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G.R. No. 231658 – REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, GARY C. ALEJANO, EMMANUEL A. BILLONES, AND TEDDY BRAWNER BAGUILAT, JR. *versus* HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, HON. DELFIN N. LORENZANA, SECREATARY OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR, AND GENERAL EDUARDO AÑO, CHIEF-OF-STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR

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G.R. NO. 231771 – EUFEMIA CAMPOS CULLAMAT, VIRGILIO T. LINCUNA, ATELIANA U. HIJOS, ROLAND A. COBRADO, CARL ANTHONY D. OLALO, ROY JIM BALANGHIG, RENATO REYES, JR., CRISTINA E. PALABAY, AMARYLLIS H. ENRIQUEZ, ACT TEACHERS' REPRESENTATIVE ANTONIO L. TINIO, GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS, KABATAAN PARTY-LIST REPRESENTATIVE SARAH JANE I. ELAGO, MAE PANER, GABRIELA KRISTA DALENA, ANNA ISABELLE ESTEIN, MARK VINCENT D. LIM, VENCER MARI CRISOSTOMO AND JOVITA MONTES *versus* PRESIDENT RODRIGO DUTERTE, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF LT. GENERAL EDUARDO AÑO, AND PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALDO DELA ROSA

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G.R. No. 231774 – NORKAYA S. MOHAMAD, SITTIE NUR DYHANNA S. MOHAMAD, NORAISAH S. SANI, AND ZAHRIA P. MUTI-MAPANDI *versus* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF DEFENSE (DND) SECRETARY DELFIN LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) CATALINO S. CUY, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF-OF-STAFF GENERAL EDUARDO M. AÑO, PHILIPPINE NATIONAL POLICE (PNP) DIRECTOR GENERAL RONALD M. DELA ROSA, AND NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.

Promulgated: July 4, 2017

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SEPARATE CONCURRING OPINION

TIJAM, *J.*:

I concur in the result reached by Mr. Justice Del Castillo in his *ponencia.* I submit this opinion to offer my views concerning certain issues.

All three petitions seek this Court's judicial review of Proclamation No. 216 dated May 23, 2017 (Proclamation), pursuant to the third paragraph of Section 18, Article VII of the 1987 Constitution which reads:

> 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.

Although mere citizenship gives *locus standi*, there must be *prima facie* showing of insufficiency of the factual basis for the Proclamation.

As a rule, a party must be able to establish a direct and personal interest in the controversy to clothe him with the requisite *locus standi*. He must be able to show, not only that the government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way.[1] The Constitution, however, has relaxed this rule with respect to petitions assailing the sufficiency of the factual basis of a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, requiring only that the petitioner be any Filipino citizen. The exception was so provided to facilitate the institution of any judicial challenge to such proclamation or suspension. This is just one of the several safeguards placed in Section 18, Article VII of the Constitution to avert, check or correct any abuse of the extraordinary powers, lodged in the President, of imposing martial law and suspending the privilege of the writ of *habeas corpus*. Nevertheless, this should not result in the Court taking cognizance of every petition assailing such proclamation or suspension, if it appears to be *prima facie* unfounded. That the Court has the authority to outright deny patently unmeritorious petitions is clear from the above-quoted provision, which uses the permissive term "may" in referring to the Court's

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[1] *Araullo v. Aquino,* G.R. No. 209287, July 1, 2014.

exercise of its power of judicial review. The term "may" is indicative of a mere possibility, an opportunity or an option.[2] When used in law, it is directory and operates to confer discretion.[3]

Indeed, given that any citizen can file the action, it must be required that the petition should allege sufficient grounds for the Court to take further action. For instance, a petition that simply invokes the court's judicial power to review the proclamation without alleging specific grounds, or is based on a general, unsubstantiated and conclusory allegation that the President was without or had false factual basis for issuing the proclamation or suspension, could be dismissed outright. Otherwise, in the absence of a personal stake or direct injury which will ordinarily infuse one with legal standing to file the case, the Court can theoretically be saddled with hundreds of petitions and be compelled to entertain them simply because they were filed. The requirement of a *prima facie* showing of insufficiency of the factual basis in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* becomes even more important if, as the *ponencia* declares, this Court's review is to be confined only to the Proclamation, the President's Report to Congress, and the pleadings.

Action questioning the sufficiency of the factual basis of the Proclamation is *sui generis*.

I am in agreement with the *ponente* in treating the proceedings filed pursuant to the third paragraph of Section 18, Rule VII of the 1987 Constitution as *sui generis*.

The action questioning the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is neither a criminal nor a civil proceeding. Its subject is unique unto itself as it involves the use of an extraordinary power by the President as Commander-in-Chief and matters affecting national security. Furthermore, the exercise of such power involves not only the executive but also the legislative branch of the government; it is subject to automatic review by Congress which has the power to revoke the declaration or suspension. To ensure that any unwarranted use of the extraordinary power is promptly discontinued, the Constitution limits the period for the Court to decide the case. And to facilitate a judicial inquiry into the declaration or suspension, the Constitution allows any citizen to bring the action. The Constitution likewise specifies the ground upon which this particular action can be brought, i.e. the sufficiency of the factual basis of the declaration or suspension. As an express exception to the rule that the Court is not a trier of

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2 *Social Security Commission v. Court of Appeals*, G.R. No. 152058, September 27, 2004.

3 *See Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011.

facts, the Court is asked to make a factual determination, at the first instance, of whether the President had adequate reasons to justify the declaration or suspension. Moreover, as an exception to the doctrine of hierarchy of courts, the Constitution provides that the case be filed directly with this Court. Finally, the Court's jurisdiction was conferred as an additional safeguard against any abuse of the extraordinary power to declare martial law and suspend the privilege of the writ of *habeas corpus*. Taken together, these elements make the Court's jurisdiction under Section 18 *sui generis*.

Verily, considering the magnitude of the power sought to be checked or reviewed, bearing in mind the evil sought to be prevented by constitutionalizing the Court's power to inquire into the sufficiency of the factual basis of the declaration or suspension, and taking into account the requirements specified by the Constitution for such review, an action brought pursuant to the third paragraph of Section 18, Article VII of the 1987 Constitution is indeed a class of its own.

Accordingly, any action that invokes this Court's jurisdiction under Section 18, Article VII of the 1987 Constitution to determine the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*, satisfies the constitutional requirement that the challenge be made "in an appropriate proceeding."

That a proceeding under Section 18, Article VII is not included in the enumeration of actions over which the Court has jurisdiction under Section 5, Article VIII of the Constitution is of no moment. After all, the Court's judicial power, as defined in the same Article, is not an exhaustive list of this Court's jurisdiction. The definition provides that "(j)udicial 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." It, therefore, does not preclude this Court from assuming such jurisdiction as may have been conferred elsewhere in the Constitution but not specifically indicated in Article VIII.

Congress' action precedes the Court's review but Congressional imprimatur is not conclusive on the Court. The Court's independence is not necessarily compromised by awaiting Congressional action.

Addressing respondents' assertion that due deference must be given to the actions of the two co-equal branches of government – the President's resort to martial law and suspension of the privilege of the writ of *habeas corpus*, and Congress' support thereof, the *ponencia* stresses the independence of this Court's judicial review and holds that such review can be made simultaneously with and independently from Congress' power to revoke. The *ponencia,* thus, would have the Court re-examine, reconsider and set aside its pronouncement in *Fortun v. Macapagal-Arroyo*[4] that the Court "must allow Congress to exercise its own review powers," and should hear petitions challenging the President's action only when Congress defaults in its duty to review the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

I agree with the *Fortun* pronouncement insofar as it instructs that the Court must allow Congress to exercise its own review powers ahead of the Court's inquiry. I do not agree, however, that the Court can "step in" only when Congress **defaults** in its duty to review. The Court can inquire into the sufficiency of the factual basis of the proclamation or suspension not only when Congress fails to undertake such review, but also if it decides to support the proclamation or suspension as in this case. The Court is not bound by Congress' decision not to revoke the proclamation or suspension. The system of checks and balances as built in Section 18, Article VII demands that the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* be within reach of judicial scrutiny. It is only when Congress decides to revoke the proclamation or suspension that the Court shall withhold review as such revocation will render any prayer for the nullification of the proclamation or suspension moot; and, even if the Court finds the existence of the conditions for the proclamation or suspension, it cannot require or compel the President to exercise his martial law or suspension power.

The exercise by the President, Congress and the Court of their powers under Section 18, Article VII is sequential. Accordingly, Congress' review must precede judicial inquiry, for the following reasons:

First. As observed in *Fortun,* the President's power to declare martial law or to suspend the privilege of the writ of *habeas corpus* is essentially shared with Congress. Under the Constitution, Congress has the power to revoke the declaration or suspension, and the President is absolutely without authority to set the revocation aside. As stated in *Fortun*, since only Congress can maintain the declaration or suspension based on its own evaluation of the facts, the President and Congress, in a sense, exercise the martial law and suspension power jointly. Thus, Congress' review of the

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[4] G.R. No. 190293, March 20, 2012

declaration or suspension must perforce take place before the Court's judicial examination of the factual basis of the President's action.

Second. As a measure to rein in the President's use of the extraordinary powers under Section 18, Article VII, the framers of the 1987 Constitution originally intended for the martial law and suspension power to be exercised by the President **with the concurrence of Congress.**[5] They intended for Congress to act, not even sequentially, but jointly, in the President's exercise of the martial law or suspension power. In lieu of such concurrence, however, they ultimately settled on Congress' revocation power, taking into account that the President would need to act immediately if there is indeed rebellion or invasion and public safety is endangered. That the framers of the Constitution, if not for such time element, would have Congress take part in the decision whether to exercise the martial law or suspension power, supports the view that Congress' action should precede judicial inquiry.

Third. The Constitution requires the President to submit his Report to Congress, either in person or in writing, within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. After receiving the President's Report, Congress' review of the proclamation or suspension is automatic. Judicial review, on the other hand, has to be initiated by a citizen. The imposition on the President of a duty to report to Congress within such a short period from the proclamation or suspension, and Congress' automatic review of the Report, show that Congress is expected to initially act on the President's proclamation or suspension for the purpose of deciding whether it must continue.

Fourth. As safeguards or remedies against an unjustified use of the extraordinary powers under Section 18, Article VII, the Constitution provides for both Congressional review, which is automatic, and judicial review, which must be initiated by any citizen. Being automatic, Congressional review of the proclamation or suspension is instantly an available remedy to address any misuse of the extraordinary powers under Section 18, Article VII. With its power of revocation which the President cannot set aside, Congress' action offers an adequate remedy against any unwarranted use of the martial law and suspension power. To ensure an orderly procedure and in the interest of preserving comity with a co-equal branch of the government, Congressional review of the proclamation or suspension must be allowed to take place before the Court intervenes.[6] Indeed, it is sound practice to exhaust all available and adequate remedies before resort to judicial review.

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[5] Deliberations on the 1987 Constitution, Vol. II. pp. 485 & 732 (Explanations of Commissioners Sarmiento and Quesada on their votes).

[6] The same principle has been applied in upholding the doctrine of exhaustion of administrative remedies.

Fifth. The Court should not pre-empt Congress' possible revocation of the President's proclamation or suspension. Furthermore, conflicting decisions from the Court and Congress, which will not be in the interest of judicial stability or Congressional independence, will be avoided. Indeed, it will not promote judicial stability if Congress can still exercise its power to revoke notwithstanding a decision from this Court finding sufficient factual basis for the proclamation or suspension. Furthermore, if the Court decides to nullify the proclamation or suspension ahead of Congress' action, Congress may still assert its independence to evaluate the President's decision. These may lead to a constitutional crisis involving two (2) co-equal branches of government, each endowed with power to review the President's action. Thus, for the sake of orderly procedure, one must precede the other, and since the Court has been considered as the "last bulwark of justice and democracy,"[7] it is but logical that it should undertake its review after the legislature has performed its duty. This is consistent with the principle of separation of powers which has been explained as follows:

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with **the Supreme Court as the final arbiter, effectively checks the other departments** in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[8] (Emphasis supplied)

However, consistent with *Fortun*, should Congress procrastinate or default on its duty to review, the Court will proceed to hear petitions challenging the President's action.

To be sure, legislative imprimatur on the proclamation or suspension will not consequentially bring such proclamation or suspension outside the ambit of judicial review. It should be noted that under Section 18, Article VII, even **extensions** of the proclamation or suspension, which only Congress can declare upon the President's initiative, can be the subject of this Court's inquiry in an appropriate proceeding that questions the factual basis thereof.

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7 *Roxas v. De Zuzuarregui, Jr.*, G.R. No. 152072, July 12, 2007.

8 *Francisco, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

It must be stressed, too, that the Court's independence will not be compromised by allowing Congressional review to take place before the Court exercises its judicial authority. This Court's independence will still be preserved as it will not be bound by the findings of Congress but will have to make an independent assessment of the facts upon which the President relied in issuing his proclamation or suspension. There is no abdication of duty on the part of the Court as it will proceed to hear the case if Congress decides not to revoke the Proclamation.

Any concern that the Court may not be able to decide within the thirty-day (30) period (from filing of the appropriate proceeding), as fixed by the Constitution, if the exercise of the powers under Section 18, Article VII is to be sequential, has been addressed in *Fortun.* The Court explained that since Congress is expected to act swiftly upon submission of the President's Report, the 30-day period would be enough for the Court to exercise its review power, and in any case, the expiration of the period would not divest the Court of its jurisdiction since jurisdiction once acquired is not lost until the case has been terminated.

At this juncture, it bears noting that while the *Fortun* pronouncement, as quoted in the *ponencia*, speaks of the Court's intervention taking place only when Congress defaults on its duty to review the President's action, subsequent statements in the *Fortun* Decision suggests that the Court would still hear petitions questioning the factual basis of the proclamation or suspension even after Congress' review, thus:

> But **those 30 days, fixed by the Constitution, should be enough for the Court to fulfill its duty without pre-empting congressional action**. Section 18, Article VII, requires the President to report his actions to Congress, in person or in writing, within 48 hours of such proclamation or suspension. In turn, the Congress is required to convene without need of a call within 24 hours following the Presidents proclamation or suspension. **Clearly, the Constitution calls for quick action on the part of the Congress. Whatever form that action takes, therefore, should give the Court sufficient time to fulfill its own mandate to review the factual basis of the proclamation or suspension within 30 days of its issuance.** (Emphasis supplied)

Therefore, based on the entirety of its Decision in *Fortun*, it cannot be said that the Court has, as the *ponencia* states, "abdicated from its bounden duty to review" the factual basis of the proclamation or suspension, or "surrendered the same to Congress."

The Court cannot supplant the President's choice of which of the three powers under Section 18, Article VII of the Constitution to use.

Section 18, Article VII of the 1987 Constitution gives the President, under prescribed conditions, the powers to call out the armed forces, to suspend the privilege of the writ of *habeas corpus*, and to place the Philippines or any part thereof under martial law.

I agree with the *ponente* in holding that this Court's review cannot extend to calibrating the President's decision pertaining to which of said powers to avail given a set of facts or conditions.

It is not within this Court's power to rule that the President should have used his "calling out" powers instead. To do so is to encroach on an entirely executive prerogative and violate the principle of separation of powers. It is not this Court's duty to supplant the President's decision but merely to determine whether it satisfies the conditions prescribed in the Constitution for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

The Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution.[9]

Recommendation of or consultation with the Defense Secretary or other high-ranking military officials is not a condition imposed by the Constitution.

Indeed, as the *ponencia* holds, a plain reading of Section 18, Article VII of the Constitution will reveal no such condition for the President's exercise of the power to proclaim martial law or to suspend the privilege of the writ of *habeas corpus*. It should also be pointed out that as the Chief Executive, the President has access to all kinds of information, not

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[9] *Biraogo v. The Philippine Truth Commission*, G.R. No. 192935, December 7, 2010.

necessarily from the military. Furthermore, the President himself is from Mindanao and has served as a local chief executive of Davao City for many years. It cannot be said, therefore, that he is not privy to the realities on the ground in Mindanao and that his knowledge is superficial or will not enable him, absent a recommendation from or consultation with military officials, to make an informed judgment in the exercise of the martial law and suspension powers under Section 18, Article VII.

Constitutionality of the Proclamation is determined under the sufficiency of factual basis test.

Based on the *ponencia*, there are two (2) tests to determine the constitutionality of a declaration of martial law or a suspension of the privilege of the writ of *habeas corpus*: the arbitrariness test, as applied in the 1971 case of *Lansang v. Garcia,*[10] and the sufficiency of factual basis test, introduced in Section 18, Article VII of the 1987 Constitution.

Section 18, however, specifies the scope of this Court's judicial review, i.e., the determination of the sufficiency of the factual basis of the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*. The factual basis, as provided in the Constitution, lies in the existence of an actual rebellion or invasion where public safety requires the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The Court's review is, thus, confined to the determination of whether the facts upon which the President relied in issuing such declaration or suspension show a case of actual rebellion or invasion that poses a danger to public safety. The Constitution does not require the Court to look into the fairness or arbitrariness of such imposition or suspension. Otherwise, the framers of the Constitution would have stated so, considering that they introduced the concept of judicial review of grave abuse of discretion under Section 1 of Article VIII of the Constitution. In other words, in reviewing the President's Proclamation, this Court's criterion is factual and will not involve a determination of whether the President acted in a whimsical, capricious or despotic manner by reason of passion or personal hostility.

Petitioners have the burden of proving insufficiency of factual basis.

Under our Rules of Court, it is presumed that an official duty has been regularly performed.[11] It has likewise been held that a public officer is

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10 G.R. No. L-33964, December 11, 1971.

11 Section 2(m), Rule 131.

presumed to have acted in good faith in the performance of his duties.[12] It is also a settled rule that he who alleges must prove,[13] and the rule applies even to negative assertions.[14] Thus, the burden of proving that the President's factual basis for declaring martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao was insufficient, lies with the petitioners.

Notably, in *Sanlakas v. Executive Secretary,*[15] involving President Gloria Macapagal-Arroyo's declaration of a state of rebellion, the Court decided the case on the premise that petitioners therein had the burden of proving that the President exceeded her authority as Chief Executive or Commander-in-Chief in issuing such declaration and in calling out the armed forces to suppress the rebellion, thus:

> It is not disputed that the President has full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. While the Court may examine whether the power was exercised within constitutional limits or in a manner constituting grave abuse of discretion, none of the petitioners here have, by way of proof, supported their assertion that the President acted without factual basis.
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> The petitions do not cite a specific instance where the President has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The President, in declaring a state of rebellion and in calling out the armed forces, was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers. These are **purely executive** powers, vested on the President by Sections 1 and 18, Article VII, as opposed to the **delegated legislative** powers contemplated by Section 23 (2), Article VI.

In the same vein, the Court, in *Ampatuan v. Puno*,[16] involving President Macapagal-Arroyo's Proclamation 1946 which placed the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency, and called out the Armed Forces of the Philippines and the Philippine National Police to prevent and suppress all incidents of lawless violence therein, the burden of proof was likewise placed upon the petitioners questioning the President's decision, thus:

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12 *Araullo v. Aquino*, G.R. No. 209287, February 3, 2015.

13 *Republic v. Roque, Jr.*, G.R. No. 203610, October 10, 2016.

14 *People v. Castillo*, G.R. No. 131892-93, February 15, 2000; *Cheng v. Javier*, G.R. No. 182485, July 3, 2009.

15 G.R. No. 159085, February 3, 2004.

16 G.R. No. 190259, June 7, 2011.

> Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the calling out power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the take over of the entire ARMM by the DILG Secretary had no basis too.
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> x x x x
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> Since petitioners are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

Considering that the foregoing cases also involve the exercise of the President's power as Commander-in-Chief and they likewise inquire into the factual basis of the executive action, the Court's ruling that the burden of proof lies with the petitioners impugning the exercise of such power, should similarly apply to the instant case.

Petitioners failed to discharge their burden of proof.

Petitioners were unable to show that the President had no sufficient factual basis in issuing Proclamation No. 216. The attempt of petitioners in G.R. No. 231658 and 231771 to discredit some of the President's reasons for issuing his Proclamation must perforce fail as it was based merely on news articles they found online. Such news reports amount to "hearsay evidence, twice removed" and are, therefore, "not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted."[17] Indeed, it appears that not even an effort to verify said news reports was made, or affidavits of witnesses presented, to directly refute the President's factual assertions.

In any event, of the several incidents mentioned by the President in his Proclamation and Report to Congress, petitioners in G.R. No. 231658 imputed falsity and inaccuracy only to some of the events so stated. Granting *arguendo* that the President's claims as regards these events were inaccurate or false, the other incidents enumerated in the President's Proclamation and Report to Congress still establish conditions upon which the President can exercise his martial law and suspension powers.

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17 *Feria v. Court of Appeals*, G.R. No. 122954, February 15, 2000.

Furthermore, reliance of petitioners, in G.R. No. 231658, on the maxim of *falsus in uno, falsus in omnibus* is greatly misplaced. Firstly, their allegation of falsehood, based on mere newspaper reports, is unsubstantiated. Secondly, the legal maxim of *falsus in uno, falsus in omnibus* is not a positive rule of law and is not strictly applied in this jurisdiction.[18] Thirdly, it has been held that said principle presupposes the existence of a positive testimony on a material point contrary to subsequent declarations in the testimony.[19] It has not been shown, however, that there was a self-contradiction or an inconsistency in the President's rationale for issuing Proclamation No. 216. Finally, for the principle of *falsus in uno, falsus in omnibus* to apply, there should be a conscious and deliberate intention to falsify.[20] Petitioners have not been able to establish that there was at least a conscious and deliberate intention on the part of the President to falsify his reasons for declaring martial law and suspending the privilege of the writ of *habeas corpus*.

Proclamation No. 216 and the President's Report to Congress sufficiently establish the existence of actual rebellion that endangers public safety.

The conditions prescribed in the Constitution for a valid proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* are as follows: (1) there must be an actual invasion or rebellion; and (2) public safety requires the proclamation or suspension.

I agree that considering the urgency of the situation, which may not give the President opportunity to verify with precision the facts reported to him, the President only needs to be satisfied that there is probable cause to conclude that the aforesaid conditions exist. As a standard of proof, probable cause has been defined thus:

> x x x Probable cause is meant such set of facts and circumstances, which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, **the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.** Probable cause demands more than bare suspicion, but it

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18 *Northwest v. Chiong*, G.R. No. 155550, January 31, 2008.

19 Id.

20 *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011.

> requires less than evidence that would justify a conviction.[21] (Emphasis supplied)

There was probable cause for the President to believe that rebellion was being committed.

The facts, upon which the President based his Proclamation and which have not been satisfactorily controverted, show that more likely than not, there was rebellion and public safety required the exercise of the President's powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* in Mindanao.

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968, defines "rebellion" as follows:

> Article 134. *Rebellion or insurrection – How committed.* – The crime of rebellion or insurrection is committed by **rising and taking arms against the Government** for the purpose of **removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof**, of any body of land, naval or other armed forces, or **depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives**. (Emphasis supplied.)

That there is an armed uprising in Marawi City is not disputed. The bone of contention lies in the element of culpable purpose.

However, the facts and incidents, as put forward by the President in his Proclamation and Report to Congress, show that there is probable cause to conclude that the uprising is aimed at removing Mindanao from its allegiance to the Philippine Government and depriving the President of his powers over the territory.

As reported by the President, the Maute Group, along with the Abu Sayyaf Group and their sympathizers, attacked, laid siege and burned both government and privately-owned facilities in Marawi City, including hospitals and schools, and caused casualties to both government personnel and civilians. They took hostages and searched for Christians to execute. They prevented Maranaos from leaving their homes, and forced young male Muslims to join their groups. They occupied several areas in Marawi City and set up road blockades and checkpoints at the Iligan City-Marawi City

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[21] *Clay & Feather International, Inc. v. Lichaytoo*, G.R. No. 192105, May 30, 2011.

junction. These acts, viewed in the light of the Maute Group's declaration of allegiance to the DAESH[22] and their brazen display of the ISIS[23] flag in several areas in Marawi City, sufficiently establish the Group's intention to remove the City's allegiance to the Philippine Government, to reinforce their Group and create a stronghold in Marawi City, and to establish a DAESH *wilayat* or province in Mindanao.

Furthermore, as the President stated in his Report to Congress, the Maute Group and their sympathizers had been responsible for cutting vital lines of transportation and power, which prevented the government from delivering basic services and from sending troop reinforcements to restore peace in Marawi City. By such act, the Maute Group and their cohorts clearly intended to prevent the Executive from exercising its functions to deliver basic services and to maintain peace and order in Marawi City.

Clearly, therefore, by the standard of probable cause, the culpable purpose required under Article 134 of the Revised Penal Code has been shown to exist.

Petitioners in G.R. No. 231658 also argue that the alleged siege of Marawi City was actually an armed resistance, not to remove the City's allegiance from the Republic, but to shield a high profile terrorist, Isnilon Hapilon, following a government operation to capture him. The argument, however, fails to persuade. The acts perpetrated by the Maute Group are more consistent with the intention to establish a seat of power in Marawi City, than an effort to shield Hapilon from capture. Indeed, it taxes credulity to assume that the act of setting a school on fire, or of recruiting young male Muslims to strengthen the group's force, or the killing of teachers, as cited in the President's Report, is simply for the purpose of shielding the group's leader. Thus, if anything, the government operation only set in motion the group's plan to lay siege and take over Marawi City for and in the name of ISIS. In fact, the group's resources and weapons, which have enabled them to continue fighting the Philippine military more than a month since Proclamation No. 216 was issued, confirm that they were preparing to carry out an armed uprising to establish a DAESH *wilayat*.

The same petitioners likewise maintain that the Maute Group's act of hoisting the DAESH flag is mere cheap propaganda and is not indicative of removing Marawi City from its allegiance to the Republic or of depriving the President of his powers and prerogatives. On the contrary, this act, in light of the group's declaration of allegiance to DAESH, demonstrated an intention to subject the city to the DAESH's rule. It is not even necessary

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[22] Acronym of a group's full Arabic name, al-Dawla al-Islamiya fi al-Iraq wa al-Sham, translated as "Islamic State in Iraq and Syria."

[23] Islamic State of Iraq and Syria.

that the DAESH recognize the group or acknowledge its allegiance; what matters is the group's intent to bring the City under its regime. The brazen display of the DAESH flag in several areas of Marawi City cannot but be considered as laying claim over the City for and on behalf of DAESH. To dismiss it as cheap propaganda may not be prudent and may not serve the best interest of national security.

Public safety requires the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.

The events as reported by the President to Congress show that the violent attacks of the Maute group and its sympathizers have resulted in destruction of government and privately-owned properties as well as human casualties. The government has been prevented from delivering basic services and from sending troop reinforcements to restore peace in Marawi City. Civilians and government personnel have no easy access to and from the City. All of these were taking place as part of the plan of the Maute Group and its sympathizers to establish their seat of power in Marawi City and create a DAESH *wilayat* in Mindanao. Clearly, the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* have been firmly grounded on the requirements of public safety.

Scope of Review

I agree that past events may be considered in justifying the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* if they are connected or related to the situation at hand. Such events may also be considered if material in assessing the extent and gravity of the current threat to national security.

In Proclamation No. 216, the President averred that the Maute terrorist group who attacked government and private facilities, inflicted casualties, and hoisted the DAESH/ISIS flag in several areas, in Marawi City, on May 23, 2017, is the very same group that had been responsible for a series of violent acts for which the President issued Proclamation No. 55 in February 2016, declaring a state of emergency on account of lawless violence in Mindanao. These violent acts included an attack on the military outpost in Butig, Lanao del Sur in February 2016, the killing and wounding of several soldiers, and the mass jailbreak in Marawi City in August 2016 which freed the group's comrades and other detainees.

These past incidents are clearly relevant to the assessment of the Maute group's intention and capability to implement a plan of establishing a DAESH *wilayat* in Mindanao.

Similarly, events subsequent to the issuance of the proclamation or suspension may be considered in the Court's determination of the sufficiency of the factual basis. Subsequent events confirm the existence or absence of the conditions for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

I have my reservations, however, as regards the statement in the *ponencia* that the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The accuracy or veracity of the information upon which the President based his decision, if properly challenged before the Court, would have to be passed upon and determined.

Rebellion and Terrorism

It is true, as Mr. Justice Leonen pointed out, that martial law is not a constitutionally prescribed solution to terrorism. This is so, however, because terrorism was not as pronounced or prevalent when the 1987 Constitution was drafted as it is today. I reckon that if it were, it would have been considered and indeed included by the framers of the Constitution among the conditions for the exercise of the martial law power, given that like rebellion or invasion, it is inimical to national security, and because it is, as described in Republic Act No. (RA) 9372,[24] a crime against the Filipino people and against humanity.[25]

Terrorism, under RA 9372 is committed when specific crimes under the Revised Penal Code (RPC) or special laws, are perpetrated, thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand. Rebellion under Article 134 of the RPC, as well as murder, kidnapping and arson, are some of the offenses subsumed in the crime of terrorism.

However, while rebellion is included in the crime of terrorism under RA 9372, said law did not have the effect of obliterating rebellion as a crime in itself. Thus, even as rebellion can qualify as an act of terrorism, it does not cease to be a ground for the declaration of martial law if the elements

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24 Human Security Act of 2007.

25 Section 2, RA 9372.

under the RPC are present. In this case, it has been established by the standard of probable cause that the armed uprising of the Maute group and its sympathizers is for the purpose of establishing as DAESH *wilayat* or province in Mindanao. The argument, therefore, that the acts of the Maute group and their sympathizers constitute mere acts of terrorism, outside the ambit of the martial law power, will not hold water.

In fact, RA 9372 specifically states that "(n)othing in (said) Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government." It can be deduced, therefore, that even if rebellion qualifies as terrorism, the President is still empowered to exercise the martial law and suspension powers under Section 18, Article VII of the 1987 Constitution.

"(A)s set of rules and principles, (the International Humanitarian Law) aims, **for humanitarian reasons**, to limit the effects of armed conflict."[26] If the reason for the law is to protect human rights and to promote human welfare, it cannot possibly be a source of protection for the acts of rebellion perpetrated by the Maute group and its cohorts since their acts constitute or qualify as acts of terrorism. Terrorism is the very antithesis of human rights.[27]

Proclamation covering the entire Mindanao has sufficient factual basis.

In his Report to Congress, the President, in part, stated:

> (a) The attacks of the Maute group and their sympathizers on May 23, 2017 constitute not simply a display of force, but a clear attempt to establish the group's seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao.
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> (b) The acts of the Maute group and their sympathizers have emboldened other armed groups in Mindanao, resulted in the deterioration of public order and safety in Mindanao, and compromised the security of the entire Mindanao.
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> (c) Their occupation of Marawi City fulfills a strategic objective because of its terrain and the easy access it provides to other parts of Mindanao. Lawless armed groups have historically used provinces

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26 http://www.ijrcenter.org/international-humanitarian-law/ (Last accessed July 5, 2017).

27 "A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights March 25, 2003," https://www.hrw.org/legacy/un/chr59/counter-terrorism-bck.pdf (last accessed July 5, 2017).

> adjoining Marawi City as escape routes, supply lines and backdoor passages.
>
> (d) The Maute terrorist group is composed of 263 fully armed members (as of the end of 2016). It chiefly operates in Lanao del Sur but has extensive networks with foreign and local armed groups such as the Jemaah Islamiyah, Mujadin Indonesia Timur and the Abu Sayyaf Group. It adheres to the principles of DAESH and has declared its allegiance to the DAESH. Reports show that the group receives financial and logistical support from foreign-based terrorist groups, the ISIS in particular, and from illegal drug money. And,
>
> (e) Considering the network and alliance-building activities among terrorist groups, local criminals and lawless armed men, the siege of Marawi City is a vital step towards achieving absolute control over the entirety of Mindanao.

In arriving at these conclusions, the President is presumed to have taken into account intelligence reports, including classified information, regarding the actual situation on the ground. Absent any countervailing evidence, these statements indicate a plan and an alliance among armed groups to take over and establish absolute control over the entire Mindanao. Thus, there appears to be sufficient basis for the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao.

In their Consolidated Comment, respondents averred that the intelligence reports submitted by the Armed Forces of the Philippines to the President showed that the Maute Group has banded with three other radical terrorist organizations (the Abu Sayyaf Group from Basilan, Ansarul Khilafah Philippines from Saranggani and Sultan Kudarat, and the Bangsamoro Islamic Freedom Fighters from Maguindanao); that due to their uniform pledge of allegiance to ISIS and a common purpose of establishing an ISIS *wilayah* in Mindanao, an alliance was formed among these rebel groups; that Hapilon was appointed *emir* or leader of all ISIS forces in the Philippines and hailed as the *mujahid* or leader of the soldiers of the Islamic State in the Philippines; that Hapilon performed a symbolic *hijra* or pilgrimage to unite the ISIS-inspired groups in mainland Mindanao; that after Hapilon was appointed as *emir*, multiple atrocities, including bombings, abductions and beheadings, were committed in the wake of the consolidation of the forces of said rebel groups and foreign terrorists; that these widespread atrocities were to fulfill the last step before they are presented to the ISIS for approval and recognition; and that said rebel groups chose Marawi City as the starting point of establishing its *wilayah* in Mindanao because it is at the heart of Mindanao, within reach of nearby provinces and cities, and because of its cultural and religious significance to Muslims.

It does not appear that the admissibility, weight or credibility of these reports have been challenged in such manner as to override the presumption of regularity in the exercise of the President's power to declare martial law and to suspend the privilege of the writ of *habeas corpus*. Likewise, a demand for respondents to validate these findings or reports does not appear to have been made. As they stand, these findings will reasonably engender a belief that the rebel groups seek and intend to make Mindanao an ISIS *wilayah* or province, with Marawai City, given its strategic location and cultural and religious significance, as the starting point of their occupation in the name of ISIS. Considering the alliance of these rebel groups, the violent acts they have perpetrated in different parts of Mindanao for the shared purpose of establishing an ISIS *wilayah*, and the extent of the territory they intend to occupy in the name of ISIS, it cannot be said that the imposition of martial law over the entire Mindanao is without factual basis.

The location of the armed uprising should not be the only basis for identifying the area or areas over which martial law can be declared or the privilege of the *writ of habeas corpus* can be suspended. Thus, that the subject armed uprising appears to be taking place only in Marawi City should not be a reason to nullify the declaration or suspension over the rest of Mindanao. Foremost, it has been shown that there is factual basis to include the rest of Mindanao in the Proclamation. So also, the Constitution does not require that the place over which the martial law or suspension will be enforced, should be limited to where the armed uprising is taking place, thus, giving the President ample authority to determine its coverage. Furthermore, as noted in *Aquino, Jr. v. Enrile,*[28] modern day rebellion has other facets than just the taking up of arms – including financing, recruitment and propaganda that may not necessarily be found or occurring in the place of the armed conflict, thus:

> x x x The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.

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28 G.R. No. L-35546, September 17, 1974.

Moreover, the geography of Marawi City provides easy access for rebels to escape to nearby provinces or cities. If martial rule will be limited to Marawi City, rebels may simply move to neighboring areas to elude arrest. The recent apprehension of the parents of the Maute brothers in Davao City and Lanao del Sur, under Arrest Order No. 1, and of another suspected rebel, Sultan Fahad Salic, in Misamis Oriental, indicates that rebels may already be taking advantage of the easy access afforded by Marawi's location. These arrests, made outside Marawi City, lend support to the President's decision to make Proclamation No. 216 apply to the whole of Mindanao.

Proclamation No. 216 is not void for vagueness for the absence of guidelines/operational parameters.

The validity of a proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is to be measured against the conditions set in the Constitution. The only conditions prescribed in the Constitution are that actual rebellion or invasion exists and public safety requires the proclamation or suspension. There is nothing in the Constitution that requires that guidelines or operational parameters be included in the proclamation. Thus, the proclamation cannot be voided on the ground that they are not set out therein. Besides, as noted by Mr. Justice Del Castillo in his *ponencia*, guidelines or operational parameters are merely tools for the implementation of the proclamation.

Furthermore, as the situation calls for immediate action, the President cannot be expected to at once specify the guidelines and operational parameters in the proclamation. In any event, safeguards have been incorporated in the Constitution to ensure that rights are protected. Thus, Section 18, Article VII, in part, states:

> 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.
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> 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.
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> 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.

Conclusion

Martial law is not intrinsically wrong. If it were, the framers of the Constitution composed of staunch nationalists and defenders of human rights, would have deleted it altogether from the 1935, 1973 and 1987 Constitutions. These learned men understood that martial law was a necessary constitutional weapon to defend the integrity and sovereignty of the Republic.

Those who criticize martial law are haunted by the abuses of the past and fearful of the potential dangers it may entail. But these apprehensions have no bearing when the noble objectives sought to be accomplished are the protection of the people and the defense of the state.

The foregoing considered, I vote to **DISMISS** the consolidated petitions.

NOEL GIMENEZ TIJAM
Associate Justice