

**G.R. No. 243522 – REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAWNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE, and ARLENE “KAKA” J. BAG-AO, *Petitioners* v. HON. SALVADOR C. 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; [and] 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 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, XAMANTHA XOFIA A. SANTOS, *Petitioners* v. SENATE OF THE PHILIPPINES (represented by SENATE PRESIDENT VICENTE 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 THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. BENJAMIN R. MADRIGAL, JR., PHILIPPINE NATIONAL POLICE (PNP) CHIEF**

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**DIRECTOR GENERAL OSCAR D. ALBAYALDE, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., Respondents;** and

**G.R. No. 243797 – RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY, and RORELYN MANDACAWAN, Petitioners v. THE SENATE OF THE PHILIPPINES, represented by 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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## SEPARATE CONCURRING OPINION

**PERLAS-BERNABE, J.:**

I concur in the result.

Again, before the Court are consolidated petitions<sup>1</sup> assailing the sufficiency of the factual basis of Resolution of Both Houses No. 6<sup>2</sup> dated December 12, 2018,<sup>3</sup> which grants a third extension to the effectivity of Proclamation No. 216,<sup>4</sup> entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao,” for another year, or from January 1, 2019 to December 31, 2019. The pertinent portions of this Resolution read:

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that

<sup>1</sup> There are four (4) petitions filed assailing the martial law extension. The Petition in G.R. No. 243522 was filed on January 4, 2019 (an Amended Petition was filed on January 17, 2019), while the Petition in G.R. No. 243677 was filed on January 16, 2019. The Petition in G.R. No. 243745 was filed on January 18, 2019, while the Petition in G.R. No. 243797 was filed on January 23, 2019.

<sup>2</sup> Entitled “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 ANOTHER PERIOD OF ONE (1) YEAR FROM JANUARY 1, 2019 TO DECEMBER 31, 2019.”

<sup>3</sup> See Annex “B” of Petition in Lagman; *rollo* (G.R. No. 243522), Vol. I, pp. 56-58.

<sup>4</sup> Issued on May 23, 2017.

rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also 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; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others and causing One hundred fifty-six million pesos (P156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

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*Resolved by the Senate and the House of Representatives in a Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.*

As I have discussed in my Separate Concurring Opinion in *Representatives Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145, and 236155 (*Lagman v. Pimentel III*),<sup>5</sup> in cases involving the examination of a martial law extension, the Court's task is to determine whether or not there is sufficient factual basis to show that: (a) the invasion or rebellion still

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<sup>5</sup> See Decision in *Lagman v. Pimentel III*, G.R. Nos. 235935, 236061, 236145, and 236155, February 6, 2018. The motion for reconsideration is still pending consideration by the Court.

persists; and (b) public safety requires the extension.<sup>6</sup> Pursuant to Section 18, Article VII of the 1987 Constitution,<sup>7</sup> these two (2) requirements ought to be satisfied by Congress before it may properly decree another martial law extension.

The first point of analysis is on the persistence of rebellion. As I have also explained in my previous Opinions,<sup>8</sup> “a rebellion, **because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops**, such as when the rebels have **already surrendered** or that they are **caught by government operatives**. As it may, however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then a **satisfactory showing of the rebel movement’s substantial inactivity or loss of capability to mount a public uprising would reasonably suffice.**”<sup>9</sup>

Based on the evidence presented by respondents in these cases, there is no sufficient indication that the rebellion spearheaded by the Maute-Hapilon group – who was primarily responsible for the infamous Marawi siege – has been substantially inactive or has lost the capability to mount a public uprising. Although the President’s most recent letter-request<sup>10</sup> to Congress highlighted the threats of the so-called “local terrorist groups” (LTG) and “communist terrorist groups” (CTG), it remains that the remnants of the Maute-Hapilon group are still actively resisting the military as evidenced by the armed encounter in Sultan Dumalongdong, Lanao del Norte last September 7, 2018.<sup>11</sup>

Moreover, as respondents have noted, the other DAESH/ISIS-linked rebel groups, which include the Abu Sayyaf Group (ASG) and the Bangsamoro Islamic Freedom Fighters (BIFF), are still continuously conducting their radicalization and recruitment activities in Mindanao.<sup>12</sup> These rebel groups are still actively contending with the military and the police through the numerous violent incidents indicated in their reports,<sup>13</sup>

<sup>6</sup> See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *id.*

<sup>7</sup> Section 18. x x x.

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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 [of *habeas corpus*] or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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<sup>8</sup> See my Separate Opinion in *Lagman, v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, July 4, 2017, 829 SCRA 1; and my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

<sup>9</sup> *Lagman v. Pimentel III*, *id.*; emphases supplied. See also *Lagman, v. Medialdea*, *id.* at 470-471.

<sup>10</sup> See letter dated December 6, 2018; Annex A of the Petition of *Lagman*; *rollo* (G.R. No. 243522), Vol. I, p. 51-55.

<sup>11</sup> See Implementation of Martial Law in Mindanao Monthly Reports 2018 for the period from September 1 to 30, 2018.

<sup>12</sup> See Respondent’s Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, p. 833.

<sup>13</sup> See Implementation of Martial Law in Mindanao Monthly Reports 2018.

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and the bombing incidents throughout Mindanao,<sup>14</sup> most notably, the twin blasts on a church in Jolo, Sulu.<sup>15</sup> To note, despite the lack of specification, the President did mention the activities of “other rebel groups” as a moving consideration for Proclamation No. 216. As such, it can be reasonably inferred that the identification of the Maute-Hapilon group was not intended to be exclusive.<sup>16</sup>

As I previously ratiocinated, a grant of an extension of martial law may be justified by “**supervening events [which] not only pertain to the regrouping efforts of the x x x rebel ‘remnants’ but also the inclusion of other rebel groups, x x x, whose rebellious activities during the supervening period may have amplified – if not, complicated – the situation.** As the Constitution reads, the persistence of an invasion or rebellion (together with the public requirement) is sufficient for an extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation.”<sup>17</sup>

Notably, it has been argued<sup>18</sup> that the “violent incidents” of these rebel groups have not been substantiated enough by respondents owing to the incomplete entries, non-identification of perpetrators, unstated motives, and inclusion of incidents that are unrelated to rebellion, in the reports. However, to my mind, the existence of minor inconsistencies or the hiatus of information on certain attending details is not entirely fatal to respondents’ cause. As the latter advanced, these reports are a “complete record of all violent incidents x x x attributed to a specific threat group or any of its members.”<sup>19</sup> These constitute a compilation of several “spot reports” made on the ground by the AFP units which are prepared under exigent – and oftentimes, time-sensitive – constraints. In my view, absent any palpable indication of any falsity, ill motive, or unreasonableness on the part of the government, due deference should be accorded to the institutional capabilities of our military, which have gained enough experience on the ground to make critical decisions regarding the safety of our country. Verily, one should be cognizant that the military is, after all, a human institution which is not expected to be completely infallible; thus, the recommending officers may altogether make strategic calculations based on “imperfect” disclosures. As the old adage goes, “incomplete information is better than one that is complete but too late to be used.”<sup>20</sup>

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<sup>14</sup> See Letter of the Armed Forces of the Philippines to the President attached to the cover letter of the Department of National Defense, dated December 4, 2018; Annex “1” of the Comment to the Petitions; *rollo* (G.R. No. 243522), Vol. I, pp. 201-202.

<sup>15</sup> Oral Arguments, TSN, January 22, 2019, p. 16.

<sup>16</sup> See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

<sup>17</sup> See *id.*; emphasis supplied.

<sup>18</sup> See Opinion of Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa).

<sup>19</sup> See Respondents’ Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, p. 838.

<sup>20</sup> *Id.* at 838-839.

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In the same light, the fact that respondents have not specifically identified the perpetrators or have unstated motives for a *limited* number of incidents should not detract from the overall veracity of the above-said reports. Requiring the military to adduce more detailed information with regard to these incidents may be tantamount to demanding more than “adequate proof of compliance with the constitutional requisites.”<sup>21</sup> More so, respondents cannot be completely faulted for failing to clearly establish the motive of these groups *corresponding to each of these incidents*. Motive, as a state of mind, is difficult to prove with exactitude, much more on an isolated basis. One must have a holistic appreciation of the circumstances relevant to the said action to ascertain such a motive. In this regard and keeping in mind the *sui generis* nature of this proceeding,<sup>22</sup> respondents should not be expected to be able to prove motive in the same way that one would prove motive in a criminal proceeding. It should suffice that based on the circumstances observed on the ground, there exists reasonable factual basis that the armed encounters are driven by motives anchored on rebellion. At the risk of belaboring the point, respondents’ assertion that these incidents are committed in furtherance of a rebellion was borne from the military’s “years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions.”<sup>23</sup> Accordingly, based on the evidence presented, and absent any compelling reason to hold otherwise, I am inclined to conclude that there exists adequate proof on the persistence of the rebellion contemplated under Proclamation No. 216, which means that the same has not been rendered *functus officio*.<sup>24</sup>

As to the requirement of public safety, the following circumstances demonstrate the exigencies which support the third extension of martial law over Mindanao:

- a. No less than 181 persons in the martial law Arrest Orders have remained at large;
- b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

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- d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government’s delivery of basic services and clearly needs military intervention.

<sup>21</sup> See my Separate Concurring Opinion in *Lagman v. Pimentel III*, supra note 5.

<sup>22</sup> See my Separate Opinion *Lagman v. Medialdea*, supra note 8, at 455.

<sup>23</sup> See my Separate Concurring Opinion in *Lagman v. Pimentel III*, supra note 5.

<sup>24</sup> See Opinion of Justice Caguioa.

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e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.


f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The [Communist Terrorist Rebel Group's] exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the [PNP's] reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.<sup>25</sup>

Petitioners failed to disprove the occurrence of the foregoing circumstances and events. On the other hand, the intelligence reports clearly demonstrate the continuing threat to public safety. There also appears to be no patent unreasonableness in the amount of time requested for the extension to meet the public safety concerns wrought by the rebellion. As I mentioned in my opinion in *Lagman v. Pimentel III*, "if the President's estimation does not appear to be implausible or farfetched, then this Court should defer to his plan of action, especially so since Congress has further given its assent."<sup>26</sup>

Thus, considering that there exists sufficient factual basis to show that the rebellion still persists and that public safety requires the extension of martial law under the terms stated in Resolution of Both Houses No. 6 dated December 12, 2018, I vote to **DISMISS** the consolidated petitions.

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>25</sup> See Respondent's Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, pp. 832-833.

<sup>26</sup> See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.