



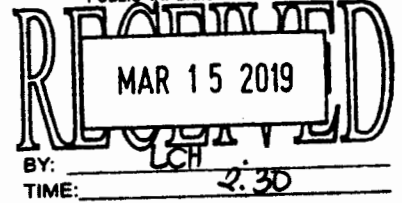
Republic of the Philippines

Supreme Court

Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAWNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE AND ARLENE "KAKA" J. BAG-AO,
Petitioners,

G.R. No. 243522

- versus -

HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; GEN. BENJAMIN MADRIGAL, JR., CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR; AND HON. BENJAMIN E. DIOKNO, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, RESPECTIVELY REPRESENTED BY HON.

**SPEAKER GLORIA
MACAPAGAL-ARROYO AND
HON. SENATE PRESIDENT
VICENTE C. SOTTO III.,**
Respondents.

X-----X

**BAYAN MUNA PARTYLIST
REPRESENTATIVE CARLOS
ISAGANI T. ZARATE,
GABRIELA WOMEN'S PARTY
REPRESENTATIVES,
EMERENCIANA A. DE JESUS,
AND ARLENE D. BROSAS,
ANAKPAWIS
REPRESENTATIVE ARIEL B.
CASILAO, ACT TEACHERS
REPRESENTATIVES ANTONIO
L. TINO AND FRANCE L.
CASTRO, AND KABATAAN
PARTYLIST REPRESENTATIVE
SARAH JANE I. ELAGO,**
Petitioners,

G.R. No. 243677

- versus -

**PRESIDENT RODRIGO
DUTERTE, CONGRESS OF THE
PHILIPPINES, REPRESENTED
BY SENATE PRESIDENT
VICENTE C. SOTTO III AND
HOUSE SPEAKER GLORIA
MACAPAGAL-ARROYO,
EXECUTIVE SECRETARY
SALVADOR MEDIALDEA,
DEFENSE SECRETARY DELFIN
LORENZANA, ARMED FORCES
OF THE PHILIPPINES CHIEF-
OF-STAFF LIEUTENANT
GENERAL BENJAMIN
MADRIGAL, JR., PHILIPPINE
NATIONAL POLICE**

**DIRECTOR-GENERAL OSCAR
DAVID ALBAYALDE,**
Respondents.

X-----X

**CHRISTIAN S. MONSOD, RAY
PAOLO J. SANTIAGO,
NOLASCO RITZ LEE B.
SANTOS III, MARIE HAZEL E.
LAVITORIA, DOMINIC AMON
R. LADEZA, AND XAMANTHA
XOFIA A. SANTOS,**
Petitioners,

G.R. No. 243745

- versus -

**SENATE OF THE PHILIPPINES
(represented by SENATE
PRESIDENT VICENTE C.
SOTTO III), HOUSE OF
REPRESENTATIVES (represented
by GLORIA MACAPAGAL-
ARROYO), EXECUTIVE
SECRETARY SALVADOR C.
MEDIALDEA, DEPARTMENT
OF NATIONAL DEFENSE (DND)
SECRETARY DELFIN N.
LORENZANA, DEPARTMENT
OF INTERIOR AND LOCAL
GOVERNMENT (DILG)
SECRETARY EDUARDO M.
AÑO, ARMED FORCES OF THE
PHILIPPINES (AFP) CHIEF OF
STAFF GENERAL BENJAMIN R.
MADRIGAL, JR., PHILIPPINE
NATIONAL POLICE (PNP)
DIRECTOR GENERAL OSCAR
D. ALBAYALDE, NATIONAL
SECURITY ADVISER
HERMOGENES C. ESPERON,
JR.,**
Respondents.

X-----X

**RIUS VALLE, JHOSA MAE
PALOMO, JEANY ROSE
HAYAHAY AND RORELYN
MANDACAWAN,**

Petitioners,

- versus -

**THE SENATE OF THE
PHILIPPINES REPRESENTED
BY THE SENATE PRESIDENT
VICENTE C. SOTTO III, THE
HOUSE OF REPRESENTATIVES,
REPRESENTED BY THE HOUSE
SPEAKER GLORIA
MACAPAGAL-ARROYO, THE
EXECUTIVE SECRETARY, THE
SECRETARY OF NATIONAL
DEFENSE, THE SECRETARY OF
THE INTERIOR AND LOCAL
GOVERNMENT, THE CHIEF OF
STAFF, ARMED FORCES OF
THE PHILIPPINES, THE
DIRECTOR GENERAL,
PHILIPPINE NATIONAL
POLICE, AND ALL PERSONS
ACTING UNDER THEIR
CONTROL, DIRECTION,
INSTRUCTION, AND/OR
SUPERVISION,**

Respondents.

G.R. No. 243797

Present:

**BERSAMIN, C.J.,
CARPIO,
PERALTA,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
A. REYES, JR.,
GESMUNDO,
J. REYES, JR.,
HERNANDO, and
CARANDANG, JJ.**

Promulgated:

February 19, 2019

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DECISION

CARANDANG, J.:

These are consolidated petitions¹ filed under Section 18,² Article VII of the Constitution, assailing the constitutionality of the third extension from January 1, 2019 to December 31, 2019, of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao.

Petitioners further pray for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to enjoin the respondents from implementing the one-year extension.

The Antecedents

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 to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG), for a period not exceeding sixty (60) days.³

Proclamation No. 216 cited the following justifications for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*:

x x x x

WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started [the] flying [of] the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

¹ *Rollo* (G.R. No. 243522), pp. 3-48; *rollo* (G.R. No. 243677), pp. 3-38; *rollo* (G.R. No. 243745), pp. 3-30; *rollo* (G.R. No. 243797), pp. 7-18.

² 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 of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

³ *Rollo* (G.R. No. 243522), p. 152; *see also* Resolution of Both Houses No. 6, *id.* at 56-58.

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.

x x x x.⁴

On May 25, 2017, within the 48-hour period set in Section 18, Article VII of the 1987 Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the factual events and reasons that impelled him to issue the said Proclamation. Both Houses expressed their full support to the Proclamation, under the Senate P.S. Resolution No. 388 and House Resolution No. 1050, finding no cause to revoke the same.⁵

Subsequently, three (3) consolidated petitions assailing the sufficiency of the factual basis of Proclamation No. 216 were filed before this Court.

In a Decision dated July 4, 2017, the Court in *Representative Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al.*,⁶ found sufficient factual bases for the issuance of Proclamation No. 216 and declared it constitutional.

On July 18, 2017, the President requested Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2, which extended Proclamation No. 216 until December 31, 2017.⁷

Acting on the recommendations of the Department of National Defense (DND) Secretary Delfin N. Lorenzana (Secretary Lorenzana) and the then Armed Forces of the Philippines (AFP) Chief of Staff General Rey Leonardo Guerrero (General Guerrero) in a letter dated December 8, 2017, the President again asked both the Senate and the House of Representatives to extend the Proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018.⁸

Thereafter, four (4) consolidated petitions were filed before this Court assailing the constitutionality of the second extension of Proclamation No. 216.

⁴ The fifth and sixth Whereas Clauses, Proclamation No. 216.

⁵ *Rollo* (G.R. No. 243522), pp. 152-153.

⁶ G.R. Nos. 231658, 231771 and 231774, July 4, 2017.

⁷ *Rollo* (G.R. No. 243522), p. 153.

⁸ *Id.* at 108-112 and 153-155.

In a Decision dated February 6, 2018, this Court in *Representative Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*,⁹ found sufficient factual bases for the second extension of the Proclamation from January 1 to December 31, 2018, and declared it constitutional.

Before the expiration of the second extension of Proclamation No. 216 or on December 4, 2018, Secretary Lorenzana in a letter¹⁰ to the President, recommended the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year from January 1, 2019 up to December 31, 2019.¹¹ Secretary Lorenzana wrote the recommendation to the President primarily to put an end to the continuing rebellion in Mindanao waged by the DAESH-inspired groups and its local and foreign allies, particularly the Daulah Islamiyah (DI), and the threat posed by the Communist Party of the Philippines-New People's Army Terrorists (CNTs).¹²

Likewise, the AFP Chief of Staff General Carolito G. Galvez, Jr. (General Galvez) and Chief of the Philippine National Police (PNP) Director-General Oscar D. Albayalde (Director-General Albayalde) recommended the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year beginning January 1, 2019 up to December 31, 2019, based on current security assessment for the total eradication of the Local Terrorist Groups (LTG), ASG, Bangsamoro Islamic Freedom Fighters (BIFF), DI, and other lawless armed groups and the CNTs, their foreign and local allies, supporters, financiers, in order to fully contain the continuing rebellion in Mindanao and to prevent it from escalating to other parts of the country, and to ensure complete rehabilitation and reconstruction of the most affected areas, as well as to attain lasting peace and order, and to preserve the socio-economic growth and development of the entire Mindanao.¹³

Acting on these recommendations, the President, in a letter¹⁴ dated December 6, 2018 to the Senate and the House of Representatives, requested for the third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.¹⁵ The President stated in his letter that, although there has been significant progress in putting rebellion under control and ushering in substantial economic gains in Mindanao, the joint security assessment submitted by General Galvez of the AFP and Director-General Albayalde of the PNP highlighted essential facts indicating that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in

⁹ G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

¹⁰ *Rollo* (G.R. No. 243522), pp. 201-202.

¹¹ *Id.* at 201.

¹² *Id.* at 202.

¹³ *Id.* at 208-213.

¹⁴ *Id.* at 51-55.

¹⁵ *Id.* at 52.

the whole of Mindanao.¹⁶ Private sectors, Regional and Provincial Peace and Order Councils, and local government units in Mindanao were also clamoring for a further extension of the proclamation.¹⁷ The President cited the following essential facts to extend the proclamation:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.

¹⁶ Id. at 52-53.

¹⁷ Id. at 113-123.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.¹⁸

On December 12, 2018, the Senate and the House of Representatives, in a joint session, adopted Resolution No. 6, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for another period of one (1) year from January 1, 2019 to December 31, 2019.”¹⁹ Joint Resolution No. 6, partly states:

X X X X

WHEREAS, on December 10, 2018, the House of Representatives received a communication dated December 6, 2018 from President Rodrigo Roa Duterte, informing the Senate and the House of Representatives, that on December 5, 2018, he received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, requesting for further extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao up to December 31, 2019;

WHEREAS, in the same letter, the President cited the joint security report of the Armed Forces of the Philippines (AFP) Chief of Staff, General Carlito G. Galvez, Jr., and the Philippine National Police (PNP) Director-General, Oscar D. Albayalde, which highlighted the accomplishment owing to the implementation of Martial Law in Mindanao, particularly the reduction of the capabilities of different terrorist groups, the neutralization of six hundred eighty-five (685) members of the local terrorist groups (LTGs) and one thousand seventy-three (1,073) members of the communist terrorist group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms; nineteen percent (19%) reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; twenty-nine percent (29%) reduction of terrorist acts committed by LTGs in 2018 compared to 2017; and substantial decrease in crime incidence;

¹⁸ Id. at 53-54.

¹⁹ Id. at 56-58.


WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups, collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others causing One Hundred fifty-six million pesos (P156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

WHEREAS, Section 18, Article VII of the 1987 Philippine Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, the proclamation or suspension of the privilege of the writ of *habeas corpus* for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred thirty-five (235) affirmative votes comprising the majority of all its Members, has determined that rebellion and lawless violence still persist in Mindanao and public safety indubitably requires 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 another period of one (1) year from January 1, 2019 to December 31, 2019.*²⁰

The Parties' Arguments

A. Petitioners' Case

Based on their respective petitions and memoranda²¹ and their oral arguments before this Court on January 29, 2019, petitioners' arguments are summarized as follows:

a) The Court is mandated to independently determine the sufficiency of factual bases of the extension of martial law and it must not limit its review on the basis of the declaration presented by the Executive and Legislative branches of the government.²² Given the Court's critical role in the system of checks and balances, it must be proactive and in keeping with the Constitutional mandate that "the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty."²³

b) The present factual situation of Mindanao no longer calls for a third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* because no actual rebellion persists in Mindanao.²⁴ The acts of lawlessness and terrorism by the remnants of terrorist groups and by the communist insurgents enumerated in the letter of the President were not established to be related or connected to the crime of rebellion, and can all be subdued and suppressed under the calling out power of the President.²⁵

c) The absence of the requirement of public safety is underscored by the very absence of an actual rebellion consisting of an armed uprising against the government for the purpose of removing Mindanao or a portion thereof from the allegiance to the Republic. More so, the alleged rebellion in Mindanao does not endanger public

²⁰ Id. at 57-58.

²¹ *Rollo* (G.R. No. 243522), pp. 753-787; *rollo* (G.R. No. 243677), pp. 258-294; *rollo* (G.R. No. 243745), pp. 276-318; *rollo* (G.R. No. 243797), pp. 295-313.

²² *Rollo* (G.R. No. 243745), p. 23.

²³ Id. at 26-27.

²⁴ *Rollo* (G.R. No. 243522), pp. 7-8.

²⁵ Id. at 21.

safety.²⁶ The threat to public safety contemplated under the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.²⁷

d) Proclamation No. 216 has become *functus officio* and the extension is no longer necessary, considering the deaths of the leaders of the ASG and the Maute brothers, and the cessation of combat operations and the liberation of Marawi City.²⁸

e) Congress committed grave abuse of discretion in approving the third extension hastily despite the absence of sufficient factual basis.²⁹

f) The third extension violates the constitutional proscription against a long duration of martial law or the suspension of the privilege of the writ of *habeas corpus*.³⁰ The constitutional limitations on the period of martial law must be for a short or limited duration, which must not exceed sixty (60) days, and should the third extension be granted, the martial law regime would have lasted 951 days.³¹

g) The “justifications” proffered by the President in his letter merely illustrates in general terms, lacking in specifics to support the claim that rebellion persists in Mindanao, and the President undertook to submit to the Congress a more detailed report which he failed to do.³²

h) The resolutions and recommendations for martial law extension by the Regional and Provincial Peace and Order Councils were due only to their desire for peace and order, economic development, and not because rebellion persists in Mindanao.³³

i) The third extension of martial law will lead to further violation of citizens’ political, civil, and human rights.³⁴

B. Respondents' Case

Respondents, through the Office of the Solicitor General (OSG), argue that:

²⁶ Id. at 10, 37-38.

²⁷ *Rollo* (G.R. No. 243677), p. 22.

²⁸ *Rollo* (G.R. No. 243522), pp. 10, 38-41.

²⁹ *Rollo* (G.R. No. 243745), p. 312.

³⁰ *Rollo* (G.R. No. 243522), p. 7.

³¹ Id. at 41-42.

³² Id. at 9.

³³ Id. at 33-34.

³⁴ Id. at 8, 11, 45-46.

- a) The Court's power of judicial review under Section 18, Article VII is limited to the determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.³⁵
- b) There is sufficient factual basis to extend the effectivity of Proclamation No. 216 as rebellion persists in Mindanao, and public safety requires it.³⁶ The President and both Houses of Congress found that there is probable cause or evidence to show that rebellion persists in Mindanao.³⁷
- c) The events happening in Mindanao strongly indicate that the continued implementation of martial law is necessary to protect and insure public safety.³⁸
- d) The deaths of the leaders of the ASG, the Maute brothers and the cessation of the Marawi siege did not render *functus officio* the declaration of *martial law* under Proclamation No. 216.³⁹ Although the Marawi siege ended, the factual circumstances which became the basis for the second extension still exists and continuously threaten the peace and order situation in Mindanao.⁴⁰
- e) Congress has the sole prerogative to extend martial law and the suspension of the privilege of the writ of *habeas corpus* since the 1987 Constitution does not limit the period of extension and suspension, nor prohibit further extensions or suspensions.⁴¹
- f) Congress has the absolute discretion in determining the rules of procedure with regard to the conduct and manner by which Congress deliberates on the President's request for extension of martial law, and therefore is not subject to judicial review.⁴²
- g) The alleged human rights violations do not warrant the nullification of martial law and the suspension of the privilege of the writ of *habeas corpus*. There are sufficient legal safeguards to address human rights abuses.⁴³

³⁵ Id. at 802, 806-809.

³⁶ Id. at 159.

³⁷ Id. at 162-163.

³⁸ Id. at 159, 170-173.

³⁹ Id. at 173-176.

⁴⁰ Id. at 174-175.

⁴¹ Id. at 159, 178-187.

⁴² Id. at 159, 187-189.

⁴³ Id. at 160, 190-192.



h) Petitioners failed to prove that they are entitled of injunctive relief.⁴⁴

The Issues

The following are the issues to be resolved as identified by the Court:⁴⁵

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.

1. Whether rebellion exists and persists in Mindanao.
2. Whether public safety requires the extension of martial law in Mindanao.
3. Whether the further extension of martial law has not been necessary to meet the situation in Mindanao.

B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

C. Whether Proclamation No. 216 has become *functus officio* with the cessation of Marawi siege that it may no longer be extended.

D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court *[E]n [B]anc*.

1. Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.
2. Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao – including the length of the period of deliberation and interpellation of the executive branch's resource persons.

E. Whether the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.

F. Whether the allegations of human rights violations in the implementation of martial law in Mindanao is sufficient to warrant a nullification of its extension.

x x x x

⁴⁴ Id. at 160, 192-196.

⁴⁵ Amended Advisory, id. at 731-734.

Ruling of the Court

The requirements of rebellion and public safety are present to uphold the extension of martial law in Mindanao from January 1, 2019 to December 31, 2019.

Since the Court must determine the sufficiency of the factual basis for the declaration as well as the extension of martial law and suspension of the writ of *habeas corpus*, the standard of review under Section 18, Article VII is not grave abuse of discretion.

The sufficiency of the factual basis for the extension of martial law in Mindanao must be determined from the facts and information contained in the President's request, supported by reports submitted by his alter egos to Congress. These are the bases upon which Congress granted the extension. The Court cannot expect exactitude and preciseness of the facts and information stated in these reports, as the Court's review is confined to the sufficiency and reasonableness thereof. While there may be inadequacies in some of the facts, *i.e.*, facts which are not fully explained in the reports, these are not reasons enough for the Court to invalidate the extension as long as there are other related and relevant circumstances that support the finding that rebellion persists and public safety requires it.

Contrary to *Monsod, et al.*, the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. The Court is not a fact-finding body required to make a determination of the correctness of the factual basis for the declaration or extension of martial law and suspension of the writ of *habeas corpus*. It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions.

Thus, in determining the sufficiency of the factual basis for the extension of martial law, the Court needs only to assess and evaluate the written reports of the government agencies tasked in enforcing and implementing martial law in Mindanao.

Indeed, in *Montenegro v. Castañeda*,⁴⁶ the Court pronounced that:

[W]hereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with



⁴⁶ 91 Phil. 882, 890 (1952).

its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.

But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.

The quantum of proof applied by the President in his determination of the existence of rebellion is probable cause. The Court in *Lagman v. Medialdea*⁴⁷ held that "in determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers."

The Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or level (degree) of sufficiency is, after all, an executive call. The President, who is running the government and to whom the executive power is vested, is the one tasked or mandated to assess and make the judgment call which was not exercised arbitrarily.

The Court in the case of *David v. Macapagal-Arroyo*⁴⁸ held that:

As to how the Court may inquire into the President's exercise of power, the Court through the case of *Lansang [v. Garcia]*, adopted the test that "judicial inquiry can go no further than to satisfy the Court not that the President's decision is correct," but that "the President did not act arbitrarily." Thus, the standard laid down is not correctness, but arbitrariness." In the case of *Integrated Bar of the Philippines [v. Zamora]*, this Court added that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings." (Citations omitted)

In finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived and untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported. The President's decision to extend the declaration and the suspension of the Writ, when it goes through the review of the Legislative branch, must be accorded a weightier and more consequential basis. Under these circumstances, the President's decision or judgment call is affirmed by the representatives of the People.

⁴⁷ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 147.

⁴⁸ 522 Phil 705, 854 (2006).

The December 6, 2018 letter of the President to the Congress is not a mere repetition of his previous letters requesting for extensions as petitioners would like Us to believe. Although couched in general terms, specific updates on the current state of violence and what the government has done to eradicate the current threats waged by different rebel groups were reported. These updates are periodically reviewed by the martial law implementers and are presented to the President in order to ensure the responsiveness and suitability of measures undertaken by the government.

While the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions.

The factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) – identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) – the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).

The Department of National Defense's (DND's) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao," which was presented during the Joint Session of Congress, and offered in evidence as Slides during this Court's Oral Arguments on January 29, 2019, shows the following violent incidents from January 1 to November 30, 2018 as part of the continuing rebellion being waged by the LTRGs:⁴⁹

Type of Incident	Number of Incidents
Ambuscade	6
Arson	2
Firefighting/Attack	4
Grenade Throwing	4
Harassment	54
IED/Landmining Explosion	31
Attempted Kidnapping	1
Kidnapping	19
Liquidation	9
Murder	4
Shooting	3
Total	137

⁴⁹ Respondents' Memorandum, citing Slides No. 8 and 9, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, *rollo* (G.R. No. 243522), p. 826.

In the same Reference Material, the DND reported the following violent incidents for the period of January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTRGs.⁵⁰

Type of Incident	Number of Incidents
Ambush	15
Raid	4
Nuisance Harassment	41
Harassment	29
Disarming	5
Landmining	8
SPARU Operations	18
Liquidation	23
Kidnapping	5
Robbery/Hold-up	1
Bombing	1
Arson	27
Total	177

From the slides presented by respondents during the Oral Arguments on January 29, 2019, and as summarized by respondents in their Memorandum, the following events transpired in Mindanao.⁵¹

a) No less than 181 persons in the martial law Arrest Orders have remained at large.

b) Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

c) On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao Del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.

d) The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e) Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

⁵⁰ Respondents' Memorandum, citing Slide No. 26, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, id. at 826-827.

⁵¹ Id. at 832-833.

f) Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g) The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organization (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government forces and business establishment are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h) The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.

The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas. The absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes.

In addition, these violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao. As explained by the AFP Office of Deputy Chief of Staff for Intelligence (OJ2) in its letter to the OSG, the violent incidents cannot be viewed in isolation:

[T]he events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. The argument advanced is that **these incidents should be viewed in their totality and not as unrelated, isolated events.** These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties resulting from these combined events, show a

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consistent pattern of armed uprising or rebellion in Mindanao.⁵²
(Emphasis Ours)

The test of sufficiency is not accuracy nor preciseness but reasonableness of the factual basis adopted by the Executive in ascertaining the existence of rebellion and the necessity to quell it.

REBELLION EXISTS AND PERSISTS IN MINDANAO

Essential to the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* is rebellion defined under Article 134 of the Revised Penal Code, as applied in the cases of *Lagman v. Medialdea* and *Lagman v. Pimentel III*:

Art. 134. *Rebellion or insurrection; How committed.* - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."⁵³

And it was emphasized in *Lagman v. Medialdea*⁵⁴ that:

It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the government;" and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined *a priori*, within predetermined bounds." We understand this to mean that the precise extent or range of the rebellion could not be measured by exact metes and bounds. (Citations omitted)

Rebellion, within the context of the situation in Mindanao, encompasses no definite time nor particular locality of actual war and continues even when actual fighting has ceased. Therefore, it is not restricted as to the time and locality of actual war nor does it end when actual fighting has ended. The state of rebellion results from the commission of a series or

⁵² Id. at 838.

⁵³ G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

⁵⁴ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205-206.

combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and poses serious threat to the security of the nation. The ultimate objective of the malefactors is to seize power from the government, and specifically “for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.”⁵⁵

The visible and invisible facets of rebellion is accurately depicted in *Lagman v. Medialdea*:⁵⁶

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.⁵⁷ (Emphasis ours)

The nuance added to the concept of rebellion under the 1987 Constitution was amplified in Justice Presbiterio Velasco, Jr.’s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*,⁵⁸ citing the excerpts from the *Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J.* where it was stated:

From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past*. But the concern of the Constitution is to counter threat to public safety both *in the present and in the future* arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President’s capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.

What all these point to are that the twin requirements of actual rebellion or invasion and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine

⁵⁵ Revised Penal Code, Art. 134.

⁵⁶ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.

⁵⁷ Id. at 208-209.

⁵⁸ G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.

whether rebellion exists. x x x.⁵⁹ (Italics in the original)

In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile,⁶⁰ which was decided in 1974 under the 1973 Constitution, the Court has already acknowledged that:

The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.⁶¹

Equally relevant is the very early pronouncement by this Court in *Montenegro v. Castañeda*⁶² in relation to the suspension of the privilege of the writ of *habeas corpus* under Proclamation No. 210, s. 1950, describing the nature of rebellious acts:

To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow his government *vi et armis*, by force and arms.⁶³

Recognizing the political realities in the country, the geography of Mindanao, the increasing number of local and foreign sympathizers who provide financial support, and the advances in technology that have emboldened and reinforced the terrorists' and extremists' capabilities to disturb peace and order, the declaration of martial law cannot be restricted only to areas where actual fighting continue to occur. As a result, rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao.

⁵⁹ Id.

⁶⁰ G.R. No. L-35538, September 17, 1974, 59 SCRA 183.

⁶¹ Id. at 240-241.

⁶² 91 Phil. 882, 890 (1952).

⁶³ Id.

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PUBLIC SAFETY REQUIRES THE EXTENSION OF MARTIAL LAW IN MINDANAO

The Resolutions coming from the Regional Peace and Order Council (RPOC) of Region XI (Davao City)⁶³ and Region XIII (Caraga);⁶⁴ the Provincial Peace and Order Council (PPOC) of the Province of Agusan del Norte,⁶⁵ Agusan del Sur,⁶⁶ and Dinagat Islands;⁶⁷ and the Office of the Governor, Province of Sarangani,⁶⁸ expressing support for the President's declaration of martial law and its extension, reflect the public sentiment for the restoration of peace and order in Mindanao. These resolutions are initiated by the people of Mindanao, the very same people who live through the harrows of war, things and experiences that we can only read about. Importance must be given to these resolutions as they are in the best position to determine their needs.

Citing the *Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J.* in Justice Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*,⁶⁹ the demands of public safety is determined through the application of prudential estimation, thus:

The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.

⁶³ Resolution No. 06, Series of 2018 dated October 24, 2018, *rollo* (G.R. No. 243522), pp. 113-114.

⁶⁴ Resolution No. 01, Series of 2018 dated November 15, 2018, *id.* at 115.

⁶⁵ Resolution No. 2018-09 dated November 15, 2018, *id.* at 117-118.

⁶⁶ Resolution No. 10, Series of 2018 dated November 20, 2018, *id.* at 119-120.

⁶⁷ Resolution No. 03, Series of 2018 dated November 16, 2018, *id.* at 121-122.

⁶⁸ *Id.* at 123.

⁶⁹ G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.



Ultimately, it is the Commander-in-Chief, aided by the police and military, who is the guardian and keeper of public safety.

The Congress has the prerogative to extend the martial law and the suspension of the privilege of the writ of habeas corpus as the Constitution does not limit the period for which it can extend the same.

This Court in the case of *Lagman v. Medialdea*⁷¹ explained the only limitations to the exercise of congressional authority to extend such proclamation or suspension: a) the extension should be upon the President's initiative; b) it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and c) it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.

Why Section 18 of Article VII of the Constitution did not fix the period of the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* and granted Congress the authority to decide its duration is fully explained in the deliberations of the Constitutional Commission on the matter, *viz*:

MR. SUAREZ.

Thank you, Madam President. I concur with the proposal of Commissioner Azcuna but may I suggest that we fix a period for the duration of the extension, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. So if Commissioner Azcuna could put a certain limit to the extended period, I would certainly appreciate that, Madam President.

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MR. SUAREZ.

Thank you Madam President. May we suggest that on line 7, between the words "same" and "if," we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration just so it will keep going.

THE PRESIDENT.

What does the Committee say?

MR. REGALADO.

May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of the Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. If we put it at 60 days only, then thereafter, they have to meet again to agree jointly on a further extension.

⁷¹ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.

9

MR. SUAREZ.

That is precisely intended to safeguard the interests and protect the lives of citizens.

MR. REGALADO.

In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.

MR. SUAREZ.

We are afraid of a situation that may develop where the extended period would be even longer than the initial period, Madam President. It is only reasonable to suggest that we have to put a restriction on the matter of the exercise of this right within a reasonable period.

MR. REGALADO.

Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on. But there is already the cut-off 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ.

That is correct. I think the two of them must have to agree on the period; but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that there must be a reasonable period for the extension. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it Madam President.

FR. BERNAS.

Madam President, may I just propose something because I see the problem. Suppose we were to say: "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" — that gives Congress a little flexibility on just how long the extension should be. xxx xxx xxx

THE PRESIDENT.

Is that accepted by Commissioner Suarez?

MR. SUAREZ.

Yes, Madam President.

MR. OPLE.

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

FR. BERNAS.

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

MR. OPLE.

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

FR. BERNAS.

Yes, the participation of the President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way.

Thank you, Madam President.

MR. SUAREZ.

We will accept the committee suggestion, subject to style later on.
xxx xxx xxx.⁷²

The records of the Constitutional Commission show that Commissioner Suarez's proposal to add a similar 60-day limitation to the extension of an initial proclamation of martial law was not adopted by a majority of the members of the Commission. The framers evidently gave enough flexibility on Congress to determine the duration of the extension.

The Constitutional limits/checks set by the Constitution to guard against the whimsical or arbitrary use of the extra ordinary powers of the Chief Executive under Section 18, Article VII are well in place and are working. At the initial declaration of the martial law, the President observed the 60-day limit and the requirement to report to Congress. In this initial declaration as well as in the extensions, the President's decision was based on the reports prepared by the different specialized agencies of the Executive branch charged with external and internal security of the whole country. These were the same reports submitted to Congress which were deliberated

⁷² II Record of the Constitutional Commission (1986), pp. 508-509.



on, no matter how brief the time allotment was for each of the lawmakers' interpellations. Yet the evidence or basis to support the extension of martial law passed through the scrutiny of the Chief Executive and through several more of the House of Representatives and the Senate. The Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government.

Proclamation No. 216 has not become functus officio with the cessation of the Marawi siege.

While Proclamation No. 216 specifically cited the attack of the Maute group in Marawi City as basis for the declaration of martial law, rebellion was not necessarily ended by the cessation of the Marawi siege. Rebellion in Mindanao still continues, as shown by the violent incidents stated in reports to the President, and was made basis by the Congress in approving the third extension of martial law. These violent incidents continuously pose a serious threat to security and the peace and order situation in Mindanao.

Martial law in Mindanao should not be confined to the Marawi siege. 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. Clashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder – crimes which are absorbed in rebellion – continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao.

The report of the military shows that the reported IED incidents, ambushade, murder, kidnapping, shooting and harassment in 2018 were initiated by ASG members and the BIFF.⁷²

Be it noted that rebellion is a continuing crime.⁷³ It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces.⁷⁴ It was held in *Lagman v. Pimentel III*⁷⁵ that:

⁷² *Rollo* (G.R. No. 243522), pp. 861-881.

⁷³ *Representative Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*, supra note 9.

⁷⁴ *Id.*

⁷⁵ G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.



We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in *one* place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict.⁷⁶ (Citations omitted)

In sum, Proclamation No. 216 did not become *functus officio* with the cessation of the Marawi siege. Considering that rebellion persists and that the public safety requires it, there is sufficient factual basis to extend martial law in Mindanao for the third time.

The manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus is a political question that is not reviewable by the Court.

We cannot say anything more than what has been expounded and find no reason to deviate from the ruling on this matter in the case of *Lagman v. Pimentel III*:⁷⁷

No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings, to wit:

Section 16. (3) **Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days. (Emphasis ours)**

In *Pimentel, Jr., et. al. v. Senate Committee of the Whole*, this constitutionally-vested authority is recognized as a grant of full discretionary authority to each House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this

⁷⁶ Id.

⁷⁷ G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

This freedom from judicial interference was explained in the 1997 case of *Arroyo v. De Venecia*, wherein the Court declared that:

But the cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.

In other words, the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

Construing the full discretionary power granted to the Congress in promulgating its rules, the Court, in the case of *Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations, et al.* explained that the limitation of this unrestricted power deals only with the imperatives of quorum, voting and publication. It should be added that there must be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.⁷⁹ (Citations omitted)

The allegations of human rights violations in the implementation of martial law in Mindanao is not sufficient to warrant a nullification of its extension.

All forms of human rights violations and abuses during the implementation of martial law and suspension of powers should not go unpunished. Nonetheless, consistent with the previous rulings of the Court in *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the alleged violations and abuses should be resolved in a separate proceeding. Therefore, the purported human rights abuses mentioned in the petitions, particularly in the Bayan Muna and Valle Petitions, fail to persuade that these are sufficient to warrant a nullification of the extension.

A declaration of martial law does not suspend fundamental civil rights of individuals as the Bill of Rights enshrined in the Constitution remain effective. Civil courts and legislative bodies remain open. While it is recognized that, in the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the powers given to officials tasked with its implementation are susceptible to abuses, these instances have already been taken into consideration when the pertinent provisions on

⁷⁹ Id.



martial law were drafted. Safeguards within the 1987 Constitution and existing laws are available to protect the people from these abuses. In *Lagman v. Medialdea*,⁸⁰ the Court emphasized that:

It was the collective sentiment of the framers of the 1987 Constitution that *sufficient* safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculation of the presidential powers is called for in the guise of additional safeguards.

In *Lagman v. Pimentel III*,⁸¹ the Court discussed these safeguards to wit:

Nevertheless, cognizant of such possibility of abuse, the framers of the 1987 Constitution endeavored to institute a system of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties. Thus, pursuant to Section 18, Article VII of the 1987 Constitution:

- (a) The President may declare martial law or suspend of the privilege of the writ of the privilege of *habeas corpus* only when there is an invasion or rebellion and public safety requires such declaration or suspension.
- (b) The President's proclamation or suspension shall be for a period not exceeding 60 days.
- (c) Within 48 hours from the proclamation or suspension, the President must submit a Report in person or in writing to Congress.
- (d) The Congress, voting jointly and by a vote of at least a majority of all its Members, can revoke the proclamation or suspension.
- (e) The President cannot set aside the Congress' revocation of his proclamation or suspension.
- (f) The President cannot, by himself, extend his proclamation or suspension. He should ask the Congress' approval.
- (g) Upon such initiative or request from the President, the Congress, voting jointly and by a vote of at least a majority of all its Members, can extend the proclamation or suspension for such period as it may determine.
- (h) The extension of the proclamation or suspension shall only be approved when the invasion or rebellion persists and public safety requires it.
- (i) The Supreme Court may review the sufficiency of the factual basis of the proclamation or suspension or the extension thereof, in an appropriate proceeding filed by any citizen.
- (j) The Supreme Court must promulgate its decision within 30 days from the filing of the appropriate proceeding.
- (k) Martial law does not suspend the operation of the Constitution.

Accordingly, the Bill of Rights remains effective under a state of martial law. Its implementers must adhere to the principle that civilian authority is supreme over the military and the armed forces is the protector,

⁸⁰ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205.

⁸¹ G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

9

of the people. They must also abide by the State's policy to value the dignity of every human person and guarantee full respect for human rights.

(l) Martial law does not supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function.

(m) The suspension of the privilege of the writ applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

(n) Finally, during the suspension of the privilege of the writ, any person thus arrested or detained should be judicially charged within three days, otherwise he should be released.⁸²

In addition to the safeguards provided by the Constitution, adequate remedies in the ordinary course of law against abuses and violations of human rights committed by erring public officers are available including the following:

1. R.A. No. 7438 (An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof);
2. R.A. No. 9372 or the Human Security Act of 2007;
3. R.A. No. 9745 or the Anti-Torture Act of 2009; and
4. Writs of Amparo (A.M. No. 07-9-12-SC) and Habeas Data (A.M. No. 08-1-16-SC); and
5. Universal Declaration of Human Rights (UDHR).

In relation to the international human rights principles established under the Universal Declaration of Human Rights (UDHR), the law enforcement officials are also guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights. Soft law instruments of particular relevance to law enforcement include United Nations' (UN) Basic Principles [o]n the Use of Force and Firearms by Law Enforcement Officials (BPUFF),⁸³ Code of Conduct for Law Enforcement Officials (CCLEO),⁸⁴ Standard Minimum Rules for the Treatment of Prisoners (SMR),⁸⁵ Body of Principles for the Protection of All Persons

⁸² Id.

⁸³ Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>> (visited February 15, 2019)

⁸⁴ Adopted by General Assembly Resolution 34/ 69 of 17 December 1979.

<<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>> (visited February 15, 2019)

⁸⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

under Any Form of Detention or Imprisonment (Body of Principles),⁸⁵ and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration).⁸⁶ These instruments uphold the principles of legality, proportionality, necessity, and accountability in situations involving the use of force by law enforcers.

A Final Word

While the Maute uprising was the immediate concern at that time, We must not forget that the country was confronted with not just one or two rebel bands but several rebel groups or anti-government entities. The country faced rebellion from several fronts. The extensions of Proclamation No. 216 are the Chief Executive's decisive response to several existing rebellions throughout Mindanao. Each of these persisting challenges to the authority of the legitimate government is certainly a basis sufficient to warrant the declaration of martial law. Surely, the President does not want a repeat of the Maute experience and wait until a city is overrun before declaring martial law. The Constitutional safeguards found in Section 18, Article VII does not demand that a city be first taken over or people get killed and billions of properties go up in smoke before the President may be justified to use his options under Section 18. What the Constitution asks is only that there be actual rebellion, an existing rebellion in the territory where Martial rule is to be imposed. The declaration should not be arbitrary or whimsical, but its basis should not also be so accurate that there is no room for changes or correction. Considering the volatility of conflict, situations may change at the blink of an eye. And the Executive is burdened with such responsibility to act decisively.

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Resolution of Both Houses No. 6 and **DECLARES** it as **CONSTITUTIONAL**. Accordingly, the consolidated petitions are hereby **DISMISSED**.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (visited February 15, 2019)

⁸⁵Adopted by General Assembly resolution 43/173 of 9 December 1988.

<https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx> (visited February 15, 2019)

⁸⁶Adopted by General Assembly resolution 40/34 on 29 November 1985.

http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/40/34 (visited February 15, 2019)

WE CONCUR:

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CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice