

G.R. No. 243522 – REPRESENTATIVES EDCEL C. LAGMAN, ET. AL., Petitioners, v. HON. SALVADOR C. MEDIALDEA, EXEC. SECRETARY; ET. AL., Respondents.

G.R. No. 243677 - BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, ET. AL., Petitioners, v. PRESIDENT RODRIGO DUTERTE, ET AL., Respondents.

G.R. No. 243745 – CHRISTIAN S. MONSOD, ET AL., Petitioners, v. SENATE OF THE PHILIPPINES, ET. AL., Respondents.

G.R. No. 243797 – RIUS VALLE, ET. AL., Petitioners, v. THE SENATE OF THE PHILIPPINES, ET. AL., Respondents.

Promulgated:
February 19, 2018

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CONCURRING OPINION

REYES, JR., A. J.:

As to purpose, martial law is known in the west as the dramatic solution to a violent situation – to quell a riot, to suppress anarchy, to overcome rebellion. Here in the Philippines, this primary purpose remains, but it has been enlarged to embrace also the extirpation of the ills and conditions which spawned the riot, the anarchy, and the rebellion.¹

Chief Justice Fred Ruiz Castro's
Speech during the 8th World Peace
Through Law Conference held in
Manila

Martial law has been a tempestuous issue in the Philippines since its imposition in 1972. Many correlate the same to being a mere tool for the vesting of unlimited and unchecked powers to a then sitting President.

This phenomenon, while understandable, has unfortunately shunted to the side the good that legitimate martial law can bring: the efficiency in combating grave crises, the boon to a state and its citizens' safety and security, and the promise of peace. This, especially when operating within the overall rule of law, subject to certain and specific constitutional constraints.² These restraints have been immortalized in the 1987 Constitution, known to have been drafted and promulgated with the intent of permitting martial law only when public order and safety will it.

¹ Bernas, J.J. The 1987 Constitution of the Philippines: A Commentary (2009 ed.) p. 912.

² Reynolds, John Emplire, Emergency, and the Law (last published May 27, 2014), p. 88.

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While martial law is an exercise of the President, as aided by the military, and in place “of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty,”³ the present Constitution has limited the exercise of this discretion of the President and put it under the review powers of Congress and of the Supreme Court. Under the 1987 Constitution: “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,”⁴ *to wit:*

The next text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine the sufficiency of the factual basis of the suspension. Hence, the Court is empowered to determine whether in fact actual invasion and rebellion exists and whether public safety requires the suspension. Thus, quite obviously too, since the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court.

It is thus clear that it is the Supreme Court’s specific mandate to determine the fact of actual rebellion and the need for public safety. While not supplanting the discretion of the President, the Court must nonetheless rule as to whether the power granted to the President was arbitrarily exercised, and if such was used to the detriment of the affected populace. A reluctance to do so adequately would amount to shirking the Court’s responsibility to utilize its review power, while a failure to do so would cause great prejudice to the State. A proper exercise of the same would gain ground in turning the existence of martial law as a remnant of the abusive legacy, into a tool that is used to uphold peace and prosperity when the need calls for it.

The Court's power of judicial review over extensions to martial law and suspensions of the privilege of the writ of habeas corpus is limited to the determination of whether there is “sufficient factual basis.”

³ Bernas, J.J. The 1987 Constitution of the Philippines: A Commentary (2009 ed.) p.916.

⁴ Id. at p.917.

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Section 18, Article VII of the 1987 Constitution⁵ vests upon the Court the authority to review the factual basis of the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* or to any extension thereof. This authority has been expressly recognized as *sui generis* and in *Lagman v. Pimentel III*,⁶ it has been opined that if invoked, it allows the Court to act as champions of the Constitution.⁷

However, in order to properly exercise this special power of judicial review, the Court must be mindful of its boundaries and limitations. As pronounced by the Court in *Lagman v. Medialdea*,⁸ and subsequently affirmed in *Lagman v. Pimentel III*,⁹ the scope of the Court's power to review under Section 18, Article VII should be confined to the determination of whether the President's exercise of his powers as Commander-in-Chief under said provision, or in this case, the extension of the imposition of martial law and the suspension of the writ of *habeas corpus*, has "sufficient factual basis."

Probable cause is the standard of proof required in establishing sufficiency of the factual basis.

With that being said, the Court has been unequivocal in ruling that "sufficient factual basis" necessarily connotes that the President has probable cause to believe that: (1) that there exists an actual invasion or rebellion; and (2) that public safety so requires the imposition of martial law

⁵ **Section 18.** The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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⁶ G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

⁷ Id.

⁸ G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 176-177.

⁹ G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

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or the suspension of privilege of the writ of *habeas corpus* or the extension thereof.¹⁰

The Court has already clarified in the past that it is axiomatically the probable cause standard, and none other, that should guide the President to establish the existence of the above-mentioned conditions. *Probable cause* here means such evidence which would lead a reasonable man, making use of common sense, to believe that more likely than not, there is actual rebellion or invasion. This point has been extensively elucidated on by the Court in *Lagman v. Medialdea*,¹¹ *to wit*:

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. x x x Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, **concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ.** This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. **It merely necessitates an “average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge.** He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused.¹² (Citations omitted and Emphasis supplied)

The President found probable cause for the extension of martial law and the suspension of the writ of habeas corpus.

As his Letter¹³ dated December 6, 2018 to both Houses of Congress would show, the President was thoroughly convinced of the existence of rebellion in Mindanao and that the extension of martial law was necessary to maintain public safety, *to wit*:

¹⁰ See *Lagman v. Pimentel III* (2018) & *Lagman v. Medialdea* (2017).

¹¹ *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

¹² *Id.* at p. 184.

¹³ *Rollo* (G.R. No. 243522), Vol.1, pp. 51-55.

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Notwithstanding these gains, the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labelled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule x x x. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations x x x.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. x x x.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. **Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.**



For all of the foregoing reasons, **I implore 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) more year** from 1 January 2019 to 31 December 2019, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution.¹⁴ (Emphasis supplied)

In fact, the records readily display the numerous reports¹⁵ which were submitted to the President prior to the extension of martial law. These reports described violent incidents, disturbances, and skirmishes carried out by the the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), the Dawlah Islamiyah (DI), and other Local Terrorist Groups (LTGs) covering the period of January 1, 2018 to December 31, 2018.

One of the reports submitted summarized *ASG*-initiated violent incidences in Mindanao. It exhibited data revealing a total of sixty-six (66) incidents, among which were sixteen (16) harassment operations, eighteen (18) kidnappings, five (5) ambushes, and eight (8) IED explosion related incidents. Consequently, a total of thirty-three (33) persons were killed while thirty-six (36) were wounded.¹⁶

Another report detailed *BIFF*-initiated violent incidences. The report revealed that a total of seventy-four (74) incidents were recorded which led to the death of twenty-four (24) people and the wounding of thirty (30). The report also indicated that out of said incidents, forty (40) were harassment operations while twenty one (21) were connected to IED and roadside bombings.¹⁷

Additionally, the report which summarized *DI*-initiated violent incidents revealed that these incidences resulted in the injuring of ninety-three (93) individuals and the death of seven (7).¹⁸

Finally, the report which dealt with *NPA*-initiated violent incidences in Mindanao displayed a staggering one hundred and ninety three (193) incidents occurring during the period of January 1, 2018 up until December

¹⁴ Id. at 108-112.

¹⁵ *Rollo* (G.R. No. 243522), Vol.1, pp. 214-289.

¹⁶ Id. at 215-245.

¹⁷ Id. at 246-282.

¹⁸ Id. at 283-288.

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31, 2018. Among these incidents, one hundred and thirty (130) were reported to be guerilla operations while the other sixty three (63) were attributed to terrorist acts.¹⁹

The Philippine National Police (PNP), through Police Director Ma. O. Aplasca, submitted a Letter²⁰ which supplemented the above-mentioned reports. More specifically, the supplemental data was able to identify various LTGs as the perpetrators of different kidnappings, bombings, and harassment operations against the government and civilians alike.

In line with the above-mentioned reports, respondents were able to indicate the following circumstances which took place in Mindanao during the second extension of martial law covering the period of January 1, 2018 to December 31, 2018:

- a. No less than 181 persons in the martial law Arrest Orders have remained at large.
- b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
- c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
- d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.
- e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.
- f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

¹⁹ Id. at 289.

²⁰ Rollo (G.R. No. 243522), Vol. 2, pp. 860-881.

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- g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.
- h. The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil, in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the student's rebellious ideas against the government.²¹

These incidences, taken altogether, showcase the insurgents' overall purpose of furthering rebellion in Mindanao. To further shed light on the connection between the aforementioned acts of harassment, kidnapping, arson, and other violent acts to rebellion, the AFP, through Major General Pablo. M. Lorenzo, submitted a Letter²² to the Court clarifying the same, *to wit*:

The word "harassment" is a military term for a type of armed attack whether the perpetrators fire at a stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. x x x This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. x x x With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. **All these activities are undoubtedly undertaken in furtherance of rebellion.**

²¹ Id. at 832-833.

²² Id. at 847-859.

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x x x. But as mentioned earlier, the events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. **The argument advanced is that these incidents should be viewed in their totality and not as unrelated, isolated events. These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties resulting from these combined events, show a consistent pattern of armed uprising or rebellion in Mindanao.**²³ (Emphasis supplied)

Unsurprisingly, a quick run-through of the offenses included in the reports from the AFP will show a stark and disturbing similarity with the actions used as basis for the initial proclamation of martial law and its subsequent second extension.

In *Lagman v. Medialdea*,²⁴ the military reports therein contained intelligence data detailing numerous acts of violence perpetrated by the Maute Group, alongside other Local Terrorist Groups (LTGs), against civilians and government authorities. Among these acts of violence committed by the LTGs were bombings of government and civilian establishments, armed hostilities against government troops, kidnappings and ransoming, and recruitment of members.²⁵ Specifically, the following formed the probable cause basis for the President to declare a state of martial law and suspend the privilege of the writ of *habeas corpus*:

(1) Attacks on various government and privately owned facilities.

At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities - government and privately owned - in the City of Marawi; Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School; The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of [24 May] 2017, members of the Maute Group were seen guarding the entry gates of Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the PhilHealth office located thereat; The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze; Lawless armed groups likewise ransacked the Landbank of

²³ Id. at 853-854.

²⁴ G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

²⁵ Id. at 128-130.

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Philippines and commandeered one of its armored vehicles.²⁶

(2) Forcible entry and assaults on personnel.

At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being managed by the Bureau of Jail Management and Penology (BJMP); The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells; The group took cellphones, personnel-issued firearms, and vehicles (*i.e.*, two [2] prisoner vans and private vehicles).²⁷

(3) Facilitating inmate escapes.

The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.²⁸

(4) Interruption/blackouts of energy supplies.

By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)²⁹

(5) Illegal/aggressive occupation of territories.

As of 2222H, persons connected with the Maute Group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar; These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.³⁰

(6) Ambushes/ambuscades.

From 1800H to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.³¹

(7) Bomb threats.

By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell

26 Id.
27 Id.
28 Id.
29 Id.
30 Id.
31 Id.

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under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.³²

(8) Kidnapping/taking of hostages

Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.³³

(9) Forcible recruitment.

They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.³⁴

(10) Murders.

A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail; About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.; Latest information indicates that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded; There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians.³⁵

On the other hand, in *Lagman v. Pimentel III*,³⁶ the President based his request for the second extension of martial law on reports which indicated that various LTGs: (1) continuously offered armed resistance against the government, (2) actively recruited and trained new members, and (3) executed retaliatory attacks and bombings.³⁷ The following excerpts from the report emphasize the serious threat these various LTGs posed to our country's liberty, *viz*:

(q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerrilla fronts are in this region. Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the

³² , Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

³⁷ Id.

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communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks. **In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, land mine/IED attacks, arson, and sabotage, that resulted in the death of 47 government forces and 31 civilians.** An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. [Fifty-nine] (59) incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed ₱2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business establishments from 2015 to the first semester of 2017 has been estimated at ₱2.6 billion.³⁸ (Citations omitted and Emphasis supplied)

It is readily observable that, with only minor deviation, the facts alleged by respondents in their reports show a clear and bothersome parallel with those presented as findings of fact in the previous two cases.³⁹ The similarities of the factual circumstances between the initial proclamation, the second extension, and the herein third extension only bolster the latter's validity.

For petitioners' part, they argue that there is no longer any rebellion in Mindanao endangering public safety. They advocate that the dated letters and reports of the military, particularly the letter dated December 6, 2018, do not contain any tangible proof of acts constituting and actually related to rebellion, but instead contain mere acts of lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents.⁴⁰ It is further alleged that respondents failed to alleviate doubts as to the veracity of the incidents of violence as stated in the reports, even when given the opportunity to explain the numerous inconsistencies and gaps in the same, especially as to the connection of the acts to the atmosphere of rebellion in the region.

Moreover, petitioners claim that the failure of respondents to properly substantiate the reports bolsters the former's point that there is an absence of an actual and physical rebellion consisting of an armed uprising against the

³⁸ Id.

³⁹ *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

⁴⁰ *Rollo* (G.R. No. 243522), Vol. I, pp. 20-21.

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government for the purpose of removing Mindanao or a portion thereof from allegiance to the Republic of the Philippines.⁴¹

I humbly disagree.

The totality of the evidence presented is enough to convince the President that a state of rebellion continues to exist.

In making an assessment, the Court should consider the totality of the information constituting the “factual basis” of the declaration or extension. All the pieces of evidence should be appraised and evaluated in their entirety, and not on a piecemeal or individual basis. Taken altogether, the information must be sufficient to convince an ordinary man of ordinary intelligence that there is an on-going rebellion.⁴²

Whether the said reports, taken as a whole, constitute sufficient basis for the President to conclude that more likely than not, actual rebellion exists, is entirely the latter’s prerogative. This point was emphasized in *Lagman v. Medialdea*,⁴³ to wit:

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

It is beyond cavil that the President can rely on intelligence reports and classified documents. **“It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or**

⁴¹ *Rollo* (G.R. No. 243522), Vol. 1, pp. 11-12.

⁴² *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 179.

⁴³ G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

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documents reports] and be satisfied that the public safety demands the suspension of the writ.” Significantly, respect to these so-called classified documents is accorded even “when [the] authors of or witnesses to these documents may not be revealed.⁴⁴ (Citations omitted and emphasis supplied)

Furthermore, as explained emphatically in *Lagman v. Medialdea*,⁴⁵ the mere presence of inconsistencies and ambiguities in the reports should not operate to detract from the bigger picture these reports are painting. After all, the determination of the absolute correctness, accuracy, or precision of the facts which were made the basis of the imposition of martial law or its extension is not within the power of this Court to ascertain.⁴⁶

More simply put, the determination of whether all the information presented, taken as a whole, in spite of inherent obscurities and inconsistencies, is enough to portray that a state of rebellion exists and that the further extension of martial law is required to protect public safety, is entirely the judgment call of the President.⁴⁷

Identifying rebellion.

By its nature and through a perusal of the elements that make up the offense, rebellion can be properly termed as a crime of the masses or multitudes involving crowd action done in furtherance of a political end.⁴⁸ Rebellion is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the President or the Legislature, wholly or partially, of any of their powers or prerogatives.⁴⁹

For a finding of rebellion to prosper, the following elements must be present:⁵⁰

⁴⁴ Id. at 200-201.

⁴⁵ G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

⁴⁶ Id. at 179.

⁴⁷ Id. at 178.

⁴⁸ *Ladlad v. Velasco*, G.R. No. 172070, June 1, 2007, 523 SCRA 318, 336..

⁴⁹ Section 2 of R.A. No. 6968, Article. 134. *Rebellion or insurrection. - How committed.* - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the 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.

⁵⁰ *Ladlad v. Senior State Prosecutor*, G.R. No. 172070-72, June 1, 2007, 523 SCRA 318, 336.

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1. That there be a (a) public uprising and (b) taking arms against the Government; and
2. That the purpose of the uprising or movement is either
 - (a) to remove from the allegiance to said Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or
 - (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

The crime of rebellion is complete the very moment a group rises publicly and takes up arms against the Government, for the purpose of overthrowing the latter by force. The Revised Penal Code (RPC) speaks of the intent or purpose to overthrow the Government as the subjective element, while the acts of rising publicly and taking arms against the Government, which is milder than the more aggressive phrase “levies war” used in the definition of treason under the RPC,⁵¹ is the normative element of the offense,⁵² i.e. related to the norms or standards given.

Justice Montemayor in his separate opinion in *People v. Geronimo*,⁵³ offers a guide in identifying these norms for the overt acts constitutive of the crime of rebellion, to wit:

One of the means by which rebellion may be committed, in the words of said article 135, is by “engaging in war against the forces of the government” and ‘committing serious violence’ in the prosecution of said ‘war’. **These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war carries in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers.** Being within the purview of “engaging in war” and ‘committing serious violence’, said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses, but only one crime — that of rebellion plain and simple.

Now that we find that what article 135 provides is not engaging in war, but merely engaging in combat, and knowing the vast difference between war and mere combat, there is the possibility that some of the considerations and conclusions made in that majority resolution in the Hernandez case may be affected or enervated. In other words, our law in rebellion contemplates on only armed clashes, skirmishes, ambushade, and raids, not the whole scale conflict of civil war like that between the Union and Confederate forces in the American

⁵¹ Ateneo Law Journal, Judge Jesus P. Morfe, Rebellion May Be Simple or Complex pp.164-175, p. 165.

⁵² Reyes, The Revised Penal Code Book Two, 18th Ed. 2012, p. 87, citing *People v. Cube*, C.A. 46 O.G. 4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

⁵³ G.R. No. L-8936, October 23, 1956, 100 Phil. 90 (1956).

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Civil War, where the rebels were given the status of belligerency under the laws of war, and consequently, were accorded much leeway and exemption in the destruction of life and property and the violation of personal liberty and security committed during the war.

In the consolidated petition,⁵⁴ with respect to the “hostile activities during the extended period of martial law” committed or attributed to the ASG, the BIFF, the DI, and other terrorist groups, petitioners alleged that both the military and the President failed to connect these “hostile activities” to rebellion. Petitioners mentioned that the reported acts, among others, either lack clarification, lack some or all of the elements of rebellion, or are even completely unrelated or do not constitute the offense. Some of these incidents cited as questionable in relation to the finding of rebellion include, among others, four bombings/IED explosions, radicalization and recruitment activities, acts of harassment against government installations, liquidation operations and arson attacks as part of extortion schemes, kidnap-for-ransom activities of major ASF factions in Sulu.

However, it is opined that the various acts of violence presented by respondents as basis for the extension are part and parcel of the already existing state of rebellion in Mindanao, and in fact cannot be deemed or considered separate from the same. It is not necessary that said rebels succeed in overthrowing the government, nor is an actual clash with the forces of the Government absolutely necessary,⁵⁵ especially as we need to take into context the understanding of modern warfare that oftentimes wars are fought without set rules, that they may be fought psychologically, in the air, or on the ground. Many ascribe images of well-organized, uniformed armies marching in close formation in the midst of exploding shells when picturing armed conflict,⁵⁶ in actuality, however, the real image differs from depictions of conflicts in countries such as Vietnam, Iraq, or Afghanistan,⁵⁷ which can be characterized more by irregular or guerilla tactics.

Of particular and relevant note is that military conflicts which are motivated by potentially borderless ideological, criminal, religious, or economic goals instead of mere defense of territory, are on the rise.⁵⁸ Today, the monopoly on violence and the prevention of the same has been fractured on multiple levels, as “governments from Mexico and Venezuela to Pakistan

⁵⁴ *Rollo* (G.R. No. 243522), Vol. I., p. 131.

⁵⁵ Reyes, *The Revised Penal Code Book Two*, 18th Ed. 2012, p. 86, citing *People v. Cube*, C.A. 46 O.G. 4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

⁵⁶ N. KALYVAS, STATHIS & Balcells, Laia. (2010). *International System and Technologies of Rebellion: How the End of the Cold War Shaped Internal Conflict*. *American Political Science Review*. 104. 415 - 429. 10.1017/S0003055410000286.

⁵⁷ *Id.*

⁵⁸ *Id.* at 113.

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and to here in the Philippines have lost control of swathes of national territory used by armed groups as the base for military activities that often support cross-border ambitions or enterprises.”⁵⁹

A modern state of rebellion highlights the prevalent idea that rebels have the military capacity to challenge and harass the state, but lack the capacity to confront it in a direct and frontal way,⁶⁰ and oftentimes, a devastating, proactive response on the part of a government to a direct armed challenge will ensure that the rebels’ only option is to fight asymmetrically.⁶¹ As in several in-country wars such as those which occurred in El Salvador (1979-92), Peru (1980-96), and Nepal (1996-2006), the rebel groups therein tended to “hover just below the military horizon,” hiding and relying on harassment and surprise, stealth, and raiding.⁶² Despite the utilization of these unconventional methods, the rebel forces are frequently still able to establish territorial control in crucial and strategic areas,⁶³ to the vast detriment of the innocent civilians residing in the region.

The violent incidences have unveiled the new nature of the conflict between the government and insurgency, one that the military is behooved to respect otherwise they will quickly lose control of the situation and subsequently the region. This includes the modern tactics and tools the insurgents have utilized to threaten the government to adhere to their philosophy. IEDs for instance have become one of the most devastating weapons in military conflicts in the past few years,⁶⁴ and a look at the incidences of violence as reported will show that the rebel factions have not hesitated to rely on the same to strike the region’s citizenry and infrastructure. The IED devices are small, easy to camouflage, come in multiple types with many combinations of munitions and detonating systems. They can often and easily be assembled from easily obtainable ingredients such as agricultural supplies or chemicals from a factory or drugstore.⁶⁵ The ease that they may be put together and used are buoyed by the fact that they require no complicated supply chain or time-consuming deployment, and instructions for manufacturing are simple and circulated all over the internet.⁶⁶ It has in fact been opined that the sheer contrast between the homemade quality of IEDs and the usual technological superiority of the state forces that they undermine go a long way in promoting propaganda

⁵⁹ Id. at 115.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Moises Naim, *The End of Power: From Boardrooms to Battlefields and Churches to States, Why Being in Charge Isn’t What it Used to Be* 2014, 19.

⁶⁵ Id.

⁶⁶ Id.

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such as David-versus-Goliath narratives, helping in public relations and inspiring more insurgents to join the cause to combat the government.⁶⁷

Aside from weaponized individual bombers and the internet, the latter used at the frontier of cyberwar and hacking civilian and military infrastructure, what these tools and techniques have in common is their ease of access.⁶⁸ These not only improve the chances of rebel forces when it comes to direct clashes, but also have deleterious indirect effects, such as the “constellation of online militant voices that amplify hostile messages, spread propaganda materials and threats, and attract new recruits to their cause.”⁶⁹

Therefore, it is incorrect for petitioners to state that public safety is not imperiled and martial law does not necessitate a third extension because of the absence of an “actual rebellion consisting of an armed uprising.”⁷⁰ While petitioners have used the continuous and consistent incidences of violence as reported by the government to declare that there is no rebellion taking place in the region, for purposes of erring on the side of pragmatism one must adhere to an opposite standard of thinking which is to take the problem of political violence as one aggravated by each and every violent act committed within the rebellion zone.

As for the other indispensable element, the facts show that the political purpose for the uprising remains extant. I draw attention to the fact that the crimes cited were perpetrated by groups previously recognized by the Court as rebel groups in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. The purpose of the acts committed, a fundamental element of the crime of rebellion, was identified as present in those cases, for the purposes of removing Mindanao – starting with the City of Marawi, Lanao del Sur – from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole,⁷¹ to clearly establish an Islamic State and a seat of power in the region for a planned establishment of a DAESH wilayat or province covering the entire Mindanao.

⁶⁷ Id.

⁶⁸ Id. at 121.

⁶⁹ Id. at 120.

⁷⁰ *Rollo* (G.R. No. 243522), Vol.1, p. 12.

⁷¹ G.R. Nos. 231658, 231771, 231774, July 4, 2017, 829 SCRA 1, 190, citing Report p. 1, 1st par.

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The Court in fact found in *Lagman v. Pimentel III* that while there may be ideological differences between the different groups (the NPA and the DAESH/ISIS-inspired rebels, among others), they have the shared purpose of overthrowing the duly constituted government.⁷² The political purpose, then, is determined not individually, but in its totality, and is hereby present in this case.

Again, at the risk of being repetitive, the reports showing the presence of numerous violent acts, which as previously highlighted have been correctly found valid and adequate by the President himself utilizing the probable cause standard.

Rebellion has not ceased; public safety continues to be imperiled.

The finding that the incidences of violence are recurring are a logical and alarming consequence of rebellion's characterization as continuous and supportive of the stance to extend martial law. As expanded upon in the case of *Umil v. Ramos*:

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**.

From the facts as above-narrated, the claim of the petitioners that they were initially arrested illegally is, therefore, without basis in law and in fact. The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. Clearly then, the arrest of the herein detainees was well within the bounds of the law and existing jurisprudence in our jurisdiction.⁷³

The continuance and lingering effects of rebellion can be seen from the tangible incidents still attendant even at this later juncture. As mentioned earlier, the letter⁷⁴ of Major General Pablo M. Lorenzo to Solicitor-General Jose C. Calida showed the enumeration of a high number of violent

⁷² G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

⁷³ Id.

⁷⁴ *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

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incidences. These reported acts constitute the public uprising and a show of force against the government that would indicate that the rebellion has yet to be quelled. Martial law will be beneficial and not prejudicial in bringing safety and security to the Mindanao region, especially as already manifested by the respondents, there have been orders issued during both the proclamation of martial law in Mindanao and the subsequent extension, which have not yet completed the implementation phase.

In conclusion, in *Lagman v. Medialdea*, the Supreme Court aptly held that in determining the probable cause used as basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. There is no reason to deviate from this finding of the Court in the aforesaid case. This is especially poignant considering the need to preserve the public's safety in the affected areas. Public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters,"⁷⁵ and the continuing and even escalating violence and threats to public safety dictate that this Court finds in favor of the executive's prerogative to move forward with the extension of martial law.

There are sufficient mechanisms to safeguard against any abuse of martial law.

Furthermore, I find that the concerns of petitioners that there may be a usurpation of functions and a violation of rights to be unfounded. Aside from failing to properly substantiate that any abuse was attendant, any allegation is misplaced in a petition to question the validity of extending martial law. As the Court already conclusively settled in *Lagman*, alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of *habeas corpus* should be resolved in a separate proceeding.

The staunch fears of petitioners that abuse is rampant in Mindanao as a result of the state of martial law, or with another extension, are unfounded. While it is beyond the review power of this Court to examine allegations of human rights violations, it has been observed that the current implementation on the part of the Executive has been effective thus far in suppressing the threat caused by the insurgents. Especially with the midterm

⁷⁵ *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 207.

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elections about to take place, it is advised that martial law in the Mindanao region be seen for what it has represented, which is the upholding of safety and security of the region. This, instead of being seen as an opportunity for abuse on the part of the government, which as highlighted has no basis in fact or law.

To recall, the Constitution itself already expressly, clearly, and indubitably provides strict safeguards against any potential abuse by the President. Justice Carpio's dissenting opinion in *Fortun v. Macapagal-Arroyo*⁷⁶ aptly explains, to wit:

The Constitution now expressly declares, "A state of martial law does not suspend the operation of the Constitution." Neither does a state of martial law supplant the functioning of the civil courts or legislative assemblies. Nor does it authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, or automatically suspend the writ. **There is therefore no dispute that the constitutional guarantees under the Bill of Rights remain fully operative and continue to accord the people its mantle of protection during a state of martial law.** In case the writ is also suspended, the suspension applies only to those judicially charged for rebellion or offenses directly connected with invasion. (Emphasis supplied)

In *Pequet v. Tangonan*,⁷⁷ the Supreme Court highlighted the call to the military to exercise care and prudence to avoid incidents involving illegal and involuntary restraint, and that martial law was precisely provided to assure the country's citizenry that the State is not powerless to cope with invasion, insurrection or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, as in the case at bar, it is precisely in accordance with and not in defiance of the fundamental law.⁷⁸ In fact, this is even more reason then for the rule of the law to be followed.⁷⁹

The fear that human rights are set aside and abuse will grow rampant have no basis. In the absence of any substantiated proof that the extension of martial law is an origination or extension of human rights violations by the government, this Court is behooved to respect and provide the President with sufficient discretion to exercise its powers.

⁷⁶ G.R. No. 190293, March 20, 2012, 668 SCRA 504, 561-562.

⁷⁷ G.R. No. L-40970, August 21, 1975, 66 SCRA 216.

⁷⁸ Id. at 219.

⁷⁹ Id.

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One cannot turn a blind eye to the fact that political conflicts between the government and the various rebel groups in Mindanao have continued up to the present to devastate the region's economy as well as hampered its development,⁸⁰ and the incidences of violence reported to the President only highlight the hostile and tense atmosphere and state of rebellion in Mindanao. John Abbink of the Department of Social and Cultural Anthropology at Vrije Universiteit Amsterdam⁸¹ in fact notes, "violent actions are much more meaningful and rule bound than reports about them lead us to believe."⁸² As seen, the plethora of incidents, especially those involving the regular bombings, actually aggravate the existing state of rebellion to the point that they are subsumed by it. Authorities have in fact opined that this phenomenon frequently occurs in areas where government or a central authority is weak and in areas where there is a perceived lack of justice and security.⁸³

While the government has been able to show that security has been improved and that the measures taken have stymied insurgent efforts to forcibly separate Mindanao from the Republic, it must continue to exercise vigilance until these threats have been eradicated and peace once again reigns in the Philippines south. The executive department through the President is merely fulfilling its Constitutional mandate to affect police power for the overall welfare of the state and performing its duty to protect its citizens from threats of harm and violence.

As a final note, the Court cannot simply turn a blind eye to the unceasing threats and acts of violence which plague the everyday lives of those in Mindanao. One of the primordial duties of the Court is to protect the State in its entirety and secure the public's safety. Given the overwhelming evidence presented, the Court is convinced that there is sufficient factual basis for the extension of martial law and the suspension of the writ of *habeas corpus*. To rule otherwise would be to court danger to our sovereignty.

⁸⁰ Survey of Feuding Families and Clans in Selected Provinces in Mindanao, Jamail A. Malian MSU-Institute of Technology. P. 36 (Rido: Clan Feuding and Conflict Management in Mindanao – Wilfredo Magno Torres III, Editor, 2007 The Asia Foundation.

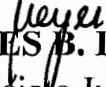
⁸¹ https://www.researchgate.net/profile/Jon_Abbink2 (last accessed: February 16, 2019).

⁸² Big War, Small Wars: The Interplay of Large-scale and Community Armed Conflicts in Five Central Mindanao Communities Jose Jowel Canuday p. 256.

⁸³ Id.



ACCORDINGLY, in view of the foregoing, I vote to **DISMISS** the petitions and grant the President's request for extension of the period covered by Proclamation No. 216 series of 2017 and Congress' Resolution of Both Houses No. 6 issued on December 12, 2018.


ANDRES B. REYES
Associate Justice