

**GR. No. 235935 – REPRESENTATIVE EDCEL C. LAGMAN, ET AL.
v. SENATE PRESIDENT AQUILINO PIMENTEL III, ET AL.**

**G.R. No. 236061 – EUFEMIA CAMPOS CULLAMAT, ET AL. v.
PRESIDENT RODRIGO DUTERTE, ET AL.**

**G.R. No. 236145 – LORETTA ANN P. ROSALES v. PRESIDENT
RODRIGO DUTERTE, ET AL.**

**G.R. No. 236155 – CHRISTIAN S. MONSOD, ET AL. v. SENATE
PRESIDENT AQUILINO PIMENTEL III, ET AL.**

Promulgated: February 6, 2018

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CONCURRING OPINION

GESMUNDO, J.:

I concur with the *ponencia*.

*There is sufficient factual basis
for extending the period of
martial law*

I submit that there is sufficient factual basis to justify the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao for one (1) year.

Congress approved the extension of martial law pursuant to the letter dated December 8, 2017, of President Rodrigo R. Duterte (*President Duterte*). The said letter, in turn, was based on the letters of AFP General Rey Leonardo B. Guerrero (*General Guerrero*) and Secretary of National Defense Delfin Lorenzana¹ (*Secretary Lorenzana*), which state:

The AFP strongly believes that on the basis of the foregoing assessment, the following are cited as justification for the recommended extension, to wit:

The DAESH-Inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western, and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;

¹ Memorandum of the OSG, pp. 4-5.



Other DAESH-inspired and like-minded threat groups such as [the] BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato;

The CTs have been pursuing and intensifying their political mobilization (army, party and mass base building, rallies, pickets and demonstrations, financial and logistical build up), terrorism against innocent civilians and private entities, and guerilla warfare against [both] the security sector, and public government infrastructures;

The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;

The threats being posed by the CTs, ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;

The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of *habeas corpus* in Mindanao will significantly help not only the AFP, but also the other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and

In seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial law to date, without any report of human rights violation and/or incident of abuse of authority.²

During the oral arguments, General Guerrero presented data which justified the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao, to wit:

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

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

² Id.

ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 by the Maute Group in Lanao provinces; 37 by the Maguid Group in Sarangani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain[s] as new recruits were given an amount ranging from Php15,000.00 to 50,000.00; and as radicalized converts.

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

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

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester.³

As gleaned above, the approval of the extension of martial law in Mindanao is not arbitrary but has sufficient factual basis. It must be remembered that in *Lagman v. Medialdea*⁴ (*Lagman*), the Court held that there was sufficient factual basis that actual rebellion exists in Mindanao and that public safety requires martial law, particularly in Marawi where there was intensive firefighting initiated by the Maute Group. Notably, even after President Duterte declared the liberation of Marawi City on October 17, 2017, the Maute Group was still able to recruit new members and increase their number to 250 as of December 2017. Other terrorist groups in Mindanao were able to increase their memberships as well.

General Guerrero stated that the said increase in membership was due to several factors, such as the clannish culture of the groups; revenge for their fallen relatives; and financial gain ranging from ₱15,000.00 to ₱50,000.00. He also pointed out that foreigners have been joining these terrorists group in guise of businessmen or tourists, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao.

Indeed, with these factual bases, the military needs to intensify their efforts against these terrorist groups through the continued imposition of martial law. Lifting martial law would remove the leverage of the military against these terror groups during their on-going operations and would weaken the rigorous campaign against them and allow them to continuously

³ Oral Arguments – En Banc, January 17, 2018, pp. 59-60.

⁴ G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

threaten the civilian population. These facts establish a *prima facie* case in justifying the extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao because actual rebellion persists and public safety requires it.

The petitioners failed to impeach the factual basis and *prima facie* case presented by the respondents. Notably, in this *sui generis* petition to determine the sufficiency of the factual basis for an extension of martial law or suspension of the privilege of the writ of *habeas corpus*, the movants should focus on assailing the factual basis to support such declaration. Regrettably, instead of citing specific factual allegations to counter the respondents' position, the petitioners resorted to raising questions of law and even questions regarding the wisdom in extending martial law. Such issues, however, should not be raised in this present *sui generis* proceeding.

Rebellion as a continuing offense

As stated in *Umil v. Ramos*⁵ (*Umil*), a case decided under the 1987 Constitution, the crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes. Unlike other so-called "common" offenses, such as adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base, which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained.⁶

It was also established in *Umil* that the arrest of persons involved in the rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously, the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but equally in pursuance of the rebellious movement. **The arrest or capture is thus impelled by the exigencies of the situation that involves the very survival of society and its government and duly constituted authorities.**⁷

⁵ 265 Phil. 325 (1990).

⁶ *Umil v. Ramos* (Resolution), 279 Phil. 266, 295 (1991).

⁷ *Supra* note 5 at 336-337.

The Court stressed in *Umil* that arrest of persons involved in the rebellion whether as its fighting armed elements, **or for committing non-violent acts but in furtherance of the rebellion**, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense.⁸ Consequently, even if the firefighting stopped temporarily, offenders could still be arrested by State agents if they continue to perform non-violent acts in furtherance of the rebellion, such as recruitment of members, financing of rebellious groups, or planning the next unlawful attack.

In spite of the cessation of firefighting, the crime of rebellion is continuing because the ideological base persists, which requires the repetition of the acts of lawlessness and violence until the objective of overthrowing organized government is realized. Thus, hostilities and acts of terrorism committed afterwards, pursuant to the ideological purpose, continue to form part of the crime of rebellion.

In this case, while the firefighting in Marawi City have ceased, the goal of the Maute Group to overthrow the government remains. Their continuing goal is evident in the incessant recruitment of members in the Lanao area and the financing of the rebel group. While non-violent, these acts are still considered in the furtherance of rebellion. Indeed, these acts are part and parcel of the crime of rebellion seeking to achieve their illegitimate purpose. Thus, as of December 2017, General Guerrero reported to the Court that the Maute Group has recruited a total of 250 members, a significant number capable of committing other atrocities against the civilian population.

Aside from the Maute Group, the Turaifie Group in the Cotabato Area; the Bangsamoro Islamic Freedom Fighters in Maguindanao and North Cotabato; the Abu Sayaff Group in Basilan, Sulu and Tawi-Tawi; and the New People's Army are continuing their rebellious goals through their rampant recruitment and clashes with the military. Notably, the New People's Army engaged in armed conflict with the government even though there were on-going peace negotiations. These continued firefighting threaten the general populace in Mindanao, which affects public safety.

In the course of the oral arguments, General Guerrero stated that rebellion in Mindanao is still on-going in spite of the culmination of the Marawi siege, *viz*:

JUSTICE BERNABE:

Now, why is the second extension significantly longer than the first when in fact it was already publicly declared that Marawi City has been liberated from the Maute?

⁸ Id. at 336.

GENERAL GUERRERO:

As I've said, Your Honor, Marawi is just a part of the whole problem. After the liberation of Marawi, there are still other areas that we need to address.

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JUSTICE BERNABE:

I mean, Marawi City had already been liberated so there is this escalating conflict already, shouldn't this diminish the public safety needed to continue with martial law over the entire Mindanao?

GENERAL GUERRERO:

The conflict in Marawi is distinct and separate from what is happening in the other parts of the area, in the Lanao, particularly. Although, as I have said, the conflict in Marawi has already been resolved but still there are some elements there that continue to operate. As I have said, we had just addressed the armed component and for as long as we have not addressed the other factors that have brought this conflict into existence they will still be able to continue to recruit other rebels and continue with the atrocities, Your Honor.

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JUSTICE BERNABE:

What is the objective behind this extension of martial law, the one-year extension? Is it still to quell the Maute-Japilon led rebellion?

GENERAL GUERRERO:

Yes...

JUSTICE BERNABE:

Or is it generally put an end to all communist or terrorist activities in the entire Mindanao?

GENERAL GUERRERO:

The rebellion has not been quelled, Your Honor. What we have done is we have been able to resolve the Marawi conflict but the rebellion continues to exist.

JUSTICE BERNABE:

So, the objectives are both, to still quell the Maute-Japilon led Rebellion and as well as to put an end to all communist or terroristic activities?

GENERAL GUERRERO:

That is the objective, Your Honor, to address the other rebel groups.⁹

⁹ Oral Arguments – En Banc, January 17, 2018, pp. 154-155.

Certainly, with these set of facts and with the concept of rebellion as a continuing offense, there is sufficient factual basis that actual rebellion in Mindanao persists and public safety requires the extension of the period of martial law and the suspension of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, as reasonably authorized by Congress.

Current concept of rebellion

The petitioners argue that the US cases of *Ex Parte Milligan*¹⁰ (*Milligan*) and *Duncan v. Kahanamoku, Sheriff*¹¹ (*Duncan*), which required that there must be an actual theater of war to justify the President's declaration of martial law, must be applied by the Court.

I disagree.

In *Milligan*, martial law was declared because there was an on-going rebellion in the Confederate states. The US Court held that martial law is the will of the commanding officer of an armed force or of a geographical military department, expressed in time of war, within the limits of his military jurisdiction, as necessity demands and prudence dictates, restrained or enlarged by the orders of his military or supreme executive chief. It was also ruled therein that the military tribunals only have jurisdiction where civil courts are not functioning. But where the civil courts are functioning and there is no need for bayonets or military aid to execute its jurisdiction, military tribunals cannot try civilians.

Similarly, in *Duncan*, martial law was declared because Hawaii was in an actual theater of war arising from the Japanese armed invasion on December 7, 1941 and there was, at all times, a danger of invasion in the nature of commando raids or submarine attacks. The US Court ruled therein that since the civil courts were opened later on February 24, 1944, the petitioners could not be tried by military courts under martial law.

In the case at bench, the concept of actual invasion or rebellion is not the same as that of *Milligan*, decided in 1866, and *Duncan*, decided in 1946. During those times, the actual invasion or rebellion was appreciated in the traditional sense where the enemies use bayonets, cannons, commando raids or submarine attacks and conflicts were concentrated within a specific location or state. However, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion, to wit:

¹⁰ 71 U.S. 2 (1866)

¹¹ 327 U.S. 304 (1946).

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 as a tumultuous disturbance.

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

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consists of isolated attacks in several places – for example in one camp here; another in the province of Quezon; then in another camp in Laguna; no attack in Malacañang – but there is complete paralysis of the industry of the whole country. If we place these things together, the impression is clear – 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 rebellion.**¹² (emphases supplied)

The Constitutional framers foresee the possibility that modern rebellion will involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places but would be orchestrated to paralyze the country and destabilize the government. In such case, Justice Regalado suggested it would be a matter of factual appreciation and evaluation of the President, based on the circumstances, in determining if rebellion exists. Thus, the traditional concept of rebellion where there must be actual use of weapons concentrated in a single place is not the sole concept of actual rebellion envisioned under the 1987 Constitution.

¹² Record of the Constitutional Commission Proceedings and Debates, Vol. II, pp. 412-413.

Defanged Martial Law

Martial law, while it has no precise definition, is employed to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the State against actual rebellion or invasion.¹³ In the Philippines, the power to declare martial law rests in the hands of the President. History dictates that the 1935 and 1973 Constitutions allowed the President to exploit its power in declaring martial law due to the following reasons:

1. That the proclamation of martial law automatically suspends the privilege of the writ of *habeas corpus*;
2. That the President as Commander-in-Chief can promulgate proclamations, orders and decrees during the period of martial law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people, and to the institution of reforms to prevent resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a world recession, inflation or economic crisis;
3. That the President, as legislator during the period of martial law, can legally create military commission or court martials to try not only members of the armed forces but also civilian offenders for specified offenses.¹⁴

Thus, when the framers of the present Constitution discussed the power of the President to declare martial law and suspend the privilege of the writ of *habeas corpus*, they ensured that such abuses would not be repeated. Commissioner Monsod even noted that the martial law of then President Marcos was an aberration in history and that the grounds for the imposition of martial law and suspension of the privilege were reduced, and that **should a second Marcos arise, there would be enough safeguards in the new Constitution to take care of such eventuality**. Accordingly, the following safeguards are now in place to limit the Chief Executive's power to declare martial law:

1. The initial declaration of martial law has a time limit of sixty (60) days;
2. The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law;
3. There is a process for its review and possible revocation of Congress;
4. There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis;
5. The removal of the phrases "imminent danger thereof" and "insurrection" as grounds for declaring martial law;
6. 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. Thus, during the martial law, the President can neither promulgate

¹³ *Duncan v. Sheriff Kahanamoku*, supra note 10.

¹⁴ See *Gumaua v. Espino*, 185 Phil. 283 (1980); and Bernas, *Constitutional Structure and Powers of Government* Part I, 2010 ed., p. 473.

proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open.

7. The declaration of martial law does not automatically suspend the privilege of the writ of *habeas corpus*;
8. During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.
9. The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it.

The numerous safety measures embodied under the present Constitution ensure that the President cannot abuse its power anymore to the detriment of the citizens. The said measures defanged martial law. As can be gleaned in *Lagman*, the safeguards and processes were fully operational and the declaration of martial law by President Rodrigo Duterte over the whole Mindanao was thoroughly scrutinized by Congress and the Court. In said case, the Court concluded that the President, in issuing Proclamation No. 216, had sufficient factual bases to show that actual rebellion exists and that public safety requires the declaration of martial law and suspension of the writ of *habeas corpus*.

During the oral arguments, it was confirmed by Commissioner Monsod, one of the petitioners, that martial law under the Constitution has been restricted, to wit:

JUSTICE BERSAMIN:

Okay, I will agree for the moment with you. But the thing is, you have a version of martial law that does not replicate the Marcos version, it is now emasculated. Is that, will you agree with that?

CHAIRMAN MONSOD:

Yes.

JUSTICE BERSAMIN:

Emasculated.

CHAIRMAN MONSOD:

Not *emasculated*, there's a narrowed discretion of the President because...

JUSTICE BERSAMIN:

Narrowed, restricted to tie the hands of the President, if I may put it that way. It cannot be anymore as pervasive as the martial law that was

under the 1935 Constitution because we had no other experience in martial law since that time, since that time.

CHAIRMAN MONSOD:

Yes, Your Honor.¹⁵

It was also discussed that martial law under the present Constitution is unique because it does not confer additional powers to the President, the Constitution is continuously upheld, the agencies of the government and the courts continue to function, and human rights and international humanitarian laws are still observed.¹⁶ General Guerrero also shared his view that the only benefits generated by the present declaration of martial law are the immediate arrest of the rebels;¹⁷ civilian authorities are readily compliant with the requests of the AFP;¹⁸ increased military presence;¹⁹ and logistical benefit due to the increased information gathering and dissemination.²⁰

Flexibility in Extending Martial Law

The petitions at bench also question the procedural validity of the extension of martial law. Under the Constitution, the said extension is different from the initial proclamation of martial law, to wit:

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

As stated above, in the initial declaration of martial law, it is the President as the Commander-in-Chief of all armed forces of the Philippines that declares martial law for a maximum period of sixty (60) days. Upon its

¹⁵ Oral Arguments – En Banc, January 16, 2018, p. 115.

¹⁶ Oral Arguments – En Banc, January 17, 2018, pp. 146-147.

¹⁷ Id. at 136.

¹⁸ Id. at 148.

¹⁹ Id. at 150.

²⁰ Id. at 151.

declaration, it shall become immediately effective. It is subject to a review by Congress within forty-eight (48) from its declaration.

With respect to the extension of martial law, the last sentence of the first paragraph of Section 18 clearly states that Congress is empowered to extend the duration of martial law. The President's only role in such an extension is that he is the one who initiates it. Notably, even if the President initiates the said extension, it is not immediately effective. It is only when Congress grants the extension, after determining that invasion or rebellion persists and public safety requires it, that it becomes operational. Evidently, the power of Congress is more potent than that of the President when it comes to the extension of martial law. Stated differently, when there is an extension of the duration of martial law, the Constitution confers on Congress the authority to grant or deny it. If Congress does not find any basis to grant the requested extension, then it shall not exceed the sixty (60) day period of its initial declaration.

Congress' power to extend the proclamation of martial law is observed in the following Constitutional deliberations:

MR. REGALADO

In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.²¹

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MR. SUAREZ

That is correct. I think the two of them must have to agree on the period; but it is theoretically possibly that when the President writes a note to the Congress because it would be at the instance of the President that the extension have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear

²¹ Record of the Constitutional Commission Proceedings and Debates, Vol. II, p. 507.

that **there must be a reasonable period for the extension**. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it, Madam President.

FR. BERNAS

Madam President, may I just propose something because I see the problem. **Suppose we were to say “or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS” – that gives Congress a little flexibility on just how long the extension should be.**

MR. OPLE

Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS

Yes, participation of the President is there but **by giving the final decision to Congress**, we are also preserving the idea that the President may not revoke what Congress has decided upon.

MR. OPLE

The reason for my concern, Madam President, is that **when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and rebellion**, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way. Thank you. Madam President.²²

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MR. CONCEPCION

If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress

²² Id. at 508-509.

will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. **He is the one who is supposed to know how long it will take him to fight. Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.**²³ (emphases supplied)

The framers of the Constitution gave Congress flexibility on the period of the declaration of martial law. It was emphasized therein that the final decision to extend the said declaration rests with Congress. Whether the President states a specific period of extension or not, Congress ultimately decides on the said period. Until it grants the extension, the sixty (60) day period of the initial declaration of martial law prevails. In effect, by becoming the granting authority, Congress limits the President's power to extend the period of martial law.

During the Constitutional deliberations, it was recognized that there are many limitations and encumbrances in the President's power to declare martial law. Commissioner Ople even raised apprehension that the encumbrances of martial law under the constitutional provision may compel the President to simply declare a revolutionary government. However, such apprehension did not prevail because the present wording of the Constitution grants Congress the ultimate authority to decide whether the period of martial law should be extended. Manifestly, there is no specific period stated in the extension of the period of martial law because the Constitution leaves it to Congress to decide the reasonable period for such an extension. In the event that the President requires more time to quell a rebellion or invasion beyond the granted period of extension, then his remedy is to ask for another extension from Congress. Manifestly, as discussed by Commissioner Concepcion, the framers also considered the possibility that there will be more than one (1) extension should the first extension be insufficient.

Thus, Congress has the prerogative to determine for itself the period of the extension of martial law. In this case, it used the flexibility granted to it by the Constitution to determine that the reasonable period of extension of martial law over Mindanao should be for one (1) year or until December 31, 2018. The petitioners cannot deny the flexibility of Congress in determining the extended period for martial law. They should have focused on assailing the sufficiency of the factual basis for extending the period of martial law. However, as discussed *supra*, the petitioners failed to assail the said factual basis. In the absence of compelling evidence to the contrary, the reasonable period of extension as determined by Congress must stand.

²³ *Id.* at 510.

*Extent of review of Congress
and the Supreme Court differs*

The role of Congress in granting the extension of martial law is vital. Due to the essential authority of Congress, it is proper to examine the review it can undertake to determine the propriety of granting such extension initiated by the President. It was thoroughly discussed in *Lagman* that the power of Congress to review a declaration of martial law is independent from that of the Court. Congress has a greater scope of review compared to the Court, to wit:

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

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

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

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.²⁴

In this case, the President sent a letter dated December 8, 2017, to the Senate President and House Speaker requesting further extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao for an additional year. The letter contained several grounds justifying the extension.

On December 12, 2017, the AFP officials presented and explained the different justifications of the request for the extension of martial law before the Senate and the House of Representatives.²⁵ On December 13, 2017,

²⁴ Id.

²⁵ Oral Arguments – En Banc, January 17, 2018, p. 99.



Congress held a joint session to discuss whether the extension of martial law in Mindanao was warranted. Each member of Congress was granted a maximum of three (3) minutes to explain his allotted time pursuant to Section 7 of Rule IV of the Joint Session of Congress.²⁶ The said three (3) minute rule excluded the time given to resource persons. After thorough discussion and extensive debates, two hundred forty (240) members of Congress affirmed that rebellion persists and that public safety requires the further extension of martial law and the suspension of the writ of *habeas corpus* for one (1) year in Mindanao.

I concur with the *ponencia* that Congress complied with its constitutional duty to review the extension of martial law before granting the same. From the onset, the Constitutional framers intended that the procedure of review by Congress under Section 18 should be accelerated and simplified due to the pressing need of the President and the people when there is actual invasion or rebellion and public safety requires it, to wit:

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I quite realize that there is this recourse to the Supreme Court and there is a time limit, but at the same time because of the extraordinary character of this event when martial law is imposed, **I would like to make it easier for the representatives of the people to review this very significant action taken by the President.**²⁷ (emphasis supplied)

The three-minute rule provided for each member of Congress to speak before the Joint Session is reasonable pursuant to the constitutional intent to accelerate the proceedings for review under Section 18. The said congressional rule even excluded the time allocated to resource speakers invited by Congress. To hold otherwise, where each member of Congress is given an unlimited time to interpolate, will no longer serve the purpose of expediently resolving the extension of martial law. Verily, as long as the members of Congress are all given equal opportunity to voice their opinions, then they can effectively review the significant action taken by the President.

Moreover, the procedure laid down by the Joint Session Rules of Congress is pursuant to its power to determine its own rules of proceedings.²⁸ The rule-making power of Congress is a grant of full discretionary authority in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use

²⁶ Petition in G.R. No. 235935, p. 17.

²⁷ Record of the Constitutional Commission Proceedings and Debates, Vol. II, p. 494.

²⁸ SECTION 16. xxx

(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

of the power as will constitute a denial of due process.²⁹ Pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate or the House of Representatives is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.³⁰

Here, the petitioners failed to specify how Congress, in the joint session, violated its own rules of procedure or how the said rules were violative of the right to due process even though each member of Congress was given the opportunity to be heard. Absent any evidence of arbitrariness, the proceedings during the joint session of Congress on December 13, 2017 must be upheld. Pursuant thereto, Congress properly issued the Resolution of Both Houses No. 4,³¹ viz:

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines “to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution[;]”

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayaff Group in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People’s Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country’s democratic form of government with communist rule;

xxx

²⁹ *Pimentel, Jr. v. Senate Committee on the Whole*, 660 Phil. 202, 220 (2011).

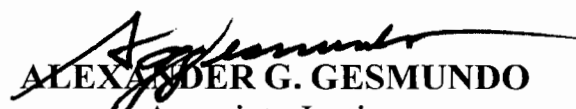
³⁰ *Spouses Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009).

³¹ Memorandum of the OSG, pp. 23-24.

WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas corpus* in the Whole Mindanao:

Now, therefore, be it *Resolve by the Senate and the House of Representatives in a Joint Session Assembled*, To further extend Proclamation No. 216, Series of 2017, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas corpus* in the Whole of Mindanao” for a period of one (1) year from January 1, 2018 to December 31, 2018.³²

For failure of the petitioners to overcome the *prima facie* case establishing the factual basis presented by the respondents in necessitating the extension of the period of martial law and the suspension of the writ of *habeas corpus* in the whole Mindanao for one (1) year, I vote to **DISMISS** the consolidated petitions.


ALEXANDER G. GESMUNDO
Associate Justice

³² Id.