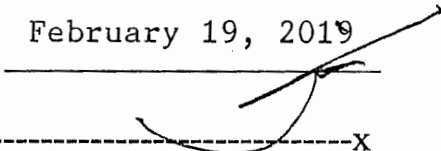


G.R. No. 243522 – REPRESENTATIVES EDCEL LAGMAN, ET AL. vs. HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, ET AL.; **G.R. NO. 243677** – BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI ZARATE, ET AL. vs. PRESIDENT RODRIGO DUTERTE, ET AL.; **G.R. NO. 243745** – CHRISTIAN MONSOD, ET AL. vs. SENATE OF THE PHILIPPINES (REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III), ET AL.; **G.R. NO. 243797** – RIUS VALLE, JHOSA MAE PALOMO, ET AL. vs. THE SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT VICENTE C. SOTTO III, ET AL.

Promulgated:

February 19, 2019

A handwritten signature in black ink is written over the date "February 19, 2019". The signature is slanted upwards to the right. Below the signature, there is a horizontal line with a dashed line extending from it to the left and right, ending in 'X' marks.

SEPARATE CONCURRING OPINION

HERNANDO, J.:

THE CASE

These consolidated petitions challenge the constitutionality of Resolution of Both Houses (RBH) No. 6 issued by the Senate of the Philippines and the House of Representatives approving the extension, for the period of January 1, 2019 until December 31, 2019, of Proclamation No. 216 entitled, “Declaring a State of Martial Law and Suspending the Privilege of Writ of *Habeas Corpus* in the whole of Mindanao” issued by President Rodrigo Roa Duterte (President Duterte).

FACTUAL ANTECEDENTS

On May 23, 2017, President Duterte issued Proclamation No. 216 for a period not exceeding sixty (60) days. The Senate and the House of Representatives respectively issued Senate Resolution No. 388 and House Resolution No. 1050, supporting Proclamation No. 216 and finding no cause to revoke the same. Forthwith, a constitutional challenge was mounted before the Supreme Court against Proclamation No. 216. This was rejected in *Lagman v. Medialdea*,¹ where the High Court categorically pronounced that there was sufficient factual basis for the issuance of Proclamation No. 216 and thus decreed it as constitutional.

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

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In a course of action without precedent, President Duterte requested Congress to extend the effectivity of Proclamation No. 216. On July 22, 2017, in a Special Joint Session, the Congress adopted RBH No. 2 extending for the first time Proclamation No. 216 until December 31, 2017.

Thereafter, in a letter dated December 7, 2017, President Duterte requested for a second extension of Proclamation No. 216 for the period of January 1, 2018 to December 31, 2018 or for such period as may be determined by Congress.

On December 13, 2017, the Senate and the House of Representatives, in joint session, adopted RBH No. 4 further extending Proclamation No. 216 from January 1, 2018 to December 31, 2018. Significantly, this second extension was contested before this Court anchored on the absence of rebellion in Mindanao, specifically the end of the *Marawi* siege, and the requirement of public safety. However, this opposition was again spurned in *Lagman v. Pimentel III*² where the Court found sufficient factual basis for the further extension of Proclamation No. 216.

When the second extension was about to expire, Secretary of National Defense Delfin N. Lorenzana (Secretary Lorenzana) wrote to President Duterte on December 5, 2018 where he recommended a further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. And, in a joint letter³ to the President, both the Armed Forces of the Philippines (AFP) Chief of Staff and the Philippine National Police (PNP) Director General echoed Secretary Lorenzana's advocacy for the extension of martial law for another 12 months based on: (1) the Islamic State's (IS) fundamental shift in operational methodology, from caliphate-building to waging a global insurgency and rebellion; and (2) the mid-year recognition by the IS of the East Asia *Wilayat*, with the Philippines at its epicenter.⁴ The letter likewise cited four bombing incidents in Mindanao which killed 16 people and injured 63 others in a span of two months.⁵

Acting on, and spurred by, the foregoing advice of his top brass in the military and police establishments, President Duterte, in a letter dated December 6, 2018, requested Congress for a third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019, specifying various bombing incidents in Mindanao, such as:

- a. The Lamitan Bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others;

² G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

³ *Rollo*, G.R. No. 243522, Vol. 1, pp. 208-213. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D. Albayalde to President Rodrigo R. Duterte.

⁴ *Id.*, Vol. 2, p. 798. Memorandum for Respondents through the Office of the Solicitor General, p. 5.

⁵ *Supra* note 3. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D. Albayalde to President Rodrigo R. Duterte.

- b. The two (2) Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five (5) casualties and wounded forty-five (45) individuals; and
- c. The Barangay Apopong, General Santos City IED explosion on September 16, 2018 that left eight (8) individuals, including a three-year old child, wounded.⁶

In his letter, President Duterte likewise adverted to the following events: (a) kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (b) at least 342 violent incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (c) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhP156,000,000.00); and (d) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others.⁷

On December 12, 2018, Congress issued RBH No. 6 entitled, “Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for Another Period of One (1) Year from January 1, 2019 to December 31, 2019” which approved the Commander-in-Chief’s supplication for the third extension of Martial Law in Mindanao.

Hence, these petitions, all of which commonly assail the factual basis of the third extension of Martial Law in Mindanao, were lodged before the Court by: (a) Congressmen Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene “Kaka” J. Bag-ao docketed as G.R. No. 243522 (Lagman Petition); (b) Bayan Muna Partylist Representative Carlos Isagani T. Zarate, *et al.*, docketed as G.R. No. 243677 (Bayan Muna Petition); (c) Christian Monsod, *et al.*, docketed as G.R. No. 243745 (Monsod Petition); and (d) Rius Valle, *et al.*, docketed as G.R. No. 243797 (Lumad Petition).

THE PETITIONS SUBMITTED BEFORE THE COURT

G.R. No. 243522 (Lagman Petition)⁸

The *Lagman Petition* posits that the Supreme Court must make an independent and critical assessment of the President’s factual submission pertaining to the third extension of martial law.⁹ Moreover, actual rebellion

⁶ *Supra* note 4 at p. 799, Memorandum for Respondents through the Office of the Solicitor General.

⁷ *Id.*

⁸ *Id.* at pp. 753-788. Filed by Representatives Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene “Kaka” Bag-Ao.

⁹ *Id.* at pp. 756-757. Memorandum of the Petitioners Lagman, *et al.*

does not exist in Mindanao which would warrant a third extension of Proclamation No. 216. Even the President, in his letter dated December 6, 2018 to Congress, merely expressed in general terms the state of the supposed continuing rebellion in Mindanao.¹⁰ Additionally, the President failed to submit a detailed report to substantiate his claim that rebellion persists in Mindanao; thus, there is no sufficient factual basis to further extend the proclamation of Martial Law.¹¹ Even the military admitted that no one was arrested or charged with rebellion during the second extension of Martial Law in Mindanao. More significant, the purported reported violent incidents were never connected to rebellion.¹²

Said petition maintains that the alleged public clamor for the extension of martial law, as well as the claimed economic growth brought about by the imposition of martial law, cannot be considered as a valid ground for the extension thereof.¹³ In the same vein, it points out that public safety is not imperiled.¹⁴

The *Lagman Petition* also argues that acts of terrorism such as the bombings in different places of Mindanao, which were perpetrated during the effectivity of Martial Law in the island, were not equivalent to rebellion because there were differences in motive, target and scope. In evaluating such acts of terrorism, it advances the argument that the President can instead exercise his calling out power and not declare a state of martial law.¹⁵ The previous rulings in *Lagman v. Medialdea*¹⁶ and *Lagman v. Pimentel III*¹⁷ should not be accorded blind adherence just because these cases were the precedents of the cases at bench. The circumstances surrounding the third extension differed from the situation when Martial Law was initially declared.¹⁸ Since public safety is no longer imperiled, there is no longer a need for a third extension.¹⁹

What is more, Proclamation No. 216 cannot be extended because it has become *functus officio*. The so-called rebellion of the Maute Group and the Abu Sayyaf Group (ASG), which was the basis for the declaration of Martial Law, has been vanquished with the killing of the respective groups' leaders, together with the President's declaration that Marawi City has been liberated. In other words, the purpose and mission of Proclamation No. 216 had been accomplished. A third extension also violates the limited period envisioned in the Constitution. Congress does not have the discretion to determine the duration of the extension of martial law and the suspension of the privilege of the writ.

¹⁰ *Id.*, Vol. 1, at pp. 26-27. Petition of the Petitioners Lagman, *et al.*

¹¹ *Id.* at pp. 27-28.

¹² *Id.* at pp. 11-22; *supra* note 4, pp. 757-760, Memorandum of the Petitioners Lagman, *et al.*

¹³ *Id.* at pp. 34-36.

¹⁴ *Id.* at p. 37.

¹⁵ *Supra* note 4, pp. 771-772, 761-764. Memorandum of the Petitioners Lagman, *et al.*

¹⁶ *Supra* note 1.

¹⁷ *Supra* note 2.

¹⁸ *Supra* note 4, pp. 765-768. Memorandum of the Petitioners Lagman, *et al.*, pp. 13-15.

¹⁹ *Id.* at pp. 768-771.

The *Lagman Petition* exhorts that Section 18, Article VII should be read in its entirety and interpreted as a restriction and limitation on the declaration of martial law and the suspension of the privilege of the writ.²⁰ It stated that the “little flexibility” for the Congress to determine the length of the extension must be consistent with the intent of the Constitution to limit the duration of the extension of the original period of martial law with a benchmark of not exceeding sixty (60) days. Such “limited flexibility” must similarly not be abused by the President and Congress.²¹

The *Lagman Petition* avers that Congress granted the extension with inordinate haste by the supermajority allies of the President because the periods to interpellate and to explain votes were restricted.²² The imposition of Martial Law only emboldened the military and the police to violate the rights of the citizens of Mindanao, citing the recent arrest of former Representative Satur Ocampo and incumbent Representative Francis Castro during a humanitarian mission to rescue the Lumads.²³

Said petition further argues that the 1987 Constitution removed the declaration of martial law, the suspension of the privilege of the writ, or the extension thereof from the purview of the doctrine of “political question.”²⁴ It opines that the Court’s power to review the sufficiency of factual basis does not require a prior finding of grave abuse of discretion on the part of the President and Congress.²⁵ In any case, it asserts that the imposition and extension of martial law and the suspension of the privilege of the writ are undue restrictions on the citizens’ rights.²⁶

Finally, the petition prays for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to stop the implementation of the third extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao, as well as the disbursement of funds to finance the said declaration.²⁷

On January 17, 2019, the *Lagman Petition* was amended to implead the House of Representatives and the Senate of the Philippines for approving RBH No. 6 dated December 12, 2018.²⁸

G.R. No. 243677 (Bayan Muna Petition)²⁹

²⁰ *Id.* at pp. 775-786.

²¹ *Supra* note 3 at pp. 41-44, *Petition of the Petitioners Lagman, et al.*; *Supra* note 4, p. 781, *Memorandum of the Petitioners Lagman, et al.*

²² *Id.* at pp. 44-45.

²³ *Id.* at pp. 45-46.

²⁴ *Supra* note 4 at p. 782, *Memorandum of the Petitioners Lagman, et al.*

²⁵ *Id.* at pp. 783-784.

²⁶ *Id.* at p. 783.

²⁷ *Supra* note 3 at pp. 46-47, *Petition of the Petitioners Lagman, et al.*

²⁸ *Supra* note 3 at pp. 308-309, *Amended Petition of the Petitioners Lagman, et al.*

²⁹ *Rollo*, G.R. No. 243677, pp. 3-41; Filed by Bayan Muna Partylist Representative Carlos Isagani T. Zarate, Gabriela Women’s Party Representatives Emerenciana A. De Jesus and Arlene D. Brosas,

The *Bayan Muna Petition* contends that there is no actual rebellion that exists and persists in Mindanao. President Duterte's letter to Congress asking for a third extension of Proclamation No. 216 merely enumerated the isolated incidents committed by various groups. These incidents did not point to a clear political purpose of rebellion as defined under the Revised Penal Code (RPC). The radicalization and recruitment activities allegedly being spearheaded by the Daulah Islamiya (DI) forces cannot be categorized as actual rebellion as there is no public uprising yet. In addition, the various reported incidents failed to (a) positively identify the perpetrators; (b) show basis for attributing said incidents to a particular rebel group; and (c) state or identify the motive for the commission of the said offenses.³⁰

Moreover, in the December 4, 2018 letter of Defense Secretary Lorenzana, as well as in the undated joint letter of AFP Chief of Staff Galvez, Jr. and PNP Chief Albayalde to President Duterte, it was mentioned that the number of atrocities and degradation of capacities of the identified rebel groups significantly decreased by virtue of the implementation of Martial Law in Mindanao. These reported gains brought about by Martial Law in Mindanao negate the presence of a threat to public safety and militates against the further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.³¹

The *Bayan Muna Petition* further posits that the factual bases alleged and relied upon by the respondents to further extend Proclamation No. 216 are merely generic threats to public safety which are consequences of and inherent damage or injury resulting from, any rebellion. The threat to public safety referred to in Section 18, Article VII that would require the imposition or extension of martial law must have risen to the level where the government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions. Thus, if the threat to public safety in a rebellion has not risen to a level that would necessitate the imposition of martial law, this Court should intervene in case the President implores the implementation of Martial Law instead of exercising his calling-out powers.³²

Furthermore, the *Bayan Muna Petition* maintains that Proclamation No. 216 has become *functus officio* with the cessation of the *Marawi* siege. Thus, considering that the actual rebellion for which Proclamation No. 216 was issued has ceased, there is no longer any basis for its further extension as there is no persisting actual rebellion in Mindanao.³³ During the joint session of Congress for the third extension, Secretary Lorenzana made a

Anakpawis Representative Ariel B. Casilao, ACT Teachers Representatives Antonio L. Tinio and France L. Castro, and Kabataan Partylist Representative Sarah Jane I. Elago.

³⁰ *Id.* at p. 127, Memorandum for Petitioner Bayan Muna, *et al.*

³¹ *Id.* at pp. 263-266.

³² *Id.* at p. 272.

³³ *Id.* at pp. 278-280, Memorandum for Petitioner Bayan Muna, *et al.*

material misrepresentation when he testified that a kidnapping case was filed against Bayan Muna Party-List Representatives Satur Ocampo and petitioner Castro, and sixteen (16) teachers, pastors and other delegates of a humanitarian and rescue mission in Talaingod Davao del Norte, when in fact none was filed because the prosecution found no probable cause. This incident was, however, listed and considered as one of the bases for the extension of Proclamation No. 216.³⁴

Lastly, the petition cites various sources, namely: (a) human rights monitor Karapatan; (b) International Fact Finding and Solidarity Mission (IFFSM); and (c) the Association of Southeast Asian Nations (ASEAN) Parliamentarians for Human Rights, which documented human rights violations by reason of the implementation of Martial Law in Mindanao. The petition argues that this Court has the duty to consider the human rights situation in Mindanao in the determination of the sufficiency of the factual basis for the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.³⁵

G.R. No. 243745 (Monsod Petition)³⁶

The *Monsod Petition* argues that the extension of Martial Law is null and void for lack of sufficient factual basis. It asserts that the present factual situation does not call for the extension of martial law and the suspension of the privilege of the writ as the so-called rebellion existing in Mindanao is not sufficient to warrant an extension.³⁷ The rebellion which warrants the imposition of martial law when public safety requires it refers to the rebellion as defined under Article 134 of the RPC.³⁸

In this case, the present public safety situation in Mindanao does not call for the extension of martial law and the suspension of the privilege of the writ; if at all, the President can resort to his extraordinary power to call out the armed forces when it becomes necessary.³⁹ In any case, respondents have not shown that the supposed rebellion in Mindanao is of such an intensity that would render the civilian government incapable of functioning.⁴⁰ It emphasizes that the further extension of martial law and the suspension of the privilege of the writ are not necessary to meet the situation in Mindanao, given that the factual circumstances in the region have drastically improved.⁴¹

³⁴ *Id.* at pp. 282-284.

³⁵ *Id.* at pp. 288-292.

³⁶ *Rollo*, G.R. No. 243745, pp. 3-31, Filed by Christian S. Monsod, Ray Paolo J. Santiago, Nolasco Ritz Lee B. Santos III, Marie Hazel E. Lavitoria, Dominic Amon R. Ladeza, and Xamantha Xofia A. Santos.

³⁷ *Id.* at pp. 14-25, Petition of the Petitioners Monsod, *et al.*; *Id.* at p. 290, Memorandum of the Petitioners Monsod, *et al.*

³⁸ *Id.* at pp. 291-295, Memorandum of the Petitioners Monsod, *et al.*

³⁹ *Id.* at pp. 295-301.

⁴⁰ *Id.* at p. 303.

⁴¹ *Id.* at pp. 303-305.

The *Monsod Petition* avers that while the Constitution does not expressly state a specific duration for the allowable extension of martial law and the suspension of the privilege of the writ, any extension should be supported by sufficient factual basis. As such, the number of extensions is limited by the existence of invasion or rebellion, and the requirement of public safety, as supported by sufficient factual basis.⁴² The current factual situation renders Proclamation No. 216 *functus officio* considering the cessation of the *Marawi* siege. Public safety no longer requires it, and the civilian government is able to exercise its functions.⁴³

Said petition points out that the postponement of the *Barangay* and *Sanggunian Kabataan* (SK) Elections by the Commission on Elections (COMELEC) in Mindanao in 2017 and the subsequent conduct of the elections in 2018 after it was determined that conditions are conducive for the conduct of the elections amidst the existence of Martial Law shows that the basis for martial law no longer exists in Mindanao.⁴⁴

Along the same lines, the *Monsod Petition* contends that martial law has a transitory nature and that the President's exercise of martial law and suspension powers is temporary in nature and was never meant to be the status quo.⁴⁵

Moreover, this Court has the power and constitutional mandate to independently determine the sufficiency of the factual basis for the further extension of Proclamation No. 216. It should independently determine the factual basis and should not confine itself to the data presented by the Executive and Legislative branches of government. The intent of the framers of the Constitution was for the Court's review to be transitory in nature and responsive to the factual situation and changes thereafter.⁴⁶

The *Monsod Petition* further asserts that while Congress has the power to determine the manner in which to approve the extension of martial law, it must also meet the requirement of sufficient factual basis. The same standard should likewise apply as regards the Congress' discretion to respond to the President's request for an extension.⁴⁷ All the same, it calls upon the Court to consider that the Constitution provides that the sufficiency of the factual circumstances be weighed by the court of law and not on whether the President was satisfied or not with his or her assessment of the circumstances to declare martial law.⁴⁸ It should not be hindered from exercising its expanded jurisdiction under Section 1, Article VIII of the Constitution, which includes the review of the actions of other branches of

⁴² *Id.* at pp. 305-307.

⁴³ *Id.* at pp. 307-308.

⁴⁴ *Id.* at pp. 27-28, *Petition of the Petitioners Monsod, et al.*

⁴⁵ *Id.* at pp. 308-309, *Memorandum of the Petitioners Monsod, et al.*

⁴⁶ *Id.* at pp. 23-27, *Petition of the Petitioners Monsod, et al.*; *Id.* at pp. 309-310, *Memorandum of the Petitioners Monsod, et al.*

⁴⁷ *Id.* at p. 311, *Memorandum of the Petitioners Monsod, et al.*

⁴⁸ *Id.* at p. 30, *Petition of the Petitioners Monsod, et al.*

government, *i.e.*, its power to determine the factual basis for the proclamation and extension of martial law.⁴⁹ In doing so, the totality of factual circumstances will determine if there is adequate ground to warrant a nullification of the extension of martial law.⁵⁰

Said petition emphasizes that the burden of proof is upon the Executive and the Legislative Departments to show that there is sufficient factual basis for the declaration and extension of martial law, in light of the factual milieu existing in Mindanao.⁵¹

In view of these, the *Monsod Petition* sought the issuance of a TRO or injunction in order to enjoin the respondents from further implementing Proclamation No. 216, as there is a possibility of abuse of rights.⁵²

G.R. No. 243797 (Lumad Petition)⁵³

The *Lumad Petition* contends that the Court may take judicial notice that the original factual basis for the issuance of Proclamation No. 216 no longer exists and that the same proclamation has already been rendered *functus officio*. Because of this, the third extension no longer has factual basis due to the President's declaration that Marawi City has been liberated.⁵⁴ The President's reasons for requesting an extension from Congress are inadequate since the President's own report indicated that the situation has improved.⁵⁵ Congress did not effectively review the factual basis for the request for extension which amounted to grave abuse of discretion. Moreover, Congress should not have considered "terrorism" as a ground for the proclamation of martial law, much more for its extension. In the same vein, the Legislature's failure to ascertain the change in the factual basis relied upon by the President led to its being remiss in its duty to review Proclamation No. 216.⁵⁶

Likewise, the *Lumad Petition* argues that the respondents failed to justify the need for a third extension as well as the sufficiency of its factual basis.⁵⁷ In line with this, current events such as the bombing in Jolo, Sulu, do not retroactively justify the continued existence of martial law.⁵⁸ Neither can the ongoing rebellion by the New People's Army (NPA) justify the extension of Proclamation No. 216, as this should be covered by a new

⁴⁹ *Id.* at pp. 312-313, Memorandum of the Petitioners Monsod, *et al.*

⁵⁰ *Id.* at pp. 313-314.

⁵¹ *Id.* at p. 316.

⁵² *Id.* at p. 30, Petition of the Petitioners Monsod, *et al.*; *Id.* at pp. 314-315, Memorandum of the Petitioners Monsod, *et al.*

⁵³ *Rollo*, G.R. No. 243797, pp. 7-18, Filed by Rius Valle, Jhosa Mae Palomo, Lito Kalubag, Junjun Gambang, Jeany Rose Hayahay, and the Integrated Bar of the Philippines.

⁵⁴ *Id.* at pp. 10-11, Petition of the Lumad Petitioners; *Id.* at pp. 299-306, Memorandum of the Lumad Petitioners, *et al.*

⁵⁵ *Id.* at pp. 11-12; *id.* at p. 300.

⁵⁶ *Id.* at p. 12; *Id.* at pp. 300-304.

⁵⁷ *Id.* at pp. 304-305, Memorandum of the Lumad Petitioners, *et al.*

⁵⁸ *Id.* at p. 306.

proclamation.⁵⁹ Said Proclamation grants powers that are overbroad and undefined which suspend and curtail other rights, rendering an effective legislative or judicial review impossible. This includes General Order No. 1⁶⁰ which implements martial law.⁶¹

Relevantly, the *Lumad Petition* argues that the wholesale extension of martial law and the suspension of the privilege of the writ has resulted in an environment of continued impunity directed against *Lumad* schools which have been intimidated, harassed, and “red tagged.” In support of this argument, it narrated the first-hand experiences of the petitioners therein.⁶²

Notably, the *Lumad Petition* likewise asked for the issuance of an injunctive relief.⁶³

Respondents, through the Office of the Solicitor General (OSG)

Respondents, on the other hand, argue that there is sufficient factual basis for the extension of Proclamation No. 216. Contrary to the *Monsod Petition* which demands that this Court should independently determine the sufficiency of the factual basis for extension of Proclamation No. 216. It is impossible for the Court to conduct an independent factual inquiry as its review is limited to the information given to the President by the AFP and the PNP. In fact, in *Lagman v. Medialdea*,⁶⁴ this Court acknowledged that it does not have the same resources available to the President; hence, its determination of the sufficiency of factual basis must be limited only to the facts and information mentioned in the Report and Proclamation. This Court must then rely on the fact-finding capabilities of the executive department. Also, respondents contend that the Constitution does not authorize the Court to conduct an independent inquiry as it is not an inquisitorial tribunal.⁶⁵

As regards the manner by which Congress deliberated on the President’s request for the third extension of Proclamation No. 216, respondents posit that the same is not subject to judicial review pursuant to the Court’s ruling in *Lagman v. Pimentel III*⁶⁶ wherein the Court ruled, that considering that martial law is a law of necessity and self-preservation mechanism of the State, its proclamation or extension must be deliberated with speed. Thus, as this Court held, it “cannot engage in undue speculation

⁵⁹ *Id.* at pp. 306-307.

⁶⁰ Section 3, General Order No. 1.

Section 3. **Scope and Authority.** The Armed Forces of the Philippines shall undertake all measures to prevent and suppress all acts of rebellion and lawless violence in the whole of Mindanao, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof, to ensure national integrity and continuous exercise by the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

⁶¹ *Supra* note 53 at pp. 12-13, *Petition of the Lumad Petitioners*; *Id.* at pp. 307-308, *Memorandum of the Lumad Petitioners, et al.*

⁶² *Id.* at pp. 13-17; *id.* at pp. 306-313.

⁶³ *Id.* at pp. 17-18, *Petition of the Lumad Petitioners.*

⁶⁴ *Supra* note 1.

⁶⁵ *Supra* note 3 at pp. 121-123, *Memorandum for Respondents.*

⁶⁶ *Supra* note 2.

that members of Congress did not review and study the President's request based on a bare allegation that the time allotted for deliberation was too short."⁶⁷

Respondents further point out that the *Lagman Petition* raised the same issue already resolved in *Lagman v. Pimentel III*,⁶⁸ that is, whether the Congress has the power to extend martial law and suspend the privilege of the writ of *habeas corpus*. The 1987 Constitution did not fix the period of extension which gives Congress a wider latitude in determining the period for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. The Constitution is clear, plain and free from any ambiguity; thus it must be given its literal meaning and applied without any attempted interpretation. *Verba legis non est recedendum*, or from the words of the Constitution, there should be no departure. Hence, the period for which the Congress may extend martial law and suspend the privilege of the writ of *habeas corpus* is a matter that it can define by any predetermined length of time. The Congress is given the power to determine the period of extension for a limited duration as specifically mandated under Section 18, Article VII of the 1987 Constitution.⁶⁹

As to the alleged human rights violations, respondents argue that such do not warrant the nullification of martial law and the suspension of the privilege of the writ of *habeas corpus*. Respondents assert that the issue of alleged human rights violations has been threshed out in *Lagman v. Medialdea*⁷⁰ where it was declared that "*any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding.*" In the case at bar, the Court is only tasked to determine the sufficiency of the factual basis for the extension of Proclamation No. 216 and not to rule on the veracity of the alleged human rights violations by reason of the implementation of martial law.⁷¹

Furthermore, respondents contend that the sufficiency of the factual basis for the extension of Proclamation No. 216 and the public safety requirement are fully supported and addressed by the Department of National Defense's (DND) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao" which was presented during the joint session of Congress which showed that rebellion still persists in Mindanao on account of: (a) the Local Terrorist Rebel Groups (LTRG) which consists of Abu Sayyaf Group (ASG), Bangsamoro Islamic Freedom Fighters (BIFF), Daulah Islamiya, and other groups that have established affiliation with ISIS/DAESH; and (b) Communist Terrorist Rebel Groups

⁶⁷ *Supra* note 3 at pp. 124-125, Memorandum for Respondents.

⁶⁸ *Supra* note 2.

⁶⁹ *Supra* note 3 at pp. 126-132, Memorandum for Respondents.

⁷⁰ *Supra* note 1 at p. 173.

⁷¹ *Supra* note 3 at pp. 132-135, Memorandum for Respondents.

(CTRG) which consists of the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).⁷²

Respondents maintain that the ongoing rebellion committed by these rebel groups endangers public safety. They cited various events and factors which showed that the rebel groups posed a threat to public safety, such as: (a) 181 persons with martial law arrest warrants have remained at large; (b) recent bombings which collectively killed 16 people and injured 63 others in less than two months; (c) the ambush of Philippine Drug Enforcement Agency (PDEA) personnel who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur on October 5, 2018 which killed five persons and wounded two others; (d) radicalization activities conducted in vulnerable Muslim communities as well as recruitment of new members; and (e) continued kidnappings by ASG factions in Sulu and Basilan with seven victims remaining in captivity.⁷³

Considering these atrocities committed by the rebel groups, respondents contend that both the President and the Congress have probable cause to believe that rebellion exists in Mindanao and the same endangers public safety. The quantum of evidence required to determine the existence of rebellion is merely probable cause. Thus, the President and the Congress relying on the detailed reports submitted by the DND and the AFP inferred that: (a) there is an armed public uprising in Mindanao; (b) the purpose of which is to remove from the allegiance to the government or its laws, the territory of the Republic or any part thereof, or depriving the Chief Executive or the Legislature of any of their powers or prerogatives, and (c) public safety requires the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.⁷⁴

So too, notwithstanding the minor discrepancies in the reports as well as alleged inclusion of entries or events which were deemed not in furtherance of rebellion, the credibility of the reports cannot be doubted as these reports were duly validated and authenticated in accordance with military procedure which are akin to entries in official records by a public officer which, under the law, enjoy the presumption as *prima facie* evidence of the facts stated therein.⁷⁵

Lastly, respondents avow that the Court is not authorized to issue an injunctive writ under Section 18, Article VII of the 1987 Constitution. The jurisdiction of the Court is limited only to the determination of the sufficiency of factual basis of the extension of Proclamation No. 216. Even assuming that this Court has the power to issue an injunctive writ, respondents contend that petitioners failed to establish their right to a temporary restraining order or injunction. Simply put, petitioners have no

⁷² *Id.* at pp. 135-138.

⁷³ *Id.* at pp. 138-151.

⁷⁴ *Id.* at pp. 151-154.

⁷⁵ *Id.*

clear and unmistakable legal right to prevent the extension of martial law in Mindanao. Petitioners also failed to prove that the alleged violations of their civil rights are directly attributed to the implementation and extension of Proclamation No. 216.

ISSUES

The Amended Advisory dated January 22, 2019 listed the following issues for resolution:

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.

1. Whether rebellion exists and persists in Mindanao.
2. Whether public safety requires the extension of martial law in Mindanao.
3. Whether the further extension of martial law is not necessary to meet the situation in Mindanao.

B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

C. Whether Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege that it may no longer be extended.

D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court *en banc*.

1. Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.

2. Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao - including the length of the period of deliberation and interpellation of the executive branch's resource persons.

E. Whether the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.

F. Whether a temporary restraining order or injunction should issue.

G. Whether a temporary restraining order or injunction should issue.⁷⁶

Before delving further into the foregoing issues, it should be mentioned that some of these have already been resolved and discussed at length in *Lagman v. Medialdea*⁷⁷ and *Lagman v. Pimentel III*.⁷⁸ In particular,

⁷⁶ Amended Advisory of the Supreme Court.

⁷⁷ *Supra* note 1.

⁷⁸ *Supra* note 2.

the issues taken up and settled by this Court in the mentioned cases are the following: a) the power of the Court to review the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof under Section 18, Article VII of the Constitution; b) the parameters for determining the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof; c) the determination of the sufficiency of the factual basis should be based on the full complement or totality of the factual basis and not on the absolute correctness of the facts stated in the Proclamation and the written report; d) the allowable standard of proof for the President, that is, probable cause; e) the power of the Congress to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*; f) the manner in which the Congress deliberated on the President's request for extension is not subject to judicial review; g) the termination of armed combat in Marawi does not conclusively indicate that rebellion ceased to exist; h) 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; and i) mere allegation of a constitutionally protected right does not automatically proceed to the issuance of an injunctive relief.

DISCUSSION

I concur with the *ponencia* in holding that RBH No. 6 extending Martial Law in the whole of Mindanao for the period of January 1, 2019 to December 31, 2019 has sufficient factual basis; that a rebellion persists in Mindanao; and public safety requires the extension of Proclamation No. 216 for another year.

The view that I embrace is anchored on Section 18, Article VII of the Constitution from which the Supreme Court's jurisdiction over the matter emanates:

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

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

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

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

Undoubtedly, the section obliges the Supreme Court to review 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 in an appropriate proceeding filed by any citizen. Consistent with the principle of checks and balances in our Constitution, the review we undertake herein is a check on the executive's and the legislative's separate but related powers to initiate and extend the declaration of Martial Law. This delineation of powers mapped out in Section 18 has already been settled and drawn by this Court in *Lagman v. Medialdea*⁷⁹ and enhanced further in *Lagman v. Pimentel III*.⁸⁰

In *Lagman v. Medialdea*,⁸¹ the Court firmly outlined the parameters in determining the sufficiency of the factual basis for the declaration of Martial Law: (a) actual rebellion or invasion; (b) public safety requires it; and (c) there is probable cause for the President to believe that there is actual rebellion or invasion. The Court further explained that in determining the sufficiency of the factual basis, it looks into the full complement or totality of such factual basis, thus⁸²:

In determining the sufficiency of the factual 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. Neither should the Court expect absolute correctness of

⁷⁹ *Supra* note 1.

⁸⁰ *Supra* note 2.

⁸¹ *Supra* note 1 at p. 184.

⁸² *Id.* at pp. 179-180 citing the Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526, 565-619 (2012).

the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to “immediately put an end to the root cause of the emergency.” Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment, as appears to be the case here. (Emphasis mine)

The central matter of contention in these cases is the propriety of the third extension of Martial Law from January 1, 2019 to December 31, 2019. Based on the letter of the President to Congress requesting for a third extension, and the accompanying letters of the Secretary of National Defense, the AFP Chief of Staff, and the PNP Director General addressed to the President, I find that respondents have sufficiently established the existence and persistence of an actual rebellion and that public safety requires the third extension of Proclamation No. 216.

Concededly, there were several inconsistencies and/or inaccuracies in the written reports submitted by the DND and the AFP to the President. Nevertheless, these statistical outliers are not enough to invalidate the extension of Proclamation No. 216 considering that there were other facts in the written reports which support the conclusion that there is actual rebellion which persists and that public safety requires said extension. Besides, absolute accuracy or correctness of all the information in the written reports is not required in order for the President to extend Proclamation No. 216 for to do so would unduly hamper the President's power to respond to an urgent situation. Simply put, accuracy is not equivalent to sufficiency. As sensibly held in *Lagman v. Medialdea*⁸³:

Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances

⁸³ *Id.*

obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to “immediately put an end to the root cause of the emergency.” Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

This Court need not delve into the alleged inconsistencies and/or inaccuracies but on the totality of the factual basis which necessitates the extension of Proclamation No. 216. Notably, respondents cited the following incidents and/or factors for the extension of Martial Law: (a) the various bombing incidents committed by various terrorist groups that resulted in civilian casualties such as (1) the Lamitan Bombing on July 31, 2018 that killed 11 individuals and wounded 10 others, (2) the two Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five casualties and wounded 45 individuals, and (3) the Barangay Apopong, General Santos City IED explosion on September 16, 2018 that left eight individuals, including a three-year old child, wounded; (b) the kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (c) at least 342 violent incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (d) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhP156,000,000.00); and (e) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others. On the whole, I find these cited incidents more than sufficient factual bases for the President to request the Congress for the third extension of Proclamation No. 216, this time from January 1, 2019 to December 31, 2019.⁸⁴

Relevantly, the intelligence division of the AFP (OJ2) explained the process of validation of information:

The Office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of

⁸⁴ *Supra* note 3, pp. 114-115, 135-151, Memorandum for Respondents.

the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an operational methodology employed by the military in gathering information.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, *i.e.*, they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called 'spot reports,' they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through 'progress reports' and detailed 'special reports.'⁸⁵

The foregoing explanation adequately answers the question, at least with regard to the process of validation of information pertaining to the recorded incidents in Mindanao during Martial Law in that island. To reiterate, and consistent with *Lagman v. Medialdea*,⁸⁶ accuracy is not required; neither is it equal to sufficiency.

In fact, during the plenary proceeding of the Joint Session of Congress regarding the third extension, figures were cited and actual experiences were described which fully bolstered respondents' position that the imposition of Martial Law in Mindanao ought to be extended. The following pertinent details were mentioned:

E.S. MEDIALDEA.

X X X X

The President, in calling upon the Congress to extend Proclamation No. 216 has observed, among others, the following:

The remnants of the local terrorist groups composed of the Abu Sayyaf group and Daulah Islamiya have continued with their political thrust of establishing a wilayah and the Philippines, as part of Daesh, pretended global caliphate.

On the other hand, the so called Bangsamoro Islamic Freedom Fighters have remained adamant in their pursuit of establishing an

⁸⁵ *Supra* note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

⁸⁶ *Supra* note 1 at p. 179.

independent Islamic State. These complications are further worsened by the presence of other foreign terrorist elements who, despite differences in ideologies, share the same purpose of overthrowing our government.

X X X X

The communist terrorist groups compose of the Communist Party of the Philippines, the National Democratic Front, and the New People's Army have carried on their armed struggle as part of their political aim to overthrow this government and supplant the same with communist rule. They commit armed hostilities against the people and displayed blatant, contiguous, and resolute defiance against the duly constituted government authorities.

X X X X

LT. GEN. MADRIGAL. Your Honor, Sir, based on the current – our PSR, Sir, the number of the ASG at this point is – number is about 424, with 254 firearms; the BIFF 264, with 254 firearms; Daulah Islamiyah 111, with 91 firearms; and the communist terrorist group of 1,636 or a total of 2,435, Your Honor.

REP. LAGMAN. And what are the basis for those figures?

LT. GEN. MADRIGAL. It's the deliberation, Your Honor, by the joint intelligence community, Your Honor.

X X X X

REP. CAGAS.

X X X X

While there had been considerable progress in addressing rebellion in the region, as well as promoting its overall security and peace and order situation, the threat of national security posed by rebel groups remain clear and present in the region. There had been bombings in Sultan Kudarat in August and in Basilan in July, and last month, armed men believed to be members of the communist New People's Army set fire to three dump trucks in a small village in my district. Those dump trucks had been used to work on a road project linking the municipality of Magsaysay to the town of Matanao.

The attack came barely a month after military officials said in a statement that the NPA forces in the province had already weakened. Clearly, the attack is NPA's way of sending the government a message that they are still a strong and brute force, and that they are not ready to back down.⁸⁷

It is also worthy to note that the President, through his fact-finding capabilities, has access to confidential information which may be shared to and relied upon by the Court in determining the sufficiency of the factual

⁸⁷ Transcript of Plenary Proceedings of Joint Session of Congress on the extension of Martial Law in Mindanao from January 1, 2019 to December 31, 2019 dated December 12, 2018, pp. 14-15, 27 and 134.

basis for the extension of Proclamation No. 216. To be sure, this is not gossamer information. After all, such information underwent intelligence affirmation by the military outfit best equipped to filter the same, the Office of the Deputy Chief of Staff for Intelligence, J2. The President, however, is not expected to completely validate all the information he received before he can request for the extension of martial law. He needs only to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.⁸⁸

The quantum of evidence that the President needs to satisfy in order to declare martial law and suspend the privilege of the writ of *habeas corpus* and extend the same is probable cause. Probable cause does not require absolute truth.⁸⁹ It has been defined as a “*set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.*”⁹⁰ This Court’s power to review, therefore, is limited only to the examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether or not the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ.⁹¹ In holding so, I should need only to point to the soundness and sensibility of our prior ruling in *Lagman v. Medialdea*⁹² where it was held that the Court does not need to satisfy itself that the President’s decision is correct, rather it only needs to determine whether the President acted arbitrarily.⁹³

Moreover, I cannot agree to the proposition that certain fundamental precepts in administrative fact-finding are applicable in the cases at bar. Such a proposal confuses the parameters and scope of the investigatory powers of the military and police in determining threats to national security and public safety.

There is no dissension on my end as to the exposition of *Ang Tibay v. Court of Industrial Relations*,⁹⁴ relative to fundamental precepts in administrative fact-finding investigations or proceedings. However, these tenets cannot be made to apply to recommendations made by the military and the police to the President, in relation to its fact-finding inquiries which establishes the positive threat to national security and public safety posed in Mindanao. The investigating functions of the military and the police do not endow them with quasi-judicial powers requiring them to make a finding of substantial evidence in each of their investigations.

⁸⁸ G.R. Nos. 231658, 231771 & 231774 (Resolution), December 5, 2017.

⁸⁹ *Id.*

⁹⁰ *Lagman v. Medialdea*, *supra* note 1 at p. 193.

⁹¹ *Id.* at p. 182.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ 69 Phil. 635 (1940).

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Thus, I cite again the AFP's clarification on certain discrepancies noted by some of my Colleagues with regard to the data provided by the Office of the Deputy Chief of Staff for Intelligence, J2, and which were raised during the oral arguments:

The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an operational methodology employed by the military in gathering information.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, *i.e.*, they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports."⁹⁵ (Emphasis supplied.)

It is my view that the nature of the evidence that support the findings established out of this investigatory power, which is essentially the function of the military and police, is not substantial evidence, which is the norm in administrative cases. Indeed, in a Section 18 review of the sufficiency of the factual basis for the declaration of martial law, the President need only find probable cause for the existence of rebellion (or invasion) and that the declaration of martial law is required by public safety.⁹⁶

To emphasize the distinction, I refer to the ruling in *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*⁹⁷ which distinguished between a purely investigative body as the Anti-Money Laundering Council (AMLC) and that bestowed with quasi-judicial powers. In that case, the Court ruled that the AMLC's initial determination of whether certain activities are constitutive of anti-money laundering offenses

⁹⁵ *Supra* note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

⁹⁶ *Lagman v. Pimentel III*, *supra* note 2.

⁹⁷ 802 Phil. 314 (2016).

do not make it into a quasi-judicial body which must comply with the precepts of due process at that stage.

Here, the military and the police, performed their function of providing intelligence reports resulting from their investigations, to the President, the Commander-in-Chief. Although these reports may have contained discrepancies, the President, in his discretion, found probable cause to believe that the rebellion in Mindanao is ongoing and that public safety is endangered, thereby requiring him to request for the further extension of Martial Law in Mindanao for another year.

Thus, I find that the President's factual basis to further extend Proclamation No. 216 is grounded on validated confidential information which were lifted from ground level activities and intelligence reports gathered by the military. These validated incidents and circumstances encountered by the military in the area necessitate the extension of Proclamation No. 216 in Mindanao.

In exercising its power to review the sufficiency of the factual basis for the declaration and/or extension of Martial Law, this Court should use as a guide known and validated incident reports from the military and the police. It cannot, however, replace with its own perceptions and recommendations the actual experiences and encounters of the military, especially for those on the ground or actually stationed in Mindanao where all the attacks or threats are taking place. It would be presumptuous for us to suggest otherwise given that we are not directly affected and do not see firsthand the threats and attacks against, not only to the government, but also the innocent civilians. Likewise, I cannot volunteer our own factual findings since this Court does not have the means nor resources to actually verify the details of each encounter or threat. In fact, the Court would still need to refer back to the military's intelligence reports as they are the primary source of information in the first place. It must be stressed that in the case of *Lagman v. Medialdea*,⁹⁸ this Court already held that even the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment.⁹⁹

⁹⁸ *Supra* note 1.

⁹⁹ II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus belli* for the suspension of the privilege of the writ of *habeas corpus*. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.

MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.**

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence of documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. **It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ.** After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a

The continued threats to the country's security posed by the rebels, as supported by the data given by the military and evidenced by the recent bombings or attacks in different parts of Mindanao definitively establish that rebellion still persists. For instance, the bombing in Jolo, Sulu,¹⁰⁰ despite the declaration of martial law in the area, left a number of people dead and wounded. An incident like this, and everything and anything similar, simply cannot go unnoticed and not addressed. Plainly, in light of the threats and attacks, there is no doubt that public safety requires the continued implementation of martial law over the region. There is a real and imminent threat which needs to be addressed given that life and property are at stake.

Second. The extension of Proclamation No. 216 is categorically within the powers of Congress and is shorn up by the ruling in *Lagman v. Pimentel III*.¹⁰¹

We need not look beyond Section 18 which clearly grants unto Congress the power to shorten or extend the President's proclamation of Martial Law or suspension of the privilege of the writ of *habeas corpus*, the pertinent part of which provides that:

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 supplied.)

In *Lagman v. Pimentel III*,¹⁰² the Court interpreted that provision of Section 18 and ruled that Congress has the power to approve any extension of the proclamation of martial law, as long as it is under the President's initiative, and falling within the set parameters as basis for the extension. *Lagman v. Pimentel III*¹⁰³ held that by approving the extension of martial law, Congress and the President performed a "joint executive and legislative act" or "collective judgment."

justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.

MR. NATIVIDAD. As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?

MR. PADILLA. Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document because after all, we are restricting the period to only 60 days and further we are giving the Congress or the Senate the right or the power to revoke, reduce, or extend its period.

¹⁰⁰ See: Twin Blasts Hit Jolo Cathedral; At Least 20 Dead, available at: <https://news.mb.com.ph/2019/01/27/twin-blasts-hit-jolo-cathedral-at-least-20-dead/> (last accessed February 15, 2019).

¹⁰¹ *Supra* note 2.

¹⁰² *Id.*

¹⁰³ *Id.*

More importantly, the proviso which declares that “[U]pon 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” is silent on the number of times Congress may extend the effectivity of martial law as well as its duration. Evidently, Congress is vested with the discretion to determine the duration of and the number of extensions of the martial law.

The view that I take herein is limned by the deliberations of the Constitutional Commission on the 1987 Constitution which gave Congress the power to determine the frequency and duration of the extension for as long as the determinative factors, specifically, the invasion or rebellion persists and public safety requirement, are present, *viz.*:

MR. PADILLA. According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is essentially an executive act. If that be so, and especially under the following clause: “if the invasion or rebellion shall persist and public safety requires it,” I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

FR. BERNAS. I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

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 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.**¹⁰⁴ (Emphasis mine)

Clearly, the framers of the Constitution fitted Congress with enough flexibility to determine the duration of the extension without prejudice to the President’s request for another extension. This is only logical and proper considering that the amount of time necessary to quell a rebellion cannot be measured with mathematical accuracy, definitiveness or even finality.

Third. This Court, in *Lagman v. Pimentel III*,¹⁰⁵ already ruled on the issue of the manner by which Congress deliberates on the President’s request for extension, which issue is not subject to judicial review. Indeed, “the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation.”¹⁰⁶ Upon evaluation, the petitioners

¹⁰⁴ *Lagman v. Pimentel III*, *id.* citing Record of the Constitutional Commission (1986), pp. 508-516.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* citing *Pimentel, Jr. v. Senate Committee of the Whole*, 660 Phil. 202 (2011) and *Arroyo v. De Venecia*, 343 Phil. 42 (1997).

unfortunately failed to provide evidence in order to demonstrate to this Court how Congress conducted its joint session in a manner which contradicted the Constitution or its own rules.

Hence, there is no merit in petitioners' contention that the members of the Congress were given merely a short period of time to discuss and explain their arguments before the voting to extend Proclamation No. 216. The motivations of each member of Congress and the duration on which they deliberated on the President's request for a third extension are political questions which the Court need not rule on. Simply put, Congress, as a body, performed its functions within the ambit of the Constitution and the authority granted therein.

Fourth. Despite the cessation of the *Marawi* siege, Proclamation No. 216 has not become *functus officio*.

This Court declared in *Lagman v. Pimentel III*¹⁰⁷ that the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It bears stressing that the situation in Mindanao involves that of an asymmetric war which is defined as a “*warfare between two opposing forces which differ greatly in military power and which typically involves the use of unconventional weapons and tactics, such as but not limited to hit-and-run ambush and bombings to inflict casualties while minimizing their own risks.*”¹⁰⁸

During the oral arguments, General Benjamin R. Madrigal, Jr, the AFP Chief of Staff, expounded on the concept of an asymmetric war, to wit:

ASSOCIATE JUSTICE HERNANDO:

I'm jumping off from what Justice Jardeleza has started from and this is on the basis of the statement of Secretary Lorenzana before Congress that there is a need to at least degrade the extent of combat that's taking place thirty percent before PNP as a law enforcement agency can come into the picture. I just want to ask this just for my perspective to be validated. I think that that thirty percent degradation is from the view point of a war that is asymmetric because what government is waging against these rebels is not a general or a conventional war rather it's an asymmetric war. And that is because we have a standing army that numbers 98,000 as of last count with 120,000 as reservists. And when we compare that number to the rebels, I'm very sure that their number is very much less than that and which is why I say that what government is waging against these rebels is an asymmetric war, not a symmetrical or conventional war. So that thirty percent, General Madrigal, is from the prospective of an asymmetric war?

GENERAL MADRIGAL:

Your Honor, that's why we have included as part of the parameters the level of influence specially on the affected barangays because the

¹⁰⁷ *Id.*

¹⁰⁸ Asymmetric Warfare, available at <https://www.merriam-webster.com/dictionary/asymmetric%20warfare> (last accessed February 15, 2019).

number we are referring to, the 1,600 or so regulars are still supported by the support system. We call it the underground mass organization; they call it the *Sangay ng Partido sa Lokalidad* or party members in the locality and *Demolisyon Bayan* or the armed militias in the barangay. So these are all part of the overall enemy capability as far as the CPP-NPA that we are addressing, not only the regular armed groups but also the support system. In fact we focus so much on the support system in the firm belief that it will be very easy to address armed groups if they do not have the support of the community.¹⁰⁹

Plainly, even with the end of the Marawi siege, rebellion persists as confirmed by the various validated reported incidents submitted by the military such as bombing incidents, kidnapping episodes and other atrocities. In addition, modern day rebellion need not take place in the battlefield of the parties' own choosing. It may also include underground propaganda, recruitment, procurement of arms and raising of funds which are conducted far from the battle fronts. As held in *Aquino, Jr. v. Ponce Enrile*¹¹⁰:

In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at the time. Many of the facts and events recited in detail in the different 'Whereases' of the proclamation are of common knowledge. The state of rebellion continues up to the present. **The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts.** They cannot be counteracted effectively unless recognized and dealt with in that context. (Emphasis supplied.)

The *Lagman* and *Bayan Muna* petitions also raised the argument that the rebel group identified to be behind the rebellion in the initial proclamation of Martial Law should be the same rebel group that is foisting the rebellion for which the third extension is being sought by the Commander-in-Chief. This is unfounded. For one, this is tantamount to imposing a limitation which is not found in Section 18, Article VII or envisioned by the framers of the Constitution. To be sure, Section 18, Article

¹⁰⁹ Transcript of Stenographic Notes taken during the hearing of the case at bench on January 29, 2019, pp. 90-91.

¹¹⁰ 158-A Phil. 1, 48-49 (1974).


VII did not in any manner require the President to identify or specify in the initial proclamation the particular rebel group that is mounting the rebellion. For another, this would result into an absurd situation wherein the President might as well be required to issue another proclamation or request for an extension, each time that a new rebel group is identified to be behind the rebellion, and which rebel group was not mentioned or included in the initial proclamation of the President.

Thus, I hasten to add that it is quite absurd to state that with the cessation of the *Marawi* siege and the so-called end of the Maute rebellion, Proclamation No. 216 has become *functus officio*. To put the issue in its proper perspective, Proclamation No. 216 indeed referred mainly to the Maute group. However, it must also be pointed out that Proclamation No. 216 did not rest exclusively on the Maute rebellion. Proclamation No. 216 was so couched in such a way that the “violent acts committed by the Maute terrorist group” was only “**part of the reasons** for the issuance of Proclamation No. 55” which, in turn, referred to other “armed lawless groups,” as well as “private armies and local warlords, bandits and criminal syndicates, terrorist groups and religious extremists.”

In any event, the fact that the Maute group had been vanquished does not mean that the rebellion in Mindanao has been finally quelled; neither does it prohibit the extension of the initial or original proclamation of Martial Law. To my mind, as long as the rebellion persists and there is an undeniable threat to public safety, regardless of whoever or whichever group is waging the same, the original or initial declaration of martial law, or even its subsequent extension, would stand firmly on constitutional moorings. The lengthening of martial law should not depend on the particular group mentioned in the Proclamation; rather, it should rest on the fact that there is sufficient basis that rebellion still exists and that public safety requires the same. The qualifying factors must be the very existence of rebellion or invasion and threat to public safety. Significantly enough, Proclamation No. 216 did not exclusively refer to the Maute rebellion; “other rebel groups” were clearly referenced therein.

In fine, based on the present and existing factual milieu in Mindanao as verified by validated incident reports, I find that there is sufficient factual basis to extend the period of martial law and the suspension of the privilege of the writ of *habeas corpus* a third time, specifically from January 1, 2019 until December 31, 2019. The totality of the factual circumstances, coupled with Congress’ power to determine the duration, necessitates in all respects the third extension of Martial Law in Mindanao.

ACCORDINGLY, I vote to **DISMISS** the petitions and **DECLARE CONSTITUTIONAL** Resolution of Both Houses No. 6.



RAMON PAUL L. HERNANDO

Associate Justice