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G.R. No. 243522 – REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAUNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE AND ARLENE “KAKA” J. BAG-AO, *Petitioners*, v. HON. SALVADOR MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; GEN. BENJAMIN MADRIGAL, JR., CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR; HON. BENJAMIN E. DIOKNO, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, RESPECTIVELY REPRESENTED BY. HON. SPEAKER GLORIA MACAPAGAL-ARROYO AND HON. SENATE PRESIDENT VICENTE C. SOTTO, III, *Respondents*.

G.R. No. 243677 – BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN’S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS REPRESENTATIVES ANTONIO L. TINIO AND FRANCE L. CASTRO AND KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, *Petitioners*, v. PRESIDENT RODRIGO R. DUTERTE, CONGRESS OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III AND HOUSE SPEAKER GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF LIEUTENANT GENERAL BENJAMIN MADRIGAL, JR., PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL OSCAR DAVID ALBAYALDE, *Respondents*.

G.R. No. 243745 – 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, *Petitioners*, v. SENATE OF THE PHILIPPINES (REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III), HOUSE OF REPRESENTATIVES (REPRESENTED BY SPEAKER GLORIA MACAPAGAL-ARROYO), EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY EDUARDO M. AÑO, ARMED



THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. BENJAMIN R. MADRIGAL, JR., PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL OSCAR D. ALBAYALDE, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,
Respondents.

G.R. No. 243797 – RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY AND RORELYN MANDACAWAN, Petitioners, v. THE SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT VICENTE C. SOTTO III, THE HOUSE OF REPRESENTATIVES, REPRESENTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES GLORIA MACAPAGAL-ARROYO, THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL, PHILIPPINE NATIONAL POLICE, AND ALL PERSONS ACTING UNDER THEIR CONTROL, DIRECTION, INSTRUCTION, AND/OR SUPERVISION,
Respondents.

Promulgated:
February 19, 2019

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DISSENTING OPINION

*Sapere aude.*¹
-Kant

LEONEN, J.:

I dissent.

I continue to reiterate the points that I have already raised in my dissents in *Padilla et al. v. Congress*,² *Lagman, et al. v. Medialdea, et. al.*,³ and *Lagman, et al. v. Pimentel III, et al.*⁴ This is the third one-year extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* over the entire Mindanao.

¹ Dare to know. Alternatively, dare to think for yourself. Immanuel Kant, *An Answer to the Question: What is enlightenment* (1784).

² G.R. Nos. 231671 and 231694, July 25, 2017, 832 SCRA 282 [Per J. Leonardo-De Castro, En Banc].

³ G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

⁴ G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

I cannot join the majority's increasing judicial appeasement of the President's unconstitutional exercise of his commander-in-chief powers. Allowing this new extension amounts to an abdication of this Court's duty enshrined in the Constitution. With this fourth accommodation, we have become an enfeebled Supreme Court, far from what our fundamental law requires of us when the President exercises his commander-in-chief powers. What the majority has done disappoints a better reading of history. It all but removes the constitutional protections against the rise of another authoritarian.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* are not simple law enforcement measures. They are intended to be used only under the most exigent circumstances where the State's existence already drifts between life and death. The imminence of such a possibility must be clear, and should be the product of reasonable inferences from facts which are clear, proven, consistent, and not contradictory. They are not to be exercised for any kind of rebellion except that which is close to or at the verge of success. Anything less should be constitutionally addressed with law enforcement or by the President's power to call out the armed forces.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* are not intended to be psychological measures to impose fear on our citizens. They are no substitute for effective, efficient, and professional police action.

These powers of the commander-in-chief are constitutional options of last resort as they undermine the balance of democratic deliberation and pragmatic action embedded in our fundamental law. They are meant as temporary measures which will expire with clear achievable goals. Their necessity must be demonstrable. The kinds of powers to be exercised should be transparent and legible.

I do not see Proclamation No. 216 and all of its extensions as having passed the stringent requirements in our fundamental law.

I

On May 23, 2017, spurred by the Maute Group's attack on Marawi City, President Rodrigo R. Duterte (President Duterte) issued Proclamation No. 216 (the Proclamation), which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in Mindanao for 60 days. On May 25, 2017, the President submitted a Report to Congress detailing the factual basis of the Proclamation. Representatives from the Executive Department, military, and police also conducted briefings before

the Senate and the House of Representatives.⁵ Shortly after, the Senate issued P.S. Resolution No. 388⁶ supporting the Proclamation. For its part, the House of Representatives issued House Resolution No. 1050.⁷

Three (3) separate Petitions were filed against the Proclamation, questioning the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*, which this Court dismissed in *Lagman, et al. v. Medialdea, et al.*⁸

The majority in *Lagman, et al. v. Medialdea, et al.* stressed that in reviewing the sufficiency of factual basis of the martial law declaration or suspension of the privilege of the writ of *habeas corpus*, this Court could not intrude upon the President's judgment, over which he should avail of his calibrated powers in a given situation. The majority declared that there was sufficient factual basis for the Proclamation's issuance, stating that it should view the totality of the factual basis as presented to the President, without expecting him to verify the "absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation."⁹ It emphasized that in determining the existence of rebellion, the President only needed probable cause "that more likely than not[,] a rebellion was committed or is being committed."¹⁰

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I insisted that, with our nation's history with martial law, this Court must be more stringent, more precise, and more vigilant in performing its constitutional duty to review the sufficiency of the factual basis for the martial law declaration.

At the outset, the government's designation of the Maute Group as rebels is erroneous. The group neither had the numbers nor the sophistication necessary to hold ground in Marawi. It did not seek to control the centers of governance. Its ideology, inspired by the extremist views of Salafi Jihadism, could not sway the local community to take up arms and overwhelm the local and national government. During the Marawi siege, local terrorist groups acted not to control seats of governance, but to slow down the advance of government forces and facilitate their members'

⁵ *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 132 [Per J. Del Castillo, En Banc].

⁶ Resolution Expressing the Sense Of The Senate, Supporting Proclamation No. 216 Dated May 23, 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao' and Finding No Cause to Revoke the Same available at <http://www.senate.gov.ph/lisdata/26134224711.pdf>. Accessed February 15, 2019.

⁷ Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it Finds No Reason to Revoke Proclamation No. 216 Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" available at http://www.congress.gov.ph/legisdocs/basic_17/HR01050.pdf. Accessed February 15, 2019.

⁸ *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

⁹ Id. at 194.

¹⁰ Id. at 184.

escapes. They committed atrocities to establish their terrorist credentials and sow fear.¹¹

Terrorists and terrorism cannot be neutralized through the declaration of martial law. Counteracting violent extremism calls for thoughtful action, along with “patience, community participation, precision, and a sophisticated strategy that respects rights, and at the same time uses force decisively at the right time and in the right way.”¹²

As for the sufficiency of the factual bases surrounding the issuance of the Proclamation, I pointed out that the government’s presentation of facts was utterly wanting. The factual bases cited were primarily allegations, with the government deliberately failing to present their information’s sources and their vetting process. Furthermore, some of the factual bases cited in the Proclamation would not lead to a conclusion that rebels were impelled by political motives like overthrowing the government or wresting government control over a portion of Mindanao. Thus, the facts cited as bases for the Proclamation show acts of terrorism, not necessarily rebellion.

In his dissent in *Lagman, et al. v. Medialdea, et al.*, Associate Justice Antonio T. Carpio (Associate Justice Carpio) stated that the sufficiency of the factual basis for the Proclamation must be determined at the time it was proclaimed, with immediately preceding or contemporaneous events tending to show probable cause that factual basis existed for the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. Subsequent events that immediately take place would then serve as confirmation on the existence of probable cause.¹³

Associate Justice Carpio opined that while there was probable cause for President Duterte to believe that there was a need to impose martial law in Marawi City, there was no similar probable cause to include the entirety of Mindanao within the Proclamation’s coverage. He pointed out that the hostilities were confined in Marawi City, and the Presidents’ Report had no evidence to show that there was actual rebellion outside of it. Moreover, the Maute Group’s spokesperson announced that the group intended to implement Shariah Law in the city, but mentioned no other place in Mindanao. Associate Justice Carpio asserted that the Maute Group’s capability to sow terror, without an actual rebellion or invasion, was not a ground to declare martial law or suspend the privilege of the writ of *habeas corpus*.¹⁴

¹¹ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 490 [Per J. Del Castillo, En Banc].

¹² Id. at 602.

¹³ Id. at 304.

¹⁴ Id. at 308.

Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa), concurring with then Chief Justice Maria Lourdes Sereno and Associate Justice Carpio, stated that there was probable cause for the President to believe that actual rebellion and public safety required the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Nonetheless, there was a dearth of evidence to show that actual rebellion existed outside of Marawi City. He stressed that, on the chance that Maute Group members may flee to other parts of Mindanao, this does not merit including the whole Mindanao in the Proclamation. Instead, “[t]hey can be pursued by the State under the concept of rebellion being a continuing crime, even without martial law.”¹⁵

On July 18, 2017,¹⁶ President Duterte again requested Congress to extend the Proclamation’s effectivity to December 31, 2017, as it was set to expire on July 22, 2017. He claimed that after reading the reports and recommendations of the Department of National Defense Secretary, Chief of Staff of the Armed Forces of the Philippines (Armed Forces), and the Chief of the Philippine National Police, he believed that the rebellion in Mindanao would not be quelled by July 22, 2017. His letter to Congress reported that 379 of some 600 Da’watul Islamiyah Waliyatul Masriq rebels had been neutralized, and 329 firearms recovered. Further, operations against other rebel groups¹⁷ were successful and the checkpoints led to the arrest of 66 individuals associated with it. Nonetheless, he stated that despite the armed forces’ achievements, rebellion persisted not only from the Maute Group, but from the other rebel groups as well:

The DIWM DAESH-inspired group continues to offer armed resistance in Marawi City and other parts of Western and Central Mindanao. Parts of Marawi City, comprising around four (4) barangays, are still under the control of the rebels. The city’s commercial districts, where about 800 structures are located, are found within these areas. The rebels have likewise holed up in mosques, *madrasahs*, and hospitals, thereby restricting the government troops’ offensive movements, as they have to consider the safety of civilian hostages and trapped residents nearby.

The DIWM DAESH-inspired group’s leadership largely remains intact despite the considerable decline in the number of rebels fighting in the main battle area. Moreover, terrorist groups from various parts of Mindanao espousing or sympathizing with the same ideology remain active and are ready to reinforce Isnilon Hapilon’s group or launch diversionary attacks and similar uprisings elsewhere. Key leaders of the rebellion, namely, Hapilon, the Maute brothers Abdullah, Omarkhayam, and Abdulasiz *alias* Madie, and foreign terrorist Mahmud bin Ahmad

¹⁵ Id. at 659.

¹⁶ Mara Cepeda, *READ: Duterte’s letter to Congress asking for martial law extension*, RAPPLER, July 19 2017, <<https://www.rappler.com/nation/176084-document-duterte-letter-congress-martial-law-extension>> [Accessed on February 15, 2019].

¹⁷ The other rebel groups mentioned were the Bangsamoro Islamic Freedom Fighters (BIFF), Abu Sayyaf Group (ASG) and New People’s Army (NPA).

remain at large. Despite the arrest of key personalities like Ominta Maute, support structures have been continuously sustained, with the emergence of such new replacements as Adel Sarip Maute *alias* Monai, who was recently apprehended in Taguig City, Metro Manila.

Of the two hundred seventy-nine (279) personalities identified and ordered to be arrested by the Martial Law Administrator under Arrest Order Nos. 1 and 2 dated 29 May 2017 and 05 June 2017, respectively, only twelve (12) have been either neutralized or arrested. The AFP is further set to recommend the issuance of another arrest order for some two hundred (200) other individuals. There are also indications that the DIWM rebels are vigorously recruiting from other lawless armed groups, terrorist elements, and their families and supporters, to add to their ranks and replace those who have been killed or arrested.

The rebels have been found to possess high-powered and military-grade weapons such as rocket-propelled grenades and a large supply of ammunition. There have been reported entries of reinforcements, weapons, ammunitions, and other logistical supplies from outside Marawi City through clandestine routes. Private armed groups and supporters of some sympathetic local politicians are likely to continue extending their assistance.

Other Islamic State-inclined armed groups (*i.e.*, ASG, AKP, and BIFF), which are capable of perpetrating atrocities and violent attacks against vulnerable targets, remain scattered in various areas in Mindanao. Several reports consistently indicate that these local terrorist groups are pursuing offensive actions and conspiring to attain their overall objective of establishing a *wilayat* or *caliphate* in Mindanao. Significantly, videos recovered from a safehouse previously occupied by DIWM rebels validate their intention to establish a *wilayat* in Marawi City and other areas of Mindanao through simultaneous armed public uprisings against the duly constituted authorities therein.¹⁸ (Emphasis in the original, citation omitted)

On July 22, 2017, in a special joint session, the Senate and the House of Representatives adopted Resolution of Both Houses No. 2¹⁹ extending the Proclamation to December 31, 2017.

On October 16, 2017, Isnilon Hapilon and Omar Maute, leaders of the Maute Group, were killed in a military assault.²⁰

On October 17, 2017, the President announced Marawi's liberation from rebel forces. He also announced the creation of a task force for

¹⁸ Letter of President Rodrigo Duterte to the Senate and the House of Representatives dated July 18, 2017 available at <https://www.rappler.com/nation/176084-document-duterte-letter-congress-martial-law-extension> (last accessed on February 15, 2019).

¹⁹ Resolution of Both Houses Extending until 31 december 2017 Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" available at http://www.congress.gov.ph/legisdocs/second_17/RBH0011.pdf. Accessed February 15, 2019.

²⁰ *TIMELINE: The Battle for Marawi*, ABS-CBN NEWS, October 17, 2017, <<https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi>> (last accessed on February 15, 2019).

Marawi's rehabilitation with an initial budget of ₱20 billion.²¹

On December 8, 2017, President Duterte requested a second extension²² from Congress. He reported that while the government forces made remarkable progress in controlling the rebellion, the adversary group's remaining members continued to recruit and train new members to fight back. He also reported additional threats from other rebel groups such as the Turaifie Group, Bangsamoro Islamic Freedom Fighters, Abu Sayyaf Group, and the New People's Army.

President Duterte wrote that National Defense Secretary Delfin N. Lorenzana (Secretary Lorenzana), as Martial Law Administrator, recommended the extension of martial law for another year "to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers."²³

During the joint session on December 13, 2017, members of Congress were only provided with the three (3) letters written by the President, General Guerrero, and Secretary Lorenzana. Each member was only allowed to interpellate resource persons for a maximum of three (3) minutes.²⁴ That same day, the Congress adopted Resolution of Both Houses No. 4,²⁵ which further extends the Proclamation from January 1, 2018 to December 31, 2018.

Four (4) consolidated Petitions were filed before this Court questioning the constitutionality of the second extension.

On February 6, 2018, *Lagman, et al. v. Pimentel III, et al.*²⁶ declared

²¹ *TIMELINE: The Battle for Marawi*, ABS-CBN NEWS, October 17, 2017, <<https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi>> (last accessed on February 15, 2019).

²² Pia Ranada, *Duterte asks Congress for 1-year martial law extension*, RAPPLER, December 11, 2017, <<https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension-mindanao>> (last accessed on February 16, 2019).

²³ Pia Ranada, *Duterte asks Congress for 1-year martial law extension*, RAPPLER, December 11, 2017, <<https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension-mindanao>> (last accessed on February 16, 2019).

²⁴ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

²⁵ Resolution of Both Houses Further Extending Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" For a Period of One (1) Year from January 1, 2018 to December 31, 2018 available at http://www.congress.gov.ph/legisdocs/second_17/RBH0014.pdf. Accessed February 15, 2019].

²⁶ G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

the sufficiency of factual basis for the President's second extension of martial law over Mindanao. It held that rebellion persisted and there was a continuing effort to rebuild the group, as reflected in the intelligence reports submitted to the President.

Lagman, et al. v. Pimentel III, et al. also stated that while the factual basis for the second extension referred to other lawless groups not in the Proclamation, the President already alluded to other lawless armed groups as participants in the Marawi siege and the Maute Group's extensive linkage with other local and foreign armed groups, which were also predisposed to wrest government control over Marawi City.

Likewise, *Lagman, et al. v. Pimentel III, et al.* explained that including the New People's Army in the factual basis for the second extension would not render it void, since the latter's aims of establishing communist rule and overthrowing the existing government are well-known.

My dissent in *Lagman, et al. v. Pimentel III, et al.* called for a stricter mode of review when evaluating the sufficiency of factual basis for the extension of martial law. The "proposal for a type of deferential factual review, is nothing but a reincarnation of the political question doctrine similar to that in *Aquino v. Enrile* and *Morales v. Enrile* during the darker days of martial law declared by Ferdinand E. Marcos."²⁷ I sought to persuade this Court to exercise its independence and conduct a "sober and conscientious review amid the hysteria of the moment."²⁸

Further, I have already warned that the blind acceptance of the Armed Forces and the President's factual allegations would only result in a token review, which would surrender our constitutional duty:

To establish that the factual basis for the extension of martial law is sufficient, the government has to show evidence for its factual allegations as well as the context for its inference. An enumeration of violent incidents containing nothing but the area of the incident, the type of violent incident, and the date of the incident, without its sources and the basis for its inference, does not meet the sufficiency of the factual basis to show persisting rebellion and the level of threat to public safety that will support a declaration of martial law or the suspension of the writ of *habeas corpus*.

There are two (2) *facta probanda*, or ultimate facts, necessary to establish that martial law was properly extended, namely: (1) the persistence of an actual rebellion; and (2) that public safety requires the

²⁷ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, ⁴
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>>
[Per J. Tijam, En Banc].

²⁸ Id. at 3.

extension of martial law.

Of course, no single piece of evidence can establish these ultimate facts. There must be an attempt to establish them through evidentiary facts, which must, in turn, be proved by evidence—not bare allegations, not suspicion, not conjecture.

Letters stating that rebellion persists and that public safety requires the extension of martial law do not prove the *facta probanda*. The letters only prove that the writers thereof wrote that rebellion persists and public safety requires the extension of martial law. Lists of violent incidents do not prove the *facta probanda*; they only tend to prove the *factum probans* that there were, in fact, violent incidents that occurred. But, assuming the evidence is credible to prove the *factum probans* that violent incidents have occurred, this *factum probans*, without context, is insufficient to show that rebellion persists.

We do not conflate the *factum probandum* with the *factum probans*. Muddling the two undermines the review required by the Constitution. It will lead this Court to simply accept the allegations of the government without any modicum of review.²⁹ (Emphasis in the original)

Congress' approval of the second extension was not proven to have been based on sufficient factual basis, as its members were not provided with the same intelligence information to which the President had access. More importantly, its members were not informed of the context of the provided raw data from which they could logically assess if an extension was indeed warranted. They were also not apprised of how the Armed Forces vetted the information they received.

I further highlighted that the government had already achieved the supposed target of the Proclamation, after neutralizing the Maute Group leaders and at least 920 DAESH-inspired fighters, along with the liberation of Marawi City. Even if recruitment efforts were being done to build up the decimated ranks of the Maute Group, the 537 “rebels” were no match for the hundreds and thousands of men and women in the Armed Forces and the Philippine National Police. The numbers presented and accepted by the majority was, to me, “hardly ... a decent figure that will support an extended declaration of martial law and a suspension of the writ of *habeas corpus* throughout the entire Mindanao region, and for a period of one year.”³⁰

I also raised how the majority, in their eagerness to label the law enforcement problems in Mindanao as rebellion and provide the President carte blanche authority to declare martial law, abdicated their constitutional duty to the Filipino people. I warned that their actuations and reverence of the President were not new, and were reminiscent of this Court's actions during one of the darkest episodes in Philippine history:

²⁹ Id. at 41.

³⁰ Id. at 47.

In the 1970s, there was a Court which painfully morphed into a willing accomplice to the demise of fundamental rights through tortured readings of their clear constitutional mandate in order to accommodate a strongman. What followed was one of the darkest episodes in our history. Slowly but surely, soldiers lost their professionalism. Thousands lost their freedoms. Families suffered from involuntary disappearances, torture, and summary killings. Among them are some of the petitioners in this case.

Regardless of the motives of the justices then, it was a Court that was complicit to the suffering [of] our people. It was a Court that degenerated into a willing pawn diminished by its fear of the impatience of a dictator.

The majority's decision in this case aligns us towards the same dangerous path. It erodes this Court's role as our society's legal conscience. It misleads our people that the solution to the problems of Mindanao can be solved principally with the determined use of force. It is a path to disempowerment.

Contrary to the text and spirit of the Constitution, the decision in this case provides the environment that enables the rise of an emboldened authoritarian.³¹

In his dissent in *Lagman, et al. v. Pimentel III, et al.*, Associate Justice Francis H. Jardeleza (Associate Justice Jardeleza) stated that the government failed to prove that public safety still required martial law in Mindanao. He referred to two (2) "minimum indicators of scale"³² that would meet the public safety requirements for a declaration of martial law and suspension of the writ of *habeas corpus*. These are:

. . . (1) the presence of hostile groups engaged in *actual and sustained armed hostilities* with government forces; and (2) these groups have actually *taken over, and are holding*, territory. . .³³ (Emphasis in the original)

Associate Justice Jardeleza emphasized that despite the barrage of data presented by the government to substantiate its second extension, the evidence neither reached the "minimum reasonable indicators"³⁴ nor rose to the same level of scale in Marawi City when the Proclamation was issued.

Likewise, Associate Justice Carpio stated that with the liberation of Marawi City and the end of the Maute Group's rebellion, the Proclamation

³¹ Id. at 75.

³² J. Jardeleza, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> 17 [Per J. Tijam, En Banc].

³³ Id.

³⁴ Id. at 20.

can no longer be extended. He maintained that the capability of the rebel group's remnants to sow terror or damage property is not the actual rebellion contemplated by the Constitution:

Respondents cannot rely on the *capability* of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, *capability* to rebel, *absent an actual rebellion or invasion*, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law on the basis of an imminent danger or threat would unlawfully reinstate the ground of "imminent danger" of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution.³⁵ (Emphasis in the original)

On December 4, 2018,³⁶ Secretary Lorenzana, emboldened by this Court's deferential but unconstitutional manner of review in the earlier cases, recommended a third extension of martial law and suspension of the privilege of the writ of *habeas corpus* until December 31, 2019. It was endorsed by the Department of National Defense and Chief of Staff of the Armed Forces.³⁷ He also included various resolutions and requests for the martial law extension from the Provincial and Municipal Councils, Peace and Order Councils, and Chambers of Commerce and Industry from Mindanao.

Secretary Lorenzana wrote that the operations of the Armed Forces ended the DAESH-inspired and Communist Party of the Philippines' rebellion, leading to the following gains:

1. The neutralization of 688 members of the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, and other DI-affiliated groups, and the seizure of 448 firearms;
2. The neutralization of 1,049 CNTs, and the seizure of 307 firearms;
3. The conduct of 5,020 activities by the AFP with the assistance of CAFGU Active Auxiliary units (CAA) in coordination with other agencies to insulate and secure unaffected areas, critical infrastructure, and vital installations against operations of the rebel groups;
4. The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.]³⁸

Despite the gains made, Secretary Lorenzana revealed that various

³⁵ J. Carpio, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, 11 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

³⁶ *Rollo* (G.R. No. 243522), Vol. 1, pp. 201–202. Comment, Annex 1.

³⁷ *Id.* at 208–213. Comment, Annex 2.

³⁸ *Id.* at 201–202.

rebel groups in Mindanao continued their operations against both civilians and government forces. The supposed rebel operations included the four (4) bombing incidents that killed 16 people and injured 63 within two (2) months.³⁹

Secretary Lorenzana wrote that with the extension of martial law up to December 31, 2019, the Department of National Defense hoped to:

1. Put an end to the continuing rebellion of the DAESH-inspired groups and the threat posed by the CNT through a whole-of-government approach;
2. Prevent the influx of foreign fighters, disrupt the local and international financial conduits, and neutralize the leadership of the rebel groups operating in Mindanao;
3. Secure the conduct of the 2019 mid-term elections and the Bangsamoro Plebiscite and the possible implementation of the Bangsamoro Organic Law[.]⁴⁰

On December 6, 2018,⁴¹ President Duterte wrote both houses of Congress for a further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. He referred to Secretary Lorenzana's letter to substantiate his request, and reported the following gains in quelling rebellion:

I am pleased to inform the Congress that during the Martial Law period, as extended, in Mindanao, we have achieved significant progress in putting the rebellion under control, ushering in substantial economic gains in Mindanao. In a joint security assessment report, General Carlito G. Galvez Jr., the Armed Forces of the Philippines (AFP) Chief of Staff and Martial Law Implementor, and Director-General Oscar D. Albayalde, Chief of the Philippine National Police (PNP), highlighted the following accomplishments, among others, owing to the implementation of Martial Law in Mindanao: reduction of the capabilities of different terrorist groups, particularly the neutralization of 685 members of the local terrorist groups (LTG) and 1,073 members of the communist terrorist groups (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms (more than eight thousand from January to November 2018); 19% reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; 29% reduction of terrorist acts committed by LTG in 2018 compared to 2017; and substantial decrease in crime incidence (Cotabato City – 51% reduction and Maguindanao – 38% reduction). All of these gains in security and peace and order have resulted in remarkable economic gains in Mindanao. In fact, private sectors, local and regional peace and order councils, and local government units in Mindanao are now also clamoring for a further extension of the subject proclamation and suspension.⁴²

³⁹ Id. at 201.

⁴⁰ Id. at 202.

⁴¹ Petition (G.R. No. 243522), pp. 51–55. Annex A.

⁴² Id. at 52–53.

However, President Duterte wrote that despite the government's exceptional gains against rebellion in Mindanao, intelligence reports confirmed that rebellion persisted and public safety still needed the continued imposition of martial law:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to proto 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, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. 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. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.⁴³

On December 12, 2018, the Congress, in a joint session, adopted Resolution of Both Houses No. 6,⁴⁴ again extending the Proclamation from January 1, 2019 to December 31, 2019.

⁴³ Id. at 53-54. Annex A.

⁴⁴ Id. at 56-58. Annex B.

Four (4) consolidated Petitions⁴⁵ were filed before this Court questioning the constitutionality of the third martial law extension. Among them, Rius Valle, et al.'s Petition detailed the environment of continued impunity created by the wholesale extension of martial law and suspension of the privilege of the writ of *habeas corpus*. It alleged how the military forces were blatantly targeting, intimidating, harassing, and "red tagging" teachers and students of lumad schools, as well as their families.⁴⁶

II

As I stated in my dissents in *Lagman, et al. v. Medialdea, et al.* and *Lagman, et al. v. Pimentel III, et al.*, the Constitution does not allow a vague declaration and extension of martial law without clear pronouncement of the scope and parameters of its application.

The martial law declaration has been vague from the beginning, and continues to be with each extension. The Proclamation did not provide the scope and parameters of its application. It merely declared a state of martial law in Mindanao for 60 days and suspended the privilege of the writ of *habeas corpus* for the same period.

The scope of the martial law proclamation of martial law expanded with every new issuance from its administrators. On May 30, 2017, the President issued General Order No. 1⁴⁷ (or the General Order) to implement Proclamation No. 216, which expanded the coverage of martial law to suppress all acts of rebellion *and* lawless violence in Mindanao, regardless of whether the lawless violence was related to the original hostilities in Marawi City. It also granted the Armed Forces full authority to arrest "persons and/or groups who have committed, are committing, or attempting to commit" rebellion and any other kind of lawless violence.⁴⁸

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I pointed out that the Armed Forces had insufficient guidelines to follow in implementing martial law. This is seen in its overly broad interpretation of its

⁴⁵ The petitioners were Representatives Edcel C. Lagman et al. v. Hon. Salvador C. Medialdea, Executive Secretary et al. (G.R. No. 243522), Bayan Muna Partylist Representative Carlos Isagani T. Zarate et al. v. President Rodrigo Duterte et al. (G.R. No. 243677), Christian S. Monsod et al. v. Senate of the Philippines (Represented by Senate President Vicente Sotto III) et al. (G.R. No. 243745), and Rius Valle et al. v. The Senate of the Philippines, represented by the Senate President Vicente C. Sotto III et al. (G.R. No. 243797).

⁴⁶ Memorandum (G.R. No. 243797), pp. 80–82.

⁴⁷ Implementing Proclamation No. 216 Dated 23 May 27, available at <http://www.officialgazette.gov.ph/downloads/2017/05may/20170530-GO-1-RRD.pdf>. Accessed February 17, 2019.

⁴⁸ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 492–493 [Per J. Del Castillo, En Banc].

responsibilities under martial law, which it construed to include the dismantling of the New People's Army, illegal drug syndicates, peace spoilers, other terror-linked private armed groups, and other lawless armed groups.⁴⁹ Yet, illegal drug syndicates and "peace spoilers"⁵⁰ are not covered by the concept of rebellion. The Proclamation's vagueness made their inclusion in the Operational Directive possible.

Under the Proclamation and General Order No. 1, the overly broad and undefined power accorded to the President and the Armed Forces translates to unrestricted authority, which may go against constitutional rights and guarantees.

General Order No. 1 is effectively a directive for law enforcement officers to arrest persons committing unspecified acts. It is, likewise, an implied gag order on the media, as evidenced by a directive for it "to provide full support and cooperation to attain the objectives of [the General Order]"⁵¹ and "exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel, and enable them to effectively discharge their duties and functions under [the General Order]."⁵²

In addition, the Proclamation's vagueness, along with the subsequent issuances, allowed it to evade both legislative and judicial review of the sufficiency of the factual basis surrounding it.

The lack of parameters, standards, or criteria continue to hound the third extension of martial law. The intelligence reports, which became the basis for the third extension of martial law, cite a gamut of criminal acts committed in Mindanao from January 1, 2018 to November 30, 2018. These include ambushes, arson, firefighting/attack, grenade throwing, harassment, improvised explosive device or landmine explosion, kidnapping, attempted kidnapping, liquidation, murder, and robbery/ hold-up, among others.⁵³

The government maintained that the criminal acts were committed "relative to the continuing rebellion being waged by the [local terrorist and rebel groups]";⁵⁴ however, its conclusion was not supported by its own intelligence reports. Perpetrators were not identified or, if identified, no motive was attributed behind their criminal acts.⁵⁵

⁴⁹ Id. at 493.

⁵⁰ Id.

⁵¹ General Order No. 1 (2017), sec. 6.

⁵² General Order No. 1 (2017), sec. 6.

⁵³ *Rollo* (G.R. No. 243522, Vol. 2, pp. 826–827. OSG Memorandum.

⁵⁴ Id. at 826.

⁵⁵ Ponencia, p. 19.

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The calculated vagueness behind the Proclamation leads to its broad and indiscriminate application, empowering law enforcement officers with unbridled discretion to carry out its operations against unspecified enemies.

Indeed, the Proclamation has created dubious and imaginary monsters, and enforcers of the law will not hesitate to slay them with the great and limitless power bestowed upon them.

III

Even the measurable targets of martial law's implementation have been unclear since its initial proclamation in 2017. Worse, the government has been reluctant to set forth any targets, and pronouncements on its targets have been inconsistent.

Just as the vagueness of what powers to exercise leads to unduly broad powers, the absence of any clear target leads to the probability of indefinite and repeated extensions. This is based on illegal activities still occurring in places in Mindanao despite the subsistence of martial law.

In my dissent in *Lagman, et al. v. Pimentel III, et al.*, I explained why the government must define its targets for the martial law extension. Without this articulation, this Court cannot review the sufficiency of the factual basis for the extension.

I noted that according to the Chief of Staff's Operational Directive submitted in *Lagman, et al. v. Medialdea, et al.*, the operation's purpose was to ensure that normalcy be restored, and safety and security be assured throughout Mindanao within 60 days. Although the operation's key tasks included destroying local terrorist groups and dismantling the New People's Army, it did not state what would constitute doing so.

In the second, longer extension, the government still failed to define its targets. During the oral arguments, General Rey Leonardo Guerrero only named quelling the rebellion as the objective of the then one (1)-year extension of martial law. Yet, he could not explain what it meant to "quell the rebellion"⁵⁶ or how much degradation of forces would be enough to consider the rebellion quelled.

⁵⁶ See J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

As of the beginning of the oral arguments for the latest martial law extension, there were still no mention of any targets or projected timelines, or any measure to determine whether the rebellion had been successfully quelled:

ASSOCIATE JUSTICE CAGUIOA:

... Okay, my last question is this, is there a projected or estimated timeline when government forces will be able to put an end to the, what you say is a persisting rebellion in Mindanao, is there a timeline?

MAJOR GENERAL LORENZO:

We have targets in our campaign, targeting the different groups, Your Honor, so what I can say at this point is, it is dependent on the accomplishment or attainment of the target goals set in the different campaigns that we are implementing, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Okay, at which point in time from your perspective can you say that rebellion would have been quelled? At which point in time when the last rebel is dead? At which point in time do we say rebellion is done, is no longer persisting? Just for me to understand from your point of view.

MAJOR GENERAL LORENZO:

Sir, given that question, what I could say is, it's not the killing of every single rebel out there when we can call, when we can say that rebellion no longer exist. Rather, it is the attainment of a level of security whereby the different threat groups can no longer impose their will or impose their will (sic) on the people or they are no longer effective as far as attaining their political objectives are concerned. So, we...

ASSOCIATE JUSTICE CAGUIOA:

So, until such...

MAJOR GENERAL LORENZO:

...we set certain parameters for this, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that that level of security is not attained, it is your position that rebellion continues, is that it?

MAJOR GENERAL LORENZO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that rebellion continues, martial law will continue?

MAJOR GENERAL LORENZO:

Not necessarily, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

But that is the, that was the endorsement of the Military to the President, correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.⁵⁷

Later on, Associate Justice Jardeleza coaxed from the Solicitor General a semblance of a target, and for the first time, a basis to determine whether the rebellion had been addressed enough so that public safety no longer requires a martial law extension:

JUSTICE JARDELEZA:

. . . The question I have, Mr. SolGen and the reason if you can, I can give you a time to confer with them. I would like you to look at the testimony of Secretary Lorenzana to the Congress, and I quote: "Kapag po nai-reduced iyan nang about 30% ng kanilang capability and they become law enforcement problems, then the police forces can take over without the military." Do you see it, Mr. SolGen? So I would like to give you time to show it to General Albayalde and Usec Yano. And when General Mendoza and Secretary Año are back, I'm sorry, Madrigal are back, you can show it also to them and then I have a question which you can answer after you confer with them. Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the President that martial law is over? You can confer with your clients, Mr. Solgen.

CHIEF JUSTICE BERSAMIN:


Undersecretary Yano? . . . There is an instruction or request for you to confer with the Solicitor General on the subject of that interpellation. You may join the Solicitor General.

Secretary Año, you are I think needed to confer with the Solicitor General.

Note:

After several minutes.

SOLICITOR GENERAL CALIDA:

Your Honor, we have talked with our clients and I will ask one of them to answer your question, Your Honor. 

JUSTICE JARDELEZA:

Yes, thank you, Mr. SolGen.

⁵⁷ TSN dated January 29, 2019, pp. 40-41.

GENERAL MADRIGAL:

Your Honor, I'm General Benjamin Madrigal, Jr., the Chief of Staff of the Armed Forces of the Philippines. Regarding the statement of the Secretary, that basically, Your Honor, is the military definition of destruction of the enemy. When you attain 30% not only in terms of number of the regular forces but rather the 30%, you have reduced the enemy by 30% in terms of strength, firearms, the support system, for example the Barangay affectations as well as resources, Your Honor.

JUSTICE JARDELEZA:

So I think that's very interesting, General, in effect that is what I am asking, what is the science behind the 30% and I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And no. (4) violent incidents?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

So those four, which are in your data and as presented today and as presented to the Congress. The sum total is what you call capability?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And when you degrade the capability by 30% then...?

GENERAL MADRIGAL:

By 70%, meaning, the remaining part is 30%, Your Honor.

JUSTICE JARDELEZA:

If you degrade their capability by 70% and their strength is only 30%, what is the term? You have defeated them or what?

GENERAL MADRIGAL:

We call it that, that is, that it has been brought down to level of law enforcement, Your Honor.

JUSTICE JARDELEZA:

Which means General Albayalde...

GENERAL MADRIGAL:

Can take over...

JUSTICE JARDELEZA:

...and the DILG will take over?

GENERAL MADRIGAL:

They can take the lead, Your Honor.

JUSTICE JARDELEZA:

Now, but do you have an opinion on whether then martial law should be lifted because you don't need the military anymore?

GENERAL MADRIGAL:

We will gladly recommend the lifting of martial law if we attain that, Your Honor.

JUSTICE JARDELEZA:

Thank you.

Can I have a second question to the SolGen? Again, may I ask the able staff of the SolGen to show to the SolGen Annex 1 of your, OSG Comment? I am referring to the undated letter of General Carlito G. Galvez, Jr. to the President... There is a portion there, Mr. SolGen where General Galvez says, and the beginning of the sentence is "The LTGs manpower and firepower have been reduced by..."

SOLICITOR GENERAL CALIDA:

What number, Your Honor?

JUSTICE JARDELEZA:

I think ASG Rex can point it to you.

SOLICITOR GENERAL CALIDA:

This is no. 1, Your Honor, page 3.

JUSTICE JARDELEZA:

Yes, the sentence begins, Mr. SolGen "the LTGs manpower and firepower have been reduced by..." do you see that?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.



JUSTICE JARDELEZA:

Can I complete now the sentence? It says, "the LTGs manpower, meaning the local terrorists groups, the LTGs manpower and firepower have been reduced by 62% and 45%, respectively." And the letter of General Galvez continues and, I quote: "On the other hand, the CTGs, meaning the communist terrorist groups, the NPAs, manpower and firepower have been reduced by 31% and 38%, respectively." Do you see that, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

So given that the science is supposed to be from the military point of view, degrading it by 70% in the case of the manpower of the LTGs, the degradation was 62%.

SOLICITOR GENERAL CALIDA:

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.

JUSTICE JARDELEZA:

So, Mr. SolGen, the position we would like to know from the government and please cover it in the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

JUSTICE JARDELEZA:

So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

SOLICITOR GENERAL CALIDA:

Capability.

JUSTICE JARDELEZA:

...and violent incidents so that by the end of the year we will know how much progress has been made?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

We have a deal, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Can we add capability, Your Honor, because that is what...?

JUSTICE JARDELEZA:

Well, what capability?

SOLICITOR GENERAL CALIDA:

...what Lorenzana said, Your Honor, capability.

....

JUSTICE JARDELEZA:

Well, because if you add, as what I'm saying now, as of today in your submission to the Congress and your slide today, you don't have a column called capability because as the resource person said and I thought as a layman, the military men testifying, capability is again the sum total of "gaano kadami ba 'yong kalaban, gaano 'yong firearms."

SOLICITOR GENERAL CALIDA:

And the support of the...

JUSTICE JARDELEZA:

How many barangays they control or...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...they influenced...

SOLICITOR GENERAL CALIDA:

Correct.

JUSTICE JARDELEZA:

The sum total of which is the capability to have violent incidents. So to me the four are already, or if you add the four equals capability.

SOLICITOR GENERAL CALIDA:

Okay, Your Honor. I agree.

JUSTICE JARDELEZA:

So we have a deal. That's the...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...the definition of terms. Now, Mr. SolGen, I would like to congratulate you because earlier we had a session where you were there and the petitioners' counsels were there and I believed you were able to prevail on your clients to declassify or make public your report to the Congress and I really, I'm very happy that the SolGen is able to convince his clients. So again as I said I don't know whether the Court will extend the martial law.

SOLICITOR GENERAL CALIDA:

I hope it will, Your Honor.

JUSTICE JARDELEZA:

Well, when I mean for this case, but in the event that the Court does, I will urge again the government through you, through the SolGen, to keep following the practice of submitting reports to the Congress. Because now we have a baseline. I have my own views about capability but granting everything that the government has said, and I think what we have established today is a baseline. You give us the figures, January 1, 2019, manpower plus firearms plus controlled barangays plus violent incident equals capability. And I think you have done a great service to the country by saying the report of the military to the Congress is not classified so that the people will know on a month to month basis how much progress the military and the PNP are doing. And I really hope and pray that before December 2019, that the military and the police degrade by more than 70% so that the members of the Court do not have to meet again and have another petition. Thank you very much, Mr. SolGen.⁵⁸

However, upon further interpellation, the Solicitor General admitted that this 30% target discussed with Associate Justice Jardeleza had only been developed that day. He further admitted that he could not "predict the future"⁵⁹ when it came to the President's own targets for martial law:

ASSOCIATE JUSTICE LEONEN:

I asked for the Solicitor General because I know that you are the most knowledgeable in your, with your side.

⁵⁸ TSN dated January 29, 2019, pp. 51-59.

⁵⁹ TSN dated January 29, 2019, p. 70.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Okay. When did government arrive at the 30% target that you discussed with Justice Jardeleza?

SOLICITOR GENERAL CALIDA:

Actually, I just read it this afternoon, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So, you just arrived at the goal of martial law 30% degrading only this afternoon?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And you are now binding the Commander-in-Chief? In other words, you just discussed it here in caucus?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And now you committed to Court a degradation of 70% as the goal of martial law?

SOLICITOR GENERAL CALIDA:

For this year, Your Honor.

ASSOCIATE JUSTICE LEONEN:

For this year?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And this is the position of government, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Are you binding President Rodrigo Duterte, the Commander-in-



Chief? Because I do not see him here and if you arrived at the target only now that means you are binding the President?

SOLICITOR GENERAL CALIDA:

I will explain to him what happened here and I will report to you, Your Honor.

ASSOCIATE JUSTICE LEONEN:

But I think you know the President more than I do, he has his own mind, is that not correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

He has his own goals, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And as far as all of you are concerned you are all alter egos, advisers to the President, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And therefore, you cannot commit to this Court 30%, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, because it came from the military group, Your Honor.

ASSOCIATE JUSTICE LEONEN:

More importantly, this 30% was it discussed with Congress?

SOLICITOR GENERAL CALIDA:

I was not present there, Your Honor, so I have no idea.

ASSOCIATE JUSTICE LEONEN:

In other words, it was not, it was in one of the statements of Lorenzana, the Secretary. But Congress did not push and ask the resource speakers what was the goal of one year, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.



ASSOCIATE JUSTICE LEONEN:

Yes. So it's possible to have an extension for 2020, is that not correct? Still possible?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps even 2021, correct?

SOLICITOR GENERAL CALIDA:

That's possible, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps 2022, correct?

SOLICITOR GENERAL CALIDA:

Hopefully, yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So this is the new normal? That for the whole term of this President there will be martial law in Mindanao, is that not possible? Considering that the Communist Party has been resilient for 50 years. I was only six years old when they started, now I'm 56. Considering that violent extremism will exist in Mindanao in the next three years, considering that there will still be kidnapping, considering that there will still be rido and those are all in your reports. Therefore, are you now telling the Supreme Court that it is possible that the extensions will be not only three, will be four, five or six extensions?

SOLICITOR GENERAL CALIDA:

Well, it depends, Your Honor, if the policy of 30% degradation which will start this year, if we can attain it, why not, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes, but it is not the goal of the Commander-in-Chief, correct? Not yet?

SOLICITOR GENERAL CALIDA:

Well, I cannot predict the future, Your Honor.⁶⁰

Although the Solicitor General had initially appeared to be willing to commit to a 30% degradation target and to explain the situation to the President, he ultimately admitted that he could not predict how the President would think in the future.

⁶⁰ TSN dated January 29, 2019, pp. 66–70.

Moreover, the targets identified during the January 29, 2019 oral arguments are inconsistent with the pronouncements made by Secretary Lorenzana barely a week later, on February 4, 2019, in his speech on the National Security Outlook for the Philippines in 2019. In his speech, he said:

The Anti-Terrorism Act which, when enacted, would no longer necessitate the proclamation of martial law and suspension of habeas corpus; this is the main argument that we presented to the Senate when we were there to defend martial law because we told them that the people now have no teeth... I told them, if they can pass it within half of this year, then I can recommend the cessation of martial law in Mindanao by July first.⁶¹

Additionally, the Office of the Solicitor General admitted that the targets set during the oral arguments were essentially lip service. In its Memorandum, it said that it could not bind the President to its definition of when the rebellion would be quelled:

83. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to determine the necessity for an extension of martial law is not subject to any condition except the requirements of actual invasion or rebellion and public safety. It would also be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego. The President is not bound by the actions of his subalterns; the former is only bound by what the Constitution dictates. Ergo, an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent.⁶² (Citation omitted)

Curiously, figures on anti-illegal drug operations have repeatedly been cited in the government's letters and reports on martial law, as if the figures were targets in the proclamation and implementation of martial law. In his December 4, 2018 Letter to President Duterte, the Solicitor General said:

The operations conducted by the AFP in support of the implementation of martial law have resulted in gains in ending the DAES inspired and CNT rebellion in the country, including:

....

4. The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.]⁶³

⁶¹ Delfin N. Lorenzana, *The National Security Outlook in the Philippines in 2019* (Proposed Remarks for the Secretary of National Defense, February 4, 2019).

⁶² *Rollo* (G.R. No. 243522), Vol. 2, p. 834.

⁶³ *Rollo* (G.R. No. 243522), Vol. 1, pp. 201–202.

Similarly, in his letter to President Duterte, General Carlito G. Galvez, Jr. cited the Armed Forces' support of anti-illegal drug operations as one of the outcomes of the martial law implementation in Mindanao. Likewise, all of the Armed Forces' monthly reports included figures that pertained to the dismantling of "illegal drug syndicates and other lawless armed groups,"⁶⁴ reporting: (1) the volume of illegal drugs confiscated; and (2) the number of personalities who surrendered, were killed, or were captured.

Notably, the existence of illegal drug syndicates was not, and cannot be, the basis of the martial law declaration.

These conflicting assertions on the targets of martial law raise doubts on whether any target exists at all, or if the government has been implementing martial law to sincerely quell a supposed rebellion and restore civil rule in Mindanao. They reveal a lack of foresight, preparation, or strategy in the implementation of martial law, which should put this Court on guard in this exercise.

IV

It is this Court's constitutional duty to review, in an appropriate proceeding, the sufficiency of the factual basis for the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.⁶⁵ Thus, this Court is bound to reassess and independently determine the sufficiency of the factual basis presented by the government. We cannot accept the President's conclusion *pro forma* and adopt it as our own.

Settled is the rule that the burden is on the government to show this Court that it has sufficient factual basis for the extension of martial law and


⁶⁴ *Rollo* (G.R. No. 243522), Vol. 1, p. 205.

⁶⁵ CONST., art. VII, sec. 18 partly provides:

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 any 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.



suspension of the privilege of the writ of *habeas corpus*.⁶⁶ The government is duty bound to adequately prove that the facts and information it alleged can support the extension. This may be done by presenting evidence supporting its factual allegations, and the context for its interference.

Standards must be set to guide this Court as it treads the multitudinous reports given to determine the sufficiency of the factual bases invoked by the President.

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I asserted that the facts alleged and relied upon by the President must be: (1) credible; (2) complete or sufficient to establish a conclusion;⁶⁷ (3) consistent with each other; and (4) able to establish a sensible connection between the incidents reported and the existence of rebellion, and the consequent need for martial law's proclamation or extension.

The government's presentation of facts justifying the extension has not met these standards.

V

The government failed to show the credibility of its intelligence reports to justify the third extension of martial law. It has failed to show that the kind of rebellion, if any, suffices to justify the necessity and public safety requirement to declare martial law or suspend the privilege of the writ of *habeas corpus*.

Due to the multifarious responsibilities demanding the president's attention, he or she is constrained to heavily rely on the intelligence reports submitted by those under his or her command.⁶⁸ The President banks on his or her alter egos' reports to determine the proclamation or extension of martial law. These reports constituting the factual bases of the President's judgment must go through a strict validation process. To serve as sufficient bases, they must be subjected to a scrupulous process of analysis and validation.⁶⁹ This process must be airtight in nature to avoid, or at least minimize, dubious data. Finally, to ensure that the source of information is credible, the information collected must be transparent.

Facts are deemed judicially sufficient when it is shown that they came from credible sources, these being the foundation of the President's exercise

⁶⁶ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 489 (2017) [Per J. Del Castillo, En Banc].

⁶⁷ Id.

⁶⁸ Id. at 552.

⁶⁹ Id.

of its commander-in-chief powers under Article VII, Section 18 of the Constitution.

The credibility of the information rests upon the degree of validation used to confirm its authenticity. The function of validating information is vital to the resulting judgment of the President.

In my dissenting opinion in *Lagman, et al. v. Madialdea, et al.* I enumerated five (5) disciplines in gathering information, namely: (1) signals intelligence; (2) human intelligence; (3) open-source intelligence; (4) geospatial intelligence; and (5) measurement and signatures intelligence.⁷⁰

Signals Intelligence (SIGINT) refers to the interception of communications between individuals and “electronic transmissions that can be collected by ships, planes, ground sites, or satellites.”

Human Intelligence (HUMINT) refers to information collected from human sources either through witness interviews or clandestine operations.

By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain. Open-Source Intelligence sources include “traditional media, Internet forums and media, government publications, and professional or academic papers.”

Newspapers and radio and television broadcasts are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.

Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth. An example of geospatial intelligence is a “satellite photo of a foreign military base with topography[.]”

Lastly, Measures and Signatures Intelligence (MASINT) refers to “scientific and highly technical intelligence obtained by identifying and analyzing environmental byproducts of developments of interests, such as weapons tests.” Measures and Signatures Intelligence has been helpful in “identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems.”⁷¹ (Citations omitted)

Respondents submitted numerous reports⁷² as basis for the third extension of martial law. These reports, according to respondents, are the consolidation of various intelligences and accounts of different field units and multiple sources within the government.⁷³

⁷⁰ Id. at 553.

⁷¹ Id. at 553–554.

⁷² *Rollo* (G.R. No. 243522), Vol. 1, pp. 214–292. Comment, Annexes 3–8.

⁷³ Oral Arguments dated January 19, 2019.

Since the reports were the foundation of the President's judgment, this Court probed into how they were validated and authenticated. Regrettably, respondents failed to illuminate on this matter:

ASSOCIATE JUSTICE CAGUIOA:

Alright. Let me begin my small questions. I noticed, that in the Annexes that you submitted at the lower right hand portion there is a stamp that says "authenticated by" and there is a signature over the name, if I can read the name, SMS Dionisio B. Medilo PAF, NCOIC, ATD, OJ2. Can you tell us who this person is?

MAJOR GENERAL LORENZO:

Yes, Your Honor. He is the enlisted personnel assigned to our office.

ASSOCIATE JUSTICE CAGUIOA:

And can you tell us what his functions are?

MAJOR GENERAL LORENZO:

He is assigned with the Anti-Terrorist Division of the OJ2. He receives reports, assists in the research and intelligence reports relative to the counter-terrorism efforts of the Armed Forces of the Philippines, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

He is based in Mindanao?

MAJOR GENERAL LORENZO?

He is based in Manila.

....

ASSOCIATE JUSTICE CAGUIOA:

Thank you. Now, going back to the person who authenticated these reports, can you tell us the process? What is the process that OJ2 follows in authenticating reports, in vetting intel? Can you tell us how that process goes?

MAJOR GENERAL LORENZO:

May I be clarified on the question, Your Honor?

ASSOCIATE JUSTICE CAGUIOA:

In the preparation of these Tables, I'm sure there is a vetting process, there is an authentication process as explained by the phrase "authenticated by." I just want to know what is the process involved in the process of authentication.



MAJOR GENERAL LORENZO:

Normally, Sir, as we received reports, for intelligence processing, Sir, there is the so-called intelligence cycle. So as we received reports, that is the submission of reports to us, that is already, shall I say, collected information goes through different stages of processing. We collate, integrate and bring in other information that are related to it. We also evaluate the source of the report whether in terms of reliability, the accuracy of the information until we come out with more refined or more accurate intelligence that is for the intelligence cycle ... (interrupted)

....

ASSOCIATE JUSTICE CAGUIOA:

Let me cut you. When Medilo says "he authenticates these Tables," what exactly is he saying?

MAJOR GENERAL LORENZO:

Your Honor, if you are referring to authentication of documents as to authenticity of what we are receiving, he will just look at the original file and a reproduction of what would be authenticated by usually officers under us. We have admin officers to authenticate documents ... (interrupted)

....

ASSOCIATE JUSTICE CAGUIOA:

So just to be clear there are more raw information coming in, they all come together. You do a screening, check the sources, and then, you make your conclusions and all of that is in a report and Mr. Medilo simply collates and compiles these reports. Is that correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.⁷⁴

....

ASSOCIATE JUSTICE GISMUNDO:

So, just to be clarified, when you mentioned authenticated by SMS Medillo, what do you mean by that? Does he verified it, each incident report from an index or what?

GEN. LORENZO:

Yes, Your Honor, because it's a faithful reproduction of what's already on file.

ASSOCIATE JUSTICE GISMUNDO:

Because you want the Court to rely on this report as the factual basis for the prayer for the extension of martial law, we want to be assured that this is authenticated, you may have the presumption of regularity but we want to know the authenticity and veracity of these incident reports.

⁷⁴ TSN dated January 29, 2019, pp. 24–28.

GEN. LORENZO:

Sorry, Your Honor, those reports came from the chain of command, Your Honor, the . . . (interrupted)

ASSOCIATE JUSTICE GESMUNDO:

Can you put that in your memorandum also, how this report was processed?

GEN. LORENZO:

We will do that, Your Honor.

ASSOCIATE JUSTICE GESMUNDO:

Thank you very much.⁷⁵

Despite the opportunity to expound in their Memorandum the authentication process the reports had gone through, respondents repeatedly failed to provide a satisfactory explanation. They merely stated that the information in the reports came from various Armed Forces units obtained through formal channels⁷⁶ and informants who are members of the threat groups.⁷⁷

Respondents only indicated that they have been “[d]uly validated in accordance with military procedure,”⁷⁸ and are similar to entries in official records which enjoy the presumption of being the *prima facie* evidence of the facts.⁷⁹

More, they hinge on petitioner’s failure to advance any basis for this Court to cast doubt on these reports.⁸⁰

However, it must be emphasized that due to the intelligence reports’ confidentiality, any opportunity for petitioners to challenge their authenticity is negated. Petitioners have no duty to uncover the errors and inaccuracies of these reports; rather, it is the government’s obligation to prove that the reports it relied on are authentic.

The rights curtailed by martial law demand that the government ensure the information it gathered had come from credible sources. Respondents’ failure to indicate the analytical process their reports have gone through raises serious doubts on their authenticity and reliability.

⁷⁵ TSN dated January 29, 2019, p. 65.

⁷⁶ *Rollo* (G.R. No. 243522), Vol. 2, pp. 847–859. See Memorandum for Respondents, Annex 1. Reports of government agencies performing security and law enforcement functions.

⁷⁷ *Id.* at 838.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

With the government forcing upon this Court the premise that the facts it alleged warrant a martial law extension, without properly citing any standard to validate them, this Court will be constrained to accept the alleged facts as absolute truth. This cannot be the case. The Constitution explicitly grants this Court the power to review the sufficiency of the factual basis for the martial law extension. Anything less will render this Court's judicial power of review inutile.

VI

Although many criminal incidents were alleged to support the claim that there is an ongoing rebellion in Mindanao, many of the reports were glaringly incomplete, and lacked a crucial detail: who the perpetrators were.

Members of this Court rigorously scrutinized the submissions made by respondents and found glaring inadequacy in their reports. A number of the violent incidents reported to be associated to an ongoing rebellion do not indicate their perpetrators. Likewise, the motives behind these attacks were not indicated. To name a few:

1. On March 5, 2018 a report was made that a certain Mutim Abdos of So Hawani, Barangay Latih, Patikul, Sulu was fired upon by an "undetermined number of unidentified armed men"⁸¹ believed to be Abu Sayyaf Group members.⁸²
2. On March 7, 2018, a certain Sitti Dornis Mustapa Hamsirani was abducted by three (3) *unidentified armed men* while she was on her way to Jolo town. After investigation, it was discovered that she has been failing to pay her debt to an unknown man. Further inquiry was made to determine the identity and real motive of the abduction.⁸³
3. On April 11, 2018, *unidentified persons* placed an unidentified improvised explosive device beneath a payloader at Barangay Geras, Isabela City, Basilan.⁸⁴
4. On April 16, 2018, an *unidentified person* threw a hand grenade at the warehouse of Engineer Soler Undug, District Engineer of Basilan-Autonomous Region of Muslim Mindanao, in Barangay Aguada, Isabela City, Basilan.⁸⁵

⁸¹ *Rollo* (G.R. No. 243522), Vol. 1, p. 225.

⁸² *Id.*

⁸³ *Id.* at 226.

⁸⁴ *Id.* at 229.

⁸⁵ *Id.* at 230.

5. On April 28, 2018, a certain Nijam AWSAL @NGAIN was killed by an *unidentified assailant* believed to be an Abu Sayyaf Group member.⁸⁶
6. On May 28, 2018, SSg Alam Intel NCO of Bcoy, 18IB was ambushed by *unidentified armed men* in Sitio Bekew, Barangay Baguindan, Tipo-Tipo, Basilan while he was traversing their CP Base in Sitio Kapayagan, Baguindan, Tipo-Tipo, Basilan.⁸⁷
7. On November 23, 2018, a red/black Suzuki Raider was reported to have been forcibly taken by 10 armed Abu Sayaff Group members.⁸⁸
8. On November 30, 2018, the house of a certain Abul Hair Oddok was burned down by 11 armed Abu Sayaff Group members. No information was given regarding the purpose of the attack.⁸⁹
9. On December 12, 2018, an engineer of HHH Developer and Construction Company in Barangay Cabunbata, Isabela City, Basilan, was shot to death by a riding-in-tandem duo of the Abu Sayaff Group.⁹⁰

During the oral arguments, these omissions were pointed out to respondents, who were then directed by this Court to include in their Memorandum updates on the perpetrators' identities. However, they failed to conclusively ascertain that these attacks were executed by insurgents to further the rebellion.⁹¹

In his December 6, 2018 letter⁹² to the Senate and the House of Representatives, President Duterte stated that during the extended period of martial law, the Abu Sayyaf Group, Bangsamoro Islamic Federation Fighters, Daulah Islamiyah, and other terrorist groups continue to defy the government by perpetuating hostile activities. This, he said, required further extension of martial law.

By ascribing to these terrorist groups the authorship of the hostile activities, the President has unduly jumped to a conclusion insufficiently supported by evidence. The intelligence report, which formed part of the President's determination to declare martial law, did not categorically state that it was the members of these groups who executed the hostile acts, which allegedly warranted the extension of martial law.

⁸⁶ Id. at 231. Spelling error in the original.

⁸⁷ Id. at 233.

⁸⁸ Id. at 243.

⁸⁹ Id. at 244.

⁹⁰ Id. at 245.

⁹¹ *Rollo* (G.R. No. 243522), Vol. 2, pp. 863, 867, 868 and 869. Memorandum for Respondents, Annexes 2-C, 2-G, 2-H, and 2-I.

⁹² *Rollo* (G.R. No. 243522), Vol. 1, pp. 51-55.

Likewise, the motive of these unidentified men in committing the hostile acts were never identified in the intelligence report. The link to ascertain the malefactors' identities and their motives in committing the hostile acts vis-à-vis the actual perpetrators and their implied affiliation with these terrorist groups were never alleged.

This failure cannot be allowed. A considerable void exists within the intelligence report, which cannot be substituted by any amount of implication or guesswork.

VII

Assuming that these violent incidents were authored by terrorist groups, respondents failed to show that they were committed to further the rebellion. No definite connection was presented to show that these incidents were carried out to advance the objectives of the rebellion. They failed to demonstrate how these events support the government's conclusion of persisting rebellion in Mindanao. They also failed to show that these were the kinds of rebellion which met the requirement of necessity and public safety in the Constitution.

Among the incidents was the ambush of a certain Muksin Kaidin and Mukim on February 1, 2018, by an undetermined number of unidentified men while onboard their vehicle. The victims sustained multiple gunshot wounds and died due to the vehicle's explosion. Initial investigation revealed that the attack was caused by a longstanding family feud between the victims and the suspects.⁹³

On February 28, 2018, members of Barangay Peacekeeping Action Team and Local Government Unit conducting road construction projects in the barangay hall of Barangay Dugaa, Tuburan, Basilan, were fired upon by Abu Sayaff Group affiliates led by Abu Sayyaf Group Subleader Abdullah Jovel Indanan @Guro, who reportedly feuds with the incumbent barangay chair of Dugaa.⁹⁴

On March 30, 2018, a firefight ensued at Barangay Latih Detachment in Patikul, Sulu, initiated by Abu Sayaff Group members to avenge the death of its member, Roger Samlaon.⁹⁵

On June 17, 2018, Abu Sayyaf Group Subleader Alden Bagade @SAYNING was killed by his brother, Muslim Bagade, who mistook him

⁹³ *Rollo* (G.R. No. 243522), Vol. 1, p. 218.

⁹⁴ *Id.* at 224. Spelling error in the original.

⁹⁵ *Id.* at 227.

for an intruder.⁹⁶

On July 24, 2018, the house of a certain Kagui Norodin Lasam was burned down by unidentified armed men, believed to be members of the Bangsamoro Islamic Freedom Fighters, for not giving the mandatory zakat.⁹⁷

During the oral arguments, members of this Court pressed respondents to make a connection between the following incidents and the alleged continuing rebellion in Mindanao. Despite their categorical commitment, respondents failed to do so.

ASSOCIATE JUSTICE LEONEN:

Okay. All intelligence reports and conclusions are validated, is that not correct?

SOLICITOR GENERAL CALIDA:

According to the military, Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

When presented to the Commander-in-Chief, it is validated especially, is that not correct? Because he's the Commander-in-Chief he has to act with very specific validated information, is that not correct?

SOLICITOR GENERAL CALIDA:

Well, I have no personal knowledge on that, Your Honor, but I trust our military, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes, and when it is presented to Congress on a matter as significant as martial law, it is likewise validated, is that not correct?

SOLICITOR GENERAL CALIDA:

It should be validated, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes. Now, how do you explain the inconsistencies, the incomplete statements, the inclusion of rido and kidnapping in the report that was just submitted to the highest court of the land to support the extension of martial law?

SOLICITOR GENERAL CALIDA:

I think, Your Honor, that was corrected by them, maybe there were some clerical errors.

⁹⁶ Id. at 235.

⁹⁷ Id. at 272.

ASSOCIATE JUSTICE LEONEN:

It was not clerical errors.

SOLICITOR GENERAL CALIDA:

To err is human, Your Honor.⁹⁸

Contrary to respondents' justification, including kidnapping incidents and family feuds in the intelligence reports are not clerical errors. Their insertion means that these acts were committed to further the objectives of rebellion. By doing so, the government is duty bound to give details as to why they were included.

Respondents failed to overcome the burden of proving the connection between these instances. That the attacks were perpetrated by members of the terrorist groups that the President mentioned does not mean that they were committed in furtherance of rebellion. At best, they were politically motivated or based only on grudges involving private matters.

A mere invocation of random firefights or encounters involving armed men cannot engender a belief that they were undertaken in furtherance of rebellion.

VIII

The intelligence reports are replete with inconsistencies.

The headings of the intelligence reports containing the violent incidents state, "ASG-INITIATED VIOLENT INCIDENTS,"⁹⁹ "BIFF-INITIATED VIOLENT INCIDENTS"¹⁰⁰ and "DI-INITIATED VIOLENT INCIDENTS."¹⁰¹ However, a reading of these intelligence reports would show that the individuals involved in some of the incidents in them were not identified. That these unidentified men were involved in the violent incidents renders the whole intelligence report inconsistent, because the headings attribute these acts to specific terrorist groups.

Respondents, in no equivocal terms, stated that unidentified men were involved in some of the incidents in its intelligence reports. The intent to deceive in the crafting of the intelligence report is more real than not.

Moreover, the monthly reports of martial law's implementation in

⁹⁸ TSN dated January 29, 2019, pp. 70–71.

⁹⁹ *Rollo* (G.R. No. 243522), Vol. 1, p. 215. Comment, Annex 4.

¹⁰⁰ *Id.* at 246. Comment, Annex 5.

¹⁰¹ *Id.* at 283. Comment, Annex 6.

Mindandao submitted by the Armed Forces to Congress were methodically prepared to give an impression of continued rebellion in Mindanao. The facts were presented to depict a situation justifying the martial law's further extension. However, a scrutiny of these reports shows that they are brimming with irregularities. One might conclude that the reports have been tweaked to cater the need of the policy maker.

In its February 23, 2018 report¹⁰² for the period of January 2018, the Armed Forces reported a total of 31 neutralized terrorist group members and 36 recovered firearms, as follows:

| Objective | Measure of Performance | TOTAL |
|----------------------------|-------------------------------------------|--------------|
| Terrorist Groups destroyed | Nr of neutralized terrorist group members | 31 |
| | • Killed | 19 |
| | • Captured/Apprehended | 1 |
| | • Surrendered | 11 |
| | Nr of firearms recovered | 36 |
| | • High-powered | 19 |
| | • Low-powered | 17 |

In February 2018, the Armed Forces reported¹⁰³ additional 42 neutralized terrorist group members and 31 firearms recovered:

| Objective | Measure of Performance | TOTAL (01-28 Feb 18) | TOTAL (01 Jan- to date) |
|----------------------------|-------------------------------------------|-----------------------------|--------------------------------|
| Terrorist Groups destroyed | Nr of neutralized terrorist group members | 42 | 73 |
| | Killed | 20 | 39 |
| | Captured/Apprehended | 6 | 7 |
| | Surrendered | 16 | 27 |
| | Nr of firearms recovered | 31 | 67 |
| | High-powered | 18 | 37 |
| | Low-powered | 13 | 30 |

In March 2018, 95 terrorist group members were reported¹⁰⁴ to have been neutralized and 32 firearms recovered. This would have amounted to 168 neutralized terrorist group members and 99 seized firearms, but reported as follows:

¹⁰² AFP Monthly Report, Annex A. For the month of January 2018.
¹⁰³ AFP Monthly Report, Annex B. For the month of February 2018.
¹⁰⁴ AFP Monthly Report, Annex D. For the month of March 2018.

| Objective | Measure of Performance | Inclusive Date (Mar 1-31, '18) | TOTAL (Jan 1 - Mar 31, '18) |
|----------------------------|-------------------------------------------|---------------------------------------|------------------------------------|
| Terrorist Groups destroyed | Nr of neutralized terrorist group members | 95 | 187 |
| | Killed | 58 | 98 |
| | Captured/Apprehended | 6 | 25 |
| | Surrendered | 31 | 64 |
| | Nr of firearms recovered | 32 | 97 |
| | High-powered | 28 | 95 |
| | Low-powered | 4 | 2 |

Respondents failed to submit to this Court a copy of the report for April.

In May 2018, additional 93 terrorist group members were neutralized and 83 firearms seized.¹⁰⁵

| Objective | Measure of Performance | Inclusive Date (May 1-31, '18) | TOTAL (Jan 1 - May 31, '18) |
|----------------------------|-------------------------------------------|---------------------------------------|------------------------------------|
| Terrorist Groups destroyed | Nr of neutralized terrorist group members | 93 | 312 |
| | Killed | 11 | 117 |
| | Captured/Apprehended | 41 | 66 |
| | Surrendered | 41 | 129 |
| | Nr of firearms recovered | | |
| | High-powered | 69 | 208 |
| | Low-powered | 14 | 33 |

For the month of June 2018, they reported¹⁰⁶ additional neutralized 66 terrorists and 36 seized firearms which should have resulted to 378 neutralized terrorist group members and 277 firearms recovered. However, the number as reported was lower than what it should have been without furnishing any explanation.

| Objective | Measure of Performance | Inclusive Date (June 1-30, '18) | TOTAL (Jan 1 - June 30, '18) |
|------------------|-------------------------------|----------------------------------------|-------------------------------------|
|------------------|-------------------------------|----------------------------------------|-------------------------------------|

¹⁰⁵ AFP Monthly Report, Annex E. For the month of May 2018.

¹⁰⁶ AFP Monthly Report, Annex F. For the month of June 2018.

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| | | | |
|-------------------------------|----------------------------------------------|----|-----|
| Terrorist Groups destroyed | Nr of neutralized terrorist group members | 66 | 301 |
| | Killed | 34 | 128 |
| | Captured/Apprehended | 11 | 28 |
| | Surrendered | 21 | 145 |
| | Nr of firearms recovered | 36 | 235 |
| | High-powered | 30 | 206 |
| | Low-powered | 6 | 29 |

Similar irregularities are scattered among the different monthly reports submitted by the Armed Forces. They belie any assertion that the monthly reports are consistent with the data they represent—the *raison d'être* of martial law in Mindanao.

The inconsistencies in both the intelligence reports and monthly reports of the Armed Forces are fatal flaws in the President's plan to continue imposing martial law in Mindanao.

To determine the sufficiency of the factual basis for the extension of martial law, all relevant information must be exhaustively determined. Each piece of evidence submitted must be rigorously examined. This Court cannot blindly acknowledge the perception of the President as correct. It is our burden to uphold and safeguard our democratic processes.

I am not convinced that there is sufficient factual basis for the extension of Martial Law.

Moreover, the intelligence reports failed to present themselves credible enough to narrate the information justifying the martial law extension. There is a lack of transparency on the information sources gathered by the Armed Forces. This renders the collected information dubious, as there is a risk that the information the President used to determine the martial law extension may have been tampered or maliciously leaked to support unscrupulous ends.

Respondents failed to illuminate this Court on the analytical standard or procedure used by the government to determine the legitimacy of the information contained in the intelligence reports. By simply alleging the information without bothering to explain how it was authenticated, this Court is left in the dark and is forced to accept any and all data or information included in the intelligence reports.

The hostile acts in the intelligence reports lack effective links to ascribe the hostilities to the Abu Sayaff Group, Bangsamoro Islamic

Freedom Fighters, or Daulah Islamiyah. Respondents failed to determine the perpetrators' identities and motives in committing the hostile acts. By failing to make a concrete link between the terrorist groups and the unidentified men, the intelligence reports unduly assume that the terrorist groups were indeed the entities behind the hostilities.

This assumption cannot pass legal muster. This Court is mandated by the Constitution to make a determination as to the sufficiency of the factual basis for the martial law extension. By engaging in assumptions and guesswork, the completeness of the intelligence reports comes under scrutiny, their findings become dubious, and the conclusions they present are put in question.


Assuming that the information in the intelligence reports is credible and complete, the intelligence reports still suffer from an infirmity. During the oral arguments, this Court pressed respondents to draw a connection between the violent incidents in the intelligence reports and the existence of rebellion in Mindanao. Respondents, however, failed to sufficiently draw the nexus. This lack of a reasonable connection proves fatal in justifying the extension of martial law.

Moreover, a scrutiny of the intelligence reports and monthly reports brings about numerous inconsistencies in the documents' narration and determination of data.

The intelligence reports all contained headings to the effect that the violent incidents contained within were initiated by the Abu Sayaff Group, Bangsamoro Islamic Freedom Fighters, and Daulah Islamiyah. However, upon closer look, the perpetrators of some of the incidents in them were unidentified.

In other words, despite their headings explicitly stating that the terrorist groups spearheaded the violent incidents, the intelligence reports still acknowledged that the perpetrators of some of the violent incidents were never identified.

The monthly reports also suffer from the same inconsistencies. They show that the data did not tally correctly. The numbers representing the measure of performance for each month did not match upon final determination. Such inconsistencies would lead a reasonable mind to no other conclusion except that the monthly reports were made in a rush.



IX

The Communist Party of the Philippines-New Peoples' Army-National Democratic Front (CPP-NPA-NDF) was not properly included as basis for the initial proclamation of martial law. The CPP-NPA-NDF, as it subsists and has subsisted for the past few decades, is not a rebellion that requires the declaration of martial law.

In my dissent in *Lagman, et al. v. Pimentel III, et al.*,¹⁰⁷ I pointed out that President Duterte, in his letter requesting for the longer extension of martial law, introduced the CPP-NPA as new basis for the claim that rebellion persists, not present in the Proclamation. Thus, the government, in extending martial law, inserted incidents relating to the diminishing insurrection of the CPP-NPA-NDF as an afterthought to bolster its claims of a rebellion requiring the martial law declaration.

In my dissent, I pointed out that there was no explanation why: (1) they should be included in justifying the need to extend martial law; (2) the martial law is only in Mindanao, despite incidents of violence outside of it attributed to the CPP-NPA; and (3) the martial law would only be for a year. It was also not explained what could be accomplished in that period, considering that the CPP-NPA has been operating for more than 50 years. I further pointed out that the army's numbers have only been decreasing—while it had around 26,000 soldiers in the 1980s, its ranks now only total 1,748 in Mindanao, according to the Armed Forces data.

Despite this, respondents insist, and the majority accepts, that the claim that the CPP-NPA's operations require a martial law declaration. In his December 6, 2018 letter, President Duterte asserted:

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, took advantage and likewise posed serious security concerns[.]¹⁰⁸

However, in his letter-report on the martial law implementation, Armed Forces Chief of Staff Benjamin R. Madrigal, Jr. stated that the Armed Forces had claimed a total of 1,620 CPP-NPA members had been

¹⁰⁷ See J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

¹⁰⁸ *Rollo* (G.R. No. 243522), Vol. 1, pp. 53–54. Annexes to the Petition.

neutralized. Specifically, 62 had been killed, 189 had been captured, and 1,369 surrendered.¹⁰⁹

During the oral arguments, I restated my position that the government has not sufficiently justified including the CPP-NPA as a reason for extending martial law. Save for its diminishing numbers, the CPP-NPA is a nationwide movement that can move outside the area under martial law.¹¹⁰

Respondents' failure to address these points make it clear that including the CPP-NPA to justify extending martial law is just a means of inflating the numbers of criminal or violent incidents, and thus, making their assertion that public safety requires military rule more credible.

X

As early as in *Lagman, et al. v. Medialdea, et al.*, I insisted and reiterate that martial law is product of necessity. It is only called when the civil government is incapable of maintaining peace and order.¹¹¹ It should not be indefinite, but a mere temporary condition.¹¹²

Article VII, Section 18 of the 1987 Constitution¹¹³ provides that as commander-in-chief, the President shall have the power to call out the Armed Forces to suppress rebellion. Martial law should be declared only when the calling-out powers of the President becomes inadequate to quell rebellion:

¹⁰⁹ Id. at 59–66. Annex C of the Corrected Monthly Reports.

¹¹⁰ TSN, pp. 82-83.

¹¹¹ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

¹¹² Id. at 35.

¹¹³ CONST., Art. VII, Sec. 18 provides:

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 any 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.

JUSTICE LEONEN:

Would you agree with me that in Section 18 of Article VII, the requirement for a declaration of martial law or the suspension of a writ of habeas corpus is not only that rebellion exists but there is a certain degree of rebellion that requires the exigency of martial law, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor, and that rebellion is ongoing.

JUSTICE LEONEN:

Yes, prior to the declaration of martial law, if it is only lawless violence that happens or aggrupation of lawless violence that the military is not prohibited from calling out the Armed Forces, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

And would you agree with me that the degree of judicial review or the scrutiny that is involved when the President, as Commander-in-Chief, calls out the Armed Forces is less than when he declares martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, battle of hearts and minds, I heard it so often. Do you recall where it came from?

ATTY. DIOKNO:

I don't see, I think that it came from . . . (interrupted)

JUSTICE LEONEN:

In Vietnam by a certain Colonel Lansdale when he inaugurated the concept of anti-insurgency and tested it using an occupying force because they were losing the war against the Vietcong, am I not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Now, this requires that winning hearts and minds is not only done by the military, that was the mistake in Vietnam, correct?

ATTY. DIOKNO:

Yes.



JUSTICE LEONEN:

That it requires the cooperation of the military and the civilian authority, is that not correct?

ATTY. DIOKNO:

That's true.

JUSTICE LEONEN:

Yes, as a matter of fact, several military plans, I think this was under AFP General Año, AFP General Bautista, among others, created the concept of Balikatan or "Whole-of-nation" approach where it was recognized that winning the war will not only take the military but will also take civilian authority, is that not correct?

ATTY. DIOKNO:

I think it's obvious that military action alone will not be sufficient, Your Honor.

JUSTICE LEONEN:

Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?

ATTY. DIOKNO:

That is the case, yes.

JUSTICE LEONEN:

And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?

ATTY. DIOKNO:

I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.

JUSTICE LEONEN:

And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?

ATTY. DIOKNO:

That is so true, Your Honor, no (interrupted)

JUSTICE LEONEN:

And martial law is antithetical to good governance, is that not correct?



ATTY. DIOKNO:

That is the case, Your Honor.

JUSTICE LEONEN:

Because we do not give an opportunity to civilian authorities to catch up, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Can busses be searched without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Saluday vs. People under the ponentia of Justice Carpio, unanimous Court said it can, very recently, 2018 only. Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:

Of course, yes, Your Honor.

JUSTICE LEONEN:

In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:

Yes, I believe so.

JUSTICE LEONEN:

Who is more feared, the president or the military?

ATTY. DIOKNO:

(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:

Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:

That is correct.¹¹⁴

A perusal of respondents' justification for a further extension of martial law leads to a single conclusion: there is absolutely no necessity for martial law.

In his December 6, 2018 letter, the President categorically stated that rebellion have already been put under control. The factual bases provided by the President in justifying the martial law extension is insufficient. Respondents, with all the data and information it has presented, failed to discharge the burden of proving that there is absolute necessity in extending martial law in Mindanao. The President is, however, not without recourse. The lawless and violent incidents in Mindanao may either be quelled by professional police action or the President's calling-out powers in relation to the Armed Forces.

XI

Judicial review of the President's exercise of his or her powers to declare martial law and suspend the privilege of the writ of *habeas corpus* is not a novel issue. Unfortunately, the majority cites jurisprudence out of context and without appreciation of the evolution of relevant doctrines. The majority opinion cites precedents that are no longer binding.

The Court may review the sufficiency of the factual basis of the martial law extension. The text of the Constitution is clear. The only disagreement pertains to how this Court should perform its review; that is, what this Court may examine and what standards to use. Likewise, we should determine what must be submitted to this Court as proof of factual basis and what standards should these submissions meet to be deemed

¹¹⁴ TSN dated January 29, 2019, pp. 107-111.

sufficient.

Retracing the evolution of the constitutional provision authorizing the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*, as well as this Court's interpretation of the provision, provides guidance.

We begin with a discussion of *Barcelon v. Baker, Jr.*,¹¹⁵ which was decided before the 1935 Philippine Constitution, when the Philippine Bill of 1902 was in effect.

In *Barcelon*, an application for a writ of *habeas corpus* was filed on behalf of petitioner Felix Barcelon, because he was detained and restrained in Batangas under the orders of one of the respondents, David J. Baker, Jr. In that case, the respondents countered that the Governor-General, under a resolution and request of the Philippine Commission, had suspended the writ of *habeas corpus* in Cavite and Batangas, and thus, the writ of *habeas corpus* prayed by Barcelon should not be granted. Thus, this Court was called to determine whether it could investigate the facts upon which the branches of government acted in suspending the privilege of the writ of *habeas corpus*. This Court held that the factual basis relied on by the Governor-General and the Philippine Commission in suspending the privilege of the writ was beyond judicial review, it being exclusively political in nature:

In short, the status of the country as to peace or war is legally determined by the political (department of the Government) and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of war or insurrection must also decide when hostilities have ceased — that is, when peace is restored. In a legal sense the state of war or peace is not a question in pais for courts to determine. It is a legal fact, ascertainable only from the decision of the political department.¹¹⁶ (Citations omitted)

At the time of *Barcelon*, there was no constitutional provision on martial law to interpret, much less any constitutional provision authorizing this Court to review any government act in relation to its declaration.

This did not change with the passage of the 1935 Constitution, which authorized the President to place any part of the Philippines under martial law in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when required by public safety. Article VII, Section 10(2) of the 1935 Constitution provided:

¹¹⁵ 5 Phil. 87 (1905) [Per J. Johnson, En Banc]

¹¹⁶ Id. at 107.

(2) The President shall be 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, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

Thus, the first relevant constitutional provision authorized the president to declare martial law, but did not expressly authorize this Court to review his or her exercise of this power.

In *Montenegro v. Castañeda*,¹¹⁷ when the 1935 Constitution was in effect, this Court was called upon to determine the validity of the president's suspension of the privilege of the writ of *habeas corpus*. The petitioner in that case argued that there was no state of invasion, insurrection, rebellion, or imminent danger to justify the suspension of the privilege of the writ. This Court, citing *Barcelon*, deferred to the president's authority to decide on the matter as being final and conclusive:

To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow this government *vi et armis*, by force and arms.

And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker* (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.

Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.¹¹⁸ (Emphasis supplied)

However, almost 19 years later, this Court unanimously reversed this deferential policy in *In the Matter of the Petition for Habeas Corpus of Lansang v. Garcia*.¹¹⁹

¹¹⁷ 91 Phil. 882 (1952) [Per J. Bengzon, En Banc].

¹¹⁸ Id. at 886-887.

¹¹⁹ 149 Phil. 547 (1971) [Per C.J. Concepcion, En Banc].

Still operating under the 1935 Constitution, this Court, in *In Re: Lansang*, was called upon to revisit its deferential position in *Montenegro* and *Barcelon*, to determine whether it should inquire into the existence of the factual basis required for the suspension of the privilege of the writ of *habeas corpus*. Abandoning its previous position, this Court decided that it had this authority, and should use it. It held:

[T]he members of the Court are now *unanimous* in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that “(t)he privilege of the writ of *habeas corpus* shall *not* be suspended” It is only by way of *exception* that it permits the suspension of the privilege “in cases of invasion, insurrection, or rebellion” — or, under Art. VII of the Constitution, “imminent danger thereof” — “when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.” For from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.¹²⁰ (Emphasis in the original, citation omitted)

This Court further ruled that the separation of powers under the Constitution is not absolute. The system of checks and balances recognizes the executive department’s supremacy on the suspension of the privilege of the writ of *habeas corpus* only when it is exercised within certain discretionary limits. Determining whether the executive department has acted within the ambit of its discretion is vested with the judicial department, where it is constitutionally supreme.¹²¹

Shortly after *In Re: Lansang*, on September 22, 1972, former President Ferdinand E. Marcos (former President Marcos) issued General

¹²⁰ Id. at 585–586.

¹²¹ Id.

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Order No. 2, causing the arrest and detention of the petitioners in the consolidated petitions of *In the Matter of the Petition for Habeas Corpus of Aquino, et al. v. Ponce Enrile*.¹²² The majority in that case ruled that the sufficiency of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* was purely political, and was outside the ambit of the courts' power of review. The case, therefore, not justiciable. The ruling in *In Re: Aquino* effectively abandoned the doctrine laid down in *In Re: Lansang*.

On January 17, 1973, former President Marcos issued Proclamation No. 11-02, which certified and proclaimed that the 1973 Constitution has been ratified and has come into effect. The 1973 Constitution reiterated the president's commander-in-chief powers under the 1935 Constitution.

Article VII, Section 11 of the 1973 Constitution provided:

SECTION 11. The President shall be 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, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

Almost a decade after, this Court, in *In the Issuance of the Writ of Habeas Corpus for Parong, et al. v. Enrile*,¹²³ reiterated the doctrine of political question in *Baker and Montenegro*. It decreed:

In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? Verily, the existence of the emergencies should be left to President's sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of *habeas corpus* on the occasion thereof, should also be beyond judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but impractical and unrealistic, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. For the Court to insist on reviewing Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of "political question" in reference to the power of judicial review.

¹²² 158-A Phil. 1 (1974) [Per C.J. Makalintal, En Banc].

¹²³ 206 Phil. 392 (1983) [Per J. De Castro, En Banc]. Also known as *Garcia v. Padilla*.

Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the Lansang doctrine and reversion to that of *Barcelon vs. Baker* and *Montenegro vs. Castaneda*.¹²⁴ (Citations omitted)

Notably, barely six (6) days after the promulgation of *In Parong, et al.*, this Court, in *In the Matter of the Petition for Habeas Corpus of Morales, Jr. v Enrile*¹²⁵ reverted to the ruling of justiciability as pronounced in *In Re: Lansang*. In that case, it ruled that the issue of the sufficiency of the factual bases the president relied on in suspending the privilege of the writ of *habeas corpus* raises a justiciable, rather than a political, question. It further decreed that this Court “must inquire into every phase and aspect of petitioner’s detention . . . up to the moment the court passes upon the merits of the petition”¹²⁶ to ensure that the due process clause of the Constitution had not been violated.

The justiciability of the president’s discretion was finally laid to rest upon the ratification of the 1987 Constitution.¹²⁷ Under Article VII, Section 18, this Court is duty bound to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. It provides, in part:

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 any 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

¹²⁴ Id. at 431–432.

¹²⁵ 206 Phil. 466 (1983) [Per J. Concepcion, Jr., Second Division].

¹²⁶ Id. at 496.

¹²⁷ J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 510 [Per J. Del Castillo, En Banc].

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.

In *David v. Senate Electoral Tribunal*,¹²⁸ this Court stressed that legal provisions are the result of the re-adoption or re-calibration of previously existing rules. More often than not, these recalibrated legal provisions are introduced to address and cure the shortcomings and inadequacies of the previous rules:

Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.¹²⁹

The historical developments that led to the advent of the 1987 Constitution show its framers' unmistakable intent to expand the power of this Court to review and check on possible abuses committed by the executive department in the exercise of its powers. As it stands, the 1987 Constitution mandates this Court to review and assess the factual bases relied upon by the President in declaring martial law.¹³⁰ The political question doctrine has steadily diminished.

The conclusion reached by the majority on the authority of this Court to review the factual basis of the martial law extension ignores this historical and jurisprudential backdrop. The majority cites *Montenegro* as basis for the presumption of correctness to which the judiciary should accord the acts of the executive and legislative departments.¹³¹ However, *Montenegro* was decided almost 60 years ago, in 1952, under a different constitution. The opinion it holds has become *passé* not only because it was delivered more than half a century ago, but also because it runs counter against the categorical mandate of the fundamental law of the land.

¹²⁸ 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

¹²⁹ *Id.* at 572–573.

¹³⁰ J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 551 [Per J. Del Castillo, En Banc].

¹³¹ Ponencia, p. 22.

I reiterate my opinion in *Lagman, et al. v. Medialdea, et al.*:¹³²

The Supreme Court cannot shirk from its responsibility drawn from a historical reading of the context of the provision of the Constitution through specious procedural devices. As experienced during the darker Marcos Martial Law years, even magistrates of the highest court were not immune from the significant powerful and coercive hegemony of an authoritarian. It is in this context that this Court should regard its power. While it does not substitute its own wisdom for that of the President, the sovereign has assigned it the delicate task of reviewing the reasons stated for the suspension of the writ of habeas corpus or the declaration of martial law. This Court thus must not be deferential. Its review is not a disrespect of a sitting President, it is rather its own Constitutional duty.¹³³

XII

Years from now, the younger generation will look back to review history as we write them today. They will then hold all of us to account.

They will discover how, during these trying times, the very institution that our society depends on to secure their liberties to pursue meaningful freedoms under the framework of a constitution won by our people allowed the steady slide toward authoritarianism and the consequent loss of critical dissent. They will look to the saga of these four (4) cases relating to Proclamation No. 216 and the way that the clear text, jurisprudence, and historical context of Article VII, Section 18 of the 1987 Constitution was mangled.

The majority in all these cases have normalized martial law and the suspension of the writ of *habeas corpus*. They have reduced the most stringent modality of judicial review found in our Constitution into a mere token and cursory exercise. Worse, they have allowed the exercise of an undefined set of commander-in-chief powers within an arbitrary time frame, without a goal, and within a wide territorial area without clear judicially discoverable basis. They have allowed the Commander-in-Chief to declare martial law and suspend the privilege of the writ of *habeas corpus* against violent acts which did not call for such remedies.

It is no argument that this martial law is different from the martial law of the seventies. Those of us who lived through those days were also told of the myth of the New Society or the *Bagong Lipunan*. Many among us were beguiled with the narrative of a strong, brilliant, and omniscient leader—only to wake up years later with all our democratic institutions not only undermined but also rendered impotent. The narrative of a benevolent

¹³² G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

¹³³ Id. at 512.

authoritarian is never true.

We have not learned our lessons well. The violent manifestations by those whom we call rebels or violent extremists are the product of the abuses and inequality within our society. These are acts of desperation delivered by corruption and a system that rewards greed and fails to make meaningful citizens of us all.

History writes of the folly of the authoritarian that keeps power through fear. Reading the history of our people correctly, we should already know that it will be the political and economic empowerment of our people that will assure that those who resort to violence will be dissuaded, discovered, or weakened.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* over a wide swath of territory does the exact opposite. That is why it should never be normal. It cannot be allowed to be extended three (3) times. That is why its declaration should be scrutinized carefully, deliberately and conscientiously, by both the Congress and this Court. It is an exceptional measure. It should not hide the lack of professionalism, the failures of intelligence, and the inefficiencies that have spawned our troubles.

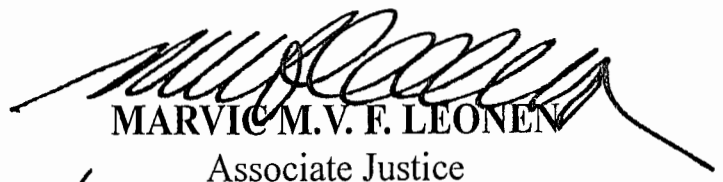
Those who dissent within a society are not necessarily its enemies, or its government's. It may just be that they perform the role of asking those in power and in the majority to pause and listen to reason, rather than acquiesce to the tendencies of the strongest among them.

I regret that, in this case and for the fourth time, we did not again take careful pause. Despite the woeful state of the data provided to us, the majority looked the other way. It would have been this Court's opportunity to show that we can reason better and truly think for ourselves.

Sapiere aude.

For these reasons and for the sake of this and future generations, I dissent.

Accordingly, I vote to **GRANT** the Petitions.


MARVIC M. V. F. LEONEN
Associate Justice