

**EN BANC**

**G.R. No. 243522** - *Representatives Edcel Lagman, et al. v. Hon. Salvador C. Medialdea, Executive Secretary, et al.*; **G.R. No. 243677**- *Bayan Muna Partylist Representative Carlos Isagani Zarate, et al. v. President Rodrigo Duterte, et al.*; **G.R. No. 243745** - *Christian Monsod, et al. v. Senate of the Philippines (represented by Senate President Vicente C. Sotto III), et al.*; **G.R. No. 243797** - *Rius Valle, Jhosa Mae Palomo, et al. v. The Senate of the Philippines, represented by the Senate President Vicente C. Sotto III, et al.*

**Promulgated:**

February 19, 2019

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**SEPARATE CONCURRING OPINION**

**REYES, J. JR., J.:**

President Rodrigo Roa Duterte sent a Letter dated December 6, 2018, requesting for a third extension of Proclamation No. 216 to the Congress. This was issued on the basis of the letters-recommendation sent by the Department of National Defense Secretary Delfin Lorenzana and then AFP Chief Carlito Galvez, Jr.

In said letter, President Duterte mentioned that although there were gains during the period of extension of Martial Law in 2018, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) highlighted certain essential facts indicating that rebellion still exists in Mindanao. He emphasized that several bombings with the use of Improvised Explosive Devices were committed by various terrorist groups. President Duterte also cited various kidnapping incidents by major Abu Sayyaf Group (ASG) factions in Sulu and perpetrations of at least 243 violent incidents by the Communist Terrorist Groups. All of which were in furtherance of its public declaration to seize political power and supplant the nation's democratic form of government with communism.

In the Joint 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 Year from January 1, 2019 to December 31, 2019," both Houses of Congress approved the President's request.

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In response, some members of the Congress, teachers, and residents of some parts of Mindanao filed their respective petitions, essentially questioning the third extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*, under the third paragraph of Section 18, Article VII of the Constitution.

On this matter, I concur with the *ponencia* in ruling that (1) there was sufficient factual basis for the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*; and (2) the basis for which the martial law was initially proclaimed, *i.e.*, Proclamation No. 216, has not become *functus officio* with the cessation of the Marawi siege.

*Sufficiency of factual basis for the extension of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus*

*On rebellion*

This Court had already definitively addressed the issue on the determination of the presence of rebellion and its relation to the supposed inaccuracies in reports in the case of *Lagman v. Medialdea*.<sup>1</sup> In said case, this Court considered it imperative to review the factual circumstances in all respects and not independently, to wit:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation.

Undoubtedly, this calls for the survey of the reports in its entirety.

While during oral arguments, some members of this Court pointed out inaccuracies and irregularities in the submitted reports by the AFP and PNP, it must be considered that such inconsistencies do not necessarily negate the truth; for these inaccuracies do not essentially capture the factual circumstances which called for the extension. Admittedly, these violent incidents prove that rebellion persists in Mindanao. The Letter dated December 6, 2018 as well as the reports of the AFP evince that the ASG, the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and the other rebel groups continue to perpetrate hostile activities in Mindanao. The bombings, violent incidents and other related crimes cannot

<sup>1</sup> G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 179.

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be discounted as many were killed and injured. Similarly, the recruitment of new members must be noted. All these events were executed in furtherance of the rebel groups' purpose of seizing parts of Mindanao and depriving the government of its power over the same.

Moreover, it is worthy to emphasize that it is unlikely to acknowledge rebellion as being committed by *identified* groups of men engaging in an armed conflict with the government in the case of *Lagman v. Pimentel III*,<sup>2</sup> thus:

Rarely is rebellion now committed by a large group of identified men engaging the government in an all-out conventional war in accordance with the Geneva Conventions. It would then be simply naive to dismiss, as the petitioners have, the remaining armed groups in Mindanao as but "phantom remnants" of the defeated terrorists and rebels. **The fact that they do exist and still continue fighting is by itself proof of the subsistence of the condition that compelled the administration to proclaim Martial Law in Mindanao.** (Emphasis supplied)

*On the requirement of public safety*

In *Lagman v. Medialdea*,<sup>3</sup> this Court highlighted 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 and publicly rise in arms against the government for the attainment of their culpable purpose. Alternatively put, the fact that reported violent incidents occurred in certain areas does not negate their advancement in other parts of Mindanao. In *Lagman v. Pimentel III*,<sup>4</sup> this Court reasoned:

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.

For this matter, there is an imperative need to consider the Resolutions issued by several Regional Peace and Order Councils in Region XI (Davao City), Region XIII (Caraga), Agusan Del Norte, Agusan Del Sur, and Dinagat Islands in Mindanao wherein the *Whereas Clauses* provide: (a) their intention to extend the period of Martial Law so that

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<sup>2</sup> G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

<sup>3</sup> *Lagman v. Medialdea*, supra note 1, at 205-206.

<sup>4</sup> Supra note 2.

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developments and growth that the region achieved can be sustained (Davao City); (b) they support the extension of Martial Law in pursuit of lasting peace, order, and security (Caraga); and (c) they appreciated the proclamation of Martial Law because they could feel the security in their jurisdictions against lawless elements due to the presence and efforts of AFP and PNP (Agusan Del Norte, Agusan Del Sur, and Dinagat Islands).

Notably, these councils have the obligation to focus on coordination and orchestration of measures to ensure the safety of the people within their own jurisdictions. The duties and functions of these councils are enshrined in Executive Order No. 773 (Further Reorganizing the Peace and Order Council), *viz.*:

**Sec. 3. Duties and Functions of Sub-National Councils. —**

The RPOCs, PPOCs, CPOCs, and MPOCs shall have the following duties and functions:

- (a) Provide a forum for dialogue and deliberation of major issues and problems affecting peace and order, including insurgency;
- (b) Recommend measures which will improve or enhance peace and order and public safety in their respective areas of responsibility, including anti-insurgency measures;
- (c) Recommend measures to converge and orchestrate internal security operations efforts of civil authorities and agencies, military and police.

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Clearly from the foregoing, it is apparent that such councils are tasked with communicating with the people matters regarding peace, security, and public order within their respective jurisdictions. As such, they can be regarded as medium of the people in declaring their apprehensions. These councils also have the recommendatory functions to secure institutive action for peace and order. The issuance of these Resolutions, which are reflective of the voice of their constituents, strengthens the proposition that public safety necessitates the continued implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

*Proclamation No. 216 was not rendered functus officio by the cessation of the Marawi Siege*

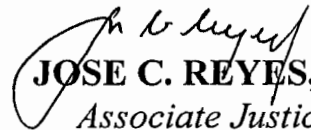
The acts committed by the rebel groups, aside from the Maute group, cannot simply be avoided. The halting of the armed combat in Marawi did not automatically amount to an absence of rebellion. As discussed above,

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rebellion in Mindanao is still subsisting. It is worthy to emphasize that in the two *Lagman* cases, this Court already accepted that rebellion cannot be characterized in isolation. Significantly, the perpetration by the local terrorist groups and other communist terrorist groups, as indicated in Proclamation No. 216, should be unquestioned. To reiterate, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation.<sup>5</sup> It would be more dangerous to require the President to classify and tag rebel groups with rigor before deciding on the need to implement the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*, precisely because the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern.<sup>6</sup>

Within constitutional bounds, the government has the prime duty of serving and protecting the people.<sup>7</sup> To this end, our government actively pursues its constitutional mandate by administering measures which not only keep and reserve its power and authority but likewise uphold the safety of the citizenry against peril and adversities.

In this view, I vote to **DISMISS** the petitions in G.R. Nos. 243522, 243677, 243745, and 243797.

  
**JOSE C. REYES, JR.**  
*Associate Justice*

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<sup>5</sup> G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

<sup>6</sup> *Id.*

<sup>7</sup> CONSTITUTION (1987), Art. II, Sec. 4.