

G.R. No. 235935 – REPRESENTATIVES EDCCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, and EMMANUEL A. BILLONES, *Petitioners*, v. SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO, and ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, *Respondents*;

G.R. No. 236061 – EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, ATTY. NERI JAVIER COLMENARES, DR. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., CRISTINA E. PALABAY, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA'S WOMEN'S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS and ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS' REPRESENTATIVES ANTONIO L. TINIO and FRANCISCA L. CASTRO, and KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, *Petitioners*, v. PRESIDENT RODRIGO DUTERTE, SENATE PRESIDENT AQUILINO PIMENTEL III, HOUSE SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, and PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD DELA ROSA, *Respondents*;

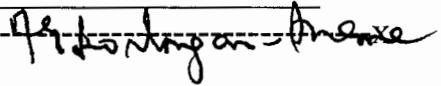
G.R. No. 236145 – LORETA ANN P. ROSALES, *Petitioner*, v. PRESIDENT RODRIGO R. DUTERTE, represented by EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, MARTIAL LAW ADMINISTRATOR SECRETARY DELFIN N. LORENZANA, MARTIAL LAW IMPLEMENTER GENERAL REY L. GUERRERO, and PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL RONALD M. DELA ROSA, and the CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES, represented by SENATE PRESIDENT AQUILINO Q. PIMENTEL III, and the HOUSE OF REPRESENTATIVES, represented by HOUSE SPEAKER PANTALEON D. ALVAREZ, *Respondents*; and

G.R. No. 236155 – CHRISTIAN S. MONSOD, DINAGAT ISLANDS REPRESENTATIVE ARLENE J. BAG-AO, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, NICOLENE S. ARCAINA, and JOSE RYAN S.

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

Promulgated:

February 6, 2018

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

Before the Court are consolidated petitions¹ which assail the sufficiency of the factual basis of Resolution of Both Houses No. 4² dated December 13, 2017,³ that further extended the effectivity of Proclamation No. 216,⁴ entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao,”⁵ from January 1, 2018 to December 31, 2018. Pertinent portions of this Resolution read:

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines “to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may

¹ There are four (4) petitions filed assailing the martial law extension. The Petition in G.R. No. 235935 was filed on December 27, 2017, while the Petition in G.R. No. 236061 was filed on January 8, 2018. Petitions in G.R. No. 236145 and G.R. No. 236155 were both filed on January 12, 2018.

² Entitled “RESOLUTION OF BOTH HOUSES FURTHER EXTENDING PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED “DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO” FOR A PERIOD OF ONE (1) YEAR FROM JANUARY 1, 2018 TO DECEMBER 31, 2018.”

³ See Annex “A” of Memorandum for the Petitioner in G.R. No. 236145 dated January 24, 2018.

⁴ Issued on May 23, 2017.

⁵ See Annex “1” of the Comment of respondents dated January 8, 2018.

determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution”;

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People’s Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country’s democratic form of government with Communist rule;

x x x x

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao: Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session Assembled, To further extend Proclamation No. 216, Series of 2017, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao” for a period of one (1) year from January 1, 2018 to December 31, 2018.

I. Parameters of Review.

At the onset, it should be pointed out that the Court’s parameter of review over this case remains the same as its parameter of review over President Rodrigo Roa Duterte’s (the President) initial proclamation of martial law, as was undertaken by this Court in the consolidated cases of *Representatives Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, Executive Secretary, et al.*, G.R. Nos. 231658, 231771, and 231774 (*Lagman v. Medialdea*).⁶ Section 18, Article VII of the 1987 Constitution (Section 18, Article VII) vests unto this Court special jurisdiction to review, in an appropriate proceeding filed by any citizen, not only the **sufficiency of the**

⁶ See Decision in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, July 4, 2017. The Resolution on the motion for reconsideration was promulgated on December 5, 2017.

factual basis of the proclamation of martial law, but also “the extension thereof,” *viz.*:

Section 18. x x x.

x x x x

The Supreme Court may review, in an **appropriate proceeding** filed by any citizen, the **sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ **or the extension thereof**, and must promulgate its decision thereon within thirty days from its filing. (Emphases and underscoring supplied)

In my Separate Opinion in *Lagman v. Medialdea*, I have explained that the term “sufficient factual basis” under Section 18, Article VII is a conceptually novel and distinct parameter of review, which should not be equated to the gauge of arbitrariness (as in the standard of grave abuse of discretion in *certiorari* cases) but should, instead, be construed in its generic sense – that is, adequate proof of compliance with the constitutional requisites. Thus, insofar as reviewing the President’s proclamation of martial law, the parameter and its underlying considerations were summed up as follows:

[T]he parameter “sufficient factual basis” under Section 18, Article VII of the Constitution simply means that there is adequate proof to show that the President had complied with the two requisites to impose martial law. These requisites are: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same.

There is adequate proof that the President complied with the first requisite if the elements of rebellion as defined in Article 134 of the RPC concur; this means that the rebellion is not merely imminent but has been actually consummated.

On the other hand, there is adequate proof that the President complied with the second requisite if it is shown that the public safety demands the imposition of martial law under a particular territorial extent; since public safety is a malleable concept, the Court should then gauge whether or not there is a reasonable need to impose martial law in light of the exigencies of the situation and concomitantly, whether its territorial extent is rationally commensurate to the said exigencies.⁷

Although the parameter of review remains the same, the object of review in this case is different. Here, the object of review is not the President’s initial proclamation of martial law – as in Proclamation No. 216 decided in *Lagman v. Medialdea* – but rather, the Congress’ extension of the President’s martial law proclamation, as embodied in Resolution of Both Houses No. 4 dated December 13, 2017. As such, there is no reason to apply the principle of conclusiveness of judgment as respondents would suppose.⁸

⁷ See my Separate Opinion in *Lagman v. Medialdea*, *id.*, p. 22.

⁸ See Comment of respondents dated January 8, 2018; pp. 8-10; and Memorandum for the Respondents dated January 24, 2018, pp. 38-40.

Notably, while Congress had, in fact, earlier extended Proclamation No. 216⁹ through Resolution of Both Houses No. 2¹⁰ dated July 22, 2017,¹¹ the Constitution does not proscribe any limitation on either (a) the number of times an extension may be made, or (b) the duration of time for which a particular extension may be made. Thus, contrary to petitioners' postulation,¹² Congress is not precluded from either extending martial law for a second time or extending martial law for a period of more than sixty (60) days.

Pursuant to Section 18, Article VII, the power to extend martial law belongs to Congress; however, the exercise of this power is “[u]pon the initiative of the President”:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

x x x x (Emphasis and underscoring supplied)

Being a power specifically conferred unto Congress, it is not bound by the recommendation of the President regarding any proposed extension; thus, it may engage in its own independent examination on the matter, and consequently, may arrive at its own reasons in deciding on whether or not to extend martial law. In this sense, Congress – being composed of the duly-elected representatives of the people – acts as a legislative body in deciding whether or not to extend martial law in our country, and necessarily, if an extension is so decided, sets the extension's terms as it deems fit.

⁹ Proclamation No. 216 was to end on July 22, 2017, or the last day of the sixty (60)-day period provided under Section 18, Article VII. Pursuant to Resolution of Both Houses No. 2 dated July 22, 2017, Proclamation No. 216 was originally extended until December 31, 2017.

¹⁰ Entitled “RESOLUTION OF BOTH HOUSES EXTENDING UNTIL 31 DECEMBER 2017 PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED “DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO.”

¹¹ See Annex “B” of the Petition in G.R. No. 235935.

¹² See discussions in the Petitions: G.R. No. 235935, pp. 20-25; and G.R. No. 236061, pp. 28-30.

However, as observed during the deliberations on the 1987 Constitution, Congress' decision-making process would necessarily be in consultation with the President.¹³ This is because it is the President who not only seeks the proclamation's extension but also ultimately possesses the information and expertise to deal with a persisting invasion or rebellion. As pointed out in *Lagman v. Medialdea*:

“It is for the President as Commander-in-Chief of the Armed Forces to appraise these [classified evidence or documents/]reports and be satisfied that the public safety demands the suspension of the writ.” Significantly, respect to these so-called classified documents is accorded even “when the authors of or witnesses to these documents may not be revealed.”

In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.¹⁴

¹³ THE PRESIDENT. Commissioner Azcuna is recognized.

MR. AZCUNA. Thank you, Madam President.

I would like to offer an amendment to Section 15, line 7 of page 7. After the word “or,” insert a comma (,) and add the phrase: AT THE INSTANCE OF THE PRESIDENT, so that the amended portion will read: “may revoke such proclamation or suspension which revocation shall not be set aside by the President, or AT THE INSTANCE OF THE PRESIDENT extend the same if the invasion or rebellion shall persist and public safety requires it.

May we know the reaction of the Committee? The reason for this, Madam President, is that the extension should not merely be an act of Congress but should be requested by the President. Any extension of martial law or the suspension of the privilege of the writ of *habeas corpus* should have the concurrence of both the President and Congress. Does the Committee accept my amendment?

MR. REGALADO. The Committee accepts that amendment because it will, at the same time, solve the concern of Commissioner Suarez, aside from the fact that this will now be a **joint executive and legislative act**.

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MR. OPLE. May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that [sic] point was going to be a collective judgment between the President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS. Not really, Madam President, **because Congress would be doing this in consultation with the President**, and the President would be outvoted by about 300 Members.

MR. OPLE. Yes, but still **the idea is to preserve the principle of collective judgment** of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS. Yes, **the participation of the President is there but by giving the final decision to Congress**, we are also preserving the idea that the President may not revoke what Congress has decided upon. (II RECORD, CONSTITUTIONAL COMMISSION, 507-509 [July 31, 1986]; emphases and underscoring supplied)

¹⁴ See *Lagman v. Medialdea*, supra note 6, p. 68.

While Congress makes the final decision, this necessary interaction between the political branches of government shows that the entire process of extending the proclamation of martial law is – as described by the Framers – a “joint executive and legislative act,”¹⁵ animated by the “principle of collective judgment.”¹⁶

Meanwhile, same as reviewing the President’s power to proclaim martial law, the Court acts as a check to the Congress’ power to extend martial law. In the latter respect, the Court’s task, upon the institution of the appropriate proceeding by any citizen, is to determine if there is sufficient factual basis to show that: (a) the invasion or rebellion still persists; and (b) public safety requires the extension. Pursuant to Section 18, Article VII of the 1987 Constitution, these two (2) requirements ought to be satisfied by Congress before it may properly decree a martial law extension.

II. Persistence of Rebellion.

In my Separate Opinion in *Lagman v. Medialdea*, I have discussed the unique nature of rebellion and in such light, broached how the concept of “actual rebellion” should be understood under the Constitution’s martial law provision:

[I]n light of the nature of rebellion (1) as a movement, (2) as a complex net of intrigues and plots, (3) as a continuing crime, and (4) as a political offense, it is my view that this Court cannot confine the concept of rebellion to the actual exchange of fire between the accused rebels and the forces of the government. As above-intimated, the taking up of arms against the government is only what consummates the crime of rebellion in order to prosecute those accused thereof under the RPC. **However, up until that movement stops (for instance, when the rebels surrender or are caught by government operatives), it is my opinion that the rebellion continues to survive in legal existence.**

X X X X

[T]he crime of rebellion defies our ordinary impression that a crime’s occurrence can be pinpointed to a definite territory, much less its existence bounded to a particular moment in time. Because of its nature, rebellion is hardly compatible with the norms of spatial and temporal limitability, as usually applied in our criminal law. It is in this specific light that we should understand the concept of an actual rebellion under the Constitution’s martial law provision.¹⁷

As above-highlighted, it has been my position that a rebellion, because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops, such as when the rebels have already surrendered or that they are caught by government operatives. As it may,

¹⁵ II RECORD, CONSTITUTIONAL COMMISSION, 508 (July 31, 1986).

¹⁶ *Id.* at 509.

¹⁷ See my Separate Opinion in *Lagman v. Medialdea*, *supra* note 6, pp. 16 and 18.

however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then a satisfactory showing of the rebel movement's substantial inactivity or loss of capability to mount a public uprising would reasonably suffice.

In this case, however, there is no evidence to show that the rebel movement in Mindanao, comprised of the Maute-Hapilon Group and other rebel groups under the DAESH/ISIS¹⁸ front, has been substantially inactive or has lost the capability to mount a public uprising. On the contrary, respondents have competently proven that these rebels have, in fact, regrouped, thereby demonstrating that the rebellion still persists.

Records show that respondents' determination was arrived at based on field reports and technical data coming from no less than the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). The information gathered by our troops on the ground was then conveyed by the President in his December 8, 2017 letter to Congress:

On 04 December 2017[,] I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, stating that "based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers x x x." A copy of Secretary Lorenzana's letter (together with a copy of the letter of AFP Chief Guerrero) is attached for your convenient reference.¹⁹

In the same letter, the President summed up the security assessment of the AFP, as supported by the PNP, into five (5) integral points. These points constitute the reasons which impelled the President to seek a further extension of martial law from January 1, 2018 to December 31, 2018:

The security assessment submitted by the AFP, supported by a similar assessment by the Philippine National Police (PNP), highlights certain essential facts that I, as Commander-in-Chief of all armed forces of the Philippines, have personal knowledge of.

¹⁸ Acronym of the group's full Arabic name, *al-Dawla al-Islamiya fi al-Iraq wa al-Sham*, translated as "Islamic State in Iraq and Syria." (See Letter to Congress of the President dated July 18, 2017, Annex "D" of the Petition in G.R. No. 236145).

¹⁹ See Letter dated December 8, 2017 of the President; Annex "E" of the Petition in G.R. No. 236145, p. 2.

First, despite the death of Hapilon and the Maute brothers, the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-large and, in all probability, are presently regrouping and consolidating their forces.

More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/ reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and of a *Wilayat* not only in the Philippines but also in the whole of Southeast Asia.

Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH [*Wilayat*] in the Philippines and Southeast Asia.

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) [continues] to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.

Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.

x x x x²⁰ (Emphases and underscoring supplied)

Notably, Congress adopted these same considerations as evinced from the text of Resolution of Both Houses No. 4:

²⁰ See *id.* at 2-3.

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting, the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters [continues] to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule[.]

As correctly observed by the *ponencia*, “[t]he reasons cited by the President in his request for further extension [of martial law] indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its ‘remnants’ have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces[,] and continued attacks.”²¹ These “remnants”, as explained by the respondents, “are capable of launching retaliatory attacks against the Government and sowing acts of terrorism against the civilian population to wrest control of Mindanao and continue their bid to establish a *wilayah* in the region. In addition, they have established linkages with other rebel groups such as the BIFF, AKP, ASG, DI Maguid, DI Turaifie who are capable of perpetrating strategic and well-coordinated mass casualty attacks to overthrow the present government.”²²

As further elaborated upon by the AFP during the oral arguments of this case, the manpower of the *Dawlah Islamiyah*, which is the DAESH-affiliate organization in the Philippines responsible for the Marawi Siege and is composed of several local terrorist groups, “increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the [DAESH]-inspired groups at their respective areas of concentration.”²³ “These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives and parents during the Marawi operations; financial gain as new recruits were given an amount

²¹ *Ponencia*, p. 40.

²² See Memorandum for the Respondents dated January 24, 2018, p. 30.

²³ Statement of AFP Deputy Chief of Staff for Intelligence Major General Fernando Trinidad during a Power Point briefing in the Oral Arguments, TSN, January 17, 2018, pp. 58-59.

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ranging from Php15,000.00 to Php50,000.00; [and] as radicalized converts.”²⁴ Furthermore, the AFP has expressed concerns that “the situation has [in fact] become [more] complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 [FTFs] were monitored joining the [DAESH]-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with Abu DAR who has historically established link with Turaifie.”²⁵

Based on this information, it is thus highly apparent that the rebellion subject of Proclamation No. 216 still persists. Petitioners did not only fail to refute the data presented to this Court by the government, but more so, have mistakenly equated the end of the rebellion with the so-called liberation of Marawi City. While it is true that the President had himself declared the liberation of Marawi City on October 17, 2017,²⁶ this declaration only signifies the fact that the actual firefighting between the rebels and government forces in the said city had been halted. However, as stated in my Separate Opinion in *Lagman v. Medialdea*, the rebellion survives in legal existence up until the rebellious movement stops.²⁷ The cessation of the actual exchange of fire between the rebels and government forces is not enough to declare an end to the rebellion as these rebels may as well regroup and shore up their strength, as in fact, what happened in this case. Besides, as aptly noted by the *ponencia*, the announced liberation of Marawi City (on October 17, 2017) was made “nearly two months before the President’s request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through its monitoring efforts.”²⁸ As held in *Lagman v. Medialdea*, “Congress may take into consideration not only data available prior to, but likewise events supervening the declaration.”²⁹

To clarify, these supervening events should not only pertain to the regrouping efforts of the aforestated rebel “remnants” but also the inclusion of other rebel groups, such as the BIFF, the Turaifie Group and the NPA, whose rebellious activities during the supervening period may have amplified – if not, complicated – the situation. As the Constitution reads, the persistence of an invasion or rebellion (together with the public requirement) is sufficient for an extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation. If such were the case, then (a) the Constitution would have so stated or the Framers would have so discussed this requirement; or (b) the President would have to impractically

²⁴ Id.

²⁵ Id. at 60.

²⁶ Petition (G.R. No. 235935), p. 4; Petition (G.R. No. 236061), p. 10; Petition (G.R. No. 236145), p. 5; and Petition (G.R. No. 236155), p. 12.

²⁷ See my Separate Opinion in *Lagman v. Medialdea*, supra note 6, p. 16.

²⁸ *Ponencia*, p. 43.

²⁹ See *Lagman v. Medialdea*, supra note 6, p. 28.

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issue a separate martial law proclamation just to cover the supervening activities of other rebel groups when, in reality, the government has to deal with the entire impact of a state of rebellion.

Besides, while not specifically identified in Proclamation No. 216, the President mentioned of “other rebel groups” therein and had, in fact, considered the siege of Marawi City as a demonstration of the capability of the Maute Group, as well as of these “other rebel groups” “to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.”³⁰ As such, it can be reasonably inferred that the identification of the Maute Group in Proclamation No. 216 was not meant to be exclusive. In this relation, the Court in *Lagman v. Medialdea*, had, in fact, recognized “the widespread atrocities in Mindanao and the linkages established among rebel groups,” concluding that “the armed uprising that was initially staged in Marawi cannot be justified as confined only to Marawi.”³¹ Thus, the President and the Congress’ consideration of these other rebel groups, while not specifically named in Proclamation No. 216, should be deemed as reasonable. Finally, while the NPA has been recognized to be a “decades-long rebellion,” the *ponencia* correctly states that its “‘intensified’ insurgence clearly bears a significant impact on the security of Mindanao and the safety of its people, which were the very reasons for the martial law proclamation and its initial extension.”³² Thus, the NPA’s inclusion should not render the subject extension void.

III. Public Safety Requires the Extension of Martial Law.

The Constitution not only requires the persistence of rebellion but also, that public safety still requires its extension. As earlier stated, not only does Congress have the power to decide whether or not to extend a proclamation of martial law, it also has the power to dictate the terms of extension, which includes, of course, the extension’s length.

In my Separate Opinion in *Lagman v. Medialdea*, I have discussed that “the second requirement [on public safety] is a more malleable concept of discretion, whereby deference to the prudential judgment of the President, as Commander-in-Chief, to meet the exigencies of the situation should be properly accorded.”³³ However, I have qualified that “our deference x x x must be circumscribed within the bounds of truth and reason[:]”³⁴ truth relates to the Court’s duty to ascertain the veracity of the facts presented by the government, whereas reasonableness may be determined through an overall appreciation of the surrounding circumstances. With respect to the

³⁰ WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao. (See Proclamation No. 216.)

³¹ See *Lagman v. Medialdea*, supra note 6, p. 78.

³² *Ponencia*, p. 49.

³³ See my Separate Opinion in *Lagman v. Medialdea*, supra note 6, p. 12.

³⁴ See *id.* at 20.

latter, the Court may consider “the reported armed capabilities, resources, influence, and connections of the rebels”; “the historical background of the rebel movement”; and further, “the President’s estimation of the rebels’ future plan of action. If the estimation, when taken together with all the foregoing factors, does not seem implausible or farfetched, then this Court should defer to the President’s military strategy.”³⁵

In this case, the President requested Congress to extend martial law over the entire Mindanao from January 1, 2018 to December 31, 2018 based on his prudential estimation that it would take such period of time to quell the rebellion:

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will help the AFP, the [PNP], and all other law enforcement agencies to quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country. Public safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.

For all these reasons, I ask the Congress of the Philippines to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution.³⁶

After due deliberation, Congress had overwhelmingly acceded to this request, thereby showing its deference to the President as this country’s chief military strategist:

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao: Now, therefore, be it

*Resolved by the Senate and the House of Representatives in a Joint Session Assembled, To further extend Proclamation No. 216, Series of 2017, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao” for a period of one (1) year from January 1, 2018 to December 31, 2018.*³⁷

³⁵ See *id.* at 21.

³⁶ See Letter dated December 8, 2017 of the President, Annex “E” of the Petition in G.R. No. 236145, p. 5.

³⁷ See Resolution of Both Houses No. 4 dated December 13, 2017, Annex “A” of the Memorandum for the Petitioner in G.R. No. 236145.

As explained by Associate Justice Marvic M.V.F. Leonen in his Dissenting Opinion in *Lagman v. Medialdea*, “Congress deals primarily with the wisdom behind the proclamation x x x” and “[m]uch deference is x x x accorded to [it] x x x when it comes to determining the wisdom behind the imposition or continued imposition of martial law or the suspension of the writ.”³⁸

The *ponencia* finds that “[t]he facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it.”³⁹ As detailed in the *ponencia*, the following circumstances and events demonstrate the public necessity to extend martial law over the entire Mindanao:

(a) No less than 185 persons in the Martial Law Arrest Orders have remained at large. Remnants of the Hapilon and Maute groups have been monitored by the AFP to be reorganizing and consolidating their forces in Central Mindanao, particularly in Maguindanao, North Cotabato, Sulu and Basilan, and strengthening their financial and logistical capability.

(b) After the military operation in Marawi City, the Basilan-based ASG, the Maute Group, the Maguid Group and the Turaifie Group, comprising the DAESH-affiliate Dawlah Islamiyah that was responsible for the Marawi siege, was left with 137 members and a total of 166 firearms. These rebels, however, were able to recruit 400 new members, more or less, in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.

(c) The new recruits have since been trained in marksmanship, bombing and tactics in different areas in Lanao del Sur. Recruits with great potential are trained in producing Improvised Explosive Devices (IEDs) and urban operations. These new members are motivated by their clannish culture, being relatives of terrorists, by revenge for relatives who perished in the Marawi operations, by money as they are paid ₱15,000.00 to ₱50,000.00, and by radical ideology.

(d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits. Foreign terrorists, from Southeast Asian countries, particularly from Indonesia and Malaysia, will continue to take advantage of the porous borders of the Philippines and enter the country illegally to join the remnants of the DAESH/ISIS-inspired rebel groups.

(e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Sarangani province. In December 2017, 16 Indonesian DAESH-inspired FTFs entered the Southern Philippines to augment the ASG-Basilan and Maute groups in the Lanao province. In January 2018, an unidentified Egyptian DAESH figure was monitored in the Philippines.

³⁸ See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen in *Lagman v. Medialdea*, supra note 6, p. 20; emphasis and underscoring supplied.

³⁹ *Ponencia*, p. 57.

(f) At least 32 FTFs were killed in the Marawi operations. Other FTFs attempted to enter the main battle area in Marawi, but failed because of checkpoints set up by government forces.

(g) “The DAESH-inspired DIWM groups and their allies continue to visibly offer armed resistance in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City.” There were actually armed encounters with the remnants of said groups.

(h) “Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype [Turaifie], and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga, and Cotabato.”

(i) The Turaifie [G]roup conducts roadside bombings and attacks against government forces, civilians and populated areas in Mindanao. The group plans to set off bombings in Cotabato.

(j) The Maute Group, along with foreign terrorists, were reported to be planning to bomb the cities of Zamboanga, Iligan, Cagayan de Oro and Davao.

(k) The remaining members of the ASG-Basilan have initiated five violent attacks that killed two civilians.

(l) In 2017, the remnants of the ASG in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula, conducted 43 acts of violence, including IED attacks and kidnapping which resulted in the killing of eight innocent civilians, three of whom were mercilessly beheaded. Nine kidnap victims are still held in captivity.

(m) Hapilon’s death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve the common goal of establishing a DAESH-ISIS *wilayat* in Mindanao. This likely merger may spawn retaliatory attacks such as IED bombings, in urban areas, particularly in the cities of Zamboanga, Isabela and Lamitan.

(n) By AFP’s assessment, the ISIS’ regional leadership may remain in the Southern Philippines and with the defeat of ISIS in many parts of Syria and Iraq, some hardened fighters from the ASEAN may return to this region to continue their fight. The AFP also identified four potential leaders who may replace Hapilon as emir or leader of the ISIS forces in the Philippines. It warned that the Dawlah Islamiyah will attempt to replicate the Marawi siege in other cities of Mindanao and may conduct terrorist attacks in Metro Manila and Davao City as the seat of power of the Philippine Government. With the spotlight on terrorism shifting from the Middle East to Southeast Asia following the Marawi siege, the AFP likewise indicated that the influx of FTFs in the Southern Philippines will persist. The AFP further referred to possible lone-wolf attacks and atrocities from other DAESH-inspired rebel groups in vulnerable cities like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.⁴⁰

⁴⁰ Id. at 50-53.

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Petitioners, for their part, have failed to disprove the occurrence of the foregoing circumstances and events. They instead, harp on the allegation that due to the liberation of Marawi City, martial law is not anymore necessary to preserve the public's safety.⁴¹ Clearly, such narrow reasoning cannot prevail over the President and the Congress' holistic appreciation of the case. With intelligence reports showing that the Maute Group has, in fact, regrouped and that other rebel groups have either linked with the DAESH/ISIS front or have taken advantage of the situation and intensified their operations, the threat to public safety undoubtedly remains present. As to whether or not the objective of resolving such threat can be achieved in one (1) year – to my mind – this Court is hardly competent to provide a precise estimation. The Court's task is to determine the sufficiency of the extension's factual basis and in so doing, (a) vet if the facts presented are true, and (b) assess if the decreed extension is reasonable. As earlier intimated, if the President's estimation does not appear to be implausible or farfetched, then this Court should defer to his plan of action, especially so since Congress has further given its assent. Notably, AFP Chief of Staff General Rey Leonardo Guerrero asked this Court during the oral arguments of this case to trust their years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions which may spell the difference between life and death.⁴² In this case, no cogent cause has been shown for this Court to deny this trust to its co-equal branches of government.

⁴¹ See Petition (G.R. No. 235935), p. 4; Petition (G.R. No. 236061), p. 10; Petition (G.R. No. 236145), p. 5; and Petition (G.R. No. 236155), p. 12.

⁴² General [Rey Leonardo] Guerrero:

Thank you, Your Honor. If I may be allowed to respond[.]


Yes, Your Honor, it has been a challenge[.] [I]t's been challenging to answer to [*sic*] your questions propounded here before me because, clearly, Your Honor, what is expected of me is to try to dissect definitions of sections about how the military operates[.] [w]hen in truth and in fact, Sir, the military operates in a manner that is hard to explain to legal minds, [and] to people from the other professions. We based our decisions partly on information that we gather[.] [I]n some instances, [they] are imperfect. We take risks [–] calculated risks, and normally we also rely on our gut feel, which is for many people probably would not understand. But our gut feel is based on our years of experience in the field, in combat[.] or we make decisions in a split of a second. Our decision could necessarily result in the loss of lives, destruction of property. This afternoon, Your Honors, we presented to you the reasons why we [are] recommending for the extension of martial law. We provided you with the factual basis of the existence of rebellion in Mindanao. And as to the powers that you are referring to, the powers that we need, it is upon you, what powers you will give us. We are not asking for any powers, Your Honor. But clearly[.] with the implementation of martial law, you have been abled us, you have been able to provide us with the much needed support that we have been longing for, for us to be successful in our campaign and we have done that in Marawi. And if you will allow us, we will continue to do that and finish our job. We are not asking for any extra powers, Your Honors.

x x x x

What we are asking is for you to trust us[. t]he people in Marawi, the people in Mindanao[. t]hat we have been able to talk to clearly understand the situation of the military in so far as our performance of our mission is concerned. We hope that your will also understand our situation. x x x.
(TSN, Oral Arguments dated July 17, 2018, pp. 157-158.)

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Thus, considering that there exists sufficient factual basis to show that the rebellion still persists and that public safety requires the extension of martial law under the terms stated in Resolution of Both Houses No. 4 dated December 13, 2017, I vote to **DISMISS** the consolidated petitions.


ESTELA M. PERLAS-BERNABE
Associate Justice