

EN BANC

G.R. No. 243522 – REP. EDCEL C. LAGMAN, *et al.*, Petitioners v. HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, *et al.*, Respondents.

G.R. No. 243677 – BAYAN MUNA PARTY LIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, *et al.*, Petitioners v. CONGRESS OF THE PHILIPPINES, *et al.*, Respondents.

G.R. No. 243745 – CHRISTIAN S. MONSOD, *et al.*, Petitioners v. SENATE OF THE PHILIPPINES, *et al.*, Respondents.

G.R. No. 243797 – RIUS VALLE, *et al.*, Petitioners v. SENATE OF THE PHILIPPINES, *et al.*, Respondents.

Promulgated:

February 19, 2019

X-----X

DISSENTING OPINION

CARPIO, J.:

The Case

These consolidated petitions are filed under this Court's power to review the sufficiency of the factual basis of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* (writ) under paragraph 3, Section 18, Article VII of the 1987 Constitution. These petitions challenge the constitutionality of Joint Resolution No. 6 dated 12 December 2018 issued by the Senate and the House of Representatives which extended the proclamation of martial law and suspension of the privilege of the writ in the whole of Mindanao for another period of one (1) year from 1 January 2019 until 31 December 2019.

The Antecedent Facts

On 12 December 2018, the Senate and the House of Representatives, voting jointly, adopted Joint Resolution No. 6 which extended the period of

W

martial law and the suspension of the privilege of the writ in the whole of Mindanao (under Proclamation No. 216) from 1 January 2019 to 31 December 2019. Joint Resolution No. 6 states:

X X X X

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao", to address the rebellion launched by the Maute Group and elements of Abu Sayyaf Group in Marawi City, and to restore peace and order in Mindanao;


WHEREAS, on July 22, 2017, the Senate and the House of Representatives in a Special Joint Session adopted Resolution of Both Houses No. 2, extending the Proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao until December 31, 2017;

WHEREAS, on December 13, 2017, upon the request of President Rodrigo Roa Duterte, the Senate and the House of Representatives in a Joint Session adopted 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 Mindanao until December 31, 2018;

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;

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 Apopong 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 and causing One hundred fifty-six million pesos (₱156,000,000.00) 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 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, 2019.¹

These consolidated petitions impugn the constitutionality of Joint Resolution No. 6.

Discussion

I vote to grant the petition on the ground that the **extension** of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 is unconstitutional.

First, martial law under Proclamation No. 216 can no longer be extended with the end of the Maute rebellion. The very basis for the proclamation of martial law and the suspension of the privilege of the writ under Proclamation No. 216 was the Maute rebellion. Since the actual rebellion of the Maute group in Marawi City has been admittedly quelled, the extension of Proclamation No. 216 is now clearly unconstitutional. *Second*, the government failed to discharge the burden of proof under paragraph 3, Section 18, Article VII of the 1987 Constitution that actual rebellion by the Maute group exists in the whole Mindanao group of islands.

I reiterate that the declaration of martial law on the ground of rebellion under paragraph 3, Section 18, Article VII of the 1987 Constitution requires the **existence of an actual rebellion**, not an *imminent danger of rebellion* or *threat of rebellion*.

In exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the President is required by the 1987 Constitution to establish the following: **(1) the existence of rebellion or invasion**; and **(2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion**. Needless to say, the absence of either element will not authorize the President, who is sworn to defend the Constitution, to exercise his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

Imminent danger or threat of rebellion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion**. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which ground was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words "imminent danger" in the 1987 Constitution,² **actual rebellion**

¹ Annex "B" of Lagman Petition, *Rollo*, G.R. No. 243522 (Vol. 1), pp. 56-58.

² During the deliberations of the Constitutional Commission, Fr. Bernas clarified:



is now required and the President can no longer use imminent danger of rebellion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion**. This is the clear, indisputable letter and intent of the 1987 Constitution.

This Court in *Lagman v. Medialdea*³ held that the term “**rebellion**” in Section 18, Article VII of the 1987 Constitution refers to the crime of rebellion as defined by the Revised Penal Code, to wit:

x x x. Since the Constitution did not define the term “rebellion,” it must be understood to have the same meaning as the crime of “rebellion” in the Revised Penal Code (RPC).

During the July 29, 1986 deliberation of the Constitutional Commission of 1986, then Commissioner Florenz D. Regalado alluded to actual rebellion as one defined under Article 134 of the RPC:

MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event - this Manila Hotel incident, everybody knows what happened. Would the Committee consider that an actual act of rebellion?

MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. x x x.


Thus, rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the RPC. To give it a different definition would not only create confusion but would also give the President wide latitude of discretion, which may be abused - a situation that the Constitution seeks to prevent. (Emphasis supplied)

In fact, when the President declared martial law and suspended the privilege of the writ, he expressly cited the definition of rebellion under the Revised Penal Code. Proclamation No. 216 states:

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that “the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any

the reason that the phrase “OR IMMINENT DANGER THEREOF” could cover a multitude of sins and could be a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. x x x (1 RECORDS, CONSTITUTIONAL COMMISSION 773 (18 July 1986).

³ G.R. No. 231658, 4 July 2017, 829 SCRA 1, 182-183.



body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.(Emphasis supplied)

Based on its statutory definition in the Revised Penal Code, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising is either (a) to remove from the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) 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.⁴

By definition, Article 134 of the Revised Penal Code requires an actual rebellion for the crime of rebellion to exist. Since there is no longer an actual rebellion by the Maute group in Marawi City and there is no showing of an actual Maute rebellion in other parts of Mindanao, Joint Resolution No. 6, extending martial law and the suspension of the privilege of the writ, is therefore unconstitutional.

Proclamation No. 216 can no longer be extended with the liberation of Marawi City and the end of the Maute rebellion in Marawi City.

As I have stated in my previous dissenting opinions, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the actual rebellion cited by President Rodrigo Roa Duterte (President Duterte) in Proclamation No. 216. **The said proclamation clearly identifies the “Maute group” as the only rebel group subject of the proclamation, which specifically mentions the Maute group as rebelling by “rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance to said [g]overnment” Marawi City.** The pertinent paragraphs of Proclamation No. 216 state:

x x x x

WHEREAS, Section 18 Article VII of the Constitution provides that “x x x [i]n case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x”;

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that “the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws,

⁴ *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives”;

WHEREAS, **part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group** such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

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

WHEREAS, **this recent attack shows the capability of the Maute group** and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.⁵ (Emphasis supplied)

The identity of the rebel group used by Congress to extend martial law and suspend the privilege of the writ must be limited to the same rebel group contained in the initial proclamation of the President. This is in consonance with Section 18, Article VII of the 1987 Constitution which states:

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

x x x x (Emphasis supplied)

⁵ Bayan Muna Petition, *Rollo*, G.R. No. 243677, p. 8.

The Constitution is clear that upon the initiative of the President and the joint voting of both chambers of Congress, the proclamation of martial law and the suspension of the privilege of the writ may be extended “if the x x x rebellion shall **persist**” or, in simpler terms, if the rebellion led by the rebel group cited in the initial proclamation shall **continue**. In this case, the rebellion of the Maute group had undoubtedly been terminated upon the death of their leader, Isnilon Hapilon, and the liberation of Marawi City. In fact, in a statement dated 17 October 2017, President Duterte publicly declared “**Marawi’s liberation and beginning of (Marawi City’s) rehabilitation.**”⁶ On October 2017, National Defense Secretary Delfin Lorenzana also affirmed the “**termination of all combat operations in Marawi City.**”⁷ Furthermore, in the year 2018, the President and representatives of the Armed Forces of the Philippines have been consistent in their public statements that the actual rebellion in Marawi City had finally ended:

(1) Seven months after President Duterte’s declaration of Marawi’s liberation, Brig. Gen. Edgardo Arevalo, spokesperson for the AFP, said in a statement that “**Marawi has been liberated. If we have to look back to it, let’s do so to learn from it and move on.**”⁸

(2) Before the year 2018 ended, President Duterte again affirmed that the rebellion in Marawi had already “finished.” He said, “Then Marawi, there was massive destruction. I got a general (Eduardo del Rosario) who was assigned in my city. *Sabi ko* (I said), ‘You fix it within 6 months.’ And he did. *Kaya natapos (That’s why it was finished).*”⁹

⁶ Eimor P. Santos, *Duterte declares liberation of Marawi* <<http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html>> (last accessed 1 February 2019). See also Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> (last accessed 1 February 2019); Trisha Macas and Raffy Tima, *Duterte declares Marawi City is free* <<http://www.gmanetwork.com/news/news/nation/629820/duterte-declares-marawi-city-is-free/story/>> (last accessed 1 February 2019); Allan Nawal, Jeffrey Maitem, Richel Umel and Divina Suson, *Marawi ‘liberated’ from terrorists but battle drags on* <<http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists>> (last accessed 1 February 2019); AFP, AP and Francis Wakefield, *Battle of Marawi ends* <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> (last accessed 1 February 2019); Catherine S. Valente, *Marawi free* <<http://www.manilatimes.net/marawi-free/357155/>> (last accessed 1 February 2019); Rosette Adel, *Duterte declares Marawi freed from terrorists* <<http://www.philstar.com/headlines/2017/10/17/1749752/duterte-declares-marawi-freed-terrorists>> (last accessed 1 February 2019); PTV News, *President Duterte declares liberation of Marawi City* <<https://ptvnews.ph/president-duterte-declares-liberation-marawi-city/>> (last accessed 1 February 2019).

⁷ Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> (last accessed 2 February 2019). See also AFP, AP and Francis Wakefield, *Battle of Marawi ends* <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> (last accessed 2 February 2019).

⁸ Christine O. Avendaño, *Duterte to mark Marawi liberation in October* <<https://newsinfo.inquirer.net/993817/duterte-to-mark-marawi-liberation-in-october#ixzz5cdrFD6B5>> (last accessed 31 January 2019).

⁹ Pia Ranada, *President in Fatigues: In 2018, Duterte turns to military for (almost) everything* <<https://www.rappler.com/newsbreak/in-depth/218680-duterte-turns-to-philippine-military-year-end->

During the oral arguments on 29 January 2019, Major General Lorenzo of the Armed Forces of the Philippines also admitted **that there is no longer any armed rebellion in Marawi City**, to wit:

SENIOR ASSOCIATE JUSTICE CARPIO:

Is there an on-going armed rebellion in Marawi City?

MAJOR GENERAL LORENZO:

Not in Marawi City, Your Honor.¹⁰ (Emphasis supplied)

Hence, the end of the armed Maute rebellion bars the extension of Proclamation No. 216 which was issued because of the Maute rebellion. Any extension pursuant to Proclamation No. 216 under Joint Resolution No. 6 is unconstitutional. To uphold the extension of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 in the absence of an actual rebellion would sanction a clear violation of Section 18, Article VII of the 1987 Constitution.

The Government failed to discharge the burden of proof that there is an on-going rebellion of the Maute group in the whole Mindanao group of islands.

The burden of proof to show the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ is on the Government. The *sui generis* proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ. The Government bears the burden of justifying the resort to extraordinary powers that are subject to the extraordinary review mechanisms of this Court under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Indeed, the majority of the members of this Court in *Lagman v. Medialdea*¹¹ conceded that this burden **rests** on the Government, to wit:

x x x. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, **the President satisfactorily discharged his burden of proof.**

2018> (last accessed 1 February 2019).

¹⁰ TSN, p. 42.

¹¹ Supra note 3, at 192-194, citing *Fortun v. President Macapagal-Arroyo*, 684 Phil. 595-598 (2012).

After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. As Justice Carpio decreed in his Dissent in *Fortun*:

x x x [T]he Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers.

Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. x x x

x x x x

Proof beyond reasonable doubt is the highest quantum of evidence, and to require the President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the writ amounts to an excessive restriction on 'the President's power to act as to practically tie her hands and disable her from effectively protecting the nation against threats to public safety.'

Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. This amount of proof likewise unduly restrains the President in exercising her emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt.

Not even preponderance of evidence, which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.

x x x x

Weighing the superiority of the evidence on hand, from at least two opposing sides, before she can act and impose martial law or suspend the writ unreasonably curtails the President's emergency powers.

Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.



I am of the view that probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a 'set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.'

In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law. x x x.
(Emphasis supplied)

During my interpellation of the Solicitor General in the oral arguments last 29 January 2019, the Government could not confirm that the elements of the Maute group are engaged in actual rebellion in Davao City. The record states:

SENIOR ASSOCIATE JUSTICE CARPIO:

Mr. Sol-Gen, is there an ongoing armed rebellion today in Davao City?

SOLICITOR GENERAL CALIDA:

In certain parts, Your Honor, there is.

SENIOR ASSOCIATE JUSTICE CARPIO:

Committed by whom?

SOLICITOR GENERAL CALIDA:

I understand the communist groups, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

So the NPA?

SOLICITOR GENERAL CALIDA:
NPA.

SENIOR ASSOCIATE JUSTICE CARPIO:
Certainly not the MILF? Peace agreement.

SOLICITOR GENERAL CALIDA:
I have not been to Davao for quite some time, Your Honor, so I don't exactly know.

SENIOR ASSOCIATE JUSTICE CARPIO:
But you are aware that we have a peace agreement now with the MILF. I don't think.... (interrupted)

SOLICITOR GENERAL CALIDA:
MILF, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So the rebellion in Davao, parts of Davao, as you say, is being committed by the NPA, correct?

SOLICITOR GENERAL CALIDA:
Well, if I'm not mistaken, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
But not by the MILF, correct?

SOLICITOR GENERAL CALIDA:
Not by the... or MI...?

SENIOR ASSOCIATE JUSTICE CARPIO:
The MILF.

SOLICITOR GENERAL CALIDA:
Not to my knowledge, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
Well, we have a peace agreement. I don't think they have broken that. x x x the [Maute/ISIS] group, they are not in Davao?

SOLICITOR GENERAL CALIDA:
I'm not sure of that, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
But do you know x x x [if] they have armed rebels there operating in Davao City?

SOLICITOR GENERAL CALIDA:
That is a possibility because Davao City is a huge city and in fact... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
Do you have any... (interrupted)



SOLICITOR GENERAL CALIDA:
...there was... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
...information that they are operating in Davao City?

SOLICITOR GENERAL CALIDA:
I have no... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
Have they engaged in any skirmish with the military or police in Davao City?

SOLICITOR GENERAL CALIDA:
I have no personal knowledge at this time but I can research, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
Okay, you include that in your memo. How about the BIFF, are they committing rebellion in Davao City?

SOLICITOR GENERAL CALIDA:
I'm not sure, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So you are only sure of the NPA?

SOLICITOR GENERAL CALIDA:
For now, Yes, Your Honor, but I will ask the military, Your Honor, and the police to update me if there are incidents like what you've mentioned, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So okay, but you are defending martial law throughout Mindanao but you are not sure if the Maute and the ISIS groups are operating in Davao City?

SOLICITOR GENERAL CALIDA:
Well, at this time I don't have the knowledge but I will try to get feedback, Your Honor.¹² (Emphasis supplied)

The Government could not even affirm the existence of an on-going armed rebellion by the Maute group in Davao City. In fact, the Government has not named any province, city or municipality in the entire Mindanao where an actual rebellion by the Maute group is on-going. Consequently, under the Constitution, there is no sufficient factual basis to extend the declaration of martial law under Proclamation No. 216 in the whole of Mindanao for another period of one (1) year.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 243522, 243677, 243745, and 243797 and **DECLARE** Joint Resolution

¹² TSN, pp. 93-95.

No. 6 dated 12 December 2018 of the Senate and the House of Representatives **UNCONSTITUTIONAL** for failure to comply with Section 18, Article VII of the 1987 Constitution.



ANTONIO T. CARPIO
Associate Justice