Republic of the Philippines
Supreme Court
Manila

EN BANC

ALEXANDER A. PADILLA, RENE A.V. SAGUISAG, CHRISTIAN S. MONSOD, LORETTA ANN P. ROSALES, RENE B. GOROSPE, and SENATOR LEILA M. DE LIMA,
Petitioners,

- *versus* -

CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES, as represented by Senate President Aquilino "Koko" Pimentel III, and the HOUSE OF REPRESENTATIVES, as represented by House Speaker Pantaleon D. Alvarez,
Respondents.

G.R. No. 231671

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FORMER SEN. WIGBERTO E. TAÑADA, BISHOP EMERITUS DEOGRACIAS S. IÑIGUEZ, BISHOP BRODERICK PABILLO, BISHOP ANTONIO R. TOBIAS, MO. ADELAIDA YGRUBAY, SHAMAH BULANGIS and CASSANDRA D. DELURIA,
Petitioners,

- *versus* -

CONGRESS OF THE PHILIPPINES, CONSISTING OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, AQUILINO "KOKO"

G.R. No. 231694

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM, and
REYES, JR., *JJ.*

PIMENTEL III, President, Senate of the Philippines, and PANTALEON D. ALVAREZ, Speaker, House of the Representatives,
Respondents.

Promulgated:

July 25, 2017

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DECISION

LEONARDO-DE CASTRO, *J.*:

These consolidated petitions under consideration essentially assail the failure and/or refusal of respondent Congress of the Philippines (the Congress), composed of the Senate and the House of Representatives, to convene in joint session and therein deliberate on Proclamation No. 216 issued on May 23, 2017 by President Rodrigo Roa Duterte (President Duterte). Through Proclamation No. 216, President Duterte declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period not exceeding sixty (60) days effective from the date of the proclamation's issuance.

In the Petition for *Mandamus* of Alexander A. Padilla (Padilla), Rene A.V. Saguisag (Saguisag), Christian S. Monsod (Monsod), Loretta Ann P. Rosales (Rosales), Rene B. Gorospe (Gorospe), and Senator Leila M. De Lima (Senator De Lima), filed on June 6, 2017 and docketed as G.R. No. 231671 (the Padilla Petition), petitioners seek a ruling from the Court directing the Congress to convene in joint session to deliberate on Presidential Proclamation No. 216, and to vote thereon.[1]

In the Petition for *Certiorari* and *Mandamus* of former Senator Wigberto E. Tañada (Tañada), Bishop Emeritus Deogracias Iñiguez (Bishop Iñiguez), Bishop Broderick Pabillo (Bishop Pabillo), Bishop Antonio Tobias (Bishop Tobias), Mo. Adelaida Ygrubay (Mo. Ygrubay), Shamah Bulangis (Bulangis), and Cassandra D. Deluria (Deluria), filed on June 7, 2017 and docketed as G.R. No. 231694 (the Tañada Petition), petitioners entreat the Court to: (a) declare the refusal of the Congress to convene in joint session for the purpose of considering Proclamation No. 216 to be in grave abuse of discretion amounting to a lack or excess of jurisdiction; and (b) issue a writ of *mandamus* directing the Congress to convene in joint session for the aforementioned purpose.[2]

Respondent Congress, represented by the Office of the Solicitor General (OSG), filed its *Consolidated Comment* on June 27, 2017. Respondents Senate of the Philippines and Senate President Aquilino

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1 *Rollo* (G.R. No. 231671), p. 22.
2 *Rollo* (G.R. No. 231694), p. 27.

"Koko" Pimentel III (Senate President Pimentel), through the Office of the Senate Legal Counsel, separately filed their *Consolidated Comment (Ex Abudanti Cautela)* on June 29, 2017.

ANTECEDENT FACTS

On May 23, 2017, President Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the Mindanao group of islands on the grounds of rebellion and necessity of public safety pursuant to Article VII, Section 18 of the 1987 Constitution.

Within forty-eight (48) hours after the proclamation, or on May 25, 2017, and while the Congress was in session, President Duterte transmitted his "Report relative to Proclamation No. 216 dated 23 May 2017" (Report) to the Senate, through Senate President Pimentel, and the House of Representatives, through House Speaker Pantaleon D. Alvarez (House Speaker Alvarez).

According to President Duterte's Proclamation No. 216 and his Report to the Congress, the declaration of a state of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao ensued from the series of armed attacks, violent acts, and atrocities directed against civilians and government authorities, institutions, and establishments perpetrated by the Abu Sayyaf and Maute terrorist groups, in complicity with other local and foreign armed affiliates, who have pledged allegiance to the Islamic State of Iraq and Syria (ISIS), to sow lawless violence, terror, and political disorder over the said region for the ultimate purpose of establishing a DAESH *wilayah* or Islamic Province in Mindanao.

Representatives from the Executive Department, the military, and other security officials of the government were thereafter invited, on separate occasions, by the Senate and the House of Representatives for a conference briefing regarding the circumstances, details, and updates surrounding the President's proclamation and report.

On May 29, 2017, the briefing before the Senate was conducted, which lasted for about four (4) hours, by Secretary of National Defense Delfin N. Lorenza (Secretary Lorenzana), National Security Adviser and Director General of the National Security Council Hermogenes C. Esperon, Jr. (Secretary Esperon), and Chief of Staff of the Armed Forces of the Philippines (AFP) General Eduardo M. Año (General Año). The following day, May 30, 2017, the Senate deliberated on these proposed resolutions: (a) Proposed Senate (P.S.) Resolution No. 388,[3] which expressed support for

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[3] Entitled "*Resolution Expressing the Sense of the Senate, Supporting Proclamation No. 216 dated May 23, 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao' and Finding No Cause to Revoke the Same.*" (*Rollo* [G.R. No. 231671], p. 177).

President Duterte's Proclamation No. 216; and (b) P.S. Resolution No. 390,[4] which called for the convening in joint session of the Senate and the House of Representatives to deliberate on President Duterte's Proclamation No. 216.

P.S. Resolution No. 388 was approved, after receiving seventeen (17) affirmative votes as against five (5) negative votes, and was adopted as Senate Resolution No. 49[5] 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 Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'*"[6]

P.S. Resolution No. 390, on the other hand, garnered only nine (9) votes from the senators who were in favor of it as opposed to twelve (12) votes from the senators who were against its approval and adoption.[7]

On May 31, 2017, the House of Representatives, having previously constituted itself as a Committee of the Whole House,[8] was briefed by

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4 Entitled "*Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216 dated 23 May 2017 Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'*" (*Rollo* [G.R. No. 231671], pp. 178-181).

5 *Rollo* (G.R. No. 231671), pp. 182-183.

6 The pertinent portions of the resolution reads:

> WHEREAS, the 1987 Philippine Constitution, Article VII, Section 18, provides that:
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> "...in case of invasion or rebellion, when the public safety requires it, he (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...";
>
> WHEREAS, President Rodrigo Roa Duterte issued 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," on May 23, 2017 (the "Proclamation");
>
> WHEREAS, pursuant to his duty under the Constitution, on May 25, 2017, and within forty-eight hours after the issuance of the Proclamation, President Duterte submitted to the Senate his report on the factual and legal basis of the Proclamation;
>
> WHEREAS, on May 29, 2017, the Senators were briefed by the Department of National Defense (DND), the Armed Forces of the Philippines (AFP), and by the National Security Council (NSC) on the factual circumstances surrounding the Proclamation as well as the updates on the situation in Mindanao;
>
> WHEREAS, on the basis of information received by the Senators, the Senate is convinced that President Duterte declared martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao because actual rebellion exists and that public safety requires it;
>
> WHEREAS, the Senate, at this time, agrees that there is no compelling reason to revoke Proclamation No. 216, series of 2017;
>
> WHEREAS, the Proclamation does not suspend the operation of the Constitution, which among others, guarantees respect for human rights and guards against any abuse or violation thereof: Now, therefore, be it
>
> *Resolved, as it is hereby resolved,* To express the sense of the Senate, that there is no compelling reason to revoke Proclamation No. 216, series of 2017, at this time.

7 See excerpts from the deliberations of the Senate on P.S. Resolution No. 390 held on May 30, 2017, attached as Annex "7" of the *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel (*Rollo* [G.K. No. 231671], pp. 184-230.)

8 The House of Representatives resolved to constitute itself as a Committee of the Whole House on May 29, 2017.

Executive Secretary Salvador C. Medialdea (Executive Secretary Medialdea), Secretary Lorenzana, and other security officials for about six (6) hours. After the closed-door briefing, the House of Representatives resumed its regular meeting and deliberated on House Resolution No. 1050 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 Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'"*[9] The House of Representatives proceeded to divide its members on the matter of approving said resolution through *viva voce* voting. The result shows that the members who were in favor of passing the subject resolution secured the majority vote.[10]

The House of Representatives also purportedly discussed the proposal calling for a joint session of the Congress to deliberate and vote on President

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9 *Rollo* (G.R. No. 231671), pp. 130-131. The full text of said resolution is reproduced here:

WHEREAS, Section 18, Article VII (Executive Department) of the 1987 Constitution states, in pertinent part:

> "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. x x x";

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao";

WHEREAS, on May 25, 2017, President Rodrigo Roa Duterte submitted a Report to the House of Representatives relative to Proclamation No. 216 stating, among others:

> "x x x, after finding that lawless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao – starting with the City of Marawi, Lanao del Sur – from its allegiance to the Government and its laws and depriving the Chief Executive of its 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. x x x"

WHEREAS, on May 31, 2017, the House of Representatives constituted itself into a Committee of the Whole House to consider the Report of the President relative to Proclamation No. 216, and heard the briefing by the heads of departments of the Executive Department;

WHEREAS, during the said briefing and after interpellation, the Members of the House of Representatives determined the sufficiency of the factual basis for the issuance of Proclamation No. 216;

RESOLVED BY THE HOUSE OF REPRESENTATIVES, to express its full support to President Rodrigo Roa Duterte as it finds no reason to revoke Proclamation No. 216, entitled *"Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao."*

10 *See* excerpts from the deliberations of the Committee of the Whole House on House Resolution No. 1050 held on May 31, 2017, attached as Annex "8" of the *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel. (*Rollo* [G.R. No. 231671], pp. 231-241.)

Duterte's Proclamation No. 216. After the debates, however, the proposal was rejected.[11]

These series of events led to the filing of the present consolidated petitions.

THE PARTIES' ARGUMENTS

The Padilla Petition

Petitioners in G.R. No. 231671 raise the question of "[w]hether Congress is required to convene in joint session, deliberate, and vote jointly under Article VII, [Section] 18 of the Constitution" and submit the following arguments in support of their petition:

> [I] THE PETITION SATISFIES THE REQUISITES FOR THE EXERCISE OF THE HONORABLE COURT'S POWER OF JUDICIAL REVIEW.
>
> [i] THERE IS AN ACTUAL CASE OR CONTROVERSY.
>
> [ii] PETITIONERS, AS PART OF THE PUBLIC AND AS TAXPAYERS, POSSESS LEGAL STANDING TO FILE THIS PETITION.
>
> [iii] PETITIONER [DE LIMA], AS MEMBER OF CONGRESS, HAS LEGAL STANDING TO FILE THIS PETITION.
>
> [iv] THE CASE AND THE ISSUE INVOLVED ARE RIPE FOR JUDICIAL DETERMINATION.
>
> [II] THE PLAIN TEXT OF THE CONSTITUTION, SUPPORTED BY THE EXPRESS INTENT OF THE FRAMERS, AND CONFIRMED BY THE SUPREME COURT, REQUIRES THAT CONGRESS CONVENE IN JOINT SESSION TO DELIBERATE AND VOTE AS A SINGLE DELIBERATIVE BODY.
>
> [i] THE PLAIN TEXT OF THE CONSTITUTION REQUIRES THAT CONGRESS CONVENE IN JOINT SESSION.
>
> [ii] THE EXPRESS INTENT OF THE FRAMERS IS FOR CONGRESS TO CONVENE IN JOINT SESSION TO DELIBERATE AND VOTE AS A SINGLE DELIBERATIVE BODY.
>
> [iii] THE SUPREME COURT CONFIRMED IN *FORTUN v. GMA* THAT CONGRESS HAS THE "AUTOMATIC DUTY" TO CONVENE IN JOINT SESSION.

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11 *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel. (Id. at 140.)

[iv] LEGISLATIVE PRECEDENT ALSO RECOGNIZES CONGRESS' DUTY TO CONVENE IN JOINT SESSION.

[III] THE REQUIREMENT TO ACT AS A SINGLE DELIBERATIVE BODY UNDER ARTICLE VII, [SECTION] 18 OF THE CONSTITUTION IS A MANDATORY, MINISTERIAL CONSTITUTIONAL DUTY OF CONGRESS, WHICH CAN BE COMPELLED BY *MANDAMUS*.[12]

Petitioners claim that there is an actual case or controversy in this instance and that their case is ripe for adjudication. According to petitioners, the resolutions separately passed by the Senate and the House of Representatives, which express support as well as the intent not to revoke President Duterte's Proclamation No. 216, injure their rights "to a proper [and] mandatory legislative review of the declaration of martial law" and that the continuing failure of the Congress to convene in joint session similarly causes a continuing injury to their rights.[13]

Petitioners also allege that, as citizens and taxpayers, they all have *locus standi* in their "assertion of a public right" which they have been deprived of when the Congress refused and/or failed to convene in joint session to deliberate on President Duterte's Proclamation No. 216. Senator De Lima adds that she, together with the other senators who voted in favor of the resolution to convene the Congress jointly, were even effectively denied the opportunity to perform their constitutionally-mandated duty, under Article VII, Section 18 of the Constitution, to deliberate on the said proclamation of the President in a joint session of the Congress.[14]

On the propriety of resorting to the remedy of *mandamus*, petitioners posit that "the duty of Congress to convene in joint session upon the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* does not require the exercise of discretion." Such mandate upon the Congress is allegedly a purely ministerial act which can be compelled through a writ of *mandamus*.[15]

As for the substantive issue, it is the primary contention of petitioners that a plain reading of Article VII, Section 18 of the Constitution shows that the Congress is required to convene in joint session to review Proclamation No. 216 and vote as a single deliberative body. The performance of the constitutional obligation is allegedly mandatory, not discretionary.[16]

According to petitioners, the discretionary nature of the phrase "may revoke such proclamation or suspension" under Article VII, Section 18 of

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12 *Rollo* (G.R. No. 231671), pp. 8-10, 12, 15, 19-20.
13 Id. at 8.
14 Id. at 8-9.
15 Id. at 21.
16 Id at. 12-13.

the Constitution allegedly pertain to the power of the Congress to revoke but not to its obligation to jointly convene and vote – which, they stress, is mandatory. To require the Congress to convene only when it exercises the power to revoke is purportedly absurd since the Congress, without convening in joint session, cannot know beforehand whether a majority vote in fact exists to effect a revocation.[17]

Petitioners claim that in *Fortun v. Macapagal-Arroyo*,[18] this Court described the "duty" of the Congress to convene in joint session as "automatic." The convening of the Congress in joint session when former President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) declared martial law and suspended the privilege of the writ of *habeas corpus* in Maguindanao was also a legislative precedent where the Congress clearly recognized its duty to convene in joint session.[19]

The mandate upon the Congress to convene jointly is allegedly intended by the 1986 Constitutional Commission (ConCom) to serve as a protection against potential abuses in the exercise of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus*. It is "a mechanism purposely designed by the Constitution to compel Congress to review the propriety of the President's action x x x [and] meant to contain martial law powers within a democratic framework for the preservation of democracy, prevention of abuses, and protection of the people."[20]

The Tañada Petition

The petitioners in G.R. No. 231694 chiefly opine that:

I. A PLAIN READING OF THE 1987 CONSTITUTION LEADS TO THE INDUBITABLE CONCLUSION THAT A JOINT SESSION OF CONGRESS TO REVIEW A DECLARATION OF MARTIAL LAW BY THE PRESIDENT IS MANDATORY.

II. FAILURE TO CONVENE A JOINT SESSION DEPRIVES LAWMAKERS OF A DELIBERATIVE AND INTERROGATORY PROCESS TO REVIEW MARTIAL LAW.

III. FAILURE TO CONVENE A JOINT SESSION DEPRIVES THE PUBLIC OF TRANSPARENT PROCEEDINGS WITHIN WHICH TO BE INFORMED OF THE FACTUAL BASES OF MARTIAL LAW AND THE INTENDED PARAMETERS OF ITS IMPLEMENTATION.

IV. THE FRAMERS OF THE CONSTITUTION INTENDED THAT A JOINT SESSION OF CONGRESS BE CONVENED

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17 Id. at 14-15.
18 684 Phil. 526 (2012).
19 *Rollo* (G.R. No. 231671), pp. 19-20.
20 Id. at 19.

IMMEDIATELY AFTER THE DECLARATION OF MARTIAL LAW.[21]

Similar to the contentions in the Padilla Petition, petitioners maintain that they have sufficiently shown all the essential requisites in order for this Court to exercise its power of judicial review, in that: (1) an actual case or controversy exists; (2) they possess the standing to file this case; (3) the constitutionality of a governmental act has been raised at the earliest possible opportunity; and (4) the constitutionality of the said act is the very *lis mota* of the petition.

According to petitioners, there is an actual case or controversy because the failure and/or refusal of the Congress to convene jointly deprived legislators of a venue within which to raise a motion for revocation (or even extension) of President Duterte's Proclamation No. 216 and the public of an opportunity to be properly informed as to the bases and particulars thereof.[22]

Petitioners likewise claim to have legal standing to sue as citizens and taxpayers. Nonetheless, they submit that the present case calls for the Court's liberality in the appreciation of their *locus standi* given the fact that their petition presents "a question of first impression – one of paramount importance to the future of our democracy – as well as the extraordinary nature of Martial Law itself."[23]

Petitioners contend that the convening of the Congress in joint session, whenever the President declares martial law or suspends the privilege of the writ of *habeas corpus*, is a public right and duty mandated by the Constitution. The writ of *mandamus* is, thus, the "proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, especially when the public right involved is mandated by the Constitution."[24]

For this group of petitioners, the Members of the Congress gravely abused their discretion for their refusal to convene in joint session, underscoring that "[w]hile a writ of *mandamus* will not generally lie from one branch of the government to a coordinate branch, or to compel the performance of a discretionary act, this admits of certain exceptions, such as in instances of gross abuse of discretion, manifest injustice, or palpable excess of authority, when there is no other plain, speedy and adequate remedy."[25]

As to the merits, petitioners assert that the convening of the Congress in joint session after the declaration of martial law is mandatory under Article VII, Section 18 of the Constitution, whether or not the Congress is in

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21 *Rollo* (G.R. No. 231694), pp. 18-21.
22 Id. at 13.
23 Id. at 16.
24 Id at. 17.
25 Id.

session or there is intent to revoke. It is their theory that a joint session should be a deliberative process in which, after debate and discussion, legislators can come to an informed decision as to the factual and legal bases for the declaration of martial law. Moreover, "legislators who wish to revoke the martial law proclamation should have the right to put that vote on historical record in joint session – and, in like manner, the public should have the right to know the position of their legislators with respect to this matter of the highest national interest."[26]

Petitioners add that a public, transparent, and deliberative process is purportedly necessary to allay the people's fears against "executive overreach." This concern allegedly cannot be addressed by briefings in executive sessions given by representatives of the Executive Branch to both Houses of the Congress.[27]

Petitioners further postulate that, based on the deliberations of the Members of the ConCom, the phrase "voting jointly" under Article VII, Section 18 was intended to mean that a joint session is a procedural requirement, necessary for the Congress to decide whether to revoke, affirm, or even extend the declaration of martial law.[28]

Consolidation of Respondents' Comments

Respondents assert firmly that there is no mandatory duty on their part to "vote jointly," except in cases of revocation or extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.[29] In the absence of such duty, the non-convening of the Congress in joint session does not pose any actual case or controversy that may be the subject of judicial review.[30] Additionally, respondents argue that the petitions raise a political question over which the Court has no jurisdiction.

Petitioners' avowal that they are citizens and taxpayers is allegedly inadequate to clothe them with *locus standi*. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi*. Petitioners must show that they have a direct and personal interest in the Congress' failure to convene in joint session, which they failed to present herein. A taxpayer's suit is likewise proper only when there is an exercise of the spending or taxing power of the Congress. However, in these cases, the funds used in the implementation of martial law in Mindanao are taken from those funds already appropriated by the Congress. Senator De Lima's averment of her *locus standi* as an incumbent member of the legislature similarly lacks merit. Insofar as the powers of the Congress are not

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26 Id. at 20.
27 Id. at 21.
28 Id. at 25.
29 Id. at 224-225, 279.
30 Id. at 211.

impaired, there is no prejudice to each Member thereof; and even assuming *arguendo* that the authority of the Congress is indeed compromised, Senator De Lima still does not have standing to file the present petition for *mandamus* because it is not shown that she has been allowed to participate in the Senate sessions during her incarceration. She cannot, therefore, claim that she has suffered any direct injury from the non-convening of the Congress in joint session.[31]

Respondents further contend that the constitutional right to information, as enshrined under Article III, Section 7 of the Constitution, is not absolute. Matters affecting national security are considered as a valid exception to the right to information of the public. For this reason, the petitioners' and the public's right to participate in the deliberations of the Congress regarding the factual basis of a martial law declaration may be restricted in the interest of national security and public safety.[32]

Respondents allege that petitioners failed to present an appropriate case for *mandamus* to lie. *Mandamus* will only issue when the act to be compelled is a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust, or station.[33]

According to respondents, it is erroneous to assert that it is their ministerial duty to convene in joint session whenever martial law is proclaimed or the privilege of the writ of *habeas corpus* is suspended in the absence of a clear and specific constitutional or legal provision. In fact, Article VII, Section 18 does not use the words "joint session" at all, much less impose the convening of such joint session upon the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. What the Constitution requires is joint voting when the action of the Congress is to revoke or extend the proclamation or suspension.[34]

Indeed, prior concurrence of the Congress is not constitutionally required for the effectivity of the proclamation or suspension. Quoting from the deliberations of the framers of the Constitution pertaining to Article VII, Section 18, the Congress points out that it was the intention of the said framers to grant the President the power to declare martial law or suspend the privilege of the writ of *habeas corpus* for a period not exceeding sixty (60) days without the concurrence of the Congress. There is absolutely nothing under the Constitution that mandates the Congress to convene in joint session when their intention is merely to discuss, debate, and/or review the factual and legal basis for the proclamation. That is why the phrase "voting jointly" is limited only in case the Congress intends to revoke the

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31 Id. at 212-214.
32 Id at 236-240.
33 Id. at 217, citing *Pacheco v. Court of Appeals*, 389 Phil. 200, 203 (2000).
34 Id. at 228.

proclamation.[35] In a situation where the Congress is not in session, the Constitution simply provides that the Congress must convene in accordance with its rules but does not state that it must convene in joint session. Respondents further refer to the proper procedure for the holding of joint sessions.

Respondents brush aside as mere *obiter dictum* the Court's pronouncement in the *Fortun* case that it is the duty of the Congress to convene upon the declaration of martial law. That whether or not the Congress should convene in joint session in instances where it is not revoking the proclamation was not an issue in that case. Moreover, the factual circumstances in the *Fortun* case are entirely different from the present cases. The Congress then issued a concurrent resolution calling for the convening of a joint session as the intention – at least as far as the Senate was concerned – was to revoke the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Maguindanao. The *Fortun* case then cannot be considered a legislative precedent of an "automatic convening of a joint session by the Congress upon the President's proclamation of martial law."[36]

Respondents argue that the remedy of *certiorari* is likewise unavailing. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[37] The Congress has the duty to convene and vote jointly only in two (2) instances, as respondents have already explained. The Congress had even issued their respective resolutions expressing their support to, as well as their intent not to revoke, President Duterte's Proclamation No. 216. There then can be no evasion of a positive duty or a virtual refusal to perform a duty on the part of the Congress if there is no duty to begin with.[38]

Respondents respectfully remind the Court to uphold the "constitutional demarcation of the three fundamental powers of government."[39] The Court may not intervene in the internal affairs of the Legislature and it is not within the province of the courts to direct the Congress how to do its work. Respondents stress that this Court cannot direct the Congress to convene in joint session without violating the basic principle of the separation of powers.[40]

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35 Id. at 230-231.
36 Id. at 233-234.
37 Id. at 222, citing *Unilever Philippines v. Tan*, 725 Phil. 486, 493-494 (2014).
38 Id.
39 Id. at 223, citing *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008).
40 Id. at 223, 266-267.

Subsequent Events

On July 14, 2017, petitioners in G.R. No. 231671, the Padilla Petition, filed a Manifestation, calling the attention of the Court to the imminent expiration of the sixty (60)-day period of validity of Proclamation No. 216 on July 22, 2017. Despite the lapse of said sixty (60)-day period, petitioners exhort the Court to still resolve the instant cases for the guidance of the Congress, State actors, and all Filipinos.

On July 22, 2017, the Congress convened in joint session and, with two hundred sixty-one (261) votes in favor versus eighteen (18) votes against, overwhelmingly approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2017.

STATEMENT OF THE ISSUES

After a meticulous consideration of the parties' submissions, we synthesize them into the following fundamental issues:

I. Whether or not the Court has jurisdiction over the subject matter of these consolidated petitions;

II. Whether or not the petitions satisfy the requisites for the Court's exercise of its power of judicial review;

III. Whether or not the Congress has the mandatory duty to convene jointly upon the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* under Article VII, Section 18 of the 1987 Constitution; and

IV. Whether or not a writ of *mandamus* or *certiorari* may be issued in the present cases.

THE COURT'S RULING

The Court's jurisdiction over these consolidated petitions

The principle of separation of powers

The separation of powers doctrine is the backbone of our tripartite system of government. It is implicit in the manner that our Constitution lays out in separate and distinct Articles the powers and prerogatives of each co-

equal branch of government. In *Belgica v. Ochoa*,[41] this Court had the opportunity to restate:

> The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*, it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." To the legislative branch of government, through Congress, belongs the power to make laws; to the executive branch of government, through the President, belongs the power to enforce laws; and **to the judicial branch of government, through the Court, belongs the power to interpret laws.** Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere." Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. **To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates.** Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others. (Emphases supplied, citations omitted.)

Contrary to respondents' protestations, the Court's exercise of jurisdiction over these petitions cannot be deemed as an unwarranted intrusion into the exclusive domain of the Legislature. Bearing in mind that the principal substantive issue presented in the cases at bar is the proper interpretation of Article VII, Section 18 of the 1987 Constitution, particularly regarding the duty of the Congress to vote jointly when the President declares martial law and/or suspends the privilege of the writ of *habeas corpus,* there can be no doubt that the Court may take jurisdiction over the petitions. It is the prerogative of the Judiciary to declare "what the law is."[42] It is worth repeating here that:

> **[W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments**; it does not in reality nullify or invalidate an act of the legislature, **but only asserts the solemn and sacred obligation assigned to it by the Constitution** to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[43] (Emphases supplied.)

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41 721 Phil. 416, 534-535 (2013).

42 *See Lozano v. Nograles,* 607 Phil. 334, 340 (2009), citing *Marbury v. Madison,* 1 Cranch 137, 2L. Ed. 60 [1803].

43 *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936).

Political question doctrine

Corollary to respondents' invocation of the principle of separation of powers, they argue that these petitions involve a political question in which the Court may not interfere. It is true that the Court continues to recognize questions of policy as a bar to its exercise of the power of judicial review.[44] However, in a long line of cases,[45] we have given a limited application to the political question doctrine.

In *The Diocese of Bacolod v. Commission on Elections*,[46] we emphasized that the Court's judicial power as conferred by the Constitution has been expanded to include "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." Further, in past cases, the Court has exercised its power of judicial review noting that the requirement of interpreting the constitutional provision **involved the *legality* and not the *wisdom*** of a manner by which a constitutional duty or power was exercised.[47]

In *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*,[48] we explained the rationale behind the Court's expanded *certiorari* jurisdiction. Citing former Chief Justice and Constitutional Commissioner Roberto R. Concepcion in his sponsorship speech for Article VIII, Section 1 of the Constitution, we reiterated that the courts cannot hereafter evade the duty to settle matters, by claiming that such matters constitute a political question.

Existence of the requisites for judicial review

Petitioners' legal standing

Petitioners in G.R. No. 231671 allege that they are suing in the following capacities: (1) Padilla as a member of the legal profession representing victims of human rights violations, and a taxpayer; (2) Saguisag as a human rights lawyer, former member of the Philippine Senate, and a taxpayer; (3) Monsod as a framer of the Philippine Constitution and member of the 1986 ConCom, and a taxpayer; (4) Rosales as a victim of human rights violations committed under martial law declared by then President

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44 A recent example is *Ocampo v. Enriquez*, G.R. No. 225973, November 8, 2016.

45 *Marcos v. Manglapus*, 258 Phil. 479, 506-507 (1989); *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 840 (1991); *Daza v. Singson*, 259 Phil. 980, 983 (1983); *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 904 (2003).

46 751 Phil. 301, 340 (2015), citing Chief Justice Reynato Puno's separate opinion in *Francisco, Jr. v. House of Representatives*, id.

47 Id. at 338-339.

48 G.R. No. 207132, December 6, 2016.

Ferdinand E. Marcos, and a taxpayer; (5) Gorospe as a lawyer and a taxpayer; and (6) Senator De Lima as an incumbent Member of the Philippine Senate, a human rights advocate, a former Secretary of Justice, Chairperson of the Commission on Human Rights, and a taxpayer.

On the other hand, in G.R. No. 231694, while petitioner Tañada sues in his capacity as a Filipino citizen and former legislator, his co-petitioners (Bishop Iñiguez, Bishop Pabillo, Bishop Tobias, Mo. Ygrubay, Bulangis, and Deluria) all sue in their capacity as Filipino citizens.

Respondents insist that none of the petitioners have legal standing, whether as a citizen, taxpayer, or legislator, to file the present cases.

The Court has consistently held that *locus standi* is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed.[49]

Petitioners satisfy these standards.

The Court has recognized that every citizen has the right, if not the duty, to interfere and see that a public offense be properly pursued and punished, and that a public grievance be remedied.[50] When a citizen exercises this "public right" and challenges a supposedly illegal or unconstitutional executive or legislative action, he represents the public at large, thus, clothing him with the requisite *locus standi*. He may not sustain an injury as direct and adverse as compared to others but it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the vindication of a public right.[51]

Verily, legal standing is grounded on the petitioner's personal interest in the controversy. A citizen who files a petition before the court asserting a public right satisfies the requirement of personal interest simply because the petitioner is a member of the general public upon which the right is vested.[52] A citizen's personal interest in a case challenging an allegedly unconstitutional act lies in his interest and duty to uphold and ensure the proper execution of the law.[53]

The present petitions have been filed by individuals asserting that the Senate and the House of Representatives have breached an allegedly

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49 *Purisima v. Lazatin*, G.R. No. 210588, November 29, 2016, citing *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

50 *David v. Macapagal-Arroyo*, 522 Phil. 705, 756 (2006).

51 *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 680 (2010).

52 *Legaspi v. Civil Service Commission*, 234 Phil. 521, 530 (1987).

53 *Tañada v. Tuvera*, 220 Phil. 422, 430 (1985).

constitutional duty to convene in joint session to deliberate on Presidential Proclamation No. 216. The citizen-petitioners' challenge of a purportedly unconstitutional act in violation of a public right, done in behalf of the general public, gives them legal standing.

On the other hand, Senator De Lima questions the Congress' failure to convene in joint session to deliberate on Proclamation No. 216, which, according to the petitioners, is the legislature's constitutional duty.

We have ruled that legislators have legal standing to ensure that the constitutional prerogatives, powers, and privileges of the Members of the Congress remain inviolate.[54] Thus, they are allowed to question the validity of any official action – or in these cases, inaction – which, **to their mind**, infringes on their prerogatives as legislators.[55]

Actual case or controversy

It is long established that the power of judicial review is limited to actual cases or controversies. There is an actual case or controversy where there is a conflict of legal rights, an assertion of opposite legal claims, where the contradiction of the rights can be interpreted and enforced on the basis of existing law and jurisprudence.[56]

There are two conflicting claims presented before the Court: on the one hand, the petitioners' assertion that the Congress has the **mandatory** duty to convene in joint session to deliberate on Proclamation No. 216; and, on the other, the respondents' view that so convening in joint session is **discretionary** on the part of the Congress.

Petitioners seek relief through a writ of *mandamus* and/or *certiorari*. *Mandamus* is a remedy granted by law when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use or enjoyment of a right or office to which such other is entitled.[57] *Certiorari*, as a special civil action, is available only if: (1) it is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of

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54 *Purisima v. Lazatin,* supra note 49, citing *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 439 (2010).

55 *Biraogo v. The Philippine Truth Commission of 2010*, id., citing *Senate of the Philippines v. Ermita*, 522 Phil. 1, 29 (2006).

56 *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra note 39 at 481, citing *Didipio Earth Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*, 520 Phil. 457, 471 (2006).

57 RULES OF COURT, Rule 65, Sec. 3.

law.[58] With respect to the Court, however, *certiorari* is broader in scope and reach, and it may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board, or officer exercising judicial, quasi-judicial, or ministerial functions, but also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, **even if the latter does not exercise judicial, quasi-judicial or ministerial functions**.[59]

As the present petitions **allege** an omission on the part of the Congress that constitutes neglect of their constitutional duties, the petitions make a *prima facie* case for *mandamus*, and an actual case or controversy ripe for adjudication exists. When an act or omission of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but, in fact, the duty of the judiciary to settle the dispute.[60]

Respondents aver that the Congress cannot be compelled to do something that is discretionary on their part nor could they be guilty of grave abuse of discretion in the absence of any mandatory obligation to jointly convene on their part to affirm the President's proclamation of martial law. Thus, petitioners are not entitled to the reliefs prayed for in their petitions for *mandamus* and/or *certiorari*; consequently, no actual case or controversy exists.

There is no merit to respondents' position.

For the Court to exercise its power of judicial review and give due course to the petitions, it is sufficient that the petitioners set forth their material allegations to make out a *prima facie* case for *mandamus* or *certiorari*.[61] Whether the petitioners are actually and ultimately entitled to the reliefs prayed for is exactly what is to be determined by the Court after careful consideration of the parties' pleadings and submissions.

Liberality in cases of transcendental importance

In any case, it is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance.

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58 *Cawad v. Abad,* 764 Phil. 705, 722 (2015).

59 *Araullo v. Aquino III,* 737 Phil. 457, 531 (2014).

60 *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra note 39 at 486, citing *Tañada v. Angara*, 338 Phil. 546, 575 (1997).

61 This is implied in *De Castro v. Judicial and Bar Council* (supra note 51 at 737), wherein we ruled: "On its face, this petition fails to present any justiciable controversy that can be the subject of a ruling from this Court. As a petition for *certiorari*, it must first show as a minimum requirement that the JBC is a tribunal, board or officer exercising judicial or quasi-judicial functions and is acting outside its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. A petition for *mandamus*, on the other hand, at the very least must show that a tribunal, corporation, board or officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty."

There are marked differences between the Chief Executive's military powers, including the power to declare martial law, as provided under the present Constitution, in comparison to that granted in the 1935 Constitution. Under the 1935 Constitution,[62] such powers were seemingly limitless, unrestrained, and purely subject to the President's wisdom and discretion.

At present, the Commander-in-Chief still possesses the power to suspend the privilege of the writ of *habeas corpus* and to proclaim martial law. However, these executive powers are now subject to the review of both the legislative and judicial branches. This check-and-balance mechanism was installed in the 1987 Constitution precisely to prevent potential abuses of these executive prerogatives.

Inasmuch as the present petitions raise issues concerning the Congress' role in our government's system of checks and balances, these are matters of paramount public interest or issues of transcendental importance deserving the attention of the Court in view of their seriousness, novelty, and weight as precedents.[63]

Mootness

The Court acknowledges that the main relief prayed for in the present petitions (*i.e.*, that the Congress be directed to convene in joint session and therein deliberate whether to affirm or revoke Proclamation No. 216) may arguably have been rendered moot by: (a) the lapse of the original sixty (60) days that the President's martial law declaration and suspension of the privilege of the writ of *habeas corpus* were effective under Proclamation No. 216; (b) the subsequent extension by the Congress of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* over the whole of Mindanao after convening in joint session on July 22, 2017; and (c) the Court's own decision in *Lagman v. Medialdea*,[64] wherein we ruled on the sufficiency of the factual bases for Proclamation No. 216 under the original period stated therein.

In *David v. Macapagal-Arroyo*, the jurisprudential rules regarding mootness were succinctly summarized, thus:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a

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62 Article VII, Section 10(2) of the 1935 Constitution provides, "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 privileges of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law."

63 *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra note 39 at 488, citing *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618 (2000).

64 G.R. Nos. 231658, 231771 and 231774, July 4, 2017.

> declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.
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> x x x x
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> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; ***second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.** [65] (Emphasis supplied, citations omitted.)

It cannot be gainsaid that there are compelling and weighty reasons for the Court to proceed with the resolution of these consolidated petitions on the merits. As explained in the preceding discussion, these cases involve a constitutional issue of transcendental significance and novelty. A definitive ruling from this Court is imperative not only to guide the Bench, the Bar, and the public but, more importantly, to clarify the parameters of congressional conduct required by the 1987 Constitution, in the event of a repetition of the factual precedents that gave rise to these cases.

The duty of the Congress to vote jointly under Article VII, Section 18

We now come to the crux of the present petitions – the issue of whether or not under Article VII, Section 18 of the 1987 Constitution, it is mandatory for the Congress to automatically convene in joint session in the event that the President proclaims a state of martial law and/or suspends the privilege of the writ of *habeas corpus* in the Philippines or any part thereof.

The Court answers in the negative. The Congress is not constitutionally mandated to convene in joint session except to vote jointly to revoke the President's declaration or suspension.

By the language of Article VII, Section 18 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*.

Article VII, Section 18 of the 1987 Constitution fully reads:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he

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65 Supra note 50 at 753-754.

> 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.
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> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> 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.)

Outside explicit constitutional limitations, the Commander-in-Chief clause in Article VII, Section 18 of the 1987 Constitution vests on the President, as Commander-in-Chief, absolute authority over the persons and actions of the members of the armed forces,[66] in recognition that the President, as Chief Executive, has the general responsibility to promote public peace, and as Commander-in-Chief, the more specific duty to prevent and suppress rebellion and lawless violence.[67] However, to safeguard against possible abuse by the President of the exercise of his power to proclaim martial law and/or suspend the privilege of the writ of *habeas corpus*, the 1987 Constitution, through the same provision, institutionalized checks and balances on the President's power through the two other co-equal

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66 *B/Gen. Gudani v. Lt./Gen. Senga*, 530 Phil. 398, 421-422 (2006).

67 *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on the Ancestral Domain*, supra note 39 at 529.

and independent branches of government, *i.e.*, the Congress and the Judiciary. In particular, Article VII, Section 18 of the 1987 Constitution requires the President to submit a report to the Congress after his proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* and grants the Congress the power to revoke, as well as extend, the proclamation and/or suspension; and vests upon the Judiciary the power to review the sufficiency of the factual basis for such proclamation and/or suspension.

There are four provisions in Article VII, Section 18 of the 1987 Constitution specifically pertaining to the role of the Congress when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus*, *viz.*:

> a. Within forty-eight (48) 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;
>
> b. 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;
>
> c. 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
>
> d. The Congress, if not in session, shall within twenty-four hours (24) following such proclamation or suspension, convene in accordance with its rules without need of call.

There is no question herein that the first provision was complied with, as within forty-eight (48) hours from the issuance on May 23, 2017 by President Duterte of Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao, copies of President Duterte's Report relative to Proclamation No. 216 was transmitted to and received by the Senate and the House of Representatives on May 25, 2017.

The Court will not touch upon the third and fourth provisions as these concern factual circumstances which are not availing in the instant petitions. The petitions at bar involve the initial proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*, and not their extension; and the 17th Congress was still in session[68] when President

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68 The First Regular Session of the 17th Congress was from May 2 to June 2, 2017.

Duterte issued Proclamation No. 216 on May 23, 2017.

It is the second provision that is under judicial scrutiny herein: "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."

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. There is only room for application. According to the plain-meaning rule or *verba legis*, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is expressed in the maxims *index animi sermo* or "speech is the index of intention[,]" and *verba legis non est recedendum* or "from the words of a statute there should be no departure."[69]

In *Funa v. Chairman Villar*,[70] the Court also applied the *verba legis* rule in constitutional construction, thus:

> The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.
>
> The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. *J.M. Tuason & Co., Inc. v. Land Tenure Administration* illustrates the *verbal legis* rule in this wise:
>
> > We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the **words in which constitutional provisions are couched express the objective sought to be attained**. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use**. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum. (Emphases supplied.)

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69 *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

70 686 Phil. 571, 591-592 (2012).

The provision in question is clear, plain, and unambiguous. In its literal and ordinary meaning, the provision grants the Congress the power to revoke the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* and prescribes how the Congress may exercise such power, *i.e.*, by a vote of at least a majority of all its Members, voting jointly, in a regular or special session. The use of the word "may" in the provision – such that "[t]he Congress x x x **may** revoke such proclamation or suspension x x x" – is to be construed as permissive and operating to confer discretion on the Congress on whether or not to revoke,[71] but in order to revoke, the same provision sets the requirement that at least a majority of the Members of the Congress, voting jointly, favor revocation.

It is worthy to stress that the provision does not actually refer to a "joint session." While it may be conceded, subject to the discussions below, that the phrase "voting jointly" shall already be understood to mean that the joint voting will be done "in joint session," notwithstanding the absence of clear language in the Constitution,[72] still, the requirement that "[t]he Congress, **voting jointly**, by a vote of at least a majority of all its Members in regular or special session, x x x" explicitly applies only to the situation when the Congress revokes the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. Simply put, the provision only requires Congress to vote jointly on the revocation of the President's proclamation and/or suspension.

Hence, the plain language of the subject constitutional provision does not support the petitioners' argument that it is obligatory for the Congress to convene in joint session following the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, under all circumstances.

The deliberations of the 1986 ConCom reveal the framers' specific intentions to (a) remove the requirement of prior concurrence of the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; and (b) grant to the

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71 *See Office of the Ombudsman v. De Sahagun*, 584 Phil. 119, 127 (2008).

72 Compared to Article VI, Section 23(1) of the 1987 Constitution, which reads, "The Congress, by a vote of two-thirds of both Houses **in joint session assembled**, voting separately, shall have the sole power to declare the existence of a state of war." See also Article VII, Section 4, fourth paragraph, which states:

> The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives **in joint public session**, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

Congress the discretionary power to revoke the President's proclamation and/or suspension by a vote of at least a majority of its Members, voting jointly.

The Court recognized in *Civil Liberties Union v. The Executive Secretary*[73] that:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.

However, in the same Decision, the Court issued the following *caveat*:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. **We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof.**"[74] (Emphasis supplied.)

As the Court established in its preceding discussion, the clear meaning of the relevant provision in Article VII, Section 18 of the 1987 Constitution is that the Congress is only required to vote jointly on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. Based on the *Civil Liberties Union case*, there is already no need to look beyond the plain language of the provision and decipher the intent of the framers of the 1987 Constitution. Nonetheless, the deliberations on Article VII, Section 18 of the 1986 ConCom does not reveal a manifest intent of the framers to make it mandatory for the Congress to convene in joint session following the President's proclamation and/or suspension, so it could deliberate as a single body, regardless of whether its Members will concur in or revoke the President's proclamation and/or

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73 272 Phil. 147, 157 (1991).

74 Id. at 169-170.

suspension.

What is evident in the deliberations of the 1986 ConCom were the framers' intentions to (a) remove the requirement of prior concurrence by the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; and (b) grant to the Congress the discretionary power to revoke the President's proclamation and/or suspension by a vote of at least a majority of its Members, voting jointly.

As the Commander-in-Chief clause was initially drafted, the President's suspension of the privilege of the writ of *habeas corpus* required the prior concurrence of at least a majority of all the members of the Congress to be effective. The first line read, "The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion[;]" and the next line, "In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, **and, with the concurrence of at least a majority of all the members of the Congress,** suspend the privilege of the writ of *habeas corpus*."[75]

The Commissioners, however, extensively debated on whether or not there should be prior concurrence by the Congress, and the exchanges below present the considerations for both sides:

> MR. NATIVIDAD. First and foremost, we agree with the Commissioner's thesis that **in the first imposition of martial law there is no need for concurrence of the majority of the Members of Congress** because the provision says "in case of actual invasion and rebellion." If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. They say that in case of rebellion, one cannot even take his car and go to the Congress, which is possible because the roads are blocked or barricaded. And maybe if the revolutionaries are smart, they would have an individual team for each and every Member of the Congress so he would not be able to respond to a call for a session. So the requirement of an initial concurrence of the majority of all the Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.
>
> 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*. x x x

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75 II RECORD, CONSTITUTIONAL COMMISSION 393-394 (July 29, 1986).

x x x x

MR. SUAREZ. x x x

The Commissioner is suggesting that in connection with Section 15, we **delete the phrase "and, with the concurrence of at least a majority of all the Members of the Congress..."**

MR. PADILLA. **That is correct especially for the initial suspension of the privilege of the writ of *habeas corpus* or also the declaration of martial law.**

MR. SUAREZ. So in both instances, the Commissioner is suggesting that this would be **an exclusive prerogative of the President**?

MR. PADILLA. **At least initially, for a period of 60 days.** But even that period of 60 days may be shortened by the Congress or the Senate because the next sentence says that the Congress or the Senate may even revoke the proclamation.

x x x x

MR. MONSOD. x x x

We are back to Section 15, page 7, lines 1 and 2. I just want to reiterate my previous proposal to amend by deletion the phrase "and, with the concurrence of at least a majority of all the members of Congress."

x x x x

MR. SUAREZ. x x x

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

MR. SUAREZ. Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand

E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10(2) of the Constitution, wherein he made this predicate under the "Whereas" provision.

> Whereas, the rebellion and armed action undertaken by these lawless elements of the Communists and other armed aggrupations organized to overthrow the Republic of the Philippines by armed violence and force have assumed the magnitude of an actual state of war against our people and the Republic of the Philippines.

And may I also call the attention of the Gentleman to General Order No. 3, also promulgated by Ferdinand E. Marcos, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 wherein he said, among other things:

> Whereas, martial law having been declared because of wanton destruction of lives and properties, widespread lawlessness and anarchy and chaos and disorder now prevailing throughout the country, which condition has been brought about by groups of men who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines in order to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and the legitimate government...

And he gave all reasons in order to suspend the privilege of the writ of *habeas corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase "and, with the concurrence of at least a majority of all the members of the Congress"?

MR. MONSOD. Yes, Madam President, in the case of Mr. Marcos he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. **As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual bases because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.

MR. SUAREZ. Will that prevent a future President from doing what Mr. Marcos had done?

MR. MONSOD. There is nothing absolute in this world, and there may be another Marcos. What we are looking for are safeguards that are reasonable and, I believe, adequate at this point. **On the other hand, in case of invasion or rebellion, even during the first 60 days when the intention here is to protect the country in that situation, it would be unreasonable to ask that there should be a concurrence on the part of the Congress, which situation is automatically terminated at the end of such 60 days.**

x x x x

MR. SUAREZ. Would the Gentleman not feel more comfortable if we provide for a legislative check on this awesome power of the Chief Executive acting as Commander-in-Chief?

MR. MONSOD. I would be less comfortable if we have a presidency that cannot act under those conditions.

MR. SUAREZ. But he can act with the concurrence of the proper or appropriate authority.

MR. MONSOD. Yes. But when those situations arise, it is very unlikely that the concurrence of Congress would be available; and, secondly, the President will be able to act quickly in order to deal with the circumstances.

MR. SUAREZ. So, we would be subordinating actual circumstances to expediency.

MR. MONSOD. I do not believe it is expediency when one is trying to protect the country in the event of an invasion or a rebellion.

MR. SUAREZ. No. But in both instances, we would be seeking to protect not only the country but the rights of simple citizens. We have to balance these interests without sacrificing the security of the State.

MR. MONSOD. I agree with the Gentleman that is why in the Article on the Bill of Rights, which was approved on Third Reading, the safeguards and the protection of the citizens have been strengthened. And on line 21 of this paragraph, I endorsed the proposed amendment of Commissioner Padilla. We are saying that those who are arrested should be judicially charged within five days; otherwise, they shall be released. So, there are enough safeguards.

MR. SUAREZ. **These are safeguards after the declaration of martial law and after the suspension of the writ of *habeas corpus*.**

MR. MONSOD. That is true.[76] (Emphases supplied.)

Ultimately, twenty-eight (28) Commissioners voted to remove the requirement for prior concurrence by the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of

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[76] Id. at 470-477.

the writ of *habeas corpus*, against only twelve (12) Commissioners who voted to retain it.

As the result of the foregoing, the 1987 Constitution does not provide at all for the manner of determination and expression of concurrence (whether prior or subsequent) by the Congress in the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. In the instant cases, both Houses of the Congress separately passed resolutions, in accordance with their respective rules of procedure, expressing their support for President Duterte's Proclamation No. 216.

In contrast, being one of the constitutional safeguards against possible abuse by the President of his power to proclaim martial law and/or suspend the privilege of the writ of *habeas corpus*, the 1987 Constitution explicitly provides for how the Congress may exercise its discretionary power to revoke the President's proclamation and/or suspension, that is, "voting jointly, by a vote of at least a majority of all its Members in regular or special session."

The ConCom deliberations on this particular provision substantially revolved around whether the two Houses will have to vote jointly or separately to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; but as the Court reiterates, it is undisputedly for the express purpose of revoking the President's proclamation and/or suspension.

Based on the ConCom deliberations, pertinent portions of which are reproduced hereunder, the underlying reason for the requirement that the two Houses of the Congress will vote jointly is to avoid the possibility of a deadlock and to facilitate the process of revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*:

> MR. MONSOD. Madam President, I want to ask the Committee a clarifying question on line 4 of page 7 as to whether the meaning here is that the majority of all the Members of each House vote separately. Is that the intent of this phrase?
>
> x x x x
>
> FR. BERNAS. We would like a little discussion on that because yesterday **we already removed the necessity for concurrence of Congress for the initial imposition of martial law.** If we require the Senate and the House of Representatives to vote separately for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*. That is just thinking aloud. To balance the fact that the President acts unilaterally, then **the Congress voting as one body and not separately can revoke** the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

MR. MONSOD. In other words, voting jointly.

FR. BERNAS. Jointly, yes.

x x x x

MR. RODRIGO. May I comment on the statement made by Commissioner Bernas? I was a Member of the Senate for 12 years. Whenever a bicameral Congress votes, it is always separately.

For example, bills coming from the Lower House are voted upon by the Members of the House. Then they go up to the Senate and voted upon separately. Even on constitutional amendments, where Congress meets in joint session, the two Houses vote separately.

Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House. So, I believe that whenever Congress acts, it must be the two Houses voting separately.

If the two Houses vote "jointly," it would mean mixing the 24 Senators with 250 Congressmen. This would result in the Senate being absorbed and controlled by the House. This violates the purpose of having a Senate.

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.

MR. RODRIGO. Maybe the way it can be done is to vest this function in just one of the Chambers – to the House alone or to the Senate alone. But to say, "by Congress," both House and Senate "voting" jointly is practically a vote by the House.

FR. BERNAS. I would be willing to say just the vote of the House.

MR. RODRIGO. That is less insulting to the Senate. However, there are other safeguards. For example, if, after 60 days the Congress does not act, the effectiveness of the declaration of martial law or the suspension of the privilege of the writ ceases. Furthermore, there is recourse to the Supreme Court.

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.

MR. RODRIGO. Between the Senate being absorbed and

controlled by the House numerically and the House voting alone, the lesser of two evils is the latter.

x x x x

MR. GUINGONA. x x x

In connection with the inquiry of Commissioner Monsod, and considering the statements made by Commissioner Rodrigo, I would like to say, in reply to Commissioner Bernas, that perhaps because of necessity, we might really have to break tradition. Perhaps it would be better to give **this function of revoking** the proclamation of martial law or the suspension of the writ or extending the same to the House of Representatives, instead of to the Congress. I feel that even the Senators would welcome this because they would feel frustrated by the imbalance in the number between the Senators and the Members of the House of Representatives.

Anyway, Madam President, we have precedents or similar cases. For example, under Section 24 of the committee report on the Legislative, appropriation, revenue or tariff bills, and bills authorizing increase of public debt are supposed to originate exclusively in the House of Representatives. Besides, we have always been saying that it is the Members of the House of Representatives who are mostly in touch with the people since they represent the various districts of our country.

x x x x

MR. MONSOD. I would prefer to have the vote of both Houses because this is a very serious question that must be fully discussed. By limiting it alone to the House of Representatives, then we lose the benefit of the advice and opinion of the Members of the Senate. I would prefer that they would be **in joint session**, but I would agree with Father Bernas that they should not be voting separately as part of the option. I think they should be voting jointly, so that, in effect, the Senators will have only one vote. But at least we have the benefit of their advice.

x x x x

MR. RODRIGO. I was the one who proposed that the two Houses vote separately because if they vote jointly, the Senators are absolutely outnumbered. It is insulting to the intelligence of the Senators to join a session where they know they are absolutely outnumbered. Remember that the Senators are elected at large by the whole country. The Senate is a separate Chamber. The Senators have a longer term than the Members of the House; they have a six-year term. They are a continuing Senate. Out of 24, twelve are elected every year. So, if they will participate at all, the Senate must vote separately. That is the practice everywhere where there are two chambers. But as I said, between having a joint session of the Senate and the House voting jointly where it is practically the House that will decide alone, the lesser of two evils is just to let the House decide alone instead of insulting the Senators by making them participate in a charade.

MR. REGALADO. May the Committee seek this clarification from Commissioner Rodrigo? **This voting is supposed to revoke the**

proclamation of martial law. If the two Houses vote separately and a majority is obtained in the House of Representatives for the revocation of the proclamation of martial law but that same majority cannot be obtained in the Senate voting separately, what would be the situation?

MR. RODRIGO. Then the proclamation of martial law or the suspension continues for almost two months. After two months, it stops. Besides, there is recourse to the Supreme Court.

MR. REGALADO. Therefore, that arrangement would be very difficult for the legislative since they are voting separately and, for lack of majority in one of the Houses they are precluded from revoking that proclamation. They will just, therefore, have to wait until the lapse of 60 days.

MR. RODRIGO. It might be difficult, yes. But remember, we speak of the Members of Congress who are elected by the people. Let us not forget that the President is also elected by the people. Are we forgetting that the President is elected by the people? We seem to distrust all future Presidents just because one President destroyed our faith by his declaration of martial law. I think we are overreacting. Let us not judge all Presidents who would henceforth be elected by the Filipino people on the basis of the abuses made by that one President. Of course, we must be on guard; but let us not overreact.

Let me make my position clear. I am against the proposal to make the House and the Senate vote jointly. That is an insult to the Senate.

x x x x

MR. RODRIGO. Will the Gentleman yield to a question?

MR. MONSOD. Yes, Madam President.

MR. RODRIGO. So, in effect, if there is a **joint session** composed of 250 Members of the House plus 24 Members of the Senate, the total would be 274. The majority would be one-half plus one.

MR. MONSOD. So, 148 votes.

MR. RODRIGO. And the poor Senators would be absolutely absorbed and outnumbered by the 250 Members of the House. Is that it?

MR. MONSOD. Yes, that is one of the implications of the suggestion and the amendment is being made nonetheless because there is a higher objective or value which is **to prevent a deadlock** that would enable the President to continue the full 60 days in case one House revokes and the other House does not.

The proposal also allows the Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and their national vote.

MR. RODRIGO. So, the Senators will have the "quality votes" but Members of the House will have the "quantity votes." Is that it?

> MR. MONSOD. The Gentleman is making an assumption that they will vote against each other. I believe that they will discuss, probably in joint session and vote on it; then the consensus will be clear.
>
> x x x x
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> MR. NOLLEDO. Madam President, the purpose of the amendment is really to set forth a limitation because we have to avoid a stalemate. For example, the Lower House decides that the declaration of martial law should be revoked, and that later on, the Senate sitting separately decides that it should not be revoked. It becomes inevitable that martial law shall continue even if there should be no factual basis for it.
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> MR. OPLE. Madam President, if this amendment is adopted, we will be held responsible for a glaring inconsistency in the Constitution to a degree that it distorts the bicameral system that we have agreed to adopt. I reiterate: If there are deadlocks, it is the responsibility of the presidential leadership, together with the leaders of both Houses, to overcome them.[77] (Emphases supplied.)

When the matter was put to a vote, twenty-four (24) Commissioners voted for the two Houses of the Congress "voting jointly" in the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, and thirteen (13) Commissioners opted for the two Houses "voting separately."

Yet, there was another attempt to amend the provision by requiring just the House of Representatives, not the entire Congress, to vote on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*:

> MR. RODRIGO. Madam President, may I propose an amendment?
>
> x x x x
>
> MR. RODRIGO. On Section 15, page 7, line 4, I propose to change the word "Congress" to HOUSE OF REPRESENTATIVES so that the sentence will read: "The HOUSE OF REPRESENTATIVES, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension or extend the same if the invasion or rebellion shall persist and public safety requires it."
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> FR. BERNAS. Madam President, the proposed amendment is really a motion for reconsideration. We have already decided that both Houses will vote jointly. Therefore, the proposed amendment, in effect, asks for a reconsideration of that vote in order to give it to the House of Representatives.
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> MR. RODRIGO. Madam President, the opposite of voting jointly is voting separately. If my amendment were to vote separately, then, yes,

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77 II RECORD, CONSTITUTIONAL COMMISSION 493-501 (July 31, 1986).

it is a motion for reconsideration. But this is another formula.

x x x x

MR. DE CASTRO. What is the rationale of the amendment?

MR. RODRIGO. It is intended to avoid that very extraordinary and awkward provision which would make the 24 Senators meet jointly with 250 Members of the House and make them vote jointly. What I mean is, the 24 Senators, like a drop in the bucket, are absorbed numerically by the 250 Members of the House.

x x x x

MR. SARMIENTO. Madam President, we need the wisdom of the Senators. What is at stake is the future of our country – human rights and civil liberties. If we separate the Senators, then we deprive the Congressmen of the knowledge and experience of these 24 men. I think we should forget the classification of "Senators" or "Congressmen." We should all work together to restore democracy in our country. So we need the wisdom of 24 Senators.

MR. RODRIGO. Madam President, may I just answer. This advice of the 24 Senators can be sought because they are in the same building. Anyway, the provision, with **the amendment of Commissioner Monsod, does not call for a joint session**. It only says: "the Congress, by a vote of at least a majority of all its Members in regular or special session" – it does not say "joint session." So, I believe that if the Members of the House need the counsel of the Senators, they can always call on them, they can invite them.[78] (Emphasis supplied.)

The proposed amendment was not adopted, however, as only five (5) Commissioners voted in its favor and twenty-five (25) Commissioners voted against it. Thus, the power to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* still lies with both Houses of the Congress, voting jointly, by a vote of at least a majority of all its Members.

Significantly, the Commissioners only settled the manner of voting by the Congress, *i.e.*, "voting jointly, by a vote of at least a majority of all its Members," in order to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, but they did not directly take up and specify in Article VII, Section 18 of the 1987 Constitution that the voting shall be done during a joint session of both Houses of the Congress. In fact, Commissioner Francisco A. Rodrigo expressly observed that the provision does not call for a joint session. That the Congress will vote on the revocation of the President's proclamation and/or suspension in a joint session can only be inferred from the arguments of the Commissioners who pushed for the "voting jointly" amendment that the Members of the House of Representatives will benefit from the advice, opinion, and/or wisdom of the Senators, which will be presumably shared

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[78] Id. at 501-502.

during a joint session of both Houses. **Such inference is far from a clear mandate for the Congress to automatically convene in joint session, under all circumstances,** when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus*, even when Congress does not intend to revoke the President's proclamation and/or suspension.

There was no obligation on the part of the Congress herein to convene in joint session as the provision on revocation under Article VII, Section 18 of the 1987 Constitution did not even come into operation in light of the resolutions, separately adopted by the two Houses of the Congress in accordance with their respective rules of procedure, expressing support for President Duterte's Proclamation No. 216.

The provision in Article VII, Section 18 of the 1987 Constitution requiring the Congress to vote jointly in a joint session is specifically for the purpose of revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. In the petitions at bar, the Senate and House of Representatives already separately adopted resolutions expressing support for President Duterte's Proclamation No. 216. Given the express support of both Houses of the Congress for Proclamation No. 216, and their already evident lack of intent to revoke the same, the provision in Article VII, Section 18 of the 1987 Constitution on revocation did not even come into operation and, therefore, there is no obligation on the part of the Congress to convene in joint session.

Practice and logic dictate that a collegial body will first hold a meeting among its own members to get a sense of the opinions of its individual members and, if possible and necessary, reach an official stance, before convening with another collegial body. This is exactly what the two Houses of the Congress did in these cases.

The two Houses of the Congress, the Senate and the House of Representatives, immediately took separate actions on President Duterte's proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao through Proclamation No. 216, in accordance with their respective rules of procedure. The *Consolidated Comment* (*Ex Abudanti Cautela*), filed by the Senate and Senate President Pimentel, recounted in detail the steps undertaken by both Houses of the Congress as regards Proclamation No. 216, to wit:

> 2. On the date of the President's declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, Congress was in session (from May 2, to June 2, 2017), in its First Regular Session of the 17th Congress, as evidenced by its Legislative Calendar, otherwise

known as Calendar of Session as contained in Concurrent Resolution No. 3 of both the Senate and the House of Representatives. x x x

3. During the plenary session of the Senate on the following day, 24 May 2017, privilege speeches and discussions had already been made about the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. This prompted Senator Franklin M. Drilon to move to invite the Secretary of National Defense, the National Security Adviser and the Chief of Staff of the Armed Forces of the Philippines to brief the senators in closed session on what transpired in Mindanao. Submitted to a vote and there being no objection, the Senate approved the motion. x x x

4. On 25 May 2017, the President furnished the Senate and the House of Representatives, through Senate President Aquilino "Koko" Pimentel III and Speaker Pantaleon D. Alvarez, respectively, with copies of his report (hereinafter, the "Report") detailing the factual and legal basis for his declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

5. On or about 25 May 2017, invitation letters were issued and sent by the Senate Secretary, Atty. Lutgardo B. Barbo to the following officials requesting them to attend a briefing for the Senators on 29 May 2017 at 3:00 p.m. at the Senators' Lounge at the Senate in a closed door session to describe what transpired in Mindanao which was the basis of the declaration of martial law in Mindanao: (a) Secretary Delfin N. Lorenzana, Secretary of National Defense (hereinafter, "Secretary Lorenzana"); (b) Secretary Hermogenes C. Esperon, Jr., National Security Adviser and Director General of the National Security Council (hereinafter, "Secretary Esperon"); and (c) General Eduardo M. Año, Chief of Staff of the Armed Forces of the Philippines (hereinafter, "Gen. Año"). The said letters stated that the Senators requested that the President's Report be explained and that more details be given about the same. x x x

6. On 29 May 2017, about 3:30 p.m., a closed door briefing was conducted by Secretary Lorenzana, Secretary Esperon and other security officials for the Senators to brief them about the circumstances surrounding the declaration of martial law and to inform them about details about the President's Report. The briefing lasted for about four (4) hours. After the briefing, the Senators had a caucus to determine what could be publicly revealed.

7. On the same day, 29 May 2017, the House of Representatives resolved to constitute itself as a Committee of the Whole on 31 May 2017 to consider the President's Report.

8. On 30 May 2017, two (2) resolutions were introduced in the Senate about the proclamation of martial law. The first one was P.S. Resolution No. 388 (hereinafter, "P.S.R. No. 388") introduced by Senators Sotto, Pimentel, Recto, Angara, Binay, Ejercito, Gatchalian, Gordon, Honasan, Lacson, Legarda, Pacquiao, Villanueva, Villar and Zubiri which was entitled, "Expressing the Sense of the Senate, Supporting the Proclamation No. 216 dated May 23, 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" and Finding no Cause to revoke the Same." The

second one was P.S. Resolution No. 390 (hereinafter, "P.S.R. No. 390") introduced by Senators Pangilinan, Drilon, Hontiveros, Trillanes, Aquino and De Lima which was entitled, "Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216 dated 23 May 2017 entitled, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao." x x x

9. Discussions were made on the two (2) proposed resolutions during the plenary deliberations of the Senate on 30 May 2017. The first resolution to be discussed was P.S.R. No. 388. During the deliberations, amendments were introduced to it and after the amendments and the debates, P.S.R. No. 388 was voted upon and it was adopted by a vote of seventeen (17) affirmative votes and five (5) negative votes. The amended, substituted and approved version of P.S.R. No. 388, which was then renamed Resolution No. 49, states as follows:

RESOLUTION NO. 49

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 PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO."

WHEREAS, the 1987 Philippine Constitution, Article VII, Section 18, provides that:

> ". . . in case of invasion or rebellion, when the public safety requires it, he (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 . . .";

WHEREAS, President Rodrigo Roa Duterte issued 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," on May 23, 2017 (the "Proclamation");

WHEREAS, pursuant to his duty under the Constitution, on May 25, 2017, and within forth-eight hours after the issuance of the Proclamation, President Duterte submitted to the Senate his report on the factual and legal basis of the Proclamation;

WHEREAS, on May 29, 2017, the Senators were briefed by the Department of National Defense (DND), the Armed Forces of the Philippines (AFP), and by the National Security Council (NSC) on the factual circumstances surrounding the Proclamation as well as the updates on the situation in Mindanao;

> *WHEREAS*, on the basis of the information received by the Senators, the Senate is convinced that President Duterte declared martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao because actual rebellion exists and that the public safety requires it;
>
> *WHEREAS*, the Senate, at this time, agrees that there is no compelling reason to revoke Proclamation No. 216, series of 2017;
>
> *WHEREAS*, the Proclamation does not suspend the operation of the Constitution, which among others, guarantees respect for human rights and guards against any abuse or violation thereof: Now, therefore, be it
>
> *Resolved, as it is hereby resolved*, To express the sense of the Senate, that there is no compelling reason to revoke Proclamation No. 216, series of 2017 at this time.
>
> Adopted. x x x"
>
> x x x x
>
> 10. Immediately thereafter, P.S.R. No. 390 was also deliberated upon. After a prolonged discussion, a vote was taken on it and nine (9) senators were in favor and twelve (12) were against. As such, P.S.R. No. 390 calling for a joint session of Congress was not adopted. x x x
>
> 11. In the meantime, on 31 May 2017, the House of Representatives acting as a Committee of the Whole was briefed for about six (6) hours by officials of the government led by Executive Secretary Salvador C. Medialdea (hereinafter, "Executive Secretary Medialdea"), Secretary Lorenzana and other security officials on the factual circumstances surrounding the President's declaration of martial law and on the statements contained in the President's Report. During the evening of the same day, a majority of the House of Representatives passed Resolution No. 1050 entitled, "Resolution Expressing the Full Support of the House of Representatives to President Rodrigo Roa Duterte As It Finds No Reason to Revoke Proclamation No. 216 Entitled, 'Declaring A State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'" In the same deliberations, it was likewise proposed that the House of Representatives call for a joint session of Congress to deliberate and vote on the President's declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. However, after debates, the proposal was not carried. x x x.[79]

It cannot be disputed then that the Senate and House of Representatives placed President Duterte's Proclamation No. 216 under serious review and consideration, pursuant to their power to revoke such a proclamation vested by the Constitution on the Congress. Each House timely took action by accepting and assessing the President's Report, inviting over and interpellating executive officials, and deliberating amongst

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79 *Rollo* (G.R. No. 231671), pp. 136-140.

their fellow Senators or Representatives, before finally voting in favor of expressing support for President Duterte's Proclamation No. 216 and against calling for a joint session with the other House. The prompt actions separately taken by the two Houses of the Congress on President Duterte's Proclamation No. 216 belied all the purported difficulties and delays such procedures would cause as raised in the Concurring and Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen (Justice Leonen). As earlier pointed out, there is no constitutional provision governing concurrence by the Congress in the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, and absent a specific mandate for the Congress to hold a joint session in the event of concurrence, then whether or not to hold a joint session under such circumstances is completely within the discretion of the Congress.

The Senate and Senate President Pimentel explained in their *Consolidated Comment* (*Ex Abudanti Cautela*), that, by practice, the two Houses of the Congress must adopt a concurrent resolution to hold a joint session, and only thereafter can the Houses adopt the rules to be observed for that particular joint session:

> It must be stated that the Senate and the House of Representatives have their own respective Rules, *i.e.*, the Rules of the Senate and the Rules of the House of Representatives. **There is no general body of Rules applicable to a joint session of Congress. Based on parliamentary practice and procedure, the Senate and House of Representatives only adopt Rules for a joint session on an *ad hoc* basis but only after both Houses have already agreed to convene in a joint session through a Concurrent Resolution. The Rules for a Joint Session for a particular purpose become *functus officio* after the purpose of the joint session has been achieved.** Examples of these Rules for a Joint Session are (1) the Rules of the Joint Public Session of Congress on Canvassing the Votes Cast for Presidential and Vice-Presidential Candidates in the May 9, 2016 Election adopted on 24 May 2016; and (2) the Rules of the Joint Session of Congress on Proclamation No. 1959 (Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao, Except for Certain Areas) adopted on 09 December 2009. The only time that the Senate and the House of Representatives do not adopt Rules for a joint session is when they convene on the fourth Monday of July for its regular session to receive or listen to the State of the Nation Address of the President and even then, they adopt a Concurrent Resolution to do so.
>
> **The usual procedure for having a joint session is for both Houses to first adopt a Concurrent Resolution to hold a joint session. This is achieved by either of two (2) ways: (1) both the Senate and the House of Representatives simultaneously adopting the Concurrent Resolution – an example would be when the two (2) Houses inform the President that they are ready to receive his State of the Nation Address or (2) For one (1) House to pass its own resolution and to send it to the other House for the latter's concurrence.** Once the joint session of both Houses is actually convened, it is only then that the Senate and the House of Representatives jointly adopt the Rules for the joint

session. x x x[80] (Emphases supplied.)

With neither Senate nor the House of Representatives adopting a concurrent resolution, no joint session by the two Houses of the Congress can be had in the present cases.

The Court is bound to respect the rules of the Congress, a co-equal and independent branch of government. Article VI, Section 16(3) of the 1987 Constitution states that "[e]ach House shall determine the rules of its proceedings." The provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption, and promulgation of its rules; and as such, the exercise of this power is generally exempt from judicial supervision and interference.[81] Moreover, unless there is a clear showing by strong and convincing reasons that they conflict with the Constitution, "all legislative acts are clothed with an armor of constitutionality particularly resilient where such acts follow a long-settled and well-established practice by the Legislature."[82] Nothing in this Decision should be presumed to give precedence to the rules of the Houses of the Congress over the provisions of the Constitution. This Court simply holds that since the Constitution does not regulate the manner by which the Congress may express its concurrence to a Presidential proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, the Houses of the Congress have the discretion to adopt rules of procedure as they may deem appropriate for that purpose.

The Court highlights the particular circumstance herein that **both Houses of Congress already separately expressed support for President Duterte's Proclamation No. 216, so revocation was not even a possibility** and the provision on revocation under Article VII, Section 18 of the 1987 Constitution requiring the Congress to vote jointly in a joint session never came into operation. It will be a completely different scenario **if either of the Senate or the House of Representatives, or if both Houses of the Congress, resolve/s to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*,** in which case, Article VII, Section 18 of the 1987 Constitution shall apply and the Congress must convene in joint session to vote jointly on the revocation of the proclamation and/or suspension. Given the foregoing parameters in applying Article VII, Section 18 of the 1987 Constitution, Justice Leonen's concern, expressed in his Concurring and Dissenting Opinion, that a deadlock may result in the future, is completely groundless.

The legislative precedent referred to by petitioners actually supports the position of the Court in the instant cases. On December 4, 2009, then President Macapagal-Arroyo issued Proclamation No. 1959, entitled

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80 Id. at 156-157.

81 *Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009).

82 *McGillicuddy v, Commissioner, Department of Agriculture, Food and Rural Resources,* 646 A.2d 354, July 22, 1994, citing *State v. Hills*, 574 A.2d 1357, 1358 (Me. 1990).

"*Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao, except for Certain Areas.*" The Senate, on December 14, 2009, adopted Resolution No. 217, entitled "*Resolution Expressing the Sense of the Senate that the Proclamation of Martial Law in the Province of Maguindanao is Contrary to the Provisions of the 1987 Constitution.*" Consequently, the Senate and the House of Representatives adopted Concurrent Resolutions, *i.e.*, Senate Concurrent Resolution No. 14 and House Concurrent Resolution No. 33, calling both Houses of the Congress to convene in joint session on December 9, 2009 at 4:00 p.m. at the Session Hall of the House of Representatives to deliberate on Proclamation No. 1959. It appears then that the two Houses of the Congress in 2009 also initially took separate actions on President Macapagal-Arroyo's Proclamation No. 1959, with the Senate eventually adopting Resolution No. 217, expressing outright its sense that the proclamation of martial law was unconstitutional and necessarily implying that such proclamation should be revoked. With one of the Houses favoring revocation, and in observation of the established practice of the Congress, the two Houses adopted concurrent resolutions to convene in joint session to vote on the revocation of Proclamation No. 1959.

For the same reason, the *Fortun* case cannot be deemed a judicial precedent for the present cases. The factual background of the *Fortun* case is not on all fours with these cases. Once more, the Court points out that in the *Fortun* case, the Senate expressed through Resolution No. 217 its objection to President Macapagal-Arroyo's Proclamation No. 1959 for being unconstitutional, and both the Senate and the House of Representatives adopted concurrent resolutions to convene in joint session for the purpose of revoking said proclamation; while in the cases at bar, the Senate and the House of Representatives adopted Senate Resolution No. 49 and House Resolution No. 1050, respectively, which expressed support for President Duterte's Proclamation No. 216, and both Houses of the Congress voted against calling for a joint session. In addition, the fundamental issue in the *Fortun* case was whether there was factual basis for Proclamation No. 1959 and not whether it was mandatory for the Congress to convene in joint session; and even before the Congress could vote on the revocation of Proclamation No. 1959 and the Court could resolve the *Fortun* case, President Macapagal-Arroyo already issued Proclamation No. 1963 on December 12, 2009, entitled "*Proclaiming the Termination of the State of Martial Law and the Restoration of the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao.*" Furthermore, the word "automatic" in the *Fortun* case referred to the duty or power of the Congress to review the proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, rather than the joint session of Congress.[83]

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[83] The Court wrote in the *Fortun* case, that "President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* before the joint houses of Congress could fulfill their **automatic duty** to review and validate or invalidate the same[;]" and "Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that

Petitioners invoke the following provision also in Article VII, Section 18 of the 1987 Constitution: "The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension convene in accordance with its rules without call." Petitioners reason that if the Congress is not in session, it is constitutionally mandated to convene within twenty-four (24) hours from the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, then it is with all the more reason required to convene immediately if in session.

The Court is not persuaded.

First, the provision specially addresses the situation when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus* while the Congress is in recess. To ensure that the Congress will be able to act swiftly on the proclamation and/or suspension, the 1987 Constitution provides that it should convene within twenty-four (24) hours without need for call. It is a whole different situation when the Congress is still in session as it can readily take up the proclamation and/or suspension in the course of its regular sessions, as what happened in these cases. *Second*, the provision only requires that the Congress convene without call, but it does not explicitly state that the Congress shall already convene in joint session. In fact, the provision actually states that the Congress "convene in accordance with its rules," which can only mean the respective rules of each House as there are no standing rules for joint sessions. And *third*, it cannot be said herein that the Congress failed to convene immediately to act on Proclamation No. 216. Both Houses of the Congress promptly took action on Proclamation No. 216, with the Senate already issuing invitations to executive officials even prior to receiving President Duterte's Report, except that the two Houses of the Congress acted separately. By initially undertaking separate actions on President Duterte's Proclamation No. 216 and making their respective determination of whether to support or revoke said Proclamation, the Senate and the House of Representatives were only acting in accordance with their own rules of procedure and were not in any way remiss in their constitutional duty to guard against a baseless or unjustified proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* by the President.

There is likewise no basis for petitioners' assertion that without a joint session, the public cannot hold the Senators and Representatives accountable for their respective positions on President Duterte's Proclamation No. 216. Senate records completely chronicled the deliberations and the voting by the Senators on Senate Resolution No. 49 (formerly P.S. Resolution No. 388) and P.S. Resolution No. 390. While it is true that the House of

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the Court must allow Congress to exercise its own review powers, which is **automatic** rather than initiated." (Supra note 18 at 556, 558.)

Representatives voted on House Resolution No. 1050 *viva voce*, this is only in accordance with its rules. Per the Rules of the House of Representatives:

RULE XV
Voting

> Sec. 115. *Manner of Voting.* – The Speaker shall rise and state the motion or question that is being put to a vote in clear, precise and simple language. The Speaker shall say "as many as are in favor, (*as the question may be*) say '*aye*'". After the affirmative vote is counted, the Speaker shall say "as many as are opposed, (*as the question may be*) say '*nay*'".
>
> If the Speaker doubts the result of the voting or a motion to divide the House is carried, the House shall divide. The Speaker shall ask those in favor to rise, to be followed by those against. If still in doubt of the outcome or a count by tellers is demanded, the Speaker shall name one (1) Member from each side of the question to count the Members in the affirmative and those in the negative. After the count is reported, the Speaker shall announce the result.
>
> An abstention shall not be counted as a vote. Unless otherwise provided by the Constitution or by these rules, a majority of those voting, there being a quorum, shall decide the issue.
>
> Sec. 116. *Nominal Voting.* – Upon motion of a Member, duly approved by one-fifth (1/5) of the Members present, there being a quorum, nominal voting on any question may be called. In case of nominal voting, the Secretary General shall call, in alphabetical order, the names of the Members who shall state their vote as their names are called.
>
> Sec. 117. *Second Call on Nominal Voting.* – A second call on nominal voting shall be made to allow Members who did not vote during the first call to vote. Members who fail to vote during the second call shall no longer be allowed to vote.

Since no one moved for nominal voting on House Resolution No. 1050, then the votes of the individual Representatives cannot be determined. It does not render though the proceedings unconstitutional or invalid.

<u>The Congress did not violate the right of the public to information when it did not convene in joint session.</u>

The Court is not swayed by petitioners' argument that by not convening in joint session, the Congress violated the public's right to information because as records show, the Congress still conducted deliberations on President Duterte's Proclamation No. 216, albeit separately; and the public's right to information on matters of national security is not absolute. When such matters are being taken up in the Congress, whether in separate or joint sessions, the Congress has discretion in the manner the proceedings will be conducted.

Petitioners contend that the Constitution requires a public deliberation process on the proclamation of martial law: one that is conducted *via* a joint session and by a single body. They insist that the Congress must be transparent, such that there is an "open and robust debate," where the evaluation of the proclamation's factual bases and subsequent implementation shall be openly discussed and where each member's position on the issue is heard and made known to the public.

The petitioners' insistence on the conduct of a "joint session" contemplates a mandatory joint Congressional session where public viewing is allowed.

However, based on their internal rules, each House has the **discretion** over the manner by which Congressional proceedings are to be conducted. Verily, sessions are generally open to the public,[84] but each House may decide to hold an **executive session due to the confidential nature of the subject matter** to be discussed and deliberated upon.

Rule XI of the Rules of the House of Representatives provides:

> Section 82. *Sessions Open to the Public.* - Sessions shall be open to the public. However, **when the security of the State** or the dignity of the House or any of its Members are affected by any motion or petition being considered, the House may hold executive sessions.
>
> Guests and visitors in the galleries are prohibited from using their cameras and video recorders. Cellular phones and other similar electronic devices shall be put in silent mode.
>
> Section 83. *Executive Sessions.* - When the House decides to hold an executive session, the Speaker shall direct the galleries and hallways to be cleared and the doors closed. Only the Secretary General, the Sergeant-at-Arms and other persons specifically authorized by the House shall be admitted to the executive session. They shall preserve the confidentiality of everything read or discussed in the session. (Emphasis supplied.)

Rule XLVII of the Rules of the Senate similarly sets forth the following:

> SEC. 126. The executive sessions of the Senate shall be held always behind closed doors. In such sessions, only the Secretary, the Sergeant-at-Arms, and/or such other persons as may be authorized by the Senate may be admitted to the session hall.
>
> SEC. 127. Executive sessions shall be held whenever a Senator so requests it and his petition has been duly seconded, or **when the security of the State or public interest so requires**. Thereupon, the President shall order that the public be excluded from the gallery and the doors of the session hall be closed.

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[84] See Rule XI, Section 82, The Rules of the House of Representatives.

> The Senator who presented the motion shall then explain the reasons which he had for submitting the same.
>
> The minutes of the executive sessions shall be recorded in a separate book. (Emphasis supplied)

From afore-quoted rules, it is clear that matters affecting the **security of the state** are considered **confidential** and must be discussed and deliberated upon in an **executive session**, excluding the public therefrom.

That these matters are considered confidential is in accordance with settled jurisprudence that, in the exercise of their right to information, the government may withhold certain types of information from the public such as **state secrets** regarding **military**, diplomatic, and **other national security matters**.[85] The Court has also ruled that the Congress' deliberative process, including information discussed and deliberated upon in an executive session,[86] may be kept out of the public's reach.

The Congress not only recognizes the sensitivity of these matters but also endeavors to preserve their confidentiality. In fact, Rule XLVII, Section 128[87] of the Rules of the Senate expressly establishes a **secrecy ban** prohibiting all its members, including Senate officials and employees, from divulging any of the confidential matters taken up by the Senate. A Senator found to have violated this ban faces the possibility of expulsion from his office.[88] This is consistent with the Ethical Standards Act[89] that prohibits public officials and employees from using or divulging "confidential or classified information officially known to them by reason of their office and not made available to the public."[90]

Certainly, the factual basis of the declaration of martial law involves intelligence information, military tactics, and other sensitive matters that have an undeniable effect on national security. Thus, to demand Congress to hold a public session during which the legislators shall openly discuss these matters, all the while under public scrutiny, **is to effectively compel them to make sensitive information available to everyone, without exception, and to breach the recognized policy of preserving these matters'**

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85 *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 586 Phil. 135, 162 (2008), citing *Almonte v. Vasquez*, 314 Phil. 150, 167 (1995); *Chavez v. Public Estates Authority*, 433 Phil. 506, 534 (2002).

86 *Chavez v. Philippine Commission on Good Government*, 360 Phil. 133, 162 (1998).

87 SEC. 128. The President as well as the Senators and the officials and employees of the Senate shall absolutely refrain from divulging any of the confidential matters taken up by the Senate, and all proceedings which might have taken place in the Senate in connection with the said matters shall be likewise considered as strictly confidential until the Senate, by two-thirds (2/3) vote of all its Members, decides to lift the ban of secrecy.

88 SEC. 129. Any Senator who violates the provisions contained in the preceding section may, by a two-thirds (2/3) vote of all the Senators, be expelled from the Senate, and if the violator is an official or employee of the Senate, he shall be dismissed.

89 Republic Act No. 6713, enacted on February 20, 1989, cited in *Chavez v. Philippine Commission on Good Government*, supra note 86.

90 Section 7, Republic Act No. 6713.

confidentiality, at the risk of being sanctioned, penalized, or expelled from Congress altogether.

That these are the separate Rules of the two Houses of the Congress does not take away from their persuasiveness and applicability in the event of a joint session. Since both Houses separately recognize the policy of preserving the confidentiality of national security matters, then in all likelihood, they will consistently observe the same in a joint session. The nature of these matters as confidential is not affected by the composition of the body that will deliberate upon it – whether it be the two Houses of the Congress separately or in joint session.

Also, the petitioners' theory that a regular session must be preferred over a mere briefing for purposes of ensuring that the executive and military officials are placed under oath does not have merit. The Senate Rules of Procedure Governing Inquiries In Aid of Legislation[91] require that **all witnesses at executive sessions or public hearings** who testify as to matters of fact shall give such testimony under oath or affirmation. The proper implementation of this rule is within the Senate's competence, which is beyond the Court's reach.

Propriety of the issuance of a writ of mandamus or certiorari

For *mandamus* to lie, there must be compliance with Rule 65, Section 3, Rules of Court, to wit:

> SECTION 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Jurisprudence has laid down the following requirements for a petition for *mandamus* to prosper:

> [T]hus, a petition for mandamus will prosper if it is shown that the subject thereof is a **ministerial act or duty**, and not purely discretionary on the part of the board, officer or person, and that the **petitioner has a well-defined, clear and certain right to warrant the grant thereof.**

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91 Sec. 12. Testimony Under Oath. All witnesses at executive sessions or public hearings who testify as to matters of fact shall give such testimony under oath or affirmation. Witnesses may be called by the Committee on its own initiative or upon the request of the petitioner or person giving the information or any person who feels that he may be affected by the said inquiry.

> The difference between a ministerial and discretionary act has long been established. **A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.**[92] (Emphases added.)

It is essential to the issuance of a writ of *mandamus* that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. *Mandamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[93]

Although there are jurisprudential examples of the Court issuing a writ of *mandamus* to compel the fulfillment of legislative duty,[94] we must distinguish the present controversy with those previous cases. In this particular instance, the Court has no authority to compel the Senate and the House of Representatives to convene in joint session absent a clear ministerial duty on its part to do so under the Constitution and in complete disregard of the separate actions already undertaken by both Houses on Proclamation No. 216, including their respective decisions to no longer hold a joint session, considering their respective resolutions **not to revoke** said Proclamation.

In the same vein, there is no cause for the Court to grant a writ of *certiorari*.

As earlier discussed, under the Court's expanded jurisdiction, a petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[95] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty

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92 *Velasco v. Belmonte, Jr.*, G.R. No. 211140, January 12, 2016, 780 SCRA 81, 119 citing *Codilla, Sr. v. De Venecia*, 442 Phil. 139, 189 (2002).

93 *University of San Agustin, Inc. v. Court of Appeals*, 300 Phil. 819, 830 (1994).

94 *See Velasco v. Belmonte, Jr.*, supra note 92 at 123, citing *Codilla, Sr. v. De Venecia*, supra note 92 at 188-189.

95 *Jardeleza v. Sereno*, 741 Phil. 460, 491 (2014).

or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[96] It bears to mention that to pray in one petition for the issuance of both a writ of *mandamus* and a writ of *certiorari* for the very same act – which, in the Tañada Petition, the non-convening by the two Houses of the Congress in joint session – is contradictory, as the former involves a mandatory duty which the government branch or instrumentality must perform without discretion, while the latter recognizes discretion on the part of the government branch or instrumentality but which was exercised arbitrarily or despotically. Nevertheless, if the Court is to adjudge the petition for *certiorari* alone, it still finds the same to be without merit. To reiterate, the two Houses of the Congress decided to no longer hold a joint session only after deliberations among their Members and putting the same to vote, in accordance with their respective rules of procedure. Premises considered, the Congress did not gravely abuse its discretion when it did not jointly convene upon the President's issuance of Proclamation No. 216 **prior to expressing its concurrence thereto**.

WHEREFORE, the petitions are **DISMISSED** for lack of merit.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

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96 *Limkaichong v. Land Bank of the Phils.*, G.R. No. 158464, August 2, 2016.

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

See separate concurring and dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

I join J. Leonen

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT