

G.R. No. 243522 (*Representatives Edcel S. Lagman, et al. v. Hon. Salvador Medialdea, Executive Secretary, et al.*).

G.R. No. 243677 (*Bayan Muna Partylist Representative Carlos Isagani T. Zarate, et al. v. President Rodrigo Duterte, et al.*).

G.R. No. 243745 (*Christian S. Monsod, et al. v. Senate of the Philippines [represented by Senate President Vicente C. Sotto III], et al.*).

G.R. No. 243797 (*Rius Valle, et al. v. The Senate of the Philippines, represented by Senate President Vicente C. Sotto III, et al.*).

Promulgated:

February 19, 2019

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### SEPARATE CONCURRING OPINION

**PERALTA, J.:**

Once again, the Court is confronted with the issue of the constitutionality of the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao by the Congress with the adoption of Resolution of Both Houses No. 6, which approved the extension of Proclamation No. 216 from January 1, 2019 until December 31, 2019.

### FACTUAL ANTECEDENTS

On May 23, 2017, President Rodrigo R. 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 for a period not exceeding sixty (60) days, to quell the rebellion launched by the Maute Group and the Abu Sayyaf Group (*ASG*). The Senate and the House of Representatives supported the proclamation in separate resolutions.<sup>1</sup> Petitions were filed before this Court, assailing the factual basis of Proclamation No. 216. In *Lagman v. Medialdea*,<sup>2</sup> the Court held that Proclamation No. 216 was constitutional as there were sufficient factual bases for the proclamation.

On July 22, 2017, the Congress passed Resolution of Both Houses No. 2, extending the imposition of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao up to December 31, 2017. A second

<sup>1</sup> P.S. Resolution No. 388 (Senate); House Resolution No. 1050 (House of Representatives).

<sup>2</sup> G.R. No. 231658, G.R. No. 231771 and G.R. No. 231774, July 4, 2017, 829 SCRA 1.

extension was granted from January 1, 2018 to December 31, 2018, and the Court upheld the extension in *Lagman, et al. v. Pimentel III, et al.*<sup>3</sup>

On December 6, 2018, President Duterte wrote a letter to the Senate and the House of Representatives to initiate the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao from January 1, 2019 to December 31, 2019. President Duterte said 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 and public safety requires the continuation of martial law in the whole of Mindanao. The ASG, the Bangsamoro Islamic Freedom Fighters (*BIFF*), 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; and the DI forces continue their radicalization activities and recruitment of new members. President Duterte cited four bombing incidents by terrorist groups in Lamitan, Basilan City on July 31, 2018; Isulan, Sultan Kudarat on August 28, 2018 and September 2, 2018; and General Santos City on September 16, 2018, which resulted in the death of 16 persons and wounding of 63 persons. He also cited the kidnap for ransom activities of the ASG in Sulu to finance their operations. He stated that there were a total of eight (8) kidnappings involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos. He also stated that at least 342 violent incidents were perpetrated by the Communist Terrorist Groups (*CTG*) in furtherance of their public declaration to seize political power and supplant the nation's democratic form of government with communism. These incidents include harassment, attacks against government installations, liquidation operations, and various arson attacks as part of extortion schemes which took place mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018.

President Duterte averred that a further extension of the implementation of martial law and the 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 ongoing rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. Public safety requires the extension to avoid further loss of lives and physical harm to the civilians, our soldiers and the police.

On December 12, 2018, the Senate and the House of Representatives adopted Joint Resolution No. 6, which extended for the third time the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao from January 1, 2019 to December 31, 2019.

<sup>3</sup> G.R. No. 235935, G.R. No. 236061, G.R. No. 236145 and G.R. No. 236155, February 6, 2018.

Petitioners filed their respective petitions under Section 18, Article VII of the 1987 Constitution, questioning the sufficiency of the factual basis of the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao, and contending that rebellion does not persist in Mindanao and public safety does not require it.

Petitioners Lagman, *et al.*, among others, contend that what were alleged in President Duterte's letter were mere acts of lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents which can all be subdued and suppressed under the calling out power of the President. Petitioners Bayan Muna Partylist Representative Carlos Isagani Zarate, *et al.* also contend that the President's letter does not allege that the situation has deteriorated and the civilian government no longer functions effectively, requiring the exercise of the powers of martial rule to ensure public safety, but instead shows the significant progress of government to quell the rebellion in Mindanao, and the government no longer qualifies or categorizes such rebellion as being "actual." They further contend that the enumerated incidents of violence by the different rebel groups lumped together by the government and the damage they inflicted were not serious threats to public safety.

#### MAIN ISSUE

*The main issue raised is whether or not there exists sufficient factual basis for the extension of martial law in Mindanao: (1) whether rebellion exists and persists in Mindanao; and (2) whether public safety requires the extension of martial law in Mindanao.*

The consolidated petitions essentially assail the Congress' act of approving President Duterte's letter-request dated December 6, 2018 and extending the implementation of martial law in Mindanao from January 1 to December 31, 2019.

Article VII, Section 18<sup>4</sup> of the 1987 Constitution grants the power to extend the proclamation of martial law or suspension of the privilege of the

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<sup>4</sup> SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.** (Emphasis supplied.)

writ of *habeas corpus* to the Congress, upon the initiative of the President, for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

***Rebellion exists and persists in Mindanao***

Rebellion, as applied to the exercise of the President's martial law and suspension powers, is defined under Article 134 of the Revised Penal Code:<sup>5</sup>

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.

The elements of rebellion are:

1. That there be (a) public uprising and (b) taking up arms against the Government; and
2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces; or (b) to deprive the Chief Executive or the Congress, wholly or partially, of any of their powers or prerogatives.<sup>6</sup>

Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*: (a) the invasion or rebellion persists; and (b) public safety requires the extension.<sup>7</sup>

The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on."<sup>8</sup> It is the opposite of the words "cease," "discontinue," "end," "expire," "finish," "quit," "stop" and "terminate."<sup>9</sup>

<sup>5</sup> *Lagman, et al. v. Pimentel III, et al., supra* note 3.

<sup>6</sup> *Lagman v. Medialdea, supra* note 2, at 214.

<sup>7</sup> *Lagman, et al. v. Pimentel III, et al., supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

It should be noted that in the second extension of martial law and suspension of the privilege of the writ of *habeas corpus*, the Court, in *Lagman v. Pimentel III*,<sup>10</sup> held that the second extension was constitutional because aside from finding that public safety required the extension, the Court also found that **the rebellion that spawned the Marawi crisis persists**, and that the remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory based on the AFP report, thus:

The Dawlah Islamiyah is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi.

x x x x

After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.

However, manpower increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.

ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 by the Maute Group in the Lanao provinces; 37 by the Maguid Group in Sarangani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to 50,000.00; and, as radicalized converts.

These newly recruited members are undergoing trainings in tactics, marksmanship and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with @Abu DAR who has historically established link with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester. x x x

<sup>10</sup>

*Id.*

The AFP's data also showed that Foreign Terrorist Fighters (FTFs) are now acting as instructors to the new members of the Dawlah Islamiyah.<sup>11</sup> (Citations omitted.)

The Court further stated that:

Petitioners in G.R. Nos. 236061 and 236155 have asserted that the rebellion no longer persists as the President himself had announced the liberation of Marawi City, and armed combat has ceased therein. Petitioners in G.R. No. 236061 added that Col. Romeo Brawner, Deputy Commander of the Joint Task Force Ranao, was also quoted as saying that the Maute-ISIS problem was about to be over. The statements, however, were admittedly made on October 17, 2017, nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through their monitoring efforts. It is not inconceivable that remnants of the Dawlah Islamiyah would indeed regroup, recruit new members and build up its arsenal during the intervening period. The termination of a rebellion is a matter of fact. Rebellion does not cease to exist by estoppel on account of the President's or the AFP's previous pronouncements. **Furthermore, it is settled that rebellion is in the nature of a continuing crime. Thus, members of the Dawlah Islamiyah who evaded capture did not cease to be rebels.**

**So also, it does not necessarily follow that with the liberation of Marawi, the DAESH/ISIS-inspired rebellion no longer exists.** Secretary Lorenzana, during the Congress' Joint Session on December 13, 2017, explained that while the situation in Marawi has substantially changed, the rebellion has not ceased but simply moved to other places in Mindanao x x x.

x x x x

In Lagman, 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

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<sup>11</sup>

*Id.*

necessarily be found or occurring in the place of the armed conflict[.]<sup>12</sup>  
(Citations omitted; emphasis supplied.)

In the belief that the rebellion that spawned the Marawi crisis continues to persist until the present, the third extension for the implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* was initiated by the President and approved by the Congress.

To reiterate, in his letter dated December 6, 2018 to the Congress, President Duterte manifested that the security assessment submitted by the AFP and the PNP highlights certain essential facts which show that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in the whole of Mindanao, to wit:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as IIG) 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.

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<sup>12</sup>*Id.*



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.<sup>13</sup>

During the Oral Argument, the AFP Deputy Chief of Staff for Intelligence, Major General Pablo Lorenzo, made a presentation in behalf of the respondents to inform the Court about the security situation in Mindanao, to establish that rebellion still exists and that public safety requires the extension of martial law in Mindanao. He stated:

[A]s a backgrounder, the violent take-over of Marawi City by local terrorist groups and embedded foreign terrorist fighters affiliated with the Islamic State led the President to declare martial law in Mindanao on May 23, 2017 by virtue of Presidential Proclamation No. 216. This bloody attempt to create a separate province or wilayat under the purported Islamic State caliphate necessitated a strong, swift and decisive action by the government. On July 22, 2017, martial law was extended for five more months until the end of 2017 in order to sustain the operational momentum against the Daulah Islamiyah hold-up in Marawi and prevent the spillover of rebellion in other areas in Mindanao, as a result, Marawi City was liberated from terrorists on October 23, 2017. On December 13, 2017, the Philippine Congress approved anew another extension of martial law up to the end of 2018 to effectively quell the remnants of this rebel groups that continue to take up arms against the government. On February 6, 2018, the Supreme Court upheld the constitutionality of the martial law extension. On December 12, 2018, the Philippine Congress approved the request of the President to extend Martial law for one more year up to the end of 2019. The constitutionality of which, however, is again being questioned in this august body. This presentation will therefore show that after almost 20 months since martial law was first declared in Mindanao, rebellion still exists and that the safety of the public is imperiled by the rebellion notwithstanding the gains achieved during its period of implementation. The factual basis for the extension of martial law is anchored on the continuing rebellion being waged by the communist terrorist group and the local communist terrorist groups along with their foreign terrorist allies. The following slides provide the current status and activities of these groups.

(Slides being flashed on the screen.)

For the local terrorist groups and the foreign terrorist fighters, there are two major terrorist groups waging rebellion in the country. First, the Daulah Islamiyah which is the local franchise of the Islamic State and the Bangsamoro Islamic Freedom Fighters or BIFF, a faction that broke away from the MILF when the latter agreed to settle for enhanced autonomy instead of an independent Islamic State. The Daulah Islamiyah or "DI" is a collective term of all local terrorist groups that have pledged allegiance to

<sup>13</sup> President Rodrigo R. Duterte's Letter, dated December 6, 2018, addressed to the Congress; *rollo*, G.R. No. 243522 (Vol. 1), pp. 53-54.



Islamic State leader Abu Bakar al Baghdadi. It used to be headed by the late Isnilon Hapilon. After its failed attempt in Marawi, the DI continued its rebellion. In its official newsletter from the (inaudible) Roll dated 22 September 2018, the Islamic State provided the rationale for the continuing war that is being waged by its affiliates around the world and I quote: "To defend the lands of Islam and to make the word of Allah the highest". Moreover, the Islamic State, through the same newsletter, as well as its mock news agency [continues] to claim credit for the accomplishments of the soldiers of the kilafa or caliphate including those in East Asia wilayah indeed as the Islamic State Central in Iraq and Syria [continues] to lose territories, the burden of continuing its fight and projecting its global presence has now fallen into the hands of its affiliates including the East Asia wilayah to which the DI belongs. At present, the Daulah Islamiyah is comprised of the post Marawi remnants of the local Islamic State affiliated groups namely: the Lanao based Maute group led by Owayda M. Abdulmajid alias Abu Dar, the Maguindanao based Turaiife group still headed by former BIFF Vice-Chairman for Internal Affairs Esmail Abdulmalik a.k.a. Abu Turaiife, the Saranggani based Maguid group whose de facto leader is now Jeffrey Nilong a.k.a. Moymoy and the Basilan and Sulu based Abu Sayyaf groups led by Puruji Indama and Hajan Sawadjaan, respectively. The Daulah Islamiyah's total manpower is placed at 574 equipped with 564 firearms, its presence and influence can be felt in 154 barangays in Western, Southern, and Central Mindanao. Foreign Terrorists Fighters or FTF's are also embedded with these DI affiliated groups which further complicate the government's effort to effectively address this LTGs. Aside from their high level of motivation brought about by their deep ideological foundations, they usually bring with them combat experience, contacts in international terrorist networks and functional knowledge in urban warfare tactics, IED fabrication and employment, anti-armor operations, cyber communications and financial operations, among others. As such, the FTF's continued presence facilitates the transmission of ideology, knowledge and competencies to local terrorist groups. They have also become primary instigators of more daring and deadly attacks. For instance, on July 31, 2018, foreign terrorist fighter Abu Kathir Al-Maghribi became the first suicide bomber recorded in the Philippines since the rise of the Islamic State. As of the latest count, there are four validated foreign terrorist fighters in the country while another 60 are on the watch list. For 2018, this DI affiliated groups figured in 72 encounters or clashes with government security forces resulting in 84 killed and 168 wounded on the part of the enemy, government security forces and civilians. In one instance, specifically last 16 November 2018, the ASG was able to kill five soldiers and injured 23 others. One of the soldiers who was killed, Corporal Renhart T. Macad was even beheaded. An FTF was likewise seen together with the engaged Abu Sayyaf group. From January to December 2018, the DI carried out 76 composed of ten other DI affiliated groups and 66 Abu Sayyaf group atrocities or violent activities, the most significant of which are the bombings and kidnappings. With regards to bombings, the most significant are the bombing in Lamitan City, Basilan by the ASG, two bombings in Isulan, Sultan Kudarat and the recent bombing in Cotabato City by the DI Turaiife group and one bombing in General Santos City by the DI-Maguid group. Collectively, this resulted in one, 17, rather, killed and 100 injured mostly civilians. On kidnappings, which has been the primary source of funds by the Abu Sayyaf group, a total of 18 incidents victimizing 39 individuals were recorded for 2018. This allowed the group

to accumulate approximately 41.9 million pesos in ransom payments. Thus far, a total of eight kidnapped victims composed of five foreigners and three locals are still being held captive by the Abu Sayyaf group. The DI affiliated groups have been monitored actively conducting radicalization activities in vulnerable Muslim communities and recruiting new members specifically targeting aggrieved relatives and orphans of killed Daulah Islamiyah members during the Marawi crisis. Opportunity to exact revenge and monetary incentive have become common inducements for potential recruits. The DI was also monitored conducting specialized military trainings on several occasions this year, a total of 36 recruitment and eight training activities were conducted by the DI last year. Significant of this were the IED training conducted by the DI-Maute group in Balindong, Lanao del Sur in March, the sniping training conducted by the DI-Maguid group in Palembang, Sultan Kudarat in May 2018, and the combat training of Abu Sayyaf group members under Basilan based sub-leader Puruji Indama, [along] with one Moroccan national in Sumisip, Basilan in August 2018. As mentioned earlier, the Bangsamoro Islamic Freedom Fighters broke away from the MILF when the latter decided to seriously [engage] in peace negotiations with the government. The BIFF has adopted the original objective of the MILF which is to establish an independent Bangsamoro state. As such, the group is strongly opposed to the MILF sponsored Bangsamoro Organic Law which is threatening the groups relevance and purpose of existence. Because of this, the BIFF is exploring all means to derail its implementation while continuing its violent push for the creation of an independent Bangsamoro homeland. At present, the BIFF is composed of the Karialan and Bungos factions. Their combined manpower and firearms are placed at 264 and 254, respectively. The BIFF [continues] to exert considerable influence in 50 barangays in the Municipality of Shariff Aguak, Datu Saudi-Ampatuan, Datu Unsay, Datu Hoffer Ampatuan, Datu Salibo and Datu Piang, all in Maguindanao. It also operates in some parts of North Cotabato, particularly in Pikit, Midsayap and Aleosan. For 2018, the BIFF figured in 55 encounters or clashes with government security forces that resulted in 14 killed and 36 injured in the enemy/government security forces and civilians alike. Furthermore, the BIFF managed to undertake 76 atrocities or violent activities; the most significant are the 21 IED attacks and 40 harassments of military installations. All these incidents resulted in the killing of 7 government forces, 8 civilians and the wounding of 23 government forces and 5 civilians. Significantly, the BIFF was able to conduct 2 IED trainings, one in South Uti and another one in Shariff Aguak, Maguindanao in February and December last year with around 50 participants who were tasked to conduct test missions in key urban areas in Central Mindanao after these trainings.<sup>14</sup>

In respondents' Memorandum, the Office of the Solicitor General mentioned the Department of National Defense's reference material presented during the Joint Session of Congress on the extension of martial law, which showed a total of 137 violent incidents committed by the local terrorist rebel groups (ASG, BIFF, DI, and other groups that have

<sup>14</sup> TSN, Oral Argument, G.R. Nos. 243522, 243677, 243745 and 243797, January 29, 2019, pp. 11-14.

established affiliation with ISIS/DAESH) from January 1 to November 30, 2018, as follows:

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 <sup>15</sup>

In the same reference material, the Department of National Defense reported the incidents for the period January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTG, as follows:

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 <sup>16</sup>

The violent incidents of harassment, kidnapping and arson were explained by Major General Pablo Lorenzo, thus:

The word “harassment” is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking,

<sup>15</sup> Memorandum of Respondents; *rollo*, G.R. No. 243522 (Vol. 2), p. 826.

<sup>16</sup> *Id.* at 826-827.

or to project presence in the area. x x x. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.<sup>17</sup>

**Undeniably, the AFP reports show that rebellion persists in Mindanao, and the violent activities, including bombing, kidnapping, harassment, and encounters with the military committed by the LTG rebel groups are in furtherance of rebellion with the goal to create a separate province or *wilayat* under the purported Islamic State caliphate (DI) and to establish an independent Bangsamoro state (BIFF) and deprive the President and the Congress of their powers or prerogatives. On the other hand, the CTG aims to overthrow the duly constituted government and establish communist rule.**

It must be reiterated that the gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character.<sup>18</sup> This peculiarity was underscored in the case of *People v. Hernandez, et al.*,<sup>19</sup> thus:

In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a *political purpose*. *The decisive factor is the intent or motive*. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the [Philippine] Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.<sup>20</sup> (Emphasis in the original.)

<sup>17</sup> *Id.* at 853-854.

<sup>18</sup> *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

<sup>19</sup> 99 Phil. 515 (1956).

<sup>20</sup> *Id.* at 535-536.

The bombings and all other attacks, kidnapping, killings, harassment, recruitment of new members, and propaganda activities conducted by the rebel and terrorist groups show that rebellion continues because these atrocities and propaganda activities are perpetrated by the same rebel groups. The concerted destabilizing activities and actions of the rebel groups are all committed in furtherance of rebellion.

Thus, the Court, in appreciating the evidence, would have to consider the fact that the entire picture could only be arrived at after piecing together what may appear initially as fragments which hardly mean anything. But such pieces could only present a better image when they are seen as parts of a whole. Such pieces are just like those of a jigsaw puzzle, or individual elements of a mosaic. When seen individually, they do not seem to make sense, but when arranged in the proper manner and seen from a distance, they present an entirely different picture.

In the same way, the Court should see the individual pieces of evidence which initially may look disparate and unrelated incidents. When these are seen in proper perspective, however, they would readily show that they are all part of the rebellion that justifies the exercise of martial law powers. Some acts of violence in some other parts of Mindanao, no matter how apparently far removed, in place and time, from the Marawi incident, could be another aspect of the continuing rebellion. The acts need not be confined to where it all started as they may have to be done elsewhere. Government success in quelling the uprising in one part could force the rebels to move elsewhere and continue with their operations there.

***Public safety requires the extension  
of martial law in Mindanao***

To recapitulate, the following events and circumstances strongly indicated that the continued implementation of martial law in Mindanao is necessary to protect public safety.

- a. 181 persons in the martial law arrest orders have remained at large;
- b. Despite the dwindling strength and capabilities of the terrorist groups, the recent bombings that transpired in Mindanao collectively killed 16 people and injured 63 others in less than 2 months;
- c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency who conducted an anti-drug symposium in Lanao del Sur were brutally ambushed, in which 5 were killed and 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;
- e. As of December 6, 2018, there are still 7 remaining kidnap victims under captivity;
- f. Mindanao remains to be the hotbed of communist rebel insurgency in the country. 8 out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao;
- g. From January to November 2018, the number of Ideological Political and Organizational efforts of the communist group amounted to 1420 which indicated their continuing recruitment of new members;
- h. The CTG exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds. On November 28, 2018, Satur Ocampo and 18 others were intercepted in a PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors.

Considering the above-cited incidents, while it may be true that the Maute group had been eliminated in Marawi, this should not be seen as the end of the rebellion. Other individuals or groups acting in concert with or animated by the same aim as that of the Maute group, including the New People's Army (*NPA*), still operate in other parts of Mindanao, all with the purpose of wresting power and authority from the legitimate government. If the purpose of declaring martial law in the first place is to be achieved, then all other acts of rebellion, whether done by the original group that started in Marawi or by some other related or similar groups, should be appreciated as parts intrinsically linked to the rebellion that called forth the proclamation of martial law.

The seemingly disconnected acts of violence and terrorism are interrelated parts of an ongoing rebellion that did not stop just because the government succeeded in quelling the uprising in Marawi. As shown by other incidents elsewhere, and until recently, it is apparent that the government still has some way to go to really achieve its purpose of ensuring the safety and security of the people.

Moreover, public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from



events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters." Public safety is an abstract term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds.<sup>21</sup>

Thus, we cannot limit the declaration of martial law only where the attacks or hostilities are happening. This has been settled in *Lagman v. Medialdea*:<sup>22</sup>

Perhaps another reason why the territorial scope of martial law should not necessarily be limited to the particular vicinity where the armed public uprising actually transpired, is because of the unique characteristic of rebellion as a crime. "The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion." Rebellion absorbs "other acts committed in its pursuance". Direct assault, murder, homicide, arson, robbery, and kidnapping, just to name a few, are absorbed in the crime of rebellion if committed in furtherance of rebellion; "[i]t cannot be made a basis of a separate charge." Jurisprudence also teaches that not only common crimes may be absorbed in rebellion but also "offenses under special laws [such as Presidential Decree No. 1829] which are perpetrated in furtherance of the political offense." "All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves."

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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.

Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. It is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

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<sup>21</sup> *Lagman, et al. v. Pimentel III, et al.*, *supra* note 3.

<sup>22</sup> *Supra* note 2.





x x x. Clearly, the power to determine the scope of territorial application belongs to the President. "The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system."<sup>23</sup> (Citations omitted.)

It is also to be underscored that with modern means of communication and transportation, it is no longer that difficult for affiliated groups of rebels to communicate and move from place to place. Putting out the rebellion in Marawi does not necessarily mean the end of the rebellion as members of said movement, or their affiliated groups, could easily get in touch with each other and coordinate acts of violence, terrorism and rebellion. Or, they could easily be in one place at one time and in another a short time later.

The Court is likewise in no different position now as it was during the initial declaration of martial law and its second extension. The Court can only act within the confines of its powers in determining the sufficiency of the factual basis for declaring or extending martial law.

Based on the AFP's end of first semester data, the ASG has a total of 424 members with 473 firearms. The BIFF has 264 members with 254 firearms and affecting 50 barangays. The DI has a reach of 16 barangays and is composed of 59 members of the Maute Group with 61 firearms, 6 members of the Maguid Group with 10 firearms, and 85 members of the Toraike Group with 20 firearms. The total barangays affected are 204. There is also a consistent influx of foreign terrorists in the country who are primarily responsible for the conduct of trainings to local terrorist fighters. There are 4 identified foreign terrorist fighters, while 60 others are among those in the AFP's watchlist.

AFP General Carlito G. Galvez, Jr. and PNP Chief Oscar D. Albayalde emphasized the need to end the ongoing rebellion because the Daesh-inspired groups and its local and foreign allies, and also the Communist Party of the Philippines-NPA forces in Mindanao, have shifted their strategy from establishing a *wilayat* to global insurgency or rebellion. Thus, they continue their recruitment and radicalization activities by teaching their new members how to launch deadlier attacks and to sow chaos and instability that will extremely endanger the public.

If the President can rely on the AFP and PNP intelligence reports and classified documents, this Court should also do so. To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategic value of other places in the military's efforts to quell the rebellion

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<sup>23</sup>*Id.* at 207-209.

and restore peace. It would be engaging in an act of adventurism if it dares to embark on a mission of deciphering the territorial metes and bounds of martial law. The Court has no military background and technical expertise to predict that. In the same manner, the Court lacks the technical capability to determine which part of Mindanao would best serve as forward operating base of the military in their present endeavor in Mindanao. It is on this score that the Court should give the President sufficient leeway to address the peace and order problem in Mindanao.<sup>24</sup>

Again, as explained in *Lagman v. Medialdea*,<sup>25</sup> the Court's reliance on the fact-finding capabilities of the Executive Department should not be considered as a constitutional lapse as this is in line with the function of the Court in determining the sufficiency of factual basis of the further extension of martial law, it must be limited only to the facts and information mentioned in the AFP Report. We cannot "undertake an independent investigation beyond the pleadings."

### ***Deadline for Decision-Rendition***

The Constitution mandates that this Court "must promulgate its decision" in regard to petitions questioning the proclamation or extension of martial law within thirty (30) days from filing.<sup>26</sup> The language is couched in the imperative. However, this may not always be achievable, especially if the Court has to do its job of properly and meticulously evaluating the sufficiency of the factual basis. There are certain factors that would not make it feasible for the Court to render judgment within the period mandated by the Constitution. One is the fact that since it involves fact-finding, the Court could not just decide on mere allegations and counter-allegations in pleadings. It has to schedule oral arguments, which may take days.

Another factor is the possibility that there may be several petitions filed questioning the proclamation or the extension, such as in this instant proceeding, as well as in the past ones. The Court could not just limit itself to the issues raised in the initial petition and ignore the rest.

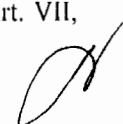
Also, the need for the Court to deliberate could result in various opinions, especially when it comes to contentious cases, such as this case. There may be changing majority depending on how the members of the

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<sup>24</sup> *Lagman v. Medialdea*, *supra* note 2, at 209-210.

<sup>25</sup> *Id.* at 154-155.

<sup>26</sup> "The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing." (Art. VII, Sec. 18, Par. 3, CONSTITUTION.)



Court would appreciate the facts and circumstances. Coming up with the final majority opinion may mean a slight delay.

Further, given the fact that when it comes to the extension of martial law, the Congress also has a definitive say, not only that of the President, the Court may have to need additional time to carefully evaluate the factual basis to determine its sufficiency in accordance with the constitutional intent. Since it is no longer merely the decision of the President that is being considered but also that of the Congress itself, the Court may have to tread more carefully in undertaking its determination of factual sufficiency. It would be unbecoming of the Court to come up with a half-baked decision simply because of time pressure, especially when it comes to very important matters, such as the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*.

Given all the foregoing considerations, as well as others that may arise, the Court may not be able to promulgate the decision within the time frame as envisioned by the Fundamental Law. Some delay may be occasioned, but the Court must still act with all deliberate dispatch in keeping with the letter and spirit of the constitutional provision. In *Fortun, et al. v. President Macapagal-Arroyo, et al.*,<sup>27</sup> the Court also stated: "But what if the 30 days given it by the Constitution proves inadequate? Justice Antonio T. Carpio himself offers the answer in his dissent: that 30-day period does not operate to divest this Court of its jurisdiction over the case. The settled rule is that jurisdiction once acquired is not lost until the case has been terminated."<sup>28</sup>

***Meaning of rebellion must be appreciated  
in the context of modern technology***

Rebellion, as a justification for the proclamation of martial law, has been directly identified with the crime as defined in the Revised Penal Code. It might be time for the Court to revisit this aspect and give it a meaning that is attuned to the digital world. Martial law as a means for the State to defend itself should not be limited to the technical meaning as set out in the penal laws requiring the use of arms. In these modern times where the use of computers presents the possibility of rebels crippling government operations, rebellion under the concept of martial law may be given a meaning that takes into account other forms by which people seeking to topple or overthrow the government can accomplish it. In the cyber age, rebellion may not simply be waged by arms but also by some other means which could achieve the same purpose – arms should not be confined to traditional meaning of firearms and ammunition but also digital weapons.

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<sup>27</sup> 684 Phil. 526 (2012).

<sup>28</sup> *Id.* at 561.

*Determination by both Political Departments*

While the Court is mandated by the Constitution to determine the sufficiency of the factual basis for the declaration of martial law, or its extension, some consideration must still be given to the factual determination by the President and the Congress. We must not lose sight of the fact that we are not armchair generals second guessing those who are in the field of battle. We may have better perspective from a distance and in hindsight, but then we cannot really see the other details that have to be carefully evaluated and calibrated by the President and the Congress when they act together to extend the duration of martial law. Some leeway, therefore, must be accorded the political departments when it comes to the Court's exercise of its duty to determine sufficiency of the factual basis for the extension of martial law. Nitpicking when it comes to the evidence presented by the government would be inappropriate.

This is not to say that the Court should just lean backward and put its imprimatur on whatever the President and the Congress would have done. If the Court were to do that, it would constitute an abdication of its constitutional power. The Court must do its job, but it must be done in a manner that recognizes the initial primary responsibility of the political branches to evaluate facts and circumstances in deciding whether or not to extend the duration of martial law. Therefore, some pieces of evidence considered by the President and the Congress should not just be dismissed because it does not conform to the Court's idea of acceptable and credible evidence that would support a judicial determination in ordinary litigation. The evidence available may at best be justified by a consideration of interrelated pieces which are inherently difficult to gather given the fact that rebellion, including terrorism, is an act that would have to employ stealth and secrecy to succeed. Rebellion may have to rely on surprise brought about by the government's failure to appreciate the small and apparently disparate acts or activities all leading to the open outbreak or manifestation of acts to overthrow the government.

Rebellion may be like cancer gnawing at the vital organs of society. It may only be noticed when already in its advanced stage, at which time there would be need to take radical remedial measures, such as the proclamation of martial law. Eradicating the cancer at the point where it was first detected does not necessarily mean that it has been contained. There is still the possibility that it has also spread undetected to some other parts, for which continuing measures would have to be undertaken. The same way with rebellion. There is a need to root out the problem, which is not as simple as defeating the rebels who tried to take over a particular locality. Otherwise,



the government may win the battle, but would eventually lose the war because it stopped at merely defeating its enemies where it first found them.

ACCORDINGLY, based on the foregoing, I vote to DISMISS the petitions and DECLARE Resolution of Both Houses No. 6 as CONSTITUTIONAL.



**DIOSDADO M. PERALTA**  
Associate Justice