G.R. No. 231658 – ***Rep. Edcel C. Lagman, et al. v. Hon. Executive Secretary Salvador Medialdea, et al.***

G.R. No. 231771 – ***Eufemia Campos Cullamat, et al. v. President Rodrigo Roa Duterte, et al.***

G.R. No. 231774 – ***Norkaya S. Mohamad, et al. v. Hon. Executive Secretary Salvador Medialdea, et al.***

Promulgated:

July 4, 2017

x----------x

DISSENTING OPINION

CAGUIOA, *J.*:

"In any civilized society the most important task is achieving a proper balance between freedom and order."[1]

Petitioners come to the Court for the determination of the sufficiency of the factual basis of the May 23, 2017 declaration of martial law and suspension of the privilege of the writ of *habeas corpus* via Proclamation No. 216.[2]

The sufficiency of factual basis for the declaration of martial law or suspension of the privilege of the writ is a justiciable question by Section 18's express provision.

At the outset, it cannot be gainsaid — indeed, it is now hornbook — that the constitutionality of the declaration of martial law and suspension of the privilege of the writ is no longer a political question within the operation of the 1987 Constitution. No attempt should be countenanced to return to that time when such a grave constitutional question affecting the workings of government and the enjoyment by the people of their civil liberties is placed beyond the ambit of judicial scrutiny as long as the Court remains faithful to the Constitution.

---

1 William H. Rehnquist, All the Laws But One: Civil Liberties in Wartime (1998) at p. 222.

2 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 declaration of martial law and suspension of the privilege of the writ are justiciable questions by express authorization of the third paragraph of Section 18, Article VII of the Constitution.

The language of the provision and the intent of the framers[3] clearly foreclose any argument of non-justiciability. Moreover, the question before the Court does not squarely fall within any of the formulations of a political question.[4] Concretely, even as the first paragraph of Section 18 commits to the Executive the issue of the declaration of martial law and suspension of the privilege of the writ, the third paragraph commits the review to the Court and provides the standards to use therein — unmistakably carving out the question from those that are political in nature. Clearly, no full discretionary authority on the part of the Executive was granted by the Constitution in the declaration of martial law and suspension of the privilege of the writ. As well, insofar as Section 18 lays down the mechanics of government in times of emergency, it is precisely the province of the Court to say what the law is.

The power of the Executive to declare martial law and to suspend the privilege of the writ, and the review by the Court of the sufficiency of the factual basis thereof, are bounded by Article VII, Section 18 of the Constitution:

> SEC. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of

---

3 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).

4 As formulated in *Baker v. Carr*, 369 U.S. 186 (1962) and *In re McConaughy*, 119 NW, 408 (1909) as adopted in this jurisdiction as early as *Tanada v. Cuenco* (1957), and *Casibang v. Aquino* (1979), and *Marcos v. Manglapus* (1989).

> 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.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The third paragraph of Section 18 is a grant of jurisdiction to the Court.

Jurisdiction is conferred by the Constitution and by law. Article VII, Section 18 of the Constitution positively grants the Court the power to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ; hence, there is absolutely no need to find another textual anchor for the exercise of jurisdiction by the Court apart from Section 18's express conferment. The Court has never attempted to draw distinctions or formulae to determine whether a provision that grants authority grants jurisdiction, or merely lays the basis for the exercise of jurisdiction. To my mind, this is a distinction — semantic or philosophical — that is simply misplaced in this exercise.

Thus, I agree with the *ponencia* that Section 18 contemplates a *sui generis* proceeding set into motion by a petition of any citizen. Plainly, Section 18 is a neutral and straightforward fact-checking mechanism, shorn of any political color whatsoever, by which any citizen can invoke the aid of the Court — an independent and apolitical branch of government — to determine the necessity of the Executive's declaration of martial law or suspension of the privilege of the writ based on the facts obtaining.

Given its *sui generis* nature, the scope of a Section 18 petition and the workings of the Court's review cannot be limited by comparison to other cases over which the Court exercises jurisdiction — primarily, petitions for *certiorari* under Rule 65 of the Rules of Court and Article VIII, Section 1.

The review under the third paragraph of Section 18 is mandatory.

It has been proposed that the review is discretionary upon the Court, given the use of the word "may," and further supported by arguments that an interpretation that the review is mandatory will lead to absurdity, to clogging of the Court's dockets, and that the 30-day period to decide Section 18 petitions are taxing for the Court and executive officials.

The argument is untenable — it reduces the provision to mere lip service if the Court can shirk its duty by exercising its discretion in the manner so suggested. While the word "may" is usually construed as directory, it does not invariably mean that it cannot be construed as mandatory when it is in this sense that the statute (in this case, the Constitution), construed as a whole, can accomplish its intended effect.[5]

I submit that the only reasonable interpretation within the context and object of the Constitution is that the review is mandatory. Keeping in mind that "under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty,"[6] the Court's review rises to the level of a public duty owed by the Court to the sovereign people — to determine, independent of the political branches of government, the sufficiency of the factual basis, and to provide the Executive the venue to inform the public.

A Section 18 proceeding filed by any citizen is sui generis, and entails a factual and legal review.

I concur with the *ponencia* that a Section 18 petition may be filed by any citizen. The Court, as intimated above, should not add any qualification for the enjoyment of this clear and evident right apart from what is stated in the provision, especially when the intent of the framers was to clearly relax the question of standing.[7]

In determining the nature and requirements of the Court's review, guidance can be had from the language of the provision and the intent of the

---

5 Crawford, Statutory Construction, page 104: "A statute, or one or more of its provisions, may be either mandatory or directory. While usually in order to ascertain whether a statute is mandatory or directory, one must apply the rules relating to the construction of statutes; yet it may be stated, as general rule, that those whose provisions relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely a matter of convenience rather than of substance, are directory."

6 *Dueñas, Jr. v. HRET*, 610 Phil. 730, 742 (2009).

7 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 386, 392 (1986).

framers. Both show that the review contemplated is both factual and legal in nature. As the framers discussed:

> 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 or 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.**[8] (Emphasis supplied)

The constitutional mandate to review, as worded and intended, necessarily requires the Court to delve into both factual and legal issues indispensable to the final determination of the "sufficiency of the factual basis" of the declaration of martial law and suspension of the privilege of the writ. This cannot be resisted by the mere expediency of relying on the rule that the Court is not a trier of facts; indeed, even when it sits as an appellate court, the Court has recognized exceptions when examination of evidence and determination of questions of fact are proper.[9]

Section 18, as a neutral and straightforward fact-checking mechanism, serves the functions of *(1)* preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, *(2)* providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, or, at the very least, *(3)* assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ.

---

8 Id. at 470.

9 *Delos Reyes Vda. Del Prado v. People*, 685 Phil. 149, 161 (2012); *Sacay v. Sandiganbayan*, 226 Phil. 496, 511-512 (1986).

Viewed in this light, the government is called upon to embrace this mechanism because it provides the Executive yet another opportunity to lay before the sovereign people its reasons for the declaration of martial law or suspension of the privilege of the writ, if it had not already done so. This requires the Executive to meaningfully take part in this mechanism in a manner that breathes life to the mandate of the Constitution. In the same manner, the Court is also mandated to embrace this fact-checking mechanism, and not find reasons of avoidance by, for example, resorting to procedural niceties.

Under Section 18, the Executive has the burden of proof by substantial evidence.

Apropos to the question of the burden of proof and threshold of evidence under a Section 18 petition, I submit that fixing the burden of proof upon the petitioners in a neutral and straightforward fact-checking mechanism is egregious error because:

First, there is nothing in the language of Section 18 or the deliberations to show that it fixes or was intended to fix the burden of proof upon the citizen applying to the Court for review;

Second, a Section 18 petition is neither a civil action nor akin to one, but is in the nature of an application to the Court to determine the sufficiency of the factual basis. It is not required to carry a concurrent claim that there was lack or insufficiency of factual basis. Hence, the fixing of burden of proof to the citizen constitutes undue burden to prove a claim (positive or negative) when no claim was necessarily made;

Third and most important, considering that the declaration of martial law and suspension of the privilege of the writ can only be validly made upon the concurrence of the requirements in the Constitution, the very act of declaration of martial law or suspension of the privilege of the writ already constitutes a positive assertion by the Executive that the constitutional requirements have been met — one which it is in the best position to substantiate. To require the citizen to prove a lack or insufficiency of factual basis is an undue shifting of the burden of proof that is clearly not the intendment of the framers.

In his dissenting opinion in *Fortun v. Macapagal-Arroyo*[10] where former President Macapagal-Arroyo's proclamation of martial law in Maguindanao was questioned, Senior Associate Justice Antonio T. Carpio

[10] 684 Phil. 526 (2012).

opined that probable cause to believe the existence of either invasion or rebellion satisfies the standard of proof for a valid declaration of martial law and suspension of the writ. He explained:

> 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 or suspension of the writ. Therefore, lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the writ is without any basis and thus, unconstitutional.
>
> The requirement of probable cause for the declaration of martial law or suspension of the writ is consistent with Section 18, Article VII of the Constitution. It is only upon the existence of probable cause that a person can be "judicially charged" under the last two paragraphs of Section 18, Article VII, to wit:
>
> > The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons **judicially charged** for rebellion or offenses inherent in, or directly connected with, invasion.
> >
> > During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be **judicially charged** within three days, otherwise he shall be released.[11] (Emphasis supplied)

I concur with the *ponencia*'s holding that the threshold of evidence for the requirement of rebellion or invasion is probable cause, consistent with Justice Carpio's dissenting opinion in *Fortun*. It is sufficient for the Executive to show that at the time of the declaration of martial law or suspension of the privilege of the writ, there "[existed] such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense [rebellion] has been committed."[12]

This standard of proof upon the Executive confirms my position that the burden of proof is originally and continually borne by the Executive throughout the entire fact-checking proceeding, for clearly, the petitioning citizen cannot be expected to prove or disprove the factual basis that is within the exclusive knowledge only of the Executive.

For truly, the Executive does not receive evidence in determining the existence of actual rebellion — only such facts and circumstances that would lead to the belief that there is actual rebellion. However, to satisfy the Court of the sufficiency of the factual basis of the declaration of martial law and

---

[11] Id. at 598.

[12] *Ho v. People*, 345 Phil. 597, 608 (1997), citing *Allado v. Diokno*, 302 Phil. 213 (1994).

the suspension of the privilege of the writ (i.e. that indeed, probable cause to believe that actual rebellion existed at the time of the proclamation, and that public safety required it), the Executive must be able to present substantial evidence tending to show both requirements.

Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[13]

To me, the requirement of "sufficiency" in a Section 18 proceeding is analogous to the "substantial evidence" standard in administrative fact-finding. The Executive needs to reveal so much of its factual basis for the declaration of martial law and suspension of the privilege of the writ so that it produces in the mind of the Court the conclusion that the declaration and suspension meets the requirements of the Constitution. Otherwise, the Court's finding of sufficiency becomes anchored upon bare allegations, or silence. In any proceeding, mere allegation or claim is not evidence; neither is it equivalent to proof.[14]

For the same reason, I submit that presumption of regularity or constitutionality cannot be relied upon, neither by the Executive nor the Court, to declare that there is sufficient factual basis for the declaration of martial law or the suspension of the writ. The presumption disposes of the need to present evidence — which is totally opposite to the fact-checking exercise of Section 18; to be sure, reliance on the presumption in the face of an express constitutional requirement amounts to a failure by the Executive to show sufficient factual basis, and judicial rubberstamping on the part of the Court.

A Section 18 review is a test of sufficiency and not arbitrariness.

The *ponencia* stated that one of the functions of Section 18 is to constitutionalize the holding in *Lansang v. Garcia*,[15] a case questioning the suspension of the privilege of the writ. In *Lansang*, the Court inquired into the **existence** of the factual bases of the proclamation to determine the constitutional sufficiency thereof and applied arbitrariness as a standard of review. It explained:

---

13 *Miro v. Vda. De Erederos*, 721 Phil. 772, 787 and 788-789 (2013).
14 See *Sadhwani v. Court of Appeals,* 346 Phil. 54, 67 (1997).
15 149 Phil. 547 (1971).

Article VII of the Constitution vests in the Executive the power to suspend the privilege of the writ of *habeas corpus* under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is *supreme* within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only *if* and *when* he acts *within* the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, *in this respect*, is, in turn, constitutionally *supreme*.

In the exercise of such authority, the function of the Court is 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. To be sure, the power of the Court to determine the validity of the contested proclamation is far from being identical to, or even comparable with, its power over ordinary civil or criminal cases elevated thereto by ordinary appeal from inferior courts, in which cases the appellate court has *all* of the powers of the court of origin.

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines *only* whether there is *some evidentiary basis* for the contested administrative finding; *no quantitative* examination of the supporting evidence is undertaken. The administrative finding can be interfered with *only* if there is *no* evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in *both* jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds equally reasonable might conceivably opine otherwise.

Manifestly, however, this approach refers to the review of administrative determinations involving the exercise of quasi-judicial functions calling for or entailing the reception of evidence. It does not and cannot be applied, in its aforesaid form, in testing the validity of an act of Congress or of the Executive, such as the suspension of the privilege of the writ of *habeas corpus*, for, as a general rule, neither body takes evidence — in the sense in which the term is used in judicial proceedings — before enacting a legislation or suspending the writ. Referring to the test of the validity of a statute, the Supreme Court of the United States, speaking through Mr. Justice Roberts, expressed, in the leading case of Nebbia v. New York, the view that:

> "x x x If the laws passed are seen to have a *reasonable relation* to a proper legislative purpose, and are *neither arbitrary nor discriminatory,* the requirements of due process are satisfied, and *judicial determination to that*

> *effect renders a court functus officio* ... With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both *incompetent* and *unauthorized* to deal ..."

Relying upon this view, it is urged by the Solicitor General —

> "x x x that judicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *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*."

> No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government, under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not *correctness*, but *arbitrariness*.[16]

The standard of review in *Lansang* was sound, as situated in the context of Article VII, Section 10, paragraph 2 of the 1935 Constitution. At the time, the power to declare martial law and suspend the privilege of the writ was textually-committed to the Executive **without a corresponding commitment to the Court of a review.** Even then, on the basis of the principle of checks and balances, the Court determined the constitutionality of the suspension by satisfying itself of some existence of factual basis — or the absence of arbitrariness — without explicit authority from the Constitution then in force.

Lansang's holding that the sufficiency of the factual basis of the suspension of the privilege of the writ is not a political question stands as stated in the third paragraph of Section 18. However, given the changing contours of and safeguards imposed upon the Executive's power to declare martial law and suspend the privilege of the writ, *Lansang* is no longer the standard of review under the 1987 Constitution.

Obviously, the mechanics under the 1935 and 1987 Constitutions belong to different factual and legal milieu. The 1987 Constitution now positively mandates the Court to review the "sufficiency of the factual basis" of the President's declaration of martial law or suspension of the privilege of the writ; the deliberations show an unmistakable and widely-held intent to remove the question of the sufficiency of the factual basis for the declaration

---

[16] Id. at 592-594.

of martial law and suspension of the privilege of the writ from the category of political questions that are beyond judicial scrutiny.[17]

Lansang's test of arbitrariness as equated to the "existence" of factual basis is clearly a lower standard than the "sufficiency" required in Section 18. The use of the word "sufficiency," signals that the Court's role in the neutral straightforward fact-checking mechanism of Section 18 is precisely to check *post facto*, and with the full benefit of hindsight, the validity of the declaration of martial law or suspension of the privilege of the writ, based upon the presentation by the Executive of the sufficient factual basis therefor (*i.e.*, evidence tending to show the requirements of the declaration of martial law or suspension of the privilege of the writ: actual rebellion or invasion, and requirements of public safety). This means that the Court is also called upon to investigate the accuracy of the facts forming the basis of the proclamation — whether there is actual rebellion and whether the declaration of martial law and the suspension of the privilege of the writ are necessary to ensure public safety.

Thus, if the Executive satisfies the requirement of showing sufficient factual basis, then the proclamation is upheld, and the sovereign people are either informed of the factual basis or assured that such has been reviewed by the Court. If the Executive fails to show sufficient factual basis, then the proclamation is nullified and the people are restored to full enjoyment of their civil liberties.

Since Section 18 is a neutral straightforward fact-checking mechanism, any nullification necessarily does not ascribe any grave abuse or attribute any culpable violation of the Constitution to the Executive. Meaning, the fact that Section 18 checks for sufficiency and not mere arbitrariness does not, as it was not intended to, denigrate the power of the Executive to act swiftly and decisively to ensure public safety in the face of emergency. Thus, the Executive will not be exposed to any kind of liability should the Court, in fulfilling its mandate under Section 18, make a finding that there were no sufficient facts for the declaration of martial law or the suspension of the privilege of the writ.

Accordingly, I disagree with the *ponencia's* statement that in the review of the sufficiency of the factual basis, the Court can only consider the information and data available to the President prior to or at the time of the declaration and that it is not allowed to undertake an independent investigation beyond the pleadings. The reliance on *Macapagal-Arroyo*[18]

---

[17] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 470, 476 and 482 (1986).

[18] *David v. Macapagal-Arroyo,* 522 Phil. 705 (2006).

and *IBP v. Zamora*[19] is misplaced because these cases deal with the exercise of calling out powers over which the Executive has the widest discretion, and which is not subject to judicial review,[20] unlike the declaration of martial law and suspension of the privilege of the writ. To recall, even then, the check on exercise of powers by the Executive was not merely arbitrariness, but "an examination of whether such power was exercised within permissible constitutional limits **or** whether it was exercised in a manner constituting grave abuse of discretion."[21]

As well, in the same manner that the Court is not limited to the four corners of Proclamation No. 216 or the President's report to Congress, it is similarly not temporally bound to the time of proclamation to determine the sufficiency of the factual basis for both the existence of rebellion **and** the requirements of public safety. In other words, if enough of the factual basis relied upon for the existence of rebellion or requirements of public safety are shown to have been inaccurate or no longer obtaining at the time of the review to the extent that the factual basis is no longer sufficient for the declaration of martial law or suspension of the privilege of the writ, then there is nothing that prevents the Court from nullifying the proclamation.

In the same manner, if the circumstances had changed enough to furnish sufficient factual basis at the time of the review, then the proclamation could be upheld though there might have been insufficient factual basis at the outset. A contrary interpretation will defeat and render illusory the purpose of review.

To illustrate, say a citizen files a Section 18 petition on day 1 of the proclamation, and during the review it was shown that while sufficient factual basis existed at the outset (for both rebellion and public necessity) such no longer existed at the time the Court promulgates its decision at say, day 30 — then it makes no sense to uphold the proclamation and allow the declaration of martial law or suspension of the privilege of the writ to continue for another thirty days, assuming it is not lifted earlier.

Conversely, if it was shown that while there was insufficient factual basis at the outset, circumstances had changed during the period of review resulting in a finding that there is now sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ, then the Court is called upon to uphold the proclamation.

---

19 392 Phil. 618 (2000).

20 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 409, 412 (1986).

21 *David v. Macapagal-Arroyo,* supra note 18, at 766.

In this sense, the evaluation of sufficiency is necessarily transitory.[22]

Therefore, while I concur with the holding that probable cause is the standard of proof to show the existence of actual rebellion at the time of the proclamation, I submit that the second requirement of public safety (*i.e.*, necessity) is a **continuing** requirement that must still exist during the review, and that the Court is not temporally bound to the time of the declaration of martial law or suspension of the privilege of the writ in determining the requirements of public safety.

The factual basis for the declaration includes both the existence of actual rebellion and the requirements of public safety.

Proceeding now to the crux of the controversy, the Court must look into the factual basis of **both** requirements for the declaration of martial law and suspension of the privilege of the writ: (1) the existence of actual rebellion or invasion; and (2) the requirements of public safety. Necessity creates the conditions of martial law and at the same time limits the scope of martial law.[23] This is apparent from the following exchange:

> MR. VILLACORTA. Thank you, Madam President.
>
> Just two more short questions. Section 15, lines 26 to 28, states:
>
> > The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces...
>
> I wonder if it would be better to transfer the phrase "whenever it becomes necessary" after the phrase "armed forces," so that it would read: "The President shall be the commander-in-chief of all the armed forces of the Philippines and HE MAY CALL OUT SUCH ARMED FORCES WHENEVER IT BECOMES NECESSARY to prevent or suppress lawless violence, invasion or rebellion." My point here is that the calling out of the Armed Forces will be limited only to the necessity of preventing or suppressing lawless violence, invasion or rebellion. As it is situated now, the phrase "whenever it becomes necessary" becomes too discretionary on the part of the President. And we know that in the past, it had been abused because the perception and judgment as to necessity was completely left to the discretion of the President. Whereas if it is placed in the manner that I am suggesting, the necessity would only pertain to suppression and prevention of lawless violence, invasion or rebellion. May I know the reaction of the Committee to that observation?

---

[22] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 494 (1986).

[23] Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 919 (2009 ed.).

x x x x

MR. VILLACORTA. I see. Therefore, the Committee does not see any difference wherever the phrase "whenever it becomes necessary" is placed.

FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*; then he can impose martial law. This is a graduated sequence.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. x x x[24] (Emphasis supplied)

Also:

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. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

Commissioner Bernas would like to add something.

FR. BERNAS. Besides, **it is not enough that there is actual rebellion.** Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, **that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it."** So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.[25] (Emphasis supplied)

---

[24] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 408-409 (1986).
[25] Id. at 412.

Rebellion under Section 18 is understood as rebellion defined in Article 134 of the Revised Penal Code.

I concur with the *ponencia* that the rebellion mentioned in the Constitution refers to rebellion as defined in Article 134 of the Revised Penal Code.

The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds.[26] The crime of rebellion requires the concurrence of intent and overt act; it is integrated by the coexistence of both the armed uprising for the purposes expressed in Article 134 of the Revised Penal Code, and the overt acts of violence described in the first paragraph of Article 135. Both purpose and overt acts are essential elements of the crime and without their concurrence the crime of rebellion cannot legally exist.[27]

Returning to Section 18, the powers to declare martial law and to suspend the privilege of the writ are further limited through the deletion of insurrection and the phrase "or imminent danger thereof" from the enumeration of grounds upon which these powers may be exercised, thereby confining such grounds to *actual* rebellion or *actual* invasion, when public safety so requires. This is seen from the deliberations which show that the calling out powers of the President are already sufficient to prevent or suppress "imminent danger" of invasion, rebellion or insurrection, thus:

> MR. CONCEPCION. **The elimination of the phrase "IN CASE OF IMMINENT DANGER THEREOF" is due to the fact that the President may call the Armed Forces to prevent or suppress invasion, rebellion or insurrection. That dispenses with the need of suspending the privilege of the writ of *habeas corpus*.** References have been made to the 1935 and 1973 Constitutions. The 1935 Constitution was based on the provisions of the Jones Law of 1916 and the Philippine Bill of 1902 which granted the American Governor General, as representative of the government of the United States, the right to avail of the suspension of the privilege of the writ of *habeas corpus* or the proclamation of martial law in the event of imminent danger. And President Quezon, when the 1935 Constitution was in the process of being drafted, claimed that he should not be denied a right given to the American Governor General as if he were less than the American Governor General. But he overlooked the fact that under the Jones Law and the Philippine Bill of 1902, we were colonies of the United States, so the Governor General was given an authority, on behalf of the sovereign, over the territory under the

---

26 *People v. Lovedioro*, 320 Phil. 481, 488 (1995).
27 *People v. Geronimo*, 100 Phil. 90, 95 (1956).

> sovereignty of the United States. Now, there is no more reason for the inclusion of the phrase "OR IMMINENT DANGER THEREOF" in connection with the writ of *habeas corpus*. As a matter of fact, the very Constitution of the United States does not mention "imminent danger." **In lieu of that, there is a provision on the authority of the President as Commander-in-Chief to call the Armed Forces to prevent or suppress rebellion or invasion and, therefore, "imminent danger" is already included there.**[28] (Emphasis supplied)

There is sufficient showing that, at the time of the proclamation, probable cause existed for the actual rebellion in Marawi City.

The armed public uprising in Marawi City is self-evident. The use of heavy artillery and the hostile nature of attacks against both civilians and the armed forces are strongly indicative of an uprising against the Government. The multitude of criminal elements as well as the concerted manner of uprising therefore satisfies the first element of the crime of rebellion.

Anent the second element of intent, the Executive's presentation of its military officials and intelligence reports *in camera* showed probable cause to believe that the intent component of the rebellion exists — that the Maute group sought to establish a "*wilayah*," or caliphate in Lanao del Sur of extremist network ISIS,[29] which has yet to officially acknowledge the said group. The video footage recovered by the military showing the plans of the Maute Group to attack Marawi City further evidences the plan to remove Marawi City from its allegiance to the Government of the Republic of the Philippines.[30]

I adopt Chief Justice Sereno's findings of fact and find, based on the totality of the evidence presented, that it has been sufficiently shown that at the time of the declaration of martial law and the suspension of the privilege of the writ, the information known to the Executive constituted probable cause to believe that there was actual rebellion in Marawi City.

Needless to state, the finding of probable cause to believe that rebellion exists in this case is solely for the purpose of reviewing the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ; it does not serve to determine the existence of the separate criteria for an objective characterization of a non-international armed conflict. The application of International Humanitarian

---

28 I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 773-774 (1986).
29 Respondents' Memorandum, pp. 5, 64-65.
30 Id. at 71.

Law (IHL) is a measure of prudence and humanity, and does not, in any way, legitimize these terrorist groups, to use the appropriate appellation.

There is insufficient showing that the requirements of public safety necessitated the declaration of martial law over the entire Mindanao.

The second indispensable requirement that must be shown by the Executive is that public safety calls for the declaration of martial law and suspension of the privilege of the writ. Here, there can be no serious disagreement that the existence of actual rebellion does not, on its own, justify the declaration of martial law or suspension of the privilege of the writ if there is no showing that it is necessary to ensure public safety.

According to Fr. Bernas:

> Martial law depends on two factual bases: (1) the existence of invasion or rebellion, and (2) the requirements of public safety. Necessity creates the conditions for martial law and at the same time limits the scope of martial law. Certainly, the necessities created by a state of invasion would be different from those created by rebellion. Necessarily, therefore, the degree and kind of vigorous executive action needed to meet the varying kinds and degrees of emergency could not be identical under all conditions. They can only be *analogous*.[31]

Due to the incorporation of several safeguards, Philippine martial law is now subject to standards that are even stricter than those enforced in connection with martial law in *sensu strictiore*, in view of the greater limitations imposed upon military participation. Hence, to determine sufficiency of the factual basis of Proclamation 216 in a manner faithful to the 1987 Constitution, such determination must necessarily be done within this strict framework.

That necessity is part of the review is seen in the following:

> MR. VILLACORTA. x x x
>
> x x x x
>
> The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces...

---

[31] Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 903 (2009 ed.).

> I wonder if it would be better to transfer the phrase "whenever it becomes necessary" after the phrase "armed forces," so that it would read: "The President shall be the commander-in-chief of all the armed forces of the Philippines and HE MAY CALL OUT SUCH ARMED FORCES WHENEVER IT BECOMES NECESSARY to prevent or suppress lawless violence, invasion or rebellion." My point here is that the calling out of the Armed Forces will be limited only to the necessity of preventing or suppressing lawless violence, invasion or rebellion. **As it is situated now, the phrase "whenever it becomes necessary" becomes too discretionary on the part of the President. And we know that in the past, it had been abused because the perception and judgment as to necessity was completely left to the discretion of the President.** Whereas if it is placed in the manner that I am suggesting, the necessity would only pertain to suppression and prevention of lawless violence, invasion or rebellion. May I know the reaction of the Committee to that observation?
>
> x x x x
>
> FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*; then he can impose martial law. This is a graduated sequence.
>
> **When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. We are making it subject to review by the Supreme Court** and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.[32] (Emphasis supplied)

While the *ponencia* holds that the scope of territorial application could either be "the Philippines or any part thereof" without qualification, this does not mean, as the *ponencia* holds, that the Executive has full and unfettered discretionary authority. The import of this holding will lead to a conclusion that the Executive needs only to show sufficient factual basis for the existence of actual rebellion in a given locality and then the territorial scope becomes its sole discretion. *Ad absurdum*. Under this formula, the existence of actual rebellion in Mavulis Island in Batanes, without more, is sufficient to declare martial law over the entire Philippines, or up to the southernmost part of Tawi-tawi. This overlooks the public safety requirement and is obviously not the result intended by the framers of the fact-checking mechanism.

Indeed, the requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily,

---

[32] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 408-409 (1986).

the initial scope of martial law is the place where there is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the intent. **Elsewhere, however, there must be a clear showing of the requirement of public safety necessitating the inclusion**.

There is insufficient showing that there was actual rebellion outside of Marawi City.

Therefore, the Executive had the onus to present substantial evidence to show the necessity of placing the entire Mindanao under martial law. Unfortunately, the Executive failed to show this. In fact, during the interpellations, it was drawn out that there is no armed public uprising in the eastern portion of Mindanao, namely: Dinagat Island Province, Camiguin Island, Misamis Oriental, Misamis Occidental, Agusan, Zamboanga, Davao, Surigao, Pagadian, Dapitan.[33]

In this connection, it should be noted that even if principal offenders, conspirators, accomplices, or accessories to the rebellion flee to or are found in places where there is no armed public rising, this fact alone does not justify the extension of the effect of martial law to those areas.[34] They can be pursued by the State under the concept of rebellion being a continuing crime, even without martial law.

In the landmark case of *Umil v. Ramos*,[35] rebellion was designated as a "continuing crime" by the Court, wherein it sustained the validity of the arrest of a member of the NPA while the latter was being treated for a gunshot wound in the hospital. The accused therein, who was charged for violation of the Anti-Subversion Act, was arrested for being a member of the NPA, an outlawed subversive organization, despite not performing any overt act at the time of his arrest. Said the Court, citing *Garcia-Padilla v. Enrile*[36]:

> The record of the instant cases would show that the persons in whose behalf these petitions for *habeas corpus* have been filed, had freshly committed or were actually committing an offense, when

---

33 TSN, June 14, 2017, pp. 126-128.

34 The June 6, 2017 arrest of Cayamora Maute, the father of the Maute brothers, in Davao City does not prove actual rebellion or public necessity of martial law in Davao City — the elder Maute said that he only wanted to get himself treated at a hospital in Davao City because he had difficulty walking. The government had not offered any reason for the arrest. Similarly, the June 10, 2017 arrest of Ominta Romato Maute, the mother of the Maute brothers, in Masiu, Lanao del Sur, also does not, on its own, constitute rebellion and public necessity of martial law in Lanao del Sur.

As well, the June 15, 2017 arrest of Mohammad Noaim Maute *alias* Abu Jadid, the alleged bomber of the Maute group, in Cagayan de Oro, could be justified under the concept of rebellion as a continuing crime, but does not show actual rebellion or public necessity of martial law in Cagayan de Oro.

35 265 Phil. 325 (1990).

36 206 Phil. 392 (1983).

> apprehended, so that their arrests without a warrant were clearly justified, and that they are, further, detained by virtue of valid informations filed against them in court. x x x
>
> As to *Rolando Dural*, it clearly appears that he was not arrested while in the act of shooting the two (2) CAPCOM soldiers aforementioned. Nor was he arrested just after the commission of the said offense for his arrest came *a day after* the said shooting incident. Seemingly, his arrest without warrant is unjustified.
>
> However, **Rolando Dural was arrested for being a member of the New Peoples Army (NPA), an outlawed subversive organization.** Subversion being a *continuing offense*, the arrest of Rolando Dural without warrant is justified as it can be said that he was committing an offense when arrested. **The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of *continuing* crimes.** As stated by the Court in an earlier case:
>
> > "From the facts as above-narrated, the claim of the petitioners that they were initially arrested illegally is, therefore, without basis in law and in fact. The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. Clearly then, the arrest of the herein detainees was well within the bounds of the law and existing jurisprudence in our jurisdiction.
> >
> > x x x x"[37] (Emphasis supplied)

Without a showing that normative acts of rebellion are being committed in other areas of Mindanao, the standard of public safety requires a demonstration that these areas are so intimately or inextricably connected to the armed public uprising in order for them to be included in the scope of martial law. Otherwise, the situation in these areas merely constitute an "imminent threat" of rebellion which does not justify the declaration of martial law and suspension of the privilege of the writ in said areas.

In this sense, Justice Feliciano's observations in *Lacson v. Perez*[38] applies with greater force in this case, *i.e.,* the concept of rebellion as a continuing crime does not thereby extend the existence of actual rebellion

---

37 *Umil v. Ramos*, supra note 35, at 334-336.

38 410 Phil. 78 (2001).

wherever these offenders may be found, or automatically extend the public necessity for martial law based only on their presence in a certain locality. In *Lacson*, he said:

> My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. **The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather or such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved.** x x x[39] (Emphasis supplied)

Corollary to the declaration of martial law and suspension of the privilege of the writ having been issued in Mindanao without a showing of actual rebellion except in Marawi City, the Executive **also** failed to show the necessity of the declaration of martial law and suspension of the privilege of the writ in the entire Mindanao to safeguard public safety.

During the oral arguments, the Solicitor General, gave non-answers to questions relating to the requirements of public safety over the entire Mindanao:

> **JUSTICE REYES:**
>
> So if the actual rebellion happened in Mindanao or specifically in Marawi City, would it be, why is it that the declarations of martial law covered the whole Mindanao?
>
> **SOLICITOR GENERAL CALIDA:**
>
> That was his political judgment at that time, Your Honor. And since our President comes from Davao City and has been mayor for so many years, he knows the peace and order situation in Davao. He has been talking to all the rebels of the other groups against government. He has information that is made available to him or to anybody else, Your Honor. And therefore I trust his judgment, Your Honor.[40]

---

39 Id. at 109.

40 TSN, June 14, 2017, pp. 136-137.

The presentation of military officials heard *in camera* was similarly vague when it came to establishing the necessity of the declaration of martial law and suspension of the privilege of the writ in the entire Mindanao. Given that the only justification offered in these proceedings tends to show that the declaration of martial law[41] is merely "beneficial" or "preferable," then the requirement of public safety is necessarily not met.

That something is beneficial or preferable does not automatically mean it is necessary — especially where, as here, the government could not articulate what "additional powers" it could or wanted to wield that Proclamation No. 55 (s. 2016)[42] did not give them.

At this juncture, I submit that martial law grants no additional powers to the Executive and the military, unless the magnitude of the emergency has led to the collapse of civil government, or by the very fact of civil government performing its functions endangers public safety.[43] This is the import of the fourth paragraph of Section 18. Perforce, the Bill of Rights remains in effect, and guarantees of individual freedoms (*e.g.* from arrests, searches, without determination of probable cause) should be honored subject to the well-defined exceptions that obtain in times of normalcy.

This is not to say, however, that the capability of the military to pursue the criminals outside of the area of armed public uprising should be curtailed. The Executive, prior to the declaration of martial law and the suspension of the privilege of the writ, had already exercised his calling out power through Proclamation No. 55 covering the entire island of Mindanao. The military remains fully empowered "to prevent or suppress lawless violence, invasion or rebellion," as Proclamation No. 55 remains valid and is not part of the scope of this Section 18 review.

The declaration of martial law is proper only in Marawi City and certain contiguous or adjacent areas.

The *ponencia* authorizes the operation of martial law over the entire Mindanao based on linkages established among rebel groups. While the Court is not so unreasonable not to accept arguments that other areas outside of the place of actual rebellion are so intimately or inextricably linked to the rebellion such that it is required to declare martial law to ensure public safety in those areas, or of operational or tactical necessity, there has been no

---

41 TSN, June 15, 2017, pp. 53-54, 68-69 and 78.

42 Proclamation No. 55, series of 2016, entitled "Declaring A State of National Emergency on Account of Lawless Violence in Mindanao."

43 Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 902 (2009 ed.), citing *Duncan v. Kahanamoku*, 327 U.S. 304, 323 (1946).

showing, save for conclusionary statements, of specific reasons for the necessity that would justify the imposition of martial law and the suspension of the privilege of the writ over the entire island. Thus, I cannot agree with the *ponencia* that there is sufficient factual basis to declare martial law over the whole of Mindanao.

Verily, the existence of actual rebellion without the public safety requirement cannot be used as justification to extend the territorial scope of martial law to beyond the locale of actual rebellion. Extending martial law and the suspension of the privilege of the writ even to contiguous or adjacent areas cannot be done without a showing of actual rebellion in those areas or a demonstration that they are so inextricably connected to the actual rebellion that martial law and suspension of the privilege of the writ are necessary to ensure public safety in such places.

Unfortunately, the Executive was not able to show the necessity of the declaration over the entire island of Mindanao.

However, I find that sufficient factual basis was shown for the necessity of martial law and the suspension of the privilege of the writ only over Lanao del Sur and the other places identified by the Chief Justice in her separate dissenting opinion where she had shown the inextricable connection of these areas to the actual rebellion being waged in Marawi. Thus, I concur fully with the Chief Justice that sufficient factual basis has been shown to validate the proclamation of martial law and the suspension of the privilege of the writ over: Lanao del Sur, Maguindanao, and Sulu.

Conclusion

There is no question that the rebellion waged in Marawi city, and the fighting still happening there to this day, has instilled a fair amount of fear and terror in the hearts of the normal Filipino. There is no denying as well that the murders and atrocities being perpetrated by the Maute extremists, inspired by ISIS, evoke in the normal Filipino the urge for retribution and even create the notion that this group be exterminated, like the vermin that they are, at the soonest possible time and with all resources available, thus justifying a resort to martial rule not only in Marawi but over all of Mindanao. The members of the Court, being Filipinos themselves, are not immune from these emotions and gut reactions. However, the members of the Court are unlike the normal Filipino in that they have a duty to protect and uphold the Constitution — a duty each member swore to uphold when they took their oath of office.

That duty has come to the fore in a very specific manner — to embrace and actively participate in the neutral, straightforward, apolitical fact-checking mechanism that is mandated by Section 18, Article VII of the Constitution, and accordingly determine the sufficiency of the factual basis of the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. The Court, under Section 18, steps in, receives the submissions relating to the factual basis of the declaration of martial law or suspension of the privilege of the writ, and then renders a decision on the question of whether there is sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ. Nothing more.

To be sure, the Court will even ascribe good faith to the Executive in its decision to declare martial law or suspend the privilege of the writ of *habeas corpus*. But that does not diminish the Court's duty to say, if it so finds, that there is insufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. That is the essence of the Court's duty under Section 18.

In discharging this duty, the Court does not assign blame, ascribe grave abuse or determine that there was a culpable violation of the Constitution. It is in the courageous and faithful discharge of this duty that the Court fulfills the most important task of achieving a proper balance between freedom and order in our society. It is in this way that the Court honors the sacrifice of lives of the country's brave soldiers — that they gave their last breath not just to suppress lawless violence, but in defense of freedom and the Constitution that they too swore to uphold.

Therefore, I vote to declare the proclamation of martial law over the entire Mindanao as having been issued without sufficient factual basis. I concur with the findings and recommendations of the Chief Justice that martial law and the suspension of the privilege of the writ of *habeas corpus* can be justified only in Lanao del Sur, Maguindanao, and Sulu.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice