippines-The New People's Army."

9. On 5 December 2017, the President issued Proclamation No. 374[63] declaring the CPP-NPA-NDF a designated/identified terrorist organization under Republic Act No. (R.A.) 10168 (The Terrorism Financing Prevention and Suppression Act of 2012). The presidential proclamation was coupled with a directive to the Secretary of Justice to file a petition in the appropriate court praying that the CPP-NPA- NDF be proscribed for being a terrorist organization under R.A. 9372 (Human Security Act of 2007).

The request of the President to the Congress was prompted by the letter dated 4 December 2017 from Secretary of National Defense Delfin N. Lorenzana. The latter recommended "the extension of Martial Law for another 12 months or 1 year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters and financiers, and to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao."

Secretary Lorenzana indicated that the armed struggle in Mindanao was still relatively strong. He emphasized that the proposed extension would significantly help not only the AFP but also other stakeholders in quelling the ongoing DAESH-inspired DIWM groups. He also said that the extension would help put an end to the rebellion being staged by communist terrorists, as well as in restoring public order, safety and stability in Mindanao.

Secretary Lorenzana attached the letter of General Guerrero, who was also recommending the extension for compelling reasons

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[63] Entitled "Declaring The Communist Party Of The Philippines (CPP)-New People's Army (NPA) as a Designated/Identified Terrorist Organization Under Republic Act No. 10168."

based on "current" security assessment. The latter added the following information in support of his request for the extension of the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus*:

1. The remnants of the groups of Hapilon and the Maute brothers, with the help of their sympathizers and supporters, are still capable of strengthening their organization in preparation for the conduct of more hostilities in the Lanao provinces and other vulnerable areas in Mindanao.
2. The Turaifie Group is undertaking propaganda to show that it is still a capable force to be reckoned with.
3. The BIFF is still equipped with 388 manpower and 328 firearms.
4. Mindanao, particularly Eastern Mindanao, continues to be the hotbed of communist insurgency and accounts for 47% of the total manpower, 48% of firearms, 51% of the affected *barangays* and 45% of guerrilla fronts nationwide.
5. Of the 14 active provinces in terms of communist insurgency, 10 are in Mindanao.
6. The Komisyon Mindanao (KOMMID) of the Communists Terrorists is now capable of sending augmentation forces, particularly party cadres, to Northern Luzon.
7. The infiltration, recruitment, indoctrination and political mobilization of indigenous peoples (IP) remain unabated with the support of party organizers from the urban areas.
8. The ASG is currently holding nine kidnap victims in captivity.

In all, General Guerrero offered the following as justification for the recommended extension:

1. The DAESH-inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western and

Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;

2. Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan De Oro, General Santos, Zamboanga and Cotabato;

3. The CTs have been pursuing and intensifying their political mobilization (army, party and mass-base building; rallies, pickets, and demonstrations; financial and logistical build-up), terrorism against innocent civilians and private entities, and guerrilla warfare against the security sector, and public and government infrastructures;

4. The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;

5. The threats being posed by the CTs, the ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;

6. The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of *habeas corpus* in Mindanao will significantly help not only the AFP, but also the other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and

7. In seeking another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial Law to date, without any reported human rights violation and/or incidents of abuse of authority.[64]

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[64] Letter of AFP General Rey Leonardo B. Guerrero, pp. 3-4.

Analysis of the Factual Claims of the Government

In *Lagman v. Medialdea*, the majority observed there was no question that there was an armed public uprising in Marawi City. The only contention of the petitioners therein was that the armed hostilities did not constitute rebellion in the absence of the element of a culpable political purpose.[65] Their argument was found to be unmeritorious in view of the conclusion of the Court that the President had sufficient factual basis tending to show that actual rebellion existed.[66]

Under Section 18, Article VII of the Constitution, an extension of the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* may be made by Congress, upon the initiative of the President, for a period to be determined by it if the invasion or rebellion persists and public safety requires it.

Thus, the question posed to this Court in the instant cases is whether or not rebellion persists and public safety requires the extension.

Considering the facts alluded to by the President, Secretary of Defense Lorenzana, General Guerrero, and ultimately Congress, the answer is no. Their pronouncements in fact show that there is no armed public uprising that justifies the conclusion that rebellion persists.

With respect to RBH No. 4, the fact that the rebel groups have "continued to rebuild their organization through recruitment and training of new members and fighters to carry on the rebellion,"[67] or that the Turaifie Group was "monitored to be planning to conduct bombings,"[68] or that the remnants of the

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[65] *Lagman v. Medialdea*, *supra* at 54.

[66] *Id.* at 61.

[67] Resolution of Both Houses No. 4 dated 13 December 2017, p. 2.

[68] *Id.*

ASG "remain a serious security concern"[69] shows that there is no armed public uprising or taking up of arms against the Government. At most, what the facts show is that there is danger of an armed public uprising that may turn out to be imminent.

The President can always call on the armed forces to suppress an imminent danger of rebellion. The deliberation of the Constitutional Commission is clear in this regard:

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 source of a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. So, we submit it to the body for a vote.

MR. PADILLA: I would just like to state that the term OR IMMINENT DANGER THEREOF appears in the 1935 and 1973 Constitutions and it has not even resulted in a multitude of sins, temptations nor confusion.

THE PRESIDING OFFICER (Mr. Bengzon): Will Commissioner de Castro speak in favor of the amendment?

MR. DE CASTRO: I am in favor of the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de Castro is recognized.

MR. DE CASTRO: Section 15 speaks of actual rebellion and actual invasion, if we eliminate "OR IMMINENT DANGER THEREOF." When there is already actual invasion or rebellion, the President no longer suspends the privilege of the writ of *habeas corpus* because we already have actual shooting. There is nothing more to be remedied by the Chief Executive. But when we put the words "OR IMMINENT DANGER THEREOF," perhaps they are still assembling; they are still preparing for their departure or their provisions for immediate rebellion. The Chief Executive then has the power to suspend the writ of *habeas corpus*, but with the situation I mentioned there is nothing more to suspend.

MR. REGALADO: Mr. Presiding Officer.

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[69] *Id*.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. REGALADO: I yield to the Floor Leader.

MR. RAMA: I ask that Commissioner Concepcion be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Concepcion is recognized.

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.[70] (Emphasis supplied)

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[70] I RECORD, CONSTITUTIONAL COMMISSION, 773-774 (18 July 1986).

The 15 violent incidents allegedly committed by the BIFF during the Martial Law period have not been described with sufficient particularity as to enable this Court to conclude that an armed public uprising with a culpable political purpose has been mounted by the BIFF against government forces. More important, these alleged violent incidents during the Martial Law period do not by themselves justify the extension.

Neither does the letter of the President dated 8 December 2017 point to the fact that an armed public uprising is still underway. He reported that at least 185 persons who had been sought to be arrested during Martial Law remained at large and, "in all probability, are presently regrouping and consolidating their forces."[71] He also stated that "Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia."[72] There is enough speculation in these statements to conclude that the Government is not even sure about the gravity of the threats that these "remnants" might pose. An impression of a foreboding rebellion is also given by the statement that "[t]heir activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and of a Wilayat not only in the Philippines but also in the whole of Southeast Asia."[73]

The President has alluded to 89 violent incidents initiated by the BIFF and 43 acts of terrorism committed by the ASG last year. Aside from the fact that these violent incidents and acts of terrorism have not been described with sufficient particularity, there is a clear possibility that most of them have already been cited as justification for the President's original proclamation of Martial Law and suspension of the privilege of the writ of *habeas corpus* and likewise for Congress' approval of the first extension.

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[71] Letter of President Duterte to the Senate of the Philippines and House of Representatives, dated 8 December 2017, p. 3.

[72] *Id*.

[73] *Id*.

That rebellion is potentially imminent is also shown by the letter of General Guerrero. He states that the remnants of the groups of Hapilon and the Maute brothers are "still capable of strengthening their organization with the help of their sympathizers and supporters in preparing for the conduct of more hostilities in the Lanao provinces and other vulnerable areas in Mindanao."[74] Notably, the Turaifie Group is not even mounting an armed uprising, as it is merely undertaking "propaganda to show that it is still a capable force to be reckoned with."[75]

That the BIFF is still equipped with 388 manpower and 328 firearms or that the ASG currently has nine kidnap victims held in captivity, while absolutely deplorable, cannot justify the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*. While the BIFF may be armed, the statement fails to show that the firearms are being used for the conduct of a public uprising coupled with a culpable political purpose. It is also difficult to see the culpable political purpose behind the kidnap of nine innocent civilians.

The Inclusion of the CPP-NPA-NDF

It is clear from the letter of the President that the "decades-long rebellion" of the NPA had very little to do with the uprising of the DAESH- inspired DIWM, and whatever connection there was consisted mainly of their similarity in geographical location.

The Solicitor General believes otherwise. He posits that the CPP-NPA rebellion was already included as a ground for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Proclamation No. 216, as well as in the request to Congress for the first extension:

JUSTICE CARPIO:

Thank you. Counsel, let['s] settle it. Just one more point. In the original declaration of martial law, only the Maute rebellion was mentioned specifically, correct?

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[74] Letter of AFP General Rey Leonardo B. Guerrero to the President through the Secretary of National Defense, p. 2.

[75] *Id*.

SOLICITOR GENERAL CALIDA:
There were others, Your Honor.

JUSTICE CARPIO:
And other rebels? But not, no other specific rebellions? Maute or Maute group [DAESH] is ISIS inspired, but no and other rebels?
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Okay, so no specific mention of CPP-NPA rebellion. It's just other rebels.
SOLICITOR GENERAL CALIDA:
Yes, but it is subsume[d] under that term, Your Honor.

JUSTICE CARPIO:
Yes, okay. Now, in the first extension. There was also no also [sic] mention of CPP-NPA specifically it was not mentioned. Correct?
SOLICITOR GENERAL CALIDA:
Actually, Your Honor, the [P]resident mentioned it, Your Honor. And may I read for the record.

JUSTICE CARPIO:
First extension?
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
As the government security forces intensified efforts during the implementation of martial law, one hundred eleven members of the New People's Army (NPA) had been encountered and neutralized while eighty-five forearms have been recovered from them.

JUSTICE CARPIO:
But what was [sic] the first extension merely extended the initial declaration. Correct?
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
So what governs is the initial declaration? Because you were just extending it.
SOLICITOR GENERAL CALIDA:
Yes, Your Honor. But I mentioned the term.

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

JUSTICE CARPIO:
Yeah, but the first proclamation of the President in the first declaration mentions other rebels.
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Without specifying what these other rebels are, other rebels aside from the Maute Group, there were other rebels.
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Now, in this second extension, it says now, CPP-NPA?
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Now, my question is, when the Constitution says that if the rebellion persists, then Congress may extend. When you use the word persist and extend, you [are] referring to the original ground for declaration of martial law. Correct?
SOLICITOR GENERAL CALIDA:
Yes, Your Honor. But as I've said, it covers the NPA because the Court can take judicial notice the oldest rebel group in the Philippines is the NPA. They have been fighting the government way back in 1960s, Your Honor.

JUSTICE CARPIO:
You are saying that when the Congress approved or approved the extension, the first extension, they were also referring to the CPP-NPA rebellion? Is that what you are saying?
SOLICITOR GENERAL CALIDA:
That's what I assumed, Your Honor.

JUSTICE CARPIO:
Okay, and also this Court, also when the Court approved.
SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:

When the Court said that it's constitutional, the Court understood that the rebellion that the ground for the declaration of martial law included the rebellion of the CPP-NPA?

SOLICITOR GENERAL CALIDA:

Yes.[76]

The Solicitor General is, of course, mistaken. Proclamation No. 216 was issued on the basis of the rebellion of the ISIS-inspired Maute Group. In *Lagman v. Medialdea*, the Court focused on the facts that had convinced the President that "there is probable cause or evidence showing that more likely than not, a rebellion was committed or being committed."[77] The facts cited at the time are as follows:

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, 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;

2. Series of violent acts committed by the Maute terrorist group including:

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[76] TSN, 17 January 2018, pp. 190-193.

[77] *Lagman v. Medialdea*, *supra* at 53.

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:

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 submitted to Congress:

1. Zamboanga siege;

2. Davao bombing;

3. Mamasapano carnage;

4. Cotabato bombings;

5. Sultan Kudarat bombings;

6. Sulu bombings;

7. Basilan bombings;

8. Attempt to capture Hapilon was confronted with armed resistance by combined forces of ASG and the Maute Group;

9. Escalation of armed hostility against government troops;

10. Acts of violence directed not only against government authorities and establishments but civilians as well;

11. Takeover of major social, economic and political foundations which paralyzed Marawi City;

12. The object of the armed hostilities was to lay the groundwork for the establishment of a DAESH/ISIS *wilayat* or province;

13. Maute Group has 263 active members, armed and combat-ready;

14. Extensive networks or linkages of the Maute Group with foreign and local armed groups;

15. Adherence of the Maute Group to the ideals espoused by ISIS;

16. Publication of a video showing Maute Group's declaration of allegiance to ISIS;

17. Foreign-based terrorist groups provide financial and logistical support to the Maute Group;

18. Events on May 23, 2017 in Marawi City, particularly;

a) at 2:00PM, 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 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 7:00 PM, 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, was taken by 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 nuns' 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 Foundation;

k) burning of Senator Ninoy Aquino College Foundation and Marawi Central Elementary Pilot School:

l) overrunning of Amai Pakpak Hospital;

m) hoisting the 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 armoured vehicle;

p) reports regarding Maute Groups' 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.[78]

During the Oral Arguments for the instant petitions, the Solicitor General argued that the atrocities committed by the NPA were in fact already included in Proclamation No. 216 as shown by the use of the phrase "other rebel groups" in the sixth WHEREAS Clause. According to him, the NPA was not categorically identified in view of the then ongoing peace talks with the CPP-NPA-NDF:

JUSTICE TIJAM: Considering that the government made mentioned [sic] of the NPA rebels as one of the reasons for asking for the extension of martial law, this does not seem to fall within the ambit of the word persist since the original declaration was made on the basis of the rebellion committed by the Maute in Mindanao and no mentioned [sic] whatsoever was made of the NPA?

SOLICITOR GENERAL CALIDA: Actually, there's a phrase there, Your Honor, that will include the NPA in the proclamation of the President, Proclamation No. 216, there's a phrase there which says,

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[78] *Id.* at 54-58.

'of other rebels.' And because there [were] peace negotiations during that time as a matter of comity and to the other party, the NPA was not explicitly included there but if you read the entire contents of the letter of the President and the proclamation of the President, Your Honor, it is very clear that all rebels including NPA which has waged the longest time of rebellion in the Philippines they are included there. In fact, Your Honor, in the recommendation of the Chief of Staff the NPA was explicitly mentioned in that recommendation.[79]

Even if we were to accept the argument that the atrocities of the NPA were already included among the grounds justifying the issuance of Proclamation No. 216, the reality is that when the Court upheld the sufficiency of the factual basis for the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in *Lagman v. Medialdea*, no facts involving the NPA were examined by this Court for the determination of probable cause or of evidence showing that, more likely than not, a rebellion had been committed or was being committed.

Clearly, for the purposes of the Court in *Lagman v. Medialdea*, Proclamation No. 216 did not include the "decades-long rebellion" of the NPA as factual basis.

Thus, for the Court now to determine that rebellion "persists," it can only do so by answering the question of whether or not the rebellion of the ISIS-inspired Maute Group or of the DAESH-inspired DIWM persists. The addition of a new actor as factual basis for arguing that a rebellion persists is self-contradictory and cannot be accepted.

Whether "defanged" or not, the present extension of the period of effectivity of the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* has not been shown to be necessary for public safety. Petitioners are more than justified in reminding this Court and respondents of the lessons of Martial Law past.

Accordingly, I vote to declare that there is **no sufficient factual basis for the extension** of the period of effectivity of

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[79] TSN, 17 January 2018, pp. 176-177.

the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao, and that Resolution of Both Houses No. 4 dated 13 December 2017 should be struck down as **unconstitutional**.

DISSENTING OPINION

CARPIO, *J.*:

The Case

These are consolidated petitions filed under the Court's power to review the sufficiency of the factual basis of the extension 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 Constitution. The consolidated petitions challenge the constitutionality of Joint Resolution No. 4 dated 13 December 2017 (Joint Resolution No. 4)[1] issued by the Senate and the House of Representatives, *further*[2] extending the proclamation of martial law and suspension of the privilege of the writ in the whole Mindanao group of islands until 31 December 2018.

The Antecedent Facts

On 13 December 2017, the Senate and the House of Representatives, voting jointly, adopted Joint Resolution No. 4. The assailed issuance reads:

x x x x x x x x x

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, Series of 2017, entitled "Declaring a

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[1] Annex "D" of Monsod Petition; Annex "5" of OSG Consolidated Comment.

[2] On 23 May 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, series of 2017, declaring a state of martial law and suspending the privilege of the writ in the whole of Mindanao. During a Special Joint Session on 22 July 2017, Congress extended Proclamation No. 216 until 31 December 2017.

State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao," to address the rebellion launched by the Maute Group and elements of the Abu Sayyaf Group and elements of the Abu Sayyaf Group in Marawi City, and to restore peace and order in Mindanao;

WHEREAS, the Senate and the House of Representatives, in a Special Joint Session held on July 22, 2017, extended the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole Mindanao until December 31, 2017;

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines "to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution";

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus on the Whole Mindanao; Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session Assembled, [t]o further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao for a period of one (1) year from January 1, 2018 to December 31, 2018.[3]

Petitioners in G.R. Nos. 235935, 236061, 236145, and 236155 impugn the constitutionality of Joint Resolution No. 4.

Discussion

I vote to grant the consolidated petitions for three reasons. ***First***, the Maute rebellion, which was the basis of Proclamation No. 216, already ceased. ***Second***, threats to security posed by remnants of the defeated rebel groups do not constitute an actual rebellion. ***Third***, neither can the NPA rebellion justify the extension of Proclamation No. 216, considering that the NPA rebellion was not the same rebellion that led to the initial martial law declaration and suspension of the privilege of the writ under Proclamation No. 216. Thus, Joint Resolution No. 4 lacks sufficient factual basis, thereby making it unconstitutional.

Preliminarily, I shall address petitioners' invocation of *Ex Parte Milligan*[4] as basis to define martial law as "the assumption

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[3] Annex "D" of Monsod Petition; Annex "5" of OSG Consolidated Comment.

[4] 711 U.S. 4 Wall. 2 (1866).

of jurisdiction by the military over the civilian population x x x."[5] Petitioners view martial law "in the context of a theater of war, wherein the government civilian functions such as the civil courts and other civil services cannot function x x x."[6]

I disagree.

Decided by the United States (US) Supreme Court in 1866, *Ex Parte Milligan* involved Lambden P. Milligan who was charged with acts of disloyalty and faced trial before a military commission in Indiana during the civil war. He was found guilty on all charges and sentenced to death by hanging. He then sought release through *habeas corpus* from a federal court. While trials of civilians by presidentially created military commissions were invalidated, the US Supreme Court recognized martial law as a necessary substitute for the civil authority in the theater of active military operations, thus:

> It follows from what has been said on this subject that there are occasions when martial rule can be properly applied. 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 theat[er] 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 the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.[7] (Emphasis supplied)

This pronouncement of the US Supreme Court has no application in this jurisdiction because *Ex Parte Milligan* conflicts

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[5] Memorandum of petitioner Rosales, pp. 15-16. See Memorandum of petitioners Monsod, *et al.*, p. 46.

[6] Memorandum of petitioners Monsod, *et al.*, pp. 46, 50-51.

[7] *Ex Parte Milligan*, *supra* note 4, at 127.

with the Philippine Constitution. Paragraph 4, Section 18, Article VII of the Constitution reads:

> 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. (Emphasis supplied)

To repeat, a state of martial law does not suspend the operation of the Constitution. Contrary to the theory of petitioners, the clause "nor supplant the functioning of the civil courts or legislative assemblies" already precludes the "existence of a vacuum in civilian authority in a theater of war."[8] Not even the phrase "conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function" can serve as basis for the military to immediately acquire jurisdiction. Under Section 2, Article VIII of the Constitution, "Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts." Applied to military courts, this means that Congress needs to enact a law vesting military courts with jurisdiction. In other words, a state of martial law does not *ipso facto* confer jurisdiction on military courts over civilians. Rather, the conferment comes from Congress through a separate law.

During the oral arguments, I made the same clarification on the inapplicability of *Ex Parte Milligan*, thus:

> JUSTICE CARPIO:
>
> Okay. x x x *Ex Parte Milligan* x x x. The US Constitution (does) not have that provision that in case of martial law the Bill of Rights (is) not suspended x x x.

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[8] Memorandum of petitioner Rosales, p. 16.

ATTY. HILBAY:
Correct, Your Honor.

JUSTICE CARPIO:
It was the old concept of necessity.

ATTY. HILBAY:
Correct, Your Honor.

JUSTICE CARPIO:
Okay. So, I think, you agree with me that when (this) Court adopted the *Ex Parte Milligan* definition of martial law, it did not jibe with the present Constitution, correct?

ATTY. HILBAY:
Well, in fact, Your Honor, *Milligan* is seen in the United States as a civil liberties case decided by the United States Supreme Court against the military.

JUSTICE CARPIO:
x x x the definition x x x that martial law is the assumption of jurisdiction by the military cannot apply here because our Constitution says, *martial law shall not supplant legislative assemblies*. So, there is no instance where the military can exercise supervision and control over legislative assemblies, correct?

ATTY. HILBAY:
Your Honor, I think the cover of phrase is where civil courts are able to function.

JUSTICE CARPIO:
No, x x x. *"Shall not nor supplant the functioning of civil courts or the legislative assemblies, nor authorize the conferment of jurisdiction on military courts over civilians where civil courts are able to function*." x x x that provision *"nor authorize the conferment of jurisdiction on military courts,"* you're talking of conferment of jurisdiction, which is conferred by what?

ATTY. HILBAY:
By martial law, Your Honor.

JUSTICE CARPIO:
No. Jurisdiction is conferred by Congress, correct?

x x x x x x x x x

JUSTICE CARPIO:

Because it says here, *it does not confer jurisdiction on military courts*. The act of declaration of martial law – can (that) confer jurisdiction on (the) military? x x x there has to be a separate law. So that this definition, 1866 definition, is not appropriate today, correct?

x x x x x x x x x

JUSTICE CARPIO:

It's only appropriate in that it says you can declare martial law in a theater of war...

ATTY. HILBAY:

Okay, Your Honor, I agree.[9]

To be clear, all of the provisions of the Constitution, including the Bill of Rights, remain operative during the proclamation of martial law and the suspension of the privilege of the writ. **The Constitution clearly prohibits the automatic assumption of jurisdiction by military courts during a state of martial law or when the privilege of the writ is likewise suspended.**

With the liberation of Marawi City and the end of the Maute rebellion, the initial declaration of martial law and suspension of the privilege of the writ under Proclamation No. 216 can no longer be extended.

Paragraph 1, Section 18, Article VII of the Constitution 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. x x x. Upon the initiative of the President, the **Congress may,** in the same manner, **extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.** [Emphasis supplied]

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[9] TSN, 16 January 2018, pp. 107-109.

The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ **"if the x x x rebellion shall persist."** Literally and without need of constitutional construction, the word "persist" means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended. In the deliberations of the Constitutional Commission, the framers understood that the extension could be justified "if the invasion (or rebellion) is **still going on**."[10] **The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension.** In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President.

Proclamation No. 216, signed by President Rodrigo Roa Duterte (President Duterte) and attested by Executive Secretary Salvador C. Medialdea on 23 May 2017, clearly identifies the "Maute group" as the rebel group who committed the crime of rebellion by "rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance to said [g]overnment." The pertinent paragraphs of Proclamation No. 216 read:

x x x x x x x x x

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";

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[10] The portion of the records reads:

MR. REGALADO: Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, **if the invasion is still going on**. But there is already the cutoff of 60-day period. Do they have to meet all over again and agree to extend the same? (Records of the Constitutional Commission, Vol. 2, 31 July 1986).

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.[11] (Emphasis and underscoring supplied)

Moreover, on 25 May 2017, when President Duterte submitted his Report to Congress, he identified the Maute group as the perpetrator of the crime of rebellion in Marawi City, to wit:

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

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[11] Annex "A" of Rosales Petition.

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.

x x x x x x x x x

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.[12] (Emphasis supplied)

On 17 October 2017, President Duterte declared the liberation of Marawi City, a day after the death of Isnilon Hapilon and Omar Maute, the leaders of the Maute rebellion. In his speech to the soldiers on 17 October 2017, the President said, "**Ladies and gentlemen, I hereby declare Marawi City liberated from the terrorist influence that marks the beginning of rehabilitation [of the city]**."[13]

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[12] *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017.

[13] Eimor P. Santos, *Duterte declares liberation of Marawi*<http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html> [last accessed 2 February 2018]. *See also* Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html> [last accessed 2 February 2018]; Trisha Macas and Raffy Tima, *Duterte declares Marawi City is free* <http://www.gmanetwork.com/news/news/nation/629820/duterte-declares-marawi-city-is-free/story/> [last accessed 2 February 2018]; Allan Nawal, Jeoffrey Maitem, Richel Umel and Divina Suson, *Marawi 'liberated' from terrorists but battle drags on* <http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists> [last accessed 2 February 2018]; AFP, AP and Francis Wakefield, *Battle of Marawi ends* <https://news.mb.com.ph/2017/10/24/battle-of-

This statement was bolstered by National Defense Secretary Delfin Lorenzana in his speech at the ASEAN Defense Ministers meeting held last October 2017. He said, "**After 154 days of the siege of Marawi by the Daesh-inspired Maute-ISIS group, or after a week since the Commander-in-Chief declared liberation of Marawi, we now announce the termination of all combat operations in Marawi**."[14]

Joint Task Force Ranao Deputy Commander Colonel Romeo Brawner clarified what "termination of combat operations" means. He said, "x x x [T]his means that **we are terminating the assault, the offensive attack on the position of the Maute-ISIS**."[15]

These three separate statements made by President Duterte, the National Defense Secretary and the Joint Task Force Ranao Deputy Commander, respectively, clearly confirm that actual rebellion no longer persisted in Marawi City beginning 17 October 2017.

Moreover, the government did not present any evidence of an on-going rebellion by the Maute group in other places of Mindanao outside of Marawi City to justify the extension of Proclamation No 216. In various media appearances,

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marawi-ends/> [last accessed 2 February 2018]; Catherine S. Valente, *Marawi free* <http://www.manilatimes. net/marawi-free/357155/> [last accessed 2 February 2018]; Rosette Adel, *Duterte declares Marawi freed from terrorists* <http://www.philstar.com/headlines/2017/10/17/1749752/duterte-declares-marawi-freed-terrorists> [last accessed 2 February 2018]; PTV News, *President Duterte declares liberation of Marawi City* <https://ptvnews.ph/president-duterte-declares-liberation-marawi-city/> [last accessed 2 February 2018].

[14] Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>[last accessed 2 February 2018]. *See also* AFP, AP and Francis Wakefield, *Battle of Marawi ends*<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>[last accessed 2 February 2018].

[15] Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>[last accessed 2 February 2018].

representatives from the government and the army confessed that Marawi City was already contained and under control.

In one media interview, Major General Restituto Padilla, Jr., spokesperson for the military, said that the remaining twenty (20) to thirty (30) terrorists left in Marawi City had "**no way to get out anymore**" and "there is no way for anyone to get in x x x **[s]o choking them to death at this point will be very key for our troops to do since the area is very much contained and very controlled**."[16]

National Defense Secretary Lorenzana Delfin told reporters that "**there were no more militants**, known locally as coming from the Maute Group, **providing resistance** following an intense final battle x x x." He continued, "All terrorists, fighting troops. All hostages have been recovered. x x x **In crushing thus far the most serious attempt to export violent extremism and radicalism in the Philippines and in the region, we have contributed to preventing its spread in Asia and gave our share to maintaining global peace, stability and security**."[17]

Indeed, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the rebellion that "persists," the same rebellion cited by President Duterte in Proclamation No. 216. **Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216. Any extension pursuant thereto is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City.** To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City

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[16] Allan Nawal, Jeoffrey Maitem, Richel Umel and Divina Suson, *Marawi 'liberated' from terrorists but battle drags on* <http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists>[last accessed 2 February 2018].

[17] AFP, AP and Francis Wakefield, *Battle of Marawi ends* <https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/> [last accessed 2 February 2018].

or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.

The capability of the remnants of the defeated rebel groups to sow terror, and cause death and damage to property, does not constitute an actual rebellion.

Congress also justifies the extension of the declaration of martial law and suspension of the privilege of the writ by citing the capability of the remnants of the defeated rebel groups to sow terror, and cause death and damage to property.

I disagree.

Paragraph 1, Section 18, Article VII of the Constitution vests in the President, as the Commander-in-Chief, the power to declare martial law or suspend the privilege of the writ, provided an actual rebellion or invasion exists and public safety requires the declaration or suspension. While Congress may extend the proclamation or suspension, the Constitution expressly requires, "the invasion or rebellion shall persist and public safety requires it." In other words, the twin requirements of actual rebellion or invasion, and public safety imposed on the initial proclamation and suspension are continuing requirements for any subsequent extension of the proclamation or suspension. As aptly put by the petitioners, "what persists must be actual."[18]

By issuing Joint Resolution No. 4, the House of Representatives and the Senate adopted the justification of the President in extending Proclamation No. 216. The Letter dated 8 December 2017 of President Duterte to Congress reads in pertinent part:

> First, despite the death of Hapilon and the Maute brothers, the **remnants of their Groups** have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. x x x

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[18] Memorandum of Lagman Petition, p. 14.

More specifically, the **remnants of the DAESH-inspired DIWM members** and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as their consolidation/reorganization in Central Mindanao. x x x

Second, the Turafie Group has likewise been monitored to be **planning to conduct** bombings, notably targeting the Cotabato area. x x x

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) contuinue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguinadao and North Cotabato. x x x

Fourth, the **remnants of the Abu Sayyaf Group (ASG)** in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. x x x

x x x x x x x x x

x x x Public safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao **to pursue the bigger task of rehabilitation** and the promotion of a stable socio-economic growth and development.[19] (Emphasis supplied)

Respondents cannot rely on the **capability** of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, **capability** to rebel, **absent an actual rebellion or invasion**, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law 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. This is a gross violation of the clear letter and intent of the Constitution, as gleaned from the following deliberations of the Constitutional Commission:

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[19] Annex C of Lagman Petition.

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 Malacanang, 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 in Article 135**. x x x.[20] (Emphasis supplied)

The NPA rebellion, with the concurrence of public safety, requires a separate martial law declaration for a period not exceeding 60 days; it cannot justify the extension of Proclamation No. 216, the factual basis of which was solely the Maute rebellion.

To repeat, under Section 18, Article VII of the Constitution, the extension of the proclamation of martial law or suspension of the privilege of the writ requires the concurrence of the following two elements: *one*, the invasion or rebellion **persists**; and *two*, public safety requires the extension. Strict compliance with Section 18, Article VII of the Constitution is imperative because the provision distinguishes the initial proclamation or suspension from the subsequent extension. The former can only last for a period not exceeding 60 days, while the duration of the latter is subject to the discretion of Congress. **By belatedly invoking the NPA rebellion as factual basis for the extension of Proclamation No. 216, the government effectively circumvented the temporal limitation set by the Constitution that the initial proclamation of martial law or suspension of the privilege of the writ can only last for 60 days.** Worse, the extension set a maximum period of one year.

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[20] II RECORD, CONSTITUTIONAL COMMISSION 412 (1987).

When the Court reviewed in *Lagman v. Medialdea*[21] the sufficiency of the factual basis of Proclamation No. 216, the Court ruled in the affirmative on the sole basis of the Maute rebellion, to wit:

> 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."
>
> 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."
>
> 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."
>
> 4) "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."
>
> 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."

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

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."

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."

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."

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."

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. [Emphasis supplied]

Similarly, when the Court examined the impact of the rebellion on public safety, the Court never attributed the acts of violence to the NPA as to warrant the proclamation of martial law or suspension of the privilege of the writ in the whole of Mindanao, thus:

> 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**. In addition and in relation to the armed hostilities, bomb threats were issued; road blockades and checkpoints were set up; schools and churches were burned; civilian hostages were taken and killed; non-Muslims or Christians were targeted; young male Muslims were forced to join their group; medical services and delivery of basic services were hampered; reinforcements of government troops and civilian movement were hindered; and the security of the entire Mindanao Island was compromised.
>
> 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.
>
> 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. (Emphasis supplied)

Even the *ponencia* concedes that Proclamation No. 216 did not contemplate the NPA rebellion as factual basis. For one, the NPA merely "took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist attacks x x x, as well as guerilla warfare," all of which suggests that the perceived "intensified" insurgence happened after the issuance of Proclamation No. 216. For another, when Proclamation No. 216 was issued, the government and the NPA were undergoing peace negotiations. Hence, to belatedly expand the factual basis of Proclamation No. 216 as to include the NPA rebellion will violate Section 18, Article VII of the Constitution.

The *ponencia* holds that the inclusion of the NPA rebellion as basis for the martial law extension is justified because the NPA shares with the DAESH/ISIS-inspired rebels the same purpose of overthrowing the government and inflicts the same degree of violence as in the Marawi siege.

I disagree.

Contrary to the holding of the *ponencia*, mere identity of purpose and capacity for violence between the NPA and the DAESH/ISIS-inspired rebels cannot justify the inclusion of the NPA rebellion as factual basis for the extension of Proclamation No. 216. The Constitution limits the initial martial law declaration or suspension of the privilege of the writ to a period of 60 days. Only when this period is not enough to quell the rebellion can an extension be sought. By citing the NPA rebellion as factual basis for the extension, the government bypassed the mandatory 60-day period prescribed by the Constitution for the initial declaration of martial law and suspension of the privilege of the writ. The government can cite the NPA rebellion as a ground for the imposition of martial law and suspension of the privilege of the writ, but the initial 60-day period prescribed by the Constitution must first be observed before the government can ask for an extension of such emergency measures.

Neither can the concurrence of Congress with the President cure the unconstitutionality of the extension. The concurrent power of the legislative and the executive to extend the

proclamation or suspension is circumscribed by the clause "if the invasion or rebellion shall persist and public safety requires it." To give effect to this clause, paragraph 3, Section 18, Article VII of the Constitution vests the Court with the power to review the sufficiency of the factual basis of the extension. In other words, mere concurrence of the two political branches is not enough. The Court is the final arbiter of the constitutionality of the extension.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155 and **DECLARE** Joint Resolution No. 4 dated 13 December 2017 of the Senate and the House of Representatives **UNCONSTITUTIONAL** for failure to comply with Section 18, Article VII of the 1987 Constitution.

DISSENTING OPINION

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

\- Joseph Goebbels
Nazi Politician and Propaganda Minister

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

\- Iris Murdoch
Author and Philosopher

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[1] *As quoted in* SUSAN L. CARRUTHERS, *THE MEDIA AT WAR* 82 (2nd ed., 2011).

[2] *As quoted in* JOHN R. SULER, *PSYCHOLOGY OF THE DIGITAL AGE: HUMANS BECOME ELECTRIC* 358 (2016).

LEONEN, *J.*:

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

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

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

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

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

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

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

The deliberation in Congress was hobbled by the belated request for extension from the President and the imposition of a rule by its "supermajority" clearly designed to produce no other result than accession to the wishes of the President without serious deliberation. Each representative of the House of Representatives and each Senator were to reveal the preferences of their constituents in just three (3) minutes. Three (3) minutes were all that each of them had to raise questions, clarify, and express dissent, if any. The Congress' leadership's resolute persistence to keep to such time limits sacrificed democratic parliamentary deliberation. This was grave abuse of discretion.

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

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

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

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

Respectfully and in conscience, I cannot agree.

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

Part I of this dissent narrates the facts and the proceedings that precede the second and longer extension of martial law and the suspension of the privilege of the writ in Mindanao. Part II summarizes the reasons for this conclusion in Part I of this dissent. The succeeding parts elaborate on the reasons. This dissent should be read in relation to my separate opinion also in G.R. No. 231658, *Lagman, et al. v. Medialdea*[3] or the 2017 Martial Law cases, questioning the first extension of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

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

I

The events leading to these consolidated cases are as follows:

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

WHEREAS, Proclamation No. 55, series of 2016, was issued on 04 September 2016 declaring a state of national emergency on account of lawless violence in Mindanao;

WHEREAS, Section 18, Article VII of the Constitution provides that 'x x x In case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law x x x';

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that 'the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives';

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim as follows:

SECTION 1. There is hereby declared a state of martial law in the Mindanao group of islands for a period not exceeding sixty days, effective as of the date hereof.

SECTION 2. The privilege of the writ of habeas corpus shall likewise be suspended in the aforesaid area for the duration of the state of martial law.

DONE in the Russian Federation, this 23rd day of May in the year of our Lord, Two Thousand and Seventeen.

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

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

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

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[4] *Respondent's Memorandum,* p. 2.

[5] *Respondent's Memorandum,* Annex D.

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

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

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

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

> Due to compelling reasons and based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another 12 months or 1 year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters and financiers, and to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao.
>
> The previous Martial Law declaration which is still in effect until end of December 2017 has resulted in remarkable achievements, such as the death of Hapilon and the Maute brothers. However, the remnants of their groups were monitored to be continuously rebuilding their

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[6] *Lagman Petition,* Annex B.

[7] *Lagman Petition,* Annex C.

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

organization through the recruitment and training of new members/ fighters. Likewise, there are also other terrorist groups, such as the TURAIFIE, monitored to be planning to conduct terrorist activities in some parts of Mindanao, and there are data that indicate that armed struggle in Mindanao is still relatively strong.

This proposed second extension of implementation of Martial Law in Mindanao coupled with continued suspension of the privilege of the writ of habeas corpus will significantly help not only the AFP, but also other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and communist terrorists-staged rebellion, and in restoring public order, safety, and stability in Mindanao.

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

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

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

Other DAESH-inspired and like-minded threat groups such as BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato;

The CTs have been pursuing and intensifying their political mobilization (army, party and mass base building, rallies, pickets and demonstrations, financial and logistical build up), terrorism against innocent civilians and private entities, and guerrilla warfare against the security sector, and public government infrastructures;

The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;

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

The threats being posed by the CTs, the ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;

The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of habeas corpus in Mindanao will significantly help not only the AFP, but also other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and

In seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial Law to date, without any reported human rights violation and/or incident of abuse of authority.

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

Acting on the President's Letter, the House of Representatives and Senate promulgated Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 2017,[11] to govern the joint session during which Congress would perform its constitutional duty to determine whether rebellion persists, and whether public safety requires the extension of martial law.[12] During this joint session, resource persons from the Executive Department would report "on the factual basis of the letter of the President calling upon Congress to further extend the period" of martial law in

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[10] *Lagman Petition,* Annex C.

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

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

Mindanao.[13] These rules limited a member's period to interpellate resource persons to only three (3) minutes.[14]

During the joint session on December 13, 2017, the only materials provided to the members of Congress were the three (3) letters written by the President, General Guerrero, and Secretary Lorenzana.[15] Nonetheless, Congress passed Resolution of Both Houses No. 4, Further Extending Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for a Period of One (1) Year from January 1, 2018 to December 31, 2018. It read:

WHEREAS, the Senate and the House of Representatives, in a Special Joint Session held on July 22, 2017, extended the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao until December 31, 2017;

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines "to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution";

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the

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[13] *Representative Lagman's Memorandum,* Annex G, Rule V, Section 6, Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 2017.

[14] *Representative Lagman's Memorandum,* Annex G, Rule V, Section 7, Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 2017.

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

Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao; Now, therefore, be it

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

Thus, four (4) petitions[16] were filed before this Court, assailing Congress' act of extending martial law and the suspension of

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

the writ of habeas corpus, as well as the President's act of recommending it. Respondents, through the Office of the Solicitor General, filed their comments to the petitions, and this Court set the case for oral arguments.

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

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

II

With the filing of any appropriate action under Article VII, Section 18,[18] this Court is required to conduct greater judicial

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

[18] CONST., Art. VII, Sec. 18 provides:

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

and judicious scrutiny of both the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus by the President and the decision of Congress to allow any extension of these Commander-in-Chief powers.

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

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

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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.

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

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

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

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

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

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[19] CONST., Art. VIII, Sec. 1 provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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

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

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

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

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

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

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

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

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

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

The first element of this part of the inquiry is the concept of "factual basis." It must not only depend on factual assertions made by the military. The basis for the factual assertions must be presented in a reasonable manner. That is, that this Court must distinguish and evaluate the relationship between *factum probandum* and *factum probans*—between the ultimate facts alleged and the evidentiary facts used, and the reasonability of the inferences to arrive at the allegations.

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

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

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

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

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

Both the President and Congress also gravely abused their discretion when they failed to make public the powers that are to be exercised by the military, the remedies, and the strategy. Public participation in quelling the rebellion, assuming that it exists, should always be encouraged. There should no longer be any secret decrees.

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

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

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

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

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

III

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

The textual evolution of Article VII, Section 18 of the Constitution and the context in which it was formulated reveals a mandate for this Court not to give full deference to the Executive

when the Commander-in-Chief powers are exercised. The present text entails "a heightened and stricter mode of review."[20]

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

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

The question of whether the judiciary may review the exercise of the Commander-in-Chief powers under the Philippine Bill of 1902 was raised in *Barcelon v. Baker*. In resolving the case, this Court deferred to the judgment of the Governor General and the Philippine Commission and ruled that the factual basis relied upon for the suspension of the privilege of the writ of habeas corpus was purely political, and thus, beyond the scope

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

[21] MALOLOS CONST., Art. 65.

[22] MALOLOS CONST., Art. 71.

[23] MALOLOS CONST., Art. 79.

[24] MALOLOS CONST., Art. 77.

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

of judicial review. In refusing to take judicial cognizance of the issue, this Court relied on the principle of separation of powers and on the presumption that each branch of the government properly dispensed its functions.[26]

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

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

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

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

[27] Phil. Autonomy Act, Sec. 21.

[28] Phil. Autonomy Act, Sec. 21.

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

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

Section 10

. . . . . .

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

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

The privilege of the writ of habeas corpus was suspended under the 1935 Constitution. This was challenged in *Montenegro v. Castañeda*.[30] Similar to *Barcelon*, a policy of non-interference was adopted in *Montenegro*. This Court deferred to the executive's discretion and ruled that "the authority to decide whenever the exigency has arisen requiring the suspension

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[29] 1935 CONST., Sec. 10, par. 2.

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

belongs to the President and "his decision is final and conclusive upon the courts and upon all other persons."[31]

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

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

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[31] *Id*. at 887.

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

framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[33] (Emphasis supplied)

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

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

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

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

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

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

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

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

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

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.

Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the Lansang doctrine and reversion to that of Barcelon vs. Baker and Montenegro vs. Castañeda.[37] (Citations omitted)

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

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

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[37] *Id.* at 431-432.

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

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

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

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

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Article VII, Section 18 of the 1987 Constitution, in stark contrast with its predecessors, provides for a more heightened

and stricter scrutiny when the President exercises his Commander-in-Chief powers.

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

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

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

Third, a time element is also introduced. The President may, "for a period not exceeding sixty days," suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

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

Article VII, Section 18 specifically delineates the roles of Congress and the Judiciary when the President exercises his Commander-in-Chief powers. The President and the Congress, as held in *Fortun v. Macapagal-Arroyo*,[39] must "act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus.*"[40]

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

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

[40] *Id*. at 557.

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

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

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

> The framers also intended for the Congress to have a considerably broader review power than the Judiciary and to play an active role following the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Unlike the Court which can only act upon an appropriate proceeding filed by any citizen, Congress may, by voting jointly and upon a majority vote, revoke such proclamation or suspension. The decision to revoke is not premised on how factually correct the President's invocation of his Commander-in-Chief powers are, rather, Congress is permitted a wider latitude in how it chooses to respond to the President's proclamation or suspension. While the Court is limited to reviewing the sufficiency of the factual basis behind the President's proclamation or suspension, Congress does not operate under such constraints and can strike down the President's exercise of his Commander-in-Chief powers as it pleases without running afoul of the Constitution.
>
> 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

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

[43] *Id*.

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.[44]

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

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

IV

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

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

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, ***when the public safety requires it***, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting

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[44] *Id*. at 20.

[45] *Id*. at 11.

jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist ***and public safety requires it***. (Emphasis supplied)

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

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

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

The term martial law refers to a summary form of criminal justice, exercised under direct or delegated royal authority by the military or police forces of the Crown, which is independent of the established processes of the common law courts, the ecclesiastical courts, and the courts which administered the civil law in England. Martial law is not a body of substantive law, but rather summary powers employed when the ordinary rule of law is suspended. "It is not law," wrote Sir Matthew Hale, "but something rather indulged than allowed as a law . . . and that only in cases of necessity."

. . . . . .

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

From the beginnings of summary procedure against rebels in the reign of Edward I until the mid-sixteenth century, martial law was regarded in both its forms as the extraordinary usages of war, to be employed only in time of war or open rebellion in the realm, and never as an adjunct of the regular criminal law. Beginning in the mid-1550s, however, the Crown began to claim the authority to expand the hitherto carefully circumscribed jurisdiction of martial law beyond situations of war or open rebellion and into territory which had been the exclusive domain of the criminal law . . .

Comparatively, in *Duncan v. Kahanamoku*,[47] a case of American origin, martial law was defined as the "exercise of the military power which resides in the Executive Branch of Government to preserve order, and insure the public safety in domestic territory in time of emergency, when other branches of the government are unable to function or their functioning would itself threaten the public safety."[48] Justice Davis in *Ex Parte Milligan*,[49] noted that "martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction."[50]

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

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

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

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

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

[50] *Id*. at 127.

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

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

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

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

> 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

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

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

[53] *Id*.

[54] Proc. No. 29 (1944).

and may, subject to revocation by the President, issue such orders as may be necessary therefor.

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

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

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

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

shall be carried into effect without the approval of the President.

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

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

8. The proclamation of martial law being an emergency measure demanded by imperative necessity, it shall continue as long as the need for it exists and shall terminate upon proclamation of the President of the Republic of the Philippines.[55]

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

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[55] *Id*.

[56] Proc. No. 30 (1944).

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

[58] Proc. No. 30 (1944).

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

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the Constitution under martial law and, in my capacity as their commander-in-chief, do hereby command the armed forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.
>
> In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative.[59] (Emphases supplied)

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

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

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

The next day, on September 22, 1972, President Marcos promulgated General Order Nos. 1 to 6, detailing the powers he would be exercising under martial law.

General Order No. 1 gave President Marcos the power to "govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities, in [his] capacity and . . . exercise all the powers and prerogatives appurtenant and incident to [his] position as such Commander-in-Chief of the Armed Forces of the Philippines."

General Order No. 2 ordered the arrest of several individuals. The same was followed by General Order No. 3, which stated that "all executive departments, bureaus, offices, agencies, and instrumentalities of the National Government, government-owned or controlled corporations, as well as governments of all the provinces, cities, municipalities, and barrios throughout the land shall continue to function under their present officers and employees and in accordance with existing laws." However, General Order No. 3 removed from the jurisdiction of the judiciary the following cases:

1. Those involving the validity, legality or constitutionality of Proclamation No. 1081 dated September 21, 1972, or of any decree, order or acts issued, promulgated or [performed] by me or by my duly designated representative pursuant thereto. (As amended by General Order No. 3-A, dated September 24, 1972).

2. Those involving the validity, legality or constitutionality of any rules, orders or acts issued, promulgated or performed by public servants pursuant to decrees, orders, rules and regulations issued and promulgated by me or by my duly designated representative pursuant to Proclamation No. 1081, dated Sept. 21, 1972.

3. Those involving crimes against national security and the law of nations.

4. Those involving crimes against the fundamental laws of the State.

5. Those involving crimes against public order.

6. Those crimes involving usurpation of authority, rank, title, and improper use of names, uniforms, and insignia.

7. Those involving crimes committed by public officers.

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

General Order No. 5 ordered that:

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

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

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

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

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

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

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

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[61] *Id.* at 32-35.

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

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

The absence of the public safety necessity for a declaration of martial law and the suspension of the privilege of the writ is clear from the documents presented. Marawi City has been liberated and is undergoing rehabilitation.[62] Moreover, by President's own admission, the AFP "has achieved remarkable progress in putting the rebellion under control."[63]

Strangely, the President sought the extension of martial law not just for public safety but for other objectives as well. In his Letter to Congress, he stated that ***"[p]ublic safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.***"[64] Certainly, these objectives could be achieved through the ordinary efforts of

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[62] *Lagman Petition,* Annex C, p. 2.

[63] *Id*.

[64] *Id*. at 5.

the local government units concerned. ***These are not bases for the suspension of the writ of habeas corpus or the declaration of martial law. These statements are a grave cause for concern as they imply sinister motives to use martial law to undermine the legal order.***

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

V

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

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

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

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

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[65] TSN dated January 17, 2018, p. 68.

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

GENERAL GUERRERO:
The objective is to quell the rebellion.

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

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

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

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

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

GENERAL GUERRERO:
Yes, Your Honor.

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

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

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

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

JUSTICE LEONEN:
I understand but . . .

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

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

GENERAL GUERRERO:
Yes, Your Honor.

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

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

JUSTICE LEONEN:
So, what is the target in 2018?

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

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

GENERAL GUERRERO:
Pardon me, Your Honor.

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

GENERAL GUERRERO:
Clearly, Your Honor.

JUSTICE LEONEN:

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

GENERAL GUERRERO:

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

JUSTICE LEONEN:

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

GENERAL GUERRERO:

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

JUSTICE LEONEN:

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

GENERAL GUERRERO:

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

. . . . . .

JUSTICE LEONEN:

Yes, so what did Martial Law add?

GENERAL GUERRERO:

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

JUSTICE LEONEN:

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

GENERAL GUERRERO:

Let me just explain, Your Honor.

JUSTICE LEONEN:

Yes.

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

JUSTICE LEONEN:
Yes.

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

JUSTICE LEONEN:
Yes.

GENERAL GUERRERO:
Elements that involve politics . . .

JUSTICE LEONEN:
Yes.

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

. . . . . .

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

GENERAL GUERRERO:
I beg your pardon, Your Honor?

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

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

JUSTICE LEONEN:
The intelligence reports are not accurate.

GENERAL GUERRERO:
Yes, Your Honor.

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

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

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

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

JUSTICE LEONEN:
But part of it is.[66]

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

CHIEF JUSTICE SERENO:
So, the martial law administrator is the Secretary?

GENERAL GUERRERO:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
Okay. Because you are the implementor you can immediately just say to the agencies, We need this, evacuate, they will immediately follow because you are the martial law implementor, is that correct?

GENERAL GUERRERO:
My implementation of martial law, Your Honor, is dependent on the powers that are, or authorities that are vested in me by the President.

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

CHIEF JUSTICE SERENO:
Okay. So, what makes it easier, is it psychological? That's why I've been asking since yesterday, is it psychological, the calling out powers on steroids?

GENERAL GUERRERO:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
So, it's psychological?

GENERAL GUERRERO:
It's partly psychological, Your Honor.

CHIEF JUSTICE SERENO:
Okay, partly psychological. What do you think makes people more cooperative in a martial law setting?

GENERAL GUERRERO:
It's the fact that a, a strong authority is in charge.

CHIEF JUSTICE SERENO:
A what?

GENERAL GUERRERO:
A strong authority is in charge.[67]

VI

Reviewing the sufficiency of the factual basis means examining both the allegations and the reasonability of the inferences arising from the actual facts used as basis for such allegations. In other words, we should not content ourselves with the *factum probandum* or what is alleged. We should also review the *factum probans* as well. A proper review of the "sufficiency of the factual basis" requires that this Court examine the evidentiary facts that would tend to prove the ultimate facts and the premises of the inferences used to arrive at the conclusions made by the government.

The government, through the AFP, regaled this Court with its allegations of fact. This was accepted by the majority in

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

Congress and the majority in this Court. There was no effort to reveal the general sources of this intelligence information, the nuances in the analysis of the various groups, and the premises used to make the inferences from the sources which they gathered.

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

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

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

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[68] RULES OF COURT, Rule 8, Sec. 1.

[69] 281 Phil. 487-508 (1991) [Per *J.* Padilla, *En Banc*].

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

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

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

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

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

In *Castillo v. Republic:*[76]

Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, i.e., mere allegations are not evidence.

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[70] *Id.* at 495-496.

[71] *Lagasca v. De Vera*, 79 Phil. 376-381 (1947) [Per *J.* Perfecto, First Division].

[72] *People v. Dunig y Rodriguez*, 289 Phil. 949-956 (1992) [Per *J.* Cruz, First Division].

[73] *Joaquin v. Navarro*, 99 Phil. 367-373 (1956) [Per *J.* Padilla, *En Banc*].

[74] *People v. Mamalias*, 385 Phil. 499-514 (2000) [Per *J.* Puno, First Division].

[75] *People v. Balanon*, 304 Phil. 79-87 (1994) [Per *J.* Bellosillo, First Division].

[76] G.R. No. 214064, February 6, 2017 <sc,judiciary.gov.ph?pdf?web?viewer.html?file=jurisprudence/2017/214064.pdf> [Per *J.* Peralta, Second Division].

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

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

It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings.[77]

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

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

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

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[77] *Id*. at 7.

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

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

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

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

Secondly, petitioner failed to prove this factum probandum.

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

The party asserting a fact has the burden of proving it. Petitioner, however, merely formulated conjectures based on the evidence he presented, and did not bother to present Nestor Espenilla to explain the consecutive numbers of the RTRs or what he meant with the words on even date in his certification. Neither did petitioner present any evidence that the records of the BIR Commissioner were falsified or antedated, thus, letting the presumption that a public official had regularly performed his duties stand. This is in contrast to respondents direct evidence attesting to the payment of said tax during the lifetime of Consuelo. With respect to respondents evidence, all that petitioner could offer in rebuttal is another speculation totally unsupported by evidence: the alleged fabrication thereof.

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

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

The Court rules in favor of petitioners.

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

We agree with petitioners.

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

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

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

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

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

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

the evidence presented by the prosecution proving her guilt beyond reasonable doubt.

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

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

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

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

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

VII.

Put differently, the factual basis for the proclamation of martial law and its extension must not only be those that are alleged, but also that the allegation must be sufficient or credible. The facts can only be judicially deemed sufficient if their basis is transparent and legible. The basis relied upon for the proclamation of martial law or its extension must be shown, to a certain degree of confidence, to be factually true based upon the credibility of its intelligence sources and the viability of its inferences. Sufficient validation must be shown in terms of the suggestions made by intelligence sources, as well as checking on the reliability of the process of reaching a conclusion. The conclusion must be factually sufficient as of the time of the review both by Congress and then by this Court.

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

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

> Signals Intelligence (SIGINT) refers to the interception of communications between individuals and "electronic transmissions that can be collected by ships, planes, ground sites, or satellites."

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

Human Intelligence (HUMINT) refers to information collected from human sources either through witness interviews or clandestine operations.

By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain. Open-Source Intelligence sources include "traditional media, Internet forums and media, government publications, and professional or academic papers."

Newspapers and radio and television broadcasts are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.

Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth. An example of geospatial intelligence is a "satellite photo of a foreign military base with topography[.]"

Lastly, Measures and Signatures Intelligence (MASINT) refers to "scientific and highly technical intelligence obtained by identifying and analyzing environmental byproducts of developments of interests, such as weapons tests." Measures and Signatures Intelligence has been helpful in "identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems."[83] (Citations omitted)

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

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[83] *Id*.

[84] *Id*. at 56.

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

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

JUSTICE LEONEN:
Were you introduced to the different factions inside the BIFF?

CONGRESSMAN LAGMAN:
No, Your Honor.

JUSTICE LEONEN:
Were you introduced to the different factions of the Abu Sayyaf Group?

CONGRESSMAN LAGMAN:
No, Your Honor.

JUSTICE LEONEN:
In other words, in the entirety of the deliberations in the extension of Martial Law, the Congress did not have the opportunity to act, look at the context of the intelligence information given to you.

CONGRESSMAN LAGMAN:
The time given to us was too short that we could not exhaust all the possible questions we have to ask.

. . . . . .

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

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

JUSTICE LEONEN:
No information about that?

CONGRESSMAN LAGMAN:
No information.

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

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

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

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

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

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

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

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

VIII

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

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

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

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

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

However, in his Letter dated December 8, 2017 addressed to Congress, President Duterte asserted that the continued recruitment operations of local terrorist groups warranted the extension of martial law. He stated that "despite the death of Hapilon and the Maute brothers, the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion."[87] These recruitment operations, according to AFP Chief of Staff General Guerrero, point to the conclusion that these groups are capable "of strengthening their organization."[88] Thus:

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

The President's conclusions seem to be in reference to the conclusion of Secretary of Defense Delfin Lorenzana, who also

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[86] *Monsod Petition,* p. 13.

[87] *Rosales Petition,* Annex E, p. 2.

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

[89] *Rosales Petition,* Annex E, pp. 2-3.

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

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

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

The alleged recruitment operations undertaken by the remnants of local terror groups do not clearly establish actual rebellion or even the imminence of one. The BIFF, AKP, DI-Maguid,

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[90] *Lagman Petition*, Annex C-1, p. 2.

[91] Martial Law Extension Briefing Powerpoint Presentation, slide 16.

[92] Martial Law Extension Briefing Powerpoint Presentation, slide 38.

[93] Martial Law Extension Briefing Powerpoint Presentation, slide 57.

[94] Martial Law Extension Briefing Powerpoint Presentation, slide 59.

[95] Martial Law Extension Briefing Powerpoint Presentation, slide 60.

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

DI-Toraype, and the ASG's perceived capability of "staging similar atrocities and violent attacks"[97] remains just that.

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

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

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

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

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

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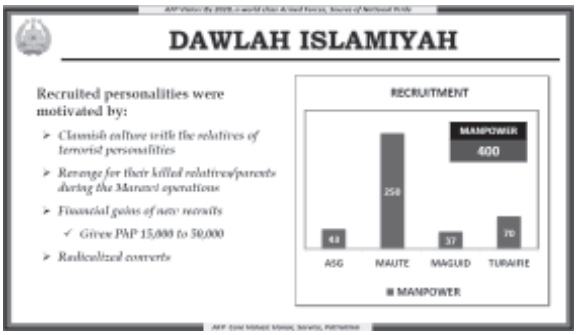
[97] *Lagman Petition*, Annex C-2, p. 3.

[98] Martial Law Extension Briefing Powerpoint Presentation, slide 18.

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

declaration of martial law and a suspension of the writ of habeas corpus throughout the entire Mindanao region, and for a period of one year.



cites clannish culture with the relatives of terrorist personalities, revenge for killed relatives/parents during the Marawi operations, financial gains of new recruits, and radicalized converts as among the reasons for the increase in DI recruits.[100]

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

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

Both the President and Armed Forces Chief of Staff General Guerrero continue to assert that the recruitment "pose a clear

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

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

IX

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

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

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

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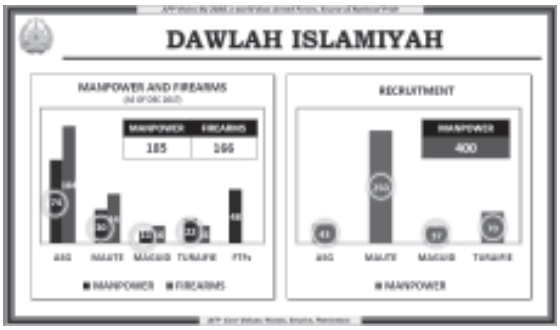
[101] *Lagman Petition*, Annex C-2, p. 4.

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

[103] *See* Dissenting Opinion of *J*. Leonen in *Lagman v. Medialdea*, G.R. No. 231648, July 4, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?

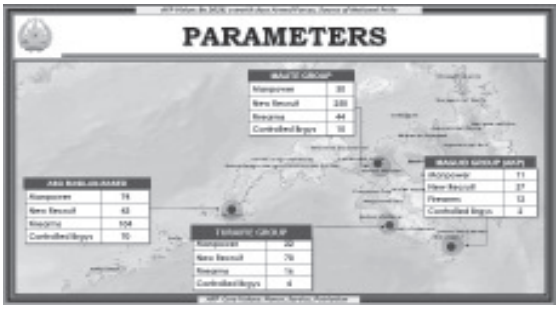
The Dawlah Islamiyah, a coalition of DAESH-inspired local terror groups composed of the ASG Basilan, some members of the Abu Sayyaf Sulu



Group, the Maute Group, AKP, and the Turaifie Group are alleged to have recruited 400 individuals in addition to the present 137 members.[104] The Turaifie Group, a relatively new group, allegedly recruited 70 new members in addition to their present membership.

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

The numbers presented by AFP show that a majority of 52% (or 280 individuals out of a total of 537) of the Dawlah Islamiyah is made up of the



file=/jurisprudence/2017/july2017/231658_leonen.pdf> [Per *J.* del Castillo, *En Banc*].

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

Maute Group.[105] However, as pointed out in my dissenting opinion in *Lagman*, the Maute Group began as a private militia, known primarily for their extortion activities. It was founded by scions of a political clan who regularly fielded candidates for local elections. The Maute Group is followed by the Basilan-based ASG faction in numbers, which comprises 21.8% (117 individuals) of the entire group. As mentioned in my dissenting opinion in *Lagman*, the Basilan-based ASG faction, which was also engaged in kidnappings and extortion, was bound by ethnicity, family ties, loyalty to leadership, and desire for revenge—*not ideology*.[106]

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

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

The AFP recognized the BIFF as a factionalized organization. During the oral arguments, General Trinidad stated that "the leadership differences between Esmail Abubakar alias "BUNGOS" and "KARIALAN" have divided the BIFF into factions." Strangely however, the AFP claims that "both factions

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

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

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

still reinforce each other"[108] and that some BIFF elements "also coddle and provide support to their comrades and relatives under the group of former Vice Chairman for Internal Affairs Abu Turaifie."[109] Again, no evidence was presented to indicate coordination between the two (2) factions or the coordination of some BFF elements with Turaifie. As such, these claims remain to be mere allegations. The reasons for the factionalism have not been presented. The motive to move together in joint operations have not been presented. Neither have cases been presented as to their ability to join forces in the past.

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

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

The woeful numbers of terrorist personnel (537) and the belief in the possibility of their coordination alone does not support

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

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

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

[111] Martial Law Extension Briefing Powerpoint Presentation, slide 46.

[112] Martial Law Extension Briefing Powerpoint Presentation, slide 34-36.

this portrayal of being able to establishing a *wilayat*. It is not based on credible evidence.

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

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

X

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

The on-going recruitment operations and reorganization efforts alleged to be "geared towards the conduct of intensified atrocities and armed public uprisings" are admittedly being carried out only in Central Mindanao, particularly "in the provinces of Maguindanao and North Cotabato and also in Sulu and

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

[114] *Id*. at 74.

[115] *Id*. at 75.

Basilan."[116] This is not yet the area of operations but merely the recruitment areas.

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

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

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

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

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[116] *Rosales Petition,* Annex E, p. 3.

[117] Martial Law Extension Briefing Powerpoint Presentation, slide 23.

[118] Martial Law Extension Briefing Powerpoint Presentation, slide 25.

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

[120] Martial Law Extension Briefing Powerpoint Presentation, slide 58.

justifying the factual sufficiency for martial law or the suspension of the writ of habeas corpus.

XI

Fourth, the President and his advisers failed to explain why Congress should "further extend the proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) year" or from January 1, 2018 to December 31, 2018. Likewise, there is no explanation why the original period of 60 days was insufficient. There was likewise no explanation why the first extension of a few months was also not enough.

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

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

Strangely, the AFP seeks the extension of martial law and the suspension of the writ of habeas corpus in Mindanao not to "gain any extra power . . . but to hasten the accomplishment of

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[121] *Rosales Petition,* Annex E, p. 5.

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

XII

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

The insurrection by the related groups under the wing of the Communist Party of the Philippines or the New Peoples' Army or the National Democratic Front was not in the proclamation or used as basis for the first extension of the declaration of the state of martial law and the suspension of the privilege of the writ of habeas corpus.[123] There is also no explanation why this ongoing insurrection should be the basis for extending martial law or suspending the writ of habeas corpus only throughout Mindanao considering that there are isolated incidents of violence attributed to this group in other parts of the country. Nor was there any explanation why the exercise of these Commander-in-Chief powers will be for one year considering that the engagement with the army has been for more than fifty years. It is not clear what is sought to be achieved within this one-year period in relation to this group.

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[122] TSN dated January 17, 2018, p. 69.

[123] Proc. No. 216 (2017).

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

> WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and
>
> WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.[124]

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

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

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[124] Proc. No. 216 (2017).

[125] *See* OSG Memorandum in *Lagman v. Medialdea*, pp. 5-8.

[126] TSN dated January 17, 2018, pp. 225-226.

absolutely no reference to the NPA or atrocities attributable to the NPA.

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

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

> From 23 May 2017 to 10 July 2017, the AFP's operations had neutralized three hundred seventy-nine (379) out of the estimated six hundred (600) DIWM rebels, and had recovered three hundred twenty-nine (329) firearms. Around one thousand seven hundred twenty-two (1,722) residents of Marawi City had been rescued and a total of sixteen (16) barangays had been declared clear of DIWM presence. During clearing operations conducted by the AFP, approximately Seventy-Five Million Pesos (₱75,000,000.00) in cash and cheques were recovered from a house in Marawi City.
>
> Operations against other rebel groups likewise yielded positive results. Against the BIFF, eighteen (18) members had been neutralized and two (2) had been arrested. Against the ASG, twenty-three (23) had been neutralized, five (5) apprehended, forty-one (41) surrendered to government forces, and forty-seven (47) firearms had been recovered.[128]

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

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

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

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[127] *Rosales Petition,* Annex D.

[128] *Id.* at 2-3.

[129] *Id.* at 3.

Apart from these, at least fifty-nine (59) arson incidents have been carried out by the NPA in Mindanao this year, targeting businesses and private establishments and destroying an estimated 2.2 billion-worth of properties. Of these, the most significant were the attack on Lapanday Food Corporation in Davao City on 09 April 2017 and the burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental on 06 May 2017, which resulted in the destruction of properties valued at ₱1.85 billion and 109 million, respectively.

As a direct result of these atrocities on the part of the NPA, I was constrained to issue Proclamation No. 360 on 23 November 2017 declaring the termination of peace negotiations with the National Democratic Front-Communist Party of the Philippines-New People's Army (NDF-CPP-NPA) effective immediately. I followed this up with Proclamation No. 374 on 05 December 2017, where I declared the CPP-NPA as a designated/identified terrorist organization under the Terrorism Financing Prevention and Suppression Act of 2012, and the issuance of a directive to the Secretary of Justice to file a petition in the appropriate court praying to proscribe the NDF-CPP-NPA as a terrorist organization under the Human Security Act of 2007.[130]

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

JUSTICE CARPIO:
Thank you. Counsel, let['s] settle it. Just one more point. In the original declaration of martial law, only the Maute rebellion was mentioned specifically, correct?

SOLICITOR GENERAL CALIDA:
There were others, Your Honor.

JUSTICE CARPIO:
And other rebels? But not, no other specific rebellions? Maute or Maute group DAES is ISIS inspired, but no other rebels?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

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

JUSTICE CARPIO:
Okay, so no specific mention of CPP-NPA rebellion. It's just other rebels.

SOLICITOR GENERAL CALIDA:
Yes, but it is subsume[d] under that term, Your Honor.

JUSTICE CARPIO:
Yes, okay. Now, in the first extension. There was also no mention of CPP-NPA specifically it was not mentioned. Correct?

SOLICITOR GENERAL CALIDA:
Actually, Your Honor, the president mentioned it, Your Honor. And may I read for the record.

JUSTICE CARPIO:
First extension?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
As the government security forces intensified efforts during the implementation of martial law, one hundred eleven members of the New People's Army (NPA) had been encountered and neutralized while eighty-five firearms have been recovered from them.

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

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

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

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

JUSTICE CARPIO:
Yes.

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

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

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

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

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

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

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

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

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

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

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

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

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

. . . . . .

[131] TSN dated January 17, 2018, pp. 190-194.

JUSTICE LEONEN:

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

SOLICITOR GENERAL CALIDA:

I was, Your Honor.

JUSTICE LEONEN:

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

SOLICITOR GENERAL CALIDA:

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

JUSTICE LEONEN:

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

SOLICITOR GENERAL CALIDA:

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

. . . . . .

JUSTICE LEONEN:

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

ATTY. COLMENARES:

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

JUSTICE LEONEN:

Because my reading might have been mistaken of the proclamation, there might have been several paragraphs which were not there, but are you sure that in Proclamation 216, there is no mention of the NPA at all?

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[132] *Id*. at 225-226.

ATTY. COLMENARES:

Yes, there was no mention, Your Honor, I think it was only three pages. In fact, the proclamation merely alleged that there is rebellion as shown by the examples of Maute activities in Marawi. And in fact, the proclamation, Your Honor, in fact even failed to allege that public safety requires the imposition of Martial Law, Your Honor.[133]

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

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

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

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

Generally, for purposes of declaring a state of martial law and suspending the privilege of the writ of habeas corpus, rebellion, as contemplated by the Constitution, cannot be defined strictly by the Revised Penal Code. The statutory definition of

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

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

rebellion is merely persuasive. To require that this Court be restricted by the statutory definition of rebellion is tantamount to giving Congress the power to amend the Constitution through legislation. The Constitution does not state that martial law may be declared "in case of invasion or rebellion, which may be defined by law," or anything of similar import.

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

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

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

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[135] *Lagman Petition,* Annex C, p. 4.

Frasec Ventures Corporation in Mati City, Davao Oriental which resulted in PhP1.85B and PhP109M-worth of properties destroyed.[136]

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

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

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

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[136] *Lagman Petition,* Annex C-2, p. 3.

[137] Martial Law Extension Briefing Powerpoint Presentation, slide 63.

[138] Martial Law Extension Briefing Powerpoint Presentation, slide 62-71.

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

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

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

The extortion activities of the NPA, assuming they are related to an on-going rebellion, do not seem to have intensified. The NPA is claimed to have amassed P1.05 billion in 2016 from private individuals and entities but their extortion activities appeared to have declined. The AFP, however, reports that as of the first semester of 2017, the NPA has taken roughly only ₱91 million from private entities. This is a marked decline. It does not show the intensified efforts of the insurgents as alleged by the respondents.

XIII

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

In *Fifteen Years On, Where Are We in the "War on Terror"?*, Brian Michael Jenkins, a former Green Beret who has served on the White House Commission on Aviation Safety and Security and as an advisor to the National Commission on Terrorism of the United States of America, explores the complex issues that face those addressing terrorism.

An effective understanding of the implications of terrorist events is difficult to achieve without delving deeper into the context behind the events. Numbers alone and gut reactions

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

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

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

should not replace scrutiny. Terrorists are opportunistic. They succeed when they can manipulate and capitalize on gut reactions and imperfect knowledge.

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

> A thorough appreciation of the current situation requires assessing progress in different fields of action and different geographic theatres . . .
>
> . . . In some areas, counterterrorism efforts have been successful; in others, less so. And for every plus or minus entry, there is a "however." Moreover, as shown in the preceding discussion, the situation has been and continues to be dynamic.
>
> On the plus side, our worst fears have not been realized. There have been no more 9/11s, none of the worst cases that post-9/11 extrapolations suggested. The 9/11 attacks now appear to be a statistical outlier, not a forerunner of further escalation. Terrorists have not used weapons of mass destruction, as many expected they would do. (At least they have not used them *yet*, many would add.) While the Islamic State appears to have recruited some chemical weapons specialists, the terrorist arsenal remains primitive, although lethal within bounds.
>
> Contrary to the inflated rhetoric of some in government, the operational capabilities of al-Qa'ida and the Islamic State remain limited. Both enterprises are beneficiaries of fortune (they would argue, of "God's will"). They are successful opportunists. The Islamic State's military success in Syria and Iraq reflects the collapse of the government's forces, not military prowess. With its legions of foreign fighters and deep financial pockets, the Islamic State theoretically could launch a global terrorist offensive, but the surge would probably be brief. This is not, as some have suggested, World War III.

Neither al-Qa'ida nor the Islamic State has become a mass movement, although both organizations attract sympathy in Muslim countries. The vast majority of Muslims polled over the years express negative views of jihadist organizations, but a significant minority expresses favorable views of al-Qa'ida and, more recently, of the Islamic State . . .

The constellation of jihadist groups is not as meaningful as it appears to be. Competing for endorsements, al-Qa'ida and the Islamic State have attracted declarations of loyalty from local groups across Africa, the Middle East, and Asia and have established a host of affiliates, provinces, and jihadist footholds. This is growth by acquisition and branding. A lot of it is public relations. Many of these groups are the products of long-standing local grievances and conflicts that would continue if there were no al-Qa'ida or Islamic State. Some are organizational assertions that represent only a handful of militants. The militants share a banner but are, for the most part, focused on local quarrels rather than a global jihad. There is no central command. There are no joint operations. The groups operate autonomously. Their connections in many cases are tenuous, although, with time, they could evolve into something more connected. The split between al-Qa'ida and the Islamic State has divided the groups. A number of them are beset by further internal divisions.

Like all terrorists, jihadis can kill, destroy, disrupt, alarm, and oblige governments to divert vast resources to secure against their attacks, but terrorists cannot translate their attacks into permanent political gain. Yet this is not the way they measure things. They tend to see their mission as continuing operations to demonstrate their commitment and awaken others.

The Islamic State is losing territory and can be defeated. With coalition air support and other external assistance, government forces in Iraq and U.S.-backed Kurdish and Arab fighters in Syria have been able to retake territory held by the Islamic State. Progress is slow, though faster than many analysts initially anticipated. This is not just a military challenge; it is also an effort to put something in place to govern recovered towns and cities.

Al-Qa'ida Central's command has been reduced to exhorting others to fight. The Islamic State has made very effective use of social media to reach a broader audience. Its advertisement of atrocity as evidence of its authenticity appears to have been a magnet for marginal and psychologically disturbed individuals. Jihadist ideology has

become a conveyer of individual discontents.[144] (Emphasis in the original)

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

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

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

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

CONTEST was designed with the following principles in mind:

- Effective: we will regularly assess the progress we are making and the outcomes of this strategy;
- Proportionate: we will ensure that the resources allocated to CONTEST, and the powers that are used for counter-

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

terrorism work are proportionate to the risks we face and necessary to reduce those risks to a level we judge is acceptable;

- Transparent: wherever possible and consistent with our security we will seek to make more information available about the threats we face, the options we have and the response we have decided on;

. . . . . .

- Flexible: terrorists will seek new tactics to exploit vulnerabilities in our protective security; we will regularly re-assess the risks we face and ensure that risk assessment is the foundation of our work;
- Collaborative: countering terrorism requires a local, national and international response. We will continue to work with foreign governments, the private sector, non-governmental organisations and the public; and
- Value for money: to deliver a counter-terrorism that is sustainable over the long term we will try to reduce costs while we maintain our core capabilities.[145]

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

Pursue is concerned with stopping terrorist attacks within the UK and against UK interests worldwide. This involves the early detection, investigation, and disruption of terrorist activity before it poses a danger to the public.[147] Among the planned Pursue activities are a continued assessment of counter-terrorism powers to ensure they are both effective and proportionate; an improvement of the ability to prosecute and deport people for terrorist-related offenses; an increase of capabilities to detect,

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[145] CONTEST: The United Kingdom's Strategy for Countering Terrorism, pp. 40-42.

[146] *Id.* at 40.

[147] *Id.* at 45.

investigate, and disrupt terrorist threats; the improvement of the ability to handle sensitive and secret materials during judicial proceedings to promote justice and national security; and to enable the UK to better tackle threats at their source by working with other countries as well as multilateral organizations.[148]

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

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

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

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

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[148] *Id*.

[149] *Id*. at 40.

[150] *Id*. at 59-60.

[151] *Id*. at 80.

[152] *Id*. at 82.

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

- Continue to build generic capabilities to respond to and recover from a wide range of terrorist and other civil emergencies;
- Improve preparedness for the highest impact risks in the National Risk Assessment;
- Improve the ability of the emergency services to work together during a terrorist attack; and
- Enhance communications and information sharing for terrorist attacks.[154]

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

XIV

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

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

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

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[153] *Id*. at 93.

[154] *Id*. at 93-94.

[155] *Id*. at. 119.

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

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

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

One of them, Fakhrudin Dilangalen, was an Islamic teacher who had already been involved in pro-ISIS activities as early as 2014. The other was the cell's leader, T.J. Macabalang, a businessman who had become fascinated by the establishment of a caliphate in 2014.[156]

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

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

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

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

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

> A mapping of university-based recruitment into extremist based both on detainee data as well as research in tertiary institutions by researchers who understand the distinctions among different streams of Islam.
> A compilation of the narratives used to draw recruits into pro-ISIS activity, both in religious study discussions as well as during military training.
> A systematic focus on cities other than Cotabato where radical cells were known to be active, using detainee information to try and draw a more complete picture of how these cells worked. We know, for example, that the organization initially known as Khilafah Islamiyah Mindanao (KIM) was founded in Cagayan de Oro by a man who became part of Maute's inner circle in Marawi, Ustadz Humam Abdul Najid alias Owayda (also known as Wai). Mapping the connections in Cagayan and understanding Owayda's role there remain essential.
> A mapping of mosques known to have hosted discussions with pro-ISIS preachers. The Salaf mosque in Cotabato is one example but there will surely be many others. Local ulama councils may want to work out a mechanism by which they can share information about known extremists to try and prevent mosques and other institutions from being recruitment centers.

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[157] *Id.* at 4.

> A detailed understanding of the role of women and why and through whom women became involved as financiers, propagandists and combatants.[158]

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

XV

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

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

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

In *Baguilat*, I stressed the need for this Court to fulfill its duty to uphold the Constitution even if it involves inquiring into the proceedings of a co-equal branch. I pointed out the danger in refusing this duty, where the proceedings are designed to stifle dissent:

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[158] *Id.* at 10-11.

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

Caution must be exercised in having a complete hands-off approach on matters involving grave abuse of discretion of a co-equal branch. This Court has come a long way from our pronouncements in *Mabanag v. Vito*.

In *Mabanag*, the Congress voted on the "Resolution of Both Houses Proposing an Amendment to the [1935] Constitution of the Philippines to be Appended as an Ordinance Thereto." The Resolution proposed to amend the 1935 Constitution to give way for the American parity rights provision, which granted United States citizens equal rights with Filipinos in the exploitation of our country's natural resources and the operation of public utilities, contrary to Articles XIII and XIV of the 1935 Philippine Constitution.

Article XV, Section 1 of the 1935 Constitution required the affirmative votes of three-fourths (3/4) of all members of the Senate and the House, voting separately, before a proposed constitutional amendment could be submitted to the people for approval or disapproval. The Senate was then composed of 24 members while the House had 98 members. Two (2) House representatives later resigned, leaving the House membership with only 96 representatives. Following the Constitutional mandate, the required votes to pass the Resolution were 18 Senators and 72 Representatives.

The Senate suspended three (3) Senators from the Nacionalista Party, namely, Ramon Diokno, Jose O. Vera, and Jose E. Romero, for alleged irregularity in their elections. Meanwhile, the House also excluded eight (8) representatives from taking their seats. Although these eight (8) representatives were not formally suspended, the House nevertheless excluded them from participating for the same reason. Due to the suspension of the Senators and Representatives, only 16 out of the required 18 Senators and 68 out of the 72 Representatives voted in favor of the Resolution.

Mabanag recognized that had the excluded members of Congress been allowed to vote, then the parity amendment that gave the Americans rights to our natural resources, which this Court ruled impacted on our sovereignty, would not have been enacted.

Nevertheless, the absence of the necessary votes of three-fourths (3/4) of either branch of Congress, voting separately, did not prevent Congress from passing the Resolution. Petitioners thus assailed the Resolution for being unconstitutional. This Court, ruling under the 1935 Constitution upheld the enactment despite the patent violation of Article XV, Section 1.

Mabanag ruled that Congress in joint session already certified that both Houses adopted the Resolution, which was already an enrolled bill. Thus, this Court had no more power to review as it was a political question:

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

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

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

We cannot again shy away from this constitutional mandate.

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

In *Estrada v. Desierto*:

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

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

It is understandable for the majority in any deliberative body to push their advantages to the consternation of the minority. However, in a representative democracy marked with opportunities for deliberation, the complete annihilation of any dissenting voice, no matter how reasonable, is a prelude to many forms of authoritarianism. While politics speaks in numbers, many among our citizens can only hope that those political numbers are the result of mature discernment. Maturity in politics is marked by a courageous attitude to be open to the genuine opposition, who will aggressively point out the weaknesses of the administration, in an orderly fashion, within parliamentary forums. After all, if the true interest of the public is in mind, even the administration will benefit by criticism.[160]

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

RULE V

CONSIDERATION OF THE LETTER OF THE PRESIDENT DATED DECEMBER 8, 2017 CALLING UPON THE CONGRESS OF THE PHILIPPINES "TO FURTHER EXTEND THE PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO FOR A PERIOD OF ONE (1) YEAR, FROM 01 JANUARY 2018 TO 31 DECEMBER 2018, OR FOR SUCH OTHER PERIOD OF TIME AS THE CONGRESS MAY DETERMINE, IN ACCORDANCE WITH SECTION 18, ARTICLE VII OF THE 1987 PHILIPPINE CONSTITUTION"

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

[161] Memorandum by Representative Lagman, Annex G.

SEC. 6. The relevant agencies of the Executive Department shall report to the Joint Session on the factual basis of the letter of the President calling upon Congress to further extend the period of Proclamation No. 216, Series of 2017.

SEC. 7. Any member of Congress may interpellate the resource persons for not more than three (3) minutes excluding the time of the answer of the resource persons.

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

JUSTICE LEONEN:

. . . . . .

Congressman Lagman, I am sure that you were given the operational orders or the OPORD while you were conducting the congressional hearings that you were given the OPORD, the Operational Directive of the Chief of Staff to the Service Command for the extension of Martial Law, is that not correct?

CONGRESSMAN LAGMAN:

Well, we were given the letter of the President . . .

JUSTICE LEONEN:

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

CONGRESSMAN LAGMAN:

With the annexes of the recommendation both of the Secretary of National Defense and the . . .

JUSTICE LEONEN:

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

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

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

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

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

CONGRESSMAN LAGMAN:
No, Your Honor . . .

JUSTICE LEONEN:
So, it was just . . .

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

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

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

JUSTICE LEONEN:
Three minutes.

CONGRESSMAN LAGMAN:
Three minutes.[162]

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[162] TSN dated January 16, 2018, pp. 58-60.

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

11. Petitioner Lagman was present during the entire joint session of the Congress on December 13, 2017 when the request of the President for a yearlong extension of martial law and the suspension of the writ in Mindanao was summarily granted by the Congress. He is absolutely certain there was no PowerPoint presentation made by the resource persons from the military and police establishments and executive department during the joint session.

12. He was also present during the all-Member caucus of the House of Representatives held in the afternoon of December 12, 2017 when the military and police establishments briefed the Members of the House of Representatives on the security situation in Mindanao. There was a PowerPoint presentation made principally by General Alex Monteagudo, the Chief of the National Intelligence Coordinating Agency (NICA). But the caucus was not the body charged with approving the extension.

13. The PowerPoint presentation, which included the assessment/conclusions of the military-police establishment, was not substantiated by independent hard data and validated accounts. It was bereft of verified and verifiable basis. It was not supported by documentary evidence. Verily, the PowerPoint presentation lacks the disclosure of the factual data on which it was based.

14. When sensitive questions were asked, the usual answer was that they involved classified information which are confidential in nature and any disclosure may endanger national security.

15. It was during his briefing that General Monteagudo said that "Marawi is only the tip of the iceberg", an understatement to justify alleged looming bigger terrorist threats and attacks. This estimation was not backed up with facts.

. . . . . .

19. It is false for the Solicitor General to claim that Petitioner Lagman was absent in either or both the briefing and joint session.[163]

The foregoing account exposes a failure on the part of Congress to look into the factual basis for extending the proclamation of

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[163] Memorandum by Representative Lagman, pp. 5-6.

martial law. Not only that, but the limitation of three (3) minutes to interpellate resource persons during the Joint Session suggests an intention to suppress any inquiry into the factual premise for the extension of martial law.

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

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

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

XVI

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

There are peace and order problems in Mindanao. Indeed, these are to be addressed convincingly and decisively with law enforcement and with a strategic program to counter violent extremism. Terrorism and isolated acts of rebellion require comprehensive solutions that sincerely addresses the causes of the emergence of radical ideologies hand in hand with military

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

and police actions to disrupt and suppress violence. Martial law is not the only option.

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

Accepting the allegations of the government, without any effort to determine its quality in terms of the evidence supporting it and to examine its logic in its entirety, amounts to a failure to do our constitutional duty to examine not only grave abuse of discretion but the factual sufficiency of the exercise of extraordinary Commander-in-Chief powers. To be blind to the kind of deliberation that was done in Congress is to fail our covenant with the sovereign Filipino people.

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

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

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

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

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

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

DISSENTING OPINION

JARDELEZA, *J.*:

In my Separate Opinion[1] in *Lagman v. Medialdea*,[2] I advanced the following views: (1) that a case filed under Section 18, Article VII of the Constitution is *sui generis*; (2) determination of the sufficiency of the factual basis is distinct from ascertaining whether there is grave abuse of discretion; (3) the standard of review for a proceeding under Section 18, Article VII should be reasonableness; and (4) the Government's presentation of evidence should, in the first instance, be conducted publicly and in open court.[3] After examining the evidence then presented before us, I found "nothing incredulous or far-fetched" about the Government's claims which, I also noted, were "not incompatible with local and foreign media reports and publicly available legal research." Thus, I concluded that there was an actual rebellion and the threat to public safety necessitated the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

The Court's jurisdiction under Section 18, Article VII is again invoked, this time to determine the sufficiency of the factual basis for the *extension* of the President's declaration. If upheld, martial law will continue to be implemented and the privilege of the writ of *habeas corpus* suspended in the whole of Mindanao

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[1] Hereinafter "Separate Opinion."

[2] G.R. Nos. 231658, 231771, & 231774, July 4, 2017.

[3] Separate Opinion, pp. 4-13, 18-23.

until December 31, 2018. The *ponencia* finds that there is sufficient factual basis for the extension.

I dissent and write this Opinion to explain my conclusion.

I

Section 18, Article VII of the 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 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 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, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

The text of the Constitution is clear. Two conditions must concur before a President can suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law: (1) actual rebellion or invasion; and (2) when public safety requires it. Much has been said about the concept of rebellion within the meaning of Section 18, Article VII. I myself have advanced views on this matter.[4] My present analysis is concerned not so much with the issue as to the existence of an actual rebellion as used under Section 18. In fact, given the facts and my proposed definition of rebellion within the meaning of Section 18,[5] which is simply armed public resistance to the government, I find the Government's claim that actual rebellion is continuously being waged in Mindanao to be *not* unreasonable.

I have very grave concerns, however, with the suggestion that the existence or persistence of a rebellion *per se* necessarily endangers public safety for purposes of Section 18, Article VII. According to the Government:

84. Since Cullamat, et al. admit the existence of rebellion in Mindanao, they cannot begrudge the Congress from agreeing to the extension of the proclamation and suspension in the interest of public safety. The danger posed by rebellion on public safety cannot be discounted. The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. x x x[6]

Otherwise stated, the Government's proposition is that since a rebellion, by definition, is carried out by a "vast movement of men," any rebellion, regardless of **scale**, may call for an exercise by the President of his extraordinary powers. I strongly disagree.

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[4] Separate Opinion, pp. 13-18.

[5] *Id.*

[6] Office of the Solicitor General Memorandum, p. 34.

II

It is my view that the second requirement of "when public safety requires it" introduced a level of **scale** as to qualify the first requirement of the existence of an actual rebellion or invasion. "Scale" is defined as "the relative size or extent of something."[7] It is synonymous with "scope, magnitude, dimensions, range, breadth, compass, degree, reach, spread, sweep."[8] The public safety requirement under Section 18, Article VII operates to limit the exercise of the President's extraordinary powers only to rebellions or invasions *of a certain scale* as to sufficiently threaten public safety. This conclusion, I find, is supported by: (a) the deliberations of the Constitutional Commission; (b) our law and jurisprudence on the concept of public safety as used in specific relation to the exercise of government powers which result in an impairment of civil rights; and (c) the experience of the Court both in this case and in *Lagman v. Medialdea* where it upheld the President's original declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

A

Deliberations of the Constitutional Commission

A careful reading of the deliberations of the Constitutional Commission would clearly show that there was no intention to interpret the public safety requirement simply as a foregone consequence of the existence of the first requirement, *i.e.*, actual rebellion or invasion. Rather, it seems that the intention was to qualify the first requirement such that **not all cases of rebellion or invasion can be considered sufficient for purposes of the exercise of the President's extraordinary powers**:

MR. DELOS REYES: As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee

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[7] English Oxford Living Dictionaries <https://en.oxforddictionaries.com/definition/scale> (last accessed February 6, 2018).

[8] *Id.*

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 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.

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.[9] (Emphasis and underscoring supplied.)

The following exchange between Commissioners Jose N. Nolledo and Crispino M. De Castro further clarified that while the President *can* call out the armed forces to address actual rebellion or invasion, it is only when the situation has posed a *severe enough* threat to public safety is he empowered to resort to his extraordinary powers of declaring martial law or suspending the privilege of the writ of *habeas corpus*:

MR. NOLLEDO: x x x

Does Commissioner de Castro agree with me that the President need not declare martial law or suspend the privilege of the writ of

[9] RECORD, CONSTITUTIONAL COMMISSION 42 (July 29, 1986).

habeas corpus if there is actual invasion [or] rebellion because he is authorized under Section 15 of the committee report to call out such Armed Forces to prevent or suppress lawless violence, invasion or rebellion?

MR. DE CASTRO: We are talking of the next sentence with the words "in case of invasion or rebellion." This becomes a useless sentence. In fact, the questions of Honorable Suarez and the statements of Honorable Ople do not fall on these two situations.

MR. NOLLEDO: No, the first sentence is very material because if there is an invasion, the President can immediately call upon the Armed Forces.

x x x x x x x x x

MR. DE CASTRO: That is why I said in case of actual invasion or actual rebellion. [T]he President will have no more time to say "I declare martial law." He will just order the Armed Forces to go there and repel the enemy.

MR. NOLLEDO: Madam President, the argument of Commissioner de Castro seems to indicate that the President is powerless without declaring martial law. **The first sentence is very clear, that in case of lawless violence, invasion or rebellion, the President may immediately call the Armed Forces to prevent or suppress the same. And it is only when public safety requires it that the President may decide to declare martial law or suspend the privilege of the writ of *habeas corpus*.** So, I would like to correct the impression that the President has no power to meet the invasion or rebellion without declaration of martial law.

x x x x x x x x x

MR. GARCIA: x x x

I also would like to remind ourselves that very often the doctrine of national security is given as a reason to impose extraordinary measures which, once begun, leads to many other violations. I believe this is something that we must guard against from the very beginning.[10] (Emphasis and underscoring supplied.)

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[10] RECORD, CONSTITUTIONAL COMMISSION 43 (July 30, 1986).

Mere invocations of issues of national security and public safety, without more, are not enough. The Constitution requires that there is sufficient factual basis to show not only that actual rebellion or invasion exists, but that the situation has reached such *scale* as to threaten public safety.

B

Public safety in Philippine law and jurisprudence

There is no one concept of public safety in Philippine law and jurisprudence, but attempts have been made to arrive at accepted meanings of the term. Public safety, for example, has been interpreted to be "synonymous" with the concept of "national security" and "security of the state,"[11] but narrower than those matters falling under the concept of "interest of the state."[12] On the other hand, dangers to public safety have been held to include traffic congestion;[13] hazards of traffic in the

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[11] *In re: Parazo*, 82 Phil. 230, 237-238 (1948). The Court held reporter Parazo in contempt for his refusal to reveal the sources for his article reporting leakage in the 1948 Bar Examinations. Invoking Republic Act No. 53, which provides that reporters cannot be compelled to reveal their confidential sources unless "such revelation is demanded by the interest of the state," Parazo contended that the phrase "interest of the state" is confined to cases involving the "security of the state" or "**public safety**." Since concerns regarding the alleged leakage do not qualify as national security matters, Parazo argued that he cannot be compelled to reveal the source of his news information. The Court, however, found that while "**security of the state" and "public safety" to be "synonymous phrases"** which involve matters of "national security," the term "interest of the state" referred to a *much broader* concept which includes "matters of national importance in which the whole state and nation, x x x is interested or would be affected, x x x" such as protection of the integrity of the bar examinations and maintenance of the high standards for entry into the legal profession. (Emphasis supplied.)

[12] *Id.* at 239-241.

[13] *Luque v. Villegas*, G.R. No. L-22545, November 28, 1969, 30 SCRA 408, 423. Thus, the Court there upheld the Public Service Commission's imposition of "measures calculated to promote the safety and convenience of the people using the thoroughfares" by regulating the number of provincial buses and jeepneys allowed to enter Manila.

evening;[14] business establishments which give rise to conflagrations and explosions;[15] open canals, manholes, live wires and other similar hazards to life and property;[16] presence of motorcycles in toll ways;[17] billboards and signages in times of typhoons;[18] unrestricted right to travel of court

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[14] *Edu v. Ericta*, G.R. No. L-32096, October 24, 1970, 35 SCRA 481, 489. The Court refused to sustain a challenge to the Reflector Law which required, for registration purposes, the installation of built-in reflectors and parking lights in vehicles. The Court therein held that "to close one's eyes to the **hazards of traffic in the evening** x x x betrays lack of concern for **public safety.**" (Emphasis supplied.)

See also *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195, which dealt with a challenge to a rule issued by the Land Transportation Office requiring the procurement and use of reflectorized triangular early warning devices.

[15] In *Uy Matia & Co. v. The City of Cebu*, 93 Phil. 300, 304 (1953), the Court upheld the local government's power to regulate and impose taxes and fees on copra warehouses on the finding that it is an establishment likely to endanger the public safety and give rise to conflagrations or explosions: "[O]nce ignited, the fire resulting therefrom, because of the oil it contains, is difficult to put under control by water and to extinguish it the use of chemicals would be necessary."

[16] *Municipality of San Juan, Metro Manila v. Court of Appeals*, G.R. No. 121920, August 5, 2005, 466 SCRA 78, 87-89, citing *Todd v. City of Troy*, 61 N.Y. 506. The Court held a local government unit liable for damages for its failure to "adopt measures to ensure **public safety** against open canals, manholes, live wires and other similar hazards to life and property" which resulted to injuries to a motorist. According to the Court, the Municipality's obligation to constantly monitor road conditions to insure the safety of motorists includes the duty "to see that they are kept in a reasonably safe condition for public travel." (Emphasis supplied.)

[17] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 349 & 343. The Court did not find unreasonable the regulation which prohibited motorcycles from traversing toll ways. The Government there argued that the presence of motorcycles in the tollways "will compromise safety and traffic considerations." The Court upheld the Government's position, stating that "[**p**]**ublic interest and safety** require the imposition of certain restrictions on toll ways that do not apply to ordinary roads. As a special kind of road, it is but reasonable that not all forms of transport could use it." (Emphasis supplied.)

[18] *Department of Public Works and Highways v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016, 808 SCRA 53, 57-58.

employees;[19] and the failure of railroad companies to install, maintain and repair safety equipment and signages.[20]

For purposes of my analysis of "when public safety requires" within the meaning of Section 18, Article VII, however, I find that the interpretation of "public safety" in relation to the impairment of the liberty of travel[21] to be most proximate/ appropriate in that both involve the derogation of civil rights to give way to a "higher" state interest.

In interpreting whether then President Corazon C. Aquino could legally ban the Marcoses from returning to the Philippines,

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The Court held that the DPWH's act of removing and confiscating billboards and signs which it determined to be "hazardous and pose imminent danger to life, health, safety and property of the general public" serve the overarching interest of public safety.

[19] *Leave Division, Office of the Administrative Services-Office of the Court Administrator v. Heusdens*, A.M. No. P-11-2927, December 13, 2011, 662 SCRA 126, 137. Here, the Court justified the regulations of judicial employees' right to travel thus: "To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder **undermining public safety**. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel." (Emphasis supplied.)

[20] *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 379-380, citing *Philippine National Railways v. Court of Appeals*, G.R. No. 157658, October 15, 2007, 536 SCRA 147 and *Cusi v. Philippine National Railways*, G.R. No. L-29889, May 31, 1979, 90 SCRA 357. In finding negligence on the part of the Philippine National Railways in an action for damages for the death and injury of several civilians, the Court expounded on railroad companies' responsibility to secure public safety, that is, to "avoid injury to persons and property at railroad crossings."

[21] CONSTITUTION, Art. III, Sec. 6. This Section provides: "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."

the Court in *Marcos v. Manglapus*,[22] voting eight to seven, upheld the restriction on the Marcoses' right to travel as part of the President's residual power as "protector of the peace."[23] For me, however, the gripping dissents made for a more compelling analysis on how public safety may, in a proper case, be invoked by the Government to curtail fundamental rights. Justice Teodoro Padilla, for example, opined that:

> Mr. Marcos, I repeat, comes before the Court *as a Filipino*, invoking a specific constitutional right, *i.e*., the right to return to the country. **Have the respondents presented sufficient evidence to offset or override the exercise of this right invoked by Mr. Marcos?** Stated differently, have the respondents shown to the Court sufficient factual bases and data which would justify their reliance on national security and public safety in negating the right to return invoked by Mr. Marcos?
>
> I have given these questions a searching examination. I have carefully weighed and assessed the "briefing" given the Court by the highest military authorities of the land last 28 July 1989. I have searched, but in vain, for convincing evidence that would defeat and overcome the right of Mr. Marcos *as a Filipino* to return to this country. **It appears to me that the apprehensions entertained and expressed by the respondents, including those conveyed through the military, do not, with all due respect, escalate to proportions of national security or public safety.** They appear to be more speculative than real, obsessive rather than factual. Moreover, such apprehensions even if translated into realities, would be "under control," as admitted to the Court by said military authorities, given the resources and facilities at the command of government. But, above all, the Filipino people themselves, in my opinion, will know how to handle any situation brought about by a political recognition of

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[22] G.R. No. 88211, September 15, 1989, 177 SCRA 668; October 27, 1989, 178 SCRA 760.

[23] *Marcos v. Manglapus*, G.R. No. 88211, October 27, 1989, 178 SCRA 760, 762. Here, the Court resolved the issue of whether then President Corazon C. Aquino gravely abused her discretion when she determined that the return of the Marcoses to the Philippines posed a serious threat to national interest and welfare. President Aquino sought to justify her action "[i]n the interest of the safety of those who will take the death of Mr. Marcos in widely and passionately conflicting ways, and for the tranquility of the state and order of society xxx."

Mr. Marcos' right to return, and his actual return, to this country**. The Court, in short, should not accept respondents' general apprehensions, concerns and perceptions at face value, in the light of a countervailing and even irresistible, specific, clear, demandable, and enforceable right asserted by a *Filipino***.

Deteriorating political, social, economic or exceptional conditions, if any, are not to be used as a pretext to justify derogation of human rights.[24] (Emphasis and underscoring supplied, citations omitted, italics in the original.)

Similarly, in his Dissent, Justice Hugo Gutierrez, Jr. stated that while there may be disturbances which may be directly attributable to the Marcoses' return to the country, they are "not of a **magnitude** as would compel this Court to resort to a doctrine of non-justiciability and to ignore a plea for the enforcement of an express Bill of Rights guarantee:"

And except for citing breaches of law and order, the more serious of which were totally unrelated to Mr. Marcos and which the military was able to readily quell, the respondents have not pointed **to any grave exigency which permits the use of untrammeled Governmental power in this case and the indefinite suspension of the constitutional right to travel.**

x x x x x x x x x

Significantly, we do not have to look into the factual bases of the ban Marcos policy in order to ascertain whether or not the respondents acted with grave abuse of discretion. Nor are we forced to fall back upon *judicial notice* of the implications of a Marcos return to his home to buttress a conclusion.

In the first place, there has never been a pronouncement by the President that a clear and present danger to national security and public safety will arise if Mr. Marcos and his family are allowed to return to the Philippines. It was only after the present petition was filed that the alleged danger to national security and public safety conveniently surfaced in the respondents' pleadings. Secondly, **President Aquino herself limits the reason for the ban Marcos**

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[24] *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 719-720.

policy to—(1) national welfare and interest and (2) the continuing need to preserve the gains achieved in terms of recovery and stability. x x x **Neither ground satisfies the criteria of national security and public safety.** The President has been quoted as stating that the vast majority of Filipinos support her position. x x x We cannot validate her stance simply because it is a popular one. Supreme Court decisions do not have to be popular as long as they follow the Constitution and the law. The President's original position "that it is not in the interest of the nation that Marcos be allowed to return at this time" has not changed. x x x On February 11, 1989, the President is reported to have stated that "considerations of the highest national good dictate that we preserve the substantial economic and political gains of the past three years" in justifying her firm refusal to allow the return of Mr. Marcos despite his failing health. x x x "**Interest of the nation," "national good," and "preserving economic and political gains," cannot be equated with national security or public order. They are too generic and sweeping to serve as grounds for the denial of a constitutional right.** The Bill of Rights commands that the right to travel may not be impaired except on the stated grounds of national security, public safety, or public health and with the added requirement that such impairment must be "as provided by law." **The constitutional command cannot be negated by mere generalizations.**[25] (Emphasis and underscoring supplied, italics in the original.)

Justice Isagani A. Cruz, for his part, found "mere conjectures of political and economic destabilization without any single piece of concrete evidence to back up their apprehensions" to be insufficient to overcome the Marcoses' right to travel.[26] Justice Edgardo L. Paras, on the other hand, stated that while there may be some danger to national safety and national security as claimed by the Government, "there is no showing as to the **extent**" as to warrant the curtailment of the Marcoses' rights.[27] Justice Abraham F. Sarmiento, Sr. similarly objects, thus, "[i]t is his constitutional right, a right that cannot be abridged by personal hatred, fear, founded or unfounded, and by speculations

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[25] *Id.* at 703, 710-711.

[26] *Id.* at 715.

[27] *Id.* at 717. Emphasis supplied.

of the man's 'capacity' 'to stir trouble.'"[28] These dissents, to me, clearly present a powerful case to require of the Government a clear showing of danger to national security or public safety *of such scale* sufficient to defeat the right to travel guaranteed by the Constitution to Filipino citizens.

I submit that no less than this same requirement should be demanded of the Government in this case.

For, the powers to declare martial law and suspend the privilege of the writ of habeas corpus implicate not only one's right to travel, but many other basic civil liberties, including the most fundamental, namely, "individual freedom."[29] There was thus a conscious effort on the part of our Framers to reserve their exercise only in the **direst** of situations and under the **strictest** of conditions. The realization that a declaration of martial law and suspension of the privilege of the writ of habeas corpus impacts our most basic and fundamental rights was foremost on the minds of the members of the Constitutional Commission:

> FR. BERNAS: I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of **the tremendous effect on the nation when the privilege of the writ of *habeas corpus* is suspended and then martial law is imposed.** Since we have allowed the President to impose martial law and suspend the privilege of the writ of *habeas corpus* unilaterally, we should **make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people**.
>
> x x x x x x x x x
>
> MR. SARMIENTO: I thank Commissioner Monsod. May I join Commissioner Monsod and Commissioner Guingona that the Congress, voting jointly, should have the power to revoke the proclamation of martial law or suspension of the writ of *habeas corpus*. In this way,

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[28] *Id.* at 729.

[29] *Lansang v. Garcia*, G.R. No. L-33964, December 11, 1971, 53 SCRA 448, 471-476.

we make it easy for the people's representatives to cut short a power which is very potent that could be the subject of abuse, and in the words of Commissioner Bennagen, could open the way for the resurgence of tyranny and dictatorship. x x x

x x x x x x x x x

MR. BROCKA: x x x **We are talking about a possible situation, a declaration of martial law, wherein the very basic and fundamental rights of the citizens are involved, x x x. Whether martial law is declared for one day or 60 days, the fact is, when martial law is declared the very basic and fundamental human rights of the citizenry are taken away from them. It does not matter whether it is one day, one hour, or 60 days.** So, I would like to express my agreement to Commissioner Monsod's amendment because yesterday we already took away the condition of prior concurrence of Congress; and now, Commissioner Monsod agrees that we have to provide a better safeguard by inserting this particular amendment of a joint decision of Congress.[30] (Emphasis supplied.)

It stands to reason that the President may exercise his extraordinary powers only when the danger to public safety has reached such *scale* that some restriction of fundamental rights becomes constitutionally permissible, under the circumstances.

C

Appreciation of scale is evident in the experience of the Court in both martial law cases

First. The characterization by the Government of the evidence they presented to justify the proclamation, and later, extension, of martial law and suspension of the privilege of the writ of *habeas corpus* would show that it admits scale *is* an element

[30] RECORD, CONSTITUTIONAL COMMISSION 44 (July 31, 1986). Here, the Constitutional Commission was debating whether to require a joint or separate vote by the two houses of Congress for purposes of revoking the President's declaration of martial law or suspension of the privilege of the writ. Members of the Constitutional Commission considered the effect of such action on civil rights. After a lengthy debate, the amendment to introduce joint voting by both houses of Congress was able to garner the majority of votes (25 in favor, 4 against, and 1 abstention).

of the public safety requirement. In the presentation in this case made by the Armed Forces of the Philippines (AFP) before the Court, they described the manpower and number of firearms of the rebels/terrorist groups to be of such "magnitude" as to "endanger the public safety" in this wise:

The **magnitude** as well as the presence of rebel groups endanger the public safety.[31]

REBEL/TERRORIST GROUPS	MANPOWER	FIREARMS	CONTROLLED BARANGAYS
Communist Rebels	1,748	2,123	426
Dawlah Islamiyah	137	162	-
BIFF	388	328	59
ASG	508	598	52
TOTAL	**2,781**	**3,211**	**537**

Thereafter, the Government attempted to pack the record with statistics to show that the "magnitude of scope"[32] of the threat to public safety was such as to put the security of Mindanao at stake. To support this conclusion about "magnitude" and "magnitude of scope," they presented specifics as to the number of violent incidents initiated by the different rebel groups,[33] the number of victims,[34] the amounts received as a result of kidnap-for-ransom activities,[35] intensification of recruitment activities,[36] and presence of foreign-trained terrorist fighters.[37] These, to me, show a clear admission on the part of the

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[31] AFP Powerpoint Presentation, Slide No. 75.

[32] AFP Briefing Paper on the Extension of Martial Law in Mindanao, p. 15.

[33] AFP Powerpoint Presentation, Slide Nos. 19, 26, and 52.

[34] AFP Powerpoint Presentation, Slide No. 62.

[35] AFP Powerpoint Presentation, Slide No. 28.

[36] AFP Powerpoint Presentation, Slide No. 33.

[37] AFP Powerpoint Presentation, Slide No. 39-43.

Government that the public safety requirement under Section18, Article VII involves a showing of scale.

Second, the Court, in *Lagman v. Medialdea*, defined public safety as "involv[ing] 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."[38] Again, this clearly acknowledged scale by using the word "significant"[39] to qualify any existing danger, injury/harm or damage to public safety. While it would continue to state that "public safety is an *abstract* term" whose "range, extent or scope could not be physically measured by metes and bounds,"[40] the Court, after an analysis of all the evidence presented, nevertheless found that they have reached a *level* of danger sufficient to risk public safety:

> 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. In addition and in relation to the armed hostilities, bomb threats were issued; road blockades and checkpoints were set up; schools and churches were burned; civilian hostages were taken and killed; non-Muslims or Christians were targeted; young male Muslims were forced to join their group; medical services and delivery of basic services were hampered; reinforcements of government troops and civilian movement were hindered; and the security of the entire Mindanao Island was compromised.

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[38] *Lagman v. Medialdea, supra* note 2 at 73.

[39] The Oxford dictionary defines "significant" as "Sufficiently great or important to be worthy of attention; noteworthy." <https://en.oxforddictionaries.com/definition/significant> (last accessed February 6, 2018)

[40] *Lagman v. Medialdea, supra.*

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.

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*.[41] (Emphasis and underscoring supplied, citations omitted.)

Significantly, it appears to me that all the other members of the Court, including myself, who voted to sustain the President's proclamation of martial law and suspended the privilege of the writ in Mindanao appreciated (whether instinctively or deliberately) to a certain extent the *scale* to which public safety has been endangered by the situation in Marawi City.

Justice Tijam, in his Separate Concurring Opinion for example, also considered essentially the same circumstances to arrive at his conclusion that the President's proclamation was firmly grounded on the requirements of public safety, that is: (1) destruction of government and privately-owned properties; (2) significant number of casualties; (3) government inability to deliver basic services; (3) government inability to send troop reinforcements to restore peace in Marawi City; and (4) lack of easy access for civilians and government personnel to and from the City.[42]

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[41] *Id.* at 65-66.

[42] Separate Concurring Opinion, *J.* Tijam, *Lagman v. Medialdea*, p. 16.

III

Scale as a measure for determining the existence of the public safety requirement; Proposed indicators of scale

The *ponencia* cites an *Amicus Curae* Brief submitted by esteemed constitutionalist Father Joaquin G. Bernas, S.J., in *Fortun v. Macapagal-Arroyo*,[43] to justify a "permissive approach" to the President's assessment of the public safety requirement under Section 18, Article VII.[44] The portion quoted reads:

> 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 of 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.[45]

While I am in complete agreement with Father Bernas' statement, I disagree with the conclusion reached by the *ponencia* on account thereof.

First, I believe Father Bernas' statement was given in the context of a discussion regarding the definition of "rebellion" as it is used in the Constitution. The conclusion of the statement was that while the Revised Penal Code definition may be considered, the President is not bound to assume "the function of a judge trying to decide whether to convict a person for

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[43] G.R No. 190293, March 20, 2012, 668 SCRA 504.

[44] *Ponencia*, p. 52.

[45] *Id.*

rebellion or not."[46] It was not meant to define public safety requirements or otherwise proscribe the future provision of guidelines for its determination.

Second. Father Bernas' statement that the determination of the requirements of public safety "involves the verification of factors not as easily measurable"[47] is not conceptually incompatible or irreconcilable with the identification of minimum reasonable indicators, "verifiable through the visual or tactile sense,"[48] through which to determine whether public safety requires the exercise of the President's extraordinary powers. Indeed, when our Framers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, it certainly did not mean for the Court to verify only the factual bases for the alleged rebellion and "permissively" rely on the President's assessment of the public safety requirement given the facts presented.

For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to "shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power" and "[create] an objective test to determine whether the President has complied with the constitutionally prescribed conditions."[49]

In fact, I realize that I have previously articulated some views on public safety which may seem opposed to the views I now embrace. I initially took the position that since the requirements of public safety appear to be phrased in discretionary terms, it would be difficult to set parameters *in a vacuum* as to what

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[46] Dissenting Opinion, *J*. Velasco, *Fortun v. Macapagal-Arroyo, supra* at 594-595.

[47] *Id.* at 594.

[48] *Id.*

[49] Separate Opinion, p. 10.

predicate facts should exist. The facts and experience from this case, however, have opened my eyes to the mischief that a "permissive" approach to the President's "prudential estimation" of the public safety requirement can cause. Permissive deference can be used to justify the imposition or extension of martial law by the simple expedient of alleging the existence or persistence of "rebel" groups *capable* of opposing the Government. I fail to see the difference between sustaining the extension of martial law based on the *capability* of hostile "rebel" groups to sow discord against the Government and sustaining martial law on the basis of an imminent danger of rebellion. That would be a movement back to the *Lansang* formulation, and an abject abdication of this Court's "newly assumed power" to review the declaration, or extension, of martial law based on sufficiency of factual basis.[50]

Worse, it would open the country to the possibility of a permanent state of martial law, as the Philippines has a long history of rebellions motivated by diverse religious, ideological, regional, and other interests. That rebellion is a continuing crime is a handle for the prosecution of rebels wherever they may be. This criminal law doctrine, however, was never envisioned to be a justification to declare martial law and/or suspend the privilege of the writ of *habeas corpus* whenever and wherever *a* rebel may operate or be found. Our history and the evidence presented in this case and in *Lagman v. Medialdea* have shown that there are rebellions and rebellions. Each rebellion is episodic and will have, as shown in the cases of the Maute Group, the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF) and the New People's Army (NPA), their ebbs and flows.

I believe a proper and principled approach to deciding this and future cases require this Court to identify some *reasonable indicators* which can be used as guides to determine *scale* for purposes of the public safety requirement. Certainly, we will

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[50] Separate Opinion, p. 9, citing Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 541.

not be able to catalogue all indicators with mathematical precision. Such an endeavor, while difficult, is nevertheless doable using all aids available to us, including interpretative aids and knowledge derived from past experience.[51] Surely, in deciding this and future cases, the Court is not limited in determining the sufficiency of the factual basis of the requirements of public safety to the extremes of an "*I know it when I see it*" and "*the President knows better*" analysis.

As I have endeavored to show above, there were incidents which were considered by the *ponencia* in *Lagman v. Medialdea* as *indicators of the scale* of the danger to public safety which may justify a declaration of martial law and/or suspension of the privilege of the writ of habeas corpus. These are: (1) "armed hostilities" directed not only against government forces or establishments but likewise against civilians and their properties; (2) bomb threats; (3) set up of road blockades and checkpoints by the hostile groups; (4) burning of schools and churches; (5) taking and killing of civilian hostages; (6) targeting of non-Muslims or Christians; (7) forced recruitment of young male Muslims; (8) hampering of the delivery of medical and other basic services; and (9) hindrance to movements of civilians and troop reinforcements.[52]

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[51] The development of the standards for what constitutes obscenity comes to mind. In the 1957 case of *Roth v. United States*, 354 U.S. 476 (1957), the United States Supreme Court was first confronted with the issue of "whether obscenity is utterance within the area of protected speech and press." While it acknowledged that the law on obscenity at the time was not as developed as to clearly/textually show that it was beyond the protection of the Fourth Amendment, the Court nevertheless found "sufficiently contemporaneous evidence to show that obscenity, too, was outside the protection intended for speech and press." Over the course of several years, and several cases later, the Court would continue to grapple with the "intractable obscenity problem," refining, testing and improving the Roth test until 1973, when it decided *Miller v California*, 413 U.S. 15 (1973). This experience of the U.S. Supreme Court is, to me, testimony that it is possible to arrive at principled parameters despite the seeming "novelty" of the issue at hand, by utilizing relevant interpretative aids available.

[52] *Supra* note 2 at 65.

Building on the indicators provided in *Lagman v. Medialdea*, there appears to be two **minimum** indicators of scale as to reasonably meet the public safety requirement necessary for a declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. These are: (1) the presence of hostile groups engaged in *actual and sustained armed hostilities* with government forces;[53] and (2) these groups have actually *taken over, and are holding*, territory.[54] Following our experience in Marawi, these indicators may further result in, or may be attended by, the interruption in the sending of troop reinforcements or local authorities being prevented, or unable to, perform their regular functions,[55] including law enforcement and the delivery of basic services. Bomb threats, burning of schools or churches, kidnapping of civilian hostages, and forced recruitment of young male Muslims only fall under the rubric of lawless violence; they do not, by themselves, satisfy the requirements of public safety. When, as in the Marawi crisis, however, these acts of lawless violence are being committed at or about the same time, and within the same defined territory, they *may* indicate a significant enough breakdown of general peace and order as to reasonably meet the public safety requirement under Section 18, Article VII.

The *ponencia* argues that "[t]he adoption of the extreme scenario as the **measure** of threat to public safety as suggested

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[53] In Marawi City, there was an actual shooting standoff between the military and the hostile elements. There were also instances of the hostile groups attacking and occupying public and private establishments, such as schools and hospitals adversely affecting the delivery of their respective services. The city was overrun and local police were unable to restore peace and order. See *Lagman v. Medialdea*, *supra* note 2 at 5-7.

[54] Bridge and road blockades by hostile groups. Sustained occupation of government or civilian properties. *Id.*

[55] "Law enforcement and other government agencies x x x face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. x x x [B]ridge and road blockades [were] set up by groups x x x. Movement by both civilians and government personnel to and from the City is likewise hindered." *Supra* note 2 at 8, citing the Proclamation No. 216 and the President's Report to Congress.

by petitioners is to invite doubt as to whether the proclamation of martial law would be at all effective in such case considering that enemies of the State raise unconventional methods which change over time."[56] It posits that to require parameters may result in a situation where the declaration of martial law "would be of no useful purpose and such could not be the intent of the Constitution."[57]

Again, and with respect, I disagree. Our experience in Marawi has proven this to **not** be the case. At the time, armed hostile groups opposed to the government have already succeeded in overrunning a large part of the city. They engaged government troops in sustained firefights, forcing many of the city's residents to evacuate their homes and flee to temporary shelters outside the city.[58] In the end, however, our military forces were still able to restore peace and order and not without great sacrifice. No "unconventional methods" were alleged to have been resorted to by these hostile groups which were beyond the experience and capacity of our government forces to meet. The *mere possibility* that hostile groups may, in the future, be able to devise such unconventional methods is, however, not an acceptable reason to do away with reasonable proof of scale for purposes of the public safety requirement under Section 18, Article VII. The requisite scale of the danger to public safety **must** be shown in every exercise of the President's extraordinary powers, regardless of the unconventionality of their causing.

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[56] *Ponencia*, p. 52.

[57] *Id.*

[58] Maxine Betterige-Moes, What happened in Marawi?, October 30, 2017 <http://www.aljazeera.com/indepth/features/2017/10/happened-marawi-171029085314348.html> (last accessed February 1, 2018). Given the gravity of the situation, no member of the Court appeared to question the scale of the danger to public safety at the time. In fact, the debates mostly revolved around legal concepts: what is the nature of the action filed under Section 18, what is the scope of the Court's review, what is the proper standard to assess the President's action, and how to define rebellion.

Finally, that there are laws in place which would rectify possible abuses *after the fact* also does not justify this "permissive" approach. The best safeguard is still vigilance on the part of the agencies tasked to check the exercise of the power *in the first place*. Ensuring that the President has enough flexibility and discretion on when to impose martial law is not sufficient justification for taking on a "permissive" approach. If at all, the identification of reasonable indicators to determine whether the danger to public safety has reached such scale as to warrant the exercise of the President's extraordinary powers is recognition of the extreme nature of the extraordinary powers and its tremendous effect on civilian lives.

IV

Conclusion: No sufficient factual basis to show that public safety requires the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao

The weight of concerns about the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao seem to stem from the absence of a categorical statement on the part of the Court on what martial law means under our Constitution. It cannot mean the assumption by the military, headed by the President, of either judicial or legislative power, at least not in the sense that it was used and abused by the former President Marcos. The 1987 Constitution textually prohibited such results. What then does martial law entail?

Quoting Willoughby, Father Bernas enumerates three types of "martial law:" (1) Military Law Proper, that is, the body of administrative laws created by Congress for the government of the army and navy as an organized force; (2) the principles governing the conduct of military forces in time of war, and in the government of occupied territory; and (3) Martial Law in *sensu strictiore*, or that law which has application when the

military arm does not supersede civil authority but is called upon to aid it in the execution of its civil functions.[59]

According to Father Bernas, martial law as it is understood in our jurisdiction cannot refer to the first meaning because it "refers to a body of administrative laws which are operative all the time, whereas martial law in the Constitution can be operative only 'in case of invasion or rebellion, when the public safety requires it.'"[60] After differentiating between the second (military government) and third (martial rule) types of martial law, he concludes that martial law *under our Constitution* is simply martial rule, that is, the military "takes the place of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty."[61] It is a "public exigency which may rise in time of war or peace" and "ceases when the district is sufficiently tranquil to permit the ordinary agencies of government to cope with existing situations."[62]

Otherwise stated, martial law as allowed under our Constitution, is simply authority for the military to act vigorously for the maintenance of an ordinary civil government. It is brought about by necessity,[63] an exigency brought about by **extreme** danger to public safety, that its object is simply the "preservation of the public safety and good order."[64] Since necessity calls it forth and defines its scope, it is imperative that the Government

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[59] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 899.

[60] *Id.*

[61] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 901.

[62] *Id.*

[63] Concurring Opinion of Chief Justice Stone in *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946), citing *Luther v. Borden*, 48 U.S. 1 (1849); *Mitchell v. Harmony*, 54 U.S. 115 (1851); *United States v. Russell*, 80 U.S. 623 (1871); *Raymond v. Thomas*, 91 U.S. 712 (1875); and *Sterling v. Constantin*, 287 U.S. 378 (1932).

[64] *Id.*

sufficiently establish the necessity. There must be proof of the **graveness** of the exigency confronting the Government as to call for the imposition of martial law. Without this, the Court is obliged, if not compelled, to strike down its exercise.

I have examined the written submissions of the Government and listened closely to the briefing provided by representatives from the AFP on the factual bases behind the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. As earlier stated, the Government, through the AFP, sought to prove the "**magnitude of scope**"[65] of the threat to public safety was such as to put the security of Mindanao at stake. Aside from the data on manpower, arms, and controlled barangays, the following 2017 statistics were also presented: (1) total of 116 BIFF-initiated violent incidents;[66] (2) total of 44 ASG-initiated violent incidents;[67] (3) total of 53 Dawlah Islamiyah-initiated violent incidents;[68] and (4) total of 422 communist-initiated incidents of rebellion in Mindanao.[69] When tested, however, against the *minimum reasonable indicators* above proposed, none of the evidence presented were similar to, or at least somewhat approximating, the scale of the situation which obtained in Marawi City during the initial Proclamation.[70] There is nothing

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[65] AFP Briefing Paper on the Extension of Martial law in Mindanao, p. 15.

[66] These incidents, broken down, are as follows: 3 ambuscades; 1 shelling/strafing; 64 firing/attacks upon government troops; 2 shootings; 4 liquidation/sniping; 2 arsons; 32 landmining and attacks using improvised explosive devices (IEDs); and 8 grenade throwing/explosions. See AFP Powerpoint Presentation, Slide No. 19.

[67] These incidents, broken down, are as follows: 13 kidnappings; 3 IED landmining/explosions; 17 attacks; 3 murders; 2 strafing; 1 liquidation; 1 shooting; 1 ambuscade; 1 arson; 1 firefight; and 1 grenade throwing. See AFP Powerpoint Presentation, Slide No. 26.

[68] AFP Powerpoint Presentation, Slide No. 37.

[69] AFP Powerpoint Presentation, Slide No. 52.

[70] It must be noted that reference to the Marawi Siege is especially relevant considering that what is at issue here is the extension of a declaration of martial law brought about by said incident.

in the record to show that there are hostile groups engaged in actual and sustained armed hostilities with government forces. Neither are there allegations, much less, proof of hostile groups actually taking over and holding territory, or otherwise causing a significant breakdown of the general peace and order situation as to prevent local civilian authorities from going about their regular duties. Neither is there evidence presented to support the claimed linkages with foreign terrorist groups. The Islamic State, with its blitzkrieg campaign for the re-founding of an Islamic caliphate, has seen a dramatic decline in its influence in 2017, with its last stronghold, the city of Raqqa, falling into the hands of US-led coalition of Syrian Kurdish and Arab fighters in October of last year.[71] And while several Philippine factions of radical Islamic leanings may have pledged allegiance to the Islamic State, the AFP has not presented evidence that the organization has reciprocated, or that the Islamic State has publicly acknowledged an official *wilayat* or franchise in the country, or extended logistical, financial, manpower, or armament support to any, some or all of such factions.[72]

Lest I be misunderstood, I am not discounting or belittling the damage to life, limb, and property caused by the reported continued attacks of the hostile groups. Granting all of the Government's allegations to be true, however, I do not find these to be sufficient basis to warrant any continued restriction on or suspension of fundamental civil liberties.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155, and **DECLARE**

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[71] BBC News, Islamic State and the Crisis in Iraq and Syria in Maps, January 10, 2018 <http://www.bbc.com/news/world-middle-east-27838034> (last accessed on February 6, 2018). The city was the *de facto* capital of the caliphate the group declared. An intensive aerial bombardment by the US-led coalition helped secure victory in Raqqa for the Syrian Democratic Forces (SDF), which was formed in 2015 by the Kurdish Popular Protection Units (YPG) militia and a number of smaller, Arab factions. Since early June, coalition planes have carried out almost 4,000 air strikes on the city.

[72] Patrick B. Johnston and Colin P. Clarke, Is the Philippines the Next Caliphate?, November 28, 2017 <https://www.rand.org/blog/2017/11/is-the-philippines-the-next-caliphate.html?> (last accessed February 6, 2018).

INVALID Joint Resolution No. 4 of the Senate and the House of Representatives dated December 13, 2017, for failure to comply with Section 18, Article VII of the 1987 Constitution.

DISSENTING OPINION

CAGUIOA, *J.*:

"At first all of it appeared to be idiotic
in its impudent assertiveness.
Later on it was looked upon as disturbing,
but finally it was believed."[1]

Shorn of its legal niceties, martial law is an emergency governance response involving the imposition of military jurisdiction over civilian population, designed to complement the emergency armed force response to an actual armed uprising. Force is met with force. The might of the military is summoned and flexed to prevent the dismemberment of the Republic caused by an actual rebellion or invasion, with martial law suspending certain civil liberties to facilitate the armed response. But, when the rebellion is quelled, or the invasion is repelled, the normal state of affairs must return.

The declaration and extension of martial law in the absence of the exigencies justifying the same reduces such extraordinary power to a mere tool of convenience and expediency. Thus, the baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses, if not renders totally nugatory, the conditions and limitations explicitly spelled out in the Constitution for the protection of individual citizens. **This violation merits consideration in the resolution of this Petition, for it stands independent of the acts of abuse that may be, or have been perpetrated in furtherance thereof**.

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[1] Hitler, A. & Murphy, J. V. (1981), *Mein Kampf*. Retrieved from <http://gutenberg.net.au/ebooks02/0200601.txt.>

In these consolidated petitions, the Court reviews anew the sufficiency of the factual basis of the extension of martial law for one year in the entire Mindanao.

The power to extend is subject to constitutional conditions.

Article VII, Section 18 of the Constitution contains the standards with which all three coordinate branches of government must comply in relation to the declaration or extension of martial law, and its review.

It enshrines the extraordinary powers of the President as Commander-in-Chief of the Armed Forces of the Philippines (AFP) — (i) the power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion; (ii) the power to suspend the privilege of the writ of *habeas corpus*; and (iii) the power to proclaim martial law. In *Lagman v. Medialdea*[2] *(Lagman)* the Court characterized these powers as graduated in nature, such that each may only be resorted to under specified conditions. As for the declaration of martial law, the relevant portion reads:

> 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.[3]

The Court, in *Lagman*, stated that Section 18, Article VII 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"[4] and thereupon proceeded with the analysis consistent with those standards. *Lagman* also instructs that

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[2] G.R. Nos. 231658, 231771 & 231774, July 4, 2017 [*En Banc*, Per *J.* Del Castillo].

[3] *Id*. at 3.

[4] *Id*. at 51.

the President is given the prerogative to determine which extraordinary power to wield in a given set of circumstances, *provided*, however, that **the conditions required by the Constitution for the use of these extraordinary powers exist**, for while the exercise of the calling-out power is primarily left to the President's discretion,[5] the power to suspend the privilege of the writ and declare martial law are not.

As for the extension by the Congress of the declaration of martial law, the same first paragraph of Section 18 provides:

> 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.

Staying faithful to the above text and consistent with *Lagman*, the parameters of determining the sufficiency of the factual basis of the extension requires the Court to examine whether (1) the invasion or rebellion persists, and (2) public safety requires the exercise of such power.

Several points become instantly clear from a plain reading of the above text: (1) the invasion or rebellion furnishing the first requirement for the extension indubitably refers to the invasion or rebellion that triggered the declaration sought to be extended, and (2) the requirement of public safety must require the extension. The mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be basis for the extension.

The Court's power and duty to review under Section 18 contemplates the determination of the existence of the conditions upon which the President's extraordinary powers may be exercised. In the context of an extension of a prior proclamation or suspension, the Court's duty thus equates to the determination of whether the factual basis therefor, then "sufficient, truthful, accurate, or at the very least, credible,"[6] persists.

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[5] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 640 (2000) [*En Banc*, Per *J.* Kapunan].

[6] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea (Resolution),* G.R. Nos. 231658, 231771 & 231774, December 5, 2017.

The Executive and Legislative Departments bear the burden of proof to show sufficient factual basis.

The question of burden of proof in the review of the declaration of martial law has been settled in *Lagman* — the Executive bears the burden of proof. For the same reasons I stated in my *Dissent* in that case, given the nature of a Section 18 proceeding as a neutral fact-checking mechanism, the Executive and Legislative departments continually bear the burden of proving sufficient factual basis for the extension.

The Court has recognized that martial law poses a severe threat to civil liberties;[7] fittingly, a review of its declaration or extension must require proof. Even the less stringent review in *Lansang v. Garcia*[8] required that minimum.

Consequently — and I reiterate to the point of being tedious — the presumptions of constitutionality or regularity do not apply to the Executive and Legislative departments in a Section 18 proceeding. These presumptions cannot operate to require the petitioners to prove a lack or insufficiency of factual basis or to produce countervailing evidence because this amounts to an undue shifting of the burden of proof absent in the language of the provision, and clearly was not the intendment of the framers. As well, while the Executive and Legislative departments cannot be compelled to produce evidence to prove the sufficiency of factual basis, these presumptions cannot operate to gain judicial approbation in the face of the refusal to adduce evidence, or presentation of insufficient evidence. For otherwise, the ruling that fixes the burden of proof upon the Executive and Legislative departments becomes illusory, and logically inconsistent: the Court cannot rule on the one hand that respondents in a Section 18 proceeding bear the burden of

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[7] *David v. Macapagal-Arroyo*, 522 Phil. 705, 781 (2006) [*En Banc*, Per *J.* Sandoval-Gutierrez].

[8] 149 Phil. 547 (1971) [Per *C.J.* Concepcion].

proof, and then on the other, rule that the presumptions of constitutionality and regularity apply. In short, the Court cannot say that the respondents must present evidence showing sufficient factual basis, but if they do not or cannot, the Court will presume that sufficient factual basis exists. To insist otherwise is to argue the absurd.

Indeed, if the Court needs to rely upon presumptions during a Section 18 review, then it only goes to show that the Executive and Legislative departments failed to show sufficient factual basis for the declaration or extension. Attempts at validation on this ground is equivalent to the Court excusing the political departments from complying with the positive requirement of Section 18.

The requirements for the extension of Proclamation 216 have not been met.

Again, the parameters for determining the sufficiency of the factual basis are now well-settled. As stated in *Lagman,* they are: (i) the existence of an actual rebellion or invasion; and (ii) that public safety necessitates such declaration or suspension. I find that the extension fails the test of sufficiency of factual basis, **as both these requirements do not exist to justify the extension**.

The existence of an actual rebellion was not established with sufficient evidence.

A valid declaration of martial law presupposes the existence of rebellion as a matter of fact and law. As defined in the Revised Penal Code (RPC),[9] the following elements are necessary for the crime of rebellion to exist:

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[9] 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 Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or

First, that there be (a) a public uprising and (b) taking arms against the government; and

Second, that the purpose of the uprising or movement is either (a) to remove from the allegiance to said 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 or prerogatives.

Simplified, the elements of rebellion are reducible to (i) an overt act of armed public uprising and (ii) a specific purpose. Both elements must concur and be proved independently of each other, as explained by the Court in *People v. Lovedioro:*[10]

> From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. Both purpose and overt acts are essential components of the crimes. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime rebellion.[11]

Based on the foregoing standards, the point of inquiry therefore is whether the Congress had sufficient factual basis to conclude that rebellion persists — that the concurrence of the elements of rebellion obtaining during the time of the declaration still exists — thus justifying the extension of the proclamation of martial law. Necessarily, the relevant window of time to be considered is shortly before the Congress' receipt of the President's Letter dated December 8, 2017.

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

[10] 320 Phil. 481 (1995).

[11] *Id.* at 489.

i. The element of an armed public uprising no longer exists

My dissent is largely premised on a simple fact: there is no more armed public uprising — thus, it cannot be said that the rebellion necessitating the declaration persists. In this regard, a review of the key evidence is in order.

a. Letter dated December 8, 2017 (Subject Letter) and Resolution of Both Houses No. 4 dated December 13, 2017 (Joint Resolution)

In the Subject Letter that eventually formed the basis of the Joint Resolution, the narration of facts palpably demonstrates that the armed public uprising which necessitated the issuance of Proclamation No. 216 **had already been subdued by government forces**:

> **I am pleased to inform the Congress that during the Martial Law period as extended in Mindanao, the Armed Forces of the Philippines (AFP) has achieved remarkable progress in putting the rebellion under control.** General Rey Leonardo Guerrero, AFP Chief of Staff and Martial Law Implementor, has reported that a total of nine hundred twenty (920) DAESH-inspired fighters, including their known leaders, have been neutralized. **Clearing of the main battle area in Marawi City was fast-tracked**, with at least one hundred thirty-nine (139) terrorists arrested, of which sixty-one (61) have been criminally charged. **All these hastened the liberation of Marawi City on 17 October 2017, and paved the way for the initiation of efforts for the rehabilitation and reconstruction of the city**.
>
> On 04 December 2017 I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, stating that "based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily **to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers**

x x x." A copy of Secretary Lorenzana's letter (together with a copy of the letter of AFP Chief Guerrero) is attached for your convenient reference.

The security assessment submitted by the AFP, supported by a similar assessment by the Philippine National Police (PNP), highlights certain essential facts that I, as Commander-in-Chief of all armed forces of the Philippines, have personal knowledge of.

First, despite the death of Hapilon and the Maute brothers, **the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters** to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-large and, in all probability, are **presently regrouping** and **consolidating their forces.**

More specifically, the **remnants of DAESH-inspired DIWM members and their allies**, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards **radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/reorganization in Central Mindanao**, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. **These activities are geared towards the conduct of intensified atrocities and armed public uprisings** in support of their objective of establishing the foundation of a global Islamic caliphate and of a Wilayat not only in the Philippines but also in the whole of Southeast Asia.

Second, the Turaifie Group has likewise been monitored to be **planning to conduct bombings**, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia.

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.

Fourth, the **remnants** of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using

Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.[12] (Emphasis supplied)

Based on the contents of the Subject Letter, its plain import is that: (i) the rebellion that spawned Proclamation No. 216 is already "under control" as over 1,000 DAESH-inspired fighters have either been killed in combat or arrested; (ii) Marawi has been liberated; (iii) reconstruction and rehabilitation of Marawi is already underway; and (iv) the rebel groups have not yet been "totally eradicated" as there are still "remnants" remaining.

These claims are made in the face of statements made a month or two prior to this request for extension by key military and government officials in the media that Marawi has been liberated;[13] that the Bangsamoro Islamic Freedom Fighters (BIFF) attacks had no connection to the Marawi siege;[14] and that military

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[12] Letter dated December 8, 2017, Annex "C" of the Lagman Petition.

[13] On October 17, 2017, President Duterte already declared that Marawi is free from "terrorist influence," as military operations continue to ensure that all terrorists have been flushed out. This declaration was made a day after Isnilon Hapilon and Omar Maute were killed. The military clarified that the war is not yet over but it will only take a "matter of days." Article retrieved from CNN Philippines: <http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html.>

[14] In June 2017, both Malacañang and AFP claimed that the BIFF attack in Pigkawayan, North Cotabato during that time had no connection to the rebellion in Marawi. Presidential spokesman Ernesto Abella dismissed the attack as a mere attempt to recover from more than two weeks of setbacks from ongoing military operations of the Army's 6th Infantry Division. Captain

operations have ceased because there are no longer militants in Marawi, and the remaining stragglers no longer affect the security in the area.[15] Interestingly, statements of military and government officials only took a turn and became consistent with the claims made in the Subject Letter at the start of 2018, after the filing of the consolidated petitions for review. Now there are warnings of a repeat of the siege,[16] and of a "continuing rebellion."[17]

Arvin Encinas, Public Affairs Chief of the 6th Infantry Division said that they doubt the capability of the BIFF to proceed to areas far from central Mindanao to sow terror. Article retrieved from Philstar: <http://www.beta.philstar.com/headlines/2017/06/23/1713103/biff-attack-not-connected-marawi-siege-palace-military>.

[15] On October 23, 2017, DND Secretary Lorenzana announced the termination of all combat operations against Daesh-inspired Maute-ISIS group in Marawi after the military killed the last remaining local and foreign terrorists in the city. He said that there are no more militants in Marawi City. Article retrieved from CNN Philippines: <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>.

On November 3, 2017, Major Gen. Restituto Padilla, AFP spokesperson, in a press briefing held in the Palace insisted that there was no premature declaration of Marawi City's liberation from terrorists despite the presence of a small number of stragglers in the war-torn city. He said that the declaration was made when the stragglers in Marawi no longer have bearing to the security in the area, "they are leaderless, they have no direction, they are merely fighting for survival." Article retrieved from Inquirer: <http://newsinfo.inquirer.net/942686/afp-no-premature-declaration-of-liberation-in-marawi-afp-marawi-padilla-stragglers>.

[16] On January 8, 2018, Secretary of National Defense (SND) Lorenzana ordered the troops to prepare for a repeat of the Marawi siege in "another city" in the Philippines. Article retrieved from Rappler: <https://www.rappler.com/nation/193155-lorenzana-warning-marawi-martial-law>.

SND Lorenzana said that rebellion remains in Mindanao and that martial law will be necessary to quell it. He also said that the main purpose of the extension is to eradicate the ISIS threat in the Philippines. Article retrieved from GMA:<http://www.gmanetwork.com/news/news/nation/638944/lorenzana-gov-t-verifying-report-on-presence-of-foreign-terrorists-in-mindanao/story/>.

[17] SND Lorenzana argued that there is a "continuing rebellion". He said that "[i]t is the belief of the armed forces and the police that there is a continuing reorganization of rebellious forces." Article retrieved from Rappler: <https://www.rappler.com/nation/193155-lorenzana-warning-marawi-martial-law>.

Significantly, there is nothing in the Subject Letter that would show that the said rebellion has maintained or intensified in strength. On the contrary, the phrases "rebuild[ing] their organization," "presently regrouping and consolidating their forces," "radicalization/recruitment," "financial and logistical build-up," all connote that the armed public uprising had been quashed and that the rebel groups were recuperating or, at most, reduced to engaging in preparatory acts toward some unspecified end. As if removing all doubt, the Subject Letter is couched in the future tense as it states that the activities of the DAESH-inspired fighters "are geared towards the conduct of x x x armed public uprisings" and that the Turaifie Group is "planning to conduct bombings."

To state the obvious, to say that a rebel group is engaged in activities geared towards the conduct of an armed public uprising is to say that no armed public uprising is, as of yet, existing. As well, to claim, as the respondents do, that the commission of acts preparatory to an armed public uprising *a priori* constitutes an actual rebellion is an argument in a circle. It is illogical and completely fails to persuade.

While it is true that rebellion is characterized as a "continuing offense," which constitutes a series of repeated acts,[18] it is equally true that these overt acts must be anchored on a common ideological base[19] and committed in furtherance thereof. In the context of a martial law extension, this unity in purpose must be clearly ascertainable from the acts in question. Stated differently, there must be a clear showing that the acts cited as basis for the extension are in fact done in furtherance of the rebellion subject of the initial proclamation. Again, I echo the warning of Justice Feliciano in *Lacson v. Perez*[20] on this point:

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[18] Leonor D. Boado, *NOTES AND CASES ON THE REVISED PENAL CODE* 422 (2012).

[19] See *Umil v. Ramos*, 279 Phil. 266, 294-295 (1991) [*En Banc*, *Per Curiam*].

[20] *Lacson v. Perez*, 410 Phil. 78 (2001) [*En Banc*, Per *J*. Melo].

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 of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization**. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved. Note, for instance, the following acts which constitute *prima facie* evidence of "membership in any subversive association[.]"[21] (Emphasis and underscoring supplied.)

Justice Feliciano's observations find particular relevance in this Petition, for unlike in *Lagman* where an armed public uprising was shown to have taken place in Marawi City, no such circumstance has been shown to **persist** in Marawi City or *any* part of Mindanao. As I had stated in my *Dissent* in *Lagman*, 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.[22] The requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily, martial law is confined to the place where there

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[21] *J.* Feliciano, Concurring and Dissenting Opinion, *Lacson v. Perez*, *id*. at 109.

[22] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, pp. 20-21.

is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the specific purpose.

Nevertheless, in the Joint Resolution, the Congress resolved to extend the proclamation of martial law over the entire Mindanao for the second time, based essentially on the same set of facts set forth in the Subject Letter. Thus:

> WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the **remnants** of their groups have **continued to rebuild their organization** through the **recruitment and training of new members** and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be **planning to conduct bombings**, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the **remnants** of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;
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> x x x x x x x x x
>
> WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao; x x x[23] (Emphasis supplied)

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[23] Resolution of Both Houses No. 4 dated December 13, 2017.

It is not unusual – as it is, in fact, expected – that a defeated army will have its own share of survivors. Our own colonial history bears witness to this fact. Hence, that some enemy fighters remain alive does not mean that a battle has not been won. In this case, to require first the "total eradication" of rebel groups before a rebellion can be considered quelled goes against plain logic and human experience. Meaning to say, the rebels' survival and the concomitant perpetuation of their ideology do not *ipso facto* mean that there is still an armed public uprising. And where there is no more armed public uprising, there can be no rebellion persisting as contemplated in the Constitution.

Respondents attempt to cover up this gaping hole by extending, through some legal fiction, the rebellion subject of *Lagman* to the present case. Using the Court's declaration in *Lagman* that actual rebellion existed in Mindanao, respondents claim that the issue of whether rebellion still exists should have already been "laid to rest."[24] In effect, respondents are telling the Court that the armed public uprising then existing during the **first** declaration of martial law on May 23, 2017 still persists, purportedly on the basis of the principle of conclusiveness of judgment. This is egregious error.

As pointedly discussed in the *ponencia*, with which I fully agree, the issue in the earlier *Lagman* case refers to the existence of a state of rebellion that would call for the President's initial declaration of martial law, while in this case, the issue refers to the persistence of the same rebellion that would justify the extension of martial law by the Congress. Moreover, given the nature of an armed public uprising, it follows that the Court's judgment on the sufficiency of factual basis for the declaration of martial law is transitory[25] and relevant only to the state of affairs during that specific period in time.

b. Presentation of Respondents during the Oral Arguments held on January 17, 2018

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[24] Memorandum for Respondents, p. 38.

[25] Fr. Bernas, during the deliberations of the Constitutional Commission. II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 494 (1986).

Among the data presented by respondents are lists of violent incidents in Mindanao. It must be stressed, however, that most of the data presented are **irrelevant** for the simple reason that most of the attacks listed occurred during periods irrelevant to the controversy at hand. Evidence, to be admissible, must be relevant to the fact in issue, that is, it must have a relation to the fact in issue as to induce belief in its existence or non-existence.[26]

Again, the relevant window of time to be considered is shortly before the Congress' receipt of the President's letter dated December 8, 2017. Thus, events that took place: (i) prior to the declaration of martial law on May 23, 2017 being the set of facts that the President considered when he issued Proclamation No. 216; and (ii) the intervening period from May 23, 2017 to July 18, 2017, which is when the President requested a first extension from Congress and which in turn is the supposed set of facts that Congress considered when it extended Proclamation No. 216 until December 31, 2017 are irrelevant for the purpose of showing that rebellion persists from the time martial law was first declared and extended.

Synthesizing the data, therefore, from the time Marawi was declared liberated on October 17, 2017, only seven (7) BIFF-initiated violent incidents were reported, all occurring within the Province of Maguindanao. The same can be said of the "Abu Sayyaf Rebel Group List of Violent Activities," which reported all incidents beginning January 6, 2017 until December 24, 2017. Only five (5) ASG-related incidents were reported between October 17, 2017 (when Marawi was liberated) until December 13, 2017.

To my mind, what stands out from the foregoing data is the apparent pattern of violence in Mindanao **even before** the "Marawi Siege." **This glaring fact, in effect, dilutes respondents' claim that the incidents of violence following the declaration of martial law was in pursuance of the actual**

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[26] *Herrera v. Alba*, 499 Phil. 185, 202 (2005) [First Division, Per *J*. Carpio].

rebellion in *Lagman*. Hence, without more, respondents' evidence remains ambiguous, to say the least.

Meanwhile, without delving into specifics, respondents also introduced a list of pending criminal cases for rebellion. However, a cursory reading of the list would reveal that the most recent development was the issuance of a Resolution dated **July 27, 2017**, or almost three (3) months before Marawi's liberation, finding probable cause to indict several respondents for the crime of rebellion. Clearly, this specie of evidence is irrelevant in the Congress' determination of whether there is sufficient factual basis to extend martial law from beyond its first extension of until December 31, 2017.

In the same vein, the list of "Arrested Personalities" provided by respondents is likewise of no consequence. As clearly stated in its heading, the said list only covers arrests "as of 23 October 2017," or a few days after Marawi's liberation, a date that is too far removed from the Congress' deliberation leading to the Joint Resolution.

All things considered, I am fully convinced that respondents have failed to establish the persistence of an actual rebellion as a constitutional requirement for the extension of martial law. While they argue that the rebellion in *Lagman* was still persisting at the time the Joint Resolution was issued, the evidence and their own admissions say otherwise — that is — that the armed public uprising has already ceased. Respondents can no longer resurrect what the law considers dead.

ii. The specific purpose

Following *Lovedioro*,[27] it must be proved that the armed public uprising was for any of the purposes enumerated in Article 134 of the RPC. Specific purpose is akin to intent, the existence of which, being a state of the mind, is proven by overt acts of the accused.[28]

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[27] *Supra* note 10.

[28] See *Venturina v. Sandiganbayan*, 271 Phil. 33, 39 (1991) [*En Banc*, Per *J.* Fernan].

Proceeding from the above discussion, the data in the presentation of respondents during the Oral Arguments held on January 17, 2018 failed to take into account the purpose for such violent incidents. By merely listing attacks made by certain armed groups, respondents cannot summarily conclude that the same are geared towards the accomplishment of the purposes of rebellion under the RPC. Absent any more data indicating purpose, the Court cannot, without violating the standards of the Constitution, rely on surmises and hasty conclusions.

To illustrate, the incidents are described as "IED attack," "attack," "grenade explosion," "kidnapping," "harassment," which are all highly generic terms, making it impossible to determine intent. Even the targets of these attacks were not supplied. At most, only the data with respect to the pending criminal cases are competent to prove intent as there was already a finding of probable cause for the crime of rebellion. However, as already discussed above, the said information is inconsequential and could not have been used by Congress to determine the necessity of extending martial law.

Another point. The *ponencia* cites as basis for its conclusion that the rebellion persists is the reported increase in manpower of the "remnants" of the rebel groups. I submit, however, that respondents were unable to prove the component of specific purpose due to their own admissions to the contrary. As quoted at length in the *ponencia*:

> After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.
>
> However, **manpower increased by more or less 400**, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.
>
> ASG Basilan-based recruited more or less **43** new members in Basilan; more or less **250** by the Maute Group in the Lanao provinces; **37** by the Maguid Group in Sarangani and Sultan Kudarat, and more or less **70** by the Turaifie Group in Maguindanao. **These newly**

recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to PhP50,000.00; and, as radicalized converts.

These newly recruited members are undergoing trainings in tactics, marksmanships and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with @Abu DAR who has historically established link with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester.[29] (Emphasis supplied)

As admitted by respondents themselves, the motivations of (i) clannish culture, (ii) revenge for their killed relatives, and (iii) financial gain, are **not** among the purposes contemplated in the RPC, which are, to repeat: (a) to remove from the allegiance to said 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 or prerogatives.

I also submit that the reliance of the *ponencia* on the atrocities committed by the New People's Army (NPA) in extending martial law stands on shaky ground. The Subject Letter reads in part:

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), **the New**

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[29] *Ponencia*, pp. 41-42, citing AFP's "briefing" Narrative (January 17, 2017 Oral Arguments), pp. 6-7.

People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up **terrorist acts against innocent civilians and private entities**, as well as guerilla warfare against the security sector and public government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.

This year, the NPA has perpetrated a total of **at least three hundred eight-five (385) atrocities** (both terrorism and guerilla warfare) **in Mindanao**, which resulted in forty-one (41) Killed-in-Action (KIA) and sixty-two (62) Wounded-in-Action (WIA) on the part of government forces. On the part of the civilians, these atrocities resulted in the killing of twenty-three (23) and the wounding of six (6) persons. The most recent was the ambush in Talakag, Bukidnon on 09 November 2017, resulting in the killing of one (1) PNP personnel and the wounding of three (3) others, as well as the killing of a four (4)-month-old infant and the wounding of two (2) civilians.

Apart from these, **at least fifty-nine (59) arson incidents** have been carried out by the NPA in Mindanao **this year**, **targeting businesses and private establishments** and destroying an estimated ₱2.2 billion-worth of properties. Of these, the most significant were the attack on Lapanday Food Corporation in Davao City on 09 April 2017 and the burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental on 06 May 2017, which resulted in the destruction of properties valued at ₱1.85 billion and ₱109 million, respectively. (Emphasis supplied)

The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if **the same** rebellion necessitating such proclamation shall **persist**. However, despite the express parameters of Section 18, the *ponencia* finds no error in the inclusion of the NPA in the Subject Letter as basis for the extension. **Indeed, it is incredible how a "decades-long rebellion" can be used as basis for extending Martial Law triggered by a rebellion that took place only months ago, especially considering that both movements were mounted by different groups inspired by distinct ideologies.**

If there is indeed an actual rebellion by the NPA as contemplated in Section 18, it must be covered by a new declaration.

In this scenario espoused by the *ponencia*, violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there are "overlaps" in the attacks. To this end, the *ponencia* is accommodating practical concerns over the clear mandate of the country's fundamental law. This precedent dangerously supports the theoretical possibility of perpetual martial law. This precedent dangerously suggests a perpetual violation of people's Constitutional rights. As well, to anchor the Court's review to the fallback position that the "government can lift the state of martial law once actual rebellion no longer persists and that public safety is amply secured" is to abdicate the duty of the Court to determine for itself the sufficiency of factual basis for the extension.

Likewise, following the discussion above, the factual narration in the Subject Letter presented is highly ambiguous, if not amorphous.

First, the timeline of the violent incidents is unclear as the information merely reflects the total number of the atrocities for "this year," which is the entire 2017. Again, these figures do not present an accurate picture because they include incidents already relied upon for the initial declaration and the first extension, and for that reason, are far-removed from the question of persistence of rebellion when Congress was deliberating on the second extension of martial law.

Second, some details in the Subject Letter strongly negate rebellion as the attacks were described as "terrorist acts against innocent civilians and private entities," and "arson incidents x x x targeting businesses and private establishments." Needless to state, terrorist acts and destruction of property, no matter how grave, are for entirely different ends than that of rebellion under Article 134. In fact, these and analogous factual bases have been relied upon by the Executive when it called out the armed forces in Proclamation No. 55, s. 2016,[30] without any

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[30] **WHEREAS**, Mindanao has had a long and complex history of lawless violence perpetrated by private armies and local warlords, bandits and criminal syndicates, terrorist groups, and religious extremists;

showing that there was an escalation of violence that necessitated the extension.

Third, the claim of "intensified" rebellion of the NPA is vague in light of the "decades-long rebellion" already existing. Considering the known fact of protracted violence in different areas of Mindanao, the Subject Letter provides no standard by which Congress, and consequently, this Court, could determine whether indeed there is a considerable rise in violent incidents that make martial law a necessity. Without such standard, Congress will be left to guesswork and blind adherence to the word of the President.

All told, weighing the totality of evidence adduced by respondents, I find that there is insufficient factual basis to justify an extension of martial law.

iii. The evidence suggests a mere threat of rebellion

The foregoing discussion does not mean, however, that I am turning a blind eye to the situation in Mindanao. The facts, as they stand, while falling short of establishing an existing rebellion, indicate a threat thereof.

WHEREAS, in recent months, there has been a spate of violent and lawless acts across many parts of Mindanao, including abductions, hostage-takings and murder of innocent civilians, bombing of power transmission facilities, highway robberies and extortions, attacks on military outposts, assassinations of media people and mass jailbreaks;

WHEREAS, the valiant efforts of our police and armed forces to quell this armed lawlessness have been met with stiff resistance, resulting in several casualties on the part of government forces, the most recent of which was the death of 15 soldiers in a skirmish with the Abu Sayyaf Group in Patikul, Sulu on 29 August 2016;

WHEREAS, on the night of 2 September 2016, at least 14 people were killed and 67 others were seriously injured in a bombing incident in a night market in Davao City, perpetrated by still unidentified lawless elements;

WHEREAS, the foregoing acts of violence exhibit the audacity and propensity of these armed lawless groups to defy the rule of law, sow anarchy, and sabotage the government's economic development and peace efforts;

WHEREAS, based on government intelligence reports, there exist credible threats of further terror attacks and other similar acts of violence by lawless elements in other parts of the country, including the metropolitan areas;

However, under the framework of our present Constitution, it is only in cases of an **actual** rebellion or insurrection that the President may, when public safety requires it, place the Philippines or any part thereof, under martial law. The threat of a rebellion, no matter how imminent, cannot be a ground to declare martial law.[31]

The intent of the framers of the Constitution to limit the President's otherwise plenary power only to cases of actual rebellion is discernible from the deliberations of the constitutional Commission of 1986, as cited by the Court in *Lagman v. Medialdea:*[32]

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 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 need for concurrence as a prerequisite to declare martial law or to suspend the privilege of the writ of *habeas corpus*.[33]

x x x x x x x x x

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[31] *Lagman v. Medialdea*, *supra* note 2.

[32] *Lagman v. Medialdea*, *supra* note 2, at 36-37, 52.

[33] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).

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.[34]

x x x x x x x x x

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[35]

Meanwhile, in *Integrated Bar of the Philippines v. Zamora,*[36] the Court cited the following exchange:

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

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[34] *Id.* at 476-477.

[35] *Id.* at 412.

[36] *Supra* note 5, at 642-643.

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.

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FR. BERNAS. Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President . . . may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger.

MR. DE LOS REYES. So actually, if a President feels that there is imminent danger of invasion or rebellion, instead of imposing martial law or suspending the writ of *habeas corpus*, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?

MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.[37]

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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

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[37] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 409, 412 (1986).

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.**[38] (Emphasis supplied)

The demonstrable capacity to launch a rebellion, absent an overt act in pursuance thereof, is **not** actual rebellion. As well, it is only if the actual rebellion or insurrection persists that the declaration of martial law may be extended. The evidence presented by the respondents do not sufficiently prove the existence or persistence of an actual rebellion. It is in this light that I register my dissent to the finding of sufficiency of factual basis as to the first requirement.

There is no evidence to show that the requirements of public safety necessitate the continued implementation of Proclamation No. 216 in any part of Mindanao.

Even assuming that the evidence presented by the respondents constitute sufficient proof of the existence of rebellion, I emphasize, as I did in my *Dissent* in *Lagman*,[39] 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.[40]

To pretend that the analysis of the question before the Court turns only upon the fact of the existence of the Maute group,

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[38] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 773-774 (1986).

[39] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 22.

[40] *Id.* at 17.

the NPA, the BIFF, Islamic fundamentalists and other armed groups that are on the loose, and their on-going plans to regroup and perceived capacity to sow terror upon our people in the future, is to deceive.

As early as *Lansang*, the Court already recognized that the magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege — in this case, in the extension of the declaration of martial law — namely, that it be required by public safety.[41]

On this score, I maintain that the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated accordingly. The Court's determination of insufficiency of factual basis carries with it the necessary implication that the conditions for the use of such extraordinary power do not exist. In making such a finding, the Court does not thereby assume to do the calibration in the President's stead, but only checks the said calibration in hindsight, as Section 18 empowers and mandates the Court to do.

As correctly observed by petitioner Rosales, necessity, in the context of martial law, is dictated not merely by the gravity of the rebellion sought to be quelled, but also the necessity of martial law to address the exigencies of a given situation.[42]

The Constitutional deliberations elucidate:

> MR. DE LOS REYES. But is not the suspension of the privilege of the writ of *habeas corpus* and the imposition of martial law more of the preparatory steps before the President should call the Armed Forces of the Philippines as Commander-in-Chief? In other words, before calling the Armed Forces of the Philippines should he not take the preparatory step of suspending the privilege of the writ of *habeas corpus* or imposing martial law?
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> MR. REGALADO. As a matter of fact, the former President outlined the steps and we have put them here as follows: (1) When it is only imminent danger, although, of course, he did not use that term, he

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[41] *Lansang v. Garcia*, *supra* note 8, at 592.

[42] Memorandum for Petitioner Rosales, p. 17.

can already call out the Armed Forces just to prevent or suppress violence; (2) if the situation has worsened and there is a need for stronger measures, then aside from merely calling out the Armed Forces he goes into the suspension of the privilege of the writ; (3) but if both measures calling out the Armed Forces and the suspension of the privilege of the writ still prove unavailing in the face of developments and exacerbated situation, this time he goes to the ultimate which would be martial law.

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

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.**[43] (Emphasis and underscoring supplied.)

Lagman instructs that "necessity" should be understood as a standard that proceeds from the traditional concept of martial law under American Jurisprudence, that is, **martial law in a**

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[43] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

theater of war.[44] In turn, the conditions existing in a theater of war were clearly identified during the Constitutional deliberations, thus:

MR. FOZ: x x x

May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause "where civil courts are able to function"? In the earlier portion of the same sentence, it says, "nor supplant the functioning of the civil courts . . ." I was just thinking that if this provision states the effects of the declaration of martial law — one of which is that it does not supplant the functioning of the civil courts — I cannot see how civil courts would be unable to function even in a state of martial law.

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 opened 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.[45] (Emphasis supplied.)

During the Oral Arguments, Commissioner Monsod further clarified the concept of necessity as a fixed standard, thus:

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[44] *Lagman v. Medialdea*, *supra* note 2.

[45] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 401-402 (1986).

CHIEF JUSTICE SERENO:

x x x Assuming there's rebellion or invasion done. The second part how do we interpret when the public safety requires it? Requires it means public safety requires the imposition of martial law, *i.e.* [martial law] is necessary?

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CHIEF JUSTICE SERENO:

I'm just about the logical nexus.

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CHIEF JUSTICE SERENO:

Meaning it is not [that] rebellion always demands, always threatens public safety. Because in the example given by Justice Carpio, if only two people rebel how can public safety be endangered. So there can be rebellion without [the] public [being] endangered. So the proper breeding of the second requirement is not that rebellion, rebellion is not required to be present (sic). It must always be present but (sic) that public safety requires the imposition of martial law. **In other words, you will still go back to the idea of the need to calibrate the powers sought to be exercised by the President**.

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CHIEF JUSTICE SERENO:

x x x I was thinking that the proper interpretation is that rebellion is there, and therefore, public safety requires the imposition of martial law, rather the public safety requires the imposition of martial law in a situation where in the first place rebellion or invasion has been already established. You get me? **In other words, the calibration of the power is defined by the need to protect the public**.

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CHIEF JUSTICE SERENO:

x x x May I request Commissioner Monsod please?

Chairman, can you tell me whether the better interpretation is that public safety requires it, public safety requires the imposition of martial law to address the rebellion or the invasion?

ATTY. MONSOD:

Yes, Your Honor.

CHIEF JUSTICE SERENO:
Is that the correct interpretation?

ATTY. MONSOD:
Yes. It's part, there has to be [a] condition of public safety requires it. Now, that includes, in other words, the citizens are exposed to all the dangers to their health or safety or security. It even includes the absence of social services. It includes the police protection is no longer there, the military steps in. And that's the situation that is contemplated. It is a lack of government services whether protection of the police help (sic) and so on of the citizens and criminality and all that. That's when the military comes in.

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ATTY. MONSOD:
That's the standard.

CHIEF JUSTICE SERENO:
[Whenever you] talk about necessity, you always must x x x must always have a calibration exercise.

ATTY. MONSOD:
Yes.

CHIEF JUSTICE SERENO:
Because you are already talking of necessity, and of course, you measure.

ATTY. MONSOD:
Yes.

x x x x x x x x x

CHIEF JUSTICE SERENO:
So, the quote in the doctrine, well in the part of the decision, quoting *[E]x-parte [M]illigan*, "is the martial law where the military has jurisdiction in a theater of war."

ATTY. MONSOD:
Yes.

CHIEF JUSTICE SERENO:
You still believe that still has a bit of relevance in the matter of necessity.

ATTY. MONSOD:
Yes.

CHIEF JUSTICE SERENO:
In other words, that [*E]x-parte [M]illigan* quotation was basically a definition of the necessity for the military presence and in fact, jurisdiction.

ATTY. MONSOD:
Yes, still necessity.[46]

The rationale behind the lofty standard of "necessity" is clear — the President is already equipped with sufficient powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through calling out the AFP to prevent or suppress such lawless violence. The necessity of martial law therefore requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety.

This is consistent with my vote in *Lagman* wherein I found the existence of an actual rebellion but found that the requirement of public safety only necessitated the imposition of martial law over the areas of Lanao del Sur, Maguindanao, and Sulu, as areas intimately or inextricably connected to the armed uprising then existing in Marawi City.

Hence, I find as completely unfounded the assertion that the lifting of Proclamation No. 216 will render the Executive unable to meet the current situation in Mindanao.

As confirmed by Commissioner Bernas:

FR. BERNAS. **Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President . . . may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger**.

MR. DE LOS REYES. So actually, if a President feels that there is imminent danger of invasion or rebellion, instead of imposing

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[46] TSN, January 16, 2018, pp. 149-153.

martial law or suspending the writ of *habeas corpus*, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?

MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.[47] (Emphasis and underscoring supplied)

The *ponencia* finds that the submissions of the respondents show that the continued implementation of martial law in Mindanao is necessary to protect public safety. As basis, the *ponencia* cites the following events and circumstances disclosed by the President and AFP:

(a) No less than 185 persons in the Martial Law Arrest Orders have remained at large. **Remnants of the Hapilon and Maute groups have been monitored by the AFP to be reorganizing and consolidating their forces** in Central Mindanao, particularly in Maguindanao, North Cotabato, Sulu and Basilan, and strengthening their financial and logistical capability.

(b) After the military operation in Marawi City, the Basilan-based ASG, the Maute Group, the Maguid Group and the Turaifie Group, comprising the DAESH-affiliate Dawlah Islamiyah that was responsible for the Marawi siege, was left with 137 members and a total of 166 firearms. These rebels, however, were able to **recruit** 400 new members, more or less, in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.

(c) The new recruits have since been trained in marksmanship, bombing and tactics in different areas in Lanao del Sur. Recruits with great potential are trained in producing Improvised Explosive Devices (IEDs) and urban operations. These new members are motivated by their clannish culture, being relatives of terrorists, by revenge for relatives who perished in the Marawi operations, by money as they are paid ₱15,000.00 to ₱50,000.00, and by radical ideology.

(d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits. Foreign terrorists from Southeast Asian countries, particularly from Indonesia and Malaysia, will continue

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[47] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

to take advantage of the porous borders of the Philippines and enter the country illegally to join the remnants of the DAESH/ISIS-inspired rebel groups.

(e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Sarangani province. In December 2017, 16 Indonesian DAESH-inspired FTFs entered the Southern Philippines to augment the ASG-Basilan and Maute groups in the Lanao province. In January 2018, an unidentified Egyptian DAESH figure was monitored in the Philippines.

(f) At least 32 FTFs were killed in the Marawi operations. Other FTFs attempted to enter the main battle area in Marawi, but failed because of checkpoints set up by government forces.

(g) "The DAESH-inspired DIWM groups and their allies continue to visibly offer armed resistance in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City." There were actually armed encounters with the remnants of said groups.

(h) "Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato."

(i) The Turaifie group conducts roadside bombings and attacks against government forces, civilians and populated areas in Mindanao. The group **plans** to set off bombings in Cotabato.

(j) The Maute Group, along with foreign terrorists, were reported to be **planning** to bomb the cities of Zamboanga, Iligan, Cagayan de Oro and Davao.

(k) The remaining members of the ASG-Basilan have initiated five violent attacks that killed two civilians.

(l) In 2017, the remnants of the ASG in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula, conducted 43 acts of violence, including IED attacks and kidnapping which resulted in the killing of eight innocent civilians, three of whom were mercilessly beheaded. Nine kidnap victims are still held in captivity.

(m) Hapilon's death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve their common goal of establishing a DAESH-ISIS *wilayat* in Mindanao. This **likely merger** may spawn retaliatory attacks such as IED bombings, in urban areas, particularly in the cities of Zamboanga, Isabela and Lamitan.

(n) By AFP's assessment, the ISIS' regional leadership **may remain** in the Southern Philippines and with the defeat of ISIS in many parts of Syria and Iraq, some hardened fighters from the ASEAN may return to this region to continue their fight. The AFP also identified four potential leaders who may replace Hapilon as *emir* or leader of the ISIS forces in the Philippines. It warned that the Dawlah Islamiyah will attempt to replicate the Marawi siege in other cities of Mindanao and may conduct terrorist attacks in Metro Manila and Davao City as the seat of power of the Philippine Government. With the spotlight on terrorism shifting from the Middle East to Southeast Asia following the Marawi siege, the AFP likewise indicated that the influx of FTFs in the Southern Philippines will persist. The AFP further referred to **possible lone-wolf attacks and atrocities from other DAESH-inspired rebel groups in vulnerable cities** like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.

The rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. The country had been witness to these groups' capacity and resolve to engage in combat with the government forces, resulting in severe casualties among both soldiers and civilians, the displacement of thousands of Marawi residents, and considerable damage to their City. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

(o) Furthermore, in 2017 alone, the BIFF initiated 116 hostile acts in North Cotabato, Sultan Kudarat and Maguindanao, consisting of ambuscade, firing, arson, IED attacks and grenade explosions. 66 of these violent incidents were committed during the martial law period and by the AFP's assessment, the group will continue to inflict violence and sow terror in central Mindanao.

(p) In 2017, the ASG, which is the predominant local terrorist group in the Southern Philippines based in Tawi-Tawi, Sulu, Basilan and Zamboanga, with its 519 members, 503 firearms, 66 controlled barangays and 345 watch-listed personalities, had perpetrated a total of 13 acts of kidnapping against 37 individuals, 11 of whom (including 7 foreigners) remain in captivity. Their kidnap-for-ransom activities for last year alone have amassed a total of ₱61.2 million.

(q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerilla fronts are in this region. Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks. In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, landmine/IED attacks, arson and sabotage, that resulted in the death of 47 government forces and 31 civilians. An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. 59 incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed ₱2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business establishments from 2015 to the first semester of 2017 has been estimated at ₱2.6 billion.

(s) Among the most significant attacks by the communist rebels on business establishments took place in April and May 2017 when they burned the facilities of Lapanday Food Corporation in Davao City and those of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental, which resulted in losses amounting to ₱1.85 billion and ₱109 million, respectively. According to the AFP, business establishments in the area may be forced to shut down due to persistent NPA attacks just like in Surigao del Sur.

(t) By AFP's calculation, the aforesaid rebel groups (excluding the 400 newly recruited members of the Dawlah Islamiyah) are nearly 2,781-men strong, equipped with 3,211 firearms and control 537 barangays in Mindanao.[48] (Emphasis supplied.)

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[48] *Ponencia,* pp. 50-54.

These events and circumstances, while worthy of severe condemnation, do not show the existence of an actual rebellion in a theater of war. **At most**, as I stressed earlier, these indicate the **threat** of imminent danger brought about by the reorganization, consolidation, recruitment and reinforcement activities, as well as isolated planned attacks undertaken by various armed groups.

Verily, **in the absence of an armed public uprising which imperils the operation of the civil government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety**. It is settled that the imminent danger of a rebellion, assuming one exists, cannot serve as sufficient basis for the proclamation of martial law; perforce, the threatened rebirth of a rebellion which the law considers dead cannot, with more reason, justify an extension thereof.

The continued implementation of martial law without sufficient basis constitutes a violation of due process.

There appears to be no right more fundamental in a modern democracy than the right to due process. In *White Light Corp. v. City of Manila*[49] *(White Light),* the Court explained how the concept of due process must be understood, thus:

> Due process evades a precise definition**. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals**. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.
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> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government,

[49] 596 Phil. 444 (2009) [*En Banc*, Per *J.* Tinga].

"procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. **Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property**.

The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.[50] (Emphasis supplied)

In essence, the right to due process had been specifically adopted by the framers of the Constitution to protect individual citizens from the abuses of government. The importance that the Constitution ascribes to the right to due process is clear. As well, the need to afford primacy to due process in the resolution of this Petition is evident, if not compelling.

To recall, martial law operates to grant the AFP jurisdiction over civilians when and where the civil government is unable to function as a consequence of an actual rebellion or invasion. As exhaustively discussed, the imposition of martial law operates

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[50] *Id*. at 461-462.

as a matter of necessity.[51] The conditions necessary to authorize its imposition are not only fixed but also exacting, for the imposition of martial law constitutes an encroachment on the life, liberty and property of private individuals.

To me, this is the significance of this case: as earlier stated, the imposition of martial law in the absence of the exigencies justifying the same reduces such extraordinary power to a mere tool of convenience and expediency. The baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses and renders nugatory the explicit conditions and limitations clearly spelled out in the Constitution for the protection of individual citizens.

The Court must disabuse itself of the notion that martial law is required to quell the rebellion, or to empower the military and the police to engage the lawless elements in Mindanao. The Executive is fully empowered to deploy the armed forces as necessary to suppress lawless violence, and even rebellion, whether actual or imminent, without martial law. Martial law is an emergency governance response that is directed **against the civilian population** — allowing the military to perform what are otherwise civilian government functions and vesting military jurisdiction over civilians.

It is through this lens that the Court should view the pressing question of whether or not there was sufficient basis to extend Martial Law.

To stress, the Court's function in a Section 18 review is to be an avenue for the restoration of the normal workings of government and the enjoyment of individual liberties should there be a showing of insufficient factual basis.[52] A ruling that sanctions the extension of martial law as a matter of expediency defeats this function and stands as a danger to public safety in

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[51] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

[52] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea (Resolution), supra* note 6, at 8.

itself, for it jeopardizes, for the sake of convenience, the fundamental freedoms guaranteed by the Bill of Rights — that from warrantless arrests and searches, without prior determination of probable cause.[53]

To be sure, what fans the flames of rebellion, whether a lasting peace is achievable in Mindanao, whether the military option is the way to address the violence in Mindanao — these are questions that can be debated *ad nauseum*. Who the so-called enemies of the Republic are and who and what their targets may be will certainly be the subject of endless speculation. At present, there are the Mautes, BIFFs, ASGs, NPAs, and other armed groups. There may be others which have not been identified by the military.

Without doubt, the threats to the country's internal and external peace and security are incessant and always present. Armed hostilities in all the islands of the country exist and will continue to exist. There is as well the specter of terrorism throughout the world.

And yet, in the face of all these, what should not be forgotten, overlooked or considered trivial is that the present Constitution has excised "imminent danger" from its martial law provision. What is required by the Constitution is actual rebellion or invasion for martial law to be declared or to persist. The respondents have not presented proof of actual rebellion, or any ongoing armed uprising between the government's armed forces and any of the so-called rebel groups, in any part of Mindanao. Even in Marawi City, the actual rebellion there no longer exists. To be sure, the reconstruction and rehabilitation of Marawi is already underway. The respondents' proof, consisting of the presence of "remnants" of the Maute group that are carrying on recruitment and training of new forces, financial and logistical build-up, consolidation of forces, and isolated attacks, as well as the increase in the Basilan-based ASG's manpower with its newly recruited members undergoing trainings in tactics,

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[53] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 22, at 22.

marksmanships and bombing operations, may present an "imminent danger" situation — but they do not rise to meet the Constitution's conditions.

In the end, as the country grapples with all these conflicts, it cannot fall into the slippery slope of expediency as the standard with which to attempt to solve these problems. No matter how beneficial or preferable the psychic effects the state of martial law may have upon government officials and the population at large, it cannot be wielded in the absence of the conditions required by the Constitution for its imposition. In the end, the fundamental law that binds all citizens of this country is the Constitution — one that demands public safety and necessity as basis for curtailing fundamental Constitutional freedoms. That is what the Constitution mandates. That, in turn, points the Court to where its duty lies — to ensure that the true state of facts is made known, that is, that the rebellion has not persisted, and that public safety does not require the extension anymore.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155, and **DECLARE INVALID AND UNCONSTITUTIONAL** Joint Resolution No. 4 of the Senate and the House of Representatives dated December 13, 2017, for failure to comply with Section 18, Article VII of the 1987 Constitution.

SECOND DIVISION

[A.M. No. 17-08-191-RTC. February 7, 2018]

RE: DROPPING FROM THE ROLLS OF MS. MARISSA M. NUDO, Clerk III, Branch 6, Regional Trial Court (RTC), Manila.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROLONGED UNAUTHORIZED

ABSENCES OF A COURT PERSONNEL; DISMISSAL, PROPER PENALTY; CASE AT BAR.— Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007, states: Section 63. *Effect of absences without approved leave.* — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x. Based on this provision, Nudo should be separated from the service or dropped from the rolls in view of her continued absence since March 2017. Nudo's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court. It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. By failing to report for work since March 2017 up to the present, Nudo grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stems from a letter[1] dated April 3, 2017 informing the Court that Ms. Marissa M. Nudo (Nudo), Clerk III of the Regional Trial Court (RTC) of Manila, Branch 6, has been on absence without official leave (AWOL) since March 2017.

The Fact

The records of the Employees' Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), show that Nudo has not submitted her Daily Time Record

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[1] *Rollo*, p. 3.

(DTR) since March 2017 up to the present. She neither submitted any application for leave. Thus, she has been on AWOL since March 1, 2017.[2]

Moreover, Atty. Rosette H. Abrenica (Atty. Abrenica), Clerk of Court V of the RTC, Branch 6, informed the OCA that Nudo, among others, failed to submit her DTR for the month of March 2017 because she has been absent since March 14, 2017 up to the present.[3]

To date, Nudo has still not reported for work. Her salaries and benefits were withheld based on Memorandum WSB No. 5a_2017 dated May 2, 2017.[4]

The OCA informed the Court of the following findings based on the records of its different offices: (*a*) Nudo is still in the *plantilla* of court personnel, and thus, considered to be in active service; (*b*) she has no application for retirement; (*c*) no administrative case is pending against her; and (*d*) she is not an accountable officer.[5]

In its report and recommendation[6] dated July 11, 2017, the OCA recommended that: (*a*) Nudo's name be dropped from the rolls effective March 1, 2017 for having been absent without official leave for more than thirty (30) working days; (*b*) her position be declared vacant; and (*c*) she be informed about her separation from the service at 738 Magsaysay Road, San Antonio, San Pedro, Laguna,her last known address on record.[7] The OCA

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[2] *Id*. at 1.

[3] *Rollo,* p. 1. See also transmittal letter dated April 3, 2017, signed by Atty. Abrenica, duly subscribed and sworn to before Presiding Judge Jansen R. Rodriguez; *id*. at 3.

[4] Dated May 2, 2017 and approved by Court Administrator Jose Midas P. Marquez. *Id*. at 6.

[5] See *id*. at 1 and 4.

[6] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Thelma C. Bahia, and OCA Chief of Office, OAS Caridad A. Pabello; *id*. at 1-2.

[7] *Id*. at 2.

added, however, that Nudo is still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government.[8]

The Court's Ruling

The Court agrees with the OCA's recommendation.

Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007,[9] states:

> Section 63. *Effect of absences without approved leave*. — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. xxx.
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> x x x x x x x x x (Emphasis supplied)

Based on this provision, Nudo should be separated from the service or dropped from the rolls in view of her continued absence since March 2017.

Nudo's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court.[10] It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[11] It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy

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[8] Pursuant to Section 2 (2.6), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. See *id*. at 1-2.

[9] Entitled "Amendment to Section 63, Rule XVI of the Omnibus Rules on Leave, Civil Service Commission (CSC) Memorandum Circular Nos. 41 and 14, Series of 1998 and 1999, Respectively," dated July 25, 2007.

[10] See *Re: Dropping from the Rolls of Rowie A. Quimno,* A.M. No. 17-03-33-MCTC, April 17, 2017.

[11] See *id*., citing *Re: AWOL of Ms. Fernandita B. Borja,* 549 Phil. 533, 536 (2007).

responsibility of upholding public accountability and maintaining the people's faith in the judiciary.[12]

By failing to report for work since March 2017 up to the present, Nudo grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.[13]

WHEREFORE, Ms. Marissa M. Nudo, Clerk III of the Regional Trial Court of Manila, Branch 6,is hereby **DROPPED** from the rolls effective March 1, 2017 and her position is declared **VACANT**. She is, however, still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon her at her address appearing in her 201 file pursuant to Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

Carpio (Chairperson), Peralta, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. 17-11-131-MeTC. February 7, 2018]

RE: DROPPING FROM THE ROLLS OF MS. JANICE C. MILLARE, Clerk III, Office of the Clerk of Court, Metropolitan Trial Court, Quezon City.

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[12] See minute resolution in *Re: Absence without official leave (AWOL) of Michael P. Fajardo,* A.M. No. 2016-5(A)-SC, August 1, 2016. See also minute resolution in *Dropping from the Rolls of Mary Grace Cadano Bouchard,* A.M. No. 15-11-349-RTC, January 11, 2016.

[13] See *id*.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; A COURT EMPLOYEE'S SEPARATION FROM SERVICE AND HIS/HER DROPPING FROM THE ROLLS IS DEEMED PROPER DUE TO PROLONGED UNAUTHORIZED ABSENCES WHICH CAUSED INEFFICIENCY IN THE PUBLIC SERVICE AS IT DISRUPTED NORMAL FUNCTIONS OF THE COURT; CASE AT BAR.— Based on the provision of Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007, Millare should be separated from the service or dropped from the rolls in view of her continued absence since July 17, 2017. Millare's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court. It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. By failing to report for work since July 17, 2017 up to the present, Millare grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stems from a letter[1] dated August 3, 2017 informing the Court that Ms. Janice C. Millare (Millare), Clerk III, Office of the Clerk of Court, Metropolitan Trial Court (MeTC) of Quezon City, did not submit her Daily Time Records (DTRs) for July 2017[2] and up to the present.

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[1] *Rollo*, pp. 4-5.

[2] See *id*. at 5.

The Facts

The records of the Employees' Leave Division, Office of Administrative Services, Office of the Court Administrator (OCA), show that Millare has not submitted her DTRs since July 2017 up to the present. She neither submitted any application for leave. Thus, she has been on absence without official leave (AWOL) since July 17, 2017.[3]

On May 30, 2017, Millare applied for and was granted authority to travel to Saipan[4] from June 5 to July 14, 2017. To date, she has still not reported for work.[5] Her salaries and benefits were withheld based on Memorandum WSB No. 8a_2017 dated August 2, 2017.[6]

The OCA informed the Court of the following findings based on the records of its different offices: (*a*) Millare is still in the *plantilla* of court personnel and, thus, considered to be in active service; (*b*) she has no application for retirement; (*c*) no administrative case is pending against her; and (*d*) she is not an accountable officer.[7]

In its report and recommendation[8] dated November 22, 2017, the OCA recommended that: (*a*) Millare's name be dropped from the rolls effective July 17, 2017 for having been absent without official leave for more than thirty (30) working days; (*b*) her position be declared vacant; and (*c*) she be informed about her separation from the service or dropping from the rolls

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[3] See *id*. at 1.

[4] See Travel Authority dated May 30, 2017, signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva; *id*. at 3.

[5] See *id*. at 2.

[6] See Memorandum dated August 2, 2017 signed by OCA Chief of Office Caridad A. Pabello and approved by Court Administrator Midas P. Marquez; *id*. at 6. See also *id*. at 1.

[7] See *id*. at 1 and 7.

[8] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office OAS Caridad A. Pabello. *Id*. at 1-2.

at 1312 Taurus Street, Carmel IV Subdivision, Tandang Sora, Quezon City, her last known address on record.[9] The OCA added, however, that Millare is still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government.[10]

The Court's Ruling

The Court agrees with the OCA's recommendation.

Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007,[11] states:

> Section 63. *Effect of absences without approved leave*. — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x.
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> x x x x x x x x x (Emphasis supplied)

Based on this provision, Millare should be separated from the service or dropped from the rolls in view of her continued absence since July 17, 2017.

Millare's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court.[12] It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[13] It should be reiterated and stressed that a court

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[9] *Id*. at 2.

[10] Pursuant to Section 2 (2.6), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. See *id*. at 1-2.

[11] Entitled "Amendment to Section 63, Rule XVI of the Omnibus Rules on Leave, Civil Service Commission (CSC) Memorandum Circular Nos. 41 and 14, Series of 1998 and 1999, Respectively," dated July 25, 2007.

[12] See *Re: Dropping from the Rolls of Rowie A. Quimno,* A.M. No. 17-03-33-MCTC, April 17, 2017.

[13] See *id*., citing *Re: AWOL of Ms. Fernandita B. Borja,* 549 Phil. 533, 536 (2007).

personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary.[14]

By failing to report for work since July 17, 2017 up to the present, Millare grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.[15]

WHEREFORE, Ms. Janice C. Millare, Clerk III, Office of the Clerk of Court, Metropolitan Trial Court of Quezon City, is hereby **DROPPED** from the rolls effective July 17, 2017 and her position is declared **VACANT**. She is, however, still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon her at her address appearing in her 201 file pursuant to Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

Carpio (Chairperson), Peralta, Caguioa, and *Reyes, Jr., JJ.,* concur.

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[14] See minute resolution in *Re: Absence without official leave (AWOL) of Michael P. Fajardo,* A.M. No. 2016-15(A)-SC, August 1, 2016. See also minute resolution in *Dropping from the Rolls of Mary Grace Cadano Bouchard,* A.M. No. 15-11-349-RTC, January 11, 2016.

[15] See *id.*

FIRST DIVISION

[G.R. No. 202974. February 7, 2018]

NORMA D. CACHO and NORTH STAR INTERNATIONAL TRAVEL, INC., *petitioners*, *vs.* **VIRGINIA D. BALAGTAS,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION; INTRA-CORPORATE CONTROVERSY; TWO-TIER TEST TO DETERMINE INTRA-CORPORATE CONTROVERSY; RELATIONSHIP TEST, EXPLAINED.—** We agree with the appellate court's ruling that a **two-tier test** must be employed to determine whether an intra-corporate controversy exists in the present case, *viz.*: (a) the **relationship test,** and (b) the **nature of the controversy test**. x x x A dispute is considered an intra-corporate controversy under the **relationship test** when the relationship between or among the disagreeing parties is any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the **corporation,** partnership, or association and its **stockholders,** partners, members, or **officers**; (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.

2. **ID.; ID.; ID.; ID.; ID.; THE EXECUTIVE VICE PRESIDENT POSITION IS ONE OF THE CORPORATE OFFICERS IN PETITIONER NORTH STAR'S BY-LAWS; RESPONDENT WAS APPOINTED BY THE BOARD AS PETITIONER NORTH STAR'S EXECUTIVE VICE-PRESIDENT, HENCE, SHE WAS ONE OF THE CORPORATE OFFICERS REGARDLESS OF THE FACT THAT HER DUTIES AND RESPONSIBILITIES ARE DETERMINED BY THE PRESIDENT INSTEAD OF THE BOARD.—** The rule is that corporate officers are those officers of a corporation who are given that character either by the **Corporation Code** or by the **corporation's by-laws**. Section 25 of the Corporation Code explicitly provides for the election of the corporation's president, treasurer, secretary, and

such other officers as may be provided for in the by-laws. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it **must be expressly mentioned in the by-laws** in order to be considered as a corporate office. x x x [T]here may be **one or more vice president** positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices. x x x The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions available as it may deem fit and in consonance with sound business practice. To require that particular designation/variation of each vice-president (*i.e.*, executive vice president) be specified and enumerated is to invalidate the by-laws' true intention and to encroach upon petitioner North Star's inherent right and authority to adopt its own set of rules and regulations to govern its internal affairs. Whether the creation of several vice-president positions in a company is reasonable is a question of policy that courts of law should not interfere with. Where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws and who have exercised their authority. Thus, by name, the *Executive Vice President* position is embraced by the phrase "one or more vice president" in North Star's by-laws. x x x [T]he x x x Secretary's Certificate overcomes respondent Balagtas's contention that she was merely the *Executive Vice President* by name and was never empowered to exercise the functions of a corporate officer. Notably, she did not offer any proof to show that her duties, functions, and compensation were all determined by petitioner Cacho as petitioner North Star's President. In any case, that the *Executive Vice President's* duties and responsibilities are determined by the President instead of the Board is irrelevant. In determining whether a position is a corporate office, the board of directors' appointment or election thereto is controlling. x x x At this point, it is best to emphasize that the **manner of creation** (*i.e.*, under the express provisions of the Corporation Code or by-laws) and the **manner by which it is filled** (*i.e.*, by election or appointment of the board of directors) are sufficient in vesting a position the character of a corporate office. x x x [A]s *Executive Vice President,*

respondent Balagtas was one of petitioner North Star's corporate officers.

3. ID.; ID.; ID.; ID.; NATURE OF CONTROVERSY TEST, ELUCIDATED.— The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The *incidents* of their relationship must also be considered. Thus, under the *nature of the controversy test*, the disagreement must not only be rooted in the existence of an intra-corporate *relationship*, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

4. ID.; ID.; ID.; ID.; WHERE THE DISMISSAL IS INTIMATELY AND INEVITABLY LINKED TO RESPONDENT'S ROLE AS PETITIONER NORTH STAR'S EXECUTIVE VICE-PRESIDENT, SUCH DISMISSAL IS AN INTRA-CORPORATE CONTROVERSY.— [I]t is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's *Executive Vice President*: *first*, the alleged misappropriations were committed by respondent Balagtas in her capacity as *vice president*, one of the officers responsible for approving the disbursements and signing the checks. And, *second*, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as *vice president*. That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

5. ID.; ID.; ID.; INTRA-CORPORATE CONTROVERSY IS OUTSIDE THE LABOR ARBITER'S JURISDICTION; PETITIONERS ARE NOT ESTOPPED FROM QUESTIONING JURISDICTION.— The Court has already held that the ruling in *Tijam v. Sibonghanoy* remains only as an exception to the general rule. Estoppel by laches will only bar a litigant from raising the issue of lack of jurisdiction in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy*. To recall, the Court in *Tijam v. Sibonghanoy* ruled

that the plea of lack of jurisdiction may no longer be raised for being barred by laches because it was raised for the first time in a motion to dismiss **filed almost 15 years after the questioned ruling had been rendered.** These exceptional circumstances are not present in this case. Thus, the general rule must apply: **that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel**. x x x [T]he issue in the present case is an intra-corporate controversy, a matter outside the Labor Arbiter's jurisdiction.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
NBS Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated November 9, 2011 and Resolution[2] dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 111637, which affirmed the Labor Arbiter's Decision[3] dated March 28, 2005.

This case stemmed from a Complaint[4] for constructive dismissal filed by respondent Virginia D. Balagtas (Balagtas) against petitioners North Star International Travel, Inc. (North Star) and its President Norma D. Cacho (Cacho) before the Labor Arbiter docketed as NLRC-NCR Case No. 04-04736-04.

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[1] *Rollo*, pp. 85-99; penned by Associate Justice Noel G. Tijam (now a member of this Court) with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba concurring.

[2] *Id*. at 102-105.

[3] *Id*. at 264-273.

[4] *Id*. at 217-218.

The facts as narrated by the Court of Appeals are as follows:

In her *Position Paper* submitted before the Labor Arbiter, petitioner [Balagtas] alleged that she was a former employee of respondent TQ3 Travel Solutions/North Star International Travel, Inc., a corporation duly registered with the Securities and Exchange Commission (SEC) on February 12, 1990. She also alleged that she was one of the original incorporators-directors of the said corporation and, when it started its operations in 1990, she was the General Manager and later became the Executive Vice President/Chief Executive Officer.

On March 19, 2004 or after 14 years of service in the said corporation, petitioner was placed under 30 days preventive suspension pursuant to a Board Resolution passed by the Board of Directors of the respondent Corporation due to her alleged questionable transactions. On March 20, 2004, she was notified by private respondent Norma Cacho of her suspension and ordered to explain in writing to the Board of Directors her alleged fraudulent transactions within 5 days from said notice. Petitioner promptly heeded the order on March 29, 2004.

On April 5, 2004, while under preventive suspension, petitioner wrote a letter to private respondent Norma Cacho informing the latter that she was assuming her position as Executive Vice-President/Chief Executive Officer effective on that date; however, she was prevented from re-assuming her position. Petitioner also wrote a letter dated April 12, 2004 to the Audit Manager inquiring about the status of the examination of the financial statement of respondent corporation for the year 2003, which request was, however, ignored. Consequently, petitioner filed a complaint claiming that she was constructively and illegally dismissed effective on April 12, 2004.

In their defense, respondents averred that, on March 19, 2004, the majority of the Board of Directors of respondent corporation decided to suspend petitioner for 30 days due to the questionable documents and transactions she entered into without authority. The preventive suspension was meant to prevent petitioner from influencing potential witnesses and to protect the respondent corporation's property. Subsequently, the Board of Directors constituted an investigation committee tasked with the duty to impartially assess the charges against petitioner.

Respondents alleged that petitioner violated her suspension when, on several occasions, she went to the respondent corporation's office

and insisted on working despite respondent Norma Cacho's protestation. Respondents also alleged that the complaint for constructive dismissal was groundless. They asserted that petitioner was not illegally dismissed but was merely placed under preventive suspension.[5]

The Decision of the Labor Arbiter

In his Decision dated March 28, 2005, the Labor Arbiter found that respondent Balagtas was illegally dismissed from North Star, *viz.*:

> WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment on July 15, 2004 and concomitantly ordering the respondent North Star International Travel, Inc., to pay her a separation pay computed at thirty (30) days pay for every year of service with backwages, plus commissions and such other benefits which she should have received had she not been dismissed at all.
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> The respondent North Star International Travel, Inc. is further ordered to pay complainant three (3) million pesos as moral damages and two (2) million pesos as exemplary damages plus ten (10%) percent attorney's fees.[6]

Subsequently, petitioners appealed the case to the National Labor Relations Commission (NLRC). In their Notice of Appeal,[7] they prayed that Balagtas's Complaint be dismissed for lack of jurisdiction. While they maintained that Balagtas was never dismissed, they also alleged that she was a corporate officer, incorporator, and member of the North Star's Board of Directors (The Board). Thus, the NLRC cannot take cognizance of her illegal dismissal case, the same being an intra-corporate controversy, which properly falls within the original and exclusive jurisdiction of the ordinary courts.

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[5] *Id*. at 86-88.

[6] *Id*. at 273.

[7] Through a Notice of Appeal dated May 27, 2005. *Rollo*, pp. 275-287.

The Ruling of the NLRC

In its Resolution[8] dated September 30, 2008, the NLRC ruled in favor of petitioners, *viz.*:

> WHEREFORE, the questioned Decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.[9]

The NLRC's findings are as follows: *First*, through a Board resolution passed on March 31, 2003, Balagtas was elected as North Star's **Executive Vice President** and **Chief Executive Officer**, as evidenced by a Secretary's Certificate dated April 22, 2003. *Second*, in her Counter Affidavit executed sometime in 2004 in relation to the criminal charges against her, respondent Balagtas had in fact admitted occupying these positions, apart from being one of North Star's incorporators. And, *third*, the position of "**Vice President**" is a corporate office provided in North Star's by-laws.[10]

Based on these findings, the NLRC ruled that **respondent Balagtas was a corporate officer of North Star at the time of her dismissal and not a mere employee**. A corporate officer's dismissal is always an intra-corporate controversy,[11] a subject matter falling within the Regional Trial Court's (RTC) jurisdiction.[12] Thus, the Labor Arbiter and the NLRC do not have jurisdiction over Balagtas's Complaint.

The NLRC also held that **petitioners North Star and Cacho were not estopped from raising the issue of lack of jurisdiction**. Citing *Dy v. National Labor Relations Commission*,[13] the NLRC explained that the Labor Arbiter heard

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[8] *Rollo*, pp. 294-315.

[9] *Id.* at 314.

[10] *Id.* at 307-308.

[11] *Tabang v. National Labor Relations Commission*, 334 Phil. 424, 430 (1997).

[12] Citing Republic Act No. 8799; *rollo*, p. 307.

[13] 229 Phil. 234 (1986).

and decided the case upon the theory that he had jurisdiction over the Complaint. Thus, the Labor Arbiter's jurisdiction may be raised as an issue on appeal.

Aggrieved, respondent Balagtas moved for reconsideration but was denied. Thus, she elevated the case to the Court of Appeals *via* a petition for *certiorari*.

The Ruling of the Court of Appeals

In its assailed Decision, the Court of Appeals found merit in Balagtas's petition, *viz.*:

> WHEREFORE, the petition is hereby GRANTED. The assailed *Resolution*, dated September 30, 2008 of the National Labor Relations Commission dismissing the petitioner's complaint for lack of jurisdiction, is hereby REVERSED and SET ASIDE. The *Decision*, dated March 28, 2005 of the Labor Arbiter is AFFIRMED and this case is ordered REMANDED to the NLRC for the re-computation of petitioner's backwages and attorney's fees in accordance with this Decision.[14]

In ruling that the present case does not involve an intra-corporate controversy, the Court of Appeals applied a **two-tier test**, *viz.*: (a) the **relationship test**, and (b) the **nature of controversy test**.

Applying the **relationship test**, the Court of Appeals explained that no intra-corporate relationship existed between respondent Balagtas and North Star. While respondent Balagtas was North Star's *Chief Executive Officer* and *Executive Vice President*, petitioners North Star and Cacho failed to establish that occupying these positions made her a corporate officer. *First*, respondent Balagtas held the *Chief Executive Officer* position as a **mere corporate title** for the purpose of enlarging North Star's corporate image. According to North Star's by-laws, the company President shall assume the position of Chief Executive Officer. Thus, respondent Balagtas was not empowered to exercise the functions of a corporate officer, which was lawfully delegated

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[14] *Rollo*, pp. 98-99.

to North Star's President, petitioner Cacho.[15] And, <u>*second*</u>, petitioner North Star's By-laws only enumerate the position of *Vice President* as one of its corporate officers. The NLRC should not have assumed that the *Vice President* position is the same as the Executive *Vice President* position that respondent Balagtas admittedly occupied. Following *Matling Industrial and Commercial Corporation v. Coros*,[16] the appellate court reminded that "a position must be expressly mentioned in the by-laws in order to be considered a corporate office."[17]

On the other hand, the Court of Appeals elucidated that based on the allegations in herein respondent Balagtas's complaint filed before the Labor Arbiter, the present case involved **labor issues**. Thus, even using the **nature of controversy test**, it cannot be regarded as an intra-corporate dispute.[18]

The subsequent motions for reconsideration were denied.[19]

Hence, the present petition.

The Issues

Petitioners North Star and Cacho come before this Court raising the following issues

A.

WHETHER RESPONDENT BALAGTAS IS A CORPORATE OFFICER AS DEFINED BY THE CORPORATION CODE, CASE LAW, AND NORTH STAR'S BY-LAWS

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[15] *Id*. at 93-94.

[16] 647 Phil. 324 (2010).

[17] *Rollo*, p. 95.

[18] *Id*. at *People vs. De Guzman*, 95-96.

[19] In a Resolution dated August 6, 2012. Respondent Balagtas filed a Motion for Partial Reconsideration dated November 28, 2011 to seek clarification on the Decision's dispositive portion, more specifically the payment of her monetary award. On the other hand, petitioners Cacho and North Star filed a Motion for Reconsideration dated November 29, 2011 and reiterated that the present case involved an intra-corporate controversy.

B.

WHETHER THE APPELLATE COURT'S DECISION REVERSING THE NLRC'S FINDING THAT BALAGTAS WAS A CORPORATE OFFICER FOR WHICH HER ACTION FOR ILLEGAL DISMISSAL WAS INAPPROPRIATE FOR IT TO RESOLVE, WAS CORRECT ESPECIALLY BECAUSE NO DISCUSSION OF THAT CONCLUSION WAS MADE BY THE APPELLATE COURT IN ITS DECISION

C.

WHETHER THE AWARD BY THE APPELLATE COURT OF SEPARATION PAY, BACKWAGES, DAMAGES, AND LAWYER'S FEES TO BALAGTAS WAS APPROPRIATE[20]

Petitioners Cacho and North Star insist that the present case's subject matter is an intra-corporate controversy. They maintain that respondent Balagtas, as petitioner North Star's *Executive Vice President* and *Chief Executive Officer*, was its corporate officer. Particularly, they argue that: *first*, under petitioner North Star's **by-laws**,*vice-presidents* are listed as corporate officers. Thus, the NLRC erred when it differentiated between: (a) "*vice president*" as a corporate office provided in petitioner North Star's by-laws, and (b) "*Executive Vice President*," the position occupied by respondent Balagtas. Its interpretation unduly supplanted the Board's wisdom and authority in handling its corporate affairs. Her appointment as one of petitioner North Star's *vice presidents* is evidenced by the **Secretary's Certificate** dated April 22, 2003. As held in *Matling*, if the position or office is created by the **by-laws** and the **appointing authority is the board of directors**, then it is a corporate office. *Second*, she had already been a corporate officer of petitioner North Star for quite some time, having been appointed as *General Manager* through a **Board Resolution** in 1997 and, subsequently, as *Executive Vice President* and *General Manager* in 2001, as evidenced by the **Secretary's Certificate** dated March 23, 2001. And *third*, respondent Balagtas has openly admitted her appointments to these positions. She even acknowledged being

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[20] *Rollo*, p. 49.

a *member of the Board* and at the same time petitioner North Star's *Executive Vice President* and *General Manager*.[21]

Considering all these in applying the **relationship test**, petitioners Cacho and North Star assert that respondent Balagtas is not petitioner North Star's mere employee but a corporate officer thereof whose dismissal is categorized as an intra-corporate matter.[22]

Petitioners Cacho and North Star further cite *Espino v. National Labor Relations Commission*[23] where the Court held that a corporate officer's dismissal is always a corporate act. It cannot be considered as a simple labor case. Thus, under the **nature of the controversy test**, the present case is an intra-corporate dispute because the primary subject matter herein is the dismissal of a corporate officer.

In refuting petitioners Cacho and North Star's allegations, respondent Balagtas avers that: *first*, she was not a corporate officer of petitioner North Star. The Board Resolution and Secretary's Certificates that purportedly support petitioners Cacho and North Star's claims were falsified, forged, and invalid. Petitioners Cacho and North Star failed to show that the *Executive Vice President* position she had occupied was a corporate office. Said position was a mere nomenclature as she was never empowered to exercise the functions of a corporate officer. In fact, in the 2003 General Information Sheet (GIS) of petitioner North Star, the field "corporate position" opposite respondent Balagtas's name was filled out as "not applicable." *Second*, she was no longer a stockholder and director of petitioner North Star. *Third*, she was merely an employee. Petitioner Cacho was the one who hired her, determined her compensation, directed and controlled the manner she performed her work, and ultimately, dismissed her from employment. *Fourth*, the issue of whether or not she was a corporate officer is irrelevant because

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[21] *Id.* at 54-64.

[22] *Id.* at 52.

[23] 310 Phil. 60, 73 (1995).

her claim for back wages, commissions, and other monies is clearly categorized as a labor dispute, not an intra-corporate controversy.[24] And *fifth*, petitioners Cacho and North Star are already estopped from questioning the jurisdiction of the Labor Arbiter. They actively participated in the proceedings before the Labor Arbiter and cannot assail the validity of such proceedings only after obtaining an unfavorable judgment.[25]

The Ruling of the Court

The petition is meritorious.

The sole issue before the Court is whether or not the present case is an intra-corporate controversy within the jurisdiction of the regular courts or an ordinary labor dispute that the Labor Arbiter may properly take cognizance of.

Respondent Balagtas's dismissal is an intra-corporate controversy

At the onset, We agree with the appellate court's ruling that a **two-tier test** must be employed to determine whether an intra-corporate controversy exists in the present case, *viz.*: (a) the **relationship test**, and (b) the **nature of the controversy test**. This is consistent with the Court's rulings in *Reyes v. Regional Trial Court of Makati, Branch 142*,[26] *Speed Distributing Corporation v. Court of Appeals*,[27] and *Real v. Sangu Philippines, Inc.*[28]

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[24] Citing *Mainland Construction, Co., Inc. v. Movilla*, 320 Phil. 353 (1995).

[25] *Rollo*, pp. 627-642, citing *Prudential Bank and Trust Company v. Reyes*, 404 Phil. 961 (2001).

[26] 583 Phil. 591 (2008).

[27] 469 Phil. 739 (2004).

[28] 655 Phil. 68 (2011).

A. Relationship Test

A dispute is considered an intra-corporate controversy under the **relationship test** when the relationship between or among the disagreeing parties is any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the **corporation**, partnership, or association and its **stockholders**, partners, members, or **officers**; (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.[29]

In the present case, petitioners Cacho and North Star allege that respondent Balagtas, as petitioner North Star's *Executive Vice President*, was its **corporate officer**. On the other hand, while respondent Balagtas admits to have occupied said position, she argues she was *Executive Vice President* merely by name and she did not discharge any of the responsibilities lodged in a corporate officer.

Given the parties' conflicting views, We must now determine **whether or not the *Executive Vice President* position is a corporate office** so as to establish the intra-corporate relationship between the parties.

In *Easycall Communications Phils., Inc. v. King*,[30] the Court ruled that a corporate office is **created** by the charter of the corporation *and* the officer is **elected** thereto by the directors or stockholders. In other words, one shall be considered a corporate officer only if two conditions are met, *viz.*: (1) the position occupied was **created by charter/by-laws**, and (2) the officer was **elected (or appointed) by the corporation's board of directors** to occupy said position.

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[29] *Reyes v. Regional Trial Court of Makati, Branch 142*, *supra* note 26 at 607, citing *Union Glass & Container Corp. v. Securities and Exchange Commission*, 211 Phil. 222, 230-231 (1983).

[30] 514 Phil. 296, 302-303 (2005), citing *Tabang v. National Labor Relations Commission*, *supra* note 11 at 429; *Real v. Sangu Philippines, Inc.*, *supra* note 28 at 85-86.

1. The Executive Vice President position is one of the corporate offices provided in petitioner North Star's By-laws

The rule is that corporate officers are those officers of a corporation who are given that character either by the **Corporation Code** or by the **corporation's by-laws**.[31]

Section 25 of the Corporation Code[32] explicitly provides for the election of the corporation's president, treasurer, secretary, and **such other officers as may be provided for in the by-laws**. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it **must be expressly mentioned in the by-laws** in order to be considered as a corporate office.[33]

In this regard, petitioner North Star's by-laws[34] provides the following:

ARTICLE IV

OFFICERS

Section 1. Election/Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the Chairman, the President, **one or more Vice-President** (sic), the Treasurer, and the Secretary, at said meeting.

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[31] *Easycall Communications Phils., Inc. v. King*, *id.* at 302.

[32] SECTION 25. *Corporate Officers, Quorum*. — Immediately after their election, the directors of a corporation must formally organize by the election of a **president**, who shall be a director, a **treasurer** who may or may not be a director, a **secretary** who shall be a resident and citizen of the Philippines, and **such other officers as may be provided for in the by-laws**. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. (Corporation Code of the Philippines, Batas Pambansa Big. 68, [May 1, 1980].)

[33] *Matling Industrial and Commercial Corporation v. Coros*, *supra* note 16 at 342-343.

[34] *Rollo*, pp. 164-181.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

Clearly, there may be **one or more vice president** positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices.

Consequently, the next question that begs to be asked is **whether or not the phrase "one or more vice president" in the above-cited provision of the by-laws includes the *Executive Vice President* position** held by respondent Balagtas.

In ruling that respondent Balagtas was not a corporate officer of petitioner North Star, the Court of Appeals pointed out that the NLRC should not have assumed that the "*Vice President*" position is the same as the "*Executive Vice President*" position that Balagtas admittedly occupied. In other words, that the **exact and complete name of the position** must appear in the by-laws, otherwise it is an ordinary office whose occupant shall be regarded as a regular employee rather than a corporate officer.

The appellate court's interpretation of the phrase "one or more vice president" unduly restricts one of petitioner North Star's inherent corporate powers, *viz.*: to adopt its own by-laws, provided that it is not contrary to law, morals, or public policy[35] for its internal affairs, to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.[36]

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[35] The Corporation Code provides, "SECTION 36. *Corporate Powers and Capacity*. — Every corporation incorporated under this Code has the power and capacity: x x x 5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code[.]"

[36] *Gokongwei, Jr. v. Securities and Exchange Commission*, 178 Phil. 266, 296 (1979), citing *Mckee & Company v. First National Bank of San Diego*, 265 F. Supp. 1 (1967).

The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions available as it may deem fit and in consonance with sound business practice.

To require that particular designation/variation of each vice-president (*i.e.*, executive vice president) be specified and enumerated is to invalidate the by-laws' true intention and to encroach upon petitioner North Star's inherent right and authority to adopt its own set of rules and regulations to govern its internal affairs. Whether the creation of several vice-president positions in a company is reasonable is a question of policy that courts of law should not interfere with. Where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws and who have exercised their authority.[37]

Thus, by name, the *Executive Vice President* position is embraced by the phrase "one or more vice president" in North Star's by-laws.

2. Respondent Balagtas was appointed by the Board as petitioner North Star's Executive Vice President

While a corporate office is **created** by an express provision either in the Corporation Code or the By-laws, what makes one a corporate officer is his **election** or **appointment** thereto by the board of directors. Thus, there must be documentary evidence to prove that the person alleged to be a corporate officer was appointed by action or with approval of the board.[38]

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[37] *Gokongwei, Jr. v. Securities and Exchange Commission*, *id*. at 293, citing *People ex rel. Wildi v. Ittner*, 165 III. App. 360, 367 (1911).

[38] See *Real v. Sangu Philippines, Inc.*, *supra* note 28 at 87.

In the present case, petitioners Cacho and North Star assert that respondent Balagtas was elected as *Executive Vice President* by the Board as evidenced by the Secretary's Certificate dated April 22, 2003, which provides:

> I, MOLINA A. CABA, of legal age, Filipino citizen, x x x after being duly sworn to in accordance with law, depose and state: That —
>
> 1. I am the duly appointed Corporate Secretary of North Star International Travel, Inc. x x x.
>
> 2. As such Corporate Secretary of the Corporation, I hereby certify that at the Regular/Special meeting of the Board of Directors and Stockholders of the Corporation which was held on March 31, 2003 during which meeting a quorum was present and majority of the stockholders were in attendance, the following resolutions were unanimously passed and adopted:
>
> "RESOLVED, AS IT IS HEREBY RESOLVED, that **during a meeting of the Board of Directors held last March 31, 2003, the following members of the Board were elected to the corporate position opposite their names:**
>
> | **NAME** | **POSITION** |
> |---|---|
> | NORMA D. CACHO | Chairman |
> | **VIRGINIA D. BALAGTAS** | **Executive Vice President**[39] |
>
> (Emphasis supplied)

On the other hand, respondent Balagtas assails the validity of the above-cited Secretary's Certificate for being forged and fabricated. However, aside from these bare allegations, the NLRC observed that she did not present other competent proof to support her claim. To the contrary, respondent Balagtas even admitted that she was elected by the Board as petitioner North Star's *Executive Vice President* and argued that she could not be

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[39] *Rollo*, p. 162.

removed as such without another valid board resolution to that effect. To support this claim, respondent Balagtas submitted the very same Secretary's Certificate as an attachment to her Position Paper before the Labor Arbiter.[40] That she is now casting doubt over a document she herself has previously relied on belies her own claim that the Secretary's Certificate is a fake.

Thus, the above-cited Secretary's Certificate overcomes respondent Balagtas's contention that she was merely the *Executive Vice President* by name and was never empowered to exercise the functions of a corporate officer. Notably, she did not offer any proof to show that her duties, functions, and compensation were all determined by petitioner Cacho as petitioner North Star's President.

In any case, that the *Executive Vice President's* duties and responsibilities are determined by the President instead of the Board is irrelevant. In determining whether a position is a corporate office, the board of directors' appointment or election thereto is controlling. Article IV, Section 4 of North Star's By-laws provides:

> Section 4. The Vice-President(s) - If one or more Vice-Presidents are **appointed**, he/they shall have such powers and shall perform such duties as may from time to time be **assigned to him/them by the Board of Directors *or* by the President**. [Emphasis supplied.]

When Article IV, Section 4 is read together with Section 1 thereof, it is clear that while petitioner North Star may have one or more vice presidents and the President is authorized to determine each one's scope of work, their appointment or election still devolves upon the Board.

At this point, it is best to emphasize that the **manner of creation** (*i.e.*, under the express provisions of the Corporation Code or by-laws) and the **manner by which it is filled** (*i.e.*, by election or appointment of the board of directors) are sufficient in vesting a position the character of a corporate office.

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[40] *Id.* at 307-308.

Respondent Balagtas also denies her status as one of petitioner North Star's corporate officers because she was not listed as such in petitioner North Star's 2003 General Information Sheet (GIS).

This is of no moment.

The GIS neither governs nor establishes whether or not a position is an ordinary or corporate office. At best, if one is listed in the GIS as an officer of a corporation, his/her position as indicated therein could only be deemed a regular office, and not a corporate office as it is defined under the Corporation Code.[41]

Based on the above discussion, as *Executive Vice President*, respondent Balagtas was one of petitioner North Star's corporate officers. Thus, there is an intra-corporate *relationship* existing between the parties.

B. Nature of the Controversy Test

The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The *incidents* of their relationship must also be considered. Thus, under the *nature of the controversy test*, the disagreement must not only be rooted in the existence of an intra-corporate *relationship*, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[42]

Verily, in a long line of cases,[43] the Court consistently ruled that a corporate officer's dismissal is *always* a corporate act,

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[41] See *Cosare v. Broadcom Asia, Inc.*, 726 Phil. 316 (2014).

[42] *Reyes v. Regional Trial Court of Makati, Branch 142*, *supra* note 26 at 608.

[43] *Locsin v. Nissan Lease Phils., Inc.*, 648 Phil. 596 (2010), citing *Estrada v. National Labor Relations Commission*, 331 Phil. 225 (1996); *Lozon v.*

or an intra-corporate controversy which arises between a stockholder and a corporation. However, a closer look at these cases will reveal that the intra-corporate nature of the disputes therein did not hinge solely on the fact that the subject of the dismissal was a corporate officer.

In *Philippine School of Business Administration v. Leano*,[44] the complainant questioned the validity of his dismissal after his position was declared vacant and he was not re-elected thereto. The cases of *Fortune Cement Corporation v. National Labor Relations Commission*[45] and *Locsin v. Nissan Lease Phils. Inc.*[46] also share similar factual milieu.

On the other hand, the complainant in *Espino v. National Labor Relations Commission*[47] also contested the failure of the board of directors to re-elect him as a corporate officer. The Court found that the board of directors deferred his re-election in light of previous administrative charges filed against the complainant. Later on, the board of directors deemed him resigned from service and his position was subsequently abolished.

Finally, in *Pearson and George, (S.E. Asia), Inc. v. National Labor Relations Commission*,[48] the complainant lost his corporate office primarily because he was not re-elected as a member of the corporation's board of directors. The Court found that the corporate office in question required the occupant to be at the same time a director. Thus, he should lose his position as a corporate officer because he ceased to be a director for any reason (*e.g.*, he was not re-elected as such), such loss is not

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National Labor Relations Commission, 310 Phil. 1 (1995); *Espino v. National Labor Relations Commission*, *supra* note 23; *Fortune Cement Corporation v. National Labor Relations Commission*, 271 Phil. 268 (1991).

[44] 212 Phil. 717 (1984).

[45] *Supra* note 43.

[46] *Supra* note 43.

[47] *Supra* note 23.

[48] 323 Phil. 166 (1996).

dismissal but failure to qualify or to maintain a prerequisite for that position.

The dismissals in these cases were all considered intra-corporate controversies not only because the complainants were corporate officers, but also, and more importantly, because they were not re-elected to their respective corporate offices and, thus, terminated from the corporation. "The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist."[49]

In other words, the dismissal must relate to any of the circumstances and incidents surrounding the parties' intra-corporate relationship. To be considered an intra-corporate controversy, the dismissal of a corporate officer must have something to do with the duties and responsibilities attached to his/her corporate office or performed in his/her official capacity.[50]

In respondent Balagtas's Position Paper filed before the Labor Arbiter she alleged as follows: (a) petitioner Cacho informed her, through a letter, that she had been preventively suspended by the Board; (b) she opposed the suspension, was unduly prevented from re-assuming her position as *Executive Vice*

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[49] *Philippine School of Business Administration v. Leano*, *supra* note 44.

[50] In *Real v. Sangu Philippines, Inc.* (*supra* note 28), the Court ruled, "As earlier stated, respondents terminated the services of petitioner for the following reasons: (1) his continuous absences at his post at Ogino Philippines, Inc.; (2) respondents' loss of trust and confidence on petitioner; and, (3) to cut down operational expenses to reduce further losses being experienced by the corporation. Hence, petitioner filed a complaint for illegal dismissal and sought reinstatement, backwages, moral damages and attorney's fees. From these, it is not difficult to see that the reasons given by respondents for dismissing petitioner have something to do with his being a Manager of respondent corporation and nothing with his being a director or stockholder."

President,[51] and thereafter constructively dismissed; (c) **the Board did not authorize either her suspension and removal from office**; and (d) as a result of her illegal dismissal, **she is entitled to separation pay in lieu of her reinstatement to her previous positions**, plus back wages, allowances, and other benefits.[52]

The foregoing allegations mainly relate to incidents involving her capacity as *Executive Vice President*, a position above-declared as a corporate office, *viz.*: *first*, respondent Balagtas's claim of dismissal without prior authority from the Board reveals her understanding that the appointment and removal of a corporate officer like the *Executive Vice President* could only be had through an official act by the Board. And, *second*, she sought separation pay in lieu of reinstatement to her former positions, one of which was as *Executive Vice President*. Even her prayer for full back wages, allowances, commissions, and other monetary benefits all relate to her corporate office.[53]

On the other hand, petitioners Cacho and North Star terminated respondent Balagtas for the following reasons: (a) for allegedly appropriating company funds for her personal gain; (b) for abandonment of work; (c) violation of a lawful order of the corporation; and (d) loss of trust and confidence.[54] In their Position Paper, petitioners Cacho and North Star described in detail the latter's fund disbursement process,[55] emphasizing respondent Balagtas's role as the one who **approves** payment vouchers and the *signatory* on issued checks—**responsibilities specifically devolved upon her as the *vice president*. And as the *vice president*, respondent Balagtas actively participated in the whole process, if not controlled it altogether**. As a result, petitioners Cacho and North Star accused respondent

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[51] *Rollo*, pp. 245-247.

[52] *Id.* at 256-257.

[53] See *Espino v. National Labor Relations Commission*, *supra* note 23.

[54] *Rollo*, p. 267.

[55] *Id.* at 228-230.

Balagtas of **gravely abusing the confidence the Board has reposed in her** as *vice president* and misappropriating company funds for her own personal gain.

From these, it is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's *Executive Vice President: first*, the alleged misappropriations were committed by respondent Balagtas in her capacity as *vice president*, one of the officers responsible for approving the disbursements and signing the checks. And, *second*, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as *vice president*.

That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

Petitioners Cacho and North Star not estopped from questioning jurisdiction

Respondent Balagtas insists that petitioners belatedly raised the issue of the Labor Arbiter's lack of jurisdiction before the NLRC. Relying on *Tijam v. Sibonghanoy*,[56] she avers that petitioners, after actively participating in the proceedings before the Labor Arbiter and obtaining an unfavorable judgment, are barred by laches from attacking the latter's jurisdiction.

We disagree with respondent Balagtas.

The Court has already held that the ruling in *Tijam v. Sibonghanoy* remains only as an exception to the general rule. Estoppel by laches will only bar a litigant from raising the issue of lack of jurisdiction in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy*. To recall, the Court in *Tijam v. Sibonghanoy* ruled that the plea of lack of jurisdiction may no longer be raised for being barred by laches because it was

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[56] 131 Phil. 556 (1968).

raised for the first time in a motion to dismiss **filed almost 15 years after the questioned ruling had been rendered**.[57]

These exceptional circumstances are not present in this case. Thus, the general rule must apply: **that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel**. In *Espino v. National Labor Relations Commission*,[58] We ruled:

> The principle of estoppel cannot be invoked to prevent this Court from taking up the question, which has been apparent on the face of the pleadings since the start of the litigation before the Labor Arbiter. In the case of *Dy v. NLRC*, supra, the Court, citing the case of *Calimlim v. Ramirez*, reiterated that the decision of a tribunal not vested with appropriate jurisdiction is null and void. Again, the Court in *Southeast Asian Fisheries Development Center-Aquaculture Department v. NLRC* restated **the rule that the invocation of estoppel with respect to the issue of jurisdiction is unavailing because estoppel does not apply to confer jurisdiction upon a tribunal that has none over the cause of action**. The instant case does not provide an exception to the said rule.[59] (Emphasis supplied.)

All told, the issue in the present case is an intra-corporate controversy, a matter outside the Labor Arbiter's jurisdiction.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated November 9, 2011 and Resolution dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 111637 are **SET ASIDE**. NLRC-NCR Case No. 04-04736-04 is dismissed for lack of jurisdiction, without prejudice to the filing of an appropriate case before the proper tribunal.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, and *Jardeleza, JJ.*, concur.

Martires,[*] *J.*, on official leave.

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[57] *Figueroa v. People*, 580 Phil. 58 (2008).

[58] *Supra* note 23.

[59] *Id.* at 75-76.

[*] On official leave; per raffle dated January 31, 2018.

FIRST DIVISION

[G.R. No. 205548. February 7, 2018]

DE LA SALLE MONTESSORI INTERNATIONAL OF MALOLOS, INC., *petitioner, vs.* **DE LA SALLE BROTHERS, INC., DE LA SALLE UNIVERSITY, INC., LA SALLE ACADEMY, INC., DE LA SALLE-SANTIAGO ZOBEL SCHOOL, INC. (formerly named De La Salle-South Inc.), DE LA SALLE CANLUBANG, INC. (formerly named De La Salle University-Canlubang, Inc.),** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE, SECTION 18, THEREOF; CORPORATE NAMES; PROHIBITION IN SECTION 18 AGAINST THE REGISTRATION OF A CORPORATE NAME WHICH IS "IDENTICAL OR DECEPTIVELY OR CONFUSINGLY SIMILAR" TO THAT OF ANY EXISTING CORPORATION; RATIONALE.—As early as *Western Equipment and Supply Co. v. Reyes*, the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion. It is regarded, to a certain extent, as a property right and one which cannot be impaired or defeated by subsequent appropriation by another corporation in the same field. x x x Recognizing the intrinsic importance of corporate names, our Corporation Code established a restrictive rule insofar as corporate names are concerned. x x x The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision

over corporations. Indeed, parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a non-profit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.

2. ID.; ID.; ID.; ID.; IN DETERMINING THE EXISTENCE OF CONFUSING SIMILARITY IN CORPORATE NAMES, THE TEST IS WHETHER THE SIMILARITY IS SUCH AS TO MISLEAD A PERSON USING ORDINARY CARE AND DISCRIMINATION; APPLICATION IN CASE AT BAR.—In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. In so doing, the Court must look to the record as well as the names themselves. x x x Petitioner's argument that it obtained the words "De La Salle" from the French word meaning "classroom," while respondents obtained it from the French priest named Saint Jean Baptiste de La Salle, similarly does not hold water. x x x We affirm that the phrase "De La Salle" is not merely a generic term. Respondents' use of the phrase being suggestive and may properly be regarded as fanciful, arbitrary and whimsical, it is entitled to legal protection. Petitioner's use of the phrase "De La Salle" in its corporate name is patently similar to that of respondents that even with reasonable care and observation, confusion might arise. The Court notes not only the similarity in the parties' names, but also the business they are engaged in. They are all private educational institutions offering pre-elementary, elementary and secondary courses. As aptly observed by the SEC *En Banc*, petitioner's name gives the impression that it is a branch or affiliate of respondents. It is settled that proof of actual confusion need not be shown. It suffices that confusion is probable or likely to occur.

3. ID.; ID.; SECURITIES AND EXCHANGE COMMISSION (SEC); HAS ABSOLUTE JURISDICTION AND CONTROL OVER ALL CORPORATIONS; IT IS THE SEC'S DUTY TO PREVENT CONFUSION IN THE USE OF CORPORATE NAMES NOT ONLY FOR THE PROTECTION OF THE CORPORATIONS INVOLVED,

BUT MORE SO FOR THE PROTECTION OF THE PUBLIC.—The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. By express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations. It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved, but more so for the protection of the public. It has authority to de-register at all times, and under all circumstances, corporate names which in its estimation are likely to generate confusion. Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law. Time and again, we have held that findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, more so if the same has been upheld by the appellate court, as in this case.

APPEARANCES OF COUNSEL

Dela Rama Dela Rama Dela Rama Law Firm for petitioner.
Tolosa Romulo Agabin Flores & Enriquez Law Offices for respondents.

D E C I S I O N

JARDELEZA, *J.*:

Petitioner De La Salle Montessori International of Malolos, Inc. filed this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court to challenge the Decision[2] of the Court of Appeals (CA) dated September 27, 2012 in CA-G.R. SP No. 116439 and its Resolution[3] dated January 21, 2013 which

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[1] *Rollo*, pp. 10-29.

[2] *Id.* at 31-47. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez.

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

denied petitioner's motion for reconsideration. The CA affirmed the Decision[4] of the Securities and Exchange Commission (SEC) *En Banc* dated September 30, 2010, which in turn affirmed the Order[5] of the SEC Office of the General Counsel (OGC) dated May 12, 2010 directing petitioner to change or modify its corporate name.

Petitioner reserved with the SEC its corporate name *De La Salle Montessori International Malolos, Inc.* from June 4 to August 3, 2007,[6] after which the SEC indorsed petitioner's articles of incorporation and by-laws to the Department of Education (DepEd) for comments and recommendation.[7] The DepEd returned the indorsement without objections.[8] Consequently, the SEC issued a certificate of incorporation to petitioner.[9]

Afterwards, DepEd Region III, City of San Fernando, Pampanga granted petitioner government recognition for its pre-elementary and elementary courses on June 30, 2008,[10] and for its secondary courses on February 15, 2010.[11]

On January 29, 2010, respondents De La Salle Brothers, Inc., De La Salle University, Inc., La Salle Academy, Inc., De La Salle-Santiago Zobel School, Inc. (formerly De La Salle-South, Inc.), and De La Salle Canlubang, Inc. (formerly De La Salle University-Canlubang, Inc.) filed a petition with the SEC seeking to compel petitioner to change its corporate name. Respondents claim that petitioner's corporate name is misleading or confusingly similar to that which respondents have acquired a

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[4] *Id.* at 99-106.

[5] *Id.* at 59-63.

[6] *Id.* at 52.

[7] *Id.* at 54.

[8] *Id.* at 55.

[9] *Id.* at 56.

[10] *Id.* at 57.

[11] *Id.* at 58.

prior right to use, and that respondents' consent to use such name was not obtained. According to respondents, petitioner's use of the dominant phrases "La Salle" and "De La Salle" gives an erroneous impression that De La Salle Montessori International of Malolos, Inc. is part of the "La Salle" group, which violates Section 18 of the Corporation Code of the Philippines. Moreover, being the prior registrant, respondents have acquired the use of said phrases as part of their corporate names and have freedom from infringement of the same.[12]

On May 12, 2010, the SEC OGC issued an Order[13] directing petitioner to change or modify its corporate name. It held, among others, that respondents have acquired the right to the exclusive use of the name "La Salle" with freedom from infringement by priority of adoption, as they have all been incorporated using the name ahead of petitioner. Furthermore, the name "La Salle" is not generic in that it does not particularly refer to the basic or inherent nature of the services provided by respondents. Neither is it descriptive in the sense that it does not forthwith and clearly convey an immediate idea of what respondents' services are. In fact, it merely gives a hint, and requires imagination, thought and perception to reach a conclusion as to the nature of such services. Hence, the SEC OGC concluded that respondents' use of the phrase "De La Salle" or "La Salle" is arbitrary, fanciful, whimsical and distinctive, and thus legally protectable. As regards petitioner's argument that its use of the name does not result to confusion, the SEC OGC held otherwise, noting that confusion is probably or likely to occur considering not only the similarity in the parties' names but also the business or industry they are engaged in, which is providing courses of study in pre-elementary, elementary and secondary education.[14] The SEC OGC disagreed with petitioner's argument that the case of *Lyceum of the Philippines, Inc. v. Court of Appeals*[15] (*Lyceum of the Philippines*) applies since

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[12] *Id.* at 32-33.

[13] *Supra* note 5.

[14] *Rollo*, pp. 60-63.

[15] G.R. No. 101897, March 5, 1993, 219 SCRA 610.

the word "lyceum" is clearly descriptive of the very being and defining purpose of an educational corporation, unlike the term "De La Salle" or "La Salle."[16] Hence, the Court held in that case that the Lyceum of the Philippines, Inc. cannot claim exclusive use of the name "lyceum."

Petitioner filed an appeal before the SEC *En Banc*, which rendered a Decision[17] on September 30, 2010 affirming the Order of the SEC OGC. It held, among others, that the *Lyceum of the Philippines* case does not apply since the word "lyceum" is a generic word that pertains to a category of educational institutions and is widely used around the world. Further, the Lyceum of the Philippines failed to prove that "lyceum" acquired secondary meaning capable of exclusive appropriation. Petitioner also failed to establish that the term "De La Salle" is generic for the principle enunciated in *Lyceum of the Philippines* to apply.[18]

Petitioner consequently filed a petition for review with the CA. On September 27, 2012, the CA rendered its Decision[19] affirming the Order of the SEC OGC and the Decision of the SEC *En Banc in toto*.

Hence, this petition, which raises the lone issue of "[w]hether or not the [CA] acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it erred in not applying the doctrine laid down in the case of [*Lyceum of the Philippines*], that LYCEUM is not attended with exclusivity."[20]

The Court cannot at the outset fail to note the erroneous wording of the issue. Petitioner alleged grave abuse of discretion while also attributing error of judgment on the part of the CA in not applying a certain doctrine. Certainly, these grounds do not coincide in the same remedy. A petition for review on

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[16] *Rollo*, pp. 60-61.

[17] *Supra* note 4.

[18] *Rollo*, p. 105.

[19] *Supra* note 2.

[20] *Rollo*, p. 18.

certiorari under Rule 45 of the Rules of Court is a separate remedy from a petition for *certiorari* under Rule 65. A petition for review on *certiorari* under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45.[21] Nonetheless, as the petition argues on the basis of errors of judgment allegedly committed by the CA, the Court will excuse the error in terminology.

The main thrust of the petition is that the CA erred in not applying the ruling in the *Lyceum of the Philippines* case which petitioner argues have "the same facts and events" [22] as in this case.

We DENY the petition and uphold the Decision of the CA.

As early as *Western Equipment and Supply Co. v. Reyes*,[23] the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion.[24] It is regarded, to a certain extent, as a property right and one which cannot be impaired or defeated by subsequent appropriation by another corporation in the same field.[25] Furthermore, in *Philips Export B.V. v. Court of Appeals*,[26] we held:

A name is peculiarly important as necessary to the very existence of a corporation x x x. Its name is one of its attributes, an element

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[21] *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 67. Citation omitted.

[22] *Rollo*, p. 18.

[23] 51 Phil. 115 (1927).

[24] *Id.* at 128.

[25] *Philips Export B.V. v. Court of Appeals*, G.R. No. 96161, February 21, 1992, 206 SCRA 457, 462. Citation omitted.

[26] *Supra*.

of its existence, and essential to its identity x x x. The general rule as to corporations is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person x x x; and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted x x x.

A corporation acquires its name by choice and need not select a name identical with or similar to one already appropriated by a senior corporation while an individual's name is thrust upon him x x x. A corporation can no more use a corporate name in violation of the rights of others than an individual can use his name legally acquired so as to mislead the public and injure another x x x.[27]

Recognizing the intrinsic importance of corporate names, our Corporation Code established a restrictive rule insofar as corporate names are concerned.[28] Thus, Section 18 thereof provides:

Sec. 18. *Corporate name.* — No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name.

The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations.[29]

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[27] *Id.* at 462-463; citations omitted.

[28] *Lyceum of the Philippines, Inc. v. Court of Appeals*, *supra* note 15 at 615.

[29] *Id.* at 615; citation omitted.

Indeed, parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a non-profit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.[30]

In *Philips Export B.V. v. Court of Appeals*,[31] the Court held that to fall within the prohibition of Section 18, two requisites must be proven, to wit: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical, or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law.[32]

With respect to the first requisite, the Court has held that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption.[33]

In this case, respondents' corporate names were registered on the following dates: (1) De La Salle Brothers, Inc. on October 9, 1961 under SEC Registration No. 19569; (2) De La Salle University, Inc. on December 19, 1975 under SEC Registration No. 65138; (3) La Salle Academy, Inc. on January 26, 1960 under SEC Registration No. 16293; (4) De La Salle-Santiago Zobel School, Inc. on October 7, 1976 under SEC Registration No. 69997; and (5) De La Salle Canlubang, Inc. on August 5, 1998 under SEC Registration No. A1998-01021.[34]

On the other hand, petitioner was issued a Certificate of Registration only on July 5, 2007 under Company Registration

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[30] *Philips Export B.V. v. Court of Appeals*, *supra* note 25; citation omitted.

[31] *Supra*.

[32] *Id*. at 463.

[33] *Id*.

[34] *Rollo*, p. 41.

No. CN200710647.[35] It being clear that respondents are the prior registrants, they certainly have acquired the right to use the words "De La Salle" or "La Salle" as part of their corporate names.

The second requisite is also satisfied since there is a confusing similarity between petitioner's and respondents' corporate names. While these corporate names are not identical, it is evident that the phrase "De La Salle" is the dominant phrase used.

Petitioner asserts that it has the right to use the phrase "De La Salle" in its corporate name as respondents did not obtain the right to its exclusive use, nor did the words acquire secondary meaning. It endeavoured to demonstrate that no confusion will arise from its use of the said phrase by stating that its complete name, "De La Salle Montessori International of Malolos, Inc.," contains four other distinctive words that are not found in respondents' corporate names. Moreover, it obtained the words "De La Salle" from the French word meaning "classroom," while respondents obtained it from the French priest named Saint Jean Baptiste de La Salle. Petitioner also compared its logo to that of respondent De La Salle University and argued that they are different. Further, petitioner argued that it does not charge as much fees as respondents, that its clients knew that it is not part of respondents' schools, and that it never misrepresented nor claimed to be an affiliate of respondents. Additionally, it has gained goodwill and a name worthy of trust in its own right.[36]

We are not persuaded.

In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. In so doing, the Court must look to the record as well as the names themselves.[37]

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[35] *Id.*

[36] *Rollo*, pp. 20-22.

[37] *Philips Export B.V. v. Court of Appeals*, *supra* note 25 at 464; citation omitted.

Petitioner's assertion that the words "Montessori International of Malolos, Inc." are four distinctive words that are not found in respondents' corporate names so that their corporate name is not identical, confusingly similar, patently deceptive or contrary to existing laws,[38] does not avail. As correctly held by the SEC OGC, all these words, when used with the name "De La Salle," can reasonably mislead a person using ordinary care and discretion into thinking that petitioner is an affiliate or a branch of, or is likewise founded by, any or all of the respondents, thereby causing confusion.[39]

Petitioner's argument that it obtained the words "De La Salle" from the French word meaning "classroom," while respondents obtained it from the French priest named Saint Jean Baptiste de La Salle,[40] similarly does not hold water. We quote with approval the ruling of the SEC *En Banc* on this matter. Thus:

> Generic terms are those which constitute "the common descriptive name of an article or substance," or comprise the "genus of which the particular product is a species," or are "commonly used as the name or description of a kind of goods," or "characters," or "refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product," and are not legally protectable. It has been held that if a mark is so commonplace that it cannot be readily distinguished from others, then it is apparent that it cannot identify a particular business; and he who first adopted it cannot be injured by any subsequent appropriation or imitation by others, and the public will not be deceived.
>
> Contrary to [petitioner's] claim, the word *salle* only means "room" in French. The word *la*, on the other hand, is a definite article ("the") used to modify *salle*. Thus, since *salle* is nothing more than a room, [respondents'] use of the term is actually suggestive.
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> A suggestive mark is therefore a word, picture, or other symbol that suggests, but does not directly describe something about the goods or services in connection with which it is used as a mark and

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[38] *Rollo*, p. 20.

[39] *Id*. at 62.

[40] *Id*. at 20.

gives a hint as to the quality or nature of the product. Suggestive trademarks therefore can be distinctive and are registrable.

The appropriation of the term "*la salle*" to associate the words with the lofty ideals of education and learning is in fact suggestive because roughly translated, the words only mean "the room." Thus, the room could be anything – a room in a house, a room in a building, or a room in an office.

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In fact, the appropriation by [respondents] is fanciful, whimsical and arbitrary because there is no inherent connection between the words *la salle* and education, and it is through [respondents'] painstaking efforts that the term has become associated with one of the top educational institutions in the country. Even assuming *arguendo* that *la salle* means "classroom" in French, imagination is required in order to associate the term with an educational institution and its particular brand of service.[41]

We affirm that the phrase "De La Salle" is not merely a generic term. Respondents' use of the phrase being suggestive and may properly be regarded as fanciful, arbitrary and whimsical, it is entitled to legal protection.[42] Petitioner's use of the phrase "De La Salle" in its corporate name is patently similar to that of respondents that even with reasonable care and observation, confusion might arise. The Court notes not only the similarity in the parties' names, but also the business they are engaged in. They are all private educational institutions offering pre-elementary, elementary and secondary courses.[43] As aptly observed by the SEC *En Banc*, petitioner's name gives the impression that it is a branch or affiliate of respondents.[44] It is

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[41] *Id.* at 104-105, citing *Societe Des Produits Nestlé, S.A. v. Court of Appeals*, G.R. No. 112012, April 4, 2001, 356 SCRA 207; and *Philippine Refining Co., Inc. v. Ng Sam*, G.R. No. L-26676, July 30, 1982, 115 SCRA 472. Italics in the original.

[42] *Ang v. Teodoro*, 74 Phil. 50 (1942); See also *Societe Des Produits Nestle, S.A. v. Court of Appeals*, *supra* note 41.

[43] *Rollo*, pp. 62-63.

[44] *Id*. at 104.

settled that proof of actual confusion need not be shown. It suffices that confusion is probable or likely to occur.[45]

Finally, the Court's ruling in *Lyceum of the Philippines*[46] does not apply.

In that case, the Lyceum of the Philippines, Inc., an educational institution registered with the SEC, commenced proceedings before the SEC to compel therein private respondents who were all educational institutions, to delete the word "Lyceum" from their corporate names and permanently enjoin them from using the word as part of their respective names.

The Court there held that the word "Lyceum" today generally refers to a school or institution of learning. It is as generic in character as the word "university." Since "Lyceum" denotes a school or institution of learning, it is not unnatural to use this word to designate an entity which is organized and operating as an educational institution. Moreover, the Lyceum of the Philippines, Inc.'s use of the word "Lyceum" for a long period of time did not amount to mean that the word had acquired secondary meaning in its favor because it failed to prove that it had been using the word all by itself to the exclusion of others. More so, there was no evidence presented to prove that the word has been so identified with the Lyceum of the Philippines, Inc. as an educational institution that confusion will surely arise if the same word were to be used by other educational institutions.[47]

Here, the phrase "De La Salle" is not generic in relation to respondents. It is not descriptive of respondent's business as institutes of learning, unlike the meaning ascribed to "Lyceum." Moreover, respondent De La Salle Brothers, Inc. was registered in 1961 and the De La Salle group had been using the name decades before petitioner's corporate registration. In contrast, there was no evidence of the Lyceum of the Philippines, Inc.'s

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[45] *Philips Export B.V. v. Court of Appeals*, *supra* note 25 at 464.

[46] *Supra* note 15.

[47] *Id.* at 616-619.

exclusive use of the word "Lyceum," as in fact another educational institution had used the word 17 years before the former registered its corporate name with the SEC. Also, at least nine other educational institutions included the word in their corporate names. There is thus no similarity between the *Lyceum of the Philippines* case and this case that would call for a similar ruling.

The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. By express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations. It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved, but more so for the protection of the public. It has authority to de-register at all times, and under all circumstances, corporate names which in its estimation are likely to generate confusion.[48]

Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law.[49]

Time and again, we have held that findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, more so if the same has been upheld by the appellate court, as in this case.[50]

WHEREFORE, the Petition is **DENIED**. The assailed Decision of the CA dated September 27, 2012 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Tijam, JJ.,* concur.

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[48] *GSIS Family Bank-Thrift Bank [formerly Comsavings Bank, Inc.] v. BPI Family Bank*, G.R. No. 175278, September 23, 2015, 771 SCRA 284, 301-302.

[49] *Id.* at 302-303.

[50] *Id.* at 298.

THIRD DIVISION

[G.R. Nos. 208481-82. February 7, 2018]

OFFICE OF THE OMBUDSMAN, REPRESENTED BY OMBUDSMAN CONCHITA CARPIO MORALES, *petitioner, vs.* **MARIA ROWENA REGALADO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; ONE CAN CONTINUE TO HOLD PUBLIC OFFICE ONLY FOR AS LONG AS HE OR SHE PROVES WORTHY OF PUBLIC TRUST.— The 1987 Constitution spells out the basic ethos underlying public office: Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust. x x x No one has a vested right to public office. One can continue to hold public office only for as long as he or she proves worthy of public trust.

2. ID.; ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (REPUBLIC ACT NO. 6713); THE LAW EXPLICITLY STATES THAT THE DISMISSAL FROM SERVICE MAY BE WARRANTED THROUGH AN ADMINISTRATIVE PROCEEDING, EVEN IF THE ERRING OFFICER IS NOT SUBJECTED TO CRIMINAL PROSECUTION.— Apart from the general treatment of misconduct with "any of the additional elements of corruption, willful intent to violate the law or disregard of established rules," Republic Act No. 6713 specifically identifies as unlawful the solicitation or acceptance of gifts "in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of

their office." x x x Section 7(d) of Republic Act No. 6713, which took effect in 1989, is in addition to Section 3(c) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act enacted in 1960. x x x Republic Act No. 3019 punishes violations of its Section 3 with imprisonment, perpetual disqualification from public office, and confiscation or forfeiture of proceeds: x x x For its part, Republic Act No. 6713 penalizes violations of its Section 7 with imprisonment and/or a fine, as well as disqualification to hold public office: x x x Section 11(b) of Republic Act No. 6713 explicitly states that dismissal from the service may be warranted through an administrative proceeding, even if the erring officer is not subjected to criminal prosecution. This is in keeping with the three (3)-fold liability rule in the law on public officers, "which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others." x x x It is without question that respondent violated Section 7(d) of Republic Act No. 6713.

3. **ID.; ID.; ID.; RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS); THE RULES CONSIDER GRAVE MISCONDUCT AS A GRAVE OFFENSE WARRANTING ULTIMATE PENALTY OF DISMISSAL FROM SERVICE WITH ACCESSORY PENALTIES.—** Consistent with the dignity of public office, our civil service system maintains that misconduct tainted with "any of the additional elements of corruption, willful intent to violate the law or disregard of established rules" is grave. This gravity means that misconduct was committed with such depravity that it justifies not only putting an end to an individual's current engagement as a public servant, but also the foreclosure of any further opportunity at occupying public office. Accordingly, the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) consider grave misconduct as a grave offense warranting the ultimate penalty of dismissal from service with the accessory penalties of cancellation of eligibility, perpetual disqualification from public office, bar from taking civil service examinations, and forfeiture of retirement benefits.

4. **ID.; ID.; ID.; ID.; THE RULES UNQUALIFIEDLY STATES THAT DISMISSAL SHALL BE METED EVEN IF IT IS ONLY THE FIRST OFFENSE; CASE AT BAR.—** In *Medina*

> *v. Commission on Audit,* this Court emphasized that "a grave offense cannot be mitigated by the fact that the accused is a first-time offender or by the length of service of the accused." x x x The fact that an offender was caught for the first time does not, in any way, abate the gravity of what he or she actually committed. Grave misconduct is not a question of frequency, but, as its own name suggests, of gravity or weight. One who commits grave misconduct is one who, by the mere fact of that misconduct, has proven himself or herself unworthy of the continuing confidence of the public. By his or her very commission of that grave offense, the offender forfeits any right to hold public office. Underscoring the severity of grave misconduct and other offenses meriting dismissal, the 2017 RACCS now specifically state that no mitigating circumstances, of any sort, may be appreciated in cases involving an offense punishable by dismissal from service.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Europa Dacanay Cubelo Europa & Flores Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

> "Yes, my dear, that's the system ng government . . . Ganito ang system, ano ako magmamalinis?"[1]
>
> - Maria Rowena Regalado
> Immigration Officer

Public officers who, in the course of performing their regulatory functions, brazenly extort money, incessantly haggle, bribe, knowingly use falsified copies of official issuances to justify extortion, threaten to withhold benefits and services, deny possession of official receipts to payors, profess undue

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[1] *Rollo*, p. 31.

influence over their colleagues, and unabashedly exclaim that extortion and bribery are standards in the government are guilty of grave misconduct. Their nefarious acts are an utter disservice to the public, and undermine the entire civil service, thereby warranting the termination of their stint in public service. The consummate atrocity of their ways should not be mollified by the convenient excuses of being caught only for the first time, and of solicited statements of support from supposedly satisfied clients that speak of their purported good performance.

This resolves a Petition for Review on Certiorari[2] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed July 19, 2013 Amended Decision[3] of the Court of Appeals in CA-G.R. SP Nos. 120843 and 121748 be reversed and set aside and that the Court of Appeals January 7, 2013 original Decision[4] be reinstated.

The Court of Appeals January 7, 2013 original Decision sustained the November 5, 2008 Decision[5] of the Office of the Ombudsman for Mindanao, finding respondent Maria Rowena Regalado (Regalado) guilty of Grave Misconduct and violation of Section 7(d) of Republic Act No. 6713,[6] otherwise known

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[2] *Id*. at 10-26, Petition for Review on *Certiorari*.

[3] *Id*. at 28-39. The Amended Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Former Fourteenth Division, Court of Appeals, Manila.

[4] *Id*. at 41-62. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Former Fourteenth Division, Court of Appeals, Manila.

[5] No copy was annexed to the Petition.

[6] Rep. Act No. 6713 (1989), Sec. 7(d), Code of Conduct and Ethical Standards for Public Officials and Employees.
Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
. . . . . .

as the Code of Conduct and Ethical Standards for Public Officers and Employees. She was meted the penalty of dismissal from the service, along with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service.[7]

The assailed Court of Appeals July 19, 2013 Amended Decision maintained that Regalado was liable for Grave Misconduct but reduced her penalty to suspension from office without pay for one (1) year. It further ordered her reinstatement to her former position, her penalty having already been served.[8]

The facts are settled.

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to:

(i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

The Ombudsman shall prescribe such regulations as may be necessary to carry out the purpose of this subsection, including pertinent reporting and disclosure requirements.

Nothing in this Act shall be construed to restrict or prohibit any educational, scientific or cultural exchange programs subject to national security requirements.

[7] *Rollo*, p. 48.

[8] *Id*. at 39.

Herein respondent Regalado was a public employee, holding the position Immigration Officer I with the Bureau of Immigration.[9]

In October 2006, Carmelita F. Doromal (Doromal), the owner and administrator of St. Martha's Day Care Center and Tutorial Center, Inc. (St. Martha's), went to the Davao Office of the Bureau of Immigration to inquire about its letter requiring her school to obtain an accreditation to admit foreign students. There, she met Regalado, who told her that she needed to pay ₱50,000.00 as "processing fee" for the accreditation. Doromal commented that the amount was prohibitive. Regalado responded that she could reduce the amount.[10] Citing a copy of Office Memorandum Order No. RBR 00-57 of the Bureau of Immigration, Regalado claimed that "the head office of the Bureau of Immigration, through the Immigration Regulation Division, ha[d] the authority to allow the accreditation at a lower amount, depending on her recommendation."[11]

In January 2007, St. Martha's Assistant Headmaster, Syren T. Diaz (Diaz) submitted to the Bureau of Immigration the necessary papers for the school's accreditation.[12]

On April 7, 2007, Regalado called Doromal on the latter's mobile phone asking if the school was "ready." Doromal responded by saying that the school was ready for inspection, but not to pay ₱50,000.00 as accreditation fee. Regalado persuaded Doromal to pay ₱50,000.00 directly to her by claiming that the cost of the inspection could soar as high as ₱100,000.00 if it were to be done instead by officers coming from the Bureau of Immigration's Manila Office, as Doromal would still have to spend for the inspectors' plane fares, billeting at the Marco Polo Hotel, and a special dinner on top of the ₱50,000.00

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[9] *Id.* at 15.

[10] *Id.* at 43.

[11] *Id.* at 59.

[12] *Id.* at 43.

"honorarium."[13] Regalado insisted on how paying just ₱50,000.00 directly to her would benefit Doromal. She explained, however, that if Doromal were to tender the ₱50,000.00, only ₱10,000.00 would be covered by a receipt.[14]

Doromal later sent Regalado a text message, saying that she could not pay ₱50,000.00. Regalado replied that it if she were to decline paying ₱50,000.00, she would have to go through the entire accreditation process all over again. Doromal replied that she did not mind re-applying, as long as she would be relieved of having to pay ₱50,000.00.[15]

On April 10, 2007, Regalado sent Doromal a text message asking to meet "so that the amount being asked may be reduced."[16]

On May 3, 2007, Regalado sent Doromal another text message encouraging her to pursue the accreditation as Regalado allegedly managed to reduce the accreditation fee to ₱10,000.00.[17]

On May 21, 2007, Regalado came to inspect St. Martha's. When Regalado had finished, Doromal asked if it was possible to pay the ₱10,000.00 by check but Regalado insisted on payment by cash. She also reminded Doromal that she would also have to pay "honorarium." Doromal inquired how much it was. Regalado responded, "*[I]kaw na bahala, ayaw ko na talaga i-mention yan baka umatras ka pa.*"[18] Regalado further instructed Doromal to come to her office on May 23, 2007 with the cash enclosed in an unmarked brown envelope and to say that it contained "additional documents," if anyone were to inquire about its contents.[19]

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[13] *Id*.

[14] *Id*.

[15] *Id*. at 44.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

Doromal could not personally come to Regalado's office on May 23, 2007 as she had to leave for the United States, so Diaz went in Doromal's stead. She was accompanied by Mae Kristen Tautho (Tautho), a Kindergarten teacher at St. Martha's. Diaz carried with her an unmarked brown envelope containing the white envelope with ₱1,500.00 inside as "honorarium."[20]

Upon finding that the contents were only ₱1,500.00, Regalado blurted, "O my God."[21] Diaz asked, "*Bakit po?*"[22] Regalado exclaimed, "You want me to give this amount to my boss?" Diaz asked how much the honorarium should be. Regalado replied that it should be at least ₱30,000.00. Diaz asked what the ₱30,000.00 was for. Regalado retorted, "It will go to my boss along with your accreditation papers and endorsement letter . . . *Ganyan ang system dito pag magprocess, actually na lower na nga ang amount because the inspectors are not from Manila, you will not book them at the Marco Polo Hotel, you will no longer entertain them, it's cheaper*."[23] Diaz asked, "Is this under the table ma'am?"[24] Regalado brazenly replied, "Yes, my dear, that's the system ng government."[25] Diaz lamented, "So sad to know that."[26] Regalado scoffed, "*Ganito ang system, ano ako magmamalinis?*"[27] Diaz and Tautho underscored that the transaction was illegal and asked what would happen if someone were to pry around. Regalado assured them, "*I'll be backing you up, walang gugulo sa inyo*."[28]

Regalado instructed Diaz and Tautho to return the following day with ₱30,000.00. She then directed them to pay the

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[20] *Id*.

[21] *Id*. at 46.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

accreditation fee of ₱10,000.00 with the cashier. After payment, Regalado demanded that they surrender to her the official receipt. Before leaving, Regalado asked Diaz about her companion. Upon finding out that Tautho was a teacher at St. Martha's, Regalado remarked, "*Ah at least safe tayo, mahirap na baka magsumbong*."[29]

On May 24, 2007, Regalado called Diaz, asking if she had cleared with Doromal the payment of ₱30,000.00 and emphasized that it was for her boss.[30]

On May 29, 2007, Doromal, Diaz, and Tautho filed with the Office of the Ombudsman for Mindanao a Complaint against Regalado.[31] Thus, an administrative case was filed for Grave Misconduct, penalized by Rule IV, Section 52(A)(3) of Civil Service Commission Resolution No. 991936,[32] and for violation of Section 7(d) of Republic Act No. 6713.[33]

In her defense, Regalado denied ever extorting money from Doromal, Diaz, and Tautho, claiming they were merely in league with "people who ha[d] a grudge against her."[34] She admitted asking for ₱50,000.00 but cited that per Office Memorandum Order No. RBR 00-57, this was the amount properly due from a school accredited to admit foreign students. She explained that, indeed, the amount due may be lowered and surmised that

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[29] *Id*.

[30] *Id*. at 46 and 45.

[31] *Id*. at 45.

[32] CSC Res. No. 991936 (1999), Sec. 52(A)(3) Uniform Rules on Administrative Cases in the Civil Service.

Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

. . . . . .

3. Grave Misconduct
1st offense — Dismissal

[33] Code of Conduct and Ethical Standards for Public Officials and Employees.

[34] *Rollo*, p. 45.

her explanations made in good faith to Doromal were misconstrued.[35] She claimed that she only really wanted to help St. Martha's.[36]

In its November 5, 2008 Decision,[37] the Office of the Ombudsman for Mindanao found Regalado guilty, thus:

> WHEREFORE, foregoing premises considered, this Office finds substantial evidence to hold MARIA ROWENA REGALADO y PLURAL guilty of Grave Misconduct and violation of Sec. 7(d) of R.A. 6713, any of which merits her removal from the government service. She is thus meted with the supreme penalty of DISMISSAL FROM THE SERVICE, which shall carry with it the accessory penalties of CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, and PERPETUAL DISQUALIFICATION [FROM] REEMPLOYMENT IN THE GOVERNMENT SERVICE.[38]

On June 24, 2011, Acting Ombudsman Orlando Casimiro approved the Office of the Ombudsman for Mindanao Decision.[39]

In its September 8, 2011 Order,[40] the Office of the Ombudsman denied Regalado's Motion for Reconsideration.[41]

In its January 7, 2013 Decision,[42] the Court of Appeals affirmed in *toto* the Office of the Ombudsman's ruling.

The Court of Appeals explained that in the first place, St. Martha's did not even have to seek accreditation. The supposed basis for accreditation, Office Memorandum Order No. RBR 00-57,[43] apply only to the accreditation of Higher Education

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[35] *Id*.

[36] *Id*. at 47.

[37] No copy annexed to the Petition.

[38] *Rollo*, p. 48.

[39] *Id*.

[40] No copy annexed to the Petition.

[41] *Rollo*, p. 48.

[42] *Id*. at 41-62.

[43] BI Office Memo. Order No. RBR 00-57 (2000).

Institutions and not to Day Care Centers like St. Martha's.[44] The Court of Appeals added that this Memorandum required the payment of ₱10,000.00 only, not ₱50,000.00, as accreditation fee.[45] It also explained that Regalado knowingly used a falsified copy of this Memorandum, one which did not bear the signature of then Bureau of Immigration Commissioner Rufus Rodriguez, and which erroneously indicated ₱50,000.00 as the accreditation fee.[46]

The dispositive portion of the Court of Appeals January 7, 2013 Decision read:

> WHEREFORE, in view of the foregoing, the Petition in CA-G.R. SP No. 120843 is DISMISSED for being moot and academic. The Petition in CA-G.R. SP No. 121748 is DENIED for lack of merit. The Decision dated 05 November 2008 and Order dated 8 September 2011 of the Office of the Ombudsman are hereby AFFIRMED in toto.
>
> SO ORDERED.[47]

Acting on Regalado's Motion for Reconsideration, the Court of Appeals issued its Amended Decision dated July 19, 2013,[48] which maintained Regalado's liability. However, it noted that it had failed to consider the affidavits executed by representatives of other schools previously assisted by Regalado, expressing their satisfaction with her service.[49] It added that "this is the very first time that [Regalado] was found to be administratively liable,"[50] and that she had previously been credited with "good work performance."[51] On account of the mitigating circumstances

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[44] *Id.* at 57.

[45] *Id.* at 56.

[46] *Id.* at 56-57.

[47] *Id.* at 61.

[48] *Id.* at 28-39.

[49] *Id.* at 37.

[50] *Id.* at 38.

[51] *Id.*

it noted, the Court of Appeals modified Regalado's penalty to only one (1)-year suspension without pay.[52] It added that Regalado had effectively served the entire duration of her suspension, thereby entitling her to reinstatement.[53]

The dispositive portion of the Court of Appeals July 19, 2013 Amended Decision read:

> WHEREFORE, the foregoing considered, WE hereby AMEND the DECISION dated 07 January 2007 by reducing the penalty imposed on Maria Rowena Regalado from DISMISSAL from the service to SUSPENSION FROM OFFICE WITHOUT PAY FOR ONE (1) YEAR, which is deemed to have already been served by her.
>
> Accordingly, WE hereby order petitioner's REINSTAMENT to her former position without loss of seniority and payment of her back wages and such other emoluments that she did not receive by reason of her dismissal from the service.
>
> SO ORDERED.[54]

Asserting that the reduction of Regalado's penalty to one (1)-year suspension was unwarranted, the Office of the Ombudsman filed the present Petition[55] seeking the reinstatement of the Court of Appeals January 7, 2013 original Decision.

The acts attributed to Regalado are no longer in dispute. At no point did the Court of Appeals July 19, 2013 Amended Decision disavow the truth of the factual findings relating to them.

Further, how Regalado's acts amount to Grave Misconduct and a violation of Section 7(d) of Republic Act No. 6713 is no longer in issue. The rulings rendered by the Office of the Ombudsman for Mindanao, the Office of the Ombudsman, and the Court of Appeals in its January 7, 2013 original Decision are uniform in these findings.

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[52] *Id.* at 39.

[53] *Id.*

[54] *Id.* at 39.

[55] *Id.* at 10-26.

The Office of the Ombudsman for Mindanao November 5, 2008 Decision explicitly stated that Regalado was "guilty of Grave Misconduct and violation of Sec. 7(d) of R.A. 6713."[56] The Court of Appeals January 7, 2013 original Decision also stated that "[t]he Decision dated 05 November 2008 and Order dated 8 September 2011 of the Office of the Ombudsman are hereby AFFIRMED in toto."[57] At no point did the Court of Appeals July 19, 2013 Amended Decision dispute the prior conclusions on the exact nature of Regalado's liability. In accordance with its dispositive portion, all it did was to "AMEND the DECISION dated 07 January 2007 by reducing the penalty imposed."[58]

Even Regalado herself opted to no longer appeal the Court of Appeals July 19, 2013 Amended Decision. Instead of Regalado, it was the Office of the Ombudsman which filed the present appeal. This appeal specifically prayed that "[j]udgment be rendered REVERSING and SETTING ASIDE the Amended Decision of the Court of Appeals dated 19 July 2013 and REINSTATING the Decision of the Court of Appeals dated 07 January 2013."[59]

Accordingly, all that remains in issue is whether or not the Court of Appeals erred in meting upon respondent Maria Rowena Regalado the reduced penalty of one (1)-year suspension without pay, in view of the mitigating circumstances it appreciated in respondent's favor.

The confluence and totality of respondent's actions are so grave that the Court of Appeals was in serious error in setting aside the original penalty of dismissal from service.

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[56] *Id.* at 48.

[57] *Id.* at 61.

[58] *Id.* at 39.

[59] *Id.* at 22.

I

The 1987 Constitution spells out the basic ethos underlying public office:

> Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[60]

The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust. As Chief Justice Enrique Fernando eloquently wrote in his concurrence in *Pineda v. Claudio*:[61]

> [W]e must keep in mind that the Article on the Civil Service, like other provisions of the Constitution, was inserted primarily to assure a government, both efficient and adequate to fulfill the ends for which it has been established. That is a truism. It is not subject to dispute. It is in that sense that a public office is considered a public trust.
>
> Everyone in the public service cannot and must not lose sight of that fact. While his right as an individual although employed by the government is not to be arbitrarily disregarded, he cannot and should not remain unaware that the only justification for his continuance in such service is his ability to contribute to the public welfare.[62] (Citation omitted)

No one has a vested right to public office. One can continue to hold public office only for as long as he or she proves worthy of public trust.

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[60] CONST., Art. XI, Sec. 1.

[61] 138 Phil. 37 (1969) [Per *J.* Castro, *En Banc*].

[62] *J.* Fernando, Concurring Opinion in *Pineda v. Claudio,*138 Phil. 37, 58 (1969) [Per *J.* Castro, *En Banc*].

II

Consistent with the dignity of public office, our civil service system maintains that misconduct tainted with "any of the additional elements of corruption, willful intent to violate the law or disregard of established rules"[63] is grave. This gravity means that misconduct was committed with such depravity that it justifies not only putting an end to an individual's current engagement as a public servant, but also the foreclosure of any further opportunity at occupying public office.

Accordingly, the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)[64] consider grave misconduct as a grave offense warranting the ultimate penalty of dismissal from service with the accessory penalties of cancellation of eligibility, perpetual disqualification from public office, bar from taking civil service examinations, and forfeiture of retirement benefits. Rule 10, Sections 50 and 57 of the 2017 RACCS provide:

> Section 50. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
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> . . . . . .

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[63] *Office of the Ombudsman v. Faller*, G.R. No. 208976 (Resolution), February 22, 2016 [Per *J.* Leonen, Second Division] citing *Atty. Valera v. Office of the Ombudsman*, *et al.,* 570 Phil. 368, 385 (2008) [Per *C.J.* Puno, First Division].

Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence."

[64] CSC Res. No. 1701077 (2017), 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

3. Grave Misconduct;

. . . . . .

Section 57. Administrative Disabilities Inherent in Certain Penalties. — The following rules shall govern in the imposition of accessory penalties:

a. The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits.

Terminal leave benefits and personal contributions to Government Service Insurance System (GSIS), Retirement and Benefits Administration Service (RBAS) or other equivalent retirement benefits system shall not be subject to forfeiture.[65]

In like manner, Civil Service Commission Resolution No. 991936, the Uniform Rules on Administrative Cases in the Civil Service, which were in effect during respondent's commission of the acts charged against her, provided:

RULE IV

Penalties

Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

. . . . . .

3. Grave Misconduct
1st offense — Dismissal

. . . . . .

Section 58. Administrative Disabilities Inherent in Certain Penalties. —

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[65] CSC Res. No. 1701077 (2017), Rule 10, Secs. 50 and 57.

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.[66]

III

Apart from the general treatment of misconduct with "any of the additional elements of corruption, willful intent to violate the law or disregard of established rules,"[67] Republic Act No. 6713 specifically identifies as unlawful the solicitation or acceptance of gifts "in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office."[68]

Section 7(d) of Republic Act No. 6713 provides:

Section 7. *Prohibited Acts and Transactions*. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

. . . . . .

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to:

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[66] CSC Res. No. 991936 (1999), Secs. 52(A)(3) and 58.

[67] *Office of the Ombudsman v. Faller*, G.R. No. 208976 (Resolution), February 22, 2016. [Per *J.* Leonen, Second Division] citing *Atty. Valera v. Office of the Ombudsman, et al.,* 570 Phil. 368, 385 (2008) [Per *C.J.* Puno, First Division].

[68] Rep. Act No. 6713 (1989), Sec. 7(d).

(i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

The Ombudsman shall prescribe such regulations as may be necessary to carry out the purpose of this subsection, including pertinent reporting and disclosure requirements.

Nothing in this Act shall be construed to restrict or prohibit any educational, scientific or cultural exchange programs subject to national security requirements.[69]

Section 7(d) of Republic Act No. 6713, which took effect in 1989, is in addition to Section 3(c) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act enacted in 1960. Section 3(c) provides:

Section 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in

[69] *Id*.

consideration for the help given or to be given, without prejudice to Section thirteen of this Act.[70]

Republic Act No. 3019 punishes violations of its Section 3 with imprisonment, perpetual disqualification from public office, and confiscation or forfeiture of proceeds:

Section 9. *Penalties for violations*. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing.[71]

For its part, Republic Act No. 6713 penalizes violations of its Section 7 with imprisonment and/or a fine, as well as disqualification to hold public office:

Section 11. Penalties. — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

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[70] Rep. Act No. 3019 (1960), Sec. 3(c).

[71] Rep. Act No. 3019 (1960), Sec. 9(a).

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.[72]

Section 11(b) of Republic Act No. 6713 explicitly states that dismissal from the service may be warranted through an administrative proceeding, even if the erring officer is not subjected to criminal prosecution. This is in keeping with the three (3)-fold liability rule in the law on public officers, "which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others."[73]

IV

It is without question that respondent violated Section 7(d) of Republic Act No. 6713. The Court of Appeals summarized her "modus operandi," as follows:

[T]he *modus operandi* of [Regalado] is to present to applicants for accreditation a fake copy of Office Memorandum Order No. RBR 00-57 providing an accreditation fee of ₱50,000.00 to be able to charge the said amount, when the actual fee required is only ₱10,000.00. If the applicant cannot afford to pay such a high amount, [Regalado], as she did in the present case, will tell the applicant that through her efforts, she will be able to reduce the accreditation fee to ₱10,000.00. However, in return, the applicant will have to give an honorarium to [Regalado's] boss amounting to at least ₱30,000.00.[74]

The matter is not a question of whether or not, as respondent mentions in her Comment to the present Petition, she actually received or profited from the solicitation of any amount from the complainants, or that she solicited even after she had

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[72] Rep. Act No. 6713 (1989), Sec. 11(a)(b).

[73] *Domingo v. Rayala*, 569 Phil. 423, 447 (2008), citing *Office of the Court Administrator v. Enriquez*, Adm. Matter No. P-89-290, 218 SCRA 1 (1993) [Per *J.* Nachura, Third Division].

[74] *Rollo*, pp. 55-56.

completed the inspection of St. Martha's.[75] Section 7(d) of Republic Act No. 6713 penalizes both solicitation and acceptance. This is similar to how Section 3(c) of Republic Act No. 3019 penalizes both the requesting and receiving of pecuniary or material benefits. In Section 7(d), the prior or subsequent performance of official acts is also immaterial.

It is equally without question that respondent engaged in misconduct that was tainted with corruption and with willful intent to violate the law and to disregard established rules. The act of requesting pecuniary or material benefits is specifically listed by Section 3(c) of Republic Act No. 3019 as a "corrupt practice." Further, there is certainly nothing in the records to suggest that respondent's actions were not products of her own volition.

It is clear, then, that respondent's actions deserve the supreme penalty of dismissal from service. The Court of Appeals, however, held that certain circumstances warrant the reduction of respondent's penalty to a year-long suspension.

The Court of Appeals was in serious error.

V

The Court of Appeals noted, as a mitigating circumstance, "that petitioner has not been previously charged of any offense and this is the very first time that she was found to be administratively liable."[76]

In taking this as a mitigating circumstance, the Court of Appeals ran afoul of the clear text of the Uniform Rules on Administrative Cases in the Civil Service. Rule IV, Section 52(A)(3) of these Rules unqualifiedly states that dismissal shall be meted even if it is only the first offense:

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[75] *Id*. at 118.

[76] *Id*. at 38.

RULE IV

Penalties

Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

. . . . . .

3. Grave Misconduct
1st offense — Dismissal[77]

Jurisprudence has been definite on this point. This Court's *En Banc* Decision in *Duque v. Veloso*[78] underscored how "the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance."

> [T]he circumstance that this is the respondent's first administrative offense should not benefit him. By the express terms of Section 52, Rule IV of the Uniform Rules, the commission of an administrative offense classified as a serious offense (like dishonesty) is punishable by dismissal from the service even for the first time. In other words, the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance. Likewise, under statutory construction principles, a special provision prevails over a general provision. Section 53, Rule IV of the Uniform Rules, a general provision relating to the appreciation of mitigating, aggravating or alternative circumstances, must thus yield to the provision of Section 52, Rule IV of the Uniform Rules which expressly provides for the penalty of dismissal *even for the first commission of the offense*.[79] (Emphasis supplied)

In *Medina v. Commission on Audit*,[80] this Court emphasized that "a grave offense cannot be mitigated by the fact that the

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[77] CSC Res. No. 991936 (1999), Sec. 52(A)(3).

[78] 688 Phil. 318 (2012) [Per *J.* Brion, *En Banc*].

[79] *Id.* at 326.

[80] *Medina v. Commission on Audit*, 567 Phil. 649 (2008) [Per *J.* Tinga, *En Banc*].

accused is a first-time offender or by the length of service of the accused."[81]

Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the fact that the accused is a first time offender or by the length of service of the accused. In *Civil Service Commission v. Cortez*, the Court held as follows:

> The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases, we imposed the heavier penalty of dismissal or a fine of more than ₱20,000.00, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.

Also, in *Concerned Employees v. Nuestro*, a court employee charged with and found guilty of dishonesty for falsification was meted the penalty of dismissal notwithstanding the length of her service in view of the gravity of the offense charged.

To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[82] (Citations omitted)

The fact that an offender was caught for the first time does not, in any way, abate the gravity of what he or she actually committed. Grave misconduct is not a question of frequency, but, as its own name suggests, of gravity or weight. One who commits grave misconduct is one who, by the mere fact of that misconduct, has proven himself or herself unworthy of the

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[81] *Id*. at 664.

[82] *Id*. at 664-665.

continuing confidence of the public. By his or her very commission of that grave offense, the offender forfeits any right to hold public office.

Underscoring the severity of grave misconduct and other offenses meriting dismissal, the 2017 RACCS now specifically state that no mitigating circumstances, of any sort, may be appreciated in cases involving an offense punishable by dismissal from service:

> Section 53. Mitigating and Aggravating Circumstances.— Except for offenses punishable by dismissal from the service, the following may be appreciated as either mitigating or aggravating circumstances in the determination of the penalties to be imposed:
>
> a. Physical illness;
> b. Malice;
> c. Time and place of offense;
> d. Taking undue advantage of official position;
> e. Taking undue advantage of subordinate;
> f. Undue disclosure of confidential information;
> g. Use of government property in the commission of the offense;
> h. Habituality;
> i. Offense is committed during office hours and within the premises of the office or building;
> j. Employment of fraudulent means to commit or conceal the offense;
> k. First offense;
> l. Education;
> m. Length of service; or
> n. Other analogous circumstances.
>
> In the appreciation thereof, the same must be invoked or pleaded by the respondent, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice, may take and consider these circumstances *motu proprio*.[83]

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[83] CSC Res. No. 1701077 (2017), Sec. 53.

VI

The Court of Appeals also cited respondent's supposed "good work performance"[84] and referenced "affidavits executed by the representatives of other schools previously assisted by [respondent] . . . stating their satisfaction with the service rendered by [her]."[85]

This Court is, quite frankly, baffled by how solicited statements of support from supposedly satisfied clients could operate to erode the liability of one such as respondent.

The plain and evident truth is that, while the language of the charge against respondent seemed austere and unadorned, she did so much more than merely solicit pecuniary benefits from the complainants. A more appropriate summation of respondent's actions should recognize how she was so brazen in extorting—not merely soliciting, but downright badgering—money from the complainants. Throughout a prolonged period extending seven (7) months from October 2006 to May 2007, she pestered the complainants for bribes that she variably referred to as "processing fee,"[86] "accreditation fee,"[87] and "honorarium."[88] Respondent could not even bear to be consistent about the language she would use in her attempts to conceal extortion.

In the course of pressing the complainants for money, respondent even knowingly used a falsified copy of an official issuance of the Bureau of Immigration. The Court of Appeals took lengths to explain how respondent did this and then proceeded to explain the incredulity of respondent's denials:

> First, the records of the case show that when Doromal first met [respondent] at the Bureau, the latter told her that the accreditation fee is ₱50,000.00. [Respondent's] basis in assessing such amount

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[84] *Rollo,* p. 38.

[85] *Id.* at 37.

[86] *Id.* at 43.

[87] *Id.*

[88] *Id.*

was her copy of *Office Memorandum Order No. RBR 00-57* which petitioner showed to Doromal when the latter was applying for accreditation. A copy of the said memorandum was also attached by petitioner to her counter-affidavit. The certified copy of the same memorandum submitted by Mr. Estrada, Chief of the Student Desk of the Bureau of Immigration, however, shows that the accreditation fee is merely ₱10,000.00.

Conspicuously missing also from petitioner's copy is the signature of the Commissioner of the Bureau of Immigration, Rufus Rodriguez. By reason of these dissimilarities, Atty. Tansingco, Chief of Staff of the Commissioner of the Bureau of Immigration was prompted to declare petitioner's copy as fake in his letter dated 05 December 2007 submitted to the Ombudsman.

[Respondent] denies knowing that the copy she was using is fake as she alleges that she merely obtained it from the available records of the Davao District Office. She, however, failed to present any proof to support this contention. Mere allegation is not proof. It was incumbent on the part of [respondent] to prove this allegation by at least submitting any copy of the memorandum existing in their Davao office similarly showing that the accreditation fee being charged is ₱50,000.00 and also not bearing the signature of the Commissioner of the Bureau of Immigration. Petitioner could have also submitted the affidavit of any of her officemates that they have also used or even came in contact with a copy of the said memorandum with the same omissions. [Respondent's] failure to do any of these greatly prejudiced her case.

Furthermore, WE agree with the observation of the Ombudsman that [respondent's] explanation that she does not know that the copy she was using is falsified and that she merely relied on the copy of *Office Memorandum No. RBR 00-57* available at their office, to be flimsy and crude to be worthy of belief. For even as [respondent] alleges that at the time she was merely an entry level employee when she was assigned to the Student's Desk at the Office and that to perform her duties she had to rely on her superior officers as well as the records of the office for information as to the applicable rules and regulations, it is still hard to believe that she was not able to discern the illegality of the copy of the memorandum she was using as it is clear that the same was unsigned.[89] (Citation omitted)

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[89] *Id.* at 56-57.

Still in the course of badgering the complainants for money, respondent professed exercising undue influence over other officers of the Bureau of Immigration. She stated, "*I'll be backing you up, walang gugulo sa inyo.*"[90] Likewise, she implicated other officers, repeatedly asserting that she was only soliciting for her boss, implying others were in on her corrupt scheme, and suggesting that Bureau of Immigration officers from Manila would have been more prodigal.[91]

Respondent's incessant demands also came with less than subtle threats that the complainants' inability to comply with her exaction would result in the denial of benefits that was available to St. Martha's. Recall that respondent told Doromal that it would be to Doromal's disadvantage were she to decline paying ₱50,000.00 as she would have to go through the entire accreditation process all over again. This was despite the fact that St. Martha's did not even need to go through accreditation, as the Court of Appeals explained, and how it submitted accreditation papers, even if it did not need to.[92]

Apart from these, when Diaz and Tautho paid through the Bureau of Immigration's official cashier, respondent, with neither reason nor any right to do so, demanded that they surrender to her their official receipt.[93]

Most telling of respondent's audacity and depravity is how she did not mince words in not only professing her own corruption, but even besmirching the entire government. Asked by Diaz if she was making demands "under the table," respondent answered, "*Yes, my dear, that's the system ng government.*"[94] She even added, "*Ganito ang system, ano ako magmamalinis?*"[95]

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[90] *Id.* at 46.

[91] *Id.*

[92] *Id.* at 44.

[93] *Id.* at 31-32.

[94] *Id.*

[95] *Id.*

Far from demonstrating considerations that should mitigate respondent's liability, her litany of transgressions could conceivably be appreciated as even aggravating. Her case makes it seem like someone breathed life to a caricature of a corrupt bureaucrat.

The civil service cannot have itself overrun by officers such as respondent. They make a mockery of every ideal that public service exemplifies. For once, some individuals had the courage to not condone her corruption. This is enough to show that respondent is nowhere near deserving of public trust. As a measure of recompense to the public, and as a portent to others who may be similarly disposed, this Court does not hesitate to impose upon respondent the supreme administrative penalty of dismissal from government service.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The July 19, 2013 Amended Decision of the Court of Appeals in CA-G.R. SP Nos. 120843 and 121748 is **REVERSED and SET ASIDE**. The Court of Appeals January 7, 2013 original Decision in the same CA-G.R. SP Nos. 120843 and 121748 is **REINSTATED**.

Respondent MARIA ROWENA REGALADO is found **GUILTY** of Grave Misconduct and of violating Section 7(d) of Republic Act No. 6713. She is to suffer the penalty of dismissal from service, along with its accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from employment in government.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin,* and *Gesmundo, JJ.,* concur.

Martires, J., on official leave, as per Letter dated January 18, 2018.

FIRST DIVISION

[G.R. No. 208642. February 7, 2018]

FACILITIES, INCORPORATED, *petitioner, vs.* **RALPH LITO W. LOPEZ,** *respondent.*

[G.R. No. 208883. February 7, 2018]

RALPH LITO W. LOPEZ, *petitioner, vs.* **FACILITIES, INCORPORATED,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE OCCASION IS NOT FOR FULL AND EXHAUSTIVE DISPLAY OF THE PARTIES' EVIDENCE BUT FOR THE PRESENTATION ONLY OF SUCH EVIDENCE AS MAY ENGENDER A WELL-FOUNDED BELIEF THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED IS PROBABLY GUILTY OF THE OFFENSE.—According to Section 1, Rule 112 of the Rules of Court, a preliminary investigation, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense. "The role and object of preliminary investigation were to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."

2. CIVIL LAW; CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND

SHOULD BE COMPLIED WITH IN GOOD FAITH; CASE AT BAR.—x x x "[i]t is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."Lopez who represented PPDC, freely signed the *MOA*. He cannot now be allowed to renege on his obligation to deliver the titles over the subject lots, based on his claim that PPDC was unable to occupy the entire portion of the condominium units.

3. **MERCANTILE LAW; PRESIDENTIAL DECREEE NO. 957 (THE SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE); A VIOLATION OF THE PROVISIONS OF THE LAW MAY BE THE SUBJECT OF A CRIMINAL ACTION, AND NOT MERELY LIMITED TO A CIVIL REMEDY; APPLICATION IN CASE AT BAR.—**Contrary to Lopez's stance, a suit for the violation of P.D. No. 957 is independent from whatever remedy granted under the MOA, *i.e.*, rescission of the Contract to Sell, or under existing laws, which obviously includes the provisions of the RPC. A perusal of P.D. No. 957 reveals that a violation of its provisions may be the subject of a criminal action, and not merely limited to a civil remedy. The decree expressly recognizes that the aggrieved party may avail of the remedies provided not only in P.D. No. 957, but also under existing laws. x x x Notably, nowhere in the aforecited provision nor in the full text of P.D. No. 957, does it say that the aggrieved party is barred from filing a criminal complaint under P.D. No. 957 and under the RPC. Also, it is clear that the MOA did not limit the remedy to rescission in case of breach by PPDC. This Court cannot merely supply material stipulations to a contract, so as to favor one party against the other pertaining to the remedies available to each of them. Indeed, "[w]hen the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs."

4. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; THE REVISED PENAL CODE PENALIZES A PERSON WHO PRETENDS TO BE THE OWNER OF A REAL PROPERTY AND SELLS THE SAME; PRESENT IN CASE AT BAR.—** x x x Lopez may likewise be held criminally liable under the RPC. Paragraph 1, Article 316 of the RPC penalizes a person who pretends to be the owner of a real property and sells the

> same, x x x Here, the records show that Lopez, on behalf of PPDC, misrepresented to Facilities that PPDC is the owner of the subject lots and that it has good and indefeasible title over them. These categorical statements led Facilities to enter into a MOA with PPDC and subsequently into a Contract to Sell and Contract of Lease. As indicated earlier, Facilities complied with its obligation under the lease contract and allowed PPDC to occupy the condominium units which served as the consideration of the subject lots. PPDC, however, ignored its obligation to deliver the titles over the subject lots which was part of their agreement. Up until the filing of the criminal complaint, the subject lots remain in the name of Primo Erni; not PPDC; and certainly not Facilities. x x x Prescinding from the aforementioned discussion, We hold that there is probable cause sufficient to institute a criminal complaint against Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner Facilities, Inc.

Padilla Reyes & Dela Torre Law Offices for respondent Ralph Lito W. Lopez.

D E C I S I O N

TIJAM, *J.*:

Before the Court are two consolidated petitions for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated January 24, 2013 and Resolution[3] dated August 8, 2013 both of the Court of Appeals (CA) in CA-G.R.SP No. 112315.

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[1] *Rollo* (G.R. No. 208642), pp. 20-34; *rollo* (G.R. No. 208883), pp. 10-25.

[2] Penned by Associate Justice Elihu A. Ybañez, concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes; *rollo* (G.R. No. 208642), pp. 39-47.

[3] *Id*. at 49-51.

Antecedent Facts

On July 23, 1999, a Memorandum of Agreement (MOA)[4] was entered into between Facilities, Inc. (Facilities), represented by its President, Vicente M.W. Araneta III (Araneta III) and Primelink Properties and Development Corporation (PPDC), represented by its developer, President and CEO, Ralph Lito W. Lopez (Lopez). As stated in the MOA, PPDC is the owner of three lots (subject lots) which it is developing into a residential subdivision project known as Tagaytay Woodsborough Residential Estate (the Project), located at Barrio Asisan, Tagaytay City; while Facilities is the registered owner of Units 1601 and 1602 (condominium units) of Summit One Office Tower located at 530 Shaw Boulevard, Mandaluyong City.[5] On even date, the parties executed a Contract to Sell[6] over the subject lots and Contract of Lease[7] over the condominium units. These contracts, which Facilities referred to as a "swap arrangement,"[8] are embodied in the essential provisions of the MOA.

The MOA provides for the so-called "swap arrangement" between Facilities and PPDC in the following manner: Facilities agreed to lease the condominium units for a period of four years to PPDC. As a consideration for the first twenty-one (21) months of the four-year lease, PPDC through Lopez, agreed to execute a deed of absolute sale covering the subject lots in favor of Facilities. PPDC also committed to deliver the transfer certificate of title (TCT) covering the subject lots in Facilities' name within a period of 360 days reckoned from July 23, 1999. PPDC further bound itself to issue a certificate of ownership over the subject lots during the pendency of the processing and issuance of the individual titles.[9]

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[4] *Id*. at 77-80.

[5] *Id*. at 77.

[6] *Id*. at 83-87.

[7] *Id*. at 89-101.

[8] *Rollo* (G.R. No. 208883), p. 72.

[9] *Rollo* (G.R. No. 208642), pp. 40, 77 and 79.

As a remedial measure, sub-paragraph 3.4.5[10] of the MOA and paragraph 3[11] of the Contract to Sell stipulates that Facilities shall have the right to demand the cancellation of the contract to sell and the payment of ₱2,384,985.60 from PPDC, in case of PPDC's failure to comply with its undertaking.

Pursuant to these agreements, PPDC moved into the condominium units in August 1999 and occupied the same for over a period of 21 months from September 1999 until December 2001.[12]

Facilities followed-up on PPDC's commitment to deliver the TCTs over the subject lots. Despite repeated demands, PPDC failed to comply with its contractual obligation and instead vacated the leased premises without leaving any forwarding address.[13]

Later on, Facilities discovered that contrary to PPDC's representation, the title over the subject lots was still registered in the name of a certain Primo Erni.[14]

Consequently, Facilities, through its President, Araneta III filed a Complaint-Affidavit[15] before the Office of the City Prosecutor (OCP) of Mandaluyong City, alleging among others,

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[10] 3.4.5. Failure by the FIRST PARTY to perform any of the foregoing shall give the SECOND PARTY the right to demand the cancellation of the Contract to Sell the Lots and to demand from the FIRST PARTY the payment of cash in the amount of TWO MILLION THREE HUNDRED EIGHTY[-]FOUR THOUSAND NINE HUNDRED EIGHTY[-]FIVE PESOS and SIXTY CENTAVOS (Php2,384,985.60). *Id*. at 79.

[11] 3. Failure of the SELLER to perform any of the foregoing shall give the BUYER the right to demand the cancellation of this Contract to Sell and to demand from the SELLER payment in cash in the amount of TWO MILLION THREE HUNDRED EIGHTY[-]FOUR THOUSAND NINE HUNDRED EIGHTY[-]FIVE PESOS and SIXTY CENTAVOS (Php2,384,985.60). *Id*. at 84.

[12] *Id*. at 40.

[13] *Id*. at 118.

[14] *Id*. at 120.

[15] *Id*. at 115-122.

that: (1) Lopez's failure to deliver the titles to the subject lots is in clear contravention of Sections 25[16] and 39[17] of Presidential Decree (P.D.) No. 957,[18] otherwise known as The Subdivision and Condominium Buyers' Protective Decree; and (2) Lopez's false representations and act of selling the subject lots to the corporation makes him liable for the crime of *estafa* under paragraph 1, Article 316[19] of the Revised Penal Code (RPC).

In its Counter-Affidavit (with Motion to Dismiss), PPDC through Mr. Lopez, argued that: (1) Lopez was not guilty of violating Sections 25 and 39 of P.D. No. 957 since the subject lots were not fully paid due to Facilities' failure to turn-over the entire premises of the condominium units; and (2) Lopez

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[16] Sec. 25. *Issuance of Title*. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

[17] Sec. 39. *Penalties*. Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (₱20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.

[18] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

[19] Art. 316. *Other forms of swindling*. The penalty of *arresto mayor* in its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.

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is not liable for the crime of *estafa* because PPDC was the real owner of the subject lots as evidence by the Deed of Absolute Sale[20] executed by PPDC and the heirs of the registered owner, Primo Erni on October 12, 1998.[21]

In its September 30, 2002[22] and November 11, 2002[23] Resolutions, the OCP of Mandaluyong City dismissed the complaint and ruled that the remedy is civil in nature.

Dissatisfied, Facilities filed a Petition for Review[24] under Department Circular No. 70[25] otherwise known as the 2000 National Prosecution Service Rule on Appeal, of the Department of Justice (DOJ) averring among others, that the OCP of Mandaluyong City erred in holding that: (1) Facilities should have first filed an action for specific performance as it defeats the policy and purpose behind the enactment of P.D. No. 957; and (2) To be liable under paragraph 1, Article 316 of the RPC, one must misrepresent himself to be the "registered" owner, not merely the owner, of a real property.

Ruling of the DOJ

On October 8, 2007, the DOJ issued a Resolution[26] granting Facilities' petition, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the questioned resolution is hereby **REVERSED and SET ASIDE**. The City Prosecutor of Mandaluyong City is hereby directed to file the appropriate information against [Lopez] for violation of Sec. 25 of [P.D.] No. 957, and another information for *estafa* under paragraph 1 of Article 316 of the [RPC],

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[20] *Rollo* (G.R. No. 208642), pp. 517-519.

[21] *Id*. at 41.

[22] *Id*. at 154-157.

[23] *Id*. at 159.

[24] *Id*. at 161-180.

[25] *Cariaga v. Sapigao, et al.*, G.R. No. 223844, June 28, 2017.

[26] Penned by Acting Secretary of Justice Agnes VST Devanadera; *rollo* (G.R. No. 208642), pp. 245-249.

and to report to this Department the action taken within ten (10) days from receipt hereof.

SO ORDERED.[27]

Lopez moved for a reconsideration of the resolution but the same was denied by the DOJ in another Resolution[28] dated December 28, 2009.

Aggrieved, Lopez filed a Petition for *Certiorari* under Rule 65 with the CA, alleging grave abuse of discretion on the part of the SOJ.

Ruling of the CA

On January 24, 2013, the CA in its Decision,[29] partially granted Lopez's petition. The CA ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*, since it is indubitable that his company is the owner of the subject lots. The CA, however, agreed with the DOJ's finding of probable cause to warrant the prosecution of Lopez for violation of Section 25 of P.D. No. 957. The dispositive portion of the decision reads, thus:

WHEREFORE, premises considered, the instant Petition is PARTIALLY GRANTED. The Resolution dated 09 October 2007 is **AFFIRMED WITH THE MODIFICATION** that the directive to file information for violation of paragraph 1 of Article 316 of the [RPC] is **SET ASIDE**. The charge, however, against [Lopez] for violation of Section 25 of [P.D.] No. 957 is **MAINTAINED**.

SO ORDERED.[30]

Both parties filed their Motions for Partial Reconsideration dated February 27[31] and 14,[32] 2013, respectively. The motions,

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[27] *Id*. at 249.

[28] *Id*. at 252.

[29] *Id*. at 39-47.

[30] *Id*. at 47.

[31] *Id*. at 63-68.

[32] *Id*. at 53-61.

however, were both denied by the CA in its Resolution[33] dated August 8, 2013.

Hence, these petitions.

In G.R. No. 208642,[34] Facilities maintains that Lopez is guilty of *estafa* under paragraph 1, Article 316 of the RPC. In all the agreements executed by the parties, Lopez represented PPDC as having good and indefeasible title to the subject lots. Yet, the title of the subject lots remains in the name of a certain "Primo Erni." Facilities avers that despite numerous opportunities that were afforded Lopez to transfer ownership of the subject lots in Facilities' name, no title has been delivered to this day. Were it not for Lopez's representation that PPDC has good title to the subject lots, Facilities claims that it would not have entered into the MOA. Facilities, thus, prays for the reversal of the CA's decision insofar as it ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*.

In G.R. No. 208883,[35] Lopez insists that Facilities' remedy is purely civil in nature. Instead of filing a criminal complaint for *estafa*, Lopez claims that Facilities could have exhausted the remedy under sub-paragraphs 3.4.5 of the MOA, and paragraph 3 of the Contract to Sell, by demanding that the contract be rescinded and that PPDC be ordered to pay ₱2,384,985.60. Lopez maintains that he is the true owner of the subject lots based on the Deed of Absolute Sale which the heirs of the original registered owner executed in favor of PPDC on October 12, 1998. Lopez claims that he did not violate Section 25 of P.D. No. 957. He argues that since PPDC was unable to utilize the entire area of the condominium units, PPDC cannot be compelled to deliver the titles over the subject lots. He likewise claims that Facilities did not comply with its obligation to pay the notarial fees, documentary stamps, transfer and registration fees on the subject lots. Hence, Lopez entreats this Court to enter

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[33] *Id.* at 50-51.

[34] *Id.* at 20-34.

[35] *Rollo* (G.R. No. 208883), pp. 10-25.

a judgment dismissing the complaint for violation of Section 25, P.D. No. 957 filed against him.

From the foregoing, the core issue to be resolved in this case is whether there is probable cause to indict Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

Ruling of the Court

We now resolve.

According to Section 1, Rule 112 of the Rules of Court, a preliminary investigation, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.[36] "The role and object of preliminary investigation were to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."[37]

As We have postulated in ***Villanueva, et al. v. Caparas***,[38] the determination of the existence of probable cause lies within the discretion of the public prosecutor:

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted

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[36] *Dr. Osorio v. Hon. Desierto*, 509 Phil. 540, 555 (2005).

[37] *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 184 (2013).

[38] 702 Phil. 609 (2013).

the preliminary investigation on the offended party's complaint. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination. As a rule, the Secretary's findings are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; or when he grossly misapprehends facts; or acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.[39] (Citations omitted)

In ***Atty. Allan S. Hilbero v. Florencio A. Morales, Jr.***,[40] this Court elucidated that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man 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. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

In this case, there is evidence showing that more likely than not Lopez violated Section 25 of P.D. No. 957 and committed acts constitutive of the crime of *estafa* under paragraph 1, Article 316 of the RPC.

We explain.

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[39] *Id*. at 616.

[40] G.R. No. 198760, January 11, 2017, citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 519 (2008).

Section 25 of P.D. No. 957, requires a developer, such as PPDC, of which Lopez is the President and CEO, to deliver the title of the lot or unit to the buyer, upon full payment of the said lot or unit. The provision partly reads, thus:

> Sec. 25. *Issuance of Title*. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. xxx.

Indeed, the failure to comply with this explicit obligation makes the developer or the person who was charge of the administration of the business, criminally liable. Section 39 of P.D. No. 957 provides, thus:

> Sec. 39. *Penalties*. ***Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine*** of not more than twenty thousand (₱20,000.00) pesos ***and/or imprisonment*** of not more than ten years: Provided, That ***in the case of corporations***, partnership, cooperatives, or associations, ***the President,*** Manager or Administrator ***or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto***. (Emphasis and italics ours)

The records established that Facilities and Lopez entered into a MOA, a Contract of Lease, and a Contract to Sell, over the subject lots located at Tagaytay City and the condominium units located at Shaw Boulevard, Mandaluyong City. Essentially, these agreements provide that as advance rental payments for the first twenty-one (21) months of a four-year lease agreement, PPDC, through Lopez would transfer the subject lots to and register it in the name of Facilities. Simply stated, the parties agreed that the consideration for the sale of the subject lots is the lease of the condominium units by PPDC for the first twenty-one (21) months of the four-year lease agreement.

It is indisputable that Facilities performed its end of the bargain from the moment it allowed PPDC to utilize the condominium units for a period of twenty-eight (28) months. This was admitted by none other than Lopez himself when he stated in his Counter-

Affidavit that PPDC occupied the premises owned by Facilities, beginning August 1999 up to December 2001,[41] or a period of twenty-eight (28) months, which is even beyond what was stipulated in the MOA. Despite this, PPDC through Lopez, refused to complete the titling process and issue the titles over the subject lots in the name of Facilities. Lopez ignored several demands made by Facilities for the delivery of the titles which was part of their agreement. Instead, he justified the non-delivery of the titles on the allegation that Facilities failed to pay the purchase price in full, including the notarial fees, documentary stamps, transfer and registration fees on the subject lots.

These contentions, however, are unavailing.

What Lopez refuses to state is the unconverted fact that Primo Erni, the registered owner of the subject lots has not yet transferred the titles in the name of PPDC. This belies Lopez's feigned effort at securing title in PPDC's name, so that the latter may, in turn, be transferred in the name of Facilities. Likewise, Facilities' non-payment of the taxes is reasonable for the simple reason that these taxes are required to be paid only after the tax on the sale (ordinary tax and capital gains tax) has already been paid. Until the sales tax over the subject lots have been paid by PPDC, no title could be issued in Facilities' favor. Thus, Facilities has no obligation yet to pay notarial fees, documentary stamps, transfer and registration fees.

At any rate, "[i]t is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."[42] Lopez who represented PPDC, freely signed the *MOA*. He cannot now be allowed to renege on his obligation to deliver the titles over the subject lots, based on his claim that PPDC was unable to occupy the entire portion of the condominium units.

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[41] *Rollo* (G.R. No. 208642), p. 327.

[42] *Morla v. Belmonte, et al.*, 678 Phil. 102, 117 (2011).

Contrary to Lopez's stance, a suit for the violation of P.D. No. 957 is independent from whatever remedy granted under the MOA, *i.e.*, rescission of the Contract to Sell, or under existing laws, which obviously includes the provisions of the RPC.

A perusal of P.D. No. 957 reveals that a violation of its provisions may be the subject of a criminal action, and not merely limited to a civil remedy. The decree expressly recognizes that the aggrieved party may avail of the remedies provided not only in P.D. No. 957, but also under existing laws. The decree, states, thus:

> Section 41. *Other remedies*. The ***rights and remedies*** provided in ***this*** Decree shall be ***in addition*** to any and all other rights and remedies that may be ***available under existing laws***. (Emphasis and italics ours)

Notably, nowhere in the aforecited provision nor in the full text of P.D. No. 957, does it say that the aggrieved party is barred from filing a criminal complaint under P.D. No. 957 and under the RPC. Also, it is clear that the MOA did not limit the remedy to rescission in case of breach by PPDC. This Court cannot merely supply material stipulations to a contract, so as to favor one party against the other pertaining to the remedies available to each of them. Indeed, "[w]hen the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs."[43]

Corollarily, Lopez may likewise be held criminally liable under the RPC. Paragraph 1, Article 316 of the RPC penalizes a person who pretends to be the owner of a real property and sells the same, reads:

> Art. 316. *Other forms of swindling*. The penalty of *arresto mayor* in its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:
>
> (1) Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.

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[43] *Pan Pacific Service Contractors, Inc., et al. v. Equitable PCI Bank*, 630 Phil. 94, 105 (2010).

Here, the records show that Lopez, on behalf of PPDC, misrepresented to Facilities that PPDC is the owner of the subject lots and that it has good and indefeasible title over them. These categorical statements led Facilities to enter into a MOA with PPDC and subsequently into a Contract to Sell and Contract of Lease. As indicated earlier, Facilities complied with its obligation under the lease contract and allowed PPDC to occupy the condominium units which served as the consideration of the subject lots. PPDC, however, ignored its obligation to deliver the titles over the subject lots which was part of their agreement. Up until the filing of the criminal complaint, the subject lots remain in the name of Primo Erni; not PPDC; and certainly not Facilities.

As aptly observed by the Acting DOJ Secretary, in her October 8, 2017 Resolution:[44]

> Evidence also shows that there was misrepresentation on the part of PPDC as regards the true status of the subject lots. Though [Facilities] was shown the deed of sale between PPDC and the heirs of the original owner thereof, the continued failure of PPDC to transfer the ownership thereof to [Facilities] within the stipulated period of time, and up to the filing of the case, only shows that there was bad faith on its part when it presented the deed of absolute sale to [Facilities] which appeared to be a forgery. Without the assurance from PPDC that the lots were in fact its property, [Facilities] could not have possibly agreed to the sale and in the process, part with the lease of their two (2) commercial units as payment for the full consideration of the subject lots. Undoubtedly therefore, PPDC have acted in bad faith and committed deceit in deliberately concealing the true status of the subject lots.[45]

Prescinding from the aforementioned discussion, We hold that there is probable cause sufficient to institute a criminal complaint against Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

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[44] *Rollo* (G.R. No. 208642), pp. 245-249.

[45] *Id*. at 248.

Prescinding from the aforementioned discussion, We hold that there is probable cause sufficient to institute a criminal complaint againt Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

WHEREFORE, premises considered, the Court hereby RESOLVES:

(1) to **GRANT** Facilities, Incorporated's petition in G.R. No. 208642;

(2) to **DENY** Ralph Lito W. Lopez's petition in G.R. No. 208883; and

(3) to **AFFIRM** the Decision dated January 24, 2013 and Resolution dated August 8, 2013 of the Court of Appeals in CA-G.R. SP No. 112315 in the **MODIFICATION** that the City Prosecutor of Mandaluyong City is directed to file the appropriate information against Ralph Lito W. Lopez for *estafa* under paragraph 1, Article 316 of the Revised Penal Code.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza*, *JJ*., concur.

SECOND DIVISION

[G.R. No. 213128. February 7, 2018]

LOURDES SCHOOL OF QUEZON CITY, INC., *petitioner, vs.* **LUZ V. GARCIA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE, AS A GROUND THEREFOR; APPLICATION OF THE DOCTRINE OF LOSS OF TRUST AND CONFIDENCE TO MANAGERIAL EMPLOYEES DISTINGUISHED FROM THAT OF THE RANK AND FILE PERSONNEL.—As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized. It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of

his participation therein renders him unworthy of the trust and confidence demanded of his position.

2. ID.; ID.; ID.; ID.; THE LOSS OF TRUST AND CONFIDENCE MUST BE GENUINE, NOT A MERE AFTERTHOUGHT INTENDED TO JUSTIFY AN EARLIER ACTION TAKEN IN BAD FAITH.— On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employees constitutional right to security of tenure. Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach.

3. ID.; ID.; ID.; ID.; FOR THE LACK OF MALICIOUS INTENT OR FRAUD, AN EMPLOYEE'S NEGLIGENCE OR CARELESSNESS IS NOT A JUSTIFIABLE GROUND TO IMPOSE THE ULTIMATE PENALTY OF DISMISSAL FROM EMPLOYMENT; CASE AT BAR.—The Court agrees with petitioner that Garcia was somehow remiss in her duties as Chief Accountant of LSQC. Admittedly, she should have been more circumspect in closely supervising Salas, particularly in monitoring and counter-checking his job with respect to the inventory-taking of notebooks and the safekeeping of unused school-issued OR booklets. Nevertheless, for lack of malicious intent or fraud, her negligence or carelessness is not a justifiable ground to impose the ultimate penalty of dismissal from employment. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the absence of substantial evidence to prove otherwise, We are constrained to find that Garcia did not commit the accusations against her. Neither did she knowingly use her authority to misappropriate school fund or property nor did she abuse the trust reposed in her by petitioner with respect to her responsibility to implement school policies on accounting matters. The most that can be attributed to Garcia is that she was simply remiss

in the performance of her duties. As this does not automatically demonstrate moral perverseness, it does not constitute dishonest or deceitful conduct that would justify loss of trust and confidence.

4. ID.; ID.; ID.; GROSS NEGLECT OF DUTY, AS A GROUND THEREFOR; ALTHOUGH NOT HABITUAL, CAN BE A SUFFICIENT CAUSE FOR DISMISSAL; NOT PRESENT IN CASE AT BAR.— [W]e do not agree with petitioner that Garcia was grossly and habitually negligent in the performance of her duties. She has not committed prior infractions in her more than two decades of service with LSQC. There is no allegation or proof that she had been previously subjected to disciplinary proceedings for violation of established school rules and regulations or found guilty of any misconduct. Her negligence cannot also be characterized as gross in character. "Gross negligence implies a want or absence of or failure to exercise slight care or diligence or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."The evidence does not show that Garcia had any reason to distrust Salas, De Leon or Costales. As they have not been involved in any misdeed in the past, she had reasonably assumed that they would conduct themselves well within the regular performance of their respective duties. Until the investigation was initiated, there was not the slightest reason to suspect that they would commit any irregularity or illegal act. At most, Garcia's misplaced trust constitutes error of judgment but not gross negligence.

5. ID.; ID.; ID.; THE CONSISTENT RULE IS THAT IF DOUBTS EXIST BETWEEN THE EVIDENCE PRESENTED BY THE EMPLOYER AND THE EMPLOYEE, THE SCALES OF JUSTICE MUST BE TILTED IN FAVOR OF THE LATTER; APPLICATION IN CASE AT BAR.—It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction. x x x Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the

latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Cezar F. Maravilla for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to set aside the January 29, 2014 Decision[1] and June 18, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 125316, which reversed the February 29, 2012 Decision[3] and April 18, 2012 Resolution[4] of the National Labor Relations Commission (*NLRC*) affirming with modification the August 25, 2011 Decision[5] of the Labor Arbiter (*LA*).

Petitioner Lourdes School of Quezon City, Inc. *(LSQC)* is a non-stock, non-profit educational institution offering elementary and high school education. Prior to the termination of her service, respondent Luz V. Garcia *(Garcia)* was its Chief Accountant and Head of the Accounting Office with a monthly salary of ₱56,912.10.

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza (now Presiding Justice) concurring; *rollo*, pp. 35-54, 524-543.

[2] *Id.* at 64-65, 545-546.

[3] *Id.* at 337-352, 548-563.

[4] *Id.* at 384-386.

[5] *Id.* at 260-268, 314-321.

Sometime in September 2010, Fr. Cesar Acuin *(Acuin)*, Rector of LSQC, issued a Memorandum creating two committees to investigate on the possible irregularities in the purchase of notebooks and the sale of textbooks in the school.[6] The first committee composed of Antonio Romero, Jr., Lalaine Alejo, Editha Grandea, Leonardo Dizu, and Jocelyn Andaya looked into the oversupply of notebooks, while the second committee composed of Mary Jane Capistrano, Ma. Elviza Godinez, Edzel Gonzales, Ma. Socorro Pradillo, and Cecilia Toledo examined on the missing proceeds of the booksale. Garcia, as one of the employees subject of the investigations, was requested to submit a written report/statement on the matter.[7]

In a letter dated October 1, 2010, Fr. Antonio Ala *(Ala)*, Treasurer of LSQC, instructed Garcia to turn-over all the money and other financial resources of the school.[8] Garcia immediately complied by giving back the passbooks, certificates and receipts of placements and post-dated checks issued by parents for payment of tuition fees as well as the passbook of Lourdes Church's placement in a bank.[9]

After the physical inventory of notebooks in the stockroom; request of pertinent documents, records and data; invitation of resource persons (a lawyer and two certified public accountants); and interviews of school officials and personnel, as well as concerned individuals, the first committee submitted its final report to Fr. Acuin on October 22, 2010.[10] The findings, with respect to Garcia, were as follows:

> [Garcia] cannot deny her culpability in the oversupply of notebooks because:
>
> 1) Despite her denials that Sir Peter's immediate head is Father Treasurer and that in all matters of purchase, Sir Peter deals

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[6] *Id.* at 97, 602.

[7] *Id.* at 89-95, 594-600.

[8] *Id.* at 246, 752.

[9] *Id.* at 247-249, 753-755.

[10] *Id.* at 96-115, 601-620.

directly with the Fr. Treasurer, the following instances belie her claim:

> a. the organizational chart (ANNEX "C") and her job description (ANNEX "D") point to her as the immediate head of Sir Peter;
>
> b. in the Efficiency Rating (ANNEX "E") submitted to the Office of the Registrar every end of the SY, [Garcia] rates Sir Peter – she gives the 70% rating, while the Father Treasurer gives the remaining 30%. This clearly indicates that only a small portion of Sir Peter's work is rated by the Father Treasurer. Considering that the bulk of work of Sir Peter is in procurement and purchasing and that [Garcia], controls 70% of the latter's efficiency rating, it becomes downright absurd for [Garcia] to deny and disclaim any supervision to Sir Peter's work as purchase officer. Simply put, Sir Peter has more to answer to [Garcia] than to Father Treasurer.

2) Contrary to [Garcia's] claims that she does not dip her hands or she is hands-off in purchasing, she is in fact privy to the transactions and workings of the purchasing officer, as shown by the following:

> a. Sir Peter admitted that there were occasions when he consulted with [Garcia] regarding purchases esp. when he is confused and when the Father Treasurer is not around.
>
> b. In the Fund Requisition Form (ANNEX "F"), her signature appeared as she noted the requisition.
>
> c. There were also requisitions (ANNEX "G") wherein she placed the source of fund for said purchases.
>
> d. Ms. Penny claimed that to date, all requisitions pass through [Garcia] for checking because if there are errors, [Garcia] will shout at her staff.
>
> e. [Garcia] told Ms. Bridget sometime in May that the former will just inform her when the next set of notebooks will be delivered.

3) Granting *arguendo* that Sir Peter does not directly report to [Garcia] in matters of purchasing, her position as Chief Accountant bestows upon her the duty to be vigilant and keen in protecting the financial interests of the school and to aid the

management in its decision making. [Garcia] neglect, if not deliberately, betrays this trust as can be gleaned from the following series of event:

> a. Considering that she actually reviews and all requisitions, as witnessed by Ms. Penny, she is in the position to know and grasp the trend of the annual purchases of notebooks. She should have sensed the erratic and unsystematic estimation made by Sir Peter of the quantity of notebooks ordered annually. She, therefore, should have called Sir Peter's attention and clarified at the first instance the basis and formula used for those estimations.
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> b. [Garcia] admitted knowledge of the big quantity of notebooks from last year's purchase. She, however, justified such to Fr. Tony by allegedly telling the latter that those notebooks will be good for two school years (SY2009-2011). If such were the case, it is baffling why [Garcia] would still remind Fr. Tony the need to order for additional notebooks for school year (SY2010-2011), knowing fully well that (i) there is still adequate supply of notebooks for SY2010-2011 and (ii) that no inventory has yet been conducted at that time to check whether there is still a need to order for more notebooks.
>
> c. Part of the work of [Garcia] as contained in her job description (ANNEX "D") is to ensure that management is aided in decision-making by the preparation of statements and/or financial reports. [Garcia] claimed that she reminded and cautioned Fr. Tony of the existing supplies of notebooks from the previous purchase by saying "Father marami pa pong notebooks." This general comment, however, did not fully and effectively appraised Fr. Tony of the extent of the oversupply. This clearly shows [Garcia's] failure to aid the Treasurer in sound decision making by failing to show Fr. Tony the results of the inventory. She glaringly did not point out the oversupply to Fr. Tony when Fr. Tony was asking about the new orders from Bridge Media.
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> d. [Garcia] claimed to know of the big number of remaining notebooks in the inventory that is why she suggested to Fr. Tony to make the buying of notebooks compulsory. Fr. Tony *allegedly* accepted her suggestion hence Fr. Tony

allegedly told her that he will talk to the GS principal to make the buying of notebooks compulsory to all students. Sometime during enrolment, [Garcia] learned that a number of parents purchased the notebooks of their sons outside the school. This should have alarmed [Garcia], knowing that Fr. Tony's *alleged* plan did not materialize. However, [Garcia] kept quiet and did not make any effort to call the attention of Fr. Tony or Mr. Bautista.

e. When her attention was called by Mr. Bautista sometime in August 2010 about her pronouncement that *"hindi required sa grade school ang notebook"*, she never mentioned to Mr. Bautista that she was told by Fr. Tony of the latter's *alleged* intent to make the purchase of the notebook from the school compulsory. Later, facing both Fr. Tony and Mr. Bautista, she again did not say anything about being told by Fr. Tony that it will be made compulsory. In summary, it appears that *the idea to make the purchase of notebooks from the school compulsory* was hatched by [Garcia] in order to maneuver the disposal of the remaining supplies of notebooks and to further justify the ordering of the notebooks from the supplier. Fr. Tony, trusting the advise of [Garcia], thought that it will work out but the latter never knew of the extent of oversupply.

4) As immediate head of the Accounting office and the most trusted person in the Office, [Garcia] should have instituted an accounting system that is efficient and systematic. But this, she failed to do as evidenced by the following:

a. Sir Peter claims to be the one assisting in the inventory of notebooks as can be gleaned from his job descriptions for SY 2004-2010 and not the one really doing the inventory. But when the other accounting personnel were queried as to their function in the inventory-taking, they all mentioned that they only assist Sir Peter in the inventory-taking. Pouring over the job description in terms of inventory-taking (ANNEX "E"), it would seem that only Sir Peter is following his job descriptions and the others do not as regards inventory-taking (ANNEX "H").

b. [Garcia] was not able to monitor and provide a check and balance in the inventory-taking, which is a crucial part in the purchase of notebooks for the next school year.

> According to Sir Peter, he had not been doing monthly inventory since the canteen operations was transferred to them. Had [Garcia] impressed upon Sir Peter said work and demanded monthly reports, the oversupply of notebooks would not have happened.
>
> c. A cursory glance at the inventory results in January and April 2010 revealed some irregularities leading the committee to conclude that no counter-checking is being done with the inventory.
>
> d. Sir Peter had been left unchecked and unguided in doing the estimation of the notebooks to be purchased. [Garcia] could have assisted Sir Peter in determining the quantity of notebooks to be ordered.
>
> e. Considering the amount of money/funds, which amounts to millions of pesos, sourced out from the school's coffers for the purchase of notebooks, it is highly irregular for the accounting to simply approve the requisition form without any scrutiny. This is problematic considering that the accounting office has access to the physical inventory of the notebooks because it is being done by the accounting staff.
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> f. [Garcia] is accountable for the absence of monthly inventory which she did not meticulously require from Sir Peter. Instead, what she did was to require the accounting staff to submit a tentative inventory at the end of February. By the time the inventory was finished, the notebooks had already been ordered by Sir Peter rendering the results of the tentative inventory useless. She should have monitored her accounting staff in charge of the inventory. Had she done that, she would have discovered some discrepancies in the reporting of inventory (ANNEX "I").[11]

The first committee recommended the termination of employment of Garcia for breach of trust and confidence through gross and habitual neglect of duty. On the same ground, the

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[11] *Id.* at 109-113, 614-618. (Underscoring in the original).

second committee suggested her immediate dismissal, reasoning that *"[it] would be harmful and more damaging for LSQC to wait until further damage or harm is done especially on the financial aspect of the school due to an imminent malpractice or possible misrepresentation of school's finances."*[12] The endorsement was based on the following:

1. Gross inefficiency and incompetence in the performance of assigned duty.

As the chief accountant, [Garcia] is "responsible for the implementation of the Accounting system, Policies and procedures and the related internal control system to protect the Institution's financial activities."

It is, therefore expected, of her to ensure the proper accounting of collection from the booksale. She is expected to supervise all the accounting staff, including the accounting responsibility of the Supplies/Purchasing Staff related to the booksale.

[Garcia] claimed giving reminders/orientation on the responsibility and nature of the work of her staff particularly on the booksale during the first five years as the chief accountant. However, since the work of her staff (particularly the cashier and purchasing staff) became a regular routine in the operation of the accounting office, she assumed that they already know the meaty-gritty *(sic)* of their responsibility thus she did not see the need to conduct regular reminders and update/check on the regular routines for the booksale.

[Garcia] cited Mrs. Pelayo as the cashier assigned to receive remittance from the booksale (money with accompanying documents) and prepare the summary of booksale. She cited giving a sort of orientation to Mrs. Pelayo particularly in accounting matters concerning the booksale every year during the first five years. It was expected that upon the daily remittance of the payment from the booksale, the used yellow receipt with the attached booklist will be kept in the accounting office. All unused receipts are expected to be surrendered to the accounting after the booksale. However, [Garcia] claimed having not checked whether the procedure on the safekeeping and retrieval of the receipts was implemented.

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[12] *Id.* at 124, 630.

[Garcia] cited Mr. Salas as the Purchasing staff responsible for the release of the requested number of OR booklets for the booksale. She claimed instructing Mr. Salas during her first five years to log the serial numbers of the booklets with the signature of the person who received the booklets. She claimed further that Mr. Salas did as instructed but the log of booklets the committee required of him to present was allegedly misplaced/lost due to the renovation of the accounting office last summer. She cited that Mr. Salas had the log of booklets for this school year but the committee informed her that the said log was asked from the library staff after the issue on the unremitted money from the booksale was uncovered. The said log was a crumpled paper and did not bear the signature of the library personnel who received the booklets.

It can be concluded that there is a failure to establish prescribed standards of work to her subordinates (cashier and supplies staff). Furthermore, there is no systematic measure to account for all the booklets released for the booksale as well as the retrieval of the unused booklets.

The accounting office verifies the statement of account from the publishing house for the claim of payment of the books based on the booksale report submitted by the Librarians. The librarians' booksale report reflected the actual number of books delivered, sold and returned and the corresponding prices (Publishing and LSQC's price). The accounting office has no detailed accounts of the books sold. The office did not use the triangulation of data (accounting, librarians and publishing) to verify the veracity of the report submitted by the librarians against the remitted money.

The absence of a scheme to validate the librarians' report with the remitted money from the booksale gave an opportunity for the conduct of repeated fraudulent activity in the booksale.

[Garcia], being the Chief accountant, failed to develop, recommend and implement an adequate and effective internal control system for the collection and accounting of the booksale.

2. Habitual neglect of duties prejudicial to the employer's interest

[Garcia] claimed to have regularly prepared the yearly booksale status report which she allegedly submitted to the Father. Based on the report for school year 2007-2008, there was no remittance of booksale for the PC Med books. As claimed by the librarians, the

PC Med books were sold and were part of the booksale. According to [Garcia], she made follow ups with the librarians regarding the money from the sales of the PC Med books but the school year ended having not received the remittance. The following school year, 2008-2009, the report reflected no remittance again for the PC Med books. A rough estimate of Php 300,000.00 per school year from the sales of the PC Med books were not remitted to the Accounting office.

Such big amount is hard to go unnoticed by the accountant if indeed there was a yearly booksale report prepared by the accountant and a detailed report of booksale by the cashier. If the effort to make a follow up for the unremitted amount was in vain, it is a solid ground for the accountable people not to be cleared in their clearance at the end of the school year. Unlike the other employees with small accountability, those accountable people from the booksale with big accountability were cleared by all the accounting people. Such negligence happened in consecutive years. There was a failure to establish a system to safeguard the revenue of the school from the remittance of the PC Med books.

In the booksale status report for school year 2009-2010, the school is guaranteed a sure income of Php1,922,682.32 from the commission for the books without yet the mark-up price. The report reflected of a gross profit of only Php1,301,955.92. There was a deficiency of Php620,726.40. Because there was still an additional income from the mark-up price for the books, thus the school's deficiency is more than what is missing.

In the tentative booksale status report for school year 2010-2011, the guaranteed income of the school from the commission is Php1,740,992.41. The gross profit was only Php 1,432,331.81. There was a deficiency of Php308,660.60. However, based on the admission of Mrs. De Leon, she recorded and computed their "daily share" from the booksale this school year and it amounted to Php649,220. Upon checking the daily share, the committee computed that the total daily share was actually Php683,830.00. The committee could safely assume that the school could have gained a gross profit of Php2,116,161.81 from the booksale. The excess amount from the amount of commission could be assumed as the total money from the mark-up price.

The big deficiency in the gross profit for two years is again hard to go unnoticed by the accountant if there was indeed a yearly report

and if there was a sound accounting system for the booksale remittance. The big deficiency in the booksale happened in consecutive years.

The above negligence of duty resulting to loss of income is prejudicial to the economic interest of the school.

3. Divulging highly confidential information

The advice of [Garcia] to Mrs. De Leon to sign all pages of her narrative report, put the letter in a sealed envelope and sign the flap of the envelope explicitly identifies the document as bearing confidential information. It was clear to [Garcia] that the letter is intended to Father Tony Ala, thus her advice again to forward the sealed letter through the secretary, Mrs. Bucalig.

[Garcia's] admission of providing Mr. Lanuzo the narrative statement of Mrs. De Leon was a clear act of divulging confidential information.

Mr. Lanuzo disclaimed being a confidant to [Garcia] for him to be entrusted with the confidential document. He further disclaimed that the apparent issue has nothing to do with the scope of his duty and responsibility as the OIC security of the school. Furthermore, he takes orders from his immediate heads regarding security matters/ concerns and would act according to the protocol of security. He acknowledged the absence of a security threat to the school based on his discernment on the confidential document. Thus, Mr. Lanuzo considered the case not a security concern.

4. Tampering information

[Garcia] admitted having offered Mrs. De Leon help specifically in the narrative report as the latter allegedly approached her for help. [Garcia] cited that her idea of helping Mrs. De Leon was to verify the consistency of her story as told to her with the narrative report prepared. In the draft of the narrative report, a certain portion was deleted as instructed by [Garcia] which the latter also admitted. Though Mrs. De Leon consented with [Garcia's] instruction, such act is tantamount to tampering. Mrs. De Leon's testimony should have been allowed to stand and be presented as it was written based on her personal account of what she did and got into for it is only her who could truly say the truth behind everything. The intrusion of [Garcia] in the narrative report of Mrs. De Leon is unprecedented because she is a party involved in the same case. Least to say, a person possible of accountability for the fraud that happened. If the concern is only

about consistency in the versions told and written as cited by [Garcia], it would be the job of the investigating body to verify.[13]

On January 11, 2011, Fr. Acuin furnished Garcia with a copy of the results conducted by the two committees and directed her to submit a written explanation on why she should not be dismissed from service.[14]

In compliance, Garcia submitted her written explanation. As to the oversupply of notebooks, she countered that she was the one who discovered the excessive supply of notebooks and had its delivery and payment stopped; and it was but Fr. Ala and Angelito "Peter" Salas (*Salas*) who were responsible for the requisition, purchase and payment of notebooks.[15] Anent the irregularity in the sale of textbooks, she contended that: she was the one who found out that there was under-remittance in book sale, which she promptly reported to Fr. Ala; the persons involved with the Official Receipts *(OR)* admitted that they did not monitor the retrieval of the ORs; she is not responsible for the book sale since her job did not involve the requisition, receiving, and sale of books; she had not divulged any highly confidential information to anyone obtained in the course of her work; and she had not tampered with information as whatever corrections made in the draft narrative report of Marifi De Leon *(De Leon)*, in the course of its finalization, is her privilege, including the right to be corrected.[16] On both cases, Garcia emphasized that she was the one who gave way to the establishment of an accounting system, bank loan payment, systematic payroll implementation, budgeting, accounting manual, and development of accounting personnel, among others.

On February 21, 2011, Garcia was placed under a 30-day preventive suspension with pay.[17] She protested her suspension,

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[13] *Id.* at 121-124, 627-630.

[14] *Id.* at 116, 125, 155, 622, 631, 661.

[15] *Id.* at 117, 156, 623, 662.

[16] *Id.* at 126, 632.

[17] *Id.* at 132-133, 638-639.

treating it as constructive dismissal, at the very least, and demanding her immediate reinstatement.[18]

Fr. Acuin then formed a fact-finding committee to receive evidence on the two administrative cases. Pursuant to his March 3, 2011 letter,[19] the committee was chaired by Atty. Sabino Padilla, Jr. (member of LSQC Board of Trustees), Maria Corazon Yap (RDO Head), and Marietta del Prado (chosen by the employees under investigation, except Garcia who did not participate in the selection process). The initial and only hearing of the committee was held on March 9, 2011.[20] All respondents, excluding Garcia who did not file a motion or request for postponement, personally appeared without a counsel.[21]

Beginning March 23, 2011, Garcia was again made to serve a 30-day preventive suspension with pay.[22] She received Fr. Acuin's memorandum under protest.

On April 8, 2001, the fact-finding committee submitted its report to Fr. Acuin.[23] The relevant portion of which are quoted below:

B.1 The misleading reports on the inventory of notebooks.

The Chairman invited the attention of the respondents to the findings and recommendations of the investigating committee, copies of which had already been furnished to them when they were given letters to submit written explanations as to why the recommended sanctions should not be imposed on them, and asked if they wished to submit any evidence or additional explanation for the consideration of the Committee.

Only Mr. Angelito Salas submitted additional documentary evidence, consisting of Exh. 1- Salas to show that he was appointed cashier on

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[18] *Id.* at 134, 157, 640, 663.

[19] *Id.* at 158-159, 664-665.

[20] *Id.* at 138, 161, 644, 667.

[21] *Id.*

[22] *Id.* at 135, 641.

[23] *Id.* at 137-142, 160-165, 643-648, 666-671.

May 20, 2010 to show that at the time he was charged, he was already a cashier and not the property custodian, and Exhs. 2, 2-A to 2-1, which are the "Fund Requisition Form" of the Treasurer's Office, to show that he only requests for funds for the purchase of notebooks, but these requests have to be approved by Fr. Tony Ala, OFM Cap., the school treasurer.

Mr. Salas reiterated that when he told Fr. Tony about the need to place orders for the purchase of notebooks, he really did not know how many notebooks were still in stock or inventory, and that he was not able to monitor the size of the inventory because of his additional workload in the canteen. Neither did he really know the actual number of notebooks in stock when he and [Garcia] went back to Fr. Tony and informed him that there was still a sizeable stock of notebooks and therefore the purchase order given to the new supplier of notebooks should be drastically reduced.

This convincing or at least plausible explanation of Mr. Salas was shown to be untrue when Mr. Jeffrey Bonalos told the committee, in front of Mr. Salas, that every month, he and Mr. Salas conducted an actual count of the stock of notebooks and submitted a written report thereof to [Garcia]. The committee asked the Accounting Office for copies of these reports. All these reports, from May 31, 2009 to April 30, 2010 were "Taken by Angelito Salas and Jeffrey [Bonalos]" and "Noted by Luz V. Garcia." Mr. [Bonalos] informed the committee, in front of Mr. Salas who kept quiet, that Mr. Salas did the actual physical count of the notebooks every month, while he recorded the count made by Mr. Salas, and that the signatures in the report were his and that of Mr. Salas and [Garcia].

The testimony of Mr. Jeffrey Bonalos on the monthly inventory-taking and the monthly reports on the inventory of notebooks shows beyond any reasonable doubt that at the time Mr. Salas and [Garcia] were giving information to Fr. Tony as School Treasurer as to the amount of notebooks to be ordered (a large amount when the order was to be placed by the usual supplier, and a very low amount when the order was instead placed with another supplier who was quoting a lower price and better quality notebook), they knew what was the correct amount to be ordered but withheld such readily available information from Fr. Tony.

The other conclusion to be drawn from this regrettable disinformation practiced on the School Treasurer is that Mr. Salas and [Garcia] were giving Fr. Tony false information, with the intention of confining to

Benopit Printing the lucrative business of supplying notebooks to the School. It was obviously to the advantage and benefit of Mr. Salas and [Garcia] to have Benopit Printing retain the business of supplying notebooks to the School.

B-2. Theft in the sale of textbooks.

Mrs. Marifi de Leon, the School Librarian, has given a detailed report and confession on how she and Mrs. Josephine Costales, the former School Librarian, defrauded the School by the hundreds of thousands, through the simple use of two sets of official receipts: the current official receipts for book sales to be turned over to the cashier and another set of official receipts, supplied by Mrs. Costales, for book sales that they were to keep to themselves. Mrs. De Leon reiterated and affirmed before the Committee the report and confession she had made, together with the transcription of the text messages between her and Mrs. Costales.

Unfortunately, the theft or irregularity could not be limited to Mrs. De Leon and Mrs. Costales. The Investigating Committee, after interviewing not only Mrs. De Leon and Mrs. Costales but also other employees, including [Garcia]. Mr. Angelito Salas, Mrs. Penny Pelayo and Mr. Jeffrey Bonalos, recommended that aside from Mrs. De Leon and Mrs. Costales, four other employees be subjected to disciplinary action:

x x x x x x x x x

2. The responsibility of [Garcia]

And what about [Garcia]? If [Garcia] as Chief Accountant had caused an inventory to be made of the unused official receipts before turning them over to the care and custody of Mr. Salas, then it would have been easy to hold Mr. Salas accountable for their loss while in his custody, and for their subsequent illegal use by Mrs. De Leon and Mrs. Costales. But [Garcia] did not undertake this simple and elementary precaution. Could this be the reason why she instructed Mrs. De Leon to say that the booklets of unused official receipts which she used to hide what she was stealing was "printed outside" by her and/or Mrs. Costales?

What is more significant is that [Garcia], as Chief Accountant, knew how much the School was expected to earn from the sales of the textbooks. After enrollment, when the sale of textbooks had come to an end, [Garcia] was in a position to determine, and in fact had a

duty to determine, how much the School had earned from the sale of textbooks. A simple comparison between reported sales of textbooks against the amounts paid to the publishers for these textbooks (sales versus cost of goods sold) should have alerted (and must have alerted her) *(sic)* that there was something very fishy in the reporting of textbook sales. But she did not raise any alarm. Why?

The kindest conclusion is that she was grossly negligent in the performance of her duties as Chief Accountant. The reasonable inference, however, is that she knew (and could not help but know) the massive cheating and misappropriation of textbook sales, but she knowingly kept quiet. Why?[24]

The committee recommended the dismissal of Garcia *"for serious misconduct for knowingly misleading the School Treasurer as to how many notebooks were to be purchased, with a view to favoring a supplier of notebooks, and for knowingly allowing (at the very least) the massive theft in the sale of textbooks."*[25] Fr. Acuin agreed with the findings, conclusions, and recommendations of the committee. In his letter dated April 14, 2011, Garcia was terminated from employment.[26] She received the same under protest on April 18, 2011.[27] Thereafter, she filed a case for illegal dismissal and damages against LSQC, Fr. Acuin, Fr. Ala, and the three-member committee.

According to petitioner, Garcia and Salas exactly knew how much the inventory of notebooks at any given time and yet they repeatedly gave false information to Fr. Ala in order to manipulate its purchase in favor of a supplier. As chief accountant, it was Garcia's duty to know and to be able to inform the school treasurer how many notebooks were still in stock and whether it was time to place an order. She had the means to determine such. All she had to do was to check the existing stock or inventory of notebooks in the school's bodega or ask for the monthly report or inventory and give the exact information

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[24] *Id.* at 138-140, 161-163, 644-646, 667-669.

[25] *Id.* at 165.

[26] *Id.* at 136, 166, 642, 672.

[27] *Id.*

needed. But she did not. Garcia relied solely on Salas, her subordinate, who was burdened with other duties related to the school canteen operation.

As to the irregularities in the book sale, petitioner asserted that Garcia obviously knew about the *modus operandi* of De Leon and Costales. Costales got her supply of OR booklets from Salas, who was the custodian of the unused ORs and was directly under Garcia. Salas, however, was placed in charge thereof without first conducting an inventory of the OR booklets placed under his custody. Consequently, there was no way of holding him responsible in the same way that a cashier could not be held liable for any cash shortage if there was no actual cash count made at the time the cash was placed under his charge. Considering that Garcia is an experienced accountant, the logical conclusion is that she saw to it that there would be no way of determining where Costales got the ORs for the theft committed. Moreover, as narrated by De Leon in her Incident Report[28] dated June 22, 2011, she was instructed by Garcia to tell school authorities that the reports on booksales in the previous years were missing and that the unauthorized ORs used for the textbook sales were printed outside. Finally, it took Garcia more than a year to discover and be alarmed of the discrepancy between what the school was supposed to earn and what it actually received from the booksale. She submitted the report to Fr. Ala only on October 7, 2010 after the theft had been committed during enrollment time in April, May, and June 2009 for school year *(SY)* 2009-2010. By the end of June or by July 2009 at the latest, the Accounting Office already had the exact data on how many textbooks were sold by the school and how much it earned from the sale, *i.e.,* total billings by (and payment to) the publishers plus discount agreed upon equals proceeds from the sale of textbooks. When she prepared the financial statements for the SY 2009-2010, which ended on March 31, 2010, there was no longer any excuse for Garcia not to become aware of the massive theft committed.

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[28] *Id.* at 228-230, 734-736.

After the parties filed their respective pleadings, the LA dismissed the complaint for lack of merit. It was opined that Garcia's denial of the accusations against her was strongly demolished by the testimonies of Fr. Ala, Jeffrey Bonalos, and De Leon, who all testified during the administrative investigation. The conclusion was that the Accounting Office was truly negligent in the performance of its functions.

The NLRC sustained the LA ruling. It held:

> The Labor Arbiter could not have erred in his finding that [Garcia] was negligent in her function as Chief Accountant. While there is no credible evidence establishing that [Garcia] joined [Salas] in specifically recommending the purchase of some 44,000 thin and thick notebooks which resulted in oversupply, it is undisputed that [Garcia] joined [Salas] in telling Fr. Ala in February 2010 of the need to purchase notebooks in anticipation of the forthcoming school year. The inventory reports adduced in evidence (p.176 Rollo) which bear [Garcia's] signature however suggest that as of January 31, 2010, [LSQC] still had in stock 7,336 thick notebooks and 19,055 thin notebooks. [Garcia] could have prevented an oversupply of notebooks had she advised Fr. Ala of the stock on hand.
>
> What is more significant is that it is undisputed that [Garcia] turned over to her subordinate, [Salas], the custody of unused receipts without an inventory of what were so turned over. [Garcia] notably failed to ensure accountability over booklets of unused receipts. The laxity in accountability control and monitoring on the part of [Garcia] had rendered the situation conducive to pilferage [of] unused official receipts and to financial irregularities. As it turned out, [pilfered] official receipts were used by [De Leon] and [Costales] in defrauding [LSQC] to the tune of ₱620,726.40 in proceeds from sale of textbooks in May and June 2010 during enrollment period. To make matters worse, it took more than one year for [Garcia] to discover the shortage in anticipated proceeds from sale of textbooks. While [Garcia's] negligence may not be considered as habitual, the grossness of her negligence is evident from the extent of the damage caused to [LSQC]. Under Article 382 of the Labor Code, gross and habitual neglect of duties by an employee is considered as a just cause for termination of employment. While the element of habituality must ordinarily be present to justify dismissal, [it] is settled that the element of habituality may be disregarded where the actual loss of *(sic)* suffered by the

employer as a consequence of the employee's negligence is substantial in amount.

Moreover, [Garcia] held the exalted position of Chief Accountant. Managerial and supervisory employees are tasked to perform key and sensitive functions and are bound by more exacting work ethics, and thus are subject by the trust and confidence rule. x x x. In the case of [Garcia] who is considered as managerial or supervisory employee and held a position of trust and confidence her dismissal does not require proof of actual involvement in the theft of proceeds from the sale of textbooks. The mere existence of a basis for believing that a managerial employee has breached the trust of his/her employer would suffice for his/her dismissal. x x x. The negligence of [Garcia] which gave opportunity for fraud to be committed against [LSQC] had rendered her unworthy of the trust and confidence demanded by her position. Succinctly put, respondents were justified in terminating the employment of [Garcia].[29]

Garcia moved to reconsider the NLRC Decision, but it was denied.[30]

When the case was elevated to the CA, the petition was granted. For the appellate court, there is grave abuse of discretion on the part of the NLRC as its findings of fact upon which its conclusion was based are not supported by substantial evidence.

On the oversupply of notebooks, it does not appear from the records that Garcia recommended the purchase of 44,000 thin and thick notebooks which resulted in its oversupply. While she told Fr. Ala that it was time to order notebooks as the enrollment was nearing, she did not suggest the number of notebooks to be ordered for the next school year. Rather, it was Salas who furnished the figures. It was he alone who was responsible for misleading Fr. Ala. Garcia could not have prevented an oversupply of notebooks because inventory preparation and reporting were the tasks of Salas. The specific school policy, rules or regulations or manual stating that it was her duty to advise Fr. Ala as to the correct number of books to

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[29] *Id.* at 349-351. (Citations omitted)

[30] *Id.* at 353-386.

be ordered was neither furnished nor presented. The mere fact that Fr. Ala "trusted" her does not vest her the responsibility of doing a job that is not included in her job description. Since the financial data and relevant reports in connection with the supply and procurement of notebooks were readily available, Fr. Ala could have easily examined and referred to them before making a decision.

As regards the alleged laxity of Garcia in accountability control and monitoring, which made way to the pilferage of unused ORs and caused the irregularities in the book sale, the CA found no definitive proof that the receipts used by De Leon and Costales were the unused ORs printed by LSQC but which had not been turned over. The transfer of custody of the unused ORs printed by the school from Garcia to Salas and from Salas to the perpetrators, as well as Garcia's willful participation or knowledge of the scheme of theft or that she benefited from it, were not established. Her acts of bringing the matter to the attention of Fr. Ala and asking De Leon to explain the discrepancy in the book sale and to find the missing funds hardly indicate gross negligence. While there may be some lapses in judgment on the way she handled the status report on the book sale, it does not amount to habitual neglect in the absence of other similar shortcomings. The lapse or inaction could only be regarded as a single or isolated act of negligence that cannot be categorized as habitual.

With respect to Garcia's alleged breach of trust and confidence, the appellate court acknowledged that her position involved a high degree of responsibility requiring trust and confidence, but it ruled that there was failure to establish with certainty the facts upon which the loss of trust and confidence could be based. While the school lost some funds, Garcia's responsibility therefor was not supported by substantial evidence. She did not commit any act that was dishonest, deceitful or morally perverse. She did not use her authority to misappropriate the proceeds of the sale of notebooks and derive benefits therefrom. She did not alter or tamper financial data. Her financial analyses and evaluations were based on those supplied by her subordinates. Moreover, it made no sense for her to engage in anomalous

transactions after spending 25 years in service wherein she had not been charged by the school with any infraction or complaint as regards the quality of her work.

The CA disposed as follows:

> **WHEREFORE,** the petition is **GRANTED**. The Decision dated February 29, 2012 and the Resolution dated April 18, 2012 of the Fourth Division of the National Labor Relations Commission are **REVERSED** and **SET ASIDE** and a new one entered declaring the dismissal of Luz Garcia as illegal and consequently ordering Lourdes School, Inc./Lourdes School Quezon City to pay her full backwages inclusive of allowances and other benefits or their monetary equivalent, from the time of her dismissal up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of her engagement up to the finality of this decision, as well as attorney's fees equivalent to Ten Percent (10%) of the monetary award. The case is **REMANDED** to the labor arbiter for the purpose of computing the monetary awards.
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> **SO ORDERED**.[31]

Petitioner's motion for reconsideration was denied;[32] hence, this petition.

We deny.

The CA did not err in ruling that petitioner failed to comply with the requisites of valid dismissal based on loss of trust and confidence.

> It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified. This is in consonance with the guarantee of security of tenure in the Constitution and elaborated in the Labor Code. A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.

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[31] *Id.* at 51-52, 540-541. (Emphasis in the original)

[32] *Id.* at 64-65.

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.

On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employees constitutional right to security of tenure.

Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished

from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employers arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence. Moreover, the burden of proof required in labor cases must be amply discharged.[33]

In this case, the evidence submitted, both testimonial and documentary, fail to convince Us that Garcia had malice aforethought at the time the alleged oversupply of notebooks and theft in the textbook sale were being committed.

On the excessive order of notebooks, there is no substantial evidence on record of the exact figures that Garcia incorrectly furnished to Fr. Ala; the frequency of giving the wrong information; how the numbers provided were disproportionate relative to the actual need of the students taking into account the existing school inventory; how and why a specific supplier was favored while the others were rejected; the difference in the prices they offered; and the benefit that Garcia received from the oversupply. Petitioner always connects her name with that of Salas and attribute the latter's act as hers as well. However, no evidence was shown that there was collusion between them. In fact, Salas never alleged that Garcia connived with him when he gave the inaccurate data to Fr. Ala.

Also, based on De Leon's written confession dated October 13, 2010,[34] while she admitted the theft she and Costales perpetrated on the proceeds of textbook sales, she did not implicate Garcia in whatever way. Like Salas, she did not allege that Garcia participated with them or allowed them to commit the same despite her prior knowledge. Truth be told, De Leon even revealed that she was confronted by Garcia when the latter

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[33] *Lima Land, Inc., et al. v. Cuevas,* 635 Phil. 36, 47-50 (2010).

[34] *Rollo*, pp. 168-173, 194-199, 674-679, 700-705.

discovered the discrepancy (between the net amount of the booksale and the amount of what the school was supposed to earn as commission) and that she was asked to immediately find supporting documents to justify the missing amount. Since conspiracy was not clearly established, the ineluctable conclusion is that Garcia was dismissed on the bases of petitioner's mere suspicions, surmises, and speculations.

The Court agrees with petitioner that Garcia was somehow remiss in her duties as Chief Accountant of LSQC. Admittedly, she should have been more circumspect in closely supervising Salas, particularly in monitoring and counter-checking his job with respect to the inventory-taking of notebooks and the safekeeping of unused school-issued OR booklets. Nevertheless, for lack of malicious intent or fraud, her negligence or carelessness is not a justifiable ground to impose the ultimate penalty of dismissal from employment. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act.[35] In the absence of substantial evidence to prove otherwise, We are constrained to find that Garcia did not commit the accusations against her. Neither did she knowingly use her authority to misappropriate school fund or property nor did she abuse the trust reposed in her by petitioner with respect to her responsibility to implement school policies on accounting matters. The most that can be attributed to Garcia is that she was simply remiss in the performance of her duties. As this does not automatically demonstrate moral perverseness, it does not constitute dishonest or deceitful conduct that would justify loss of trust and confidence.

Further, We do not agree with petitioner that Garcia was grossly and habitually negligent in the performance of her duties. She has not committed prior infractions in her more than two decades of service with LSQC. There is no allegation or proof that she had been previously subjected to disciplinary proceedings for violation of established school rules and regulations or found guilty of any misconduct. Her negligence cannot also be

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[35] *Lima Land, Inc., et al. v. Cuevas, supra* note 33, at 51.

characterized as gross in character. "Gross negligence implies a want or absence of or failure to exercise slight care or diligence or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."[36] The evidence does not show that Garcia had any reason to distrust Salas, De Leon or Costales. As they have not been involved in any misdeed in the past, she had reasonably assumed that they would conduct themselves well within the regular performance of their respective duties. Until the investigation was initiated, there was not the slightest reason to suspect that they would commit any irregularity or illegal act. At most, Garcia's misplaced trust constitutes error of judgment but not gross negligence. While petitioner is not mistaken to argue that, although not habitual, gross neglect of duty is sufficient cause to dismiss an employee,[37] such is definitely not the case here.

It also bears to point out that the severance from employment of Garcia invites suspicion of ill motive on the part of petitioner. Notably, De Leon was not dismissed from service despite her admission of guilt; rather, she was recommended to be retained in a position that does not involve the handling of money.[38] Also, Salas was totally exonerated from any involvement in the theft on textbook sales.[39] Unfortunately, the same understanding and compassion was not extended to Garcia, who, despite her more than 20 years of loyal and untarnished service, was terminated.

A lesser penalty should have been imposed by petitioner to Garcia, considering that she has no history of previous infractions. It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and

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[36] *Cebu Filveneer Corp. v. NLRC,* 350 Phil. 197, 205 (1998).

[37] See *Fuentes v. National Labor Relations Commission,* 248 Phil. 980 (1988); *PAL v. NLRC,* 271 Phil. 962 (1991); *School of the Holy Spirit of Q.C. and/or Sr. Tolentino v. Taguiam,* 580 Phil. 203 (2008); and *LBC Express - Metro Manila, Inc., et al. v. Mateo,* 607 Phil. 8 (2009).

[38] *Rollo*, pp. 142, 165, 648, 671.

[39] *Id.*

regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction.[40]

As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employees position, but his very livelihood, his very breadbasket. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.[41]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The January 29, 2014 Decision and June 18, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 125316, which reversed and set aside the February 29, 2012 Decision and April 18, 2012 Resolution of the National Labor Relations Commission, affirming with modification the August 25, 2011 Decision of the Labor Arbiter, are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[40] *Sunrise Holiday Concepts, Inc. v. Arugay,* 664 Phil. 222, 232 (2011).

[41] *Lima Land, Inc., et al. v. Cuevas, supra* note 33, at 53-54.

FIRST DIVISION

[G.R. No. 214779. February 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABDULWAHID PUNDUGAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, SUFFICIENTLY ESTABLISHED.— For a successful prosecution of illegal sale of drugs in a buy-bust operation, the following elements must be proven: (1) "the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor." What is material is the proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* as evidence. Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the buy-bust money consummate the illegal transaction. All the foregoing elements have been established by the prosecution in this case. The prosecution witnesses gave an accurate account of the transaction in a candid and straightforward manner. It was proven that PO2 Julaton was the poseur-buyer while appellant was positively identified as the seller of the sachet of *shabu* tor the sum of ₱500.00. The sachet containing white crystalline substance presented during trial was identified by PO2 Julaton as the substance purchased from appellant. The substance when examined by PSI Ballesteros tested positive for methamphetamine hydrochloride or *shabu*.

2. ID.; ID.; ILLEGAL POSSESSION; ELEMENTS, ALSO PROVEN IN THIS CASE.— Also established by the prosecution were the elements for illegal possession of regulated or prohibited drugs, to wit: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug." In the present case, when appellant was lawfully arrested because of the buy-bust operation, he was also found to have in his possession another four plastic sachets of *shabu.* Appellant failed to show that he

had legal authority to possess the same. He did not give any explanation for such possession; thus a *prima facie* evidence of knowledge or *animus possidendi* arises against him.

3. ID.; ID.; CHAIN OF CUSTODY RULE; THE PROSECUTION HAD ESTABLISHED THAT THERE WAS UNBROKEN CHAIN OF CUSTODY OVER THE SEIZED ITEMS RESULTING IN THE PRESERVATION OF THEIR INTEGRITY AND EVIDENTIARY VALUE.— It is settled that failure to strictly comply with the prescribed procedures in the inventory (and marking) of seized drugs does not render an arrest of the accused illegal or the items seized/confiscated from him inadmissible. What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The primordial concern, therefore, is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the *corpus delicti*. x x x [T]he prosecution had established that there was an unbroken chain of custody over the subject illicit items resulting, undoubtedly, in the preservation of their integrity and evidentiary value.

4. ID.; ID.; ID.; THAT THE APPREHENDING OFFICERS FOUND IT MORE PRACTICABLE TO MARK, INVENTORY AND PHOTOGRAPH THE SEIZED DRUGS AT THE POLICE STATION, UPHELD.— x x x [M]arking of the seized items at the police station will not dent the case of the prosecution. As held in *People v. Resurreccion* marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. x x x [A]s the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practical or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. x x x

5. ID.; ID.; ID.; UNAVAILABILITY OF THE REQUIRED REPRESENTATIVES AT THE TIME OF BUY-BUST AND THAT THE POLICE OFFICERS WERE PRESSED FOR TIME, CONSIDERED AS JUSTIFIABLE REASONS FOR

NON-COMPLIANCE.— x x x [T]he prosecution was able to establish that the buy-bust was conducted at around 6:20 p.m. in a squatters' area. The prosecution also explained that they were not able to invite representatives from the media, the DOJ, or an elected public official because they could not find anyone available and that they were pressed for time. To our mind, these are justifiable reasons for non-compliance with the requirements. And considering that the integrity and evidentiary value of the seized items were properly preserved, as shown by the unbroken chain of custody of the seized items, said non-compliance did not render void or invalid such seizure and custody over the illegal drugs.

6. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY OF LIFE IMPRISONMENT AND FINE OF ₱500,000.00, IMPOSED.— Under Section 5, Article II of RA 9165 the penalty for illegal sale of dangerous drugs, such as *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, in light of the effectivity of Republic Act No. 9346, the imposition of the penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on appellant by the RTC as affirmed by the CA for the illegal sale of *shabu* is in order.

7. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PROPER PENALTY.— For the crime of illegal possession of dangerous drugs, Section 11, Article II of RA 9165 provides the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00 for less than five grams of *shabu*. In this case, appellant was found in possession of *shabu* with an aggregate weight of 0.20 gram which is less than five grams. Thus, the penalty of twelve (12) years and one (1) day of *reclusion temporal* as minimum to fourteen (14) years as maximum and a fine of ₱300,000.00 imposed on appellant by the RTC and affirmed by the CA is also in order.

8. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND FRAME-UP ARE WEAK WHEN UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.— Appellant's defense hinges on denial and frame-up which is a weak defense especially when unsubstantiated by credible and convincing evidence. It must be noted that

appellant was caught in *flagrante delicto* in a legitimate buy-bust operation. As held in *People v. Velasquez*, "[t]he defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."

PERLAS-BERNABE, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; PURPOSE OF THE RULE AND EFFECT OF NON-COMPLIANCE THEREWITH.— The purpose of this rule is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case. Non-compliance with this requirement, however, would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

2. ID.; ID.; ID.; THE PROSECUTION MUST SHOW THAT EARNEST EFFORTS WERE EMPLOYED IN CONTACTING THE REQUIRED REPRESENTATIVES; MERE STATEMENTS OF UNAVAILABILITY WITHOUT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES ARE UNACCEPTABLE AS JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE.— Case law states that in determining whether or not there was indeed a justifiable reason for the deviation in the aforesaid rule on witnesses, the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "[a] sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.

3. ID.; ID.; ID.; AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN

COMPROMISED IN VIEW OF THE FAILURE OF THE PROSECUTION TO PROVIDE JUSTIFIABLE GROUNDS OR TO SHOW CIRCUMSTANCES WHICH WOULD EXCUSE THEIR TRANSGRESSION, APPELLANT DESERVES AN ACQUITTAL.— [F]or failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, I respectfully submit that the integrity and evidentiary value of the items purportedly seized from the accused-appellant have been compromised. To stress, the chain of custody procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. x x x [I]n view of the above-stated reasons, I vote to **GRANT** the appeal, and consequently, **ACQUIT** accused-appellant Abdulwahid Pundugar.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

Challenged in this appeal is the November 28, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05530 which affirmed the March 28, 2012 Judgment[2] of the Regional Trial Court (RTC), Branch 204, Muntinlupa City, finding Abdulwahid Pundugar *y* Imam (appellant) guilty beyond reasonable doubt of violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), Article II of Republic Act (RA) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 135-154; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Myra Garcia-Fernandez.

[2] Records, pp. 311-322; penned by Judge Juanita T. Guerrero.

Version of the Prosecution

At around 4:30 p.m. of May 24, 2008, a police informant came to the office of the Anti-Illegal Drugs of Muntinlupa City providing the information that a certain "Tatay" (later identified as appellant Abdulwahid Pundugar) was dealing with illegal drugs at *Purok* 7, Brgy. Alabang, Muntinlupa City. Upon learning of such information, a team was formed to conduct surveillance and a possible buy-bust operation with PO2 Domingo Julaton III (PO2 Julaton) as the designated poseur-buyer. After a coordination of their plan with the Philippine Drug Enforcement Agency[3] (PDEA), PO2 Julaton was given five pieces of 100 peso bills to be used as buy-bust money. Together with the informant, PO2 Julaton went to the target area while PO2 Elbert Ocampo (PO2 Ocampo) was assigned as "back-up." From a distance of 10 meters away, they saw appellant conversing with two companions. Upon approaching them, the informant introduced PO2 Julaton to appellant as a seaman who wanted to score. Appellant asked PO2 Julaton how much he would buy and the latter answered 500 pesos worth. After PO2 Julaton gave the buy-bust money, appellant in turn gave a sachet of *shabu* to the former. Amid their transaction, PO2 Julaton saw appellant giving a plastic sachet to each of the latter's companion. PO2 Julaton scratched the back of his head as the pre-arranged signal to his back-up that the sale transaction had been consummated. When PO2 Ocampo arrived, PO2 Julaton immediately held the hand of appellant, introduced himself as a police officer and arrested him. PO2 Julaton ordered appellant to bring out the contents of his pocket. Appellant obliged and PO2 Julaton retrieved four more plastic sachets containing white crystalline substance and the buy-bust money. PO2 Ocampo arrested appellant's companions and confiscated from them two pieces of plastic sachets. Appellant and his companions together with the confiscated items were brought to the police station for investigation. Thereat, PO2 Julaton immediately placed the marking "AB" for the item sold and the markings "AB-1," "AB-2," "AB-3," and "AB-4" for

[3] *Id*. at 11.

the items retrieved from appellant's pocket.[4] He took photographs of the items in front of appellant and an inventory of the drugs seized was made.[5] Thereafter a request for laboratory examination was prepared[6] and PO2 Julaton and PO2 Ocampo brought appellant to the Philippine National Police (PNP) Crime Laboratory together with the confiscated drugs and the request for laboratory examination.

Police Senior Inspector (PSI) Mark Alain B. Ballesteros (PSI Ballesteros), Forensic Chemist of the PNP Crime Laboratory based in Camp Crame, Quezon City personally received the specimen from PO2 Julaton together with the request for laboratory examination. In his Chemistry Report No. D-219-08[7] prepared by PSI Ballesteros the specimen recovered from appellant gave positive result for methamphetamine hydrochloride or *shabu*, a dangerous drug. Appellant was thereafter charged for violation of Sections 5 and 11, Article II of RA 9165 before the RTC of Muntinlupa City.[8]

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[4] With recorded net weights as follows: "AB" = 0.04 gram; "AB-1" = 0.05 gram; "AB-2" = 0.06 gram; "AB-3" = 0.04 gram and "AB-4" = 0.05 gram. *Id*. at 14.

[5] *Id*. at 18.

[6] *Id*. at 13.

[7] *Id*. at 14.

[8] Criminal Case No. 08-370

That on the 24th day of May 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did, then and there, willfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine Hydrochloride, a dangerous drug weighing 0.04 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law. (*Id*. at 1.)

Criminal Case No. 08-371

That on the 24th day of May 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did, then and there, willfully and unlawfully have in possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug weighing 0.20 gram, contained in four (4) heat-sealed transparent plastic sachets, in violation of the above-cited law.

Contrary to law. (*Id*. at 2.)

Version of the Defense

Appellant denied having sold *shabu* to a poseur-buyer or having in his possession sachets of *shabu*. According to him, at around 4:00 p.m. of May 24, 2008, he was attending to his store together with his daughter Noramida "Lily" Pundugar (Noramida) when he heard people shouting that policemen were coming. When he went out, he was suddenly handcuffed and brought to the police station. At the police station, he was shown plastic sachets containing *shabu* and was told to give ₱600,000.00 otherwise he will be charged and remain in jail.

Noramida corroborated the narration of his father regarding the latter's arrest. She also maintained that nothing was recovered from her father as well as from inside their store after a search was made by the policemen.

Ruling of the Regional Trial Court

Giving credence to the prosecution witnesses, the RTC ruled that the prosecution has sufficiently proven that appellant was caught in *flagrante delicto* selling dangerous drug to a law enforcement agent who posed as buyer and a subsequent search on his body yielded four more plastic sachets containing white crystalline substance. When these items were subjected to chemistry examination, they were found positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug. The RTC rejected appellant's defense of denial and frame-up. Thus, it found appellant guilty beyond reasonable doubt as charged. The dispositive portion of the Judgment reads:

> WHEREFORE, premises considered and finding the accused ABDULWAHID PUNDUGAR *y* IMAM, GUILTY beyond reasonable doubt in Criminal Case No. 08-370, for Violation of Sec. 5 of Republic Act [No.] 9165, he is sentenced to LIFE IMPRISONMENT and to pay a FINE of Php 500,000.00.
>
> In Criminal Case No. 08-371, the Court likewise finds the accused ABDULWAHID PUNDUGAR *y* IMAM, GUILTY beyond reasonable doubt of the crime of Violation of Sec. 11 of Republic Act [No.] 9165 and he is sentenced to an indeterminate penalty of

imprisonment of twelve (12) years and one (1) day of *prision mayor*[9] as minimum to fourteen (14) years as maximum. He is further ordered to pay a FINE of Php 300,000.00.

x x x x x x x x x

IT IS SO ORDERED.[10]

Ruling of the Court of Appeals

Appellant appealed to the CA ascribing error on the trial court in finding him guilty despite the prosecution's failure to prove the same beyond reasonable doubt as well as the non-compliance by the apprehending police officers with Section 21 of RA 9165 and its Implementing Rules and Regulations resulting in a broken chain of custody over the confiscated drugs.

By its assailed Decision of November 28, 2013, the CA denied appellant's appeal after finding no reason to doubt the integrity and evidentiary value of the confiscated drugs as the apprehending officers were able to preserve the same. Moreover, the CA observed that no motive was attributed to the apprehending officers by appellant to falsely testify against him thereby upholding the presumption of regularity in the performance of their duties. Thus:

WHEREFORE, the appeal is hereby DENIED for lack of merit.

SO ORDERED.[11]

Our Ruling

The appeal is devoid of merit.

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[9] Should be *reclusion temporal.*

[10] Records, p. 322.

[11] CA *rollo*, pp. 153-154.

Elements of illegal sale and illegal possession of dangerous drug established in this case.

For a successful prosecution of illegal sale of drugs in a buy-bust operation, the following elements must be proven: (1) "the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor."[12] What is material is the proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* as evidence. Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the buy-bust money consummate the illegal transaction.

All the foregoing elements have been established by the prosecution in this case. The prosecution witnesses gave an accurate account of the transaction in a candid and straightforward manner. It was proven that PO2 Julaton was the poseur-buyer while appellant was positively identified as the seller of the sachet of *shabu* for the sum of ₱500.00. The sachet containing white crystalline substance presented during trial was identified by PO2 Julaton as the substance purchased from appellant. The substance when examined by PSI Ballesteros tested positive for methamphetamine hydrochloride or *shabu*.

Also established by the prosecution were the elements for illegal possession of regulated or prohibited drugs, to wit: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug."[13] In the present case, when appellant was lawfully arrested because of the buy-bust operation, he was also found to have in his possession another four plastic sachets of *shabu*.[14] Appellant failed to show that he had legal authority

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[12] *People v. Alcala*, 739 Phil. 189, 197 (2014).

[13] *People v. Abedin*, 685 Phil. 552, 563 (2012).

[14] Marked and with recorded net weights as follows: "AB-1" = 0.05 gram; "AB-2" = 0.06 gram; "AB-3" = 0.04 gram and "AB-4" = 0.05 gram. Records, p. 14.

to possess the same. He did not give any explanation for such possession; thus a *prima facie* evidence of knowledge or *animus possidendi* arises against him.

Chain of custody unbroken; integrity and evidentiary value of the seized drugs preserved.

In every prosecution of drug related cases, the presentation of the drug itself constitutes the *corpus delicti* of the offense and its existence is indispensable to a judgment of conviction. It behooves upon the prosecution to establish beyond reasonable doubt the identity of the narcotic substance. It must be shown that the item subject of the offense is the same substance offered in court as exhibit.[15] The chain of custody requirements provided for in Section 21, Article II of RA 9165 performs this function as it ensures the preservation of the integrity and evidentiary value of the item so that unnecessary doubts concerning the identity of the evidence are removed.[16]

Invoking the pertinent provisions of the law, appellant capitalizes on the failure of the apprehending officers to mark and make an inventory of the seized illicit items at the crime scene immediately upon his arrest and not at the police station as what the officers did. In essence, appellant asks for a strict compliance with the prescribed procedures.

It is settled that failure to strictly comply with the prescribed procedures in the inventory (and marking) of seized drugs does not render an arrest of the accused illegal or the items seized/confiscated from him inadmissible. What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[17]

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[15] *People v. Salonga*, 617 Phil. 997, 1010 (2009).

[16] *People v. Unisa*, 674 Phil. 89, 117 (2011).

[17] *People v. Le*, 636 Phil. 586, 598 (2010).

The primordial concern, therefore, is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the *corpus delicti*. Here, records disclosed that after PO2 Julaton received one plastic sachet and confiscated another four plastic sachets containing *shabu* from appellant, he immediately brought the same to the police station where he marked them "AB," "AB-1," AB-2," "AB-3" and "AB-4," respectively. He then forwarded the said plastic sachets of *shabu* duly marked to the PNP Crime Laboratory, Camp Crame, Quezon City for laboratory examination. These duly marked items were received personally by Forensic Chemist PSI Ballesteros. After a quantitative examination conducted by PSI Ballesteros, the contents of the plastic sachets were found to be positive for methamphetamine hydrochloride or *shabu*. Upon being weighed, the plastic sachets were determined to be containing 0.04 gram for the item sold and an aggregate weight of 0.20 gram for the items recovered from appellant's possession. When these items were presented during the trial, PO2 Julaton positively identified them as the items sold and recovered from the possession of appellant. Clearly, the prosecution had established that there was an unbroken chain of custody over the subject illicit items resulting, undoubtedly, in the preservation of their integrity and evidentiary value.

Besides, marking of the seized items at the police station will not dent the case of the prosecution. As held in *People v. Resurreccion*[18] marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. In fact, the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 (Guidelines) provides that:

> A.1.3. In warrantless seizures, the marking, physical inventory and photograph of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest

[18] 618 Phil. 520, 532 (2009).

> office of the apprehending officer/team, whichever is practicable.

Thus, as the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practical or suitable for the purpose.

In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. As aptly noted by the CA:

> Appellant's harping on the failure of the buy-bust team to immediately mark the seized contrabands at the time of apprehension must give way to the paramount safety and security of the team. It is of record and noted in the appealed Judgment that the area where the buy-bust team operated is a squatters area with a big Muslim population and fearing any commotion and possible retaliation since appellant is a Muslim, they opted to immediately leave the place and performed the marking at their office. Besides a crowd was already starting to gather in the vicinity as testified to by appellant's daughter Noramida.[19]

Next, there is no dispute that the seized illegal drugs were marked, inventoried, and photographed in the presence of appellant. However, appellant claims that the absence of representatives from the media, the Department of Justice (DOJ) and an elective government official during the conduct of the inventory and taking of photograph is fatal to the prosecution's cause.

Section 21 of RA 9165, as amended by RA 10640,[20] pertinently provides:

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[19] CA *rollo*, p. 149.

[20] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved July 15, 2014.

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In addition, the Guidelines provides:

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of the refusal to sign, it shall be stated 'refused to sign' above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner.

> The elected public official is any incumbent public official regardless of the place where he/she is elected.

To be sure, strict compliance with this requirement is not mandated. In fact, the law itself provides a saving mechanism, to wit:

> x x x *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Here, the prosecution was able to establish that the buy-bust was conducted at around 6:20 p.m.[21] in a squatters' area. The prosecution also explained that they were not able to invite representatives from the media, the DOJ, or an elected public official because they could not find anyone available[22] and that they were pressed for time.[23] To our mind, these are justifiable reasons for non-compliance with the requirements. And considering that the integrity and evidentiary value of the seized items were properly preserved, as shown by the unbroken chain of custody of the seized items, said non-compliance did not render void or invalid such seizure and custody over the illegal drugs.

Appellant's defense hinges on denial and frame-up which is a weak defense especially when unsubstantiated by credible and convincing evidence. It must be noted that appellant was caught in *flagrante delicto* in a legitimate buy-bust operation. As held in *People v. Velasquez*,[24] "[t]he defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."

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[21] TSN, April 19, 2009, p. 5.

[22] TSN, August 19, 2009, p. 20.

[23] TSN, February 26, 2009, p. 11.

[24] 685 Phil. 538, 549 (2012).

Penalty properly imposed on appellant.

Under Section 5, Article II of RA 9165 the penalty for illegal sale of dangerous drugs, such as *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, in light of the effectivity of Republic Act No. 9346,[25] the imposition of the penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on appellant by the RTC as affirmed by the CA for the illegal sale of *shabu* is in order.

For the crime of illegal possession of dangerous drugs, Section 11, Article II of RA 9165 provides the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00 for less than five grams of *shabu*. In this case, appellant was found in possession of *shabu* with an aggregate weight of 0.20 gram which is less than five grams. Thus, the penalty of twelve (12) years and one (1) day of *reclusion temporal* as minimum to fourteen (14) years as maximum and a fine of ₱300,000.00 imposed on appellant by the RTC and affirmed by the CA is also in order.

WHEREFORE, the challenged November 28, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05530 affirming the March 28, 2012 Judgment of the Regional Trial Court, Branch 204, Muntinlupa City in Criminal Case Nos. 08-370 and 08-371 finding appellant Abdulwahid Pundugar *y* Imam **GUILTY** beyond reasonable doubt for violation of Sections 5 and 11, respectively, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Tijam, JJ.,* concur.

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[25] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Perlas-Bernabe,[*] *J.,* see dissenting opinion.

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I respectfully submit my dissent to the *ponencia* which affirmed the conviction of accused-appellant Abdulwahid Pundugar for violations of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."[1] As will be explained hereunder, my dissent is centered on the police officers' unjustified deviation from the chain of custody procedure as required by RA 9165, as amended.

Under Section 21, Article II of RA 9165, prior to its amendment by RA 10640,[2] the physical inventory and photography of the seized items should be conducted in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official, and representatives from the media and the Department of Justice (DOJ), who shall be required to sign the copies of the inventory. The purpose of this rule is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case.[3] Non-compliance with

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[*] Designated as additional member per September 6, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[1] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[2] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014. The crime subject of this case was allegedly committed on May 24, 2008, prior to the enactment of RA 10640.

[3] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

this requirement, however, would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[4]

Case law states that in determining whether or not there was indeed a justifiable reason for the deviation in the aforesaid rule on witnesses, the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "[a] sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse."[5] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.

In this case, the arresting officers attempted to justify the complete absence of any of the required witnesses during the conduct of inventory and photography of the seized items from accused-appellant by merely explaining that "they could not find anyone available and that they were pressed for time,"[6] without any showing that they exerted earnest efforts in complying with the rule. To reiterate, the arresting officers are compelled not only to state reasons for their non-compliance, but must, in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, I respectfully submit that the integrity and evidentiary value of the items purportedly seized from the accused-appellant have been compromised. To stress, the chain

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[4] See *People v. Goco,* G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252. See also *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[5] *People v. Umipang*, 686 Phil. 1024, 1053 (2012).

[6] See *ponencia,* p. 8.

of custody procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.[7]

In the recent case of *People v. Miranda*,[8] the Court held that "as the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise it risks the possibility of having a conviction overturned on ground that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[9]

ACCORDINGLY, in view of the above-stated reasons, I vote to GRANT the appeal, and consequently, **ACQUIT** accused-appellant Abdulwahid Pundugar.

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[7] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637.

[8] See G.R. No. 229671, January 31, 2018; emphasis and underscoring supplied.

[9] See *id.*

FIRST DIVISION

[G.R. No. 216753. February 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS DUMAGAY *y* SUACITO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ENTRAPMENT; BUY-BUST OPERATION; A FORM OF ENTRAPMENT USED TO APPREHEND DRUG PEDDLERS; ENTRAPMENT AND INSTIGATION, DISTINGUISHED.— There is instigation when "the accused is lured into the commission of the offense charged in order to prosecute him." On the other hand, "[t]here is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime." A buy-bust operation is a form of entrapment used to apprehend drug peddlers. It is considered valid as long as it passes the "objective test," which demands that "the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale."

2. ID.; ID.; ID.; ID.; A POLICE OFFICER'S ACT OF SOLICITING DRUGS FROM THE ACCUSED DURING BUY-BUST OPERATION IS NOT PROHIBITED BY LAW AND DOES NOT RENDER THE BUY-BUST OPERATION INVALID.— In the instant case, the CA correctly found that there was a valid buy-bust operation as the prosecution was able to establish details of the transaction from the initial contact of the poseur-buyer and the appellant up to the consummation of the sale by the delivery of the morphine. The identities of the poseur-buyer and the appellant, as the seller of the morphine, and the details of the procedure employed by the police operatives in conducting the buy-bust were clearly established by the prosecution. The fact that the poseur-buyer, through the CI, solicited morphine from appellant is not prohibited by law and

does not render the buy-bust operation invalid as, under prevailing jurisprudence, "a police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a 'decoy solicitation,' is not prohibited by law and does not render the buy-bust operation invalid."

3. ID.; REPUBLIC ACT NO. 9165; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; SUBSTANTIAL COMPLIANCE WITH THE RULES OF PROCEDURE IS SUFFICIENT AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING POLICE OFFICERS.— Chain of custody is "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction." x x x The Court has consistently ruled that each link in the chain of custody rule must be sufficiently proved by the prosecution and examined with careful scrutiny by the court. The prosecution has the burden to show "every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence." Failure to strictly comply with rules of procedure, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." Thus, in case the police officers fail to strictly comply with the rules of procedure, they must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist." In other words, taking into consideration the difficulty of complete compliance with the chain of custody requirement, the Court has considered substantial compliance sufficient "as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers."

4. ID.; ID.; ID.; ID.; MARKING; THE MARKING OF THE APPREHENDING POLICE OFFICER'S INITIALS OR

SIGNATURES ON THE SEIZED ITEMS MUST BE MADE IN THE PRESENCE OF THE ACCUSED IMMEDIATELY UPON ARREST.— [T]he marking of the apprehending police officers' initials or signatures on the seized items must be made in the presence of the accused immediately upon arrest. And although the Chain of Custody Rule allows the physical inventory of the seized items to be done at the nearest police station, this is more of an exception than a rule. Police officers, therefore, must provide an explanation to justify their failure to conduct the marking and the physical inventory at the place of arrest.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"[B]etter 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."[1]

This is an appeal filed by appellant Jesus Dumagay *y* Suacito from the October 23, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00985-MIN, affirming the August 26, 2011 Decision[3] of the Regional Trial Court (RTC) of Zamboanga City, Branch 13 in Criminal Case No. 6030 (22827), finding the appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

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[1] *People v. Sarap*, 447 Phil. 642, 653 (2003).

[2] *Rollo*, pp. 2-32; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.

[3] Records, pp. 112-122; penned by Presiding Judge Eric D. Elumba.

The Factual Antecedents

Appellant was charged with violation of Section 5, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an Information[4] which reads:

> That on or about October 14, 2006 in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, give away to another, transport or distribute, any dangerous drug, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 JOSEPH RICHMOND C. JIMENEA, PNP, RIID-PRO 9, PDEA, who acted as poseur-buyer, twenty (20) vials of 1 ml. Morphine, one (1) vial of 200 ml. Nandrolone Decanoate, two (2) syringes, which accused knowing the same to be dangerous drugs.
>
> That further, the accused was at the time of his apprehension in possession of an unlicensed .45 Caliber pistol (Homemade) with Serial Number 112074 with two (2) magazines and thirteen (13) live ammunition for caliber .45 and a Lifan Mitsukoshi Motorcycle with Plate No. JH 7640 and Chassis No. LF3XCH7AX1AOOA363, which he used, in furtherance of the crime charged as special aggravating circumstances.
>
> CONTRARY TO LAW.[5]

Appellant pleaded not guilty to the crime charged.[6]

Version of the Prosecution

During the trial, the prosecution presented PO3 Joseph Richmond Jimenea (PO3 Jimenea) and SPO4 Roy Bello Rosales (SPO4 Rosales) as witnesses.[7] However, the presentation of SPO1 Melvin Gallego (SPO1 Gallego), the investigating officer, and Police Chief Inspector Mercedes D. Diestro (PCI Diestro), the forensic chemist, were dispensed with since the prosecution

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[4] *Id*. at 1.

[5] *Id*.

[6] *Rollo*, p. 3.

[7] *Id*. at 4.

and the defense already agreed to a stipulation of facts.[8] They stipulated that SPO1 Gallego was the investigator who received the appellant and the seized items; that he conducted an inventory of the items and took pictures thereof; and that he prepared the Investigation Report and the Request for Laboratory Examination.[9] They also stipulated that PCI Diestro received the Request for Laboratory Examination of the vials and conducted the examination thereon, which yielded a positive result for the presence of morphine.[10]

PO3 Jimenea testified that he was a member of the Philippine National Police (PNP) assigned at the Regional Intelligence & Investigation Division (RIID) PRO 9, Special Operations Group (SOG) in Zamboanga City;[11] that on October 13, 2006, a confidential informant (CI) informed him that a certain "Buboy," later identified as appellant was selling morphine;[12] that he relayed the information to Police Chief Inspector Aderito B. Lacerna (PCI Lacerna), who instructed him to confirm the report;[13] that at about 5:00 p.m. of the same day, the CI called up appellant to buy morphine;[14] that appellant agreed to meet them at about 7:00 p.m. of the same day at Suterville Intersection at San Roque near the gasoline station;[15] that at around 7:00 p.m., appellant arrived on board a red motorcycle at the side of the gasoline station;[16] that appellant talked with the CI in *Chavacano* dialect;[17] that appellant asked if he was the buyer

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[8] *Id*.

[9] *Id*. at 9 and 25-26.

[10] *Id*.

[11] *Id*. at 4.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

of the morphine;[18] that appellant showed him one vial of morphine and asked how much he intends to buy;[19] that he told him that he intends to purchase ₱3,000.00 worth of morphine;[20] that appellant informed him that the said amount was good for 20 vials of morphine;[21] that they exchanged cellphone numbers and agreed to meet at noon the next day near Western Mindanao Command (WESMINCOM);[22] that he and the CI returned to their office to inform PCI Lacerna about the agreement with appellant;[23] that PCI Lacerna then informed SPO4 Rosales, the team leader of the SOG, to notify the other police operatives to be present at the office at 8:00 a.m. of October 14, 2006 for the briefing of the operation;[24] that during the briefing, he was given the buy-bust money, which was placed inside a white envelope;[25] that it was also agreed that the prearranged signal would be a "thumbs up" sign;[26] that around 10:00 a.m. that day, appellant contacted him and informed him that the morphine was ready for delivery at noon time in the vicinity of WESMINCOM;[27] that at 11:30 a.m., he left ahead of the team while the other members followed and proceeded to the vicinity of WESMINCOM and positioned themselves at the vicinity of Paradise Bakery;[28] that when appellant arrived on board his red motorcycle, appellant approached him and brought him to a corner so as not to be seen by passersby;[29] that when appellant

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[18] *Id*. at 5.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

asked for the money, he gave him the white envelope containing the marked money;[30] that appellant, in turn, took from his pocket the morphine placed inside a plastic bag;[31] that after checking if the 20 vials were indeed morphine, he immediately made a "thumbs up" sign;[32] that SPO4 Rosales and PO3 Rommel Lamberte (PO3 Lamberte) and the other operatives immediately ran towards them to arrest appellant;[33] that when appellant tried to flee, he immediately arrested him and informed him that he was a police officer;[34] that appellant tried to escape and drew his gun; that they grappled for the gun causing them to fall on the ground; that appellant was subdued due to the timely arrival of SPO4 Rosales and PO3 Lamberte;[35] that SPO4 Rosales confiscated the .45 pistol and the marked money from the pocket of appellant;[36] that he informed appellant of the reason for his arrest and advised him of his constitutional rights; and later, brought him to their office in Camp Abendan, Mercedes;[37] and that at the PNP office, he marked the seized items with his initials "JRCJ" and turned them over to SPO1 Gallego, their investigating officer.[38]

SPO4 Rosales corroborated PO3 Jimenea's testimony and further testified that, after arresting appellant, they proceeded to the office, where he placed his initials "RBR" on the marked money which he later submitted to their investigator SPO1 Gallego as shown in the Certificate of Inventory dated October 14, 2006, signed by P/Insp. Larry Domingo (PI Domingo), the representatives from the media and the Department

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[30] *Id.* at 6.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

of Justice (DOJ), and appellant himself;[39] that the said items were marked with SPO1 Gallego's initials, "MRG;"[40] that these items were photographed by SPO1 Gallego and then brought to the PNP Regional Crime Laboratory Office-9, Zamboanga City on the same day for laboratory examination;[41] that the contents of the 20 vials seized from appellant were subjected to laboratory examination at the PNP Regional Crime Laboratory Office by Forensic Chemist PCI Diestro;[42] that the Chemistry Report[43] confirmed that the vials contained morphine;[44] and that as a result, an Investigation Report was prepared by SPO1 Gallego, recommending the filing of cases in court against appellant for violation of Section 5, Article II of RA 9165 and of RA 8294.[45]

Version of the Appellant

Appellant, on the other hand, denied the accusations against him and testified that he was at the area to meet a certain "Bill," a member of the American Navy, to run errands for him;[46] that while waiting for Bill, he went inside the canteen located at the back of the gas dump;[47] that when he came out, he saw four policemen positioned outside the canteen;[48] that he was approached, manhandled and hit continuously by the policemen;[49] that there were several witnesses, among them was Sgt. Rogelio

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[39] *Id*. at 7.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] Exhibit "E" of the Prosecution, Folder of Exhibits, p. 2.

[44] *Rollo*, p. 8.

[45] *Id*.

[46] *Id*. at 10.

[47] *Id*.

[48] *Id*.

[49] *Id*.

Necesario (Sgt. Necesario);[50] and that he was brought to the police station, where the policemen demanded money from him.[51]

Sgt. Necesario testified that he has been a member of the Philippine Army since October 27, 1997;[52] that appellant used to run errands for the American soldiers who joined the *Balikatan* Exercises;[53] that on the said date, he was at the gas dump located at WESMINCOM;[54] that he saw appellant enter the canteen; and that after a few minutes, he saw him board the PDEA van blind-folded, handcuffed, with plaster on his mouth, and lying face down on the floor.[55] On cross-examination, he clarified that, from where he was positioned at that time, he could not see what was inside the canteen; and that about five minutes elapsed from the time he saw appellant enter the canteen and the time he saw him again inside the van.[56]

Ruling of the Regional Trial Court

On August 26, 2011, the RTC rendered a Decision finding appellant guilty of the crime charged. The dispositive portion of the Decision reads:

> WHEREFORE, the foregoing considered, this Court finds accused JESUS DUMAGAY y SUACITO GUILTY beyond reasonable doubt of the crime of "VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165["] and hereby sentences him to suffer a penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php 500,000) without subsidiary imprisonment.
>
> The dangerous drug subject of this case is ordered confiscated for proper disposal.

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[50] *Id*. at 11.

[51] *Id*. at 10-11.

[52] *Id*. at 9.

[53] *Id*.

[54] *Id*.

[55] *Id*. at 9-10.

[56] *Id*. at 10.

SO ORDERED.[57]

Ruling of the Court of Appeals

Appellant appealed the RTC Decision arguing that there was no valid buy-bust operation and that the police officers failed to comply with Section 21 of RA 9165, or the Chain of Custody Rule.[58]

On October 23, 2014, the CA rendered a Decision affirming the RTC Decision. The CA ruled that based on the evidence presented there was a valid buy-bust operation.[59] As to the chain of custody, the CA noted that the non-compliance with the Chain of Custody Rule was never raised during the trial of the case.[60] In any case, the CA found that the Chain of Custody Rule was followed notwithstanding the non-presentation of SPO1 Gallego and PCI Diestro.[61] It also ruled that although the RTC committed an error in describing the dangerous drug as "methamphetamine hydrochloride" instead of morphine during the August 4 and 7, 2008 hearings and in its August 4, 2008 Order, such erroneous description does not affect the actual evidence presented and offered by the prosecution, which are the vials of morphine recovered from appellant.[62]

Hence, appellant filed the instant appeal, raising the same arguments he had in the CA.

On August 3, 2015, the Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.[63]

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[57] Records, p. 121.

[58] *Rollo*, p. 12.

[59] *Id.* at 13-18.

[60] *Id.* at 30.

[61] *Id.* at 18-28.

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

[63] *Id.* at 51.

The Court's Ruling

The appeal is meritorious.

Appellant contends that there was no valid buy-bust operation as he was allegedly instigated or induced to commit the crime by the CI;[64] and that the prosecution failed to show that the Chain of Custody Rule was followed since the investigating officer and the forensic chemist failed to testify in court.[65] He likewise puts in issue the error of the RTC in describing the dangerous drug subject of this case as "methamphetamine hydrochloride," instead of morphine during the August 4 and 7, 2008 hearings and in the August 4, 2008 Order.[66]

There was a valid Buy-Bust Operation.

There is instigation when "the accused is lured into the commission of the offense charged in order to prosecute him."[67] On the other hand, "[t]here is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime."[68] A buy-bust operation is a form of entrapment used to apprehend drug peddlers.[69] It is considered valid as long as it passes the "objective test," which demands that "the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale."[70]

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[64] CA, *rollo*, pp. 18-23.

[65] *Id.* at 23-28.

[66] *Id.* at 24.

[67] *People v. Pagkalinawan*, 628 Phil. 101, 112 (2010).

[68] *Chang v. People*, 528 Phil. 740, 751 (2006).

[69] *People v. Pagkalinawan*, *supra* at 113.

[70] *Id.*

In the instant case, the CA correctly found that there was a valid buy-bust operation as the prosecution was able to establish details of the transaction from the initial contact of the poseur-buyer and the appellant up to the consummation of the sale by the delivery of the morphine. The identities of the poseur-buyer and the appellant, as the seller of the morphine, and the details of the procedure employed by the police operatives in conducting the buy-bust were clearly established by the prosecution. The fact that the poseur-buyer, through the CI, solicited morphine from appellant is not prohibited by law and does not render the buy-bust operation invalid as, under prevailing jurisprudence, "a police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a 'decoy solicitation,' is not prohibited by law and does not render the buy-bust operation invalid."[71]

However, while there was a valid buy-bust operation, the Court finds that the prosecution failed to establish an unbroken chain of custody of the seized items, *i.e.*, there were missing links.

The Prosecution failed to establish an unbroken chain of custody of the seized items.

Chain of custody is "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."[72]

Section 21, Article II of RA 9165, as amended by RA 10640,[73] reads:

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[71] *Id*. at 114.

[72] *People v. Gayoso*, G.R. No. 206590, March 27, 2017; citing *People v. Havana*, G.R. No. 198450, January 11, 2016, 778 SCRA 524, 534-535.

[73] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results x x x shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, x x x does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved July 15, 2014.

The Court has consistently ruled that each link in the chain of custody rule must be sufficiently proved by the prosecution and examined with careful scrutiny by the court.[74] The prosecution has the burden to show "every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence."[75] Failure to strictly comply with rules of procedure, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[76] Thus, in case the police officers fail to strictly comply with the rules of procedure, they must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist."[77] In other words, taking into consideration the difficulty of complete compliance with the chain of custody requirement, the Court has considered substantial compliance sufficient "as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers."[78]

In this case, it was established by the testimonies of the prosecution's witnesses and the stipulation of facts agreed by the parties that PO3 Jimenea and SPO4 Rosales marked the seized items with their initials at the police station; that PO3 Jimenea turned over the seized items to SPO1 Gallego; that after the seized items were turned over to him, SPO1 Gallego marked and photographed them;[79] that an

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[74] *People v. Bartolini,* G.R. No. 215192, July 27, 2016, 798 SCRA 711, 724.

[75] *Id*. at 720.

[76] *People v. Geronimo,* G.R. No. 225500, September 11, 2017.

[77] *Id*.

[78] *People v. Morate*, 725 Phil. 556, 571 (2014).

[79] Exhibit "J" of the Prosecution, Folder of Exhibits, p. 7.

Inventory[80] of the seized items was then made in the presence of appellant and the representatives of the media and the DOJ; that SPO1 Gallego then prepared a Request for the Laboratory Examination[81] of the seized vials, which were then brought to the crime laboratory on the same day; that PCI Diestro examined the specimen she received; and that her findings were reduced into writing in the Chemistry Report.[82]

No testimonies or stipulations, however, were made on the details of the turnover of the seized vials from the police station to the crime laboratory, and the turnover and submission of the same from the crime laboratory to the court, as only the following facts were stipulated:

> In today's trial, the proposed testimony of [SPO1 Gallego] was dispensed with and [the] parties agreed to stipulate the following: that he was the investigator in this case; that he took cognizance of this case by virtue of the Investigation Report – Exhibit "L[;]" that he received the person of the [appellant], twenty pieces/vials of Morphine Sulfate – Exhibit "B[;]" one big vial [Decaject] 200; two syringe[s] – Exhibit "C;" five pieces of ₱100.00 bills – Exhibit "H[;]" picture – Exhibit "J[;]" finger prints – Exhibit "N[;]" Inventory – Exhibit "I[;]" that he prepared the forwarding report – Exhibit "M[;]" and that he has no personal knowledge as to the actual exchange of the buy-bust money and the dangerous drugs and the articles. x x x[83]

> In today's trial, the testimony of the first witness for the prosecution, [PCI Diestro] was dispensed with and the parties agreed to stipulate on the following: that the witness is an expert in the field of forensic chemistry; that she was assigned at the PNP Crime Laboratory Office No. 9 on October 14, 2006; that on said date, their office received a request for laboratory examination from the [RIID-SOG], Exhibit "A"; Twenty (20) pieces/vials of Morphine Sulfate, one (1) big vial Decaject 200 – Exhibit "B", which she examined and gave positive result for the presence of methamphetamine hydrochloride, a dangerous

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[80] Exhibit "I" of the Prosecution, *id*. at 6.

[81] Exhibit "A" of the Prosecution, *id*. at 1.

[82] *Rollo*, pp. 6-9 and 26-29.

[83] Records, p. 69; Order dated August 7, 2008.

drug, whose findings were reduced into writing in Chemistry Report No. D-158-2006, marked as Exhibit "E"; that the said witness has no personal knowledge as to the source of the specimen. x x x[84]

From the foregoing, it is very evident that the prosecution in dispensing with the testimonies of SPO1 Gallego, the investigating officer, and PCI Diestro, the forensic chemist, failed to show every link of the chain of custody. Without the testimonies or stipulations stating the details on when and how the seized vials were brought to the crime laboratory, and thereafter, to the court, as well as the details on who actually delivered and received the same from the police station to the crime laboratory, and later, to the court for the prosecution's presentation of evidence, the Court cannot ascertain whether the seized vials presented in evidence were the same vials seized from appellant when he was arrested. These gaps in the chain of custody create doubt as to whether the *corpus delicti* of the crime had been properly preserved. And more importantly, although appellant was charged with violation of Section 5, Article II of RA 9165 for selling vials of morphine and Nandrolone Decanoate, the parties however stipulated, per August 4, 2008 Order of the RTC, that the items seized from appellant yielded positive results for the presence of methamphetamine hydrochloride or *shabu*. Clearly, the identity of the *corpus delicti* of the crime had not been properly established.

The prosecution likewise failed to give an explanation or a justifiable reason why the apprehending police officers had failed to mark the seized items and conduct the physical inventory of the same at the place where the appellant was arrested. It bears stressing that the marking of the apprehending police officers' initials or signatures on the seized items must be made in the presence of the accused immediately upon arrest.[85] And although the Chain of Custody Rule allows the physical inventory of the seized items to be done at the nearest police station, this is

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[84] *Id*. at 63; Order dated August 4, 2008.

[85] *People v. Ismael,* G.R. No. 208093, February 20, 2017.

more of an exception than a rule. Police officers, therefore, must provide an explanation to justify their failure to conduct the marking and the physical inventory at the place of arrest.

The Court also noticed that, although the prosecution stipulated that SPO1 Gallego conducted the inventory,[86] the Certificate of Inventory[87] was signed by a certain PI Domingo.

Considering all the foregoing, the Court finds that the prosecution failed to (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the Chain of Custody Rule was not complied with. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed October 23, 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 00985-MIN, which affirmed the August 26, 2011 Decision of the Regional Trial Court of Zamboanga City, Branch 13, in Criminal Case No. 6030 (22827) is hereby **REVERSED** and **SET ASIDE**.

Accordingly, appellant Jesus Dumagay *y* Suacito is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Tijam, and *Gesmundo,*[*] *JJ.,* concur.

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[86] *Rollo*, pp. 9 and 26; TSN dated August 7, 2008, p. 3.

[87] *Id.* at 7 and 25; Exhibit "I" of the Prosecution, Folder of Exhibits, p. 6.

[*] Designated as additional member per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

SECOND DIVISION

[G.R. No. 218236. February 7, 2018]

SUMIFRU (PHILIPPINES) CORPORATION, *petitioner, vs.* **SPOUSES DANILO CEREÑO and CERINA CEREÑO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DEFINED; REQUISITES WHICH MUST BE PROVED BEFORE A WRIT OF PRELIMINARY INJUNCTION, WHETHER MANDATORY OR PROHIBITORY, CAN BE ISSUED, ENUMERATED.— Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party, court, agency, or person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. Section 3 of the same Rule provides the grounds for the issuance of a preliminary injunction: x x x Thus, the following requisites must be proved before a writ of preliminary injunction, whether mandatory or prohibitory, will be issued: (1) the applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) there is a material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

2. ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION, BEING AN EXTRAORDINARY REMEDY, MUST BE GRANTED ONLY IN THE FACE OF INJURY TO ACTUAL AND EXISTING SUBSTANTIAL RIGHTS; EXPLAINED.— A writ of preliminary injunction, being an extraordinary event, one deemed as a strong arm of equity or a transcendent remedy, must be granted only in the face of injury to actual and existing substantial rights. A right to be protected by injunction means a right clearly founded on or granted by law or is enforceable as a matter of law. An injunction is not a remedy to protect or enforce contingent, abstract, or

future rights; it will not issue to protect a right not *in esse*, and which may never arise, or to restrain an act which does not give rise to a cause of action. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, injunction is not proper. While it is not required that the right claimed by the applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.

3. ID.; ID.; ID.; A PRELIMINARY INJUNCTION IS MERELY A PROVISIONAL REMEDY, AN ADJUNCT TO THE MAIN CASE SUBJECT TO THE LATTER'S OUTCOME, THE SOLE OBJECTIVE OF WHICH IS TO PRESERVE THE STATUS QUO UNTIL THE TRIAL COURT HEARS FULLY THE MERITS OF THE CASE; NOT APPLICABLE IN CASE AT BAR.— Finally, a preliminary injunction is merely a provisional remedy, an adjunct to the main case subject to the latter's outcome, the sole objective of which is to preserve the status quo until the trial court hears fully the merits of the case. The status quo usually preserved by a preliminary injunction is the last actual, peaceable, and uncontested status which preceded the actual controversy, or that existing at the time of the filing of the case. In this case, the status quo can no longer be enforced. x x x Considering that Sumifru admitted that the GEPASAs on which it anchors its right expired in 2015, there is even more reason not to issue the writ prayed for. In *Thunder Security and Investigation Agency v. National Food Authority*, we held that petitioner cannot lay claim to an actual, clear, and positive right as to entitle it to the issuance of a writ of preliminary injunction based on an expired service contract. No court can compel a party to agree to a continuation of an admittedly expired contract through the instrumentality of a writ of preliminary injunction since a contract can be renewed, revived, or extended only by mutual consent of the parties. This Resolution, however, is without prejudice to Sumifru's action for breach of contract and damages, which can only be determined after trial on the merits.

APPEARANCES OF COUNSEL

Pascua & Torrefranca Law Firm for petitioner.

Into Pantojan Feliciano-Braceros and Ong-Chang Law Offices for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision dated 20 May 2014[2] and the Resolution dated 5 May 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 04008-MIN, which affirmed the Orders dated 5 October 2010[4] and 11 November 2010[5] of the Regional Trial Court of Davao City, Branch 15 (RTC), denying the application for the issuance of a writ of preliminary prohibitory and mandatory injunction filed by petitioner Sumifru (Philippines) Corporation (Sumifru).

The Facts

The facts, as culled from the records, are as follows:

Sumifru is a domestic corporation engaged in the production and export of Cavendish bananas and has its principal office at Km. 20, Tibungco, Davao City. It is the surviving corporation in a merger, made effective in June 2008, among several corporations, including the Davao Fruits Corporation (DFC).

DFC then, now Sumifru, entered into several growership agreements with respondents spouses Danilo and Cerina Cereño (spouses Cereño) covering the latter's titled lands with a total land area of 56,901 square meters (sq. m.) located in Tamayong, Calinan District, Davao City, to wit:

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[1] Under Rule 45 of the Rules of Court. *Rollo,* pp. 17-39.

[2] *Id*. at 40-49. Penned by Associate Justice Edward B. Contreras, with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

[3] Id. at 63-64.

[4] *Id*. at 95-96. Penned by Judge Ridgway M. Tanjili.

[5] *Id*. at 97-98.

Contract	Term	Land area covered
1. Production and Purchase Agreement dated 29 November 1999 (PPA)[6]	22 July 1999 to 21 July 2009	9,176 sq. m.
2. Growers Exclusive Production and Sales Agreement (GEPASA) dated 10 January 2002[7]	15 August 2000 to 14 August 2015	13,925 sq. m.
3. GEPASA dated 7 January 2002[8]	15 November 2000 to 14 November 2015	13,800 sq. m.
4. GEPASA dated 9 December 2002[9]	23 December 2000 to 22 December 2015	20,000 sq. m.

Under the parties' PPA and GEPASAs, the spouses Cereño, as growers, undertook, among others, to sell and deliver exclusively to Sumifru the bananas produced from the contracted areas, which conform to the volume and quality specifications defined by their agreements.

On 4 August 2010, Sumifru filed a Complaint for Injunction and Specific Performance with Application for Writ of Preliminary Injunction and Temporary Restraining Order[10] against the spouses Cereño before the RTC. The complaint alleged that sometime in February 2007, the spouses Cereño flagrantly violated their PPA and GEPASAs, when they harvested the bananas without the consent of Sumifru, packed them in boxes not provided by Sumifru, and sold them to buyers other than Sumifru. Sumifru made several demands upon the spouses Cereño to comply with their contractual obligations, but they refused to heed the demands.

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[6] *Id*. at 116-125.

[7] *Id*. at 128-139.

[8] *Id*. at 142-153.

[9] *Id*. at 157-167.

[10] *Id*. at 106-113.

Hence, in seeking the issuance of a Writ of Preliminary Prohibitory/Mandatory Injunction and praying for a Temporary Restraining Order, Sumifru pleaded that the spouses Cereño be restrained from committing any or all of the following acts: (a) harvesting the bananas grown on the contracted growership areas without the consent of Sumifru, (b) packing the bananas in boxes other than those provided by Sumifru, (c) selling the produce to persons or entities other than Sumifru, and (d) committing any other act in violation of their PPA and GEPASAs. Sumifru likewise prayed that the spouses Cereño be compelled to faithfully comply with their obligations under the PPA and GEPASAs.

During the 24 August 2010 hearing for the preliminary injunction, the parties agreed and were ordered to file their respective position papers. Consequently, both parties filed their position papers. Meanwhile, on 29 September 2010, the spouses Cereño filed their Answer to the Complaint. In their Answer, they claimed that their contractual obligations under the PPA and GEPASAs were no longer in force for they already terminated the agreements due to Sumifru's gross violations and serious breach thereof.

The Ruling of the RTC

In an Order dated 5 October 2010, the RTC denied Sumifru's application for issuance of a writ of preliminary prohibitory and mandatory injunction for lack of merit. The RTC found that there was no urgency to issue the injunctive reliefs prayed for in order to prevent injury or irreparable damage to Sumifru while the main case was being heard. The RTC held that in seeking the issuance of the injunctive writ, Sumifru was practically praying for a favorable ruling in the main case, which in effect would dispose of the merits of the main case and leave only the matter of damages to be determined by the trial court.[11]

Sumifru's motion for reconsideration was denied by the RTC in an Order dated 11 November 2010.[12]

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[11] *Id.* at 95.

[12] *Id.* at 97.

Hence, Sumifru filed a petition for certiorari[13] with the CA.

The Decision of the CA

In a Decision dated 20 May 2014, the CA denied the petition of Sumifru.[14] The CA held that the RTC did not abuse its discretion in not issuing the writ of preliminary injunction since Sumifru did not satisfy all of the legal requisites for its issuance. The CA found that Sumifru's rights under the agreements are disputed, and the injury, which Sumifru claims it may suffer, is capable of mathematical computation and can be compensated by damages. Moreover, the CA upheld the RTC in finding that the issuance of the injunctive writ would have the effect of disposing of the main case. The CA concluded that it will not interfere with the RTC's exercise of judicial discretion in injunctive matters, absent any showing of grave abuse of discretion.

In a Resolution dated 5 May 2015, the CA denied the motion for reconsideration filed by Sumifru.[15]

Hence, this petition.

The Issues

Sumifru raises the following issues for resolution:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRONEOUSLY HELD THAT PETITIONER'S RIGHT TO THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION WAS PUT IN SERIOUS DOUBT BY RESPONDENTS' CLAIM THAT THEY HAVE ALREADY TERMINATED EXTRA-JUDICIALLY THE GROWERSHIP CONTRACT DESPITE THE NON-EXISTENCE OF ANY LEGAL BASIS THEREFOR;

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[13] *Id*. at 75-92. Under Rule 65 of the Rules of Court.

[14] *Id*. at 48. The dispositive portion of the Decision reads: "WHEREFORE, premises considered, the instant petition is hereby DENIED. SO ORDERED."

[15] *Id*. at 64.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT GRAVELY ERRED WHEN IT HELD THAT THE GRANT OF APPLICATION FOR A WRIT OF PRELIMINARY INJUNCTION WOULD HAVE THE EFFECT OF DISPOSING OF THE MAIN CASE, GIVEN THAT THE OBJECT THEREOF IS MERELY TO PRESERVE THE STATUS QUO ANTE[;]

III. THE CONTINUING VIOLATION [BY] RESPONDENTS OF THEIR EXCLUSIVE CONTRACT WITH PETITIONER WILL CAUSE GRAVE AND IRREPARABLE DAMAGE TO PETITIONER[;]

IV. THE GRAVE AND IRREPARABLE DAMAGE CAUSED BY RESPONDENT[S] CANNOT BE COMPENSATED UNDER ANY STANDARD COMPENSATION[.][16]

The Ruling of the Court

The petition has no merit.

Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party, court, agency, or person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. Section 3 of the same Rule provides the grounds for the issuance of a preliminary injunction:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

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[16] *Id.* at 24-25.

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, the following requisites must be proved before a writ of preliminary injunction, whether mandatory or prohibitory, will be issued: (1) the applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) there is a material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[17]

A writ of preliminary injunction, being an extraordinary event, one deemed as a strong arm of equity or a transcendent remedy, must be granted only in the face of injury to actual and existing substantial rights.[18] A right to be protected by injunction means a right clearly founded on or granted by law or is enforceable as a matter of law.[19] An injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse*, and which may never arise, or to restrain an act which does not give rise to a cause of action.[20] When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, injunction is not

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[17] *Liberty Broadcasting Network, Inc. v. Atlocom Wireless System, Inc.*, 762 Phil. 210, 218 (2015)*; Thunder Security and Investigation Agency v. National Food Authority,* 670 Phil. 351, 361 (2011).

[18] *Liberty Broadcasting Network, Inc. v. Atlocom Wireless System, Inc.*, 762 Phil. 210, 226 (2015); *Overseas Workers Welfare Administration v. Atty. Chavez,* 551 Phil. 890, 915 (2007), citing *Tayag v. Lacson,* 470 Phil. 64, 90 (2004).

[19] *Nerwin Industries Corporation v. PNOC-Energy Development Corporation,* 685 Phil. 412 (2012), citing *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.,* 651 Phil. 37 (2010).

[20] *Thunder Security and Investigation Agency v. National Food Authority,* 670 Phil. 351, 361 (2011), citing *Go v. Villanueva, Jr.*, 600 Phil. 172, 180 (2009).

proper.[21] While it is not required that the right claimed by the applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[22]

The CA did not err when it ruled that Sumifru failed to establish a clear and unmistakable right as to necessitate the issuance of a writ of preliminary injunction. As aptly found by the CA, the spouses Cereño consistently disputed Sumifru's rights under the agreements by claiming that the agreements were already terminated. In *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province,*[23] we held that there can be no clear and unmistakable right to warrant the issuance of a writ of injunction in favor of petitioners since their alleged rights under the MOA are disputed by respondent.

The CA likewise did not err when it found that there is no irreparable injury to be suffered by Sumifru. Injury is irreparable where there is no standard by which its amount can be measured with reasonable accuracy.[24] In its Complaint, Sumifru alleged that it has "released to [spouses Cereño] cash advances and farm inputs in the amount of Seven Hundred Twenty Thousand One Hundred Eighty Nine and 81/100 Pesos (Php 720,189.81)."[25] Clearly, the injury alleged by Sumifru is capable of pecuniary estimation, and any loss it may suffer, if proven, is fully compensable by damages. As to Sumifru's allegations of potential suits and damage to reputation, these are speculative at best, with no proof adduced to substantiate them.

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[21] *Spouses Ngo v. Allied Banking Corporation,* 646 Phil. 681 (2010), citing *China Banking Corporation v. Co,* 587 Phil. 380 (2008).

[22] *Id*., citing *Mizona v. Court of Appeals*, 400 Phil. 587 (2000); *Developers Group of Companies, Inc. v. Court of Appeals,* 292 Phil. 723, 729 (1993).

[23] 684 Phil. 283 (2012).

[24] *Id*. at 294, citing *Social Security Commission v. Bayona*, 115 Phil. 105 (1962).

[25] *Rollo,* p. 111.

Finally, a preliminary injunction is merely a provisional remedy, an adjunct to the main case subject to the latter's outcome, the sole objective of which is to preserve the status quo until the trial court hears fully the merits of the case.[26] The status quo usually preserved by a preliminary injunction is the last actual, peaceable, and uncontested status which preceded the actual controversy, or that existing at the time of the filing of the case.[27] In this case, the status quo can no longer be enforced.

In its petition before us, Sumifru insists that its "claim that the GEPASA is still binding and effective on the parties rests on the provisions of the very contract that the parties entered into."[28] The GEPASAs specifically provide that "[t]his agreement shall remain in full force and effect for a term of Fifteen (15) years covering the period of x x x 2000 to x x x 2015 x x x."[29] In Sumifru's Motion for Reconsideration filed on 19 October 2010 before the RTC, it alleged that "the GEPASAs will expire in 2015 or in five (5) years' time."[30] An admission made in the pleadings cannot be controverted by the party making such admission and is conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not.[31]

Considering that Sumifru admitted that the GEPASAs on which it anchors its right expired in 2015, there is even more reason not to issue the writ prayed for. In *Thunder Security*

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[26] *Overseas Workers Welfare Administration v. Atty. Chavez,* 551 Phil. 890, 911 (2007), citing *Rualo v. Pitargue*, 490 Phil. 28, 46-47 (2005).

[27] *Id.* at 911-912.

[28] *Rollo,* p. 29.

[29] *Id.* at 128, 142 and 157. Underscoring in the original.

[30] *Id.* at 100.

[31] *Constantino v. Heirs of Constantino,* 718 Phil. 575, 592 (2013), citing *Alfelor v. Halasan,* 520 Phil. 982, 991 (2006).

and Investigation Agency v. National Food Authority,[32] we held that petitioner cannot lay claim to an actual, clear, and positive right as to entitle it to the issuance of a writ of preliminary injunction based on an expired service contract. No court can compel a party to agree to a continuation of an admittedly expired contract through the instrumentality of a writ of preliminary injunction since a contract can be renewed, revived, or extended only by mutual consent of the parties.[33] This Resolution, however, is without prejudice to Sumifru's action for breach of contract and damages, which can only be determined after trial on the merits.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 20 May 2014 and the Resolution dated 5 May 2015 of the Court of Appeals in CA-G.R. SP No. 04008-MIN.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 218913. February 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMULO BANDOQUILLO *y* OPALDA,** *accused-appellant.*

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[32] *Supra* note 20.

[33] *Id.,* citing *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.,* 567 Phil. 255, 272-273 (2008); *Light Rail Transit Authority v. Court of Appeals,* 486 Phil. 315, 329 (2004); and *National Food Authority v. Court of Appeals,* 323 Phil. 558, 571 (1996).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS THEREON DESERVE GREAT RESPECT AND ARE OFTEN ACCORDED FINALITY, MORE SO WHEN SUSTAINED BY THE COURT OF APPEALS.—**It is settled that "**when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality**" unless it is shown that the lower court had *overlooked, misunderstood* or *misappreciated* some fact or circumstance of weight which, if properly considered, would have altered the result of the case. "**[This] rule finds an even more stringent application where said findings are sustained by the Court of Appeals.**"In this case, we find no compelling reason to overturn the factual findings of the trial court, given that: a) it has *not* been shown that the RTC had overlooked, misunderstood or misappreciated facts or circumstances which would have resulted in appellant's acquittal; and b) said findings were upheld by the CA.

2. **ID.; ID.; ID.; ID.; IN THE ABSENCE OF ANY ILL-MOTIVE ON THE PART OF THE VICTIM THAT WOULD MAKE HER TESTIFY FALSELY AGAINST THE ACCUSED/ APPELLANT, THE CANDID NARRATION OF THE RAPE INCIDENT DESERVES FULL FAITH AND CREDENCE.—** Note that "[w]hen the offended party is a *young* and *immature* girl between the age of 12 to 16, *as in this case*, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by court trial if her accusation were untrue." In the absence of any ill-motive on the part of "AAA" that would make her testify falsely against appellant, her candid narration of the rape incident deserves full faith and credence. "For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true."

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; RESISTANCE IS NOT AN ELEMENT OF RAPE AND THE ABSENCE THEREOF WILL NEVER BE TANTAMOUNT TO CONSENT ON THE PART OF THE VICTIM.— Resistance is not an element of rape, and the absence thereof will *never* be tantamount to consent on the part of the victim. Besides, in rape committed by a relative, such as a father, *as in this case*, moral influence or ascendancy takes the place of violence.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the July 21, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05891 which affirmed with modification the August 31, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 55, Irosin, Sorsogon, finding appellant Romulo Bandoquillo *y* Opalda guilty beyond reasonable doubt of the crime of rape.

The Antecedent Facts

Appellant was charged for the crime of rape in an Information[3] dated March 10, 2004 which reads:

That on or about early in the morning of December 27, 2003, x x x Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and by the use of force, threat and intimidation whilst inside

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Rebecca De Guia Salvador and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 49-55; penned by Judge Fred G. Jimena.

[3] *Id*. at 10-11.

their residence, with lewd designs, did then and there willfully, unlawfully and feloniously, have carnal knowledge with his own daughter, "AAA",[4] 14 years of age, a minor below 18 years of age and a child who cannot protect herself from abuse, against her will and consent, where acts and deeds by the accused degrades, demeans and debases her dignity as a child and as a human being, to her damage and prejudice.

The commission of the offense is further aggravated by the fact that the offender is her own father and armed with a knife.

During his arraignment on July 7. 2004, appellant entered a plea of not guilty.[5] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident as summarized by the Office of the Solicitor General is as follows:

In the early morning of December 27, 2003, "AAA", then only 14 years of age, was sleeping inside her room in their house when she was suddenly awakened by her father, herein appellant, who forcibly undressed her, touched her breasts and kissed her neck. "AAA" begged appellant not to continue with what he was doing, saying: "*Papa, do not do this to me, [take] pity [on] my siblings and my honor*." Appellant, however, disregarded his daughter's pleas and succeeded in having carnal knowledge of "AAA", against her will.[6]

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[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of AM. No. 04-10-11-SC known as the Rule on Violence Against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538-539.

[5] Records, pp. 19-20.

[6] CA *rollo*, p. 75.

Immediately thereafter, "AAA" contacted her mother, "ZZZ", who was then residing in Manila, and disclosed what had happened to her. "ZZZ" quickly travelled back to Sorsogon, and on December 29, 2003, "AAA" and "ZZZ" reported the incident to the Department of Social Welfare and Development and to the local authorities.[7]

"AAA" was then physically examined by Dr. Runnel John L. Rebustillo at the Irosin District Hospital.[8] Based on her Medical Certificate[9] dated February 16, 2004, "AAA" had healed lacerations at 1, 3, 5 & 6 o'clock positions, as well as hematoma on the outer part of her vaginal canal.

Version of the Defense

The defense presented appellant as its lone witness who testified that:

On December 26, 2003, appellant instructed "AAA", who was then at their house tending to their store, that if he was not yet home by 8:30 p.m. that evening, she should close the store with the lights turned on, close the gate and go to her aunt's house across the street. But when he arrived home at 9:30 p.m., he noticed that the lights were turned off and the gate was closed. As he opened the gate, a man ran out. He asked "AAA" who the man was but the latter answered that he was just a friend. After asking for the man's identity for the fourth time, he slapped her on the left cheek which made her cry.[10]

Ruling of the Regional Trial Court

In its Decision dated August 31, 2012, the RTC found appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code. It held that:

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[7] *Id*. at 75-76.

[8] *Id*. at 76.

[9] *Id*., between pages 14 and 15.

[10] *Id*. at 39.

A reading and a thorough review of the pertinent transcript of stenographic notes disclosed that [AAA] was in fact firm and consistent on the fact of rape committed on her by her father Romulo Bandoquillo. Her answers to the questions on direct examination, as well [as] on the grueling cross-examination of [the] defense counsel was clear, simple and natural words typical of children her age, that the accused performed on her sexual intercourse, identifying him properly and positively as the perpetrator of the act complained of.[11]

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua* and likewise ordered appellant to pay "AAA" ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages.[12]

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated July 21, 2014, the CA affirmed the assailed RTC Decision with the following modifications: a) it convicted appellant of the crime of *qualified* rape;[13] b) it declared appellant ineligible for parole; c) it awarded ₱30,000.00 as exemplary damages in favor of "AAA;" and d) it imposed interest at six percent (6%) per annum on all awarded damages, reckoned from the date of finality of the Decision until fully paid.[14]

The CA agreed with the RTC's findings that AAA had testified in a firm, consistent, credible and believable manner in recounting how appellant had carnal knowledge of her in the early morning of December 27, 2003.[15] It explained that:

Significantly, AAA never wavered in her direct testimonies on 07 December 2005 and 07 March 2007 that appellant succeeded in

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[11] *Id*. at 53

[12] *Id*. at 55.

[13] *Rollo*, pp. 12-13.

[14] *Id*. at 14.

[15] *Id*. at 8.

having carnal knowledge of her on the date of the incident. In her 07 December 2005 testimony, AAA confirmed the entry of appellant's penis into 'the labia of [her sexual] organ...' For rape to be consummated, full penetration is not necessary, as proof of the entrance of the male organ into the labia of the pudendum of the female organ suffices to consummate the crime of rape. During her direct testimony on 07 March 2007, and her testimony on cross-examination on 13 June 2007, AAA also remained consistent in her assertion that appellant 'inserted [his] penis into [her] vagina...' Contrary to the assertion of appellant, AAA consistently declared that the rape perpetrated by appellant in the early morning of 27 December [2003] was consummated.[16]

On this point, the CA noted that appellant had failed to adduce evidence "to convincingly show any dubious reason or ill-motive on the part of "AAA" to falsely accuse him of such serious offense as rape."[17] It thus concluded that "[i]n the absence of ill motive on the part of "AAA," appellant's denial cannot prevail over her categorical and positive testimony."[18]

The CA also rejected appellant's claim that his alleged act of spanking "AAA" on the eve of the rape incident had prompted her to make such false accusations. It ruled that "[m]ere disciplinary chastisement is not strong enough to make daughters in a Filipino family invent a charge that would only bring shame and humiliation upon them and their own family and make them the object of gossip."[19]

Finally, the CA held that the crime committed by appellant against "AAA" is *qualified* rape under Article 266-B of the Revised Penal Code, given that "AAA" is under 18 years of age and the offender is a parent.[20]

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[16] *Id.* at 10.

[17] *Id.* at 10-11.

[18] *Id.* at 11.

[19] *Id.*

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

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether "AAA's" testimony is credible, given the inconsistency in her testimony as regards the consummation of the crime;[21]

And *second*, whether "AAA's" failure to significantly resist appellant's sexual advances casts doubt on the veracity of her assertions.[22]

The Court's Ruling

It is settled that "**when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality**"[23] *unless* it is shown that the lower court had *overlooked, misunderstood* or *misappreciated* some fact or circumstance of weight which, if properly considered, would have altered the result of the case.[24] "**[This] rule finds an even more stringent application where said findings are sustained by the Court of Appeals.**"[25]

In this case, we find no compelling reason to overturn the factual findings of the trial court, given that: a) it has *not* been shown that the RTC had overlooked, misunderstood or misappreciated facts or circumstances which would have resulted in appellant's acquittal; and b) said findings were upheld by the CA.

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[21] CA *rollo*, p. 45.

[22] *Id.* at 45-46.

[23] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008). Emphasis in the original.

[24] *Id.*

[25] *Id.* at 563.

The records reveal that when "AAA" testified in court as regards her ordeal, she described how she was sexually abused by appellant in her own room on that fateful day of December 27, 2003, *viz.*:

Direct Testimony on December 7, 2005

[PROS. TITO DIAZ:]

Q: Madam witness, if this is the penis of your father, (*Prosecutor showing his finger*), was he able to enter the labia of your [sexual] organ?
A: Yes, sir.[26]

Direct Testimony on March 7, 2007

[PROS. TITO DIAZ:]

Q: And what happened after your father removed his short and brief?
A: He inserted his penis into my vagina.

Q: Did you not resist your father['s] advances when he already removed your panty and inserted his private organ to your private organ?
A: I resisted and told him not to do that to me because I am his daughter.[27]

The alleged inconsistency in "AAA's" testimony, *i.e.*, that "AAA" had earlier testified that appellant's penis was only able to enter the labia of her sexual organ but later stated that appellant was able to insert his penis into her vagina, is more apparent than real.

A thorough review of "AAA's" direct testimony as well as her cross-examination shows that there is **no real inconsistency** in "AAA's" narration of the rape incident: *first*, appellant's penis touched the labia of "AAA's" sexual organ;[28] *second*,

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[26] TSN, December 7, 2005, p. 8.

[27] TSN, March 7, 2007, 3.

[28] TSN, December 7, 2005, p. 8.

appellant tried to push his penis into "AAA's" sexual organ, and "AAA" felt pain and tried to resist;[29] and *third*, appellant was not able to *fully penetrate* "AAA's" vagina because her little brother, who was sleeping outside her room, woke up and called out to their father.[30]

We thus agree with the CA's conclusion that "AAA" *never* wavered in her direct testimonies on December 7, 2005 and March 7, 2007 that appellant had indeed succeeded in having carnal knowledge of her. As we held in *People v. Ortoa*,[31] **full penetration is not necessary for rape to be consummated**, *viz.*:

> x x x In any case, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the *labia*. **It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ.** Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.[32]

Note that "[w]hen the offended party is a *young* and *immature* girl between the age of 12 to 16, *as in this case*, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by court trial if her accusation were untrue."[33]

In the absence of any ill-motive on the part of "AAA" that would make her testify falsely against appellant, her candid narration of the rape incident deserves full faith and credence.[34] "For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject

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[29] TSN, March 7, 2007, pp. 3-4.

[30] TSN, June 13, 2007, p. 6.

[31] 599 Phil. 232 (2009).

[32] *Id.* at 247. Emphasis supplied.

[33] *People v. Pacheco*, 468 Phil. 289, 300 (2004).

[34] *People v. Espino, Jr.*, *supra* note 23 at 563-564.

herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true."[35]

We also find no merit in appellant's claim that his act of slapping "AAA" on her left cheek had prompted her to make such a false accusation against him. It is quite unbelievable for a 14 year-old girl to publicly and falsely accuse her father of rape in retaliation for such a minor disciplinary measure. After all, "[t]he burden of going through a rape prosecution is grossly out of proportion to whatever revenge the young girl would be able to exact."[36]

Finally, we reject appellant's defense that "AAA's" "failure to significantly resist the alleged attack, viewed together with her conduct thereafter, indubitably casts doubt on her credibility and the veracity of her assertions."[37] Resistance is not an element of rape, and the absence thereof will *never* be tantamount to consent on the part of the victim.[38] Besides, in rape committed by a relative, such as a father, *as in this case*, moral influence or ascendancy takes the place of violence.[39]

Given these circumstances, we uphold the CA's ruling convicting appellant of the crime of **qualified rape** under Article 266-B of the Revised Penal Code, where the rape victim is under 18 years of age and the offender is a parent.[40]

However, there is a need to modify the damages awarded to conform to prevailing jurisprudence. Thus, pursuant to *People v. Jugueta*,[41] appellant must pay "AAA" civil indemnity, moral damages and exemplary damages at ₱100,000.00 each.

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[35] *Id*. at 563.

[36] *People v. Pacheco*, 632 Phil. 624, 634 (2010).

[37] CA *rollo*, p. 46.

[38] *People v. Pepito*, 459 Phil. 1023, 1035 (2003).

[39] *People v. Pareja*, 724 Phil. 759, 778 (2014).

[40] "AAA's" minority and the father-daughter relationship of appellant and "AAA" were both admitted during the Pre-Trial. See CA *rollo*, p. 49.

[41] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated July 21, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05891 convicting Romulo Bandoquillo *y* Opalda for the crime of qualified rape is hereby **AFFIRMED with MODIFICATION** that appellant is ordered to pay the victim civil indemnity, moral damages, and exemplary damages at ₱100,000.00 each.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Tijam*, and *Gesmundo*,* *JJ.*, concur.

SECOND DIVISION

[G.R. No. 226208. February 7, 2018]

AGNES COELI BUGAOISAN, *petitioner, vs.* **OWI GROUP MANILA and MORRIS CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE BASIS FOR A PETITION UNDER RULE 65 OF THE RULES OF COURT IS ESSENTIALLY JURISDICTIONAL ERRORS; EXPLAINED.—In a petition for review on *certiorari* under Rule 45, only questions of law may be raised, in contrast with jurisdictional errors which are essentially the basis of Rule 65. Simply put, in a Rule 65, petition for *certiorari* filed with the CA, the latter must limit itself to the determination of whether or not the inferior court, tribunal, board or officer exercising judicial or quasi-judicial functions acted *without, in excess of* or *with grave abuse of* discretion amounting to lack or excess

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* Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

> of jurisdiction. x x x The Rules of Court is clear and unambiguous in this regard. A petition for *certiorari* is governed by Rule 65 of the Revised Rules of Court, x x x A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. It *cannot be used for any other purpose*, as its function is limited to keeping the inferior court within the bounds of its jurisdiction. The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but an error of law or fact – a mistake of judgment – appeal is the remedy.

APPEARANCES OF COUNSEL

Madrid Danao & Carullo for petitioner.
Quasha Ancheta Peña & Nolasco for respondents.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] pursuant to Rule 45 of the Rules of Court, as amended, seeking to partially annul, reverse and set aside the Decision[2] dated February 24, 2016 and Resolution[3] dated August 3, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131670, which modified the Decision[4] of the National Labor Relations Commission (NLRC)

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[1] *Rollo,* pp. 31-58.

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba concurring; *id*. at 60-75.

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

[4] *Id*. at 370-384.

dated May 31, 2013 and denied Agnes Coeli Bugaoisan's (petitioner) partial motion for reconsideration, respectively.

The Facts

A complaint for constructive illegal dismissal and payment of salary for the unexpired portion of the employment period, moral and exemplary damages, and attorney's fees was filed by the petitioner against respondents OWI Group Manila, Inc. (OWI) and Morris Corporation (Morris) (collectively referred to as the respondents) and Marlene D. Alejandrino before the NLRC. The case was docketed as NLRC NCR OFW CASE No. (L)01-0032-12. In that case, the petitioner alleged that on May 6, 2011 she responded to an advertisement that she saw from OWI regarding a job opening in Australia. She sent a copy of her resume online and was thereafter scheduled for an interview at OWI's office in Makati.[5]

OWI is the agent of Morris here in the Philippines. OWI offered petitioner full time employment after she underwent a series of three interviews and did a cooking demonstration. The following were the terms and conditions of her employment:

Position	Chef
Employee Collective Agreement (ECA) Level	Hospitality, Stream, Level 4
Work Status	Fulltime
Annual Salary	AUS$60,000 per annum. Please refer to clause 4.13.3 of the accompanying ECA
Superannuation	An additional 9% of the Annual Salary
Leave	152 hours/20 days paid annual leave & 76 hours/10 days paid personal leave (sick and carers)

[5] *Id*. at 61.

Appended to the offer of full-time employment was the petitioner's employment contract with Morris, a foreign corporation based in Australia. It was stated that her term of employment was for one year. Petitioner was later medically cleared to work as chef for Morris by OWI's accredited clinic.[6]

On September 25, 2011, petitioner flew from Manila to Perth, Australia. Upon arrival, she was asked to sign another offer of full-time employment by Morris. It was indicated in the offer that her position would be of a breakfast chef and she would receive an annual salary of AUS$75,000.00. She was likewise entitled to a paid annual leave of 190 hours or 25 days.[7]

Position	Chef
Annual Salary	**AUS$75,000 per annum.** Please refer to clause 4.13.3 of the accompanying ECA

x x x x x x x x x

Morris Corporation Australia Pty Ltd will pay your economy class airfare to Australia and one return flight to the Philippines once your 457 visa or your right to work in Australia has expired. **If your contract is terminated by either party during the first 2 years of employment** with Morris Corporation, you will be expected to return the full cost of the above stated travel.[8] (Emphasis Ours)

On October 2, 2011, petitioner was deployed to Morris' mining site in Randalls Kalgoorlie, Australia. She was tasked to prepare breakfast buffet for Morris' 85 employees all by herself. Due to the sheer number of employees, petitioner had to work through the night in order to serve breakfast on time. It was only then did she learn that after cooking the dishes, she was also the one who was tasked to wash the dishes. Overwhelmed with her duties and concerned for her safety when she goes to work at night, petitioner raised her concerns to the attention of Morris.[9]

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[6] *Id*. at 62.

[7] *Id*.

[8] *Id*. at 190.

[9] *Id*.

Morris refused to give her an assistant to aid her in her duties because the Randalls mining site is relatively small and the tasks can be done by one chef. Nevertheless, Morris tried to accommodate her by transferring her to its mining site in Golden Grove, Geraldton, Western Australia. The mining site in Golden Grove is bigger but petitioner worked with a team.[10]

On October 20, 2011, petitioner was transferred to Morris' mining site in Golden Grove, Geraldton, Western Australia. She still performed the same task only this time she had to prepare a breakfast buffet for Morris' 550 mining workers.[11]

On the evening of November 12, 2011, while preparing the breakfast for the following day, petitioner felt a tingling sensation followed by numbness on both of her hands. She was referred to Morris' on-site nurse, who gave her pain reliever. She was diagnosed to be suffering from Carpal Tunnel Syndrome (CTS) and was advised to undergo an intensive examination for confirmation.[12]

Petitioner did not heed the advice of the on-site nurse. Instead, she went back to her work. In the morning of November 14, 2011, she was distraught when the tingling sensation and numbness on both of her hands worsened. Consequently, she was again brought to the on-site nurse. Thereafter, she was flown to Perth, Australia for an extensive medical test.[13]

Several physicians, including Morris' preferred physician, conducted a series of medical examinations on petitioner. She was diagnosed to be suffering from Bilateral CTS and was declared unfit to work for several days. Dr. Timothy Hewitt strongly advised her to undergo surgery.[14]

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[10] *Id.* at 63.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

Petitioner filed a compensation claim with the Worker's Compensation and Injury Management (WCIM) of Australia to seek compensation for her wages while she was still unfit for work or reimbursement of her medical expenses. Her application, however, was denied.[15]

On December 23, 2011, Morris' representative met with petitioner to inform her that she already exhausted her paid annual leaves. Nevertheless, they assured her that they would not be terminating her employment. She must, however, be declared fit for work before they would allow her to report back.[16]

Although still employed, petitioner had no other means to support her daily sustenance and the required medication for her CTS due to the fact that she would not be receiving salary until declared fit to go back to work. She decided to tender her resignation letter and left for the Philippines. Thus, she was repatriated and arrived in the Philippines on December 25, 2011. Respondents, commiserating with petitioner's plight, paid for her transportation and reimbursed her expenses for her excess baggage and meal expenses.[17]

Respondents were later surprised to learn that petitioner filed a labor complaint against them on January 6, 2012. She averred in her Position Paper[18] that she was illegally dismissed and was not paid her salaries, overtime pay and medical expenses.

In a Decision dated December 28, 2012, the Labor Arbiter (LA) ruled that the petitioner was illegally dismissed from employment. It was found that the respondents committed gross misrepresentation and bad faith in inducing petitioner to work for them. Respondents ordered her to manually prepare a breakfast buffet for 600 workers all by herself. According to the LA, petitioner's CTS was caused or at least aggravated by

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[15] *Id*.

[16] *Id*. at 64.

[17] *Id*.

[18] *Id*. at 83-103.

respondents' oppressive acts. Furthermore, the tenor of her resignation letter and the immediate filing of the labor complaint evinced that she did not voluntarily tender her resignation.[19] Thus, the LA disposed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of [petitioner] as unjust and illegal. As such, respondents are hereby ordered to pay, jointly and severally, [petitioner] the following sums:
>
> **AUS$137,500.00 - As salary for the remaining period of her 2-year employment contract**
>
> Php200,000.00 - As moral damages
> Php200,000.00 - As exemplary damages
> Ten (10%) percent of the total monetary award as attorney's fees
>
> Payment can be made in Australian Dollars or its equivalent in Philippine Peso at the time of payment.
>
> SO ORDERED.[20] (Emphasis and underlining Ours)

On appeal, the NLRC sustained the findings of the LA with regard to the existence of constructive dismissal, the solidary liability of the respondents, and the award of petitioner's salary for the unexpired portion of her two-year employment contract.

Respondents filed a Motion for Reconsideration but the same was denied by the NLRC in its Resolution dated July 22, 2013.

Aggrieved, respondents filed with the CA a Petition for *Certiorari* under Rule 65 assailing the NLRC's decision and resolution, with prayer for issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.

On February 24, 2016, the CA issued its first assailed Decision in favor of petitioner, the pertinent portion of which reads as follows:

> Pursuant to the Master Employment Contract between [petitioner] and [Morris], which was submitted to the Philippine Overseas

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[19] *Id*.

[20] *Id*. at 310.

Employment Agency on 10 June 2011, **the term of the contract for employment was for one (1) year.** Her period of employment started when she arrived in Perth, Australia on 25 September 2011 and ended three (3) months later. Accordingly, **[petitioner] is entitled to receive total amount of AUS$56,250, which represents her salary for the unexpired portion of her employment contract.**[21] (Emphasis and underlining Ours)

The dispositive portion of the CA Decision dated February 24, 2016, reads:

WHEREFORE, there being no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the NLRC, the petition is **DISMISSED** for lack of merit. The Decision of the NLRC dated 31 May 2013 is hereby **AFFIRMED with MODIFICATION. [Petitioner] is awarded with the amount of AUS$56,250 or its current equivalent in Philippine Peso, representing her unpaid salaries for the unexpired portion of her one (1) year employment contract**. The rest of the Decision stands. A legal interest of 6% per annum of the total monetary awards from finality of this decision until full satisfaction is likewise imposed.

The [LA] is hereby **ORDERED** to compute the total monetary benefits awarded and due the [petitioner] in accordance with this decision.

SO ORDERED.[22] (Emphasis and underlining Ours)

Petitioner moved for partial reconsideration of the CA decision insofar as it ruled that petitioner's Overseas Employment Contract was only for one (1) year, instead of two (2) years as ruled by the LA and the NLRC.

On August 3, 2016, the CA issued its assailed Resolution[23] denying petitioner's Motion for Reconsideration, the pertinent portions of which read as follows:

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[21] *Id*. at 74.

[22] *Id*. at 74-75.

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

Thus, we note from the Master Employment Contract that the [petitioner] signed and submitted with the Philippine Overseas Employment Agency on 10 June 2011, that it was explicitly states [sic] that the **duration of her contract was for one (1) year.**

Certainly, employment contracts that were approved and verified by the Department of Labor and Employment (DOLE) may still be substituted or altered from the time the parties actually signed the same up to its expiration even without approval of the DOLE. Provided, however, that the employee was not prejudiced and the modifications made were in accordance with the minimum standards, terms and conditions of employment set by the POEA-SEC for contracts of employment of land-based workers.

Here, it is not clear from the letter of offer of full time employment that [petitioner's] employment contract was extended to two (2) years. All the same, the absence of [petitioner's] signature in the said letter evinced the fact that [petitioner] did not accept such offer. Settled is the rule that contracts are perfected by mere consent. That is, a contract is perfected upon the meeting of the offer, which must be certain, and the absolute acceptance upon the thing and the cause which shall constitute the contract.[24] (Emphasis and underlining Ours)

Hence, this petition.

The Issues

I. WHETHER OR NOT THE CA GRAVELY ERRED WHEN IT RULED THAT PETITIONER'S EMPLOYMENT CONTRACT WITH MORRIS WAS FOR ONLY ONE (1) YEAR AS PER ITS POEA MASTER EMPLOYMENT CONTRACT

II. WHETHER OR NOT SAID CONTRACT WAS VALIDLY MODIFIED BY MORRIS' SUBSEQUENT "OFFER OF FULLTIME EMPLOYMENT" FOR AT LEAST TWO (2) YEARS THUS ENTITLING HER TO THE UNPAID SALARIES FOR THE UNEXPIRED PORTION OF THE TWO-YEAR CONTRACT.[25]

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[24] *Id*.

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

Ruling of the Court

In a petition for review on *certiorari* under Rule 45, only questions of law may be raised, in contrast with jurisdictional errors which are essentially the basis of Rule 65. Simply put, in a Rule 65, petition for *certiorari* filed with the CA, the latter must limit itself to the determination of whether or not the inferior court, tribunal, board or officer exercising judicial or quasi-judicial functions acted *without, in excess of* or *with grave abuse of* discretion amounting to lack or excess of jurisdiction.

In resolving said questions of jurisdiction, the CA ruled in favor of petitioner and public respondent NLRC. It affirmed the findings of the NLRC, ruling that no grave abuse of discretion could be attributed to the latter when it issued its Decision dated May 31, 2013 and Resolution dated July 22, 2013. However, the appellate court modified the aforesaid decision by reducing the award of unpaid salaries due the petitioner on the ground that the basis should be the first contract of employment which had a duration of only one (1) year.

On the other hand, the NLRC decision affirmed the ruling of the LA insofar as it concerned, among others, the award of petitioner's unpaid salaries for the unexpired portion of her employment contract which was adjudged to be two (2) years, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of [petitioner] as unjust and illegal. As such, respondents are hereby ordered to pay, jointly and severally, [petitioner] the following sums:

AUS$137,500.00 - As salary for the remaining period of her 2-year employment contract

Php200,000.00 - As moral damages
Php200,000.00 - As exemplary damages
Ten (10%) percent of the total monetary award as attorney's fees.

Payment can be made in Australian Dollars or its equivalent in Philippine Peso at the time of payment.

SO ORDERED.[26] (Emphasis and underlining Ours)

The primary issue now that must be resolved is whether or not the CA was correct when it went beyond the issues of the case and the assigned errors raised by respondents when it filed the *certiorari* petition under Rule 65.

The Rules of Court is clear and unambiguous in this regard. A petition for *certiorari* is governed by Rule 65 of the Revised Rules of Court, which reads:

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 its or his 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.

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To eradicate confusion, what respondents filed with the CA was a special civil action for *certiorari*, under Rule 65 of the Revised Rules of Court. The issues raised by respondents before the appellate court ascribed grave abuse of discretion on the part of the NLRC in resolving the merits of the case. If respondents wanted to question the matter regarding contract duration, it should have raised the issue at the earliest possible opportunity or raised it as error on the part of the NLRC, thus, strengthening its claim of abuse of discretion committed by the latter. This issue, however, remained unraised.

A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. It *cannot be used for any*

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[26] *Id*. at 310.

other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.[27]

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.[28] Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*.[29] Where the error is not one of jurisdiction, but an error of law or fact – a mistake of judgment – appeal is the remedy.[30]

Applying this to the case at bench, the supervisory jurisdiction of the CA under rule 65 was confined only to the determination of whether or not the NLRC committed grave abuse of discretion in deciding the issues brought before it on appeal. To recapitulate, the CA is allowed to consider the factual issues only insofar as they serve as the basis of the jurisdictional error imputed to the lower court or in this case, the NLRC.

What, then, is the "question of law" that must be resolved by this Court in a Rule 45 petition assailing a decision of the CA on a Rule 65 *certiorari* petition?

In the case of *Montoya v. Transmed Manila Corporation/ Mr. Ellena, et al.*,[31] the Court ruled:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision.

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[27] *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 396 (2008), citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 784 (2003).

[28] *Land Bank of the Philippines v. Court of Appeals*, *id*.

[29] *Ala-Martin v. Sultan*, 418 Phil. 597, 604 (2001).

[30] *Spouses Samson v. Judge Rivera*, 472 Phil. 836, 849-850 (2004).

[31] 613 Phil. 696 (2009).

In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case.[32]

Similarly, the petition before the Court involves mixed questions of law and fact. Respondents, in its Comment claim that the present petition must be denied for the reason that only questions of law must be raised in a petition for review under Rule 45. They are correct.

To reiterate, the CA correctly affirmed the findings of the NLRC in that: (1) petitioner was illegally dismissed; and (2) petitioner was entitled to her unpaid salaries for the unexpired portion of the employment contract, damages and attorney's fees. However, it departed from the issues presented by the parties and decided by the labor tribunals when it modified the award of unpaid salaries to petitioner notwithstanding the fact that neither party ever raised as an issue the matter regarding duration of petitioner's employment contract. The labor tribunals ruled that the award of unpaid salaries should be the amount corresponding to the unexpired portion of the employment contract which is two (2) years. The CA, on the other hand, modified the award on the ground that the second contract was not clear as to whether or not the original duration of one (1) year had been extended. Thus, applying the pertinent provisions of the Civil Code regarding perfection of contracts, it posits that the one (1) year period should be applied.

Without an iota of doubt, this is a question of fact that is outside the scope of a petition for review under rule 65. The CA is only tasked to determine whether or not the NLRC

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[32] *Id*. at 706-707.

committed grave abuse of discretion in its appreciation of factual issues presented before it by any parties. The CA is not given unbridled discretion to modify factual findings of the NLRC and LA, especially when such matters have not been assigned as errors nor raised in the pleadings.

With regard to the issues brought to the Court in this present petition, it bears stressing that this Court's review of a CA ruling is limited to: (i) ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion; and (ii) deciding any other **jurisdictional error** that attended the CA's interpretation or application of the law.[33]

Clearly, the appellate court found no grave abuse of discretion committed by the NLRC as enunciated in the dispositive portion of its assailed decision, *viz.*:

> **WHEREFORE**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the NLRC, the petition is **DISMISSED** for lack of merit.[34]

There being no grave abuse of discretion, the CA erred when it ruled that petitioner's employment contract with Morris was for only one (1) year.

The Court is precluded from doing an independent review of this factual matter since it has already been decided by the labor tribunals, unless the CA, in the *certiorari* petition, ascertains that the NLRC acted with grave abuse of discretion. Absent such determination, factual findings of the NLRC are deemed conclusive and binding even on this Court.

In light of the foregoing, the Court considers the findings of fact of the LA, as affirmed by the NLRC, final and conclusive, in the absence of proof that the latter acted *without*, *in excess of* or *with grave abuse of* discretion amounting to lack or excess of jurisdiction.

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[33] *See* Dissenting Opinion of Associate Justice Arturo Brion in *Abbott Laboratories Philippines, et al. v. Pearlie Ann Alcaraz*, 714 Phil. 510, 549 (2013).

[34] *Rollo*, p. 74.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated February 24, 2016 and Resolution dated August 3, 2016 of the Court of Appeals in CA-G.R. SP No. 131670 are **AFFIRMED with MODIFICATION** insofar as the award of petitioner Agnes Coeli Bugaoisan unpaid salaries is concerned. The Decision dated May 31, 2013 of the National Labor Relations Commission with respect to the award of unpaid salaries to petitioner Agnes Coeli Bugaoisan for the unexpired portion of her two-year contract with respondents Owi Group Manila, Inc. and Morris Corporation is hereby **REINSTATED.**

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 231116. February 7, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CLARO YAP,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR CERTIORARI; PRESCRIPTION CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—At the threshold, settled is the rule that prescription cannot be raised for the first time on appeal; the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the courts below.

2. CIVIL LAW; PROPERTY; LAND REGISTRATION; THE COURT HAS REPEATEDLY AFFIRMED THE

INAPPLICABILITY OF THE RULES ON PRESCRIPTION AND LACHES TO LAND REGISTRATION CASES SINCE THE PECULIAR PROCEDURE PROVIDED IN THE LAND REGISTRATION LAW FROM THE TIME DECISIONS IN LAND REGISTRATION CASES BECOME FINAL IS COMPLETE IN ITSELF AND DOES NOT NEED TO BE FILLED IN.—The fact that the ownership over Lot No. 922 had been confirmed by judicial declaration several decades ago does not, however, give room for the application of the statute of limitations or laches, nor bars an application for the re-issuance of the corresponding decree. In the landmark case of *Sta. Ana v. Menla*, the Court elucidated the *raison d'etre* why the statue of limitations and Section 6, Rule 39 of the Rules of Court do not apply in land registration proceedings, x x x **In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom. x x x** For the past decades, the *Sta. Ana* doctrine on the inapplicability of the rules on prescription and laches to land registration cases has been repeatedly affirmed. Clearly, the peculiar procedure provided in the Property Registration Law from the time decisions in land registration cases become final is complete in itself and does not need to be filled in. From another perspective, the judgment does not have to be executed by motion or enforced by action within the purview of Rule 39 of the 1997 Rules of Civil Procedure.

3. ID.; ID.; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); THE LAW PROVIDES THAT THE ORIGINAL CERTIFICATE OF TITLE (OCT) SHALL BE A TRUE COPY OF THE DECREE OF REGISTRATION, THERE IS THEREFORE, A NEED TO CANCEL THE OLD DECREE AND A NEW ONE ISSUED IN ORDER FOR THE DECREE AND THE OCT TO BE EXACT REPLICAS OF EACH OTHER; CASE AT BAR.—Records show that Yap sufficiently established that Decree No. 99500 was issued on November 29, 1920 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez. Further, it was also proven during the

proceedings before the court that no OCT was ever issued covering the said lot. In this regard, Section 39 of Presidential Decree No. 1529 or the "Property Registration Decree" provides that the original certificate of title shall be a true copy of the decree of registration. There is, therefore, a need to cancel the old decree and a new one issued in order for the decree and the OCT to be exact replicas of each other. In *Republic v. Heirs of Sanchez*, the Court enunciated the necessity of the petition for cancellation of the old decree and its re-issuance, if no OCT had been issued pursuant to the old decree: x x x Again, we invite you back to the highlighted provision of Section 39 of PD 1529 which states that: **"The original certificate of title shall be a true copy of the decree of registration."** This provision is significant because it contemplates an OCT which is an exact replica of the decree. If the old decree will not be canceled and no new decree issued, the corresponding OCT issued today will bear the signature of the present Administrator while the decree upon which it was based shall bear the signature of the past Administrator. This is not consistent with the clear intention of the law which states that the OCT ***shall be true copy of the decree of registration***. Ostensibly, therefore, the cancellation of the old decree and the issuance of a new one is necessary. x x x Based from the foregoing, the RTC correctly ordered the cancellation of Decree No. 99500, the re-issuance thereof, and the issuance of the corresponding OCT covering Lot No. 922 in the name of its original adjudicate, Andres Abellana, as Administrator of the Estate of Juan Rodriguez.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Reuel T. Pintor for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the March 16, 2017

Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 05491. The CA affirmed the October 20, 2011 Decision[2] of the Regional Trial Court (RTC) of Cebu City, Branch 6, granting respondent's petition for registration of a parcel of land located in Carcar, Cebu.

The Facts

On July 28, 2010, respondent Claro Yap (Yap) filed a petition[3] for cancellation and re-issuance of Decree No. 99500 covering Lot No. 922 of the Carcar Cadastre, and for the issuance of the corresponding Original Certificate of Title (OCT) pursuant to the re-issued decree. His petition alleged the following:

1. Lot No. 922 with an area of thirty four (34) square meters is covered by Decree No. 99500 issued on November 29, 1920 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez;

2. Ownership over Lot No. 922 was vested upon Yap by virtue of inheritance and donation and that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the said lot since June 12, 1945, or earlier, and/or by acquisitive prescription being possessors in good faith in the concept of an owner for more than thirty (30) years;

3. While a valid decree was issued for Lot No. 922, based on the certification from the Register of Deeds of the Province of Cebu, there is no showing or proof that an OCT was ever issued covering the said lot;

4. Lot No. 922 was registered for taxation purposes in the name of Heirs of Porfirio Yap; and

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[1] Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig; *rollo*, pp. 48-53.

[2] Penned by Judge Ester M. Veloso; *id*. at 54-56.

[3] Entitled "Petition for the Re-issuance of a Decree and for the Issuance of Original Certificate of Title"; *id*. at 57-64.

5. There is no mortgage or encumbrance of any kind affecting Lot No. 922, or any other person having any interest therein, legal or equitable, in possession, reversion or expectancy, other than Yap.[4]

Finding the petition sufficient in form and substance, the RTC issued an Order[5] dated August 3, 2010 setting the case for hearing on August 3, 2011 and ordering the requisite publication thereof. Since no oppositors appeared before the court during the said scheduled hearing, the RTC issued another Order[6] setting the case for hearing on petitioner's presentation of evidence.

During the *ex parte* hearing held on August 8, 2011, Yap presented the following documents, among others, as proof of his claim:

1. Certified true copy of Decree No. 99500 issued by the authorized officer of the Land Registration Authority (LRA);[7]
2. Index of decree showing that Decree No. 99500 was issued for Lot No. 922;[8]
3. Certification from the Register of Deeds of Cebu that no certificate of title covering Lot No. 922, Cad. 30 has been issued;[9]
4. Extrajudicial Settlement of the Estate of the Late Porfirio C. Yap with Deed of Donation;[10]
5. Certification from the Office of the City Assessor of Carcar indicating that the heirs of Porfirio Yap had been issued Tax Declarations for Lot No. 922 since 1948;

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[4] *Id.* at 57-61.

[5] *Id.* at 79.

[6] *Id.* at 80-81.

[7] *Id.* at 66-67.

[8] *Id.* at 65.

[9] *Id.* at 71.

[10] *Id.* at 68-70.

6. Tax Declarations covering Lot No. 922 from 1948 up to 2002;[11]
7. Blueprint of the approved consolidation and subdivision plan; and
8. Certification from Community Environment and Natural Resources Office (CENRO), Cebu City stating that there is no existing public land application for Lot No. 922.[12]

In its September 20, 2011 Order,[13] the RTC admitted petitioner's evidence and deemed the case submitted for decision.

RTC Ruling

The RTC found that Yap had sufficiently established his claims and was able to prove his ownership and possession over Lot No. 922. As such, it granted the petition and ordered the Register of Deeds of the Province of Cebu to cancel Decree No. 99500, re-issue a new copy thereof, and on the basis of such new copy, issue an Original Certificate of Title in the name of Andres Abellana, as administrator of the Estate of Juan Rodriguez. The dispositive portion of the October 20, 2011 Decision states:

WHEREFORE, the court grants the petition in favor of the petitioner Claro Yap. The Land Registration Authority thru the Register of Deeds of the Province of Cebu is hereby directed to cancel Decree No. 99500 issued on November 29, 1920 and to re-issue a new copy thereof in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez, and on the bases of the new copy of Decree No. 99500, to issue an Original Certificate of Title covering Lot No. [922] in the name of Andres Abellana, as administrator of the Estate of Juan Rodriguez.

Further, the Register of Deeds is directed to furnish the petitioner, Claro Yap, with the re-issued copy of Decree No. 99500 and the copy of its title upon payment of any appropriate fees.

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[11] Tax Declaration for the year 2002 was attached to the petition; *id*. at 72-73.

[12] *Id*. at 87-97.

[13] *Id*. at 99.

SO ORDERED.[14]

Since the order of the RTC was for the re-issuance of the decree under the name of its original adjudicate, Yap filed a Partial Motion for Reconsideration[15] stating that the new decree and OCT should be issued under his name instead of Andres Abellana.

On the other hand, petitioner, through the Office of the Solicitor General (OSG), filed its Comment[16] mainly arguing that Yap's petition and motion should be denied since the Republic was not furnished with copies thereof.

In its Joint Order[17] dated August 26, 2014, the RTC denied Yap's motion ruling that the law provides that the decree, which would be the basis for the issuance of the OCT, should be issued under the name of the original adjudicate. Likewise, the RTC also denied the OSG's motion finding that the records of the case show that it was furnished with copies of the Petition as well as the Partial Motion for Reconsideration.[18]

The OSG then interposed an appeal before the CA arguing that Yap's petition should have been denied due to insufficiency of evidence and failure to implead indispensable parties such as the heirs of Juan Rodriguez and/or Andres Abellana.

CA Ruling

In its March 16, 2017 Decision, the CA upheld the RTC's ruling finding that the pieces of evidence submitted by Yap were sufficient to support the petition. It ruled that since it has been established that no certification of title or patent had been issued over Lot No. 922, the RTC did not err in ordering the

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[14] *Id*. at 55-56.

[15] *Id*. at 100-102.

[16] *Id*. at 110-115.

[17] *Id*. at 116-117.

[18] *Id*. at 121-124.

re-issuance of Decree No. 99500 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez.[19]

As regards the OSG's argument on non-joinder of indispensable parties, the CA highlighted that it is not a ground for dismissal of an action. Nevertheless, it ruled that the heirs of either Andres Abellana or Juan Rodriguez were not deprived of the opportunity to be heard as the proceeding before the RTC was an *in rem* proceeding. Thus, when the petition was published, all persons including the said heirs were deemed notified.[20]

Lastly, while the CA delved into the issues ventilated by the OSG on appeal, it also noted that it was too late to raise the same due to the latter's failure to file a motion for reconsideration of the RTC's decision or submit a comment on the merits of Yap's Partial Motion for Reconsideration.[21] The dispositive portion of the CA decision reads:

> WHEREFORE, the appeal is DENIED. The assailed Decision dated October 20, 2011 of the Regional Trial Court, Branch 06, Cebu City, in LRC REC. NO. Lot No. 922, Cad. 30, Carcar City, Cebu, is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[22]

Thus, the OSG filed the instant petition raising essentially the same arguments but this time also advancing the theory that Yap's action had already prescribed.

The Issue

The principal issue before this Court is whether or not the RTC correctly ordered the cancellation of Decree No. 99500, the re-issuance thereof, and the issuance of the corresponding Original Certificate of Title covering Lot No. 922.

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[19] *Id.* at 50-51.

[20] *Id.* at 51.

[21] *Id.*

[22] *Id.* at 53.

The Court's Ruling

We deny the petition.

At the threshold, settled is the rule that prescription cannot be raised for the first time on appeal;[23] the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the courts below.[24]

In any event, prescription does not lie in the instant case.

There is nothing in the law that limits the period within which the court may order or issue a decree

The OSG now postulates that the petition should be denied due to Yap and his predecessors' failure to file the proper motion to execute Decree No. 99500 as prescribed under Section 6, Rule 39 of the Rules of Court.[25] It also subscribes that the petition is now barred by the statute of limitations[26] since nine (9) decades had already passed after the issuance of the said decree in November 1920 without any action brought upon by Yap or his predecessors-in-interest.[27]

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[23] *J. M. Tuazon & Co., Inc. v. Macalindong*, No. L-15398, December 29, 1962; *Villanueva v. Court of Appeals*, G.R. No. 143286, April 14, 2004.

[24] *Ramos v. Osorio*, G.R. No. L-27306, April 29, 1971, 38 SCRA 469.

[25] Section 6. Execution by motion or by independent action.— A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

[26] Article 1144 of the Civil Code provides:

The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) **Upon a judgment** (Emphasis supplied).

[27] *Rollo*, p. 26.

Further, the OSG asseverates that there is no proof that Decree No. 99500 has attained finality and the decision granting the issuance thereof was not appealed or modified.

The foregoing arguments are specious.

Decree No. 99500 covering Lot No. 922 had been issued on November 29, 1920 by the Court of First Instance, Province of Cebu pursuant to the court's decision in Cadastral Case No. 1, GLRO Cadastral Record No. 58.[28] The issuance of the said decree creates a strong presumption that the decision in Cadastral Case No. 1 had become final and executory. Thus, it is incumbent upon the OSG to prove otherwise. However, no evidence was presented to support its claims that the decision in Cadastral Case No. 1 and the issuance of Decree No. 99500 had not attained finality.

The fact that the ownership over Lot No. 922 had been confirmed by judicial declaration several decades ago does not, however, give room for the application of the statute of limitations or laches, nor bars an application for the re-issuance of the corresponding decree.

In the landmark case of *Sta. Ana v. Menla*,[29] the Court elucidated the *raison d'etre* why the statue of limitations and Section 6, Rule 39 of the Rules of Court do not apply in land registration proceedings, viz:

> We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment, which may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39.) This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the

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[28] As stated in Decree No. 99500; *id*. at 66-67.

[29] No. L-15564, April 29, 1961, 1 SCRA 1297.

adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. **In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.**

Furthermore, there is no provision in the Land Registration Act similar to Sec. 6, Rule 39, regarding the execution of a judgment in a civil action, except the proceedings to place the winner in possession by virtue of a writ of possession. The decision in a land registration case, unless the adverse or losing party is in possession, becomes final without any further action, upon the expiration of the period for perfecting an appeal.

The third assignment of error is as follows:

THAT THE LOWER COURT ERRED IN ORDERING THE ISSUANCE OF A DECREE OF REGISTRATION IN THE NAMES OF THE OPPOSITORS-APPELLEES BASED ON A DECISION WHICH HAS ALLEGEDLY NOT YET BECOME FINAL, AND IN ANY CASE ON A DECISION THAT HAS BEEN BARRED BY THE STATUTE OF LIMITATIONS.

We also find no merit in the above contention. **There is nothing in the law that limits the period within which the court may order or issue a decree. The reason is what is stated in the consideration of the second assignment error, that the judgment is merely declaratory in character and does not need to be asserted or enforced against the adverse party**. Furthermore, the issuance of a decree is a ministerial duty both of the judge and of the Land Registration Commission; failure of the court or of the clerk to issue the decree for the reason that no motion therefore has been filed cannot prejudice the owner, or the person in whom the land is ordered to be registered. (Emphasis supplied)

The foregoing pronouncements were echoed in *Heirs of Cristobal Marcos v. de Banuvar*[30] and reiterated by the Court

[30] G.R. No. L-22110, September 28, 1968, 25 SCRA 316.

in the more recent *Ting v. Heirs of Diego Lirio*[31] wherein We ruled that a final judgment confirming land title and ordering its registration constitutes *res judicata* against the whole world and the adjudicate need not file a motion to execute the same, thus:

> In a registration proceeding instituted for the registration of a private land, with or without opposition, the judgment of the court confirming the title of the applicant or oppositor, as the case may be, and ordering its registration in his name constitutes, when final, *res judicata* against the whole world. It becomes final when no appeal within the reglementary period is taken from a judgment of confirmation and registration.
>
> The land registration proceedings being *in rem*, the land registration court's approval in LRC No. N-983 of spouses Diego Lirio and Flora Atienza's application for registration of the lot settled its ownership, and is binding on the whole world including petitioner.
>
> x x x x x x x x x
>
> The December 10, 1976 decision became "extinct" in light of the failure of respondents and/or of their predecessors-in-interest to execute the same within the prescriptive period, the same does not lie.

For the past decades, the *Sta. Ana* doctrine on the inapplicability of the rules on prescription and laches to land registration cases has been repeatedly affirmed. Clearly, the peculiar procedure provided in the Property Registration Law[32] from the time decisions in land registration cases become final is complete in itself and does not need to be filled in. From another perspective, the judgment does not have to be executed by motion or enforced by action within the purview of Rule 39 of the 1997 Rules of Civil Procedure.[33]

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[31] G.R. No. 168913, March 14, 2007.

[32] Presidential Decree No. 1529, entitled "Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes."

[33] *Republic v. Nillas*, G.R. No. 159595, January 23, 2007.

The propriety of cancellation and re-issuance of Decree No. 99500, to serve as basis for the issuance of an OCT covering Lot No. 922, had been sufficiently proven in the instant case

The OSG maintains that even assuming that Yap's petition is not barred by the statute of limitations, the re-issuance of Decree No. 99500 is still improper due to the total lack of evidence presented before the court.[34]

We disagree.

At the outset, the Court need not belabor itself by enumerating and discussing in detail, yet again, the pieces of evidence proffered in the instant case. This matter had already been passed upon and settled by the courts *a quo* and it is not our function to analyze or weigh evidence all over again. Yet, even if We take a second look at the facts of the case, the Court is still inclined to deny the petition.

Records show that Yap sufficiently established that Decree No. 99500 was issued on November 29, 1920 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez. Further, it was also proven during the proceedings before the court that no OCT was ever issued covering the said lot. In this regard, Section 39 of Presidential Decree No. 1529[35]

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[34] *Rollo*, p. 33.

[35] Section 39. Preparation of decree and Certificate of Title. After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the

or the "Property Registration Decree" provides that the original certificate of title shall be a true copy of the decree of registration. There is, therefore, a need to cancel the old decree and a new one issued in order for the decree and the OCT to be exact replicas of each other.

In *Republic v. Heirs of Sanchez*,[36] the Court enunciated the necessity of the petition for cancellation of the old decree and its re-issuance, if no OCT had been issued pursuant to the old decree:

1. Under the premises, the correct proceeding is a petition for cancellation of the old decree, re-issuance of decree and for issuance of OCT pursuant to that re-issued decree.

In the landmark decision of *Teofilo Cacho vs. Court of Appeals, et al., G.R. No. 123361, March 3, 1997*, our Supreme Court had affirmed the efficacy of filing a petition for cancellation of the old decree; the reissuance of such decree and the issuance of OCT corresponding to that reissued decree.

> "Thus, petitioner filed an omnibus motion for leave of court to file and to admit amended petition, but this was denied. Petitioner elevated the matter to his Court (docketed as *Teofilo Cacho vs. Hon. Manindiara P. Mangotara*, G.R. No. 85495) but we resolved to remand the case to the lower court, ordering the latter to accept the amended petition and to hear it as one for **re-issuance of decree** under the following guidelines:
>
> Considering the doctrines in *Sta. Ana vs. Menla*, 1 SCRA 1297 (1961) and *Heirs of Cristobal Marcos vs. de Banuvar*, 25 SCRA 315 [1968], and the lower court findings that the decrees had in fact been issued, the omnibus motion should have been heard as a motion to re-issue the decrees in order to have a basis for the issuance of the titles and the respondents being heard in their opposition.

Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

[36] G.R. No. 212388, December 10, 2014.

> Considering the foregoing, we resolve to order the lower court to accept the amended petition subject to the private respondent's being given the opportunity to answer and to present their defenses. The evidence already on record shall be allowed to stand but opportunity to controvert existing evidence shall be given the parties."

Following the principle laid down in the above-quoted case, a question may be asked: Why should a decree be canceled and re-issued when the same is valid and intact? Within the context of this discussion, there is no dispute that a decree has been validly issued. And in fact, in some instances, a copy of such decree is intact. What is not known is whether or not an OCT is issued pursuant to that decree. If such decree is valid, why is there a need to have it cancelled and re-issued?

Again, we invite you back to the highlighted provision of Section 39 of PD 1529 which states that: **"The original certificate of title shall be a true copy of the decree of registration."** This provision is significant because it contemplates an OCT which is an exact replica of the decree. If the old decree will not be canceled and no new decree issued, the corresponding OCT issued today will bear the signature of the present Administrator while the decree upon which it was based shall bear the signature of the past Administrator. This is not consistent with the clear intention of the law which states that the OCT ***shall be true copy of the decree of registration***. Ostensibly, therefore, the cancellation of the old decree and the issuance of a new one is necessary.

x x x x x x x x x

4. The heirs of the original adjudicate may file the petition in representation of the decedent and the re-issued decree shall still be under the name of the original adjudicate.

It is a well settled rule that succession operates upon the death of the decedent. The heirs shall then succeed into the shoes of the decedent. The heirs shall have the legal interest in the property, thus, they cannot be prohibited from filing the necessary petition.

As the term connotes, a mere re-issuance of the decree means that the new decree shall be issued which shall, in all respects, be the same as that of the original decree. Nothing in the said decree shall be amended nor modified; hence, it must be under the name of the original adjudicate. (Emphasis and underscoring in the original)

Based from the foregoing, the RTC correctly ordered the cancellation of Decree No. 99500, the re-issuance thereof, and the issuance of the corresponding OCT covering Lot No. 922 in the name of its original adjudicate, Andres Abellana, as Administrator of the Estate of Juan Rodriguez.

Verily, this Court sees no reason to overturn the factual findings and the ruling of the CA. Petitioner failed to show that the CA's decision was arbitrarily made or that evidence on record was disregarded.

IN VIEW OF THE FOREGOING, the petition is **DENIED**. The Decision dated March 16, 2017 of the Court of Appeals in CA-G.R. CV No. 05491 is hereby **AFFIRMED**.

SO ORDERED.

Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

Martires, J., on leave.

SECOND DIVISION

[G.R. No. 231359. February 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISANTO CIRBETO *y* GIRAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; ESTABLISHED IN CASE AT BAR.—Murder is defined and punished under Article 248 of the RPC, as amended by Republic Act No. 7659, x x x To successfully prosecute the crime of Murder, the following elements must be established: (*1*) that a person was killed; (*2*) that the accused killed him or her; (*3*) that the killing was attended by any of the qualifying

circumstances mentioned in Article 248 of the RPC; and (*4*) that the killing is not parricide or infanticide. In this case, and as correctly found by the courts *a quo*, the prosecution was able to establish a confluence of the foregoing elements, considering the following: *(1)* the victim Casipit was killed; (*2*) accused-appellant was positively identified as the one who killed; *(3)* Casipit's killing was attended by treachery, a qualifying circumstance; and (*4*) the killing is neither parricide nor infanticide.

2. ID.; ID.; ID.; THE TESTIMONY OF A SINGLE WITNESS, IF POSITIVE AND CREDIBLE, IS SUFFICIENT TO SUPPORT A CONVICTION EVEN IN A CHARGE OF MURDER; APPLICATION IN CASE AT BAR.—It should be emphasized that the testimony of a single witness, if positive and credible, as in the case of Dalimoos, is sufficient to support a conviction even in a charge of murder. x x x Based on the testimony, Dalimoos had consistently, straightforwardly, and positively identified accused-appellant as the person who was walking with the victim Casipit and who later on stabbed the latter. Dalimoos's testimony did not waver; neither did it suffer from any grave or material inconsistency as would strip away his credibility as an eyewitness to the crime. Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether or not they are telling the truth. x x x The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA. As such, the Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, with respect to the probative value of Dalimoos's testimony in this case.

3. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; PRESENT IN CASE AT BAR.—Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended

party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (*1*) at the time of the attack, the victim was not in a position to defend himself; and (*2*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The evidence in this case clearly shows that the attack against Casipit was sudden, deliberate, and unexpected. He was completely unaware of any threat to his life as he was merely walking with accused-appellant on the date and time in question. Moreover, deliberate intent to kill Casipit can be inferred from the location and number of stab wounds he sustained, and even though he was able to run after the first stab wound, accused-appellant was able to subdue and stab him further, rendering him defenseless and incapable of retaliation. Hence, treachery was correctly appreciated as a qualifying circumstance in this case.

4. ID.; ID.; ID.; ID.; EVIDENT PREMEDITATION; NOT ESTABLISHED IN CASE AT BAR.—For evident premeditation to be considered as a qualifying or an aggravating circumstance, the prosecution must prove: (*a*) the time when the offender determined to commit the crime; (*b*) an act manifestly indicating that the culprit has clung to his determination; and (*c*) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. In this case, there is dearth of evidence to prove that accused-appellant had previously planned the killing of Casipit. Nothing has been offered to establish *when* and *how* he planned and prepared for the same, nor was there a showing that sufficient time had lapsed between his determination and execution. The Court stresses the importance of the requirement in evident premeditation with respect to the sufficiency of time between the resolution to carry out the criminal intent and the criminal act, affording such opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what accused-appellant had planned to do, where the interval should be long enough for the conscience and better judgment to overcome the evil desire and scheme. In the stabbing of Casipit, this requirement is clearly wanting.

5. ID.; ID.; ID.; DENIAL AND ALIBI; INTRINSICALLY WEAK DEFENSES; EXPLAINED; CASE AT BAR.—With respect to the defenses of denial and alibi proffered by accused-appellant, the Court - as with the courts *a quo* - rejects the same. Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witness, Dalimoos. Between an affirmative assertion which has a ring of truth to it and a general denial, the former generally prevails.On the other hand, for the defense of alibi to prosper, appellant must prove through clear and convincing evidence that not only was he in another place at the time of the commission of the crime but also that it was physically impossible for him to be at the scene of the crime. Accused-appellant himself testified that on the date and time material to this case, he was outside a fastfood restaurant standing beside a parked car within the vicinity of the stabbing incident. As such, he failed to prove that it was physically impossible for him to be at the scene of the crime when the incident occurred.

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

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Crisanto Cirbeto *y* Giray (accused-appellant) assailing the Decision[2] dated February 9, 2016 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 06481, which affirmed with modification the Decision[3] dated October 24, 2013 of the

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[1] See Notice of Appeal with Compliance dated February 29, 2016; *rollo*, pp. 17-18.

[2] *Id*. at 2-16. Penned by Associate Justice Ramon A. Cruz with Associate Justices Marlene Gonzales-Sison and Henri Jean Paul B. Inting concurring.

[3] CA *rollo*, pp. 16-23. Penned by Judge Alice C. Gutierrez.

Regional Trial Court of Marikina City, Branch 193 (RTC) in Criminal Case No. 2011-12719-MK finding him guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

The Facts

On December 31, 2010, at around 3:15 in the afternoon, while prosecution eyewitness Roger Dalimoos[4] (Dalimoos) was outside a fast food restaurant in front of Marikina Sports Center at the corner of Sumulong Highway and Toyota Avenue, Marikina City, he saw his friend Ferdinand Casipit (Casipit) together with accused-appellant walking towards a nearby mall.[5] Dalimoos was on his way home then, so he boarded a jeepney by hanging on to its end railings.[6]

Upon reaching the stoplight at the corner of Sumulong Highway and Tuazon St., from which vantage point he could still see Casipit and accused-appellant who were already in front of the mall, Dalimoos saw the latter suddenly pull a knife from the right side of his back, hold Casipit's shirt with his left hand, and stab him with the knife using his right hand.[7] Accused-appellant was able to stab Casipit once before the latter managed to run away. However, accused-appellant ran after Casipit and caught up to him.[8] Thereafter, the former held the latter's shirt again, pulled him to the ground, and stabbed him repeatedly, resulting in the latter's death.[9]

Shortly after the incident, accused-appellant tried to flee, but he was seized by Police Officer 1 (PO1) Jayson Rael and Police Senior Inspector (P/Sr. Insp.) Fabian Ribad of the Marikina

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[4] Also referred to as "Roger Dalimuos," "Roger Dalimos," and "Roger Dalimas" in some parts of the records.

[5] CA *rollo*, p. 17. See also TSN, May 5, 2011, pp. 3-4.

[6] See *id*. See also TSN, May 5, 2011, p. 5.

[7] *Id*.

[8] *Id*.

[9] See Certificate of Death; Folder of Exhibits, pp. 7-8.

City Police Station, who responded to a radio message relaying the stabbing incident.[10] They were also able to recover the knife used to stab the victim.[11]

The result[12] of the autopsy conducted by Medico-Legal Officer Police Inspector Ma. Annalissa G. Dela Cruz (P/Insp. Dela Cruz) showed that Casipit sustained five (5) stab wounds caused by a bladed weapon, the most fatal of which was the one on the posterior neck or nape region.[13] The stab wounds on the trunk portion injured the right lung and the stab wound on the chest portion caused severe bleeding.[14]

Consequently, accused-appellant was charged with the crime of Murder in an Information[15] that reads:

> That on or about the 31st day of December 2010, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, with intent to kill, did, then and there willfully, unlawfully and feloniously repeatedly stab one FERDINAND CASIPIT *y* BASTO on his back and neck, the said killing having been attended by the qualifying circumstances of treachery, evident premeditation, and abused [sic] of superior strength which changes the nature of the felony qualifying such killing to the more serious capital crime of MURDER.
>
> CONTRARY TO LAW.[16]

When arraigned, accused-appellant entered a plea of "not guilty"[17] with the assistance of counsel *de oficio* and raised the defenses of denial and alibi, disclaiming liability for the killing of Casipit and even denying that he knew the latter or the witness,

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[10] See CA *rollo*, p. 18. See also TSN, September 15, 2011, pp. 16-18.

[11] See *id*.

[12] See Folder of Exhibits, pp. 5-6.

[13] TSN, September 15, 2011, pp. 7-8.

[14] *Id*. at 8-9.

[15] Records, p. 1.

[16] *Id*.

[17] See Order dated March 1, 2011; *id*. at 31.

Dalimoos.[18] He claimed that he was assisting a car parked in front of a fastfood restaurant in the area when the police officers arrested him for allegedly killing Casipit.[19]

During the trial, the victim's brother, Isidro Casipit, testified that he incurred expenses for his brother's wake amounting to ₱5,000.00 "more or less," and ₱8,000.00 for the burial.[20] He presented receipts[21] to support his allegation.

The RTC Ruling

In a Decision[22] dated October 24, 2013, the RTC convicted accused-appellant as charged and sentenced him to suffer the straight penalty of *reclusion perpetua* and to pay the heirs of Casipit the amounts of ₱13,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱50,000.00 as civil indemnity.[23]

In finding accused-appellant guilty beyond reasonable doubt of murder, the RTC found that he failed to prove his innocence even with his denial that he knew Casipit, as during his testimony, he referred to the victim by his nickname, "Ferdie."[24] Moreover, the RTC found the attendance of treachery as a qualifying circumstance, the mode of assault having been deliberately and consciously adopted to insure the execution of the crime without risk to accused-appellant.[25] Likewise, the RTC appreciated the qualifying circumstance of evident premeditation, which it inferred from the act of accused-appellant in bringing with him a knife and waiting for the perfect moment to consummate the plan to kill Casipit.[26]

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[18] See CA *rollo*, p. 19.

[19] *Id*. See also TSN, September 11, 2012, pp. 3-7.

[20] *Id*.

[21] See Folder of Exhibits, pp. 10-11.

[22] CA *rollo*, pp. 16-23.

[23] *Id*. at 23.

[24] See *id*. at 20-21.

[25] *Id*. at 22.

[26] *Id*. at 23.

Aggrieved, accused-appellant appealed[27] to the CA.

The CA Ruling

In a Decision[28] dated February 9, 2016, the CA affirmed accused-appellant's conviction with modifications, increasing the award of civil indemnity to ₱75,000.00 and moral damages to ₱75,000.00.[29] Additionally, it awarded the amount of ₱30,000.00 by way of exemplary damages. Likewise, all monetary awards shall earn an interest at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.[30]

The CA found that the prosecution was able to clearly establish that: (*1*) Casipit was stabbed and killed; (*2*) accused-appellant was the one who killed him; (*3*) the victim's killing was attended by the qualifying circumstances of treachery and evident premeditation; and (*4*) the killing was neither parricide nor infanticide.[31] Moreover, accused-appellant was positively identified by Dalimoos, the eyewitness, whose testimony was straightforward and direct. Contrary to accused-appellant's contention, Dalimoos's testimony did not suffer from any serious and material inconsistency sufficient to destroy his credibility.[32]

As regards the attendant qualifying circumstance of treachery, the CA found that Casipit was caught off-guard when he was stabbed by accused-appellant, which act reeks of treachery.[33] It further observed that the victim had no way of defending himself, and thus, the mode of attack was deliberately and

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[27] See Brief for the Accused-Appellant dated November 19, 2014; *id*. at 42-52.

[28] *Rollo*, pp. 2-16.

[29] *Id*. at 14.

[30] *Id*.

[31] *Id*. at 8.

[32] See *id*. at 7-8.

[33] *Id*. at 9.

consciously adopted by accused-appellant to insure the execution of the crime without risk to himself.[34]

The CA likewise sustained the RTC's finding that evident premeditation was attendant in this case, as the same may be inferred from the outward act of accused-appellant in bringing a knife with him and thereafter, patiently waiting for the right moment to consummate his plan. The CA found that from the time accused-appellant and Casipit began walking towards the mall until the time they stopped to wait for a jeepney, the former had time to ponder whether to pursue his plan to kill Casipit or not.[35]

Finally, the CA rejected accused-appellant's defenses of denial and alibi, as he failed to show that it was physically impossible for him to be at the scene of the crime at the time of the incident.[36]

Dissatisfied, accused-appellant lodged this appeal[37] before the Court.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly affirmed accused-appellant's conviction for the crime of Murder.

The Court's Ruling

The appeal has no merit.

Murder is defined and punished under Article 248 of the RPC, as amended by Republic Act No. 7659, to wit:

Article 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder

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[34] *Id*.

[35] *Id*. at 10.

[36] *Id*. at 10-11.

[37] *Id*. at 17-18.

and shall be punished by *reclusion perpetua* 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;

x x x x x x x x x

5. With evident premeditation[.]

x x x x x x x x x

To successfully prosecute the crime of Murder, the following elements must be established: (*1*) that a person was killed; (*2*) that the accused killed him or her; (*3*) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*4*) that the killing is not parricide or infanticide.[38]

In this case, and as correctly found by the courts *a quo*, the prosecution was able to establish a confluence of the foregoing elements, considering the following: (*1*) the victim Casipit was killed; (*2*) accused-appellant was positively identified as the one who killed him; (*3*) Casipit's killing was attended by treachery, a qualifying circumstance; and (*4*) the killing is neither parricide nor infanticide.

Accused-appellant's defense is focused on the possible uncertainty over his identification by Dalimoos, the eyewitness, as the victim's assailant. He insists that Dalimoos was mistaken in identifying him and may even have been coached to lie in his testimony. The Court is not convinced.

It should be emphasized that the testimony of a single witness, if positive and credible, as in the case of Dalimoos, is sufficient to support a conviction even in a charge of murder.[39] On the witness stand, Dalimoos testified thus:

Assistant City Prosecutor Conos - Do you know a person by the name [of] Ferdinand Casipit?

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[38] *People v. Las Piñas*, 739 Phil. 502, 524 (2014); citation omitted.

[39] *People v. Zeta*, 573 Phil. 125, 145 (2008); citation omitted.

Dalimoos – Yes, ma'am, he is my childhood friend.

Q – In the afternoon of December 31, 2010, where were you then?

A – I was at the parking lot of Mc. Do, ma'am.

Q – Do you know where Ferdinand Casipit was?

A – He was with Crisanto [Cirbeto] at Marquinton, ma'am.

Q – What particular place in Marquinton?

A – In front of Robinsons, ma'am.

Q – How did you know that Ferdinand Casipit and Crisanto [Cirbeto] were in front of Robinsons Marikina?

A – I was in front of Mc. Do, ma'am.

Q – In going to the front of Robinsons, what mode of transportation did they ([Cirbeto] and Casipit) take?

A – They were just walking, ma'am.

Q – By the way, where is Ferdinand Casipit now[?]

A – He is already dead, ma'am.

Q – When did he died [sic]?

A – December 31, 2010, ma'am.

Q – How did he died, if you know?

A – I was on my way home and I boarded a jeepney going home, ma'am.

Q – Where were you going home?

A – Sapa, ma'am.

Q – Where were you seated on that passenger jeepney?

A – "*Nakasabit lang po*"

Q – What about [Cirbeto] and Casipit, where were they?

A – They were already in front of Robinsons, ma'am.

Q – What happened next while you were on board the passenger jeepney and accused and the deceased were in front of Robinsons?

A – Crisanto suddenly pulled a knife, ma'am.

Q – How far were you when you saw Crisanto suddenly pulled [sic] a knife?

A – At the stop light in front of Jollibee, ma'am.

Q – When Crisanto suddenly pulled a knife, where was Casipit?

A – He was beside Crisanto, ma'am.

Q – What happened after Crisanto pulled a knife?

A – "*tyumempo po siya habang nag aabang sila ng jeep at bigla na lang tinraydor nya bigla na lang pinagsasaksak*"

Q – Who was stabbed?

A – Ferdinand Casipit, ma'am.

Q – What do you mean by "*tyumempo po sya habang nag aabang sila ng jeep at bigla nyang sinaksak si* Ferdie?"

A – "*tinraydor po*"

Q – What do you mean by "*bigla na lang nyang sinaksak*"?

A – They were waiting then for a jeepney, ma'am.

Q – How far where you from the jeepney that you were riding was on stop position from where you saw Crisanto suddenly pulled a knife and stabbed the deceased, what is the distance?

A – About 25 meters, ma'am.

Q – Will you please stand up and demonstrate how the two, the accused and the deceased standing, where was the accused in relation to where the deceased was standing at the time you saw them?

A – (the witness is demonstrating his distance from the deceased about a meter while the accused was behind the deceased towards the right, the accused looking towards the deceased and the deceased was looking on the left side towards the stop light)

x x x x x x x x x

Q – How many times did you see the accused stabbed [sic] the victim?

A – Only once and then he suddenly run, ma'am.

Q – Who run [sic]?

A – Ferdie, ma'am.

Q – Where did Ferdinand, the victim run?

A – Going to Sapa, ma'am.

Q – What about the accused where did he go?

A – He run after Ferdie, ma'am.

Q – What about you what did you do?

A – I can't cross the street because the traffic light was on green light, ma'am.

Q – What did you do next?

A – "*bumaba po ako sa jeep hinintay ko pong mag-stop tsaka ako humabol"*

Q – What did you see when you run after the accused?

A – The accused reached Ferdinand again and he hold Ferdinand's shirt and repeatedly stabbed him, ma'am.

x x x x x x x x x[40]

Based on the foregoing testimony, Dalimoos had consistently, straightforwardly, and positively identified accused-appellant as the person who was walking with the victim Casipit and who later on stabbed the latter. Dalimoos's testimony did not waver; neither did it suffer from any grave or material inconsistency as would strip away his credibility as an eyewitness to the crime.

Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether or not they are telling the truth. Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance

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[40] TSN, May 5, 2011, pp. 4-8.

that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.[41] As such, the Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, with respect to the probative value of Dalimoos's testimony in this case.

As regards the appreciation of the qualifying circumstance of treachery, the Court likewise concurs with the courts *a quo* in finding its presence in the commission of the crime.

Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (*1*) at the time of the attack, the victim was not in a position to defend himself; and (*2*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[42]

The evidence in this case clearly show that the attack against Casipit was sudden, deliberate, and unexpected. He was completely unaware of any threat to his life as he was merely walking with accused-appellant on the date and time in question. Moreover, deliberate intent to kill Casipit can be inferred from the location and number of stab wounds he sustained, and even though he was able to run after the first stab wound, accused-appellant was able to subdue and stab him further, rendering him defenseless and incapable of retaliation. Hence, treachery was correctly appreciated as a qualifying circumstance in this case.

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[41] See *People v. Dayaday*, G.R. No. 213224, January 16, 2017; citation omitted.

[42] *People v. Las Piñas*, *supra* note 38 at 524-525; citation omitted.

However, the Court is of a different view with respect to the purported presence of evident premeditation.

For evident premeditation to be considered as a qualifying or an aggravating circumstance, the prosecution must prove: (*a*) the time when the offender determined to commit the crime; (*b*) an act manifestly indicating that the culprit has clung to his determination; and (*c*) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[43]

In this case, there is dearth of evidence to prove that accused-appellant had previously planned the killing of Casipit. Nothing has been offered to establish *when* and *how* he planned and prepared for the same, nor was there a showing that sufficient time had lapsed between his determination and execution. The Court stresses the importance of the requirement in evident premeditation with respect to the sufficiency of time between the resolution to carry out the criminal intent and the criminal act, affording such opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what accused-appellant had planned to do, where the interval should be long enough for the conscience and better judgment to overcome the evil desire and scheme.[44] In the stabbing of Casipit, this requirement is clearly wanting.

With respect to the defenses of denial and alibi proffered by accused-appellant, the Court – as with the courts *a quo* – rejects the same. Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witness, Dalimoos. Between an affirmative assertion which has a ring of truth to it and a general denial, the former generally prevails.[45] On the other hand, for the defense of alibi to prosper,

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[43] See *People v. Racal*, G.R. No. 224886, September 4, 2017; citation omitted.

[44] *People v. Dela Cruz*, 551 Phil. 406, 422-423 (2007).

[45] *Ibañez v. People*, G.R. No. 190798, January 27, 2016, 782 SCRA 291, 312.

appellant must prove through clear and convincing evidence that not only was he in another place at the time of the commission of the crime but also that it was physically impossible for him to be at the scene of the crime.[46]

Accused-appellant himself testified that on the date and time material to this case, he was outside a fastfood restaurant standing beside a parked car within the vicinity of the stabbing incident.[47] As such, he failed to prove that it was physically impossible for him to be at the scene of the crime when the incident occurred. Therefore, his denial and alibi do not deserve credence.

In view of the foregoing disquisitions, the Court affirms the conclusion of the courts *a quo* that accused-appellant is indeed guilty beyond reasonable doubt of the crime of Murder, for which he is accordingly meted the penalty of *reclusion perpetua*. Furthermore, and conformably with prevailing jurisprudence,[48] the amount of exemplary damages is increased from ₱30,000.00 to ₱75,000.00. All other monetary awards are affirmed.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated February 9, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06481 finding accused-appellant Crisanto Cirbeto *y* Giray guilty beyond reasonable doubt of Murder, defined and penalized under Article 248 of the Revised Penal Code, is hereby **AFFIRMED** with**MODIFICATION** as to the amount of exemplary damages, which is increased to ₱75,000.00 in accordance with prevailing jurisprudence. The rest of the assailed Decision stands.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[46] *Escamilla v. People*, 705 Phil. 188, 197 (2013).

[47] TSN, September 11, 2012, pp. 3-7.

[48] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

SECOND DIVISION

[G.R. No. 220502. February 12, 2018]

STEEL CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **BUREAU OF CUSTOMS (BOC), BUREAU OF INTERNAL REVENUE (BIR), DEPARTMENT OF FINANCE (DOF), OFFICE OF THE PRESIDENT (OP), and MUNICIPALITY OF BALAYAN, BATANGAS,** *respondents.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT NO. 1125; THE COURT OF TAX APPEALS (CTA) HAS EXCLUSIVE APPELLATE JURISDICTION TO REVIEW ALL CASES INVOLVING DISPUTED ASSESSMENTS OF INTERNAL REVENUE TAXES, CUSTOMS DUTIES, AND REAL PROPERTY TAXES.—** With the enactment of R.A. No. 1125, the CTA was granted the exclusive appellate jurisdiction to review by appeal all cases involving disputed assessments of internal revenue taxes, customs duties, and real property taxes. In general, it has jurisdiction over cases involving liability for payment of money to the Government or the administration of the laws on national internal revenue, customs, and real property. x x x From the clear purpose of R.A. No. 1125 and its amendatory laws, the CTA, therefore, is the proper forum to file the appeal. Matters calling for technical knowledge should be handled by such court as it has the specialty to adjudicate tax, customs, and assessment cases.

2. **ID.; ID.; ID.; APPEAL TO THE CTA WILL NOT SUSPEND THE PAYMENT, LEVY, DISTRAINT, AND/OR SALE OF THE TAXPAYER'S PROPERTY FOR THE SATISFACTION OF HIS TAX LIABILITY; EXCEPTION.—** Section 11, Paragraph 4 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. Nonetheless, when, in the opinion of the CTA, the collection may jeopardize the

interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount. Yet the requirement of deposit or surety bond may be dispensed with.

APPEARANCES OF COUNSEL

Balgos Gumaru Faller Tan & Javier for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse and set aside the November 19, 2014 Decision[1] and September 15, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 127046 dismissing the appeal and affirming the Regional Trial Court (*RTC*) Order[3] dated June 6, 2012, which stated:

WHEREFORE, premises considered, the Motion for Reconsideration filed by the Office of the Solicitor General regarding the Order dated January 12, 2012, the Omnibus Motion filed by the BIR and the Motion for Reconsideration filed by the Office of the Solicitor General with regard the Order dated March 5, 2012 are granted.

Accordingly, the Orders dated January 12, 2012 and March 5, 2012 are set aside.

The Motion for Execution filed by plaintiff is denied. Likewise, the writ of preliminary injunction issued on March 8, 2012 is hereby dissolved.

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring; *rollo*, pp. 30-39.

[2] *Rollo*, pp. 41-42.

[3] *Id.* at 142-146.

SO ORDERED.[4]

The factual antecedents are as follows:

On September 11, 2006, Equitable PCI Bank, Inc. initiated a petition for rehabilitation[5] of Steel Corporation of the Philippines (*STEELCORP*), a domestic corporation organized and existing under Philippine laws, with principal place of business in *Barangay* Munting Tubig, Balayan, Batangas, and is engaged in the manufacture and distribution of cold-rolled, galvanized and pre-painted steel sheets and coils and fabrication of metal building products. The case was docketed as SP. Proc. No. 06-7993 and pending before the RTC of Batangas City. Finding the petition to be sufficient in form and substance, the court issued an Order[6] on September 12, 2006, which directed, among others, the *"[stay] [of] all claims against [STEELCORP], by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation."*

While the rehabilitation proceedings were pending, Republic Act (*R.A.*) No. 10142, or the *Financial Rehabilitation and Insolvency Act* (*FRIA*) *of 2010* was enacted.[7] Section 19 of which mandates:

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[4] *Id.* at 145-146.

[5] Pursuant to Presidential Decree No. 902-A, as amended, in relation to A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation (*Id.* at 65-98).

[6] *Rollo*, pp. 99-103.

[7] R.A. No. 10142 lapsed into law on July 18, 2010 without the signature of the President (*Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc. [formerly First Asia System Technology, Inc.],* G.R. No. 206528, June 28, 2016, 794 SCRA 625, 639 and *Majority Stockholders of Ruby Industrial Corp. v. Lim, et al.,* 665 Phil. 600, 657 [2011]) and took effect on August 31, 2010 (*BPI v. Sarabia Manor Hotel Corp.,* 715 Phil. 420, 436 [2013]).

SEC. 19. *Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs).* – Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.

On December 16, 2010, the representatives of STEELCORP and the Municipality of Balayan, Batangas met to discuss the effects of the aforequoted provision. As agreed, the municipal government waived the taxes and other fees that may be due from STEELCORP starting the year 2011 and until a final rehabilitation plan is approved by the court.[8]

In a letter[9] dated October 1, 2010, and addressed to Bureau of Customs *(BOC)* Commissioner Angelito A. Alvarez, STEELCORP manifested its intent to avail of the privileges granted by Section 19 of R.A. No. 10142, stressing that the import duties and fees/VAT which the BOC wanted to impose on and collect cannot be made without violating the aforesaid provision. It appears that STEELCORP had imported raw materials for use in its manufacture of steel products, which the BOC assessed with taxes in the sum of ₱41,206,120.00.[10]

In a Memorandum[11] dated October 26, 2010, Commissioner Alvarez, upon the recommendation of the BOC Director of Legal Service and the concurrence of the Deputy Commissioner of the BOC Revenue Collection Management Group, approved the waiver of all taxes and fees which are due to STEELCORP. On March 8, 2011, he sent his 1st Indorsement to the Department of Finance (*DOF*), stating that *"the release of the [Memorandum dated October 26, 2010] had been put on hold pending clearance from the [DOF]. The attention of [DOF] is invited to the revenue loss that may be suffered by the Bureau in the implementation*

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[8] *Rollo*, p. 113.

[9] *Id.* at 114-115.

[10] *Id.* at 129.

[11] *Id.* at 116-117.

thereof, as shown by the attached summary of importations for the past three years, and the fact that the said company is still continuously importing raw materials up to the present."[12]

Subsequently, DOF Undersecretary Carlo A. Carag issued 2nd Indorsement[13] dated May 26, 2011, which disapproved the recommendation of Commissioner Alvarez based on two grounds: (1) the Stay Order relied upon by STEELCORP is not the same as the Commencement Order required by law to consider the taxes and customs duties waived; and (2) assuming that the Stay Order is the same as the Commencement Order, the waiver contemplated under Section 19 does not include taxes and customs duties due on importations or shipments that were made by STEELCORP after the issuance of the Commencement Order.

STEELCORP elevated the matter to the Office of the President (*OP*), which docketed the case as O.P. No. 11-F-211.

Undersecretary Carag moved to dismiss the appeal for lack of jurisdiction. He noted that *"the assailed 2nd Indorsement dated May 26, 2011 issued by [the DOF] involves customs matters for automatic review from the decision of the Commissioner of Customs, which was adverse to the Government, under Section 2315 of the Tariff and Customs Code of the Philippines (TCCP), as amended. Verily, it is the Court of Tax Appeals (CTA) which has the* ***exclusive appellate jurisdiction*** *to review the decision of the Secretary of Finance pursuant to* ***Section 7, Republic Act No. 1125****, as amended."*[14] In opposition,[15] STEELCORP contended that Section 2315 of the TCCP is irrelevant since said provision presupposes that there is already an assessment of duties by the Collector of Customs, which is not so in this case because the appeal *"does not involve a decision of the Commissioner in a case involving the liability for customs*

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[12] *Id.* at 118.

[13] *Id.* at 119-123.

[14] *Id.* at 125.

[15] *Id.* at 126-128.

duties, fees or other money charges, seizure, detention or release of property affected, fine, forfeitures or other penalties imposed in relation thereto, or other matters arising under the Customs Laws or other law or part of law administered by the Bureau of Customs." It was argued that the OP is vested with *quasi*-judicial functions under Administrative Order No. 18, Series of 1987.

On September 14, 2011, STEELCORP filed a Complaint[16] against the respondents for injunction with application for immediate issuance of temporary restraining order (*TRO*) and writ of preliminary injunction (*WPI*). It was docketed as Civil Case No. 5042 and raffled before RTC, Br. 10 of Balayan, Batangas. The action sought to restrain the respondents from assessing and continuing to assess STEELCORP of all taxes and fees due to the national government, including penalties, interests, and charges from the issuance of the Stay Order on September 12, 2006 and until final court approval of the rehabilitation plan.

In its Order[17] dated September 15, 2011, the RTC issued a 72-hour TRO which was later extended until the application for preliminary injunction could be heard. On November 9, 2011, the RTC issued a *Status Quo* Order[18] extending the effects of the TRO until such time that the respondents were given the opportunity to be heard and the issue on the issuance of preliminary injunction had been resolved. Meantime, on November 9, 2011, the OP deferred the resolution of O.P. No. 11-F-211 until final resolution of Civil Case No. 5042.[19]

On January 12, 2012, the court ordered the Manila International Container Port (*MICP*) District Collector of Customs to immediately comply with the *Status Quo* Order by refraining the imposition of customs duties and taxes on the

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[16] *Id.* at 43-64.

[17] *Id.* at 130-131.

[18] *Id.* at 132-135, 217-218, 230.

[19] *Id.* at 6, 32, 184, 217.

importation of raw materials of STEELCORP and to immediately release to the corporation the raw materials without payment of duties/taxes and without further delay.[20] On the same day, the Office of the Solicitor General (*OSG*), acting for and in behalf of the BIR, BOC, DOF, and OP, filed a Motion to Dismiss (*MTD*).[21] It was argued that the RTC has no jurisdiction to hear and determine the complaint because, under Section 602 (g) of Presidential Decree (*P.D.*) No. 1464 or the TCCP, the BOC acquires exclusive jurisdiction over imported goods for purposes of enforcement of the customs laws from the moment the goods are actually in its possession or control; thus, the *Status Quo* Order is null and void. Also, under Section 2315 of the TCCP, the 2nd Indorsement dated May 26, 2011 should be appealed to the CTA; hence, the appeal to the OP did not toll the running of the 30-day reglementary period provided under Section 11 of R.A. No. 9282. Reiterating the position of the BOC, the OSG further contended that: (1) the Stay Order is not the same as the Commencement Order required by law to consider the taxes and customs duties waived; and (2) assuming that both orders are the same, the waiver contemplated under Section 19 does not include the payment of taxes and customs duties on STEELCORP's future importations or incoming shipments. STEELCORP opposed the motion.[22]

On March 5, 2012, the RTC denied the MTD and directed the issuance of a WPI *"enjoining the defendants, their agents, representatives and assigns acting in their behalf, from assessing, imposing, or collecting all taxes, customs duties and fees due from the national or local government until after the final disposition of this case."*[23] The writ was issued on March 8, 2012.[24]

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[20] *Id.* at 136-137.

[21] *Id.* at 205-216.

[22] *Id.* at 139-140.

[23] *Id.* at 138-141.

[24] *Id.* at 240.

The opposing parties filed various motions before the RTC. In its Order[25] dated June 6, 2012, the issues raised were simultaneously resolved as follows:

> 1. Denial of STEELCORP's motion to strike Answer filed by the BIR;
>
> The Memorandum of Agreement (*MOA*) dated March 17, 2012 between the OSG and the BIR, is an exception to Memorandum Circular No. 152 issued on May 7, 1992. The MOA authorized the BIR-handling lawyer to be the lead lawyer in cases of first instance filed before the CTA Divisions, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Regional Trial Courts, Department of Justice, and other administrative agencies. Hence, the BIR lawyer has the authority to appear for and its behalf and, consequently, to file an Answer in this case.
>
> 2. Denial of STEELCORP's urgent *ex-parte* motion for execution of the January 12, 2012 Order;
>
> The motion was premature in view of the necessity to resolve first the OSG's motion for reconsideration of the January 12, 2012 Order.
>
> 3. Grant of the OSG's motion for reconsideration of the January 12, 2012 Order; the BIR's omnibus motion for reconsideration and to dissolve the WPI; and the OSG's motion for reconsideration of the March 5, 2012 Order;
>
> The BIR and the BOC are the agencies tasked to collect taxes and customs duties, respectively. Inasmuch as what are to be collected, how much, when, and from whom as provided by law are to be ascertained and discharged by said agencies, the question of who are to be exempted shall also be determined by them. The issue of whether STEELCORP may avail of the benefits of R.A. No. 10142 should have been raised before the CTA after the BOC denied the claim.

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[25] *Id.* at 142-146.

4. Denial of STEELCORP's motion to strike the BIR's omnibus motion and the OSG's motion for reconsideration of the March 5, 2012 Order;

The BIR's omnibus motion and the OSG's motion for reconsideration contained proper notices of hearing and the BIR lawyers are authorized to appear for and its behalf.

Aggrieved, STEELCORP moved for reconsideration, which was denied on September 17, 2012.[26] Consequently, it filed before the CA an appeal under Rule 41 of the *Rules* to challenge the RTC Orders dated June 6, 2012 and September 17, 2012. Two issues were raised, to wit:

I. Whether or not the trial court erred when it allowed and gave due course to the separate motions of the BOC and the BIR despite their procedural and jurisdictional infirmities; and

II. Whether or not the trial court erred in lifting the preliminary injunction and ordering the dismissal of the complaint.[27]

Anent the first issue, STEELCORP pointed out that the notice of hearing on the OSG's motion for reconsideration indicated that it was submitted for the consideration and approval of the RTC on April 6, 2012, which was a Good Friday. As to the BIR's omnibus motion, the notice of hearing was dated March 28, 2012 but the motion was submitted for hearing on April 12, 2012; thus, beyond the ten-day period required under Section 5, Rule 15 of the *Rules.* It also fell on a Monday, violating Section 7, Rule 15 thereof.

With respect to the second issue, STEELCORP argued that the OP recognized that the issue involved in this case – the interpretation of Sections 19 and 146 of R.A. No. 10142 – is a legal question. Moreover, the parties are estopped by their agreement to refer the matter to the trial court, which, being one of general jurisdiction, had sufficient authority to assume over the case.

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[26] *Id.* at 264.

[27] *Id.* at 34.

On November 19, 2014, the CA dismissed the appeal. It was opined that there was no infirmity in the notices of hearing of the motions filed by the OSG and the BIR because STEELCORP was given ample time to oppose them and prepare appropriate pleadings to refute the same. On the second issue, the CA reminded that it is the law that confers jurisdiction and not experience, practice or tradition, or agreement of the parties. It was noted that the complaint for injunction sought to enjoin the BOC and the BIR from collecting customs duties and taxes on the importations made by STEELCORP. Under Section 7 (4) of R.A. No. 1125, as amended by R.A. No. 9282, the BOC's denial of the request for exemption should have been appealed to the CTA, which has the power to issue an injunction pursuant to Section 11, Paragraph 4 thereof.

A motion for reconsideration was filed, but it was denied on September 15, 2015; hence, this petition.

STEELCORP maintains that the CA erred when it sustained the trial court's act of giving due course to the OSG and the BIR motions that were set for hearing on days that were declared as national holiday and/or beyond the period prescribed by the *Rules*. Likewise, it insists that the present controversy does not assail its liability to pay customs duties, taxes or other charges on its importation of raw materials. Rather, the issue is whether a corporation placed under corporate rehabilitation can avail the benefits of Section 19 of R.A. No. 10142, which issue is cognizable by the RTC and whose decision may be appealed to the CA or the Supreme Court and not to any other court like the CTA. STEELCORP stresses that it is not raising any issue as to the amount and collectibility of the taxes and duties on its importation but is only seeking compliance by the respondents of their obligations under Section 19.

At the outset, it must be said that this petition was already denied on November 11, 2015.[28] However, it was reinstated on

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[28] *Id.* at 153-154.

June 15, 2016 when STEELCORP's motion for reconsideration was granted.[29]

Once again, We deny.

In *Philippine National Bank v. Judge Paneda,*[30] the Court similarly held:

> The courts *a quo* also stress that the said Motion failed to comply with Sections 5 and 7 of Rule 15, Rules of Court, to wit:
>
> > Section 5. *Notice of hearing*. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
> >
> > Section 7. *Motion day*. – Except for motions requiring immediate action, all motions shall be scheduled for hearing on Friday afternoon, or if Friday is a non-working day, in the afternoon the next working day.
>
> The RTC held that petitioner's Motion which was filed on December 3, 1998, and was set for hearing on December 21, 1998, eight days beyond the reglementary period prescribed under Section 5, Rule 15, and that the Motion set the hearing on a Monday and not on a Friday. The CA held that the notice of hearing of said Motion was not addressed to the parties concerned.
>
> The foregoing conclusions are incorrect.
>
> The Court, in *Maturan v. Araula,* held:
>
> > As enjoined by the Rules of Court and the controlling jurisprudence, a liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.
> >
> > **The rule requiring notice to herein private respondents** as defendant and intervenors in the lower court with respect to the hearing of the motion filed by herein petitioner for the reconsideration of the decision of respondent Judge, **has been substantially complied with. While the notice was addressed only to the clerk of court, a copy of the said motion for**

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[29] *Id.* at 155-164, 166.

[30] 544 Phil. 565 (2007).

> **reconsideration was furnished counsel of herein private respondents, which fact is not denied by private respondent. As a matter of fact, private respondents filed their opposition to the said motion for reconsideration** dated January 14, 1981 after the hearing of the said motion was deferred and re-set twice from December 8, 1980, which was the first date set for its hearing as specified in the notice. **Hence, private respondents were not denied their day in court with respect to the said motion for reconsideration**. The fact that the respondent Judge issued his order on January 15, 1981 denying the motion for reconsideration for lack of merit as it merely repeated the same grounds raised in the memorandum of herein petitioner as plaintiff in the court below, one day after the opposition to the motion for reconsideration was filed on January 14, 1981 by herein private respondents, demonstrates that the said opposition of herein respondents was considered by the respondent Judge.
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> x x x x x x x x x
>
> The motion for reconsideration of herein petitioner, while substantially based on the same grounds he invoked in his memorandum after the case was submitted for decision, **is not *pro forma* as it points out specifically the findings or conclusions in the judgment which he claims are not supported by the evidence or which are contrary to law** (*City of Cebu v. Mendoza*, L-26321, Feb. 25, 1975, 62 SCRA 440, 446), **aside from stating additional specific reasons for the said grounds**. (Emphasis supplied)

Thus, even if the Motion may be defective for failure to address the notice of hearing of said motion to the parties concerned, the defect was cured by the court's taking cognizance thereof and the fact that the adverse party was otherwise notified of the existence of said pleading. There is substantial compliance with the foregoing rules if a copy of the said motion for reconsideration was furnished to the counsel of herein private respondents.

In the present case, records reveal that the notices in the Motion were addressed to the respective counsels of the private respondents and they were duly furnished with copies of the same as shown by the receipts signed by their staff or agents.

Consequently, the Court finds that the petitioner substantially complied with the pertinent provisions of the Rules of Court and

existing jurisprudence on the requirements of motions and pleadings.[31]

Section 6, Rule 1 of the *Rules* provides that the rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice.[32] A liberal construction is proper where the lapse in the literal observance of a procedural rule has not prejudiced the adverse party and has not deprived the court of its authority.[33]

With regard the rules on notice of hearing on a motion, the CA correctly held that the test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[34] Considering that STEELCORP was afforded the opportunity to be heard through the pleadings filed in opposition to the motions of the OSG and the BIR, We view that the requirements of procedural due process were substantially complied with and that the compliance justified a departure from a literal application of the rules.

The CA also did not err in affirming the June 6, 2012 Order of the RTC which dissolved the writ of preliminary injunction and dismissed STEELCORP's complaint for lack of jurisdiction.

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[31] *Philippine National Bank v. Judge Paneda, supra,* at 578-580. (Citations omitted; emphases supplied).

[32] *Preysler, Jr. v. Manila Southcoast Dev't. Corporation,* 635 Phil. 598, 604 (2010).

[33] *Id.*

[34] *Jehan Shipping Corporation v. National Food Authority,* 514 Phil. 166, 174 (2005), as cited in *City of Dagupan v. Maramba,* 738 Phil. 71, 86 (2014); *United Pulp and Paper Co., Inc. v. Acropolis Central Guaranty Corp.,* 680 Phil. 64, 80 (2012); and *Sarmiento v. Zaratan,* 543 Phil. 232, 243 (2007).

Certainly, the consent of the parties does not confer jurisdiction over the subject matter. Jurisdiction cannot be waived; it is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[35] The jurisdiction of the court over a subject matter is conferred only by the Constitution or by law as well as determined by the allegations in the complaint and the character of the relief sought.[36]

In reverting to the earlier rulings that upheld the exclusive jurisdiction of the CTA to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances, this Court recently elucidated in *Banco De Oro v. Republic of the Philippines*[37] the subject matter jurisdiction of the CTA:

> On June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor – the former Board of Tax Appeals – but as a part of the judicial system with exclusive jurisdiction to act on appeals from:
>
> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

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[35] *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals,* G.R. No. 193625, August 30, 2017.

[36] See *Proton Pilipinas Corp. v. Republic of the Phils.,* 535 Phil. 521, 532 (2006) and *General Milling Corporation v. Uytengsu III,* 526 Phil. 722, 726 (2006).

[37] G.R. No. 198756, August 16, 2016 (*En Banc* Resolution).

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board

of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[38]

With the enactment of R.A. No. 1125, the CTA was granted the exclusive appellate jurisdiction to review by appeal all cases involving disputed assessments of internal revenue taxes, customs duties, and real property taxes.[39] In general, it has jurisdiction

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[38] *Banco De Oro v. Republic of the Philippines,* G.R. No. 198756, August 16, 2016 (*En Banc* Resolution), pp. 15-18 (Emphases supplied).

[39] See *The Prov. Treasurer and Assessor of Negros Occ. v. Azcona, etc., et al.,* 115 Phil. 618, 622-623 (1962); *Bislig Bay Lumber Co., Inc. v. Prov. Gov't. of Surigao,* 100 Phil. 303, 304-305 (1956); and *Ollada v. Court of Tax Appeals, et al.,* 99 Phil. 604, 608-609 (1956).

over cases involving liability for payment of money to the Government or the administration of the laws on national internal revenue, customs, and real property.[40] As held in *Ollada v. Court of Tax Appeals, et al.*:[41]

> Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. This shows that **the "other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as *ejusdem generis*. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included.**[42]

From the clear purpose of R.A. No. 1125 and its amendatory laws, the CTA, therefore, is the proper forum to file the appeal. Matters calling for technical knowledge should be handled by such court as it has the specialty to adjudicate tax, customs, and assessment cases.[43]

Section 11, Paragraph 4 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability

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[40] See *Hon. Enrile, etc., et al. v. Court of Appeals, et al.,* 140 Phil. 199, 205 (1969); *Auyong Hian v. Court of Tax Appeals, et al.,* 125 Phil. 422, 441 (1967); and *The Actg. Collector of Customs v. The Court of Tax Appeals, et al.,*102 Phil. 244, 252 (1957).

[41] *Supra* note 38.

[42] *Ollada v. Court of Tax Appeals, et al., supra* note 38. (Emphasis supplied).

[43] See *The Philippine American Life and General Insurance Company vs. Secretary of Finance,* 747 Phil. 811, 825 (2014).

as provided by existing law. Nonetheless, when, in the opinion of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount. Yet the requirement of deposit or surety bond may be dispensed with. We held in *Pacquiao v. Court of Tax Appeals, First Division*:[44]

> Thus, despite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interests of a taxpayer for being **patently in violation of the law**. Such authority emanates from the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law, which, as amended provides:
>
> Sec. 7. *Jurisdiction*. – The Court of Tax Appeals shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> l. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue.**
>
> x x x x x x x x x [Emphasis Supplied]

From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond **is not simply confined to cases where prescription has set in**. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the **bond** requirement under Section 11 of R.A. No. 1125 **should be dispensed**

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[44] G.R. No. 213394, April 6, 2016, 789 SCRA 19.

with. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."[45]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The November 19, 2014 Decision and September 15, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 127046 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on official business.

EN BANC

[G.R. No. 214910. February 13, 2018]

BAYANI F. FERNANDO, ANGELITO S. VERGEL DE DIOS, CESAR S. LACUNA, RUBEN C. GUILLERMO, RAMON S. ONA, FELIMON T. TARRAGO, FEDERICO E. CASTILLO, ALLAN ARCEO, DANILO M. SEÑORAN,* RENE ESTIPONA and EDENISON F. FAINSAN, in his capacity as the incumbent Assistant General Manager for Finance and Administration of the METRO MANILA

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[45] *Pacquiao v. Court of Tax Appeals, First Division, supra,* at 43-44. (Emphases and underscoring supplied).

* Also referred to as "Daniolo" in some parts of the records.

DEVELOPMENT AUTHORITY, *petitioners, vs.* **HONORABLE COMMISSION ON AUDIT *EN BANC*, RIZALINA Q. MUTIA, Director IV, Cluster B-General Public Service II and Defense, National Government Sector, COMMISSION ON AUDIT and IRENEO B. MANALO, State Auditor V, Supervising Auditor, COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); EXERCISES CONSTITUTIONAL DUTY TO EXAMINE AND AUDIT EXPENDITURES OF PUBLIC FUNDS ESPECIALLY THOSE WHICH ARE PALPABLY BEYOND WHAT IS ALLOWED BY LAW.— The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. As specifically applied here, it is well within the scope of the COA's authority to evaluate and determine whether the SOs or the extension of the contract time, which necessarily includes the waiver of any penalty or liquidated damages to be imposed, is valid. The plain reason is that government funds are involved. Hence, even if the MMDA, through Ona, favorably granted the requests for suspension of work and the extension of contract time, this cannot bind or preclude the COA from exercising its constitutionally mandated function in reviewing the same and to ensure its conformity with the law. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. Thus, the COA is traditionally given free rein in the exercise of its constitutional duty to examine and audit expenditures of public funds especially those which are palpably beyond what is allowed by law. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.

2. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION COMMITTED BY COA IN ISSUING THE ASSAILED DECISION MODIFYING THE SUBJECT

DISALLOWANCE CONSISTING OF LIQUIDATED DAMAGES AND CONTRACT COST VARIANCE.— [W]e find no grave abuse of discretion on the part of the COA in issuing its assailed Decision. x x x The bottom line is petitioners allowed and approved the disbursement of funds for the payment to WLTC, without withholding or deducting the correct amount of liquidated damages and contract cost variance. Their very admission in their petition that WLTC was at fault for the delay and guilty of violating the provisions of the contract against subcontracting proves that they have acted negligently in the disbursement of the payment to WLTC. Petitioners are correct that under RA No. 9184, liquidated damages are payable by the contractor in case of breach of contract. As the owner of the project, however, the MMDA has the obligation to make sure that the contractor pays in case of breach. Paragraph 3, Item CI 8 of the Implementing Rules and Regulations of PD No. 1594 provides that liquidated damages "shall be deducted from any money due or which may become due the contractor under the contract, and/or collect such liquidated damages from the retention money or other securities posted by the contractor, whichever is convenient to the Government." This is mandatory. Petitioners' position with regard to the contract cost variance also dovetails with the findings of the COA that it was incurred by WLTC to expedite the completion of the project. The COA found that by February 2005, the project was only halfway done despite having three subcontractors already. WLTC executed another agreement with a fourth subcontractor, Yamato, which finally expedited the construction. The COA is correct, therefore, in holding that these alleged additional costs of manpower and equipment must not be borne by the Government. These are not the same as additional or extra work which are performed over and above of what is required under the contract (or would not have been included in the agreed contract price) which would necessitate compensation for the contractor. In any case, these costs cannot be validly considered as additional or extra work costing because they were not shown to have been duly covered by change or extra work orders. Worse, as admitted by petitioners, the alleged additional costs of manpower and equipment were incurred by WLTC *after having entered into subcontract agreements*, in violation of its contract with the MMDA. Thus, petitioners should not have allowed the disbursement to pay for this alleged contract cost variance. All

told, the disallowance, as modified by the COA Proper, must be upheld.

3. ID.; ID.; ID.; ID.; COA IS CORRECT IN HOLDING WILLIAM L. TAN CONSTRUCTION (WLTC) AND RESPONSIBLE OFFICIALS OF THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY (MMDA) SOLIDARILY LIABLE FOR THE DISALLOWANCE.— The COA Proper is correct in holding WLTC and the above MMDA officials solidarily liable for the disallowance. Section 43, Chapter V, Book VI of the Administrative Code of 1987 expressly provides that "[e]very expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received." Complementarily, Section 103 of PD No. 1445 provides that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. ID.; ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; LIABILITY OF PUBLIC OFFICIALS FOR ILLEGAL EXPENDITURES OR DISBURSEMENT OF PUBLIC FUNDS, EXPLAINED; CIRCUMSTANCES SHOW THAT PETITIONERS HAD KNOWLEDGE OF FACTS WHICH WOULD RENDER THE DISBURSEMENT ILLEGAL; HENCE, THEY WERE GROSSLY NEGLIGENT IN THEIR DUTIES.— The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds. The prudent and cautious use of these funds is dictated by their nature as funds and property **held in trust** by the public officers for the benefit of the sovereign trustees – the people themselves – and for the specific public purposes for which they are appropriated. To maintain inviolate the public trust reposed on them, public

officers must exercise **ordinary diligence** or the **diligence of a good father of a family**. This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law imposes upon public officers the obligation to return these amounts. In our earlier discussion, we highlighted several dubious circumstances relating to the issuances of the SOs, the contract time extension, and the payment of the contract cost variance. Coupled with these is the own damning admission of petitioners about violations in the Contract. These acts prove that petitioners had knowledge of facts and circumstances which would render the disbursements illegal. They were thus grossly negligent in their duties.

APPEARANCES OF COUNSEL

MMDA Legal Services Department for petitioners.
The Solicitor General for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court, assailing Decision No. 2012-165[2] dated October 15, 2012 of the Commission on Audit (COA) which disapproved the COA-National Government Sector (NGS) Cluster-B Decision No. 2010-006 dated June 18, 2010 and effectively denied the appeal of the Metropolitan Manila Development Authority (MMDA) with modifications.[3]

On March 22, 2004, the MMDA conducted a public bidding for the Design and Construction of Steel Pedestrian Bridges in various parts of Metro Manila, with William L. Tan Construction

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[1] *Rollo*, pp. 3-16.

[2] *Id.* at 47-57.

[3] *Id.* at 55.

(WLTC) emerging as the winning bidder.[4] Thus, on March 24, 2004, the MMDA[5] and WLTC[6] executed a Contract[7] where the latter agreed to design and construct 14 steel pedestrian bridges for a price of ₱196,291,834.71[8] to be completed within 120 calendar days from receipt of the Notice to Proceed (NTP). The MMDA also issued the NTP on March 24, 2004 and WLTC received it on the same day.[9]

During the construction, WLTC executed Deeds of Assignment for parts of the project to third-party contractors.[10] The MMDA also issued three suspension orders (SOs) to WLTC on various dates, as well as the corresponding resume orders subsequently.[11] Based on WLTC's claimed work accomplishment, the MMDA paid WLTC a total of ₱161,903,009.85 net of taxes,[12] and withheld ₱9,052,570.48 as retention fee.[13] The MMDA also did not pay WLTC the difference of ₱5,861,078.43 since it was the computed liquidated damages for the 120-calendar day delay in the completion of the project.[14]

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[4] *Id.* at 24.

[5] Represented by then Chairman Bayani F. Fernando.

[6] Represented by William L. Tan.

[7] *Rollo*, pp. 18-23.

[8] *Id.* at 24, 47-48. The contract price was originally ₱199,801,671.91, but was revised *via* Variation Order No. 1.

[9] *Id.* at 25.

[10] *Id*. at 48. Grandspan Development Corp., J.O.C. Fabrication & Construction Corp., EEI Corporation, and Yamato Engineering Co., Ltd., Manila Branch.

[11] *Id*. at 48-49. SOs dated March 23, 2004, July 30, 2004, and November 15, 2004 and Resume Orders dated April 21, 2004, October 25, 2004, and January 27, 2005.

[12] *Id.* at 51.

[13] *Id*. at 50.

[14] *Id*.

On post-audit, the Supervising Auditor of COA-MMDA issued Notice of Suspension (NS) No. 08-23-TF-(2004-2007) on all payments pending the MMDA's submission of required documents within 90 days from notice, and by reason of the Technical Evaluation Reports (TERs) dated March 9, 2007 and June 18, 2007 of COA engineers assigned at COA-MMDA.[15] The TERs concluded that the contract cost of ₱199,801,671.91 was excessive for being 29.63% above the COA Estimated Cost of ₱151,409,330.45 due to high percentage mark-up and erroneous computation of site works.[16] The TERs also showed that the liquidated damages to be imposed should be ₱18,153,348.63, instead of ₱5,861,078.43, due to the delay in the construction for 344 days.[17]

On January 29, 2009, the COA State Auditor issued Notice of Disallowance (ND) No. 09-001-TF-(04-06).[18] The COA State Auditor held that the documents[19] requested under the NS

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[15] *Rollo*, p. 51.

[16] *Id.* at 32.

[17] *Id.* at 51.

[18] *Id.* at 38-42.

[19] *Id.* at 39. These include, among others, the following:

1. Copy of complete set of as-built plans with separate shops/drawings on changes made due to variation orders, duly approved by the Regional Director, Department of Public Works and Highways-National Capital Region (DPWH-NCR) pursuant to the Memorandum of Agreement (MOA) between MMDA and DPWH;
2. Copy of program work and technical specifications, duly approved by the Regional Director, DPWH-NCR as per MOA;
3. Contractor's detailed breakdown of estimates and/or unit cost analysis/derivation for work item expressed in volume/areas/lump/lot specifically for siteworks for all footbridges;
4. Detailed computation of contract time signed/approved by the agency officials concerned;
5. Copy of the original plans, indicating the affected portions of the project, and revised plans and specifications, indicating the changes made, duly approved by the Regional Director, DPWH-NCR; and

remained unsubmitted. As such, the suspended transactions matured into a disallowance pursuant to Section 82 of Presidential Decree (PD) No. 1445.[20] These documents were essential support for the claim against government funds and in the evaluation of the contract considering the audit observations cited in the NS. The COA State Auditor held WLTC, its subcontractors, and petitioners, except Edenison F. Fainsan (Fainsan), liable for the disallowance.[21]

The MMDA appealed before the COA-NGS Cluster-B, attaching WLTC's request for extension of the contract period dated February 10, 2005 and the approval of the MMDA dated February 17, 2005.[22]

Ruling on the appeal, the COA-NGS Cluster-B lifted the disallowance, except for liquidated damages of ₱2,063,321.56. It re-evaluated the disallowance and found that the increased deployment of labor and equipment was necessary in the actual implementation of the project. The contract cost variance was, upon re-evaluation, found to be well within the COA allowable limit. The liquidated damages, on the other hand, were reduced after the team considered the granted request for extension of time to WLTC. In view of the modification of the ND, the decision of the COA-NGS Cluster-B was elevated to the COA Proper on automatic review.[23]

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6. Copy of the agency's report on the necessity/justifications for the need of variation order which shall include: (a) the computation as to the quantities of the additional/deductive works involved per item indicating the specific stations where such works are needed; (b) the date of inspection conducted and the result of such inspection; and (c) detailed estimate of the unit cost of such items of work for new unit costs, including those expressed in volume/area/lump sum/lot.

[20] GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

[21] *Rollo*, pp. 40-41.

[22] *Id.* at 51.

[23] *Id.* at 51-52.

The COA Proper disapproved the decision of the COA-NGS Cluster-B and denied the appeal of the MMDA with modifications. It reduced the original disallowance from ₱161,903,009.85 to ₱37,255,307.46 consisting of liquidated damages of ₱18,153,348.63 and contract cost variance of ₱19,101,958.83. This was further reduced to ₱22,341,658.55 considering that the MMDA already withheld ₱9,052,570.48 as retention money and ₱5,861,078.43 as liquidated damages. The COA Proper named WLTC and the responsible officials of the MMDA liable for the disallowance.[24]

It further ruled that WLTC was liable for ₱18,153,348.63 due to the delay in the construction for 344 days. The contract expressly provided that the project should be completed for 120 days, or on July 21, 2004,[25] counted from March 24, 2004. The project, however, was only completed on June 30, 2005 without any request for extension of time before the original date of completion. The COA Proper faulted the MMDA and the COA-NGS Cluster-B for considering the SO dated March 23, 2004 and thusly using the April 21, 2004, the date of the RO, as the effective date of the Contract.[26] The COA Proper held that it was incorrect to do so because there was no project to suspend yet on March 23, 2004 as the contract was executed on March 24, 2004. Said SO was also merely signed by Ramon S. Ona (Ona), for and in behalf of the MMDA. The COA Proper held that he did not have authority to issue any SO or contract that will bind the Government. Even on the assumption that he did, the approved contract time extension, as confirmed by Fainsan, was not covered with the required performance security under Republic Act (RA) No. 9184.[27] It also held that the reasons

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[24] *Id*. at 55-56.

[25] *Id*. at 27-30, 117-125. COA erroneously stated that the contract expiry date was on July 23, 2004. In its Computation of Liquidated Damages attached as Annex "G" in the petition and Annex 7 in the comment, the correct date, July 21, 2004, was used.

[26] *Id*. at 53.

[27] Government Procurement Reform Act; *rollo*, pp. 53-54.

for the SOs[28] were inherent risks that a contractor assumes in a design and construction project.[29]

The COA Proper also upheld the original disallowance of ₱19,101,958.83 representing contract cost variance. WLTC explained that this pertains to additional cost of manpower and equipment due to increased deployment of labor and equipment to expedite the completion of the project. However, the COA Proper found that WLTC only needed to expedite the completion of the project because it had long been overdue. Thus, the alleged additional cost of manpower and equipment should not be borne by the Government.[30]

Hence, this petition which raises the issue of whether the MMDA and/or its concerned officers can be held liable for the liquidated damages and/or contract cost variance. Petitioners argue that WLTC bears the sole liability because the delay in the project and the additional costs incurred to expedite its completion were the entire fault of WLTC.

We deny the petition.

At the outset, we sustain petitioners' position that Ona, as Project Manager, had the authority to issue the SOs and ROs, and to approve the request for extension of contract time on behalf of the MMDA. Office Order No. 220, series of 2003[31] issued by then MMDA Chairman Bayani F. Fernando, and which designated Ona as Project Manager, has the general objective

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[28] *Id*. at 54, 70, 111-115. The reasons cited were: right-of-way problems; change in location for C-5/Beulah, Lanuza and Katipunan footbridges; relocation of aerial, ground and underground lines of utility companies; conflict between footbridges footings and DPWH box culvert along Marcos Highway; delay in the issuance of permits and clearances; encroachment on LRT condition; resistance of Chevrolet; pending clarification of proposed DPWH box culvert location, pending approval of final location, poor weather condition, revision of design and pending approval of Change Order No. 1.

[29] *Id*. at 52-54.

[30] *Id*. at 55-56.

[31] *Id*. at 71.

of ensuring the proper implementation of the project. We find that the authority to suspend construction work and grant requests for contract time extension are necessarily included in Ona's tasks. We take note of the practice in the construction industry where the Project Manager exercises discretion on technical matters involving construction work. Owners of the project are oftentimes not technically suited to oversee the construction work; professional project managers are thus usually hired, precisely to oversee the day-to-day operations on the construction site, exercise professional judgment when expedient, and render his independent decision on technical matters such as adjustments in cost and time.[32]

We note further that the MMDA never repudiated the acts of Ona, but has, in fact, ratified the same. However, this is not to take anything away from the COA's duty to look into the propriety of Ona's acts. The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. As specifically applied here, it is well within the scope of the COA's authority to evaluate and determine whether the SOs or the extension of the contract time, which necessarily includes the waiver of any penalty or liquidated damages to be imposed, is valid. The plain reason is that government funds are involved. Hence, even if the MMDA, through Ona, favorably granted the requests for suspension of work and the extension of contract time, this cannot bind or preclude the COA from exercising its constitutionally mandated function in reviewing the same and to ensure its conformity with the law.[33] It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. Thus, the COA is traditionally given free rein in the exercise of its constitutional duty to examine and audit

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[32] *Filipinas (Pre-Fab Building) Systems, Inc. v. MRT Development Corporation*, G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 630. Citation omitted.

[33] *Development Bank of the Philippines v. Ballesteros*, G.R. No. 168794, August 30, 2006, 500 SCRA 282, 297.

expenditures of public funds especially those which are palpably beyond what is allowed by law. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.[34]

Bearing all the foregoing in mind, we find no grave abuse of discretion on the part of the COA in issuing its assailed Decision.

Glaringly, petitioners do not deny the fact of delay in the project and actually state in their petition that it is undisputed. Indeed, records show that petitioners counted a 120-day delay reckoned from March 2, 2005[35] until June 30, 2005.[36] In contrast, the COA counted a 344-day delay reckoned from July 21, 2004[37] until June 30, 2005. The point of difference in their respective computations was in how the SOs, ROs, and extension of contract time were considered. For petitioners, these were valid; while for the COA, they were not. We agree with the COA.

It appears that petitioners, for some reason, treated the first SO and RO on March 23, 2004 and April 21, 2004, respectively, to have pushed the effectivity of the contract to April 21, 2004. This is erroneous. As the name itself suggests, the SO should have only suspended the operation and nothing more. The SO,[38] in fact, expressly directed WLTC to suspend all construction operation and did not contain anything about revising or moving the effectivity of the contract.

Petitioners also failed to belie the COA's finding that the first SO was dated March 23, 2004. This was highly suspicious, to say the least, because the Notice of Award and the NP were

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[34] *Sanchez v. COA*, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 489.

[35] *Rollo*, p. 54.

[36] *Id.* at 30.

[37] *Id.* at 52-53.

[38] *Id.* at 111.

issued on the next day, March 24, 2004. The COA is correct, therefore, in holding that there was no contract or project to suspend yet when the first SO was issued. There was also no reasonable explanation why WLTC's alleged request for suspension was dated March 24, 2004, when the SO was issued a day before. At any rate, the request was in complete violation of Clause 7 of the Contract which expressly provides that the "contractor shall give written notice to the Authority at least 10 days prior to the beginning, suspension or resume of the work, to the end that the Authority may make the necessary preparation for inspection."[39]

Considering, therefore, that the original effectivity (March 24, 2004) and expiry (July 21, 2004) of the contract must stand, it follows that the succeeding SOs in July 30, 2004 and November 15, 2004 are invalid. No extension of contract time was issued before the expiry of the contract. Even if we were to assume that the contract time was validly extended and the July and November 2004 SOs could have been feasible, we stress that petitioners failed to refute the findings of the COA that the reasons for these SOs are without legal basis for being inherent risks of the project.

Moreover, in further revising the expiry of the contract and pushing it to March 2, 2005, petitioners claim that WLTC, in its letter dated February 10, 2005, requested for an extension of contract time and the MMDA granted the same on February 17, 2005. Again, even if we were to assume that the contract time was validly extended to April 24, 2004 and that the subsequent SOs could have likewise been feasible, the supposed contract time extension must still fail. Records do not show what the reasons for such extension were and whether they were valid and allowed under the law in the first place.[40] Significantly, as

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[39] *Id.* at 101; Clause 7 of the Contract (as correctly pointed out by the COA, the Contract annexed to the petition is missing a page which contains Clause 7. It was, however, quoted in WLTC's motion for reconsideration dated November 26, 2012, attached as Annex 8 to the COA's comment).

[40] Item CI 11 of the Implementing Rules and Regulations (IRR) of PD No. 1594.

admitted by Fainsan, the extension was not covered with Performance Security.[41]

Petitioners, however, insist that the consequences of delay in the form of liquidated damages should fall on the shoulders of WLTC alone because it was the one who requested the suspension of work (and extension of contract time). The MMDA, on the other hand, never suspended the work operations at its own discretion; it merely assented to the requests "upon finding of reasonable justification therefor."[42] As for the contract cost variance, petitioners posit it was due to WLTC's act of subcontracting parts of the project. This was allegedly made entirely at the behest and preference of WLTC upon realizing that it cannot complete the project on time. Petitioners denied any participation in the acts of WLTC and even alleged that these were in violation of the Contract.[43]

The question, however, as to which party is at fault for subcontracting parts of the project is beside the point. The same holds true with respect to which party initiated the requests for suspension of work and extension of contract time, as petitioners suggest. The bottom line is petitioners allowed and approved the disbursement of funds for the payment to WLTC, without withholding or deducting the correct amount of liquidated damages and contract cost variance. Their very admission in their petition that WLTC was at fault for the delay and guilty of violating the provisions of the contract against subcontracting proves that they have acted negligently in the disbursement of the payment to WLTC.

Petitioners are correct that under RA No. 9184, liquidated damages are payable by the contractor in case of breach of contract. As the owner of the project, however, the MMDA has the obligation to make sure that the contractor pays in case of breach. Paragraph 3, Item CI 8 of the Implementing Rules

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[41] *Rollo*, p. 54.

[42] *Id*. at 9.

[43] *Id*. at 10-11.

and Regulations of PD No. 1594 provides that liquidated damages "shall be deducted from any money due or which may become due the contractor under the contract, and/or collect such liquidated damages from the retention money or other securities posted by the contractor, whichever is convenient to the Government." This is mandatory.

Petitioners' position with regard to the contract cost variance also dovetails with the findings of the COA that it was incurred by WLTC to expedite the completion of the project. The COA found that by February 2005, the project was only halfway done despite having three subcontractors already. WLTC executed another agreement with a fourth subcontractor, Yamato, which finally expedited the construction. The COA is correct, therefore, in holding that these alleged additional costs of manpower and equipment must not be borne by the Government. These are not the same as additional or extra work which are performed over and above of what is required under the contract (or would not have been included in the agreed contract price) which would necessitate compensation for the contractor. In any case, these costs cannot be validly considered as additional or extra work costing because they were not shown to have been duly covered by change or extra work orders.[44]

Worse, as admitted by petitioners, the alleged additional costs of manpower and equipment were incurred by WLTC *after having entered into subcontract agreements*, in violation of its contract with the MMDA.[45] Thus, petitioners should not have allowed the disbursement to pay for this alleged contract cost variance. All told, the disallowance, as modified by the COA Proper, must be upheld.

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[44] Pursuant to Item CI 2 of the IRR of PD No. 1594.

[45] *Rollo*, p. 22. Clause 16 of the Contract provides that:

> 16. The Contractor hereby agrees not to assign and/or sublet this Contract to any Third Party without the prior written approval of the Authority. (Emphasis omitted.)

In its Decision, the COA Proper held WLTC and the responsible officials of the MMDA liable for the disallowance. The responsible officials referred to are those originally named in the ND:

Name	Position/Designation	Nature of Participation in the Transactions
1. Bayani F. Fernando	Chairman, MMDA	Approved the transactions
2. Angelito S. Vergel De Dios	Director, TOC [Traffic Operations Center]	Certified that expenses were necessary, lawful and under his direct supervision.
3. Cesar S. Lacuna	Deputy Chairman	Certified that expenses were necessary, lawful and under his direct supervision Approved Certification of Accomplishment and Inspection Recommended approval of Agency Estimates
4. Ruben C. Guillermo	Acting Director II, Accounting Services	Certified that the supporting documents are complete and proper
5. Ramon S. Ona	Project Director	Recommended approval of Certificate of Accomplishment and Inspection Certified the Statement of Time Elapsed and Work Accomplished Approved Summary of Statement of Work Accomplished

		Approved Summary of Billings Approved Contractor's Statement of Work Accomplished Submitted Agency Estimate Signed Suspension Order Nos. 1 to 4
6. Felimon T. Tarrago	Head, Project Inspector, PMST	Prepared/submitted Summary of Contractor's Statement of Work Accomplished Prepared Summary of Billings Signed Resumption Order/Site Instruction
7. Federico E. Castillo	Project Engineer	Signed Certificate of Accomplishment and Inspection Prepared Statement of Elapsed and Work Accomplished Checked Summary of Statement of Work Accomplished Checked Contractor's Statement of Work Accomplished Checked/Reviewed Agency Estimate Prepared/signed Technical Evaluation Report
8. Allan Arceo	Engineer	Prepared/signed Technical Evaluation Report
		Prepared Agency Estimate

9. Danilo M. Señoran	Engineer II	Prepared/signed Technical Evaluation Report[46]
10. Rene Estipona	Engineer	

The COA Proper is correct in holding WLTC and the above MMDA officials solidarily liable for the disallowance. Section 43, Chapter V, Book VI of the Administrative Code of 1987[47] expressly provides that "[e]very expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received."

Complementarily, Section 103 of PD No. 1445 provides that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. In determining who are liable for audit disallowances or charges, the COA is guided by Section 19 of the Manual of Certificate of Settlement and Balances,[48] which provides:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

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

[47] Executive Order No. 292.

[48] COA Circular No. 94-001, Prescribing the Use of the Manual on Certificate of Settlement and Balances.

19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds.[49] The prudent and cautious use of these funds is dictated by their nature as funds and property **held in trust** by the public officers for the benefit of the sovereign trustees – the people themselves – and for the specific public purposes for which they are appropriated.[50] To maintain inviolate the public trust reposed on them, public officers must exercise **ordinary diligence** or the **diligence of a good father of a family**. This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law imposes upon public officers the obligation to return these amounts.[51]

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[49] See *J.* Brion's Concurring and Dissenting Opinion in *Technical Education and Skills Development Authority v. COA*, G.R. No. 204869, March 11, 2014, 718 SCRA 402, 433.

[50] *Id.* Emphasis in the original, citation omitted.

[51] *Id.* Emphasis in the original, citation omitted.

In our earlier discussion, we highlighted several dubious circumstances relating to the issuances of the SOs, the contract time extension, and the payment of the contract cost variance. Coupled with these is the own damning admission of petitioners about violations in the Contract. These acts prove that petitioners had knowledge of facts and circumstances which would render the disbursements illegal. They were thus grossly negligent in their duties.

In previous cases involving disallowances of salaries, benefits, and allowances, we have not excused from liability the approving officers who patently disregarded case laws, COA directives, and the Constitution.[52] We held that while there is a presumption of regularity in the performance of official duties, this presumption must fail in the presence of an explicit rule that was violated.[53] In *Casal v. COA*,[54] for example, we sustained the liability of certain officers of the National Museum who, notwithstanding their good faith, participated in approving and authorizing the incentive award granted to its officials and employees in violation of Administrative Order Nos. 268[55] and 29[56] which prohibited the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President. We held, thus:

> The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the

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[52] See *Tetangco, Jr. v. COA*, G.R. No. 215061, June 6, 2017.

[53] *Sambo v. COA*, G.R. No. 223244, June 20, 2017.

[54] G.R. No. 149633, November 30, 2006, 509 SCRA 138.

[55] Rationalizing the Grant of Productivity Incentive Benefits for Calendar Year 1991 to all Personnel of Government Agencies (1992).

[56] Authorizing the Grant of Calendar Year 1992 Productivity Incentive Benefits to Government Personnel and Prohibiting Payments of Similar Benefits in Future Years Unless Duly Authorized by the President (1993).

COA amounts to gross negligence, making them liable for the refund thereof. x x x[57] (Citation and italics omitted.)

Applying by analogy the above ruling, we hold that petitioners are liable for the disallowance.

WHEREFORE, the October 15, 2012 Decision and June 20, 2014 Resolution of the Commission on Audit are **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Tijam, and *Reyes, Jr., JJ.,* concur.

Leonen, J., on official business but left his vote of concurrence.

Caguioa and *Gesmundo, JJ.,* on official business.

Martires, J., on official leave.

EN BANC

[G.R. No. 229882. February 13, 2018]

CAMILO L. SABIO, *petitioner, vs.* **FIELD INVESTIGATION OFFICE (FIO), OFFICE OF THE OMBUDSMAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; MISCONDUCT, CONCEPT OF; TO DIFFERENTIATE GROSS FROM SIMPLE

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[57] *Sambo v. COA*, *supra* note 53.

MISCONDUCT, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULE MUST BE MANIFEST IN THE FORMER.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate **gross misconduct** from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest** in the former.

2. **ID.; ID.; ID.; DISHONESTY, DEFINED AND EXPLAINED; CIRCUMSTANCES TO CONSTITUTE SERIOUS DISHONESTY, ENUMERATED.—** [D]ishonesty has been defined as the concealment or **distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Civil Service Commission Resolution No. 06-0538 classifies dishonesty in three (3) gradations, namely: serious, less serious or simple. In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: (*a*) the dishonest act caused serious damage and grave prejudice to the Government; (*b*) the respondent gravely abused his authority in order to commit the dishonest act; (*c*) **where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption**; (*d*) the dishonest act exhibits moral depravity on the part of respondent; (*e*) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (*f*) the dishonest act was committed several times or in various occasions; (*g*) the dishonest act involves a Civil Service

examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (*h*) other analogous circumstances. Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.

3. ID.; ID.; ID.; GRAVE MISCONDUCT; PETITIONER'S FLAGRANT DISREGARD OF THE RULE LIMITING THE MONTHLY CELLULAR PHONE USAGE GIVES RISE TO HIS ADMINISTRATIVE LIABILITY FOR GRAVE MISCONDUCT.— [P]etitioner's flagrant disregard of the rule imposing a ₱10,000.00 cap on cellular phone usage is readily apparent from his repeated incurrence of irregular, excessive, and/or extravagant cellular phone charges over and above said cap for 7 of the 12 billing periods when excess usages were noted. Likewise, the intent to procure some benefit for himself is manifest from the undisputed fact that said charges have remained unpaid to date despite the clear provisions of Office Order No. CLS-001-2005 that any and all amounts in excess of the said cap shall be paid by the end-user. Consequently, the Court finds the CA to have correctly upheld petitioner's administrative liability for Grave Misconduct.

4. ID.; ID.; ID.; CIRCUMSTANCES CONSTITUTING GRAVE MISCONDUCT AND SERIOUS DISHONESTY, PRESENT IN CASE AT BAR; UTILIZING THE PROCEEDS FROM THE SALE OF ILL-GOTTEN WEALTH AS CASH ADVANCES WITHOUT ANY AUTHORITY AND PROPER LIQUIDATION RENDER PETITIONER LIABLE FOR GRAVE MISCONDUCT; HIS INCONSISTENT CATEGORIZATIONS OF THE SUBJECT ADVANCES EVINCE HIS INTENT TO DISTORT THE TRUTH IN ORDER TO EVADE PROPER LIQUIDATION PROCEDURE CONSTITUTE SERIOUS DISHONESTY.— By its very nature, **ill-gotten wealth assumes a public character as they supposedly originated from the government itself,**

and must, perforce, be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. **Accordingly, the proceeds from the sales thereof should likewise be remitted to the public treasury.** However, despite the express provisions of Section 63 of RA 6657, as amended, petitioner converted the ₱10,350,000.00 remittances from the sequestered corporations x x x [P]etitioner's administrative liability for Grave Misconduct and Serious Dishonesty does not rest on whether or not he has appropriated, took or misappropriated or consented or, through abandonment or negligence, permitted another person to take public funds for which he is accountable (which an accused in malversation of public funds must be shown to have committed), but rather on whether or not he flagrantly disregarded the law and established rules, or committed any distortion of the truth with respect to his handling and accounting of the public funds which came into his hands, as affirmatively shown in this case. Here, there was competent showing of a pattern of petitioner's open and repeated defiance of: (*a*) the law requiring the turn-over of receipts from the sale of ill-gotten wealth to the Agrarian Reform Fund when he channelled receipts from the sale of ill-gotten wealth to other purposes without any authority; and (*b*) the proper liquidation procedures, rendering him liable for Grave Misconduct. On the other hand, his inconsistent categorizations of the subject cash advances sufficiently evince his intent to distort the truth in order to evade the proper liquidation procedure therefor, warranting his liability for Serious Dishonesty.

5. **ID.; ID.; ID.; ID.; ACQUITTAL IN THE ALLIED CRIMINAL CASES FOR VIOLATION OF REPUBLIC ACT NO. 3019 AND MALVERSATION OF PUBLIC FUNDS UNDER THE REVISED PENAL CODE BASED ON INSUFFICIENT EVIDENCE CANNOT ABSOLVE PETITIONER FROM ADMINISTRATIVE LIABILITY.—** In a last ditch effort to escape administrative liability for the complained acts, petitioner invoked his acquittal in the allied criminal cases for Violation of Section 3 (e) of RA 3019 and Malversation of Public Funds under Article 217 of the Revised Penal Code. However, the Court holds that such acquittal on the basis of insufficiency of evidence which engendered reasonable doubt, cannot work in petitioner's favor. An administrative case is, as a rule,

independent from criminal proceedings. As such, the dismissal of a criminal case on the ground of insuffiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is merely substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt or that degree of proof which produces conviction in an unprejudiced mind.

6. **ID.; ID.; ID.; ID.; TOTALITY OF PETITIONER'S ACTS TARNISHED THE IMAGE AND INTEGRITY OF HIS PUBLIC OFFICE, WHICH IS TANTAMOUNT TO CONDUCT PREJUDICIAL TO THE INTEREST OF THE SERVICE.—** [T]he totality of petitioner's acts tarnished the image and integrity of his public office, which is tantamount to Conduct Prejudicial to the Best Interest of the Service. Conduct prejudicial to the best interest of the service is a *grave offense* which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal on the second offense. However, in view of petitioner's culpability for all the three (3) charges, Section 50, Rule 10 of the RRACCS dictates that the penalty to be imposed should be that corresponding to the most serious charge.

7. **ID.; ID.; ID.; ID.; PETITIONER'S LIABILITY FOR GRAVE MISCONDUCT AND SERIOUS DISHONESTY WOULD HAVE WARRANTED HIS DISMISSSAL IF NOT FOR HIS SEPARATION FROM THE SERVICE, HENCE IMPOSITION OF ADMINISTRATIVE DISABILITIES OF FORFEITURE OF HIS RETIREMENT BENEFITS WITH PREJUDICE TO RE-EMPLOYMENT IN ANY BRANCH OF THE GOVERNMENT IS CORRECT.—** Petitioner's administrative liability for Grave Misconduct and Serious Dishonesty would have warranted his dismissal from the service even for the first offense, if not for his separation from the office. Accordingly, the Court finds the Ombudsman and the CA to have correctly imposed the corresponding administrative disabilities of forfeiture of petitioner's retirement benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government.

APPEARANCES OF COUNSEL

Feria Tantoco Daos Law Offices for petitioner.
Ombudsman Office of the Legal Affairs for respondent.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 123692, which affirmed the Joint Decision[3] dated July 28, 2011 of the Office of the Ombudsman (Ombudsman) in the consolidated cases OMB-C-A-09-0611-J, OMB-C-A-09-0609-J, and OMB-C-A-09-0608-J that adjudged petitioner Camilo L. Sabio (petitioner) guilty of the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and thereby, imposed upon him the penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government.

The Facts

This case stemmed from separate Complaints[4] filed by respondent Field Investigation Office (FIO) of the Ombudsman charging petitioner, former Chairman of the Presidential

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[1] *Rollo*, pp. 30-83.

[2] *Id*. at 86-95. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino concurring.

[3] *Id*. at 185-207. Signed by Graft Investigation and Prosecution Officer II Alteza A. Añoso, reviewed by Director, PIAB-B Moreno F. Generoso, recommended for approval by Assistant Ombudsman, PAMO I Aleu A. Amante, and approved by Ombudsman Conchita Carpio Morales.

[4] See Complaint dated June 22, 2009, docketed as OMB-C-A-09-0611-J (*id*. at 96-107); Complaint dated May 29, 2009, docketed as OMB-C-A-09-

Commission on Good Government (PCGG), of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service arising out of the following acts: (*1*) excess monthly charges in the official use of PCGG-issued cellular phones for the years 2005 to 2007 in the total amount of ₱25,594.76,[5] in violation of: (*a*) the ₱10,000.00 cap under Office Order No. CLS-001-2005 dated August 25, 2005;[6] (*b*) Commission on Audit (COA) Circular No. 85-55-A[7] against unnecessary, excessive, and extravagant expenditures; and (*c*) Administrative Order No. 103[8] dated August 31, 2004 requiring all government agencies to adopt austerity measures, including at least 10% reduction in the consumption of utilities;[9] (*2*) failure to deposit the aggregate amount of ₱10,350,000.00 consisting of the cash advances and partial remittances from sequestered corporations, *i.e.*, the Independent Realty Corporation (IRC) and Mid-Pasig Land Development Corporation (MPLDC),[10] to the Agrarian Reform Fund of the Comprehensive Agrarian Reform Program (CARP), through the Bureau of Treasury (BOT), as required under Section 63 of Republic Act No. (RA) 6657, as amended in relation to Sections 20 and 21 of Executive Order No. (EO) 229;[11] and (*3*) failure to liquidate despite demand

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0609-J (*id*. at 108-117); and Complaint dated May 29, 2009, docketed as OMB-C-A- 09-0608-J (*id*. at 118-125).

[5] See *id*. at 98-99.

[6] See *id*. at 97.

[7] Entitled "AMENDED RULES AND REGULATIONS ON THE PREVENTION OF IRREGULAR, UNNECESSARY, EXCESSIVE OR EXTRAVAGANT EXPENDITURES OR USES OF FUNDS AND PROPERTY," issued on September 8, 1985.

[8] Entitled "DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT."

[9] See Section 1 (b) (2) of Administrative Order No. 103 dated August 31, 2004.

[10] Comprised of several checks, the details of which have been tabulated in the Ombudsman's July 28, 2011 Joint Decision; *rollo*, pp. 189-190.

[11] Entitled "PROVIDING THE MECHANISMS FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM," issued on July 22, 1987.

the amount of ₱1,555,862.03 out of the total cash advances that he used in his travels and litigation of foreign cases,[12] as required by Section 89 of Presidential Decree No. 1445[13] and COA Circular No. 97-002[14] dated February 10, 1997.

In his defense,[15] petitioner claimed that the PCGG's operations are financed from the recovered ill-gotten wealth and from the ₱5,000,000.00 Confidential and Intelligence Funds (CIF) appropriated annually.[16] However, during his tenure, the CIF for the years 2005 to 2010 were never released to him; hence, he had to utilize the cash remittances from the sequestered corporations in lieu thereof. He further explained that he had to engage the services of foreign lawyers who asked for hefty compensation in the litigation of foreign cases because while he actively took part in the litigation, he was not duly licensed to practice law in foreign countries.[17]

The Ombudsman Ruling

In a Joint Decision[18] dated July 28, 2011, which was approved on October 11, 2011, the Ombudsman found substantial evidence against petitioner and accordingly, adjudged him guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service pursuant to Section 52 (A) of the Uniform Rules on Administrative Cases in the Civil Service.[19]

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[12] *Rollo*, p. 88. See also *id*. at 119-120.

[13] Otherwise known as the "GOVERNMENT AUDITING CODE OF THE PHILIPPINES," issued on June 11, 1978.

[14] Entitled "RESTATEMENT WITH AMENDMENTS OF THE RULES AND REGULATIONS ON THE GRANTING, UTILIZATION AND LIQUIDATION OF CASH ADVANCES PROVIDED FOR UNDER COA CIRCULAR NO. 90-331 DATED MAY 3, 1990," issued on February 10, 1997.

[15] See Consolidated Counter-Affidavit dated March 22, 2010; *rollo*, pp. 126-164.

[16] *Id*. at 135.

[17] *Id*. at 89. See also *id*. at 139 and 152.

[18] *Id*. at 185-207.

[19] *Id*. at 205.

The Ombudsman found that petitioner failed to: (*a*) refute the allegations relative to his unpaid cellular phone charges, holding that his general denial along with the allegations concerning his duties and responsibilities as PCGG Chairman and the accomplishments of his office were not responsive to the charges; (*b*) refute the allegations concerning his non-remittance to the BOT of the amount of ₱10,350,000.00 received from the sequestered corporations despite the showing that he made use of the same as cash advances, and that he had, in fact, personally encashed the majority of the checks corresponding to the remittances; and (*c*) account for his unliquidated cash advance of ₱1,555,862.03 despite demand.[20] Thus, he was held liable for Grave Misconduct and Dishonesty.[21]

The Ombudsman likewise found that petitioner's acts of appropriating and/or misappropriating the proceeds of the ill-gotten wealth, excessive use of government resources, and failure to account for his cash advances tarnished the integrity of his public office, thus constituting Conduct Prejudicial to the Best Interest of the Service.[22] However, considering that petitioner is no longer connected with the PCGG, the Ombudsman declared the penalty of dismissal from the service as having been rendered moot, and thus, imposed on him instead the accessory penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in the government, including government-owned or controlled corporations.[23]

Aggrieved, petitioner filed a petition for review[24] before the CA, docketed as CA-G.R. SP No. 123692.

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[20] *Id*. at 200-202.

[21] *Id*. at 202-203.

[22] *Id*. at 203-204.

[23] *Id*. at 204.

[24] Dated April 11, 2012. *Id*. at 246-359.

The CA Ruling

In a Decision[25] dated January 31, 2017, the CA declared the Ombudsman ruling to be amply supported by substantial evidence, and thus, affirmed the same.[26] It noted that petitioner failed to: (*a*) prove that the excess charges were used for calls, text, and data consumption while he was in the performance of his duties; (*b*) turn over and remit to the BOT upon demand the cash advances and remittances from sequestered corporations (duly covered by vouchers and checks) that automatically formed part of the funds of the CARP, which were not meant to be used for the operations of the PCGG, and hence, constituted technical malversation of funds; and (*c*) satisfactorily show by the corresponding receipts and vouchers that the amount of ₱1,555,862.03 was spent for the purposes for which it was released.[27]

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the Ombudsman's Joint Decision finding petitioner guilty of the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.[28]

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[25] *Id*. at 86-95.

[26] *Id*. at 94.

[27] *Id*. at 92-93.

[28] See *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017, citing *Cabalit v. Commission on Audit-Region VII*, 679 Phil. 138, 157-158 (2012).

In this case, the Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which the CA affirmed.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate **gross misconduct** from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest** in the former.[29]

On the other hand, dishonesty has been defined as the concealment or **distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[30] Civil Service Commission Resolution No. 06-0538[31] classifies dishonesty in three (3) gradations, namely: serious, less serious or simple. In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: (*a*) the dishonest act caused serious damage and grave prejudice to the Government; (*b*) the respondent gravely abused his authority in order to commit the dishonest act; (*c*) **where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit**

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[29] See *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, July 10, 2017; citation omitted.

[30] See *Fajardo v. Corral*, G.R. No. 212641, July 5, 2017; citation omitted.

[31] Otherwise known as the "Rules on the Administrative Offense of Dishonesty," dated April 4, 2006.

material gain, graft and corruption; (*d*) the dishonest act exhibits moral depravity on the part of respondent; (*e*) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (*f*) the dishonest act was committed several times or in various occasions; (*g*) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (*h*) other analogous circumstances.

Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[32]

Both grave misconduct and serious dishonesty, of which petitioner was charged, are classified as *grave offenses* for which the penalty of dismissal is meted even for first time offenders.[33]

After a judicious study of the case, the Court finds that the evidence on record sufficiently demonstrate petitioner's culpability for the charges and fully satisfy the standard of substantial evidence, which is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.[34]

1. With respect to petitioner's excess cellular phone charges aggregating to ₱25,594.76.

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[32] See *The Office of the Court Administrator v. Egipto, Jr.*, A.M. No. P-05-1938, November 7, 2017; citation omitted.

[33] See Section 46 (A) (1) and (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

[34] See *Fajardo v. Corral*, *supra* note 30.

Office Order No. CLS-001-2005 dated August 25, 2005 issued by petitioner himself set a ₱10,000.00 cap in the maximum monthly allocation of PCGG Commissioners in the official use of PCGG-issued cellular phones[35] and disallowed the previous practice of justifying any and all amounts in excess thereof, which shall henceforth be paid by the end-user.[36] On January 30, 2008, petitioner issued Office Order No. CLS-092-2008 clarifying that the monthly allocation fixed above shall not apply in cases where the official concerned is abroad, on official business, and the charges on text messages and voice calls are made by virtue thereof.[37]

However, a reading of the complaint in OMB-C-A-09-0611-J shows that petitioner is being charged for excess monthly cellular phone charges for the periods December 27, 2005 to March 26, 2006, April 27 to May 26, 2006, July 27 to September 26, 2006, December 27, 2006 to May 26, 2007, and July 27 to August 26, 2007 for Account No. 38659931/Phone No. 9178589299 and the periods December 11, 2005 to March 10, 2006, April 11 to May 10, 2006, June 11 to August 10, 2006, December 11, 2006 to May 10, 2007, and July 11 to August 10, 2007 for Account No. 26780102/Phone No. 9175775266.[38] The charges cover a total of twelve (12) billing periods and clearly, were incurred prior to the issuance of Office Order No. CLS-092-2008 dated January 30, 2008, which, hence, would not apply.

As aptly pointed out by the CA, petitioner cannot disregard with impunity Office Order No. CLS-001-2005 limiting the use of the PCGG-issued cellular phones, which he himself issued in line with the austerity measures implemented by the government to lessen operating expenses.[39] Notably, in seven

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[35] *Rollo*, p. 87.

[36] See *id*. at 97.

[37] *Id*. at 87 and 97.

[38] *Id*. at 98-99.

[39] *Id*. at 92.

(7) of the 12 billing cycles concerned, the excess usage amounted to between 15.96%[40] and 62.77%[41] over the ₱10,000.00 cap given for cellular phone usage, rendering such excesses to be expenses that are irregular, or even excessive and extravagant[42] under the auspices of COA Circular No. 85-55-A.

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[40] Minimum excess usage = (total excess charges for billing period August 27 to September 26, 2006 for Account No. 38659931/Phone No. 9178589299 and July 11 to August 10, 2006 for Account No. 26780102/Phone No. 9175775266 ÷ monthly cap) x 100%

Minimum excess usage = (₱1,595.58 ÷ ₱10,000.00) x 100% = 0.159558 x 100% = **15.9558%** or **15.96%**

[41] Maximum excess usage = (total excess charges for billing period December 27, 2005 to January 26, 2006 for Account No. 38659931/Phone No. 9178589299 and December 11, 2005 to January 10, 2006 for Account No. 26780102/Phone No. 9175775266 ÷ monthly cap) x 100%

Maximum excess usage = (₱6,277.48 ÷ ₱10,000.00) x 100% = 0.627748 x 100% = **62.7748%** or **62.77%**

[42] COA Circular No. 85-55-A dated September 8, 1985 defines the terms irregular, unnecessary, excessive, and extravagant as follows:

> The term **"irregular expenditure"** signifies an expenditure incurred **without adhering to established rules, regulations, procedural guidelines, policies, principles or practices** that have gained recognition in law. Irregular expenditures are incurred **without conforming with prescribed usages and rules of discipline**. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. An anomalous transaction which fails to follow or violates appropriate rules of procedure, is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas, the former is incurred in violation of applicable rules and regulations other than the law.
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> x x x x x x x x x
>
> x x x. The term **"excessive expenditures"** signifies **unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price.** It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.
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> x x x x x x x x x

While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, a public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or **flagrant disregard of established rule are manifest**,[43] as in this case. Flagrant disregard of rules has been jurisprudentially demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions**.[44]

Here, petitioner's flagrant disregard of the rule imposing a ₱10,000.00 cap on cellular phone usage is readily apparent from his repeated incurrence of irregular, excessive, and/or extravagant cellular phone charges over and above said cap for 7 of the 12 billing periods when excess usages were noted. Likewise, the intent to procure some benefit for himself is manifest from the undisputed fact that said charges have remained unpaid to date[45] despite the clear provisions of Office Order No. CLS-001-2005 that any and all amounts in excess of the said cap shall be paid by the end-user.

Consequently, the Court finds the CA to have correctly upheld petitioner's administrative liability for Grave Misconduct.

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x x x. The term **"extravagant expenditure"** signifies those **incurred without restraints, judiciousness and economy.** Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious. (Emphases supplied)

[43] See *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 300-301 (2011); citations omitted.

[44] *Id*. at 297.

[45] See Comment dated October 20, 2017; *rollo*, p. 406.

However, it was not shown that the incurrence of excess charges involved any act of dishonesty to sustain liability for the charge of Serious Dishonesty.

2. With respect to petitioner's failure to remit to the CARP fund through the BOT the ₱10,350,000.00 remittances from the sequestered corporations that he used as cash advances, which he likewise failed to liquidate.[46]

Under Section 63[47] of RA 6657, as amended, **all** amounts derived from the sale of ill-gotten wealth recovered through the PCGG shall accrue to the CARP fund[48] and shall be **considered automatically appropriated** for such purpose pursuant to Sections 20[49] and 21[50] of EO 229.

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[46] *Id.* at 109-110.

[47] Section 63. *Funding Source.* — The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.

Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

x x x x x x x x x

(b) **All receipts** from assets recovered and **from sale of ill-gotten wealth** recovered through the Presidential Commission on Good Government[.] (Emphases supplied)

[48] See *Uy v. Sandiganbayan*, 477 Phil. 499, 514 (2004).

[49] Section 20. *Agrarian Reform Fund.* — As provided in Proclamation No. 131 dated July 22, 1987, a special fund is created, known as The Agrarian Reform Fund, an initial amount of FIFTY BILLION PESOS (₱50 billion) to cover the estimated cost of the CARP from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust (APT) and **receipts of sale of ill-gotten wealth recovered through the Presidential Commission on Good Government** and such other sources as government may deem appropriate. The amount collected and accruing to this special fund shall be **considered automatically appropriated** for the purpose authorized in this Order. (Emphases supplied)

[50] Section 21. *Supplemental Appropriations.* — The amount of TWO BILLION SEVEN HUNDRED MILLION PESOS (₱2.7 billion) is hereby

By its very nature, **ill-gotten wealth**[51] **assumes a public character as they supposedly originated from the government itself, and must, perforce, be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts.[52] **Accordingly, the proceeds from the sales thereof should likewise be remitted to the public treasury**.

However, despite the express provisions of Section 63 of RA 6657, as amended, petitioner converted the ₱10,350,000.00 remittances from the sequestered corporations (₱9,850,000.00 and ₱500,000.00 of which were placed in the names of petitioner and IRC Chairman and President Ernesto R. Jalandoni, respectively)[53] and the proceeds of the sale of A. Soriano Corporation shares, which formed part of the ill-gotten wealth of former President Ferdinand E. Marcos,[54] as his cash advances, and admittedly failed to verify the exact amount of resources made available to him to successfully carry out his tasks.[55]

While it is acknowledged that the PCGG performs the herculean task of recovering ill-gotten wealth, petitioner failed

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appropriated to cover the supplemental requirements of the CARP for 1987, to be sourced from the **receipts of the sale of ill-gotten wealth recovered through the Presidential Commission on Good Government** and the proceeds from the sale of assets by the APT. The amount collected from these sources **shall accrue to The Agrarian Reform Fund and shall likewise be considered automatically appropriated** for the purpose authorized in this Order. (Emphases supplied)

[51] In *Chavez v. PCGG* (360 Phil. 133, 165 [1998]), "'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships, 'resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.'"

[52] See *id*.

[53] See *rollo*, pp. 189-190.

[54] *Id*. at 201-202 and 209.

[55] See *id*. at 136.

to show any law, rule, regulation or authority that permits him to utilize receipts from the sale of the aforesaid shares – being classified as ill-gotten wealth – to be channelled for any other purpose than that provided under Section 63 of RA 6657, as amended. His reliance on the Special Provision of the General Appropriations Act for the Fiscal Year 2007[56] is misplaced because the subject cash advances were disbursed to him in the Fiscal Year 2006.[57] Neither was there any showing that the PCGG had no other funds[58] which may be utilized to serve the

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[56] *Id*. at 73-74.

[57] The details of which have been tabulated in the Ombudsman's July 28, 2011 Joint Decision; *id*. at 189-190.

[58] Per COA Audit, the PCGG maintains four (4) separate books of accounts for the following funds:

- **Fund 101** which comprises the **appropriations by the National Government for general administration and support services of PCGG**;
- **Fund 151** which comprises the donation by the Philippine Development Alternatives Foundation, Inc. (PDAF) to PCGG representing the accrued interest on the principal amount donated to the Republic of the Philippines;
- **Fund 158** which comprises **monies recovered by PCGG from the sale of ill-gotten wealth and its remittances to the Bureau of the Treasury intended for the use of the Comprehensive Agrarian Reform Program (CARP)**; and
- **Fund 184** comprises collections and disbursements/disposition of funds pertaining to the sequestered assets of the "Marcos Cronies" which shall be kept in custody by the PCGG pending the resolution of appropriated court proceedings/cases in the Philippines.

See <https://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/NGAs/2007/Nation al_Government_Sector/Office-of-the-pres/PCGG_ES07.pdf> (visited January 15, 2018).

A perusal of the PCGG's Status of Allotments, Obligations and Balances for the fiscal years 2009 up to October 31, 2013 (no data for previous years are available) published in the PCGG's official website shows that **CIF forms part of Fund 101**. (See <http://pcgg.gov.ph/wp-content/uploads/2015/02/ statement-of-allotment-obligation-and-balances-fy-2009.pdf> [visited January 15, 2018].)

purposes for which such cash advances were applied. As aptly pointed out by the CA, receipts from the sale of ill-gotten wealth are not meant to be used for the operation of the PCGG, which is funded from a separate source, *i.e.*, through the general appropriation allocated by Congress. Thus, it is immaterial whether petitioner utilized the amount for the operational expenses of the PCGG for the achievement of its mandate.[59]

Moreover, even assuming that petitioner may utilize a portion of the proceeds from the sale of ill-gotten wealth as cash advances, he failed to liquidate the same pursuant to COA Circular No. 97-002, which requires the liquidation of all cash advances at the end of each year and the refund of any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt.[60] Notably, in order to excuse himself from complying with the liquidation procedure under COA Circular No. 97-002, petitioner claimed that he used the receipts from the sale of ill-gotten wealth in replacement of his unreleased CIF,[61] thereby implying that he could account therefor with a mere certification that the same was utilized for a public purpose in the performance of duty.[62] The claim must be rejected for the reason that since the CIF is covered by an appropriation[63] specifically identifying and authorizing it as such, it is governed

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However, it was not shown that there are no funds in **Fund 101** which may be realigned to the PCGG's confidential and intelligence activities to necessitate the use of **Fund 158**. (Emphases supplied)

[59] *Rollo*, p. 93.

[60] See Item 5.8 of COA Circular No. 97-002.

[61] See *rollo*, p. 79.

[62] See *id*. at 75.

[63] An appropriation is defined as "[a]n authorization made by law or other legislative enactment, directing payment out of government funds under specified conditions or for specific purposes." See <http://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2012/GLOSSARY.pdf> (visited January 15, 2018).

by a different set of liquidation procedures[64] which was, however, also not shown to have been followed in this case.

To add, the Court cannot subscribe to petitioner's claim that no bad faith can be attributed to him since he signed the vouchers and the checks by virtue of his position as head of the PCGG, but *left the encashment of the checks and their use to his fellow Commissioners Ricardo Abcede and Nicasio Conti, who were supposedly responsible for applying those cash advances to the use of the PCGG*.[65] On the contrary, it fortified petitioner's liability for Grave Misconduct and Serious Dishonesty because it sufficiently demonstrated his propensity to disregard the law and established rules, and his predilection to distort the truth. In addition, transfer of cash advance from one accountable officer to another is not allowed, and hence, constitutes a violation of another provision[66] of COA Circular No. 97-002.

In a last ditch effort to escape administrative liability for the complained acts, petitioner invoked[67] his acquittal in the allied criminal cases for Violation of Section 3 (e) of RA 3019[68] and Malversation of Public Funds under Article 217[69] of the

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[64] COA Circular No. 92-385 dated October 1, 1992 requires the cash advance to be **liquidated within one (1) month from the date the same is received by the accountable officer concerned**, and that the grant of subsequent cash advances is subject to submission of liquidation vouchers for the previous cash advance, which must be accompanied by certified xerox copies of the: (*a*) preaudited cash advance vouchers; (*b*) Request for Obligation of Allotment (ROA), and (*c*) allotment advice.

[65] See *rollo*, p. 50.

[66] See Item 4.1.6 of COA Circular No. 97-002.

[67] See *rollo*, pp. 42-50.

[68] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," dated August 17, 1960.

[69] Article 217. *Malversation of public funds or property; Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

Revised Penal Code.[70] However, the Court holds that such acquittal on the basis of insufficiency of evidence which engendered reasonable doubt, cannot work in petitioner's favor. An administrative case is, as a rule, independent from criminal proceedings. As such, the dismissal of a criminal case on the ground of insufficiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is merely substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt or that degree of proof which produces conviction in an unprejudiced mind.[71]

In this case, petitioner's administrative liability for Grave Misconduct and Serious Dishonesty does not rest on whether or not he has appropriated, took or misappropriated or consented or, through abandonment or negligence, permitted another person to take public funds for which he is accountable (which an accused in malversation of public funds must be shown to have committed), but rather on whether or not he flagrantly disregarded the law and established rules, or committed any distortion of the truth with respect to his handling and accounting of the public funds which came into his hands, as affirmatively shown in this case. Here, there was competent showing of a pattern of petitioner's open and repeated defiance of: (*a*) the law requiring the turn-over of receipts from the sale of ill-gotten wealth to

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In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duty forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. x x x (Emphasis supplied)

[70] See *Sandiganbayan* Decision dated April 20, 2016; *rollo*, pp. 208-244.

[71] See *Ganzon v. Arlos*, 720 Phil. 104, 118 (2013).

the Agrarian Reform Fund when he channelled receipts from the sale of ill-gotten wealth to other purposes without any authority; and (*b*) the proper liquidation procedures, rendering him liable for Grave Misconduct. On the other hand, his inconsistent categorizations of the subject cash advances sufficiently evince his intent to distort the truth in order to evade the proper liquidation procedure therefor, warranting his liability for Serious Dishonesty.

3. With respect to petitioner's failure to liquidate despite demand the amount of ₱1,555,862.03 out of the total cash advances that he used in his travels and litigation of foreign cases.

Petitioner claims that the amount of ₱1,555,862.03 forms part of his CIF which he utilized to successfully accomplish his mission and to carry out his tasks as then PCGG Chairman,[72] and that his acquittal in the related criminal case[73] negates any gross misconduct and serious dishonesty on his part. Corollarily, as discussed in the immediately preceding section, such contentions must be dismissed as mere evasive tactics to skirt compliance with the proper liquidation procedures under COA Circular No. 97-002. As aptly observed by the CA:

> Instead of presenting documentary evidence, such as receipts and vouchers, to satisfactorily show that the amount was spent for the purposes for which it was released, [petitioner] proceeded to glorify the achievements of the PCGG under his watch and discussed the historical origin of its mandate. His lengthy exposition, to be sure, is not responsive to the charge and is deemed an extraneous matter that would not sway this Court in exonerating him from administrative liability.[74]

Petitioner's liability for grave misconduct and serious dishonesty must, perforce, be sustained.

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[72] See *rollo*, p. 79.

[73] *Id.* at 50-53.

[74] *Id.* at 93.

Finally, the totality of petitioner's acts tarnished the image and integrity of his public office, which is tantamount to Conduct Prejudicial to the Best Interest of the Service.[75] Conduct prejudicial to the best interest of the service is a *grave offense* which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal on the second offense.[76] However, in view of petitioner's culpability for all the three (3) charges, Section 50,[77] Rule 10 of the RRACCS dictates that the penalty to be imposed should be that corresponding to the most serious charge.

Petitioner's administrative liability for Grave Misconduct and Serious Dishonesty would have warranted his dismissal from the service even for the first offense,[78] if not for his separation from the office.[79] Accordingly, the Court finds the Ombudsman and the CA to have correctly imposed the corresponding administrative disabilities of forfeiture of petitioner's retirement benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government.

As a final note, this Court has repeatedly emphasized the time-honored rule that a "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."[80] This high constitutional standard of conduct

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[75] See *Office of the Ombudsman-Field Investigation Office v. Faller*, G.R. No. 215994, June 6, 2016, 792 SCRA 361, 374-375; citation omitted.

[76] See Section 46 (B) (8), Rule 10 of the RRACCS.

[77] Section 50. *Penalty for the Most Serious Offense*. – If the respondent is **found guilty of two (2) or more charges or counts**, the **penalty** to be imposed should be **that corresponding to the most serious charge** and the rest shall be considered as aggravating circumstances. (Emphases supplied)

[78] See Section 46 (A) (1) and (3), Rule 10 of the RRACCS.

[79] See *rollo*, p. 204.

[80] Section 1, Article XI of the 1987 Constitution.

is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. Thus, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.[81] Unfortunately, petitioner miserably failed in this respect. As appositely pointed out by the CA:

> We emphasize that despite the exalted position that [petitioner] had occupied in the executive arm of the government, he is not immune from administrative suit. As Chairman of the PCGG, he had no blanket authority to do as he pleased with the money and property of the government. He is covered by the same code of conduct and the rules and regulations pertaining to the handling and accounting of public funds. In fact, as an accountable public officer endowed with trust and confidence, [petitioner] is expected to comport himself with utmost responsibility and to observe the highest standard of ethical conduct. As holder of a public office[,] he must observe honesty, candor and faithful compliance with the law; nothing less is expected. Instead of demonstrating a conduct that is beyond reproach, [petitioner] abused his power and position to the detriment of the government and the public as a whole.[82]

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2017 of the Court of Appeals in CA-G.R. SP No. 123692, which upheld the Joint Decision dated July 28, 2011 of the Office of the Ombudsman in the consolidated cases OMB-C-A-09-0611-J, OMB-C-A-09-0609-J, and OMB-C-A-09-0608-J, is hereby **AFFIRMED**. Petitioner Camilo L. Sabio is found **GUILTY** of the administrative offenses of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and accordingly, meted the penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any

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[81] See *Office of the Ombudsman v. Espina*, *supra* note 28.

[82] *Rollo*, p. 94.

branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, Perlas-Bernabe, Jardeleza, Tijam, and *Reyes, Jr., JJ.,* concur.

Peralta and *del Castillo, JJ.,* no part.

Leonen, Caguioa, and *Gesmundo, JJ.,* on official business.

Martires, J., on official leave.

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ACTS OF LASCIVIOUSNESS

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ADMINISTRATIVE LAW

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–– The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds; as specifically applied here, it is well within the scope of the COA's authority to evaluate and determine whether the suspension orders or the extension of the contract time, which necessarily includes the waiver of any penalty or liquidated damages to be imposed, is valid; it is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that the Court entertains a petition questioning its rulings. (*Id*.)

–– The COA Proper is correct in holding the construction company and the MMDA officials solidarily liable for the disallowance; expressly provided in Sec. 43, Chapter V, Book VI of the Administrative Code of 1987 and Sec. 103 of P.D. No. 1445. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation –– A buy-bust operation is a form of entrapment used to apprehend drug peddlers; it is considered valid as long as it passes the "objective test," which demands that "the details of the purported

transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale." (People *vs*. Dumagay *y* Suacito, G.R. No. 216753, Feb. 7, 2018) p. 726

— There was a valid buy-bust operation as the prosecution was able to establish details of the transaction from the initial contact of the poseur-buyer and the appellant up to the consummation of the sale by the delivery of the morphine; a police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a 'decoy solicitation,' is not prohibited by law and does not render the buy-bust operation invalid. (*Id*.)

Chain of custody — Chain of custody is "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction"; each link in the chain of custody rule must be sufficiently proved by the prosecution and examined with careful scrutiny by the court. (People *vs*. Dumagay *y* Suacito, G.R. No. 216753, Feb. 7, 2018) p. 726

— Failure to strictly comply with rules of procedure, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved"; in case the police officers fail to strictly comply with the rules of procedure, they must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved because the Court cannot presume what these grounds are or that they even exist"; substantial compliance, when sufficient. (*Id*.)

—— Failure to strictly comply with the prescribed procedures in the inventory (and marking) of seized drugs does not render an arrest of the accused illegal or the items seized/confiscated from him inadmissible; the prosecution had established that there was an unbroken chain of custody over the subject illicit items resulting, undoubtedly, in the preservation of their integrity and evidentiary value. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

—— Non-compliance with the prescribed procedures under Sec. 21, par. 1, of R.A. No. 9165 does not, as it should not, automatically result in an accused's acquittal; the last sentence thereof, as amended, provides a saving mechanism; in this case, the prosecution failed not only to recognize and explain the procedural lapses committed by the buy-bust team, but also to adduce evidence establishing the chain of custody of the seized items. (People *vs*. De Guzman *y* Delos Reyes, G.R. No. 219955, Feb. 5, 2018) p. 43

—— *People v. Resurreccion,* cited; the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practical or suitable for the purpose; in this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

—— Sec. 21, Art. II of R.A. No. 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence; as indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case; not strictly complied in this case. (People *vs*. De Guzman *y* Delos Reyes, G.R. No. 219955, Feb. 5, 2018) p. 43

—— The links that must be established in order to ensure that the identity and integrity of the seized items had not been compromised, discussed; application. (*Id*.)

—— The marking of the apprehending police officers' initials or signatures on the seized items must be made in the presence of the accused immediately upon arrest; although the Chain of Custody Rule allows the physical inventory of the seized items to be done at the nearest police station, this is more of an exception than a rule. (People *vs*. Dumagay *y* Suacito, G.R. No. 216753, Feb. 7, 2018) p. 726

—— The prosecution explained that they were not able to invite representatives from the media, the DOJ, or an elected public official because they could not find anyone available and that they were pressed for time; these are justifiable reasons for non-compliance with the requirements; and considering that the integrity and evidentiary value of the seized items were properly preserved, said non-compliance did not render void or invalid such seizure and custody over the illegal drugs. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

Entrapment and instigation —— There is instigation when the accused is lured into the commission of the offense charged in order to prosecute him; there is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime. (People *vs*. Dumagay *y* Suacito, G.R. No. 216753, Feb. 7, 2018) p. 726

Illegal possession of dangerous drugs —— For the crime of illegal possession of dangerous drugs, Sec. 11, Art. II of R.A. No. 9165 provides the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00 for less than five grams of *shabu.* (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

Illegal possession of regulated or prohibited drugs —— Established by the prosecution were the elements for

illegal possession of regulated or prohibited drugs, to wit: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug"; a *prima facie* evidence of knowledge or *animus possidendi* arises against appellant in this case. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

Illegal sale of dangerous drugs — For a successful prosecution of illegal sale of drugs in a buy-bust operation, the following elements must be proven: (1) "the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor"; established in this case. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

— Under Sec. 5, Art. II of R.A. No. 9165, the penalty for illegal sale of dangerous drugs, such as *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. (*Id*.)

Prosecution of drug cases — For prosecutions involving dangerous drugs, the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt; like the other elements of the offense/s charged, the identity of the dangerous drug must be established with moral certainty. (People *vs*. De Guzman *y* Delos Reyes, G.R. No. 219955, Feb. 5, 2018) p. 43

CONTRACTS

Concept — A contract is the law between the parties; obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (Facilities, Inc. *vs*. Lopez, G.R. No. 208642, Feb. 7, 2018) p. 663

CORPORATIONS

Corporate names — As early as *Western Equipment and Supply Co. v. Reyes*, the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion; our Corporation Code established a restrictive rule insofar as corporate names are concerned; the policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," explained. (De La Salle Montessori Int'l. of Malolos, Inc. *vs.* De La Salle Brothers, Inc., G.R. No. 205548, Feb. 7, 2018) p. 621

–– In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination; in so doing, the Court must look to the record as well as the names themselves; petitioner's use of the phrase "De La Salle" in its corporate name is patently similar to that of respondents. (*Id*.)

Corporate officers –– Corporate officers are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws; Sec. 25 of the Corporation Code explicitly provides for the election of the corporation's president, treasurer, secretary, and such other officers as may be provided for in the by-laws; if the position is other than the corporate president, treasurer, or secretary, it must be expressly mentioned in the by-laws in order to be considered as a corporate office. (Cacho *vs*. Balagtas, G.R. No. 202974, Feb. 7, 2018) p. 597

Intra-corporate controversy — A two-tier test must be employed to determine whether an intra-corporate controversy exists in the present case: (a) the relationship test, and (b) the

nature of the controversy test; a dispute is considered an intra-corporate controversy under the relationship test when the relationship between or among the disagreeing parties is any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. (Cacho *vs*. Balagtas, G.R. No. 202974, Feb. 7, 2018) p. 597

–– It is clear that the termination complained of is intimately and inevitably linked to respondent's role as petitioner's Executive Vice President; explained; respondent's dismissal is an intra-corporate controversy, not a mere labor dispute. (*Id*.)

–– Under the nature of the controversy test, the disagreement must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. (*Id*.)

Quorum in meetings –– It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting; only stocks actually issued and outstanding may be voted; thus, for stock corporations, the quorum is based on the number of outstanding voting stocks; application. (Que Villongco *vs.* Que Yabut, G.R. No. 225022, Feb. 5, 2018) p. 61

Rights of stockholders –– It is basic that a stockholder has the right to inspect the books of the corporation, and if the stockholder is refused by an officer of the corporation to inspect or examine the books of the corporation, the Corporation Code grants the stockholder a remedy—to file a case in accordance with Sec. 144. (Que Villongco *vs.* Que Yabut, G.R. No. 225022, Feb. 5, 2018) p. 61

Transfer of shares of stock — Sec. 63 of the Corporation Code; as held in the case of *Interport Resources Corporation v. Securities Specialist, Inc.*: A transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned; as between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. (Que Villongco *vs.* Que Yabut, G.R. No. 225022, Feb. 5, 2018) p. 61

COURT OF TAX APPEALS (CTA)

Jurisdiction — Sec. 11, Par. 4 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; exceptions. (Steel Corp. of the Phils. *vs*. Bureau of Customs, G.R. No. 220502, Feb. 12, 2018) p. 809

— With the enactment of R.A. No. 1125, the CTA was granted the exclusive appellate jurisdiction to review by appeal all cases involving disputed assessments of internal revenue taxes, customs duties, and real property taxes; in general, it has jurisdiction over cases involving liability for payment of money to the Government or the administration of the laws on national internal revenue, customs, and real property. (*Id*.)

COURT PERSONNEL

Prolonged unauthorized absences — Based on the provision of Sec. 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007, the court personnel should be separated from the service or dropped from the rolls in view of her continued absence; rationale. (Re: Dropping from the Rolls of Janice C. Millare, A.M. No. 17-11-131-MeTC, Feb. 7, 2018) p. 592

—— Sec. 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007, states: Sec. 63. *Effect of absences without approved leave.* — An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice; penalty. (Re: Dropping from the Rolls of Marissa M. Nudo, A.M. No. 17-08-191-RTC, Feb. 7, 2018) p. 588

CRIMINAL PROCEDURE

Demurrer to evidence —— The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself—particularly, after the prosecution has rested its case; distinguished from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case; *Atty. Serapio v. Sandiganbayan,* cited. (Napoles *vs.* Sandiganbayan, G.R. No. 224162, Feb. 6, 2018) p. 106

DENIAL AND ALIBI

Defenses of —— Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witness; for the defense of alibi to prosper, appellant must prove through clear and convincing evidence that not only was he in another place at the time of the commission of the crime but also that it was physically impossible for him to be at the scene of the crime; application. (People *vs*. Cirbeto *y* Giray, G.R. No. 231359, Feb. 7, 2018) p. 793

DENIAL AND FRAME-UP

Defenses of —— Appellant's defense hinges on denial and frame-up which is a weak defense especially when unsubstantiated by credible and convincing evidence; appellant was caught in *flagrante delicto* in a legitimate buy-bust operation; *People v. Velasquez*, cited. (People *vs*. Pundugar, G.R. No. 214779, Feb. 7, 2018) p. 707

EMPLOYER-EMPLOYEE RELATIONSHIP

Presentation of evidence — The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter; thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed. (Lourdes School of Quezon City, Inc. *vs.* Garcia, G.R. No. 213128, Feb. 7, 2018) p. 679

EMPLOYMENT, TERMINATION OF

Doctrine of loss of trust and confidence — Loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature; it should not be used as a subterfuge for causes which are illegal, improper, and unjustified; it must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith; it must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Art. 282 (c) of the Labor Code, on willful breach. (Lourdes School of Quezon City, Inc. *vs.* Garcia, G.R. No. 213128, Feb. 7, 2018) p. 679

— Loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected; this includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property; distinction between the treatment of managerial employees from that of rank-and-file personnel. (*Id.*)

Gross neglect of duty — Gross negligence implies a want or absence of or failure to exercise slight care or diligence or the entire absence of care; it evinces a thoughtless disregard of consequences without exerting any effort to

avoid them; at most, respondent's misplaced trust constitutes error of judgment but not gross negligence. (Lourdes School of Quezon City, Inc. *vs.* Garcia, G.R. No. 213128, Feb. 7, 2018) p. 679

Negligence or carelessness — For lack of malicious intent or fraud, an employee's negligence or carelessness is not a justifiable ground to impose the ultimate penalty of dismissal from employment; loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act; the most that can be attributed to respondent is that she was simply remiss in the performance of her duties. (Lourdes School of Quezon City, Inc. *vs.* Garcia, G.R. No. 213128, Feb. 7, 2018) p. 679

ESTAFA

Commission of — Par. 1, Art. 316 of the RPC penalizes a person who pretends to be the owner of a real property and sells the same; there is probable cause sufficient to institute a criminal complaint against respondent for violation of Sec. 25, P.D. No. 957 and for the crime of *estafa* under par. 1, Art. 316 of the RPC. (Facilities, Inc. *vs*. Lopez, G.R. No. 208642, Feb. 7, 2018) p. 663

EVIDENCE

Judicial notice — Basis; defined; it is the duty of the court to assume something as matters of fact without need of further evidentiary support; resolution of both Houses No. 4 is an official act of Congress, thus, this Court can take judicial notice thereof. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

Offer of evidence — Evidence which has not been formally offered shall not be considered; nevertheless, the Court, in the interest of justice and only for the most meritorious of reasons, has allowed the submission of certification in petitions of this kind, after the parties were granted the opportunity to verify the authenticity and due execution of such document. (Rep. of the Phils. *vs*. Banal na Pag-aaral, Inc., G.R. No. 193305, Feb. 5, 2018) p. 7

EVIDENT PREMEDITATION

As a qualifying or an aggravating circumstance — To be considered as a qualifying or an aggravating circumstance, the prosecution must prove: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will; not existent in this case. (People *vs*. Cirbeto *y* Giray, G.R. No. 231359, Feb. 7, 2018) p. 793

EXECUTIVE DEPARTMENT

Powers — The determination of which among the Constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President; the Court's power of review, as provided under Sec. 18, Art. VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

Presidential immunity from suit — The President may not be sued during his tenure or actual incumbency, and there is no need to expressly grant such privilege in the Constitution or law; rationale; petitioners in G.R. Nos. 236061 and 236145 committed a procedural misstep in including the President as a respondent in their petitions. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

JUDGMENTS

Conclusiveness of judgment — Conclusiveness of judgment, a species of the principle of *res judicata*, bars the re-litigation of any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits; for purposes of *res judicata*,

only substantial identity of parties is required and not absolute identity; substantial identity of parties, when existent. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

Execution of –– The court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or stay its implementation; neither may the parties object to the execution by raising new issues of fact or law; the only exceptions thereto are when: "(i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has been submitted to the judgment of the court; (v) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (vi) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority." (Salazar *vs*. Felias, on her own behalf and representation of the other Heirs of Catalino Nivera, G.R. No. 213972, Feb. 5, 2018) p. 30

–– The family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated; petitioner's claim must be backed with evidence showing that the home was indeed (i) duly constituted as a family home, (ii) constituted jointly by the husband and wife or by an unmarried head of a family, (iii) resided in by the family (or any of the family home's beneficiaries), (iv) forms part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or property of the unmarried head of the family, and (v) has an actual value of 300,000.00 in urban areas, and 200,000.00 in rural areas. (*Id*.)

JUDICIAL DEPARTMENT

Decisions of the Court — Sec. 14, Art. VIII of the Constitution mandates that decisions rendered by any court shall state clearly and distinctly the facts and the law on which the decisions were based; the RTC decision is null and void. (Que Villongco *vs.* Que Yabut, G.R. No. 225022, Feb. 5, 2018) p. 61

Judicial power of review — Sec. 1, Art. VIII of the Constitution pertains to the Court's judicial power to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government; the first part is to be known as the traditional concept of judicial power while the latter part, an innovation of the 1987 Constitution, became known as the court's expanded jurisdiction. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

Power to review the extension of the proclamation of martial law — With regard to the extension of the proclamation of martial law or the suspension of the privilege of the writ, the same special and specific jurisdiction is vested in the Court to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis thereof; the Court's judicial review of the Congress' extension of such proclamation or suspension is limited only to a determination of the sufficiency of the factual basis thereof; by its plain language, the Constitution provides such scope of review in the exercise of the Court's *sui generis* authority under Sec. 18, Art. VII. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

JURISDICTION

Jurisdiction over the person of the defendant — When there is no service of summons upon the defendant, the court acquires no jurisdiction over his person, and a judgment

rendered against him is null and void; however, the invalidity of the service of summons is cured by the voluntary appearance of the defendant in court and their submission to the court's authority; *Carson Realty & Management Corporation v. Red Robin Security Agency, et al.*, cited; application. (Que Villongco *vs.* Que Yabut, G.R. No. 225022, Feb. 5, 2018) p. 61

LABOR ARBITER

Jurisdiction — Estoppel by laches will only bar a litigant from raising the issue of lack of jurisdiction in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy;* these exceptional circumstances are not present in this case; the issue in the present case is an intra-corporate controversy, a matter outside the Labor Arbiter's jurisdiction. (Cacho *vs*. Balagtas, G.R. No. 202974, Feb. 7, 2018) p. 597

LAND REGISTRATION

Proceedings on — In the landmark case of *Sta. Ana v. Menla*, the Court elucidated the *raison d'etre* why the statue of limitations and Sec. 6, Rule 39 of the Rules of Court do not apply in land registration proceedings; for the past decades, the *Sta. Ana* doctrine on the inapplicability of the rules on prescription and laches to land registration cases has been repeatedly affirmed; the peculiar procedure provided in the Property Registration Law from the time decisions in land registration cases become final is complete in itself and does not need to be filled in. (Rep. of the Phils. *vs.* Yap, G.R. No. 231116, Feb. 7, 2018) p. 778

LEGISLATIVE DEPARTMENT

Powers of — Sec. 18, Art. VII of the 1987 Constitution is indisputably silent as to how many times Congress, upon the initiative of the President, may extend the proclamation of martial law or the suspension of the privilege of *habeas corpus;* the only limitations to the exercise of the congressional authority to extend such proclamation or suspension, enumerated; it clearly gave Congress the

authority to decide on its duration. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

— Sec. 18, Art. VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or of the suspension of the privilege of the writ of *habeas corpus*: (a) the invasion or rebellion persists; and (b) public safety requires the extension. (*Id*.)

— The 1987 Constitution grants Congress the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus;* Congressional check on the President's martial law and suspension powers, enumerated and explained. (*Id*.)

— The Constitution, under Sec. 16 of Art. VI, grants Congress the right to promulgate its own rules to govern its proceedings; the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. (*Id*.)

MARTIAL LAW

Public safety — Defined in *Lagman;* it is an abstract term; the question, therefore, is whether the acts, circumstances and events upon which the extension was based posed a significant danger, injury or harm to the general public; the events and circumstances, disclosed by the President, the Defense Secretary and the AFP, strongly indicate that the continued implementation of martial law in Mindanao is necessary to protect public safety. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

MURDER

Elements — Defined and punished under Article 248 of the RPC, as amended by R.A. No. 7659; the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances

mentioned in Art. 248 of the RPC; and (4) that the killing is not parricide or infanticide; present in this case. (People *vs*. Cirbeto *y* Giray, G.R. No. 231359, Feb. 7, 2018) p. 793

PARTIES TO CIVIL ACTIONS

Indispensable parties –– Sec. 7, Rule 3 of the Rules of Court requires that "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants"; joining indispensable parties into an action is mandatory, being a requirement of due process; application. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

PRELIMINARY INJUNCTION

Concept –– A preliminary injunction is merely a provisional remedy, an adjunct to the main case subject to the latter's outcome, the sole objective of which is to preserve the status quo until the trial court hears fully the merits of the case; status quo, defined; in this case, the status quo can no longer be enforced; *Thunder Security and Investigation Agency v. National Food Authority*, cited. (Sumifru (Phils.) Corp. *vs*. Sps. Cereño, G.R. No. 218236, Feb. 7, 2018) p. 743

–– Purpose under Sec. 3, Rule 58 of the Rules of Court; its sole aim is to preserve the *status quo* until the merits of the case can be heard fully; s*tatus quo,* defined; petitioners have the burden to establish the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury; the alleged violations of the petitioners' civil liberties do not justify the grant of injunctive relief. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

Writ of — A writ of preliminary injunction, being an extraordinary event, one deemed as a strong arm of equity or a transcendent remedy, must be granted only in the face of injury to actual and existing substantial rights; it will not issue to protect a right not *in esse*, and which may never arise, or to restrain an act which does not give rise to a cause of action. (Sumifru (Phils.) Corp. *vs.* Sps. Cereño, G.R. No. 218236, Feb. 7, 2018) p. 743

— Preliminary injunction, defined in Sec. 1, Rule 58 of the Rules of Court; it may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction; Sec. 3 of the same Rule provides the grounds for the issuance of a preliminary injunction; requisites for the issuance of a writ of preliminary injunction, whether mandatory or prohibitory, enumerated. (*Id.*)

PRELIMINARY INVESTIGATION

Nature — According to Sec. 1, Rule 112 of the Rules of Court, a preliminary investigation, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial"; the investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law; role and object of preliminary investigation. (Facilities, Inc. *vs.* Lopez, G.R. No. 208642, Feb. 7, 2018) p. 663

PRESUMPTIONS

Presumption of regular performance of official acts — A presumption of regularity cannot arise where the questioned official acts are patently irregular, as in this case. (People *vs.* De Guzman *y* Delos Reyes, G.R. No. 219955, Feb. 5, 2018) p. 43

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Decree of registration — Sec. 39 of P.D. No. 1529 or the "Property Registration Decree" provides that the original

certificate of title shall be a true copy of the decree of registration; there is, therefore, a need to cancel the old decree and a new one issued in order for the decree and the OCT to be exact replicas of each other; *Republic v. Heirs of Sanchez*, cited; application. (Rep. of the Phils. *vs.* Yap, G.R. No. 231116, Feb. 7, 2018) p. 778

PUBLIC OFFICERS

Liability for illegal expenditures or disbursement of public funds — The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds; explained; petitioners had knowledge of facts and circumstances which would render the disbursements illegal; they were grossly negligent in their duties. (Fernando *vs*. Commission on Audit, G.R. No. 214910, Feb. 13, 2018) pp. 828-829

Public office — The 1987 Constitution spells out the basic ethos underlying public office in Art. XI, Sec. 1; continuance in office is contingent upon the extent to which one is able to maintain that trust; no one has a vested right to public office. (Office of the Ombudsman *vs*. Regalado, G.R. Nos. 208481-82, Feb. 7, 2018) p. 635

PUBLIC OFFICERS AND EMPLOYEES

Administrative liability — An administrative case is, as a rule, independent from criminal proceedings; as such, the dismissal of a criminal case on the ground of insuffiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability; quantum of proof required. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

Conduct prejudicial to the interest of the service –– The totality of petitioner's acts tarnished the image and integrity of his public office, which is tantamount to Conduct Prejudicial to the Best Interest of the Service; it is a grave offense which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal on the second offense. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

Dishonesty –– Defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth; Civil Service Commission Resolution No. 06-0538 classifies dishonesty in three (3) gradations, namely: serious, less serious or simple; petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances, enumerated; how to ascertain the intention of a person charged with dishonesty. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

Grave misconduct –– Petitioner's flagrant disregard of the rule imposing a cap on cellular phone usage is readily apparent; likewise, the intent to procure some benefit for himself is manifest from the undisputed fact that said charges have remained unpaid to date despite the clear provisions of the Office Order. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

Grave misconduct and serious dishonesty –– Petitioner's administrative liability for Grave Misconduct and Serious Dishonesty would have warranted his dismissal from the service even for the first offense, if not for his separation from the office; the Ombudsman and the CA have correctly imposed the corresponding administrative disabilities of forfeiture of petitioner's retirement benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the

government. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

–– There was competent showing of a pattern of petitioner's open and repeated defiance of: (a) the law requiring the turn-over of receipts from the sale of ill-gotten wealth to the Agrarian Reform Fund when he channelled receipts from the sale of ill-gotten wealth to other purposes without any authority; and (b) the proper liquidation procedures, rendering him liable for Grave Misconduct; his inconsistent categorizations of the subject cash advances sufficiently evince his intent to distort the truth in order to evade the proper liquidation procedure therefor, warranting his liability for Serious Dishonesty. (*Id*.)

Gross misconduct –– In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

Misconduct –– Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; it must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. (Sabio *vs*. Field Investigation Office (FIO), Office of the Ombudsman, G.R. No. 229882, Feb. 13, 2018) p. 848

RAPE

Elements –– Resistance is not an element of rape, and the absence thereof will never be tantamount to consent on the part of the victim; besides, in rape committed by a relative, such as a father, as in this case, moral influence

or ascendancy takes the place of violence. (People *vs*. Bandoquillo *y* Opalda, G.R. No. 218913, Feb. 7, 2018) p. 753

RAPE BY SEXUAL ASSAULT

Commission of — For a charge of rape by sexual assault with the use of one's fingers as the assaulting object, as in the instant case, to prosper, there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or a graze of its surface; not established in this case. (Lutap *vs*. People, G.R. No. 204061, Feb. 5, 2018) p. 10

REBELLION

Existence of — Rebellion exists when "(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) anybody 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 President issued Proclamation No. 216 in response to the series of attacks launched by the Maute Group and other rebel groups in Marawi City. (Rep. Lagman *vs*. Senate Pres. Pimentel III, G.R. No. 235935, Feb. 6, 2018) p. 112

RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS)

Grave misconduct — In *Medina v. Commission on Audit,* the Court emphasized that "a grave offense cannot be mitigated by the fact that the accused is a first-time offender or by the length of service of the accused"; grave misconduct is not a question of frequency, but, as its own name suggests, of gravity or weight; the 2017 RACCS now specifically state that no mitigating circumstances, of any sort, may be appreciated in cases involving an offense

punishable by dismissal from service. (Office of the Ombudsman *vs*. Regalado, G.R. Nos. 208481-82, Feb. 7, 2018) p. 635

—— Our civil service system maintains that misconduct tainted with "any of the additional elements of corruption, willful intent to violate the law or disregard of established rules" is grave; the 2017 RACCS consider grave misconduct as a grave offense warranting the ultimate penalty of dismissal from service with the accessory penalties of cancellation of eligibility, perpetual disqualification from public office, bar from taking civil service examinations, and forfeiture of retirement benefits. (*Id*.)

SECURITIES AND EXCHANGE COMMISSION (SEC)

Jurisdiction —— The enforcement of the protection accorded by Sec. 18 of the Corporation Code to corporate names is lodged exclusively in the SEC; by express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations; it is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved, but more so for the protection of the public. (De La Salle Montessori Int'l. of Malolos, Inc. *vs.* De La Salle Brothers, Inc., G.R. No. 205548, Feb. 7, 2018) p. 621

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (ANTI-CHILD ABUSE LAW) (R.A. NO. 7610)

Penalty —— *People v. Caoli*, cited; petitioner should be convicted of the offense designated as acts of lasciviousness under Art. 336 of the RPC in relation to Sec. 5 of R.A. 7610 since the minor victim in this case is below 12 years old and the imposable penalty is *reclusion temporal* in its medium period; application of the Indeterminate Sentence Law, and in the absence of mitigating or aggravating circumstances, discussed. (Lutap *vs*. People, G.R. No. 204061, Feb. 5, 2018) p. 10

SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE (P.D. NO. 957)

Violation of –– A suit for the violation of P.D. No. 957 is independent from whatever remedy granted under the MOA, *i.e.*, rescission of the Contract to Sell, or under existing laws, which obviously includes the provisions of the RPC; a violation of the provisions of P.D. No. 957 may be the subject of a criminal action, and not merely limited to a civil remedy; the decree expressly recognizes that the aggrieved party may avail of the remedies provided not only in P.D. No. 957, but also under existing laws; application. (Facilities, Inc. *vs*. Lopez, G.R. No. 208642, Feb. 7, 2018) p. 663

TREACHERY

As a qualifying circumstance –– Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape; two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him; appreciated in this case. (People *vs*. Cirbeto *y* Giray, G.R. No. 231359, Feb. 7, 2018) p. 793

WITNESSES

Credibility of –– It is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality" unless it is shown that the lower court had overlooked, misunderstood or misappreciated some fact or circumstance of weight which, if properly considered,

would have altered the result of the case"; this rule finds an even more stringent application where said findings are sustained by the Court of Appeals". (People *vs*. Bandoquillo *y* Opalda, G.R. No. 218913, Feb. 7, 2018) p. 753

— The testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge of murder; when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect; rationale; the witness' testimony, found credible herein. (People *vs*. Cirbeto *y* Giray, G.R. No. 231359, Feb. 7, 2018) p. 793

— When the offended party is a young and immature girl between the age of 12 to 16, as in this case, courts are inclined to give credence to her version of the incident; in the absence of any ill-motive on the part of the victim that would make her testify falsely against appellant, her candid narration of the rape incident deserves full faith and credence; rationale. (People *vs*. Bandoquillo *y* Opalda, G.R. No. 218913, Feb. 7, 2018) p. 753

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