Republic of the Philippines
Supreme Court
Manila

EN BANC

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, GARY C. ALEJANO, EMMANUEL A. BILLONES, AND TEDDY BRAWNER BAGUILAT, JR., *Petitioners,* - versus - **HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; AND GEN. EDUARDO AÑO, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR,** *Respondents.* x----------x	**G.R. No. 231658**
EUFEMIA CAMPOS CULLAMAT, VIRGILIO T. LINCUNA, ATELIANA U. HIJOS, ROLAND A. COBRADO, CARL ANTHONY D. OLALO, ROY JIM BALANGHIG, RENATO REYES, JR., CRISTINA E. PALABAY, AMARYLLIS H. ENRIQUEZ, ACT TEACHERS' REPRESENTATIVE ANTONIO L. TINIO, GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS, KABATAAN PARTY-LIST REPRESENTATIVE SARAH JANE I. ELAGO, MAE	**G.R. No. 231771**

PANER, GABRIELA KRISTA DALENA, ANNA ISABELLE ESTEIN, MARK VINCENT D. LIM, VENCER MARI CRISOSTOMO, JOVITA MONTES,
Petitioners,

- versus -

PRESIDENT RODRIGO DUTERTE, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GENERAL EDUARDO AÑO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD DELA ROSA,
Respondents.

x - x

NORKAYA S. MOHAMAD, SITTIE NUR DYHANNA S. MOHAMAD, NORAISAH S. SANI, ZAHRIA P. MUTI-MAPANDI,
Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) CATALINO S. CUY, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. EDUARDO M. AÑO, PHILIPPINE NATIONAL POLICE

G.R. No. 231774

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES, *and*
TIJAM, *JJ.*

(PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,
Respondents.

Promulgated:
July 4, 2017

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DECISION

DEL CASTILLO, *J.*:

Effective May 23, 2017, and for a period not exceeding 60 days, President Rodrigo Roa Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao.

The full text of Proclamation No. 216 reads as follows:

> WHEREAS, Proclamation No. 55, series of 2016, was issued on 04 September 2016 declaring a state of national emergency on account of lawless violence in Mindanao;
>
> WHEREAS, Section 18, Article VII of the Constitution provides that 'x x x In 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, 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.
>
> NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim as follows:
>
> SECTION 1. There is hereby declared a state of martial law in the Mindanao group of islands for a period not exceeding sixty days, effective as of the date hereof.
>
> SECTION 2. The privilege of the writ of habeas corpus shall likewise be suspended in the aforesaid area for the duration of the state of martial law.
>
> DONE in the Russian Federation, this 23rd day of May in the year of our Lord, Two Thousand and Seventeen.

Within the timeline set by Section 18, Article VII of the Constitution, the President submitted to Congress on May 25, 2017, a written Report on the factual basis of Proclamation No. 216.

The Report pointed out that for decades, Mindanao has been plagued with rebellion and lawless violence which only escalated and worsened with the passing of time.

> Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority of the duly constituted authorities, i.e., the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. Two armed groups have figured prominently in all these, namely, the Abu Sayaff Group (ASG) and the ISIS-backed Maute Group.[1]

The President went on to explain that on May 23, 2017, a government operation to capture the high-ranking officers of the Abu Sayyaf Group (ASG) and the Maute Group was conducted. These groups, which have

[1] *Rollo* of G.R. No. 231658, p. 37.

been unleashing havoc in Mindanao, however, confronted the government operation by intensifying their efforts at sowing violence aimed not only against the government authorities and its facilities but likewise against civilians and their properties. As narrated in the President's Report:

> On 23 May 2017, a government operation to capture Isnilon Hapilon, a senior leader of the ASG, and Maute Group operational leaders, Abdullah and Omarkhayam Maute, was confronted with armed resistance which escalated into open hostility against the government. Through these groups' armed siege and acts of violence directed towards civilians and government authorities, institutions and establishments, they were able to take control of major social, economic, and political foundations of Marawi City which led to its paralysis. This sudden taking of control was intended to lay the groundwork for the eventual establishment of a DAESH *wilayat* or province in Mindanao.
>
> Based on verified intelligence reports, the Maute Group, as of the end of 2016, consisted of around two hundred sixty-three (263) members, fully armed and prepared to wage combat in furtherance of its aims. The group chiefly operates in the province of Lanao del Sur, but has extensive networks and linkages with foreign and local armed groups such as the Jemaah Islamiyah, Mujahidin Indonesia Timur and the ASG. It adheres to the ideals being espoused by the DAESH, as evidenced by, among others, its publication of a video footage declaring its allegiance to the DAESH. Reports abound that foreign-based terrorist groups, the ISIS (Islamic State of Iraq and Syria) in particular, as well as illegal drug money, provide financial and logistical support to the Maute Group.
>
> The events commencing on 23 May 2017 put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities – the President, foremost – of their powers and prerogatives.[2]

In particular, the President chronicled in his Report the events which took place on May 23, 2017 in Marawi City which impelled him to declare a state of martial law and suspend the privilege of writ of *habeas corpus,* to wit:

- At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities – government and privately owned – in the City of Marawi.
- At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being managed by the Bureau of Jail Management and Penology (BJMP).

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2 Id.

- The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells.

- The group took cellphones, personnel-issued firearms, and vehicles (*i.e.,* two [2] prisoner vans and private vehicles).

- By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)

- From 1800H to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.

- A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail. The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.

- The BJMP directed its personnel at the Marawi City Jail and other affected areas to evacuate.

- By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.

- As of 2222H, persons connected with the Maute Group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar.

- These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.

- Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.

- About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.

- Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.

- The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry

gates of Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the PhilHealth office located thereat.

- The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze.

- Lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles.

- Latest information indicates that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded.

- There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians. They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.

- Based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the government.[3]

The unfolding of these events, as well as the classified reports he received, led the President to conclude that –

> These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao.
>
> The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government.
>
> There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to

[3] Id. at 38-39.

ensure that all laws are faithfully executed; and remove his supervisory powers over local governments.[4]

According to the Report, the lawless activities of the ASG, Maute Group, and other criminals, brought about undue constraints and difficulties to the military and government personnel, particularly in the performance of their duties and functions, and untold hardships to the civilians, *viz.*:

> Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered.
>
> The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao.[5]

The Report highlighted the strategic location of Marawi City and the crucial and significant role it plays in Mindanao, and the Philippines as a whole. In addition, the Report pointed out the possible tragic repercussions once Marawi City falls under the control of the lawless groups.

> The groups' occupation of Marawi City fulfills a strategic objective because of its terrain and the easy access it provides to other parts of Mindanao. Lawless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages.
>
> Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity.[6]

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4 Id. at 40.
5 Id.
6 Id. at 40-41.

The President ended his Report in this wise:

> While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao until such time that the rebellion is completely quelled.[7]

In addition to the Report, representatives from the Executive Department, the military and police authorities conducted briefings with the Senate and the House of Representatives relative to the declaration of martial law.

After the submission of the Report and the briefings, the Senate issued P.S. Resolution No. 388[8] expressing full support to the martial law proclamation and finding Proclamation No. 216 "to be satisfactory, constitutional and in accordance with the law". In the same Resolution, the Senate declared that it found "no compelling reason to revoke the same". The Senate thus resolved as follows:

> NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, by way of the sense of the Senate, that the Senate finds the issuance of Proclamation No. 216 to be satisfactory, constitutional and in accordance with the law. The Senate hereby supports fully Proclamation No. 216 and finds no compelling reason to revoke the same.[9]

The Senate's counterpart in the lower house shared the same sentiments. The House of Representatives likewise issued House Resolution No. 1050[10] "EXPRESSING THE FULL SUPPORT OF THE HOUSE OF REPRESENTATIVES TO PRESIDENT RODRIGO DUTERTE AS IT FINDS NO REASON TO REVOKE 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*'".

The Petitions

A) G.R. No. 231658 (Lagman Petition)

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7 Id. at 41.
8 Id. at 42-43.
9 Id. at 43.
10 Id. at 44-45.

On June 5, 2017, Representatives Edcel C. Lagman, Tomasito S. Villarin, Gary C. Alejano, Emmanuel A. Billones, and Teddy Brawner Baguilat, Jr. filed a *Petition*[11] *Under the Third Paragraph of Section 18 of Article VII of the 1987 Constitution.*

First, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because there is no rebellion or invasion in Marawi City or in any part of Mindanao. It argues that acts of terrorism in Mindanao do not constitute rebellion[12] since there is no proof that its purpose is to remove Mindanao or any part thereof from allegiance to the Philippines, its laws, or its territory.[13] It labels the flying of ISIS flag by the Maute Group in Marawi City and other outlying areas as mere propaganda[14] and not an open attempt to remove such areas from the allegiance to the Philippine Government and deprive the Chief Executive of the assertion and exercise of his powers and prerogatives therein. It contends that the Maute Group is a mere private army, citing as basis the alleged interview of *Vera Files* with Joseph Franco wherein the latter allegedly mentioned that the Maute Group is more of a "clan's private militia latching into the IS brand theatrically to inflate perceived capability".[15] The Lagman Petition insists that during the briefing, representatives of the military and defense authorities did not categorically admit nor deny the presence of an ISIS threat in the country but that they merely gave an evasive answer[16] that "there is ISIS in the Philippines".[17] The Lagman Petition also avers that Lt. Gen. Salvador Mison, Jr. himself admitted that the current armed conflict in Marawi City was precipitated or initiated by the government in its bid to capture Hapilon.[18] Based on said statement, it concludes that the objective of the Maute Group's armed resistance was merely to shield Hapilon and the Maute brothers from the government forces, and not to lay siege on Marawi City and remove its allegiance to the Philippine Republic.[19] It then posits that if at all, there is only a *threat* of rebellion in Marawi City which is akin to "imminent danger" of rebellion, which is no longer a valid ground for the declaration of martial law.[20]

Second, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because the President's Report contained "false, inaccurate, contrived and hyperbolic accounts".[21]

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11 Id. at 3-32.
12 Id. at 15.
13 Id. at 16.
14 Id. at 16-17.
15 Id. at 17.
16 Id.
17 Id.
18 Id. at 19.
19 Id. at 20.
20 Id. at 20-21.
21 Id. at 23.

It labels as false the claim in the President's Report that the Maute Group attacked Amai Pakpak Medical Center. Citing online reports on the interview of Dr. Amer Saber (Dr. Saber), the hospital's Chief, the Lagman Petition insists that the Maute Group merely brought an injured member to the hospital for treatment but did not overrun the hospital or harass the hospital personnel.[22] The Lagman Petition also refutes the claim in the President's Report that a branch of the Landbank of the Philippines was ransacked and its armored vehicle commandeered. It alleges that the bank employees themselves clarified that the bank was not ransacked while the armored vehicle was owned by a third party and was empty at the time it was commandeered.[23] It also labels as false the report on the burning of the Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School. It avers that the Senator Ninoy Aquino College Foundation is intact as of May 24, 2017 and that according to Asst. Superintendent Ana Alonto, the Marawi Central Elementary Pilot School was not burned by the terrorists.[24] Lastly, it points out as false the report on the beheading of the police chief of Malabang, Lanao del Sur, and the occupation of the Marawi City Hall and part of the Mindanao State University.[25]

Third, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis since the President's Report mistakenly included the attack on the military outpost in Butig, Lanao del Sur in February 2016, the mass jail break in Marawi City in August 2016, the Zamboanga siege, the Davao market bombing, the Mamasapano carnage and other bombing incidents in Cotabato, Sultan Kudarat, and Basilan, as additional factual bases for the proclamation of martial law. It contends that these events either took place long before the conflict in Marawi City began, had long been resolved, or with the culprits having already been arrested.[26]

Fourth, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis considering that the President acted alone and did not consult the military establishment or any ranking official[27] before making the proclamation.

Finally, the Lagman Petition claims that the President's proclamation of martial law lacks sufficient factual basis owing to the fact that during the presentation before the Committee of the Whole of the House of Representatives, it was shown that the military was even successful in pre-

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22 Id. at 24.
23 Id.
24 Id. at 24-25.
25 Id. at 25.
26 Id.
27 Id. at 26-27.

empting the ASG and the Maute Group's plan to take over Marawi City and other parts of Mindanao; there was absence of any hostile plan by the Moro Islamic Liberation Front; and the number of foreign fighters allied with ISIS was "undetermined"[28] which indicates that there are only a meager number of foreign fighters who can lend support to the Maute Group.[29]

Based on the foregoing argumentation, the Lagman Petition asks the Court to: (1)"exercise its specific and special jurisdiction to review the sufficiency of the factual basis of Proclamation No. 216"; and (2) render "a Decision voiding and nullifying Proclamation No. 216" for lack of sufficient factual basis.[30]

In a Resolution[31] dated June 6, 2017, the Court required respondents to comment on the Lagman Petition and set the case for oral argument on June 13, 14, and 15, 2017.

On June 9, 2017, two other similar petitions docketed as G.R. Nos. 231771 and 231774 were filed and eventually consolidated with G.R. No. 231658.[32]

B) G.R. No. 231771 (Cullamat Petition)

The Cullamat Petition, "anchored on Section 18, Article VII"[33] of the Constitution, likewise seeks the nullification of Proclamation No. 216 for being unconstitutional because it lacks sufficient factual basis that there is rebellion in Mindanao and that public safety warrants its declaration.[34]

In particular, it avers that the supposed rebellion described in Proclamation No. 216 relates to events happening in Marawi City only and not in the entire region of Mindanao. It concludes that Proclamation No. 216 "failed to show any factual basis for the imposition of martial law in the *entire Mindanao*,"[35] "failed to allege any act of rebellion *outside Marawi City*, much less x x x allege that public safety requires the imposition of martial law *in the whole of Mindanao*".[36]

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28 Id. at 28.
29 Id. at 29.
30 Id. at 29-30.
31 Id. at 48-50.
32 *Rollo* of G.R. No. 231771, pp. 80-83; *rollo* of G.R. No. 231774, pp. 47-50.
33 *Rollo* of G.R. No. 231771, pp. 4, 7.
34 Id. at 5.
35 Id. at 23. Italics supplied.
36 Id. at 23-24. Italics supplied.

The Cullamat Petition claims that the alleged "capability of the Maute Group and other rebel groups to sow terror and cause death and damage to property"[37] does not rise to the level of rebellion sufficient to declare martial law in the whole of Mindanao.[38] It also posits that there is no lawless violence in other parts of Mindanao similar to that in Marawi City.[39]

Moreover, the Cullamat Petition assails the inclusion of the phrase "other rebel groups" in the last Whereas Clause of Proclamation No. 216 for being vague as it failed to identify these rebel groups and specify the acts of rebellion that they were supposedly waging.[40]

In addition, the Cullamat Petition cites alleged inaccuracies, exaggerations, and falsities in the Report of the President to Congress, particularly the attack at the Amai Pakpak Hospital, the ambush and burning of the Marawi Police Station, the killing of five teachers of Dansalan College Foundation, and the attacks on various government facilities.[41]

In fine, the Cullamat Petition prays for the Court to declare Proclamation No. 216 as unconstitutional or in the alternative, should the Court find justification for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Marawi City, to declare the same as unconstitutional insofar as its inclusion of the other parts of Mindanao.[42]

C) G.R. No. 231774 (Mohamad Petition)

The Mohamad Petition, denominated as a "Petition for Review of the Sufficiency of [the] Factual Basis of [the] Declaration of Martial Law and [the] Suspension of the Privilege of the Writ of *Habeas Corpus*,"[43] labels itself as "a special proceeding"[44] or an "appropriate proceeding filed by any citizen"[45] authorized under Section 18, Article VII of the Constitution.

The Mohamad Petition posits that martial law is a measure of last resort[46] and should be invoked by the President only after exhaustion of less

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37 Id. at 24.
38 Id.
39 Id. at 27.
40 Id. at 24-25.
41 Id. at 28-29.
42 Id. at 31.
43 *Rollo* of G.R. No. 231774, p. 3.
44 Id. at 6.
45 Id. at 8.
46 Id. at 11.

severe remedies.[47] It contends that the extraordinary powers of the President should be dispensed sequentially, *i.e.,* first, the power to call out the armed forces; second, the power to suspend the privilege of the writ of *habeas corpus*; and finally, the power to declare martial law.[48] It maintains that the President has no discretion to choose which extraordinary power to use; moreover, his choice must be dictated only by, and commensurate to, the exigencies of the situation.[49]

According to the Mohamad Petition, the factual situation in Marawi is not so grave as to require the imposition of martial law.[50] It asserts that the Marawi incidents "do not equate to the existence of a public necessity brought about by an actual rebellion, which would compel the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*".[51] It proposes that "[m]artial law can only be justified if the rebellion or invasion has reached such gravity that [its] imposition x x x is compelled by the needs of public safety"[52] which, it believes, is not yet present in Mindanao.

Moreover, it alleges that the statements contained in the President's Report to the Congress, to wit: that the Maute Group intended to establish an Islamic State; that they have the capability to deprive the duly constituted authorities of their powers and prerogatives; and that the Marawi armed hostilities is merely a prelude to a grander plan of taking over the whole of Mindanao, are conclusions bereft of substantiation.[53]

The Mohamad Petition posits that immediately after the declaration of martial law, and without waiting for a congressional action, a suit may already be brought before the Court to assail the sufficiency of the factual basis of Proclamation No. 216.

Finally, in invoking this Court's power to review the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the Mohamad Petition insists that the Court may "look into the wisdom of the [President's] actions, [and] not just the presence of arbitrariness".[54] Further, it asserts that since it is making a negative assertion, then the burden to prove the sufficiency of the factual

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47 Id.
48 Id.
49 Id. at 12.
50 Id. at 15.
51 Id. at 17.
52 Id. at 12.
53 Id. at 20-21.
54 Id. at 23.

basis is shifted to and lies on the respondents.[55] It thus asks the Court "to compel the [r]espondents to divulge relevant information"[56] in order for it to review the sufficiency of the factual basis.

In closing, the Mohamad Petition prays for the Court to exercise its power to review, "compel respondents to present proof on the factual basis [of] the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao"[57] and declare as unconstitutional Proclamation No. 216 for lack of sufficient factual basis.

The Consolidated Comment

The respondents' Consolidated Comment[58] was filed on June 12, 2017, as required by the Court. Noting that the same coincided with the celebration of the 119th anniversary of the independence of this Republic, the Office of the Solicitor General (OSG) felt that "defending the constitutionality of Proclamation No. 216" should serve as "a rallying call for every Filipino to unite behind one true flag and defend it against all threats from within and outside our shores".[59]

The OSG acknowledges that Section 18, Article VII of the Constitution vests the Court with the authority or power to review the sufficiency of the factual basis of the declaration of martial law.[60] The OSG, however, posits that although Section 18, Article VII lays the basis for the exercise of such authority or power, the same constitutional provision failed to specify the vehicle, mode or remedy through which the "appropriate proceeding" mentioned therein may be resorted to. The OSG suggests that the "appropriate proceeding" referred to in Section 18, Article VII may be availed of using the vehicle, mode or remedy of a *certiorari* petition, either under Section 1 or 5, of Article VIII.[61] Corollarily, the OSG maintains that the review power is not mandatory, but discretionary only, on the part of the Court.[62] The Court has the discretion not to give due course to the petition.[63]

Prescinding from the foregoing, the OSG contends that the sufficiency of the factual basis of Proclamation No. 216 should be reviewed by the

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55 Id. at 24.
56 Id.
57 Id. at 25.
58 *Rollo* of G.R. No. 231658, pp. 85-135.
59 Id. at 130.
60 Id. at 105.
61 Id. at 106.
62 Id. at 105.
63 Id.

Court "under the lens of grave abuse of discretion"[64] and not the yardstick of correctness of the facts.[65] Arbitrariness, not correctness, should be the standard in reviewing the sufficiency of factual basis.

The OSG maintains that the burden lies not with the respondents but with the petitioners to prove that Proclamation No. 216 is bereft of factual basis. It thus takes issue with petitioners' attempt to shift the burden of proof when they asked the Court "to compel [the] respondents to present proof on the factual basis"[66] of Proclamation No. 216. For the OSG, "he who alleges must prove"[67] and that governmental actions are presumed to be valid and constitutional.[68]

Likewise, the OSG posits that the sufficiency of the factual basis must be assessed from the trajectory or point of view of the President and based on the facts available to him *at the time the decision was made*.[69] It argues that the sufficiency of the factual basis should be examined *not* based on the facts discovered *after* the President had made his decision to declare martial law because to do so would subject the exercise of the President's discretion to an impossible standard.[70] It reiterates that the President's decision should be guided only by the information and data available to him at the time he made the determination.[71] The OSG thus asserts that facts that were established *after* the declaration of martial law should *not* be considered in the review of the sufficiency of the factual basis of the proclamation of martial law. The OSG suggests that the assessment of after-proclamation-facts lies with the President and Congress for the purpose of determining the propriety of revoking or extending the martial law. The OSG fears that if the Court considers after-proclamation-facts in its review of the sufficiency of the factual basis for the proclamation, it would in effect usurp the powers of the Congress to determine whether martial law should be revoked or extended.[72]

It is also the assertion of the OSG that the President could validly rely on intelligence reports coming from the Armed Forces of the Philippines;[73] and that he could not be expected to personally determine the veracity of the contents of the reports.[74] Also, since the power to impose martial law is

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64 Id. at 107.
65 Id.
66 Id. at 111.
67 Id.
68 Id.
69 Id. at 112.
70 Id. at 113.
71 Id.
72 Id.
73 Id.
74 Id. at 114.

vested solely on the President as Commander-in-Chief, the lack of recommendation from the Defense Secretary, or any official for that matter, will not nullify the said declaration, or affect its validity, or compromise the sufficiency of the factual basis.

Moreover, the OSG opines that the petitioners miserably failed to validly refute the facts cited by the President in Proclamation No. 216 and in his Report to the Congress by merely citing news reports that supposedly contradict the facts asserted therein or by criticizing in piecemeal the happenings in Marawi. For the OSG, the said news articles are "hearsay evidence, twice removed,"[75] and thus inadmissible and without probative value, and could not overcome the "legal presumption bestowed on governmental acts".[76]

Finally, the OSG points out that it has no duty or burden to prove that Proclamation No. 216 has sufficient factual basis. It maintains that the burden rests with the petitioners. However, the OSG still endeavors to lay out the factual basis relied upon by the President "if only to remove any doubt as to the constitutionality of Proclamation No. 216".[77]

The facts laid out by the OSG in its Consolidated Comment will be discussed in detail in the Court's Ruling.

ISSUES

The issues as contained in the revised Advisory[78] are as follows:

1. Whether or not the petitions docketed as G.R. Nos. 231658, 231771, and 231774 are the "appropriate proceeding" covered by Paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required of this Court when a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is promulgated;

2. Whether or not the President in declaring martial law and suspending the privilege of the writ of *habeas corpus:*

    a. is required to be factually correct or only not arbitrary in his appreciation of facts;

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75 Id.
76 Id.
77 Id. at 119.
78 *See* Notice dated June 13, 2017, id. at 211-216.

b. is required to obtain the favorable recommendation thereon of the Secretary of National Defense;

c. is required to take into account only the situation at the time of the proclamation, even if subsequent events prove the situation to have not been accurately reported;

3. Whether or not the power of this Court to review the sufficiency of the factual basis [of] the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* is independent of the actual actions that have been taken by Congress jointly or separately;

4. Whether or not there were sufficient factual [basis] for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*;

a. What are the parameters for review?

b. Who has the burden of proof?

c. What is the threshold of evidence?

5. Whether the exercise of the power of judicial review by this Court involves the calibration of graduated powers granted the President as Commander-in-Chief, namely calling out powers, suspension of the privilege of the writ of *habeas corpus*, and declaration of martial law;

6. Whether or not Proclamation No. 216 of 23 May 2017 may be considered vague and thus null and void:

a. with its inclusion of "other rebel groups;" or

b. since it has no guidelines specifying its actual operational parameters within the entire Mindanao region;

7. Whether or not the armed hostilities mentioned in Proclamation No. 216 and in the Report of the President to Congress are sufficient [bases]:

a. for the existence of actual rebellion; or

b. for a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region;

8. Whether or not terrorism or acts attributable to terrorism are equivalent to actual rebellion and the requirements of public safety sufficient to declare martial law or suspend the privilege of the writ of *habeas corpus*; and

9. Whether or not nullifying Proclamation No. 216 of 23 May 2017 will:

    a. have the effect of recalling Proclamation No. 55 s. 2016; or

    b. also nullify the acts of the President in calling out the armed forces to quell lawless violence in Marawi and other parts of the Mindanao region.

After the oral argument, the parties submitted their respective memoranda and supplemental memoranda.

OUR RULING

I. *Locus standi of petitioners.*

One of the requisites for judicial review is *locus standi, i.e.,* "the constitutional question is brought before [the Court] by a party having the requisite 'standing' to challenge it."[79] As a general rule, the challenger must have "a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[80] Over the years, there has been a trend towards relaxation of the rule on legal standing, a prime example of which is found in Section 18 of Article VII which provides that *any citizen* may file the appropriate proceeding to assail the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus.* "[T]he only requisite for standing to challenge the validity of the suspension is that the challenger be a citizen. He need not even be a taxpayer."[81]

Petitioners in the Cullamat Petition claim to be "suing in their capacities as citizens of the Republic;"[82] similarly, petitioners in the Mohamad Petition all claim to be "Filipino citizens, all women, all of legal [age], and residents of Marawi City".[83] In the Lagman Petition, however,

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79 Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., p. 850.

80 Id., citing *People v. Vera,* 65 Phil. 56, 89 (1937); *Police General Macasiano (Ret.) v. National Housing Authority,* 296 Phil. 56, 64 (1993).

81 Bernas, Joaquin G., Constitutional Rights and Social Demands, 2010 ed., p. 795.

82 *Rollo* of G.R. No. 231771, p. 7.

83 *Rollo* of G.R. No. 231774, p. 6.

petitioners therein did not categorically mention that they are suing as citizens but merely referred to themselves as duly elected Representatives.[84] That they are suing in their official capacities as Members of Congress could have elicited a vigorous discussion considering the issuance by the House of Representatives of House Resolution No. 1050 expressing full support to President Duterte and finding no reason to revoke Proclamation No. 216. By such resolution, the House of Representatives is declaring that it finds no reason to review the sufficiency of the factual basis of the martial law declaration, which is in direct contrast to the views and arguments being espoused by the petitioners in the Lagman Petition. Considering, however, the trend towards relaxation of the rules on legal standing, as well as the transcendental issues involved in the present Petitions, the Court will exercise judicial self-restraint[85] and will not venture into this matter. After all, "the Court is not entirely without discretion to accept a suit which does not satisfy the requirements of a [*bona fide*] case or of standing. Considerations paramount to [the requirement of legal standing] could compel assumption of jurisdiction."[86] In any case, the Court can take judicial cognizance of the fact that petitioners in the Lagman Petition are all citizens of the Philippines since Philippine citizenship is a requirement for them to be elected as representatives. We will therefore consider them as suing in their own behalf as citizens of this country. Besides, respondents did not question petitioners' legal standing.

II. *Whether or not the petitions are the "appropriate proceeding" covered by paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required by the Court.*

All three petitions beseech the cognizance of this Court based on the third paragraph of Section 18, Article VII (Executive Department) of the 1987 Constitution which provides:

> 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.

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84 *Rollo* of G.R. No. 231658, pp. 4-5.

85 Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., p. 852.

86 Id. at 851.

During the oral argument, the petitioners theorized that the jurisdiction of this Court under the third paragraph of Section 18, Article VII is *sui generis*.[87] It is a special and specific jurisdiction of the Supreme Court different from those enumerated in Sections 1 and 5 of Article VIII.[88]

The Court agrees.

a) *Jurisdiction must be specifically conferred by the Constitution or by law.*

It is settled that jurisdiction over the subject matter is conferred only by the Constitution or by the law.[89] Unless jurisdiction has been *specifically* conferred by the Constitution or by some legislative act, no body or tribunal has the power to act or pass upon a matter brought before it for resolution. It is likewise settled that in the absence of a *clear* legislative intent, jurisdiction cannot be implied from the language of the Constitution or a statute.[90] It must appear clearly from the law or it will not be held to exist.[91]

A plain reading of the afore-quoted Section 18, Article VII reveals that it specifically grants authority to the Court to determine the sufficiency of the factual basis of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus.*

b) "In an appropriate proceeding" does not refer to a petition for certiorari filed under Section 1 or 5 of Article VIII.

It could not have been the intention of the framers of the Constitution that the phrase "in an appropriate proceeding" would refer to a Petition for *Certiorari* pursuant to Section 1 or Section 5 of Article VIII. The standard of review in a petition for *certiorari* is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of his or her functions. Thus, it is not the proper tool to review the sufficiency of the factual basis of the proclamation or suspension. It must be emphasized that under Section 18, Article VII, the

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87 TSN of Oral Argument, June 13, 2017, p. 83.
88 Id. at 21-22.
89 *De Jesus v. Garcia,* 125 Phil. 955, 959 (1967).
90 Agpalo, Ruben, E., Statutory Construction, 2003 ed., p. 167, citing *Pimentel v. Commission on Elections*, 189 Phil. 581, 587 (1980) and *Dimagiba v. Geraldez*, 102 Phil. 1016, 1019 (1958).
91 *De Jesus v. Garcia*, supra at 960.

Court is tasked to review the sufficiency of the *factual* basis of the President's exercise of emergency powers. Put differently, if this Court applies the standard of review used in a petition for *certiorari*, the same would emasculate its constitutional task under Section 18, Article VII.

c) Purpose/significance of Section 18, Article VII is to constitutionalize the pre-Marcos martial law ruling in In the Matter of the Petition for Habeas Corpus of Lansang.

The third paragraph of Section 18, Article VII was inserted by the framers of the 1987 Constitution to constitutionalize the pre-Marcos martial law ruling of this Court in *In the Matter of the Petition for Habeas Corpus of Lansang,*[92] to wit: that the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is not a political question but precisely within the ambit of judicial review.

"In determining the meaning, intent, and purpose of a law or constitutional provision, the history of the times out of which it grew and to which it may be rationally supposed to bear some direct relationship, the evils intended to be remedied, and the good to be accomplished are proper subjects of inquiry."[93] Fr. Joaquin G. Bernas, S.J. (Fr. Bernas), a member of the Constitutional Commission that drafted the 1987 Constitution, explained:

> The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. ***Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence.*** The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.[94] (Emphasis supplied)

To recall, the Court held in the 1951 case of *Montenegro v. Castaneda*[95] that the authority to decide whether there is a state of rebellion

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92 149 Phil. 547 (1971).
93 Agpalo, Ruben, E., Statutory Construction, 2003 edition, p. 109.
94 Bernas, Joaquin, G., The Intent of the 1986 Constitution Writers, 1995 ed., p. 456.
95 91 Phil. 882, 887 (1952).

requiring the suspension of the privilege of the writ of *habeas corpus* is lodged with the President and his decision thereon is final and conclusive upon the courts. This ruling was reversed in the 1971 case of *Lansang* where it was held that the factual basis of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* is not a political question and is within the ambit of judicial review.[96] However, in 1983, or after the declaration of martial law by former President Ferdinand E. Marcos, the Court, in *Garcia-Padilla v. Enrile*,[97] abandoned the ruling in *Lansang* and reverted to *Montenegro.* According to the Supreme Court, the constitutional power of the President to suspend the privilege of the writ of *habeas corpus* is not subject to judicial inquiry.[98]

Thus, by inserting Section 18 in Article VII which allows judicial review of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, the framers of the 1987 Constitution in effect constitutionalized and reverted to the Lansang doctrine.

d) Purpose of Section 18, Article VII is to provide additional safeguard against possible abuse by the President on the exercise of the extraordinary powers.

Section 18, Article VII is meant to provide additional safeguard against possible abuse by the President in the exercise of his power to declare martial law or suspend the privilege of the writ of *habeas corpus.* Reeling from the aftermath of the Marcos martial law, the framers of the Constitution deemed it wise to insert the now third paragraph of Section 18 of Article VII.[99] This is clear from the records of the Constitutional Commission when its members were deliberating on whether the President could proclaim martial law even without the concurrence of Congress. Thus:

> MR. SUAREZ. Thank you, Madam President.
>
> The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

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96 *In the Matter of the Petition for Habeas Corpus of Lansang,* supra note 92 at 585-586.
97 206 Phil. 392 (1983).
98 Id. at 419.
99 See also Cruz, Isagani, A., Philippine Political Law, 2002 edition, pp. 225-226.

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

MR. SUAREZ. Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10 (2) of the Constitution, wherein he made this predicate under the "Whereas" provision:

> Whereas, the rebellion and armed action undertaken by these lawless elements of the Communists and other armed aggrupations organized to overthrow the Republic of the Philippines by armed violence and force have assumed the magnitude of an actual state of war against our people and the Republic of the Philippines.

And may I also call the attention of the Gentleman to General Order No. 3, also promulgated by Ferdinand E. Marcos, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 wherein he said, among other things:

> Whereas, martial law having been declared because of wanton destruction of lives and properties, widespread lawlessness and anarchy and chaos and disorder now prevailing throughout the country, which condition has been brought about by groups of men who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines in order to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and the legitimate government . . .

And he gave all reasons in order to suspend the privilege of the writ of *habeas corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase 'and, with the concurrence of at least a majority of all the members of the Congress'?

MR. MONSOD. ***Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national***

> ***consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that 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 on the same within 30 days from its filing.***
>
> I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.[100]

To give more teeth to this additional safeguard, the framers of the 1987 Constitution not only placed the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* within the ambit of judicial review, it also relaxed the rule on standing by allowing any citizen to question before this Court the sufficiency of the factual basis of such proclamation or suspension. Moreover, the third paragraph of Section 18, Article VII veritably conferred upon any citizen a demandable right to challenge the sufficiency of the factual basis of said proclamation or suspension. It further designated this Court as the reviewing tribunal to examine, in an appropriate proceeding, the sufficiency of the factual basis and to render its decision thereon within a limited period of 30 days from date of filing.

e) Purpose of Section 18, Article VII is to curtail the extent of the powers of the President.

The most important objective, however, of Section 18, Article VII is the **curtailment of the extent of the powers of the Commander-in-Chief**. This is the primary reason why the provision was not placed in Article VIII or the Judicial Department but remained under Article VII or the Executive Department.

During the closing session of the Constitutional Commission's deliberations, President Cecilia Muñoz Palma expressed her sentiments on the 1987 Constitution. She said:

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[100] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

> The executive power is vested in the President of the Philippines elected by the people for a six-year term with no reelection for the duration of his/her life. **While traditional powers inherent in the office of the President are granted, nonetheless for the first time, there are specific provisions which curtail the extent of such powers. Most significant is the power of the Chief Executive to suspend the privilege of the writ of *habeas corpus* or proclaim martial law.**
>
> The flagrant abuse of that power of the Commander-in-Chief by Mr. Marcos caused the imposition of martial law for more than eight years and the suspension of the privilege of the writ even after the lifting of martial law in 1981. The new Constitution now provides that those powers can be exercised only in two cases, invasion or rebellion when public safety demands it, only for a period not exceeding 60 days, and reserving to Congress the power to revoke such suspension or proclamation of martial law which congressional action may not be revoked by the President. More importantly, the action of the President is made subject to judicial review, thereby again discarding jurisprudence which render[s] the executive action a political question and beyond the jurisdiction of the courts to adjudicate.
>
> For the first time, there is a provision that the state of martial law does not suspend the operation of the Constitution nor abolish civil courts or legislative assemblies, or vest jurisdiction to military tribunals over civilians, or suspend the privilege of the writ. Please forgive me if, at this point, I state that this constitutional provision vindicates the dissenting opinions I have written during my tenure in the Supreme Court in the martial law cases.[101]

f) To interpret "appropriate proceeding" as filed under Section 1 of Article VIII would be contrary to the intent of the Constitution.

To conclude that the "appropriate proceeding" refers to a Petition for *Certiorari* filed under the expanded jurisdiction of this Court would, therefore, contradict the clear intention of the framers of the Constitution to place *additional* safeguards against possible martial law abuse for, invariably, the third paragraph of Section 18, Article VII would be subsumed under Section 1 of Article VIII. In other words, the framers of the Constitution added the safeguard under the third paragraph of Section 18, Article VII on top of the expanded jurisdiction of this Court.

g) Jurisdiction of the Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII.

[101] V RECORD, CONSTITUTIONAL COMMISSION 1009-1010 (October 15, 1986). Emphasis supplied

The jurisdiction of this Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII. For instance, its jurisdiction to be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President can be found in the last paragraph of Section 4, Article VII.[102] The power of the Court to review on *certiorari* the decision, order, or ruling of the Commission on Elections and Commission on Audit can be found in Section 7, Article IX(A).[103]

h) Unique features of the third paragraph of Section 18, Article VII make it sui generis.

The unique features of the third paragraph of Section 18, Article VII clearly indicate that it should be treated as *sui generis* separate and different from those enumerated in Article VIII. Under the third paragraph of Section 18, Article VII, a petition filed pursuant therewith will follow a different rule on standing as any citizen may file it. Said provision of the Constitution also limits the issue to the sufficiency of the factual basis of the exercise by the Chief Executive of his emergency powers. The usual period for filing pleadings in Petition for *Certiorari* is likewise not applicable under the third paragraph of Section 18, Article VII considering the limited period within which this Court has to promulgate its decision.

A proceeding "[i]n its general acceptation, [is] the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments, and of executing."[104] In fine, the phrase "in an appropriate proceeding" appearing on the third paragraph of Section 18, Article VII refers to any action initiated by a citizen for the purpose of questioning the sufficiency of the factual basis of the exercise of the Chief Executive's emergency powers, as in these cases. It could be denominated as a complaint, a petition, or a matter to be resolved by the Court.

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[102] "The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."

[103] "Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.**" (Emphasis supplied)

[104] Ballentine, J., Law Dictionary with Pronunciations, 1948 ed., p. 1023; Bouvier, J., Law Dictionary and Concise Encyclopedia, 8th ed., Vol. II, p. 2730.

III. *The power of the Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus under Section 18, Article VII of the 1987 Constitution is independent of the actions taken by Congress.*

During the oral argument,[105] the OSG urged the Court to give deference to the actions of the two co-equal branches of the Government: on the part of the President as Commander-in-Chief, in resorting to his extraordinary powers to declare martial law and suspend the privilege of the writ of *habeas corpus*; and on the part of Congress, in giving its imprimatur to Proclamation No. 216 and not revoking the same.

The framers of the 1987 Constitution reformulated the scope of the extraordinary powers of the President as Commander-in-Chief and the review of the said presidential action. In particular, the President's extraordinary powers of suspending the privilege of the writ of *habeas corpus* and imposing martial law are subject to the veto powers of the Court and Congress.

a) The judicial power to review versus the congressional power to revoke.

The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.

In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings."[106] On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis as will be discussed below, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.

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[105] TSN of Oral Argument, June 14, 2017, pp. 99-100.

[106] *David v. President Macapagal-Arroyo*, 522 Phil. 705, 767 (2006), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 643 (2000).

In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.

b) The framers of the 1987 Constitution intended the judicial power to review to be exercised independently from the congressional power to revoke.

If only to show that the intent of the framers of the 1987 Constitution was to vest the Court and Congress with veto powers independently from each other, we quote the following exchange:

> MS. QUESADA. Yesterday, the understanding of many was that there would be safeguards that Congress will be able to revoke such proclamation.
>
> MR. RAMA. Yes.
>
> MS. QUESADA. But now, if they cannot meet because they have been arrested or that the Congress has been padlocked, then who is going to declare that such a proclamation was not warranted?
>
> x x x x
>
> MR. REGALADO. May I also inform Commissioner Quesada that the judiciary is not exactly just standing by. A petition for a writ of *habeas corpus,* if the Members are detained, can immediately be applied for, and the Supreme Court shall also review the factual basis. x x x[107]

c) Re-examination of the Court's pronouncement in Fortun v. President Macapagal-Arroyo.

[107] II RECORD, CONSTITUTIONAL COMMISSION 503-504 (July 31, 1986).

Considering the above discussion, the Court finds it imperative to re-examine, reconsider, and set aside its pronouncement in *Fortun v. President Macapagal-Arroyo*[108] to the effect that:

> Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.[109]
>
> x x x x
>
> If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. x x x[110]

By the above pronouncement, the Court willingly but unwittingly clipped its own power and surrendered the same to Congress as well as abdicated from its bounden duty to review. Worse, the Court considered itself just on stand-by, waiting and willing to act as a substitute in case Congress "defaults." It is an aberration, a stray declaration, which must be rectified and set aside in this proceeding.[111]

We, therefore, hold that the Court can simultaneously exercise its power of review with, and independently from, the power to revoke by Congress. Corollary, any perceived inaction or default on the part of Congress does not deprive or deny the Court of its power to review.

IV. *The judicial power to review the sufficiency of factual basis of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus does not extend to the calibration of the President's decision of which among his*

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108 *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526 (2012).

109 Id. at 558.

110 Id. at 561.

111 Any reference in the Majority Opinion and in the Dissent of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo* to acting "in tandem", "not only sequentially, but in a sense jointly", and "sequential or joint" pertains to the interplay of powers/actions between the President and the Congress; not of the Judiciary. See *Fortun v. President Macapagal-Arroyo*, id. at 557, 560, 604.

graduated powers he will avail of in a given situation.

The President as the Commander-in-Chief wields the extraordinary powers of: a) calling out the armed forces; b) suspending the privilege of the writ of *habeas corpus*; and c) declaring martial law.[112] These powers may be resorted to only under specified conditions.

The framers of the 1987 Constitution reformulated the powers of the Commander-in-Chief by revising the "grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action."[113]

a) Extraordinary powers of the President distinguished.

Among the three extraordinary powers, the calling out power is the most benign and involves ordinary police action.[114] The President may resort to this extraordinary power *whenever it becomes necessary* to prevent or suppress lawless violence, invasion, or rebellion. "[T]he power to call is fully discretionary to the President;"[115] the only limitations being that he acts within permissible constitutional boundaries or in a manner not constituting grave abuse of discretion.[116] In fact, "the *actual use* to which the President puts the armed forces is x x x not subject to judicial review."[117]

The extraordinary powers of suspending the privilege of the writ of *habeas corpus* and/or declaring martial law may be exercised only when there is actual invasion or rebellion, and public safety requires it. The 1987 Constitution imposed the following limits in the exercise of these powers: "(1) a time limit of sixty days; (2) review and possible revocation by

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[112] CONSTITUTION, Article VII, Section 18.

[113] Bernas, Joaquin G., The Intent of the 1986 Constitution Writers, 1995 ed., p. 456.

[114] *David v. President Macapagal-Arroyo*, supra note 106 at 780.

[115] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 642 (2000).

[116] Id. at 639-640.

[117] Bernas, Joaquin, G., Constitutional Structure and Powers of Government, Notes and Cases Part I, 2010 ed., p. 472.

The difference in the treatment of the calling out power vis-à-vis the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law is explained in this wise:

> The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by the Congress and review by this Court. (Id. at 479.)

Congress; [and] (3) review and possible nullification by the Supreme Court."[118]

The framers of the 1987 Constitution eliminated insurrection, and the phrase "imminent danger thereof" as grounds for the suspension of the privilege of the writ of *habeas corpus* or declaration of martial law.[119] They perceived the phrase "imminent danger" to be "fraught with possibilities of abuse;"[120] besides, the calling out power of the President "is sufficient for handling imminent danger."[121]

The powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* involve curtailment and suppression of civil rights and individual freedom. Thus, the declaration of martial law serves as a warning to citizens that the Executive Department has called upon the military to assist in the maintenance of law and order, and while the emergency remains, the citizens must, under pain of arrest and punishment, not act in a manner that will render it more difficult to restore order and enforce the law.[122] As such, their exercise requires more stringent safeguards by the Congress, and review by the Court.[123]

b) What really happens during martial law?

During the oral argument, the following questions cropped up: What really happens during the imposition of martial law? What powers could the President exercise during martial law that he could not exercise if there is no martial law? Interestingly, these questions were also discussed by the framers of the 1987 Constitution, *viz.*:

> FR. BERNAS. That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:
>
> > A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies...

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118 Bernas, Joaquin, G., Constitutional Structure and Powers of Government, Notes and Cases Part I, 2010 ed., p. 474.

119 Bernas, Joaquin, G., The Intent of the 1986 Constitution Writers, 1995 ed., p. 456.

120 Id. at 458.

121 Id.

122 *David v. President Macapagal-Arroyo*, supra note 106 at 781.

123 *Integrated Bar of the Philippines v. Zamora*, supra note 115 at 643.

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

The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: During martial law, the President may have the powers of a commanding general in a theatre of war. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theater of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theater of war.[124]

x x x x

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

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

FR. BERNAS. That is correct.

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

FR. BERNAS. It is not brought about by a declaration of the Commander-in-Chief. The understanding here is that the phrase 'nor authorize the conferment of jurisdiction on military courts and agencies over civilians' has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.[125]

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[124] II RECORD, CONSTITUTIONAL COMMISSION 398 (July 29, 1986).
[125] II RECORD, CONSTITUTIONAL COMMISSION 402 (July 29, 1986).

A state of martial law is peculiar because the President, at such a time, exercises police power, which is normally a function of the Legislature. In particular, the President exercises police power, with the military's assistance, to ensure public safety and in place of government agencies which for the time being are unable to cope with the condition in a locality, which remains under the control of the State.[126]

In *David v. President Macapagal-Arroyo*,[127] the Court, quoting Justice Vicente V. Mendoza's (Justice Mendoza) *Statement before the Senate Committee on Justice* on March 13, 2006, stated that under a valid declaration of martial law, the President as Commander-in-Chief may order the "(a) arrests and seizures without judicial warrants; (b) ban on public assemblies; (c) [takeover] of news media and agencies and press censorship; and (d) issuance of Presidential Decrees x x x".[128]

Worthy to note, however, that the above-cited acts that the President may perform do not give him unbridled discretion to infringe on the rights of civilians during martial law. This is because martial law does not suspend the operation of the Constitution, neither does it supplant the operation of civil courts or legislative assemblies. Moreover, the guarantees under the Bill of Rights remain in place during its pendency. And in such instance where the privilege of the writ of *habeas corpus* is also suspended, such suspension applies only to those judicially charged with rebellion or offenses connected with invasion.[129]

Clearly, from the foregoing, while martial law poses the most severe threat to civil liberties,[130] the Constitution has safeguards against the President's prerogative to declare a state of martial law.

c) "Graduation" of powers refers to hierarchy based on scope and effect; it does not refer to a sequence, order, or arrangement by which the Commander-in-Chief must adhere to.

Indeed, the 1987 Constitution gives the "President, as Commander-in-Chief, a 'sequence' of 'graduated power[s]'. From the most to the least

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126 Bernas, Joaquin, G. Constitutional Structure and Powers of Government, Notes and Cases Part 1, 2010 ed., p. 473.

127 Supra note 106.

128 Id. at 781-782.

129 See Dissenting Opinion of J. Carpio, *Fortun v. President Macapagal-Arroyo,* supra note 108 at 599.

130 *David v. President Macapagal-Arroyo*, supra note 106 at 781.

benign, these are: the calling out power, the power to suspend the privilege of the writ of *habeas corpus*, and the power to declare martial law."[131] It must be stressed, however, that the graduation refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does not dictate or restrict the manner by which the President decides which power to choose.

These extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; it therefore necessarily follows that the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of *habeas corpus*; or whether it calls for the declaration of martial law, also lies, at least initially, with the President. The power to choose, initially, which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. As Commander-in-Chief, his powers are broad enough to include his prerogative to address exigencies or threats that endanger the government, and the very integrity of the State.[132]

It is thus beyond doubt that the power of judicial review does *not* extend to calibrating the President's decision pertaining to which extraordinary power to avail given a set of facts or conditions. To do so would be tantamount to an incursion into the exclusive domain of the Executive and an infringement on the prerogative that solely, at least initially, lies with the President.

d) The framers of the 1987 Constitution intended the Congress not to interfere a priori in the decision-making process of the President.

The elimination by the framers of the 1987 Constitution of the requirement of prior concurrence of the Congress in the initial imposition of martial law or suspension of the privilege of the writ of *habeas corpus* further supports the conclusion that judicial review does not include the calibration of the President's decision of which of his graduated powers will be availed of in a given situation. Voting 28 to 12, the framers of the 1987

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[131] *SANLAKAS v. Executive Secretary Reyes,* 466 Phil. 482, 510-511 (2004).
[132] Id. at 518.

Constitution removed the requirement of congressional concurrence in the first imposition of martial law and suspension of the privilege.[133]

> MR. PADILLA. x x x
>
> We all agree with the suspension of the writ or the proclamation of martial law should not require beforehand the concurrence of the majority of the Members of the Congress. However, as provided by the Committee, the Congress may revoke, amend, or shorten or even increase the period of such suspension.[134]
>
> x x x x
>
> MR. NATIVIDAD. First and foremost, we agree with the Commissioner's thesis that in the first imposition of martial law there is no need for concurrence of the Members of Congress because the provision says 'in case of actual invasion or rebellion.' If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is a need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. x x x So the requirement of an initial concurrence of the majority of all Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.
>
> Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.
>
> And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time. So on that basis, I agree that there is no need for concurrence as a prerequisite to declare martial law or to suspend the privilege of the writ of *habeas corpus.* x x x[135]
>
> x x x x
>
> MR. SUAREZ. Thank you.
>
> The Commissioner is suggesting that in connection with Section 15, we delete the phrase 'and, with the concurrence of at least a majority of all the Members of the Congress ...'
>
> MR. PADILLA. That is correct especially for the initial suspension of the privilege of the writ of *habeas corpus* or also the declaration of martial law.
>
> MR. SUAREZ. So in both instances, the Commissioner is suggesting that this would be an exclusive prerogative of the President?

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[133] Bernas, Joaquin, G., The Intent of the 1986 Constitution Writers, 1995 ed., p. 464.
[134] II RECORD, CONSTITUTIONAL COMMISSION 469 (July 30, 1986).
[135] II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).

MR. PADILLA. At least initially, for a period of 60 days. But even that period of 60 days may be shortened by the Congress or the Senate because the next sentence says that the Congress or the Senate may even revoke the proclamation.[136]

x x x x

MR. SUAREZ. x x x

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

x x x x

MR. MONSOD. Yes, Madam President, in the case of Mr. Marcos[,] he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman mentioned, that there is an exclusive right to determine the factual basis because the paragraph being on line 9 precisely tells us that 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 on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. x x x

MR. SUAREZ. Will that prevent a future President from doing what Mr. Marcos had done?

MR. MONSOD. There is nothing absolute in this world, and there may be another Marcos. What we are looking for are safeguards that are reasonable and, I believe, adequate at this point. On the other hand, in

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136 II RECORD, CONSTITUTIONAL COMMISSION 471 (July 30, 1986).

> case of invasion or rebellion, even during the first 60 days when the intention here is to protect the country in that situation, it would be unreasonable to ask that there should be a concurrence on the part of the Congress, which situation is automatically terminated at the end of such 60 days.
>
> x x x x
>
> MR. SUAREZ. Would the Gentleman not feel more comfortable if we provide for a legislative check on this awesome power of the Chief Executive acting as Commander-in-Chief?
>
> MR. MONSOD. I would be less comfortable if we have a presidency that cannot act under those conditions.
>
> MR. SUAREZ. But he can act with the concurrence of the proper or appropriate authority?
>
> MR. MONSOD. Yes. But when those situations arise, it is very unlikely that the concurrence of Congress would be available; and, secondly, the President will be able to act quickly in order to deal with the circumstances.
>
> MR. SUAREZ. So, we would be subordinating actual circumstances to expediency?
>
> MR. MONSOD. I do not believe it is expediency when one is trying to protect the country in the event of an invasion or a rebellion.[137]

The foregoing exchange clearly manifests the intent of the Constitution not to allow Congress to interfere *a priori* in the President's choice of extraordinary powers.

e) The Court must similarly and necessarily refrain from calibrating the President's decision of which among his extraordinary powers to avail given a certain situation or condition.

It cannot be overemphasized that time is paramount in situations necessitating the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus.* It was precisely this time element that prompted the Constitutional Commission to eliminate the requirement of concurrence of the Congress in the initial imposition by the President of martial law or suspension of the privilege of the writ of *habeas corpus.*

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[137] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

Considering that the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is now anchored on actual invasion or rebellion and when public safety requires it, and is no longer under threat or in imminent danger thereof, there is a necessity and urgency for the President to act quickly to protect the country.[138] The Court, as Congress does, must thus accord the President the same leeway by not wading into the realm that is reserved exclusively by the Constitution to the Executive Department.

f) The recommendation of the Defense Secretary is not a condition for the declaration of martial law or suspension of the privilege of the writ of habeas corpus.

Even the recommendation of, or consultation with, the Secretary of National Defense, or other high-ranking military officials, is not a condition for the President to declare martial law. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to declare martial law is not subject to any condition except for the requirements of actual invasion or rebellion and that public safety requires it. Besides, it would be contrary to common sense if the decision of the President is made dependent on the recommendation of his mere alter ego. Rightly so, it is only on the President and no other that the exercise of the powers of the Commander-in-Chief under Section 18, Article VII of the Constitution is bestowed.

g) In any event, the President initially employed the most benign action – the calling out power – before he declared martial law and suspended the privilege of the writ of habeas corpus.

At this juncture, it must be stressed that prior to Proclamation No. 216 or the declaration of martial law on May 23, 2017, the President had already issued Proclamation No. 55 on September 4, 2016, declaring a state of national emergency on account of lawless violence in Mindanao. This, in fact, is extant in the first Whereas Clause of Proclamation No. 216. Based on the foregoing presidential actions, it can be gleaned that although there is no obligation or requirement on his part to use his extraordinary powers on a graduated or sequential basis, still the President made the conscious and

[138] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

deliberate effort to first employ the most benign from among his extraordinary powers. As the initial and preliminary step towards suppressing and preventing the armed hostilities in Mindanao, the President decided to use his calling out power first. Unfortunately, the situation did not improve; on the contrary, it only worsened. Thus, exercising his sole and exclusive prerogative, the President decided to impose martial law and suspend the privilege of the writ of *habeas corpus* on the belief that the armed hostilities in Mindanao already amount to actual rebellion and public safety requires it.

V. *Whether or not Proclamation No. 216 may be considered vague and thus void because of (a) its inclusion of "other rebel groups"; and (b) the absence of any guideline specifying its actual operational parameters within the entire Mindanao region.*

Proclamation No. 216 is being facially challenged on the ground of "vagueness" by the insertion of the phrase "other rebel groups"[139] in its Whereas Clause and for lack of available guidelines specifying its actual operational parameters within the entire Mindanao region, making the proclamation susceptible to broad interpretation, misinterpretation, or confusion.

This argument lacks legal basis.

a) Void-for-vagueness doctrine.

The void-for-vagueness doctrine holds that a law is facially invalid if "men of common intelligence must necessarily guess at its meaning and differ as to its application."[140] "[A] statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. [In such instance, the statute] is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[141]

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[139] WHEREAS, this [May 23, 2017 Marawi incident] 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. (Emphasis supplied)

[140] *Ermita-Malate Hotel & Motel Operators Association, Inc. v. Hon. City Mayor of Manila*, 127 Phil. 306, 325 (1967).

[141] *People v. Nazario*, 247-A Phil. 276, 286 (1988).

b) Vagueness doctrine applies only in free speech cases.

The vagueness doctrine is an analytical tool developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases.[142] A facial challenge is allowed to be made to a vague statute and also to one which is overbroad because of possible '"chilling effect' on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence."[143]

It is best to stress that the vagueness doctrine has a special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes.[144] Justice Mendoza explained the reason as follows:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech. The theory is that '[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.' The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
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> This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
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> x x x x
>
> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to

[142] *Estrada v. Sandiganbayan*, 421 Phil. 290, 354 (2001).
[143] *Disini, Jr. v. The Secretary of Justice*, 727 Phil. 28, 122 (2014).
[144] *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357, 390-391 (2008).

> attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant.' x x x[145]

Invalidation of statutes "on its face" should be used sparingly because it results in striking down statutes entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected.[146] "Such invalidation would constitute a departure from the usual requirement of 'actual case and controversy' and permit decisions to be made in a sterile abstract context having no factual concreteness."[147]

c) Proclamation No. 216 cannot be facially challenged using the vagueness doctrine.

Clearly, facial review of Proclamation No. 216 on the grounds of vagueness is unwarranted. Proclamation No. 216 does not regulate speech, religious freedom, and other fundamental rights that may be facially challenged.[148] What it seeks to penalize is conduct, not speech.

As held by the Court in *David v. President Macapagal-Arroyo,*[149] the facial review of Proclamation No. 1017, issued by then President Gloria Macapagal-Arroyo declaring a state of national emergency, on ground of vagueness is uncalled for since a plain reading of Proclamation No. 1017 shows that it is not primarily directed at speech or even speech-related conduct. It is actually a call upon the Armed Forces of the Philippines (AFP) to prevent or suppress all forms of lawless violence. Like Proclamation No. 1017, Proclamation No. 216 pertains to a spectrum of conduct, not free speech, which is manifestly subject to state regulation.

d) Inclusion of "other rebel groups" does not make Proclamation No. 216 vague.

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145 Separate Opinion of Justice Mendoza in *Estrada v. Sandiganbayan*, supra note 142 at 430-432.
146 Id. at 355.
147 *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265, 283 (2004).
148 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 490 (2010).
149 Supra note 106.

The contention that the phrase "other rebel groups" leaves Proclamation No. 216 open to broad interpretation, misinterpretation, and confusion, cannot be sustained.

In *People v. Nazario*,[150] the Court enunciated that:

> As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.' It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.
>
> But the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in Coates v. City of Cincinnati, the U.S. Supreme Court struck down an ordinance that had made it illegal for 'three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by.' Clearly, the ordinance imposed no standard at all 'because one may never know in advance what annoys some people but does not annoy others.'
>
> Coates highlights what has been referred to as a 'perfectly vague' act whose obscurity is evident on its face. It is to be distinguished, however, from legislation couched in imprecise language — but which nonetheless specifies a standard though defectively phrased — in which case, it may be 'saved' by proper construction.[151]

The term "other rebel groups" in Proclamation No. 216 is not at all vague when viewed in the context of the words that accompany it. Verily, the text of Proclamation No. 216 refers to "other rebel groups" found in Proclamation No. 55, which it cited by way of reference in its Whereas clauses.

e) Lack of guidelines/ operational parameters does not make Proclamation No. 216 vague.

Neither could Proclamation No. 216 be described as vague, and thus void, on the ground that it has no guidelines specifying its actual operational parameters within the entire Mindanao region. Besides, operational guidelines will serve only as mere tools for the implementation of the

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[150] Supra note 141.
[151] Id. at 286-287.

proclamation. In Part III, we declared that judicial review covers only the sufficiency of information or data available to or known to the President prior to, or at the time of, the declaration or suspension. And, as will be discussed exhaustively in Part VII, the review will be confined to the proclamation itself and the Report submitted to Congress.

Clearly, therefore, there is no need for the Court to determine the constitutionality of the implementing and/or operational guidelines, general orders, arrest orders and other orders issued after the proclamation for being irrelevant to its review. Thus, any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding. Finally, there is a risk that if the Court wades into these areas, it would be deemed as trespassing into the sphere that is reserved exclusively for Congress in the exercise of its power to revoke.

VI. ***Whether or not nullifying Proclamation No. 216 will (a) have the effect of recalling Proclamation No. 55; or (b) also nullify the acts of the President in calling out the armed forces to quell lawless violence in Marawi and other parts of the Mindanao region.***

a) The calling out power is in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus; nullification of Proclamation No. 216 will not affect Proclamation No. 55.

The Court's ruling in these cases will **not**, in any way, affect the President's declaration of a state of national emergency on account of lawless violence in Mindanao through Proclamation No. 55 dated September 4, 2016, where he called upon the Armed Forces and the Philippine National Police (PNP) to undertake such measures to suppress any and all forms of lawless violence in the Mindanao region, and to prevent such lawless violence from spreading and escalating elsewhere in the Philippines.

In *Kulayan v. Tan,*[152] the Court ruled that the President's calling out power is in a *different category* from the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law:

> x x x Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, **there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces.** The distinction places the calling out power in a *different category* from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification.[153]

In other words, the President may exercise the power to call out the Armed Forces **independently** of the power to suspend the privilege of the writ of *habeas corpus* and to declare martial law, although, of course, it may also be a prelude to a possible future exercise of the latter powers, as in this case.

Even so, the Court's review of the President's declaration of martial law and his calling out the Armed Forces necessarily entails *separate proceedings* instituted for that particular purpose.

As explained in *Integrated Bar of the Philippines v. Zamora,*[154] the President's exercise of his power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion may only be examined by the Court as to whether such power was exercised within permissible constitutional limits or in a manner constituting **grave abuse of discretion.**[155]

In *Zamora*, the Court categorically ruled that the Integrated Bar of the Philippines had failed to sufficiently comply with the requisites of *locus standi,* as it was not able to show *any specific injury* which it had suffered or could suffer by virtue of President Joseph Estrada's order deploying the Philippine Marines to join the PNP in visibility patrols around the metropolis.[156]

This *locus standi* requirement, however, need not be complied with in so far as the Court's jurisdiction to review the sufficiency of the factual basis of the President's declaration of martial law or suspension of the privilege of

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[152] 690 Phil. 72, (2012).
[153] Id. at 91-92. Emphasis supplied.
[154] Supra note 115.
[155] Id. at 640.
[156] Id. at 632-634.

the writ of *habeas corpus* is concerned. In fact, by constitutional design, such review may be instituted by **any citizen** before the Court,[157] without the need to prove that he or she stands to sustain a direct and personal injury as a consequence of the questioned Presidential act/s.

But, even assuming *arguendo* that the Court finds no sufficient basis for the declaration of martial law in this case, such ruling could not affect the President's exercise of his calling out power through Proclamation No. 55.

b) The operative fact doctrine.

Neither would the nullification of Proclamation No. 216 result in the nullification of the acts of the President done pursuant thereto. Under the "operative fact doctrine," the unconstitutional statute is recognized as an "operative fact" before it is declared unconstitutional.[158]

> Where the assailed legislative or executive act is found by the judiciary to be contrary to the Constitution, it is null and void. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.' The above provision of the Civil Code reflects the orthodox view that an unconstitutional act, whether legislative or executive, is not a law, confers no rights, imposes no duties, and affords no protection. This doctrine admits of qualifications, however. As the American Supreme Court stated: 'The actual existence of a statute prior to such a determination [of constitutionality], is an operative fact and may have consequences which cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to the invalidity may have to be considered in various aspects, - with respect to particular regulations, individual and corporate, and particular conduct, private and official.
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> The orthodox view finds support in the well-settled doctrine that the Constitution is supreme and provides the measure for the validity of legislative or executive acts. Clearly then, neither the legislative nor the executive branch, and for that matter much less, this Court, has power under the Constitution to act contrary to its terms. Any attempted exercise of power in violation of its provisions is to that extent unwarranted and null.
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> The growing awareness of the role of the judiciary as the governmental organ which has the final say on whether or not a legislative or executive measure is valid leads to a more appreciative attitude of the emerging concept that a declaration of nullity may have legal

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[157] CONSTITUTION, Article VII, Section 18, par. 3.

[158] Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary; 1996 ed., p. 865.

> consequences which the more orthodox view would deny. **That for a period of time such a statute, treaty, executive order, or ordinance was in 'actual existence' appears to be indisputable. What is more appropriate and logical then than to consider it as 'an operative fact?'** (Emphasis supplied)[159]

However, it must also be stressed that this "operative fact doctrine" is not a fool-proof shield that would repulse any challenge to acts performed during the effectivity of martial law or suspension of the privilege of the writ of *habeas corpus*, purportedly in furtherance of quelling rebellion or invasion, and promotion of public safety, when evidence shows otherwise.

VII. *The Scope of the Power to Review.*

a) The scope of the power of review under the 1987 Constitution refers only to the determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of habeas corpus.

To recall, the Court, in the case of *In the Matter of the Petition for Habeas Corpus of Lansang,*[160] which was decided under the 1935 Constitution,[161] held that it can inquire into, **within proper bounds**, whether there has been adherence to or compliance with the constitutionally-imposed limitations on the Presidential power to suspend the privilege of the writ of *habeas corpus.*[162] "*Lansang* limited the review function of the Court to a very prudentially narrow test of arbitrariness."[163] Fr. Bernas described the "proper bounds" in *Lansang* as follows:

> What, however, are these 'proper bounds' on the power of the courts? The Court first gave the general answer that its power was 'merely to check – not to supplant – the Executive, or to *ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act. More specifically, the Court said that its power was not 'even comparable with its power over civil or criminal cases elevated thereto by appeal…in which cases the appellate court has all the powers of the court

[159] Id. at 864-865, citing *Fernandez v. Cuerva,* 129 Phil. 332, 340 (1967).
[160] Supra note 92.
[161] Both the 1935 and 1973 Constitution do not have the equivalent provision of Section 18, par. 3, Article VII, 1987 Constitution.
[162] *In the Matter of the Petition for Habeas Corpus of Lansang,* supra note 92 at 586. See Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., p.473.
[163] Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., p. 475.

> of origin,' nor to its power of quasi-judicial administrative decisions where the Court is limited to asking whether 'there is some *evidentiary basis*' for the administrative finding. Instead, the Court accepted the Solicitor General's suggestion that it '*go no* further than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily.'[164]

Lansang, however, was decided under the 1935 Constitution. The 1987 Constitution, by providing only for judicial review based on the determination of the sufficiency of the factual bases, has in fact done away with the test of arbitrariness as provided in *Lansang.*

b) The "sufficiency of factual basis test".

Similarly, under the doctrine of contemporaneous construction, the framers of the 1987 Constitution are presumed to know the prevailing jurisprudence at the time they were drafting the Constitution. Thus, the phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* under Section 18, Article VII of the Constitution. The Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases.

We conclude, therefore, that Section 18, Article VII limits the scope of judicial review by the introduction of the "sufficiency of the factual basis" test.

As Commander-in-Chief, the President has the **sole** discretion to declare martial law and/or to suspend the privilege of the writ of *habeas corpus*, subject to the revocation of Congress and the review of this Court. Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress. These may be based on the situation existing at the time the declaration was made or past events. As to how far the past events should be from the present depends on the President.

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[164] Id. at 473.

Past events may be considered as justifications for the declaration and/or suspension as long as these are connected or related to the current situation existing at the time of the declaration.

As to what facts must be stated in the proclamation and the written Report is up to the President.[165] As Commander-in-Chief, he has sole discretion to determine what to include and what not to include in the proclamation and the written Report taking into account the urgency of the situation as well as national security. He cannot be forced to divulge intelligence reports and confidential information that may prejudice the operations and the safety of the military.

Similarly, events that happened after the issuance of the proclamation, which are included in the written report, cannot be considered in determining the sufficiency of the factual basis of the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* since these happened after the President had already issued the proclamation. If at all, they may be used only as tools, guides or reference in the Court's determination of the sufficiency of factual basis, but not as part or component of the portfolio of the factual basis itself.

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. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency".[166] Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

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[165] According to petitioner Lagman, "the length of the proclamation and the assertion of facts therein is the call of the President; see TSN of Oral Argument, June 14, 2017, p. 67.

[166] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo,* supra note 108 at 607.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment,[167] as appears to be the case here.

At this point, it is wise to quote the pertinent portions of the Dissenting Opinion of Justice Presbitero J. Velasco Jr. in *Fortun*:

> President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the 'Maguindanao massacre,' which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ.
>
> Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.[168]

Corollary, as the President is expected to decide quickly on whether there is a need to proclaim martial law even only on the basis of intelligence reports, it is irrelevant, for purposes of the Court's review, if subsequent events prove that the situation had not been accurately reported to him.

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[167] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).
MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.
MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen**.
MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence of documents. Does the Commissioner still accept that as evidence?
MR. PADILLA. **It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ**. After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.
MR. NATIVIDAD. As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?
MR. PADILLA. **Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document** because, after all, we are restricting the period to only 60 days and further we are giving the Congress or the Senate the right or the power to revoke, reduce, or extend its period.

[168] See Dissenting Opinion of Justice Presbitero J. Velasco in *Fortun v. President Macapagal-Arroyo*, supra note 108 at 629.

After all, the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration or suspension; subsequent events do not have any bearing insofar as the Court's review is concerned. In any event, safeguards under Section 18, Article VII of the Constitution are in place to cover such a situation, *e.g.*, the martial law period is good only for 60 days; Congress may choose to revoke it even immediately after the proclamation is made; and, this Court may investigate the factual background of the declaration.[169]

Hence, the maxim *falsus in uno, falsus in omnibus* finds no application in this case. Falsities of and/or inaccuracies in some of the facts stated in the proclamation and the written report are not enough reasons for the Court to invalidate the declaration and/or suspension as long as there are other facts in the proclamation and the written Report that support the conclusion that there is an actual invasion or rebellion and that public safety requires the declaration and/or suspension.

In sum, the Court's power to review is limited to the determination of whether the President in declaring martial law and suspending the privilege of the writ of *habeas corpus* had sufficient factual basis. Thus, our review would be limited to an examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of *habeas corpus.*

VIII. *The parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.*

a) Actual invasion or rebellion, and public safety requirement.

Section 18, Article VII itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*, "namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power."[170] Without the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* must be struck down.

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[169] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

[170] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo,* supra note 108 at 610.

As a general rule, a word used in a statute which has a technical or legal meaning, is construed to have the same technical or legal meaning.[171] 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).[172]

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[173]

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.[174]

Article 134 of the RPC states:

> 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.

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171 Agpalo, Ruben, E., Statutory Construction, Fifth Edition, 2003, pp. 187-189.

172 See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo,* supra note 108 at 592.

173 II RECORD, CONSTITUTIONAL COMMISSION 412 (July 29, 1986).

174 See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo,* supra note 108 at 595.

Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."[175]

b) Probable cause is the allowable standard of proof for the President.

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.[176] To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers. Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause 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 or suspension of the writ. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. It merely necessitates an "average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused."[177]

To summarize, the parameters for determining the sufficiency of factual basis are as follows: 1) actual rebellion or invasion; 2) public safety requires it; the first two requirements must concur; and 3) there is probable cause for the President to believe that there is actual rebellion or invasion.

Having laid down the parameters for review, the Court shall now proceed to the core of the controversy – whether Proclamation No. 216,

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[175] Id. at 594-595.
[176] Id. at 597-598.
[177] Id.

Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the whole of Mindanao, lacks sufficient factual basis.

IX. *There is sufficient factual basis for the declaration of martial law and the suspension of the writ of habeas corpus.*

At this juncture, it bears to emphasize that the purpose of judicial review is not the determination of accuracy or veracity of the facts upon which the President anchored his declaration of martial law or suspension of the privilege of the writ of *habeas corpus*; rather, only the sufficiency of the factual basis as to convince the President that there is probable cause that rebellion exists. It must also be reiterated that martial law is a matter of urgency and much leeway and flexibility should be accorded the President. As such, he is not expected to completely validate all the information he received before declaring martial law or suspending the privilege of the writ of *habeas corpus*.

We restate the elements of rebellion for reference:

> 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 Congress, wholly or partially, of any of their powers or prerogatives.[178]

Petitioners concede that there is an armed public uprising in Marawi City.[179] However, they insist that the armed hostilities do not constitute rebellion in the absence of the element of culpable political purpose, *i.e.*, the removal from the allegiance to the Philippine Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

The contention lacks merit.

a) Facts, events and information upon which the President

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[178] Caraig, Benjamin R., The Revised Penal Code, Criminal Law, Book Two, 2008 revised ed., p. 59.
[179] *Rollo* of G.R. No. 231658, p. 267.

anchored his decision to declare martial law and suspend the privilege of the writ of habeas corpus.

Since the President supposedly signed Proclamation No. 216 on May 23, 2017 at 10:00 PM,[180] the Court will consider only those facts and/or events which were known to or have transpired on or before that time, consistent with the scope of judicial review. Thus, the following facts and/or events were deemed to have been considered by the President in issuing Proclamation No. 216, as plucked from and extant in Proclamation No. 216 itself:

1. Proclamation No. 55 issued on September 4, 2016, declaring a state of national emergency on account of lawless violence in Mindanao;[181]

2. Series of violent acts[182] committed by the Maute terrorist group including:

a) Attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers;

b) Mass jailbreak in Marawi City in August 2016 of the arrested comrades of the Maute Group and other detainees;

3. On May 23, 2017:[183]

a) Takeover of a hospital in Marawi;

b) Establishment of several checkpoints within Marawi;

c) Burning of certain government and private facilities;

d) Mounting casualties on the part of the government;

e) Hoisting the flag of ISIS in several areas; and

f) 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;

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180 Id. at 380.
181 See Proclamation No. 216, 1st Whereas Clause.
182 See Proclamation No. 216, 4th Whereas Clause.
183 See Proclamation No. 216, 5th Whereas Clause.

and the Report[184] submitted to Congress:

1. Zamboanga siege;[185]

2. Davao bombing;[186]

3. Mamasapano carnage;[187]

4. Cotabato bombings;[188]

5. Sultan Kudarat bombings;[189]

6. Sulu bombings;[190]

7. Basilan bombings;[191]

8. Attempt to capture Hapilon was confronted with armed resistance by combined forces of ASG and the Maute Group;[192]

9. Escalation of armed hostility against the government troops;[193]

10. Acts of violence directed not only against government authorities and establishments but civilians as well;[194]

11. Takeover of major social, economic and political foundations which paralyzed Marawi City;[195]

12. The object of the armed hostilities was to lay the groundwork for the establishment of a DAESH/ISIS *wilayat* or province;[196]

13. Maute Group has 263 active members, armed and combat-ready;[197]

14. Extensive networks or linkages of the Maute Group with foreign and local armed groups;[198]

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184 *Rollo* of G.R. No. 231658, pp. 187-193.
185 Id. at 189.
186 Id.
187 Id..
188 Id.
189 Id.
190 Id.
191 Id.
192 Id.
193 Id.
194 Id.
195 Id.
196 Id.
197 Id.
198 Id.

15. Adherence of the Maute Group to the ideals espoused by ISIS;[199]

16. Publication of a video showing Maute Group's declaration of allegiance to ISIS;[200]

17. Foreign-based terrorist groups provide financial and logistical support to the Maute Group;[201]

18. Events on May 23, 2017 in Marawi City, particularly:

a) at 2:00 PM, members and sympathizers of the Maute Group and ASG attacked various government and privately-owned facilities;[202]

b) at 4:00 PM, around fifty (50) armed criminals forcibly entered the Marawi City Jail; facilitated the escape of inmates; killed a member of PDEA; assaulted and disarmed on-duty personnel and/or locked them inside the cells; confiscated cellphones, personnel-issued firearms, and vehicles;[203]

c) by 4:30 PM, interruption of power supply; sporadic gunfights; city-wide power outage by evening;[204]

d) from 6:00 PM to 7:00 PM, Maute Group ambushed and burned the Marawi Police Station; commandeered a police car;[205]

e) BJMP personnel evacuated the Marawi City Jail and other affected areas;[206]

f) control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, was taken by the rebels;[207]

g) road blockades and checkpoints set up by lawless armed groups at the Iligan-Marawi junction;[208]

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199 Id.
200 Id.
201 Id.
202 Id. at 190.
203 Id.
204 Id.
205 Id.
206 Id.
207 Id.
208 Id.

h) burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nuns' quarters in the church, and the Shia Masjid Moncado Colony;[209]

i) taking of hostages from the church;[210]

j) killing of five faculty members of Dansalan College Foundation;[211]

k) burning of Senator Ninoy Aquino College Foundation and Marawi Central Elementary Pilot School;[212]

l) overrunning of Amai Pakpak Hospital;[213]

m) hoisting the ISIS flag in several areas;[214]

n) attacking and burning of the Filipino-Libyan Friendship Hospital;[215]

o) ransacking of a branch of Landbank of the Philippines and commandeering an armored vehicle;[216]

p) reports regarding Maute Group's plan to execute Christians;[217]

q) preventing Maranaos from leaving their homes;[218]

r) forcing young Muslims to join their group;[219] and

s) intelligence reports regarding the existence of strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the Government.[220]

b) The President's Conclusion

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209 Id. at 191.
210 Id.
211 Id.
212 Id.
213 Id.
214 Id.
215 Id.
216 Id.
217 Id.
218 Id.
219 Id.
220 Id.

After the assessment by the President of the aforementioned facts, he arrived at the following conclusions, as mentioned in Proclamation No. 216 and the Report:

1) The Maute Group is "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."[221]

2) "[L]awless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao – starting with the City of Marawi, Lanao del Sur – from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole."[222]

3) The May 23, 2017 events "put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities – the President, foremost – of their powers and prerogatives."[223]

4) "These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao."[224]

5) "The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government."[225]

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221 See Proclamation No. 216, 5th Whereas Clause.
222 See Report, p. 1, 1st par., *rollo* of G.R. No. 231658, p. 187.
223 Id. at 3, last par., id. at 189.
224 Id. at 6, 1st par., id. at 192.
225 Id., 2nd par., id.

6) "There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments."[226]

7) "Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered."[227]

8) "The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao."[228]

9) "Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity."[229]

Thus, the President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogatives, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the

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226 Id., 3rd par., id.
227 Id., 4th par., id.
228 Id., 5th par., id.
229 Id. at 7, penultimate par., id. at 193.

imposition of martial law and suspension of the privilege of the writ of *habeas corpus*.

A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. 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.

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[230]

c) Inaccuracies, simulations, falsities, and hyperboles.

The allegation in the Lagman Petition that the facts stated in Proclamation No. 216 and the Report are false, inaccurate, simulated, and/or hyperbolic, does not persuade. As mentioned, the Court is not concerned about absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation.

Specifically, it alleges that the following facts are not true as shown by its counter-evidence:[231]

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[230] *Fortun v. President Macapagal-Arroyo,* supra note 112 at 595-598.

[231] *Rollo* of G.R. No. 231658, pp. 275-276.

FACTUAL STATEMENTS	COUNTER-EVIDENCE
(1) that the Maute group attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry gates of the Amai Pakpak Hospital and that they held hostage the employees of the Hospital and took over the PhilHealth office located thereat (Proclamation No. 216 and Report);	Statements made by: (a) Dr. Amer Saber, Chief of the Hospital (b) Health Secretary Paulyn Ubial; (c) PNP Spokesperson Senior Supt. Dionardo Carlos; (d) AFP Public Affairs Office Chief Co. Edgard Arevalo; and (e) Marawi City Mayor Majul Gandamra denying that the hospital was attacked by the Maute Group **citing on-line news articles of Philstar, Sunstar, Inquirer, and Bombo Radyo.**[232]
2. that the Maute Group ambushed and burned the Marawi Police Station (Proclamation No. 216 and the Report);	Statements made by PNP Director General Ronald dela Rosa and Marawi City Mayor Majul Gandamra **in the on-line news reports of ABS-CBN News and CNN Philippines**[233] denying that the Maute group occupied the Marawi Police Station.
3. that lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles (Report);	Statement made by the bank officials **in the on-line news article of Philstar**[234] that the Marawi City branch was not ransacked but sustained damages from the attacks.
4. that the Marawi Central Elementary Pilot School was burned (Proclamation No. 216 and the Report);	Statements **in the on-line news article of Philstar**[235] made by the Marawi City Schools Division Assistant Superintendent Ana Alonto denying that the school was burned and Department of Education Assistant Secretary Tonisito Umali stating that they have not received any report of damage.
5. that the Maute Group attacked various government facilities (Proclamation No. 216 and the Report).	Statement **in the on-line news article of Inquirer**[236] made by Marawi City Mayor Majul Gandamra stating that the ASG and the Maute Terror Groups have not taken over any government facility in Marawi City.

However, the so-called counter-evidence were derived solely from unverified news articles on the internet, with neither the authors nor the sources shown to have affirmed the contents thereof. It was not even shown that efforts were made to secure such affirmation albeit the circumstances proved futile. As the Court has consistently ruled, news articles are hearsay

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232 Id. at 320-332.
233 Id. at 331-332, 343-344.
234 Id. at 320-323.
235 Id.
236 Id. at 347-348.

evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted.[237] This pronouncement applies with equal force to the Cullamat Petition which likewise submitted online news articles[238] as basis for their claim of insufficiency of factual basis.

Again, it bears to reiterate that the maxim *falsus in uno, falsus in omnibus* finds no application in these cases. As long as there are other facts in the proclamation and the written Report indubitably showing the presence of an actual invasion or rebellion and that public safety requires the declaration and/or suspension, the finding of sufficiency of factual basis, stands.

d) Ruling in Bedol v. Commission on Elections not applicable.

Petitioners, however, insist that in *Bedol v. Commission on Elections,*[239] news reports may be admitted on grounds of relevance, trustworthiness, and necessity. Petitioners' reliance on this case is misplaced. The Court in *Bedol* made it clear that the doctrine of independent relevant statement, which is an exception to the hearsay rule, applies in cases "where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial."[240] Here, the question is not whether such statements were made by Saber, *et. al.*, but rather whether what they said are true. Thus, contrary to the view of petitioners, the exception in *Bedol* finds no application here.

e) There are other independent facts which support the finding that, more likely than not, rebellion exists and that public safety requires it.

Moreover, the alleged false and/or inaccurate statements are just pieces and parcels of the Report; along with these alleged false data is an arsenal of other independent facts showing that more likely than not, actual rebellion exists, and public safety requires the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. To be precise, the alleged false and/or inaccurate statements are only five out of the several statements bulleted in the President's Report. Notably, in the interpellation

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237 *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).
238 See *rollo* of G.R. No. 231771, p. 29.
239 621 Phil. 498 (2009).
240 Id. at 517.

by Justice Francis H. Jardeleza during the second day of the oral argument, petitioner Lagman admitted that he was not aware or that he had no personal knowledge of the other incidents cited.[241] As it thus stands, there is no question or challenge with respect to the reliability of the other incidents, which by themselves are ample to preclude the conclusion that the President's report is unreliable and that Proclamation No. 216 was without sufficient factual basis.

Verily, there is no credence to petitioners' claim that the bases for the President's imposition of martial law and suspension of the writ of *habeas corpus* were mostly inaccurate, simulated, false and/or hyperbolic.

X. *Public safety requires the declaration of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao.*

Invasion or rebellion alone may justify resort to the calling out power but definitely not the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. For a declaration of martial law or suspension of the privilege of the writ of *habeas corpus* to be valid, there must be a concurrence of actual rebellion or invasion and the public safety requirement. In his Report, the President noted that the acts of violence perpetrated by the ASG and the Maute Group were directed not only against government forces or establishments but likewise against civilians and their properties.[242] In addition and in relation to the armed hostilities, bomb threats were issued;[243] road blockades and checkpoints were set up;[244] schools and churches were burned;[245] civilian hostages were taken and killed;[246] non-Muslims or Christians were targeted;[247] young male Muslims were forced to join their group;[248] medical services and delivery of basic services were hampered;[249] reinforcements of government troops and civilian movement were hindered;[250] and the security of the entire Mindanao Island was compromised.[251]

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241 TSN of the Oral Arguments, June 14, 2017, pp. 10-23.
242 See Report, p. 3, 2nd par. *Rollo* of G.R. No. 231658, p. 189.
243 Id. at 4; id. at 190.
244 Id.; id.
245 Id. at 5; id. at 191.
246 Id.; id.
247 Id.; id.
248 Id.; id.
249 Id. at 6; id. at 192.
250 Id.; id.
251 Id.; id.

These particular scenarios convinced the President that the atrocities had already escalated to a level that risked public safety and thus impelled him to declare martial law and suspend the privilege of the writ of *habeas corpus*. In the last paragraph of his Report, the President declared:

> While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao until such time that the rebellion is completely quelled.[252]

Based on the foregoing, we hold that the parameters for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* have been properly and fully complied with. Proclamation No. 216 has sufficient factual basis there being probable cause to believe that rebellion exists and that public safety requires the martial law declaration and the suspension of the privilege of the writ of *habeas corpus*.

XI. *Whole of Mindanao*

a) The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public.

Considering the nation's and its people's traumatic experience of martial law under the Marcos regime, one would expect the framers of the 1987 Constitution to stop at nothing from *not* resuscitating the law. Yet it would appear that the constitutional writers entertained *no* doubt about the necessity and practicality of such specie of extraordinary power and thus, once again, bestowed on the Commander-in-Chief the power to declare martial law albeit in its diluted form.

Indeed, martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for the protection of the security of the nation; suspension of the privilege of the writ of *habeas corpus* is "precautionary, and although it might [curtail] certain rights of individuals, [it] is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people".[253] Commissioner Ople referred to the suspension of the privilege of the writ of *habeas corpus* as a "form of

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[252] Id. at 7; id. at 193.

[253] I RECORD, CONSTITUTIONAL COMMISSION 710 (July 17, 1986).

immobilization" or "as a means of immobilizing potential internal enemies" "especially in areas like Mindanao."[254]

Aside from protecting the security of the country, martial law also guarantees and promotes public safety. It is worthy of mention that rebellion alone does not justify the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*; the public safety requirement must likewise be present.

b) As Commander-in-Chief, the President receives vital, relevant, classified, and live information which equip and assist him in making decisions.

In Parts IX and X, the Court laid down the arsenal of facts and events that formed the basis for Proclamation No. 216. For the President, the totality of facts and events, more likely than not, shows that actual rebellion exists and that public safety requires the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Otherwise stated, the President believes that there is probable cause that actual rebellion exists and public safety warrants the issuance of Proclamation No. 216. In turn, the Court notes that the President, in arriving at such a conclusion, relied on the facts and events included in the Report, which we find sufficient.

To be sure, the facts mentioned in the Proclamation and the Report are far from being exhaustive or all-encompassing. At this juncture, it may not be amiss to state that as Commander-in-Chief, the President has possession of documents and information classified as "confidential", the contents of which cannot be included in the Proclamation or Report for reasons of national security. These documents may contain information detailing the position of government troops and rebels, stock of firearms or ammunitions, ground commands and operations, names of suspects and sympathizers, etc. In fact, during the closed door session held by the Court, some information came to light, although not mentioned in the Proclamation or Report. But then again, the discretion whether to include the same in the Proclamation or Report is the judgment call of the President. In fact, petitioners concede to this. During the oral argument, petitioner Lagman admitted that "the assertion of facts [in the Proclamation and Report] is the call of the President."[255]

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[254] I RECORD, CONSTITUTIONAL COMMISSION 774 (July 18, 1986).
[255] TSN of Oral Argument, June 14, 2014, p. 67.

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents/]reports and be satisfied that the public safety demands the suspension of the writ."[256] Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."[257]

In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.

c) The Court has no machinery or tool equal to that of the Commander-in-Chief to ably and properly assess the ground conditions.

In contrast, the Court does not have the same resources available to the President. However, this should not be considered as a constitutional lapse. On the contrary, this is in line with the function of the Court, particularly in this instance, to determine the sufficiency of factual basis of Proclamation No. 216. As thoroughly discussed in Part VIII, the determination by the Court of the sufficiency of factual basis must be limited only to the facts and information mentioned in the Report and Proclamation. In fact, the Court, in *David v. President Macapagal-Arroyo,*[258] cautioned not to "undertake an independent investigation beyond the pleadings." In this regard, "the Court will have to rely on the fact-finding capabilities of the [E]xecutive [D]epartment;"[259] in turn, the Executive Department will have to open its findings to the Court,[260] which it did during the closed door session last June 15, 2017.

d) The 1987 Constitution grants to the President, as Commander-in-Chief, the discretion to determine the territorial coverage or application of martial law or

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256 II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).
257 II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).
258 *David v. President Macapagal-Arroyo*, supra note 106 at 767.
259 Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines, 1996 ed., p. 486.
260 Id.

suspension of the privilege of the writ of habeas corpus.

Section 18, Article VII of the Constitution states that "[i]n case of invasion or rebellion, when the public safety requires it, [the President] may x x x suspend the privilege of writ of *habeas corpus* or place **the Philippines or any part thereof under** martial law." Clearly, the Constitution grants to the President the discretion to determine the territorial coverage of martial law and the suspension of the privilege of the writ of *habeas corpus*. He may put the entire Philippines or only a part thereof under martial law.

This is both an acknowledgement and a recognition that it is the Executive Department, particularly the President as Commander-in-Chief, who is the repository of vital, classified, and live information necessary for and relevant in calibrating the territorial application of martial law and the suspension of the privilege of the writ of *habeas corpus*. It, too, is a concession that the President has the tactical and military support, and thus has a more informed understanding of what is happening on the ground. Thus, the Constitution imposed a limitation on the period of application, which is 60 days, unless sooner nullified, revoked or extended, but not on the territorial scope or area of coverage; it merely stated "the Philippines or any part thereof," depending on the assessment of the President.

e) The Constitution has provided sufficient safeguards against possible abuses of Commander-in-Chief's powers; further curtailment of Presidential powers should not only be discouraged but also avoided.

Considering the country's history, it is understandable that the resurgence of martial law would engender apprehensions among the citizenry. Even the Court as an institution cannot project a stance of nonchalance. However, the importance of martial law in the context of our society should outweigh one's prejudices and apprehensions against it. The significance of martial law should not be undermined by unjustified fears and past experience. After all, martial law is critical and crucial to the promotion of public safety, the preservation of the nation's sovereignty and ultimately, the survival of our country. It is vital for the protection of the country not only against internal enemies but also against those enemies lurking from beyond our shores. As such, martial law should not be cast

aside, or its scope and potency limited and diluted, based on bias and unsubstantiated assumptions.

Conscious of these fears and apprehensions, the Constitution placed several safeguards which effectively watered down the power to declare martial law. The 1987 Constitution "[clipped] the powers of [the] Commander-in-Chief because of [the] experience with the previous regime."[261] Not only were the grounds limited to actual invasion or rebellion, but its duration was likewise fixed at 60 days, unless sooner revoked, nullified, or extended; at the same time, it is subject to the veto powers of the Court and Congress.

Commissioner Monsod, who, incidentally, is a counsel for the Mohamad Petition, even exhorted his colleagues in the Constitutional Convention to look at martial law from a new perspective by elaborating on the sufficiency of the proposed safeguards:

> MR. MONSOD. x x x
>
> Second, we have been given a spectre of *non sequitur*, that the mere declaration of martial law for a fixed period not exceeding 60 days, which is subject to judicial review, is going to result in numerous violations of human rights, the predominance of the military forever and in untold sufferings. Madam President, we are talking about invasion and rebellion. We may not have any freedom to speak of after 60 days, if we put as a precondition the concurrence of Congress. That might prevent the President from acting at that time in order to meet the problem. So I would like to suggest that, perhaps, we should look at this in its proper perspective. We are only looking at a very specific case. We are only looking at a case of the first 60 days at its maximum. And we are looking at actual invasion and rebellion, and there are other safeguards in those cases.[262]

Even Bishop Bacani was convinced that the 1987 Constitution has enough safeguards against presidential abuses and commission of human rights violations. In voting yes for the elimination of the requirement of prior concurrence of Congress, Bishop Bacani stated, *viz.*:

> BISHOP BACANI. Yes, just two sentences. The reason I vote yes is that despite my concern for human rights, I believe that a good President can also safeguard human rights and human lives as well. And I do not want to unduly emasculate the powers of the President. x x x[263]

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[261] II RECORD, CONSTITUTIONAL COMMISSION 394 (July 29, 1986).
[262] II RECORD, CONSTITUTIONAL COMMISSION 482 (July 30, 1986).
[263] II RECORD, CONSTITUTIONAL COMMISSION 483 (July 30, 1986).

Commissioner De los Reyes shared the same sentiment, to wit:

> MR. DE LOS REYES. May I explain my vote, Madam President.
>
> x x x The power of the President to impose martial law is doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power, and the power to impose martial law is certainly felt to be one of no ordinary magnitude. But as presented by the Committee, there are many safeguards: 1) it is limited to 60 days; 2) Congress can revoke it; 3) the Supreme Court can still review as to the sufficiency of factual basis; and 4) it does not suspend the operation of the Constitution. To repeat what I have quoted when I interpellated Commissioner Monsod, it is said that the power to impose martial law is dangerous to liberty and may be abused. **All powers may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power will be more safe and at the same time equally effectual.** When citizens of the State are in arms against each other and the constituted authorities are unable to execute the laws, the action of the President must be prompt or it is of little value. x x x[264] (Emphasis supplied)

At this juncture, it bears to stress that it was the collective sentiment of the framers of the 1987 Constitution that *sufficient* safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculation of the presidential powers is called for in the guise of additional safeguards. The Constitution recognizes that any further curtailment, encumbrance, or emasculation of the presidential powers would not generate any good among the three co-equal branches, and to the country and its citizens as a whole. Thus:

> MR. OPLE. **The reason for my concern, Madam President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion or rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. x x x**[265] (Emphasis supplied)

f) Rebellion and public safety; nature, scope, and range.

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[264] II RECORD, CONSTITUTIONAL COMMISSION 485 (July 30, 1986).
[265] II RECORD, CONSTITUTIONAL COMMISSION 509 (July 31, 1986).

It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the government;"[266] and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined *a priori*, within predetermined bounds."[267] We understand this to mean that the precise extent or range of the rebellion could not be measured by exact metes and bounds.

To illustrate: A contingent armed with high-powered firearms publicly assembled in Padre Faura, Ermita, Manila where the Court's compound is situated. They overpowered the guards, entered the Court's premises, and hoisted the ISIS flag. Their motive was political, *i.e.,* they want to remove from the allegiance to the Philippine government a part of the territory of the Philippines, particularly the Court's compound and establish it as an ISIS-territory.

Based on the foregoing illustration, and vis-à-vis the nature of the crime of rebellion, could we validly say that the rebellion is confined only within the Court's compound? Definitely not. The possibility that there are other rebels positioned in the nearby buildings or compound of the Philippine General Hospital (PGH) or the Manila Science High School (MSHS) could not be discounted. There is no way of knowing that *all* participants in the rebellion went and stayed inside the Court's compound.

Neither could it be validly argued that the armed contingent positioned in PGH or MSHS is *not* engaged in rebellion because there is no publicity in their acts as, in fact, they were merely lurking inside the compound of PGH and MSHS. However, it must be pointed out that for the crime of rebellion to be consummated, it is *not* required that *all* armed participants should congregate in *one* place, in this case, the Court's compound, and publicly rise in arms against the government for the attainment of their culpable purpose. It suffices that a *portion* of the contingent gathered and formed a mass or a crowd and engaged in an armed public uprising against the government. Similarly, it cannot be validly concluded that the grounds on which the armed public uprising actually took place should be the measure of the extent, scope or range, of the actual rebellion. This is logical since the other rebels positioned in PGH, MSHS, or elsewhere, whose participation did not involve the *publicity* aspect of rebellion, may also be considered as engaging in the crime of rebellion.

Proceeding from the same illustration, suppose we say that the President, after finding probable cause that there exists actual rebellion and

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[266] *People v. Lovedioro*, 320 Phil. 481, 488 (1995).
[267] *People v. Geronimo*, 100 Phil. 90, 96 (1956); *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

that public safety requires it, declares martial law and suspends the writ of *habeas corpus* in the whole of Metro Manila, could we then say that the territorial coverage of the proclamation is too expansive?

To answer this question, we revert back to the premise that the discretion to determine the territorial scope of martial law lies with the President. The Constitution grants him the prerogative whether to put the entire Philippines or *any* part thereof under martial law. There is no constitutional edict that martial law should be confined only in the particular place where the armed public uprising actually transpired. This is not only practical but also logical. Martial law is an urgent measure since at stake is the nation's territorial sovereignty and survival. As such, the President has to respond quickly. After the rebellion in the Court's compound, he need not wait for another rebellion to be mounted in Quezon City before he could impose martial law thereat. If that is the case, then the President would have to wait until every remote corner in the country is infested with rebels before he could declare martial law in the *entire* Philippines. For sure, this is not the scenario envisioned by the Constitution.

Going back to the illustration above, although the President is not required to impose martial law only within the Court's compound because it is where the armed public uprising actually transpired, he may do so if he sees fit. At the same time, however, he is not precluded from expanding the coverage of martial law beyond the Court's compound. After all, rebellion is not confined within predetermined bounds.

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."[268] 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.

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."[269] Rebellion *absorbs*

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[268] Definitions of PUBLIC SAFETY<www.definition.net/definition/PUBLIC SAFETY> (visited July 3, 2017).

[269] *People v. Dasig*, 293 Phil. 599, 608 (1993). Italics supplied.

"other acts committed in its pursuance".[270] Direct assault,[271] murder,[272] homicide,[273] arson,[274] robbery,[275] and kidnapping,[276] 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."[277] 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][278] which are perpetrated in furtherance of the political offense".[279] "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."[280]

Thus, by the theory of absorption, the crime of murder committed in Makati City, if committed in furtherance of the crime of rebellion being hypothetically staged in Padre Faura, Ermita, Manila, is stripped of its common complexion and is absorbed in the crime of rebellion. This all the more makes it difficult to confine the application of martial law only to the place where the armed public uprising is actually taking place. In the illustration above, Padre Faura could only be the nerve center of the rebellion but at the same time rebellion is also happening in Makati City.

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

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270 *People v. Lovedioro*, supra note 266 at 488.
271 *People v. Dasig,* supra 269 at 608-609.
272 *People v. Mangallan*, 243 Phil. 286 (1988) cited in *People v. Dasig,* supra at 609.
273 *People v. Lovedioro*, supra at 488.
274 *Ponce Enrile v. Judge Amin*, 267 Phil. 603, 612 (1990).
275 Id.
276 Id.
277 *People v. Dasig,* supra at 609.
278 *Ponce Enrile v. Judge Amin*, supra at 603.
279 *People v. Lovedioro*, supra at 490.
280 *Ponce Enrile v. Judge Amin*, supra at 611.

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.

g) The Court must stay within the confines of its power.

The Court can only act within the confines of its power. For the Court to overreach is to infringe upon another's territory. 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."[281]

To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategical value of other places in the military's efforts to quell the rebellion 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. To be blunt about it, hours after the proclamation of martial law none of the members of this Court could have divined that more than ten thousand souls would be forced to evacuate to Iligan and Cagayan de Oro and that the military would have to secure those places also; none of us could have predicted that Cayamora Maute would be arrested in Davao City or that his wife Ominta Romato Maute would be apprehended in Masiu, Lanao del Sur; and, none of us had an inkling that the Bangsamoro Islamic Freedom Fighters (BIFF) would launch an attack in Cotabato City. 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. Until now the Court is in a quandary and can only speculate whether the 60-day lifespan of Proclamation No. 216 could outlive the present hostilities 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.

Thus, considering the current situation, it will not serve any purpose if the President is goaded into using "the sword of Alexander to cut the Gordian knot"[282] by attempting to impose another encumbrance; after all, "the declaration of martial law or the suspension of the privilege of the writ

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[281] *People v. Hernandez*, 99 Phil. 515, 550 (1956).
[282] II RECORD, CONSTITUTIONAL COMMISSION 509 (July 31, 1986).

of *habeas corpus* is **essentially an executive act.**"[283]

Some sectors, impelled perhaps by feelings of patriotism, may wish to subdue, rein in, or give the President a nudge, so to speak, as some sort of a reminder of the nation's experience under the Marcos-styled martial law. However, it is not fair to judge President Duterte based on the ills some of us may have experienced during the Marcos-martial law era. At this point, the Court quotes the insightful discourse of Commissioner Ople:

> MR. OPLE. x x x
>
> x x x x
>
> Madam President, there is a tendency to equate patriotism with rendering the executive branch of the government impotent, as though by reducing drastically the powers of the executive, we are rendering a service to human welfare. I think it is also important to understand that the extraordinary measures contemplated in the Article on the Executive pertain to a practical state of war existing in this country when national security will become a common bond of patriotism of all Filipinos, especially if it is an actual invasion or an actual rebellion, and the President may have to be given a minimum flexibility to cope with such unprecedented threats to the survival of a nation. I think the Commission has done so but at the same time has not, in any manner, shunned the task of putting these powers under a whole system of checks and balances, including the possible revocation at any time of a proclamation of martial law by the Congress, and in any case a definite determination of these extraordinary powers, subject only to another extension to be determined by Congress in the event that it is necessary to do so because the emergency persists.
>
> **So, I think this Article on the Executive for which I voted is completely responsible; it is attuned to the freedom and the rights of the citizenry. It does not render the presidency impotent and, at the same time, it allows for a vigorous representation of the people through their Congress when an emergency measure is in force and effect.**[284]

h) Several local armed groups have formed linkages aimed at committing rebellion and acts in furtherance thereof in the whole of Mindanao.

With a predominantly Muslim population, Marawi City is "the only Islamic City of the South."[285] On April 15, 1980, it was conferred the

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[283] II RECORD, CONSTITUTIONAL COMMISSION 510 (July 31, 1986). Emphasis supplied.
[284] II RECORD, CONSTITUTIONAL COMMISSION 735 (August 6, 1986). Emphasis supplied.
[285] History of Lanao del Sur <https://lanaodelsur.gov.ph/about/history> (visited July 3, 2017).

official title of "Islamic City of Marawi."[286] The city's first name, "Dansalan," "was derived from the word 'dansal', meaning a destination point or rendezvous. Literally, it also means arrival or coming."[287] Marawi lies in the heart of Mindanao. In fact, the Kilometer Zero marker in Mindanao is found in Marawi City thereby making Marawi City the point of reference of all roads in Mindanao.

Thus, there is reasonable basis to believe that Marawi is only the staging point of the rebellion, both for symbolic and strategic reasons. Marawi may not be the target but the whole of Mindanao. As mentioned in the Report, "[l]awless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages;"[288] there is also the plan to establish a *wilayat* in Mindanao by staging the siege of Marawi. The report that prior to May 23, 2017, Abdullah Maute had already dispatched some of his men to various places in Mindanao, such as Marawi, Iligan, and Cagayan de Oro for bombing operations, carnapping, and the murder of military and police personnel,[289] must also be considered. Indeed, there is some semblance of truth to the contention that Marawi is only the start, and Mindanao the end.

Other events also show that the atrocities were not concentrated in Marawi City. Consider these:

> a. On January 13, 2017, an improvised explosive device (IED) exploded in Barangay Campo Uno, Lamita City, Basilan. A civilian was killed while another was wounded.[290]
>
> b. On January 19, 2017, the ASG kidnapped three Indonesians near Bakungan Island, Taganak, Tawi-Tawi.[291]
>
> c. On January 29, 2017, the ASG detonated an IED in Barangay Danapah, Albarka, Basilan resulting in the death of two children and the wounding of three others.[292]
>
> d. From March to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. These resulted in the death and wounding of several personalities.[293]

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286 Islamic City of Marawi: Historical Background <https://sites.google.com/site/icomgovph/government/historical-background> (visited July 3, 2017).

287 Islamic City of Marawi: Historical Background <https://sites.google.com/site/icomgovph/government/historical-background> (visited July 3, 2017).

288 *Rollo* of G.R. No. 231658, pp. 40-41.

289 Id. at 156.

290 Id. at 146.

291 Id.

292 Id.

293 Id. at 147-148.

e. On February 26, 2017, the ASG beheaded its kidnap victim, Juergen Kantner in Sulu.[294]

f. On April 11, 2017, the ASG infiltrated Inabaga, Bohol resulting in firefights between rebels and government troops.[295]

g. On April 13, 2017, the ASG beheaded Filipino kidnap victim Noel Besconde.[296]

h. On April 20, 2017, the ASG kidnapped SSg. Anni Siraji and beheaded him three days later.[297]

There were also intelligence reports from the military about offensives committed by the ASG and other local rebel groups. All these suggest that the rebellion in Marawi has already spilled over to other parts of Mindanao.

Moreover, considering the widespread atrocities in Mindanao and the linkages established among rebel groups, the armed uprising that was initially staged in Marawi cannot be justified as confined only to Marawi. The Court therefore will not simply disregard the events that happened during the Davao City bombing, the Mamasapano massacre, the Zamboanga City siege, and the countless bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others.[298] The Court cannot simply take the battle of Marawi in isolation. As a crime without predetermined bounds, the President has reasonable basis to believe that the declaration of martial law, as well as the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao, is most necessary, effective, and called for by the circumstances.

i) Terrorism neither negates nor absorbs rebellion.

It is also of judicial notice that the insurgency in Mindanao has been ongoing for decades. While some groups have sought legal and peaceful means, others have resorted to violent extremism and terrorism. Rebellion may be subsumed under the crime of terrorism, which has a broader scope covering a wide range of predicate crimes. In fact, rebellion is only one of the various means by which terrorism can be committed.[299] However, while

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294 Id. at 146.
295 Id.
296 Id.
297 Id.
298 President Duterte's Report to Congress, May 25, 2017, p. 3; id. at 37.
299 Section 3 of Republic Act No. 9372, otherwise known as the Human Security Act of 2007, lists the following predicate crimes of terrorism:
a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

the scope of terrorism may be comprehensive, its purpose is distinct and well-defined. The objective of a "terrorist" is to sow and create a condition of widespread fear among the populace in order to coerce the government to give in to an unlawful demand. This condition of widespread fear is traditionally achieved through bombing, kidnapping, mass killing, and beheading, among others. In contrast, the purpose of rebellion, as previously discussed, is political, *i.e.*, (a) to remove from the allegiance to the Philippine Government or its laws: (i) the territory of the Philippines or any part thereof; (ii) any body of land, naval, or armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

In determining what crime was committed, we have to look into the main objective of the malefactors. If it is political, such as for the purpose of severing the allegiance of Mindanao to the Philippine Government to establish a *wilayat* therein, the crime is rebellion. If, on the other hand, the primary objective is to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand, the crime is terrorism. Here, we have already explained and ruled that the President did not err in believing that what is going on in Marawi City is one contemplated under the crime of rebellion.

In any case, even assuming that the insurgency in Marawi City can also be characterized as terrorism, the same will not in any manner affect Proclamation No. 216. Section 2 of Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007 expressly provides that "[n]othing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government." Thus, as long as the President complies with all the requirements of Section 18, Article VII, the existence of terrorism cannot prevent him from exercising his extraordinary power of proclaiming martial law or suspending the privilege of the writ of *habeas corpus*. After all, the extraordinary powers of the President are bestowed on him by the

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b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d'Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction, or under
   (1) Presidential Decree No. 1613 (The Law on Arson);
   (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
   (3) Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
   (4) Republic Act No. 6235 (Anti-Hijacking Law);
   (5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
   (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives).

Constitution. No act of Congress can, therefore, curtail or diminish such powers.

Besides, there is nothing in Art. 134 of the RPC and RA 9372 which states that rebellion and terrorism are mutuallty exclusive of each other or that they cannot co-exist together. RA 9372 does not expressly or impliedly repeal Art. 134 of the RPC. And while rebellion is one of the predicate crimes of terrorism, one cannot absorb the other as they have different elements.[300]

Verily, the Court upholds the validity of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region.

At the end of the day, however ardently and passionately we may believe in the validity or correctness of the varied and contentious causes or principles that we espouse, advocate or champion, let us not forget that at this point in time we, the Filipino people, are confronted with a crisis of such magnitude and proportion that we all need to summon the spirit of unity and act as one undivided nation, if we are to overcome and prevail in the struggle at hand.

Let us face up to the fact that the siege in Marawi City has entered the second month and only God or Allah knows when it would end. Let us take notice of the fact that the casualties of the war are mounting. To date, 418 have died. Out of that were 303 Maute rebels as against 71 government troops and 44 civilians.

Can we not sheathe our swords and pause for a while to bury our dead, including our differences and prejudices?

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Proclamation No. 216 and **DECLARES** it as **CONSTITUTIONAL**. Accordingly, the consolidated Petitions are hereby **DISMISSED**.

SO ORDERED.

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[300] In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 148 at 493, the Court held that the elements of terrorism are as follows: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire to coerce the government to give in to an unlawful demand.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

See dissenting Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

See Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice

I concur. Please see my Separate Opinion.

PRESBITERO J. VELASCO, JR.
Associate Justice

I concur in my separate opinion:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See Separate Opinion

DIOSDADO M. PERALTA
Associate Justice

I concur. Please see my Separate Opinion

LUCAS P. BERSAMIN
Associate Justice

I concur. See separate opinion

JOSE CATRAL MENDOZA
Associate Justice

See Separate Concurring Opinion.

BIENVENIDO L. REYES
Associate Justice

I concur in the result. Please see separate Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

See Separate Opinion

See Separate Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

w/ separate opinion

SAMUEL R. MARTIRES
Associate Justice

With separate Opinion

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice