

G.R. Nos. 235935 – *Representatives Edcel C. Lagman, et al., petitioners, v. Senate President Aquilino Pimentel III, et al., respondents.*

G.R. No. 236061 – *Eufemia Campos Cullamat, et al., petitioners, v. President Rodrigo Duterte, et al., respondents.*

G.R. No. 236145 – *Loreta Ann P. Rosales, petitioner, v. President Rodrigo Duterte, et al., respondents.*

G.R. No. 236155 – *Christian S. Monsod, et al., petitioners, v. Senate President Aquilino Pimentel III, et al., respondents.*

Promulgated:

February 6, 2018

X-----*Alfonso C. Dena*-----X

CONCURRING OPINION

I concur with the findings and conclusions of the *ponencia* upholding the constitutionality of Resolution of Both Houses No. 4, which extended the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao from January 1 to December 31, 2018.

In the earlier case of *Lagman v. Medialdea*,¹ the Court upheld the constitutionality of Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. The Court, in that case, found that “the parameters for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* [i.e. 1) actual rebellion or invasion; and 2) public safety requirement] have been properly and fully complied with.”² Hence, the Court ruled that, “Proclamation No. 216 has sufficient factual basis, there being probable cause to believe that rebellion exists, and that public safety requires the martial law declaration and the suspension of the privilege of the writ of *habeas corpus*.”³

Using the same parameters as in *Lagman*, the Court is now tasked to review the sufficiency of the factual bases of Resolution of Both Houses No. 4, further extending the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao from January 1 to December 31, 2018, to wit:

¹ *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

² *Id.*

³ *Id.*

First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion;

Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area;

Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato;

Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern;

and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;⁴

Existence of Actual Rebellion

In *Lagman*, the Court found that actual rebellion existed in the whole of Mindanao. In this case, the question is whether the same rebellion still exists.

I am convinced that it does as the "liberation of Marawi" did not end the rebellion. Marawi, as found by the Court in *Lagman*, was only the staging point of the rebellion as the target was the whole of Mindanao.⁵ The fact that the surviving members of the Maute group have not surrendered and are even recruiting new members despite the death of Hapilon and the Maute brothers clearly proves that the rebellion persists. The violent incidents perpetrated by the Bangsamoro Islamic Freedom Fighters (BIFF) in Mindanao likewise negate petitioners' position that the rebellion has been quelled by the "liberation of Marawi." Thus, I believe that while the government may have won the battle in Marawi, the war against the rebellion is still ongoing.

Moreover, I agree with the *ponencia* that the inclusion of the New Peoples Army (NPA) as basis for the further extension will not render void Resolution of Both Houses No. 4. Although the NPA group was not expressly included in Proclamation No. 216 as one of the "other rebel groups," their attacks may nevertheless be used as factual bases for the extension considering that these contributed to the violence and even aggravated the situation in Mindanao.

⁴ Resolution of Both Houses No. 4, dated December 13, 2017.

⁵ *Supra* note 1.



To put things in perspective, let us say Country A invades Mindanao and immediately thereafter, the President issues a proclamation declaring martial law in the entire Mindanao. After two weeks, Country B then decides to join the war in the hope of taking over a portion of Mindanao. Under the circumstances, is the President still required to make another proclamation for the invasion by Country B? Obviously not -- as it would be superfluous and impractical considering the President already declared martial law to stop the invasion of Mindanao. So, instead of promulgating a separate declaration of martial law, the President may just ask Congress for an extension based on the original invasion, which continues to exist, with the invasion by Country B as an additional factual basis for the extension.

In this case, the attacks carried out by the NPA are but additional factual bases which may be used to support the findings of the President and the Congress that the rebellion persists in the whole of Mindanao. In fact, whether or not the NPA group was used as a basis for the extension does not change the fact that the rebellion started by Hapilon and the Maute brothers continues to exist in Mindanao.

Theater of War

Citing portions of the deliberations of the framers of the 1987 Constitution, petitioners Rosales, et al. and Monsod, et al. advance the theory that for martial law to be valid, it must be in the context of an actual "theater of war" due to a rebellion or invasion.⁶ Under this theory, martial law can only be declared in an area where there is actual armed conflict.⁷

There is, however, nothing in the deliberations to support their theory. Quoted below are the pertinent portions of the deliberations:

SR. TAN: Yes. Thank you.

The other question is also on the same section. Would martial law automatically give the President the power of legislation through decrees?

MR. SUMULONG: We will ask Commissioner Concepcion to answer.

MR. CONCEPCION: It is stated in Section 15:



⁶ Memorandum for Petitioners Rosales, et al., pp. 14-16 and Memorandum for Petitioners Monsod, et al., pp. 50-54.

⁷ Id.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts . . .

The Commissioner's question is whether martial law decreases or increases the power of the President?

SR. TAN: Decreases?

MR. CONCEPCION: Not necessarily.

SR. TAN: So, what specific power is necessary before the President can proclaim martial law?

MR. CONCEPCION: In general, in case of invasion, the President would have all the powers of a general in the army.

MR. SUMULONG: We ask Commissioner Bernas to answer.

FR. BERNAS: That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies . . .

The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case *Aquino vs. COMELEC* where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.

The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: During martial law, the President may have the powers of a commanding general in a **theatre of war**. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a **theatre of war**, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the **theatre of war**.

SR. TAN: Thank you.⁸

x x x x

MR. FOZ: Thank you, Madam President.



⁸ II RECORD, CONSTITUTIONAL COMMISSION 398 (July 29, 1986)

May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause “where civil courts are able to function”? In the earlier portion of the same sentence, it says, “nor supplant the functioning of the civil courts x x x” I was just thinking that if this provision states the effects of the declaration of martial law — one of which is that it does not supplant the functioning of the civil courts — I cannot see how civil courts would be unable to function even in a state of martial law.

MR. SUMULONG: May we refer that interpellation to Commissioner Bernas?

FR. BERNAS: This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the **theater of war**. In a **theater of war**, civil courts are unable to function. If in the actual **theater of war** civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are opened then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

MR. FOZ: It is a state of things brought about by the realities of the situation in that specified critical area.

FR. BERNAS: That is correct.

MR. FOZ: And it is not something that is brought about by a declaration of the Commander-in-Chief.

FR. BERNAS: It is not brought about by a declaration of the Commander-in-Chief. The understanding here is that the phrase “nor authorize the conferment of jurisdiction on military courts and agencies over civilians” has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.

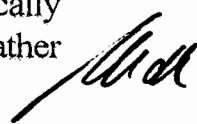
MR. FOZ: Thank you, Madam President.⁹

It appears that Father Bernas mentioned the concept of the “theater of war” twice during the deliberations.

First was in answer to the question of “[whether] martial law automatically give[s] the President the power of legislation through decrees,”¹⁰ to which Father

⁹ II RECORD, CONSTITUTIONAL COMMISSION 401-402 (July 29, 1986).

¹⁰ Supra note 8.



Bernas answered in the negative. He explained that, “the President may have the powers of a commanding general in a theatre of war. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theatre of war, not in the situation we had during the period of [Marcos] martial law.”¹¹ Simply put, Father Bernas mentioned the “theater of war” only to make it clear that under the 1987 Constitution, a declaration of martial law does not automatically grant the President the power to legislate, as the 1987 Constitution expressly provides that “a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.”¹²

Second was in response to the suggestion of deleting the phrase “where civil courts are able to function.” Father Bernas rejected this suggestion as the phrase delimits the effects of martial law so that the “practice under the Marcos regime where military courts were given jurisdiction over civilians”¹³ would not happen again. He explained that during martial law, the Commander-in-Chief has no power to confer jurisdiction on military courts and agencies over civilians, except in a “theater of war” or in the area where there is actual war because of which the civil courts are unable to function.

Considering that the framers of the 1987 Constitution only mentioned the term “theater of war” in the context of describing and defining the powers of the President during martial law, it is highly specious for petitioners to use the same to support its theory. In fact, the Court in *Lagman* quoted the same portions of the deliberations only to describe what happens during a state of martial law. Thus, contrary to the view of petitioners, there is nothing in the 1987 Constitution that limits the scope of martial law to the actual “theater of war.” As the Court has declared in *Lagman*, the discretion to determine the territorial coverage of martial law lies with the President,¹⁴ subject of course to the safeguards laid down in Section 18, Article VII of the 1987 Constitution.

Public Safety Requirement

As to the second requirement, petitioners assert that the public safety contemplated in Section 18, Article VII of the 1987 Constitution “entails a

¹¹ Id.

¹² Paragraph 4 of Section 18, Article VII of the 1987 Constitution.

¹³ Supra note 9 at 402.

¹⁴ Supra note 1.



breakdown of civilian government”¹⁵ or “a vacuum in civilian authorities.”¹⁶ Such assertion has no legal basis as there is nothing in the 1987 Constitution and in the records of the deliberations of the Constitutional Commission to indicate that such was the intended definition of the framers. Besides, unless technical terms are employed, words used in the Constitution should be given their ordinary meaning and as much as possible its language should be understood in its common usage.¹⁷ Thus, in *Lagman*, the Court defined public safety simply as one that “involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters.”¹⁸

With this definition and in light of the factual circumstances indicated in the letter of the President and the Resolution of Both Houses No. 4, I believe that public safety requires the extension of martial law. Undeniably, the acts of violence committed, and being committed, by the rebels in various areas in Mindanao continue to endanger the lives of the people in Mindanao.

Period of Extension

Finally, as to the period of extension, Section 18, Article VII of the 1987 Constitution states that, “upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension **for a period to be determined by the Congress**, if the invasion or rebellion shall persist and public safety requires it.” The provision is clear: the determination of the period of the extension, as well as the number of extensions, lies with the Congress.

In view of the foregoing, I vote to **DISMISS** the Petitions and **AFFIRM** the constitutionality of Resolution of Both Houses No. 4.



¹⁵ Memorandum for Petitioners Monsod, et al., pp. 51-54.

¹⁶ Memorandum for Petitioners Rosales, et al., pp. 17-19.

¹⁷ *Bayan v. Zamora*, 396 Phil. 623, 657 (2000).

¹⁸ *Supra* note 1.