Republic of the Philippines
Supreme Court
Manila

G.R. No. 231658 (*Rep. Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al.*), **G.R. No. 231771** (*Eufemia Campos Cullamat, et al. v. President Rodrigo R. Duterte, et al.*) and **G.R. No. 231774** (Norkaya S. *Mohammad S. Mohamad, et al. v. Executive Secretary Salvador C. Medialdea, et al.*)

Promulgated:

July 4, 2017

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SEPARATE OPINION

MARTIRES, *J.*:

"*We seem to distrust all future Presidents just because one President destroyed our faith by his declaration of martial law. I think we are overreacting. Let us not judge all Presidents who would henceforth be elected by the Filipino people on the basis of the abuses made by that one President. Of course, we must be on guard; but let us not overreact.*"[1]

On 29 August 2016, fifteen (15) soldiers were killed in Patikul, Sulu, as a result of an encounter with the Abu Sayyaf Group (*ASG*). On 2 September 2016, at least fourteen (14) people were killed and sixty-seven (67) others were seriously injured due to the bombing incident in a night market in Davao City. Moored on these incidents, as well as on government intelligence reports as to further terror attacks and acts of violence by lawless elements in the country, President Rodrigo Roa Duterte (*President*

[1] Statement of Mr. Francisco A. Rodrigo, Constitutional Commission Deliberations, 31 July 1986, p. 497.

Duterte), pursuant to his Commander-in-Chief power to call out the armed forces whenever it becomes necessary to prevent or suppress lawless violence as enunciated in Section 18, Article VII of the 1987 Constitution, issued Proclamation No. 55 on 4 September 2016, declaring a state of national emergency on account of lawless violence in Mindanao.[2]

On 23 May 2017, President Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the privilege of writ of *habeas corpus* in the whole of Mindanao. This time, President Duterte anchored his declaration, aside from the reasons cited in the earlier Proclamation No. 55, on the acts committed by the Maute terrorist group on that same day, to wit:[3]

> **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 the 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; x x x

On 25 May 2017, President Duterte, in compliance with Sec. 18, Art. VII of the Constitution requiring him to submit a report within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, submitted his written report to the Senate and the House of Representatives.

On 29 May 2017, the Senate[4] issued P.S. Resolution No. 388 stating that the Senate found the issuance of Proclamation No. 216 to be satisfactory, constitutional, and in accordance with the law, and that it found no compelling reason to revoke the same.

On 31 May 2017, the House of Representatives, after constituting itself into a Committee of the Whole House, considered the President's report and heard a briefing from representatives of the executive department. Finding no reason to revoke Proclamation No. 216, the House of Representatives issued House Resolution No. 1050[5] expressing full support to President Duterte.

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2 Proclamation No. 55, series of 2016.

3 Proclamation No. 216 dated 23 may 2017.

4 Introduced by Senators Vicente Sotto III, Aquilino Pimentel III, Ralph Recto, Juan Edgardo Angara, Nancy Binay, Joseph Victor Ejercito, Sherwin Gatchalian, Richard Gordon, Gregorio Honasan, Panfilo Lacson, Loren Legarda, Emmanuel Pacquiao, Joel Villanueva, Cynthia Villar, Juan Miguel Zubiri. Senators Francis Escudero and Grace Poe did not sign the Resolution.

5 Introduced by Representatives Pantaleon D. Alvarez, Rodolfo C. Fariñas and Danilo E. Suarez.

Before the Court, however, are three consolidated petitions brought under the third paragraph of Section 18, Article VII of the Constitution assailing the validity and constitutionality of Proclamation No. 216.

I vote to dismiss these petitions.

The present petitions are dismissible for being "inappropriate proceedings."

The provision in the 1987 Constitution on which petitioners anchored their respective petitions reads:

ARTICLE VII

EXECUTIVE DEPARTMENT

x x x x

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

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 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 of *habeas corpus*.

> 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. (emphasis supplied)

Notably, while Section 18, Article VII of the Constitution allows any Filipino citizen to assail through an appropriate proceeding the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, it is only the Court which was conferred with the sole authority to review the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. In both instances, the citizen and the Court are expressly clothed by the Constitution with authority: the former to bring to the fore the validity of the President's proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, and the latter to make a determination as to the validity thereof.

It is through the exercise of this authority, after the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, that both the citizen and the Court pierce through the exclusive realm of the President in the exercise of his Commander- in- Chief powers. But it should be stressed that the exercise of this authority must be anchored on an "appropriate proceeding" that would bind the citizen and the Court as they march towards the sole domain of the Commander in Chief. Clearly, therefore, the absence of an "appropriate proceeding" nullifies the exercise by the citizen of his authority and, unless the Court in the exercise of its judicial discretion rules otherwise, divests it likewise of its authority to grant the plea of the suitor before it.

Section 18, Article VII of the Constitution does not categorically identify what the "appropriate proceeding" is. For sure, the "appropriate proceeding" contemplated therein cannot be Section 18, Article VII itself for otherwise this could have been expressly spelled out in the provision. Moreover, there is nothing in Section 18, Article VII from which it can be reasonably inferred that it is by itself a proceeding.

By using the phrase "appropriate proceeding," the Constitutional Commission obviously acknowledged that there already exists an available course of action which a citizen can invoke in supplicating the Court to exercise its awesome review power found under Article VIII of the Constitution. The words "appropriate proceeding" should be read in their natural, ordinary and obvious signification, devoid of forced or subtle construction. "*For words are presumed to have been employed by the*

lawmaker in their ordinary and common use and acceptation. And courts as a rule, should not presume that the lawmaking body does not know the meaning of the words and the rules of grammar."[6]

The argument that the "appropriate proceeding" contemplated in Section 18, Article VII of the Constitution is *sui generis* is tantamount to regarding the phrase "appropriate proceeding" as a surplusage and a superfluity, barren of any meaning. To follow this interpretation would mean that while Section 18, Article VII requires that there be an "appropriate proceeding" to set the foundation for judicial review, that proceeding, however, is none other than Section 18, Article VII itself. This could not have been the intent of the framers of the Constitution.

To fortify this stance, quoted hereunder is the deliberation of the Committee on the Executive of the Constitutional Commission, to wit:

> MR. SARMIENTO. Mr. Davide, one last question: Why should it be appropriate proceeding? My idea is to remove simply "appropriate." Say, in a proceeding or action brought before it by any citizen, it is for the Supreme Court to ... (Drowned by voices)
>
> MR. REGALADO. It has to be appropriate. Father Bernas will answer that.
>
> MR. CONCEPCION. ...(Inaudible) proper party to (?) handle the Rules of Court, but if we grant it to anybody, or everybody, they have to hold appropriately.
>
> VOICE. Proper action.
>
> MR. CONCEPCION. Well, of course, the proceeding may be an ordinary action. I think, in general, it is appropriate proceeding.
>
> VOICE. Appropriate.
>
> MR. CONCEPCION. What are cases triable by courts of justice?[7]

The fact is underscored that Justice Florenz Regalado, a legal luminary in remedial law, insisted during the deliberation that the "proceeding" be qualified as "appropriate." Unmistakably, Justice Regalado acknowledged that the "appropriate proceeding" already exists, and corollary thereto can be logically inferred as existing independently of Section 18, Article VII. To stress, if the intention were otherwise, Section 18, Article VII could have plainly provided that it is by itself a proceeding which a citizen can avail of in assailing the Commander-in-Chief powers of the President. But the use of the word "proceeding," which was even defined

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6 *Agpalo*, Statutory Construction, Fourth Edition, 1998, p. 177.

7 17 June 1986, p. 188.

as "appropriate," can only mean that the proceeding has already been provided for in existing laws.

The *ponencia* cites Section 4, Article VII of the Constitution as another constitutional provision which, like Section 18, Article VII, confers jurisdiction to the Court in addition to those enumerated in Sections 1 and 5, Article VIII of the Constitution.

There is no issue that Section 4, Article VII of the Constitution vests jurisdiction upon the Court to be the sole judge of all contests relating to the election, returns, and qualifications of the President or the Vice-President, in the same manner that Section 18, Article VII clothes the Court with the exclusive authority to 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.

Both Sections 4 and 18 of Article VII are not proceedings by themselves. In the first, there are specific rules by which the election, returns, and qualifications of the President or Vice-President can be assailed before the Court, while in the second, it is required that there be an "appropriate proceeding" filed by a citizen to set in motion the Court's review powers.

The Constitution's explicit definition of the Court's judicial power in Article VIII is enlightening:

ARTICLE VIII

JUDICIAL DEPARTMENT

> **Section 1.** The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

As mentioned earlier, when the Constitutional Commission used the phrase "appropriate proceeding" in Section 18, Article VII, it actually acknowledged that there already exists an available route by which a citizen may attack the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof. And by defining the extent of judicial power of the Court in Section 1, Article VIII, the Constitutional Commission clearly identified

that the "appropriate proceeding" referred to in Section 18, Article VII is one within the expanded jurisdiction of the Court.

The position that the power of the Court to review the factual basis of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is pursuant to Section 1, Article VIII of the Constitution finds support in the following deliberations of the Committee on the Executive of the 1986 Constitutional Commission:

> THE CHAIRMAN. We go to the last paragraph. The last paragraph of the revised resolution reads as follows: " THE BASIS OF A PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF HABEAS CORPUS MAY BE INQUIRED INTO BY THE SUPREME COURT IN ANY APPROPRIATE PROCEEDING OR ACTION BROUGHT BEFORE IT BY ANY CITIZEN AND IF IT SO DETERMINES THAT NO SUFFICIENT BASIS EXISTS FOR SUCH PROCLAMATION OR SUSPENSION, THE SAME SHALL BE SET ASIDE. THE SUPREME COURT SHALL DECIDE THE PROCEEDING OR ACTION WITHIN THIRTY DAYS FROM ITS FILING." Any remark?
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> MS. AQUINO. Mr. Chairman, the paragraph in effect vests in the Supreme Court the power of judicial review in terms of testing or determining the constitutional sufficiency of the basis of the proclamation. Could it not be formulated in a more forthright way as to positively recognize the power of the Supreme Court to test the constitutional sufficiency or the power of judicial reprieve? No, no, no, formulate it that way, it belongs more to the judiciary than to this... (Interrupted)
>
> MR. DAVIDE. Yeah, Mr. Chairman, I was really thinking if this should be placed under the judiciary, in the article on the judiciary, I would submit the matter to Chief Justice Concepcion if the most appropriate place for this provision would be within the article on the judiciary.
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> MR. CONCEPCION. Well, in connection with the judiciary, we tentatively agreed on the following expression, you know, Section 1 says: "Judicial power shall be vested on the supreme Court etcetera." So the next paragraph either of the same section or a new section says: "Judicial power is the authority of courts of justice to settle conflicts or controversies involving rights which are legally demandable or enforceable including the question whether or not there has been an abuse of discretion amounting to lack or excess of jurisdiction, as well as the exercise of the power to suspend the privilege of a writ of habeas corpus and to declare Martial law." This is the provision that tentatively we are considering.
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> MR. DAVIDE. **So this particular paragraph, Your Honor, on the Commander-in-Chief's provision giving the Supreme Court the authority to inquire into the factual basis of the proclamation of Martial or the suspension of the privilege of a writ of habeas corpus, can be included...** (Interrupted)

MR CONCEPCION. **It is involved already. We are not satisfied with including the question whether or not there has been an abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction initially because we did not want to mention Martial Law in particular as if we were reflecting upon the action of the Supreme Court. I am particularly under special obligation in these matters because I have been a member of the court and I am expected to exercise greater attention, more courtesy to the Supreme Court, but upon the insistence of Commissioner Colayco we added: "AS WELL AS THE EXERCISE OF THE POWER TO SUSPEND THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS AND TO DECLARE MARTIAL LAW."** I realize that this would have to be taken up also in connection with the Martial Law powers of the President, but we also consider it relevant to the question of what is the nature and extent of judicial review or judicial power?

The first sentence says: "Judicial power shall be vested." So we have to define somehow what is the nature and extent of judicial power and it simply implies that judicial power extends the power whenever there is a question of abuse of jurisdiction amounting to lack of jurisdiction or excess of jurisdiction. Well, the court has the power because that is the main function of the court in a presidential system to define and delimit the duties and functions of the different branches. That is the system of checks and balances.

MR. BERNAS. Mr. Chairman, in the light of the explanation given by Commissioner Concepcion, may I suggest reformulation of this last paragraph and its transposition to the end of the first paragraph because in the first paragraph we are talking about the imposition of Martial Law, the mechanics for the imposition, the requirements for the imposition and after that we add a sentence saying: 'THE SUPREME COURT MAY REVIEW IN AN APPROPRIATE PROCEEDING THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF HABEAS CORPUS OR ITS EXTENSION AND SHALL DECIDE THE CASE WITHIN THIRTY DAYS FROM ITS FILING."

THE CHAIRMAN. Where will you put that?

MR. BERNAS. At the end of the first paragraph or right after the first paragraph. First we are talking about the imposition, then we talk about the invalidation, then after that we talk about the effects.

THE CHAIRMAN. Will you please repeat?

MR. BERNAS. "THE SUPREME COURT MAY REVIEW IN AN APPROPRIATE PROCEEDING THE SUFFICIENCY OF THE FACTUAL BASIS FOR THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS OR THE EXTENSION THEREOF AND SHALL DECIDE THE CASE WITHIN THIRTY DAYS FROM ITS FILING."[8] (emphasis supplied)

x x x x

[8] 17 June 1986, pp. 183-187.

Pertinently, Article VIII of the Constitution provides:

> Section 5. The Supreme Court shall have the following powers:
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> 1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari,* prohibition, *mandamus, quo warranto* and habeas corpus.
>
> x x x x

A petition for certiorari is proper when any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[9] A petition for prohibition may be filed when the proceedings of any tribunal, corporation, board, officer or person, whether exercising *judicial, quasi-judicial or ministerial functions,* are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[10] Clearly, these are the two modes, i.e., "appropriate proceedings," by which the Court exercises its judicial review to determine grave abuse of discretion. But it must be stressed that the petitions for certiorari and prohibition are not limited to correcting errors of jurisdiction of a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but extends to any branch or instrumentality of the government; thus, confirming that there are indeed available "appropriate proceedings" to invoke the Court's judicial review pursuant to Section 18, Article VII of the Constitution.

This position finds support in the Court's declaration in *Araullo v. Aquino, III*:[11]

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, x x x
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> **Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.**

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9 Rules of Court, Rule 65, Sect.1.
10 *Id.*, Sec. 2.
11 737 Phil. 457 (2014).

> Necessarily, in discharging its duty under Section 1, x x x to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. **The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.**[12] (emphasis supplied)

Thus, when petitioners claimed that their petitions were pursuant to Section 18, Article VII of the Constitution, they, in effect, failed to avail of the proper remedy, thus depriving the Court of its authority to grant the relief they pleaded.

The Court must take note that the Constitutional Commission had put in place very tight safeguards to avoid the recurrence of another dictator rising in our midst. Thus, the President may use his Commander-in-Chief powers but with defined limitations: (a) to prevent or suppress lawless violence, invasion or rebellion he may call out the armed forces; and, (b) 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.

In the same manner that there are limitations for the exercise by the President of his powers pursuant to Section 18, Article VII, the Constitution likewise provides for the specific manner by which such exercise can be attacked before the Court: only by a citizen of the Philippines and through an appropriate proceeding. The absence of one of these requisites should have warranted the outright dismissal of the petition. But if only for the transcendental importance of the issues herein, I defer to the majority in taking cognizance of these petitions. After all, "[*t*]*his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.*"[13]

The President did not act
with grave abuse of discretion
as he had sufficient factual basis
in issuing Proclamation No. 216.

In the resolution of these petitions, it should be noted that Section 1, Article VIII of the Constitution provides for a specific parameter by which

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[12] *Id.* at 513.

[13] *Rappler, Inc. v. Bautista*, G.R. No. 222702, 5 April 2016. (emphasis supplied)

the Court, in relation to Section 18, Article VII, should undertake its judicial review – it must be proven that grave abuse of discretion attended the President's act in declaring martial law and in suspending the privilege of the writ of *habeas corpus* in Mindanao. Nothing short of grave abuse of discretion should be accepted by the Court.

Grave abuse of discretion has a definite meaning. There is grave abuse of discretion when an act is done in a "'*capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.' The abuse of discretion must be so patent and gross as to amount to an 'evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.*'"[14] That same definition finds importance to this Court in assessing whether the President, in issuing Proclamation No. 216, acted with grave abuse of discretion.

"Rebellion," as stated in Section 18, Article VII of the Constitution refers to the crime of rebellion defined under Article 134 of the Revised Penal Code (*RPC*), which has the following elements:

1. There is a public uprising and taking arms against the Government; and

2. The purpose is either to:

   a. 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. Deprive the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The presence of the first requirement is not controverted as petitioners admit that there was public uprising and taking arms against the Government in Marawi City at the time Proclamation No. 216 was issued. Petitioners capitalize, however, on the second requirement, insisting that there is no proof that the uprising was attended with the culpable intent inherent in the act of rebellion.

It bears emphasis, however, that intent, which is a state of mind, can be shown only through overt acts that manifest such intent.[15] Thus, the

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[14] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission,* 716 Phil. 500, 515-516 (2013), citing Yu v. Reyes-Carpio, 667 Phil. 474, 481-482 (2011).

[15] *Clemente v. People* , 667 Phil. 515, 525 (2011).

culpable intent to commit rebellion can only be shown through overt acts manifesting that the perpetrators intended to remove the Philippine territory or any part thereof from the allegiance of the government or to deprive the President or the Congress of their powers or prerogatives.

Proclamation No. 216 clearly stated overt acts manifesting the culpable intent of rebellion, to wit:

1. Proclamation No. 55, series of 2016 was issued on 4 September 2016 declaring a state of national emergency on account of **lawless violence in Mindanao**.

2. There was a 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, leading to the issuance of Proclamation No. 55.

3. On 23 May 2017, the same Maute terrorist group **took over a hospital** in Marawi City, **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.

In the Report submitted by the President to Congress on 25 May 2017, he specifically chronicled the events which showed the group's display of force against the Government in Marawi City, such as the following:

1. Attacks on various government and privately owned facilities.

2. Forced entry in Marawi City Jail thereby facilitating the escape of sixty-eight (68) inmates, and where a PDEA member was killed and on-duty personnel were assaulted, disarmed, and locked up inside the cells, and where the group confiscated cellphones, firearms, and vehicles.

3. Evacuation of the Marawi City Jail and other affected areas by BJMP personnel.

4. Interruption of the power supply in Marawi City, resulting in a city-wide power outage.

5. Sporadic gunfights.

6. Ambush and burning of the Marawi Police Station, where a police car was taken.

7. Control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, with the threat to bomb these bridges to preempt military reinforcement.

8. Occupation by persons connected with the Maute group of several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as Barangays Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar.

9. Road blockades and checkpoints at the Iligan City-Marawi City junction.

10. Burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nuns' quarters in the church, and the Shia Masjid Moncado Colony.

11. Taking of hostages from the church.

12. Killing of five faculty members of Dansalan College Foundation.

13. Burning of Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.

14. Overruning of Amai Pakpak Hospital.

15. Hoisting of ISIS flag in several areas.

16. Attacking and burning of the Filipino-Libyan Friendship Hospital.

17. Ransacking of a branch of Landbank of the Philippines, and commandeering an armored vehicle.

18. Information that about 75% of Marawi city has been infiltrated by lawless armed groups composed of the Maute Group and the Abu Sayyaf Group (ASG).

19. Report that eleven (11) members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) have been killed in action, while thirty-five (35) have been seriously wounded.

20. Reports regarding the Maute group's plan to execute Christians.

21. Preventing Maranaos from leaving their homes.

22. Forcing young Muslims to join their group.

These circumstances, jointly considered by the President when he issued Proclamation No. 216, show that there was no arbitrariness in the President's decision to declare martial law and suspend the privilege of the writ of *habeas corpus* in Mindanao.

Indeed, in the case at bar, it is the Government which has the burden of proof. As defined by the rules, burden of proof is the "*duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.*"[16] Thus, it is the Government which has the duty to justify the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

Given the Government's evidence, as reported in Proclamation No. 216 and the President's Report, there is no doubt that the Government was able to discharge its burden of proof. As such, the burden of evidence, or the burden of going forward with the evidence, has been shifted to petitioners.

Petitioners, particularly in the Lagman petition, allege that there is no sufficient factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao as the facts, as stated in Proclamation No. 216 and the President's Report, are false, contrived, and inaccurate. They hark on the falsity and inaccuracy of five statements in Proclamation No. 216 and in the Report.

The general rule is that no evidence is needed for a negative allegation. However, "[*i*]*n determining whether an assertion is affirmative or negative, we should consider the substance and not the form of the assertion. A legal affirmative is not necessarily a grammatical affirmative, nor a legal negative a grammatical negative; on the contrary, a legal affirmative frequently assumes the shape of a grammatical negative, and a legal negative that of a grammatical affirmative.*"[17]

Petitioners' allegations, though couched in a grammatical negative, is actually a legal affirmative – they are claiming that five statements in

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16 Rules of Court, Rule 131, Sect. 1. (emphasis supplied)

17 *Francisco*, Evidence, p. 11.

Proclamation No. 216 and the President's Report are false. Being a positive assertion, petitioners are required to present evidence on their claim.

Notably, however, the evidence presented by petitioners are mere online news articles. The *ponencia* correctly observed that said news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted.[18]

Moreover, the five statements assailed by petitioners merely constitute a few of the numerous facts presented by the President in his report. Even assuming that those five statements are inaccurate, such inaccuracy will not cast arbitrariness on the President's decision since petitioners did not controvert the rest of the factual statements in Proclamation No. 216 and the President's Report.

In justifying the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao and not just in Marawi City, the President took note of the following circumstances in his report:

1. Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades.

2. In more recent years, there have been numerous acts of violence challenging the authority of the duly constituted authorities, such as the **recent Zamboanga siege, Davao bombing, Mamasapano carnage, and bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others.** Two armed groups have figured prominently in all these – the ASG and the Maute group.

3. 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 Jeemah 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 in particular, as well as illegal drug money, provide financial and logistical support to the Maute group.

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[18] *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

4. The events which transpired on 23 May 2017 in Marawi City, as earlier enumerated, were 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**.

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 resisted; and the brazen display of the 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.

6. **Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages** [in Marawi City].

7. **Personnel from the BJMP have been prevented from performing their functions**.

8. Through the attack and occupation of several hospitals, **medical services in Marawi City have been adversely affected**.

9. The bridge and road blockades set up by the groups effectively **deprived the government of its ability to deliver basic services** to its citizens.

10. **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.**

11. The **taking up of arms by lawless armed groups** in the area, with support being provided by foreign-based terrorist 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**.

12. The group's occupation of Marawi City fulfills a **strategic objective because of its terrain and the easy access it provides to other parts of Mindanao**. Lawless groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages.

These acts and circumstances, viewed wholistically, provided sufficient justification for the President to believe that rebellion existed in the whole of Mindanao, and that the security of the whole island was compromised. After receiving verified intelligence reports of the growing number of the Maute terrorist group, who are fully armed and prepared to wage combat to further their aims, coupled with the recent Zamboanga siege, Davao bombing, Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, and Basilan, the President had probable cause to believe that rebel groups have, in recent years, openly attempted to deprive the President of his power to faithfully execute the laws and to maintain peace and order in the whole island of Mindanao.

As to the requirement of public safety, there are no fixed standards in determining what constitutes such interference to justify a declaration of martial law. However, in *Lansang v. Garcia*,[19] the Supreme Court declared that "*the magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege.*" With this as the yardstick, logic mandates that the extent of the rebellion shown by the above-mentioned circumstances, supported as they are by verified intelligence reports, was sufficient to reasonably conclude that public safety had been compromised in such manner as to require the issuance of Proclamation No. 216. The increasing number of casualties of civilians and government troops, the escalating damage caused to property owners in the places attacked by the rebel groups, and the incessant assaults in other parts in Mindanao leave no doubt that such dangers to public safety justified the declaration of martial law and the suspension of the privilege.

To better understand who these rebel groups are, Professor Rommel C. Banlaoi (*Professor Banlaoi*), Chairman of the Board and Executive Director of the Philippine Institute for Peace, Violence and Terrorism Research (*PIPVTR*) and Head of its Center for Intelligence and National Security Studies,[20] gives an in-depth analysis:[21]

> Though Philippine government forces are actually fighting in Marawi City unified armed groups that have pledged allegiance to the Islamic State in Iraq and Syria (ISIS), the group that inevitably stands out in the ongoing military conflict is the **Maute Group**.
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> The Maute Group is brazenly taking the center stage in the ongoing firefights because the main battlefield is Marawi City, the stronghold of the Maute family and the only Islamic city in the Philippines. This armed group holds this label because the whole Maute family is involved in the establishment of an ISIS-linked organization that their followers call the ***Daulah Islamiyah Fi Ranao (DFIR)*** **or the**

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19 G.R. No. L-33964, 11 December 1991.

20 *Banloi*, Al-Harakatul Al-Islamiyyah, Essays on the Abu Sayyaf Group, Third Edition, p. 137.

21 The Maute Group and rise of family terrorism. www.rappler.com/though-leaders/173037-maute-group-rise-family-terrorism. Last visited on 3 July 2017.

> **Islamic State of Lanao**. The Maute family proclaimed the DIFR in September 2014 after performing a *bay'ah* or a pledge of allegiance to ISIS leader, Abu Bakar Baghdadi.
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> To advance ISIS activities in the **provinces of Lanao**, the Maute Group formed two highly trained armed groups called *Khilafah sa Jabal Uhod* (Soldiers of the Caliphate in Mouth Uhod) and *Khilafah sa Ranao* (Soldiers of the Caliphate in Lanao) headed by the Middle-East educated Maute brothers: Omarkayam Maute and Abdullah Maute. The family organized a clandestine fortress on behalf of ISIS in its hometown in **Butig, Lanao del Sur**, and other satellite camps in the **neighboring towns of Lumbatan, Lambuyanague, Marogong, Masiu, and even Marawi City**.
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> In Butig, the Maute Group was able to set up military camps with complete training facilities for combatants, bombers, community organizers and religious preachers. In fact, most of the suspects in the September 2016 Davao City bombing received bomb trainings in Butig where the Maute family initially organized an army of at least 300 ISIS fighters recruited from disgruntled members of families previously associated with the **Moro Islamic Liberation Front (MILF)**.
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> But from Butig, the Maute Group just discreetly formed several hideouts in Marawi City with the intention of controlling the whole city to serve as the headquarters of the Maute-supported the Daulah Islamiya Wilayatul Mashriq (DIWM), the so-called Islamic State Province in East Asia.
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> The DIWM is the umbrella organization of all armed groups in the Philippines that have pledged allegiance to ISIS.
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> Among the notorious armed groups in the DIWM are factions of the **Abu Sayyaf Group (ASG)** and the **Bangsamoro Islamic Freedom Fighters (BIFF)** as well as remnants of the **Anshar Khalifa Philippines (AKP)** and the **Khilafa Islamiyah Mindanao (KIM)**. ASG commander Isnilon Hapilon serves as the overall leader or Amir of DIWM, whose members are called by ISIS as the Soldiers of the Caliphate in East Asia.
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> Contrary to various reports, government forces are fighting in Marawi City not only the Maute Group but also other armed groups under the DIWM. There is no doubt, however, that key officials of DIWM are members of the Maute family. (emphasis supplied)

According to Professor Banlaoi, these rebel groups are banded together by their belief in the Bangsamoro struggle:[22]

> All Muslim radical groups in the Philippines, regardless of political persuasion and theological inclination, believe in the Bangsamoro struggle. The term *Bangsa* comes from the Malay word, which means

[22] *Banloi*, Al-Harakatul Al-Islamiyyah, Essays on the Abu Sayyaf Group, Third Edition, pp. 24-25.

> *nation.* Spanish colonizers introduced the term *Moro* when they confused the Muslim people of Mindanao with the "moors" of North of Africa. Though the use of the term *Bangsamoro* to describe the "national identity" of *Muslims* in the Philippines is being contested, Muslim leaders regard the *Bangsamoro* struggle as the longest "national liberation movement" in the country covering almost 400 years of violent resistance against Spanish, American, Japanese, **and even Filipino rule**. This 400-year history of Moro resistance deeply informs ASG's current struggle for a **separate Islamic state**. (emphasis supplied)

Clearly, the situation in Mindanao shows not just simple acts of lawless violence or terrorism confined in Marawi City. The widespread armed hostilities and atrocities are all indicative of a rebellious intent to establish Mindanao into an Islamic state or an ISIS *wilayah*, separate from the Philippines and away from the control of the Philippine Government.

Lastly, the peculiarity of the crime of rebellion must also be noted. "*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.*"[23]

For purposes of declaring martial law and suspending the privilege of the writ of *habeas corpus*, it is absurd to require that there be public uprising in every city and every province in Mindanao before rebellion can be deemed to exist in the whole island if there is already reason to believe that the rebel group's culpable intent is for the whole of Mindanao and that public uprising has already started in an area therein.

The following exchange among the framers of the 1987 Constitution is enlightening:[24]

> 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 Malacanang, 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?
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> 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

[23] *People v. Dasig*, 293 Phil. 599, 608 (1993).

[24] *Record of the Constitutional Commission: Proceedings and Debates Vol. II*, pp. 412-413.

was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

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MR. DE LOS REYES. I ask that question because I think **modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others**. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government.

Would the committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO. At the early stages where there was just an attempt to paralyze the government or some sporadic incidents in other areas but without armed public uprising, that would only amount to sedition under Article 138, or it can only be considered a tumultuous disturbance.

MR. DE LOS REYES. The public uprisings are not concentrated in one place, which used to be the concept of rebellion before.

MR. REGALADO. No.

MR. DE LOS REYES. But **the public uprisings consist of isolated attacks in several places—for example in one camp here; another in the province of Quezon; and then in another camp in Laguna; no attack in Malacanang—but there is a complete paralysis of the industry in the whole country. If we place these things together, the impression is clear—that there is an attempt to destabilize the government in order to supplant it with a new government**.

MR. REGALADO. **It becomes a matter of factual appreciation and evaluation.** The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. **So, the President determines, based on the circumstances, if there is presence of a rebellion**.

MR. DE LOS REYES. With the concurrence of Congress.

MR. REGALADO. **And another is, if there is publicity involved, not only the isolated situations. If they conclude that there is really an armed public uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion**. If the President considers it, it is not yet necessary to suspend the privilege of the writ. It is not necessary to declare martial law because he can still resort to the lesser remedy of just calling out the Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion. (emphasis and underlining supplied)

What can be gleaned from the foregoing is that there was a recognition that acts constituting modern rebellion, with the aid of technological advancements, could be undertaken surreptitiously or could deceptively appear random. However, when isolated acts in several areas tend to indicate an attempt to destabilize the government or deprive the President of his powers in a specific portion of the Philippine territory, it may be considered rebellion, even if the armed public uprising does not manifest in the whole intended territory. As mentioned by Commissioner Regalado, this is a matter of factual appreciation and evaluation; and based on the facts obtained by President Duterte through intelligence reports, there was sufficient basis to conclude that rebellion was taking place in the whole of Mindanao.

It is high time to revisit
the Court's pronouncement
in Fortun v. Macapagal-Arroyo.

Perchance it is propitious that through these cases, the Court is given the chance to rectify itself when it made the following pronouncement in *Fortun v. President Macapagal-Arroyo*:[25]

> 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.
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> 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.[26]

Contrary to the above pronouncement, nothing in Section 18, Article VII of the Constitution directs Congress to exercise its review powers prior to the judicial review of the Court. The judicial power of the Court, vested by Section 1, Article VIII of the Constitution, is separate and distinct from the review that may be undertaken by Congress. The judicial review by the Court is set in motion by the filing of an appropriate proceeding by a citizen. Indeed, the Constitution even requires that the Court promulgate its decision

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[25] 684 Phil. 526 (2012).
[26] *Id.* at 558-561.

within thirty days from the filing of the appropriate proceeding. With this explicit directive in the Constitution, it is beyond doubt that the process of judicial review cannot be conditioned upon the exercise by Congress of its own review power.

All things considered, may I just emphasize that "*[m]artial law is founded upon the principle that the state has a right to protect itself against those who would destroy it, and has therefore been likened to the right of the individual to self-defense. It is invoked as an extreme measure, and rests upon the basic principle that every state has the power of self-preservation, a power inherent in all states, because neither the state nor society would exist without it.*"[27] Given the series of violent acts and armed hostilities committed and still being committed by the Maute terror group, the Abu Sayyaf group, and the other armed rebel groups, which hostilities have the end view of establishing a DAESH/ISIS *wilayah* or province,[28] no less than a declaration of martial law is to be expected on the part of a circumspect President to whom we entrust our nation's safety and security.

Thus, I vote to **DISMISS** these petitions.

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[27] *Aquino, Jr. v. Ponce Enrile*, 158-A Phil. 1, 65 (1974).
[28] Consolidated Comment dated 12 June 2017.