G.R. No. 231658 – REP. EDCEL C. LAGMAN, *ET AL.*, *Petitioners*, v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *ET AL.*, *Respondents.*

G.R. No. 231771 – EUFEMIA CAMPOS CULLAMAT, *ET AL.*, *Petitioners*, v. PRESIDENT RODRIGO DUTERTE, *ET AL.*, *Respondents.*

G.R. No. 231774 – NORKAYA S. MOHAMAD *ET AL.*, *Petitioners*, v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *ET AL.*, *Respondents.*

Promulgated:

July 4, 2017

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SEPARATE OPINION

PERLAS-BERNABE, *J.*:

These consolidated petitions assail the sufficiency of the factual basis of 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," issued by President Rodrigo Roa Duterte (President Duterte) on May 23, 2017.

I. Nature of the Proceeding/Parameter of Review

Section 18, Article VII of the 1987 Constitution vests unto this Court special jurisdiction to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law, *viz.*:

> Section 18. x x x.
>
> x 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

As Section 18, Article VII confers unto this Court the power to review a particular class of cases, *i.e.*, the factual basis of a martial law

proclamation, it is clearly a jurisdiction-vesting provision, and not one that merely affects the exercise of jurisdiction.[1] As explicitly worded, Section 18, Article VII does not merely pertain to the Court's "decision of x x x questions arising in the case;"[2] nor "the correctness or righteousness of the decision or ruling made by [it]."[3] Rather, it provides the "authority to hear and determine a cause – the right to act in a particular case."[4]

The nature and import of the phrase "appropriate proceeding" as well as the parameter "sufficiency of factual basis" under Section 18, Article VII are unique constitutional concepts that have yet to be elucidated, much less defined, in our existing rules of procedure and jurisprudence. That being said, the Court is now confronted with the delicate task of fleshing out these concepts in light of their true constitutional intent.

It is my view that the term "appropriate proceeding" can only be classified as a *sui generis* proceeding that is exclusively peculiar to this Court's special jurisdiction to review the factual basis of a martial law declaration. Being a class of its own, it cannot therefore be equated or even approximated to any of our usual modes of review, such as a petition for review on *certiorari* under Rule 45 of the Rules of Court (which is an appeal) or a petition for *certiorari* under Rule 65 (which is a special civil action). Clearly, a petition based on Section 18, Article VII is not an appeal to review errors committed by a lower court; neither is it a special civil action for it is in fact, attributed as a type of "proceeding." Under Section 3 (a), Rule I of the Rules of Court:

> Section 3. *Cases governed.* — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.
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> (a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.
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> A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.
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> x x x x

A petition under Section 18, Article VII is not one whereby a party sues another for the enforcement or protection of a right, or the prevention or

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1 "Jurisdiction over the subject-matter is the power to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines its powers." (*Reyes v. Diaz*, 73 Phil. 484, 486 [1941].)

2 See *Salvador v. Patricia*, G.R. No. 195834, November 9, 2016.

3 *Palma v. Q & S, Inc.*, 123 Phil. 958, 960 (1966).

4 Id.

redress of a wrong. In fact, there is no cause of action[5] in this type of proceeding, as it is only intended to determine the sufficiency of the factual basis of a proclamation. In this limited sense, it can be argued that this proceeding, at most, resembles – albeit cannot be classified as – a special proceeding, which under the Rules of Court is "a remedy by which a party seeks to establish [among others] a particular fact"[6] (that being the factual basis of a martial law proclamation).

That a petition anchored on Section 18, Article VII is a case originally filed before this Court, or that it would eventually result in the nullification of a governmental act does not – as it should not – mean that it can be classified as an action for *certiorari*. The similarities between the two begin and end there. As earlier stated, a Section 18, Article VII petition carries no cause of action and is instead, a proceeding meant to establish a particular factual basis. This fundamental difference alone already precludes the above-supposition. Besides, other cases, such as for prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, are equally impressed with the feature of being originally filed before the Court, yet their nature and parameters remain conceptually distinct from one another. Meanwhile, the resulting nullification of a martial law proclamation (if so found by this Court to rest on insufficient factual basis) is not a conclusion exclusive to an action for *certiorari*; rather, the proclamation would be nullified on the ground that it violates the requirements of the Constitution. In fine, the cosmetic similarities between a Section 18, Article VII proceeding and a *certiorari* action are not valid reasons to confound the nature of the former with the latter.

Since Section 18, Article VII petition is a *sui generis* proceeding, the usual standards of review, such as to determine errors of judgment in a Rule 45 petition, or grave abuse of discretion amounting to lack or excess of jurisdiction in a Rule 65 petition, should therefore find no application. The standards used in Rule 45 and Rule 65 petitions trace their jurisdictional bases from Section 5, Article VIII of the 1987 Constitution, which pertinently reads:

> Section 5. The Supreme Court shall have the following powers:
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> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, mandamus, *quo warranto*, and *habeas corpus*.
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> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

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5 "Cause of action is defined as the act or omission by which a party violates a right of another." (*Heirs of Magdaleno Ypon v. Ricaforte*, 713 Phil. 570, 574 (2013), citing Section 2, Rule 2 of the Rules of Court.)

6 See Section 3 (c), rule I of the Rules of Court.

> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
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> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
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> (c) All cases in which the jurisdiction of any lower court is in issue.
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> (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
>
> (e) All cases in which only an error or question of law is involved.
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> x x x x

To my mind, the Court's jurisdiction in these cases should be considered to be general in nature as compared to its special jurisdiction under Section 18, Article VII, the latter being utilized only in one specific context, *i.e.*, when the factual basis of a martial law declaration is put into question. In this relation, the rule in statutory construction of *lex specialis derogat generali,* which conveys that where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail,[7] ought to apply.

In fact, the textual placement of Section 18, Article VII fortifies the *sui generis* nature of this "appropriate proceeding." It may be readily discerned that Section 18, Article VII is only one of two provisions relative to a Supreme Court power that is found in Article VII (Article on the Executive Department), and not in Article VIII (on the Judicial Department) of the 1987 Constitution. The other one is found in Section 4, Article VII, which states that "[t]he Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose." Similar to it acting as Presidential Electoral Tribunal (PET),[8] the Court is tasked to thresh out the factual issues in the case, as if acting as a trial court; thus, Section 18, Article VII's peculiar standard of "sufficiency of factual basis." The provision's location in Article VII on the Executive Department reveals the correlative intent of the Framers to instill the proceeding as a specific check on a particular power exercised by the President. In this regard, the Court is not called on to exercise its expanded power of judicial review to determine "whether or not there has been a grave abuse of

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[7] See *Jalosjos v. Commission on Elections*, 711 Phil. 414, 431 (2013).

[8] The 2010 Rules of Procedure of the PET provide for the procedures on Revision of Votes, Technical Examination, Subpoenas, and Reception of Evidence, among others, in order to thresh out issues of fact raised in election protests and petitions for *quo warranto*.

discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government";[9] rather, the Court is called to exercise its special jurisdiction to determine the sufficiency of the President's factual basis in declaring martial law. This parameter of review is not only explicit in Section 18, Article VII; it is, in fact, self-evident. Thus, all the more should this Court debunk the notion that the "appropriate proceeding" under Section 18, Article VII is a *certiorari* action with the parameter of grave abuse of discretion.

The parameter of review denominated as "sufficient factual basis" under Section 18, Article VII is both conceptually novel and distinct. Not only does it defy any parallelism with any of the Court's usual modes of review, but it also obviates the usage of existing thresholds of evidence, such as the threshold of substantial evidence as applied in administrative cases, preponderance of evidence in civil actions, and proof of guilt beyond reasonable doubt in criminal cases. Concomitantly, the burdens of proof utilized in these cases should not apply.

The same holds true for the evidentiary threshold of probable cause, which is but "the amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge."[10] Probable cause is ascertained from the vantage point of a "reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested."[11] "In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense."[12] While it had been previously opined that probable cause, being merely "premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ,"[13] it is my view that the purpose of and vantage point assumed by a prosecutor or judge in a determination of probable cause are fundamentally different from the purpose of and vantage point assumed by the President when he proclaims martial law. Verily, the standard of probable cause cannot be applied to the decision-making process of the highest-ranking public official in the country, who, through credible information gathered by means of the executive machinery, is not only tasked to determine the existence of an actual rebellion but must also calibrate if the demands of public safety require a martial law proclamation. Commissioner Fr. Joaquin G. Bernas, S.J. (Fr. Bernas), acting as *amicus curiae* in the case of *Fortun v.*

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9 See Section 1, Article VIII of the 1987 Constitution.

10 See Dissenting Opinion of Associate Justice Antonio T. Carpio in *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 597 (2012).

11 Id. at 598.

12 Id.

13 Id.

Macapagal-Arroyo[14] (*Fortun*), had occasion to explain that "the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not":

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish acts of the past. But the concern of the Constitution is to counter threat to public safety both in the present and in the future arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.
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> What all these point to are that the twin requirements of "actual rebellion or invasion" and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine whether rebellion exists. The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.
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> **In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.**[15] (Emphasis supplied)

It is my opinion that Fr. Bernas' reasoning is equally relevant when comparing the function of the President under Section 18, Article VII to the functions of a prosecutor or a judge who determines probable cause to

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[14] Cited in the Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Fortun*, id. at 629.
[15] Id. at 629-630.

respectively file a criminal case in court or issue a warrant for the arrest of an accused. Hence, however reasonable, practical or expedient it may seem, it is my position that this Court should not apply the probable cause standard in a Section 18, Article VII case.

For another, the Office of the Solicitor General has invoked the case of *In the Matter of the Petition for Habeas Corpus of Lansang*[16] (*Lansang*), as affirmed in *Aquino, Jr. v. Enrile*[17] (*Aquino, Jr.*) and thereby, argues that the parameter of "sufficient factual basis" is equivalent to the gauge of arbitrariness (in contrast to correctness).[18] However, as will be gleaned below, these are not proper authorities to construe the term "sufficient factual basis" since the provision regarding the power of the Court to check the President's declaration of martial law never existed in the past Constitutions under which these two cases were decided.

To briefly contextualize, *Lansang* is a 1971 case, decided under the 1935 Constitution, which involved the propriety of the suspension of the privilege of the writ of *habeas corpus*. In that case, the Court held that it had the "authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof."[19] The Court cited and affirmed *Lansang* in *Aquino, Jr.*, which was a case decided in 1974 under the 1973 Constitution. There, this Court ruled:

> The recognition of justiciability accorded to the question in Lansang, it should be emphasized, is there expressly distinguished from the power of judicial review in ordinary civil or criminal cases, and is limited to ascertaining "merely whether he (the President) has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act." **The test is not whether the President's decision is correct but whether, in suspending the writ, he did or did not act arbitrarily**.[20] (Emphasis supplied)

The pertinent provisions on martial law under the 1935 and 1973 Constitutions respectively read:

Section 10, Article VII of the 1935 Constitution

> Section 10. x x x.
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> x x x x
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> (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,

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16 149 Phil. 547 (1971).
17 158-A Phil. 1 (1974).
18 See respondents' Memorandum dated June 19, 2017, pp. 45-46.
19 *In the Matter of the Petition for Habeas Corpus of Lansang*, supra note 16, at 585-586.
20 *Aquino, Jr. v. Enrile*, supra note 17, at 47.

> 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.
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> x x x x

Section 12, Article IX of the 1973 Constitution

> Section 12. The Prime Minister 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.

As above-mentioned, these past constitutional provisions on martial law do not reflect the Court's power to "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" under the 1987 Constitution. Clearly, the variance in the constitutional context under which *Lansang* and *Aquino, Jr.* were decided negates the notion that the Framers of the 1987 Constitution applied the pronouncements made in those cases when they were crafting a novel constitutional provision which had no existing equivalent at that time. Thus, it is my impression that there could have been no contemporary construction of the term "sufficient factual basis" in reference to the *Lansang* and *Aquino, Jr.* pronouncements.

At any rate, the deliberations, and more significantly, the actual text of Section 18, Article VII do not reflect the insinuation that the term "sufficient factual basis" is equivalent to the gauge of arbitrariness, as espoused in *Lansang* and *Aquino, Jr.* If such was their intention, then the Framers should have so indicated. Instead, the Framers created a new safeguard under Section 18, Article VII to effectively prevent the aberration of a Marcosian martial law from again happening in our country:

> Section 18, Article VII is meant to provide additional safeguard against possible Presidential abuse in the exercise of his power to declare martial law or suspend the privilege of the writ of *habeas corpus*. Reeling from the aftermath of the Marcos martial law, the framers of the Constitution deemed it wise to insert the now third paragraph Section 18, Article VII. This is clear from the records of the Constitutional Commission when its members were deliberating on whether the President could proclaim martial law even without the concurrence of Congress. Thus:
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> MR. SUAREZ: Thank you, Madam President.

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD: This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. **Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.**

MR. SUAREZ: Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10 (2) of the Constitution:

x x x x

And he gave all reasons in order to suspend the privilege of the writ of *habes corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase and, with the concurrence of at least a majority of all the members of the Congress"?

MR. MONSOD: ***Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that 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 on the same within 30 days from its filing.***

> I believe that there are enough safeguards. The Constitutions is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.[21]

To adopt and validate the gauge of arbitrariness in a Section 18, Article VII case would dangerously emasculate this Court's power to serve as a potent check against the possible abuses of martial law. This is because the gauge of arbitrariness is the substantial equivalent of the concept of grave abuse of discretion which is one of the most difficult thresholds for a citizen-petitioner to hurdle since it denotes an abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act [at all] in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility."[22] Notably, Fr. Bernas, one of the Framers of the new Constitution, stated that the new provision means more than just empowering the Court to review the suspension of the privilege of the writ of *habeas corpus* as held in *Lansang*. More significantly, he expressed that "[t]he new text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine 'the sufficiency of the factual basis of the suspension'":

> What is the scope of this review power of the Supreme Court[?] It will be recalled that in *Lansang v. Garcia* the Supreme Court accepted the Solicitor General's suggestion that the Court 'go *no* further than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily. **Is this all that the 1987 provision means**?
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> The new provision quite obviously means more than just the empowerment in *Lansang*. **The new text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine 'the sufficiency of the factual basis of the suspension.** Hence, the Court is empowered to determine whether in fact actual invasion and rebellion exists and whether public safety requires the suspension. Thus, quite obviously too, since the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court. It is submitted that the Supreme Court's task of verifying the sufficiency of the factual basis for the suspension will not be as difficult as under the

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[21] See *ponencia*, pp. 23-25, citing Record of the 1987 Constitutional Commission No. 043, Vol. II, July 30, 1986, pp. 476-477.

[22] *Romy's Freight Service v. Castro*, 523 Phil. 540, 546 (2006); citation omitted.

> old system because the 1987 Constitution has radically narrowed the basis for suspension.[23]

In fine, the parameters under our usual modes of review, much more the pronouncements in *Lansang* and *Aquino, Jr.*, are clearly inappropriate references for this Court to divine the meaning of the term "sufficient factual basis" as a parameter in resolving a Section 18, Article VII petition.

In light of this legal lacuna, I submit that this Court should therefore construe the term "sufficient factual basis" in its generic sense. "[T]he general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation."[24] Moreover, "a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well. This rule of construction, known as *progressive interpretation*, extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage, and thus keeps legislation from becoming ephemeral and transitory."[25]

"Sufficient" commonly means "adequate";[26] it may also mean "enough to meet the needs of a situation or a proposed end."[27] Logically, the "end" to be established in a petition under Section 18, Article VII is the factual basis of a proclamation of martial law. **Martial law can only be proclaimed legally under the 1987 Constitution upon the President's compliance of two (2) conditions, namely: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same. Therefore, it is reasonable to conclude that "sufficient factual basis," as a parameter of review under Section 18, Article VII of the 1987 Constitution, should simply mean that this Court has been satisfied that there exists adequate proof of the President's compliance with these two (2) requirements to legally proclaim martial law**. This parameter of review should not be diluted by bringing in the need to prove arbitrariness. As a fact-finding tribunal operating under a special kind of jurisdiction, this Court is therefore tasked to ascertain, plain and simple, if there indeed exists

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23 Bernas, Joaquin G. The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., pp. 485-486, as cited in the *ponencia*, pp. 47-48.

24 See Concurring Opinion of Associate Justice Arturo D. Brion in *Orceo v. Commission on Elections*, 630 Phil. 670, 689 (2010), citing Ruben E. Agpalo, Statutory Construction, p. 180 (2003).

25 Id., citing Ruben E. Agpalo, Statutory Construction, p. 185 (2003).

26 <https://en.oxforddictionaries.com/definition/sufficient> (visited June 30, 2017).

27 <https://www.merriam-webster.com/dictionary/sufficient> (visited June 30, 2017).

(1) an actual invasion or rebellion, and (2) that public safety requires the proclamation of martial law. As will be discussed below, the first requirement is a more concrete question of law that may be resolved by applying existing legal principles. On the other hand, the second requirement is a more malleable concept of discretion, whereby deference to the prudential judgment of the President, as Commander-in-Chief, to meet the exigencies of the situation should be properly accorded. **Being a proceeding directly meant to establish the factual basis of a governmental action, it follows that the government bears the burden of proving compliance with the requirements of the Constitution for clearly, the petitioner, who may be any citizen, does not have possession of the information used by the President to justify the imposition of martial law**. Nonetheless, the petitioner has the burden of evidence to debunk the basis proffered by the government and likewise, prove its own affirmative assertions.

II. Requirements to Proclaim Martial Law.

The above-stated requirements for the President to legally place the Philippines or any part thereof under martial law are found in the first paragraph of Section 18, Article VII of the 1987 Constitution:

> 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.** (Emphasis and underscoring supplied)

In the case of *Integrated Bar of the Philippines v. Zamora*,[28] this Court explained that:

> [U]nder Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, two conditions must concur: **(1) there must be an actual invasion or rebellion and, (2) public safety must require it**. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces to prevent or suppress lawless violence, invasion or rebellion. The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.[29]

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[28] 392 Phil. 618, 643 (2000).

[29] Id. at 643; emphasis and underscoring supplied.

The deliberations of the Framers of the 1987 Constitution make it sufficiently clear that there must be an actual rebellion and not merely an imminent danger thereof, which was formerly, a ground to impose martial law under the 1935 and 1973 Constitutions but demonstrably deleted in the present Constitution. Fr. Bernas explained that the phrase "imminent danger thereof" "could cover a multitude of sins and could be a source of a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that."[30] Commissioner Florenz D. Regalado (Commissioner Regalado) adds that:

> There is a fear that the President could base the suspension of the writ on alleged intelligence reports which cannot be looked into and the veracity of which is dependent on the classification by the military. This could lead to a situation where these reports could easily be manufactured and attributed to anybody, without even the judiciary being in a position to refuse or look into the truth of the same.[31]

In his opinion in the case of *Fortun*, Senior Associate Justice Antonio T. Carpio elucidated that the "[t]he term 'rebellion' in Section 18, Article VII of the 1987 Constitution must be understood as having the same meaning as the crime of 'rebellion' that is defined in Article 134 of the Revised Penal Code, as amended."[32] Among others, he properly reasoned that:

> [T]he Revised Penal Code definition of rebellion is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution. Indisputably, the Filipino people recognize and are familiar with only one meaning of rebellion, that is, the definition provided in Article 134 of the Revised Penal Code. To depart from such meaning is to betray the Filipino people's understanding of the term "rebellion" when they ratified the Constitution. There can be no question that "the Constitution does not derive its force from the convention which framed it, but from the people who ratified it."[33]

The same thought is reflected in the exchange between Commissioners De Los Reyes and Regalado:

> MR. DE LOS REYES: As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting, or actual attack on the legislature or Malacañang, for example? x x x.
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> MR. REGALADO: If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an

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30 I RECORD, CONSTITUTIONAL COMMISSION, 773 (July 18, 1986).
31 II RECORD, CONSTITUTIONAL COMMISSION, p. 474 (July 30, 1986).
32 Supra note 10, at 592.
33 Id. at 593.

> actual assemblage of men in an armed public uprising, for the purposes mentioned in Article 134 and by the means employed under Article 135.[34]

Under Article 134 of the Revised Penal Code (RPC), as amended by Republic Act No. 6968,[35] rebellion is committed in the following manner:

> [B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature wholly or partially, of any of their powers or prerogatives.[36]

In *People v. Lovedioro*,[37] this Court stated that "[t]he gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which **cannot be confined *a priori* within predetermined bounds**."[38]

Rebellion is, by nature, not a singular act, like the other common crimes under the RPC such as murder or rape, which place of commission can be situated in a particular locality. Rather, **rebellion is "a vast movement of men and a complex net of intrigues and plots**."[39] However, the gravamen of rebellion is the armed public uprising against the government. "Gravamen" is defined as "the material or significant part of a grievance or complaint."[40] This means that while rebellion is, by nature a movement, the significant aspect thereof to prosecute the same is that the men involved in this movement actually take up arms against the government; otherwise, rebellion under the RPC is not deemed to have been consummated and the persons accused thereof cannot be penalized/convicted of the same.

The nature of rebellion as a movement is the reason why, as jurisprudence states, this crime "cannot be confined *a priori* within predetermined bounds." A "movement" has been defined as "a series of organized activities working toward an objective; also: an organized effort to promote or attain an end."[41] Complementary to this attribution, rebellion has been also classified as a "continuing crime." A continuing crime or *delito*

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34 II RECORD, CONSTITUTIONAL COMMISSION, p. 412 (July 29, 1986).

35 Entitled "AN ACT PUNISHING THE CRIME OF *COUP D'ETAT* BY AMENDING ARTICLES 134, 135 AND 136 OF CHAPTER ONE, TITLE THREE OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES" (October 26, 1990).

36 See Section 2 of RA 6968.

37 *People v. Lovedioro*, 320 Phil. 481 (1995).

38 Id. at 488; emphasis and underscoring supplied.

39 Reyes, Luis B., The Revised Penal Code, Book II, Eighteenth Edition (2012), p. 86; emphasis and underscoring supplied.

40 <https://www.merriam-webster.com/dictionary/gravamen> (visited June 30, 2017).

41 <https://www.merriam-webster.com/dictionary/movement> (visited June 30, 2017).

continuado is "a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division."[42] In *Gamboa v. Court of Appeals*,[43] this Court expounded on the concept of a continuing crime:

> Apart and isolated from this plurality of crimes (ideal or real) is what is known as "*delito continuado*" or "continuous crime." This is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, each of which, although of a delictual character, merely constitutes a partial execution of a single particular delict, such concurrence or delictual acts is called a "*delito continuado*." In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim."[44]

Anent its temporality, a "continuing offense" has been characterized as "a continuous, unlawful act or series of acts set on foot by a single impulse and **operated by an unintermittent force, however long a time it may occupy**."[45] It is "[o]ne consisting of a continuous series of acts which **endures after the period of consummation** x x x."[46]

Being a movement involving a plurality of acts, which, however, is animated by a single criminal resolution or intent, common crimes committed in furtherance of the rebellion are deemed absorbed. In the landmark case of *People v. Hernandez*,[47] this Court classified rebellion as a political crime and explained the doctrine of absorption:

> [P]olitical crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.
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> x x x x

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42 *Gamboa v. Court of Appeals*, 160-A Phil. 962, 969 (1975).

43 Id.

44 Id.

45 Reyes, Luis B., The Revised Penal Code, Book I, Eighteenth Edition (2012), p. 702, citing 22 C.J.S., 52; emphasis and underscoring supplied.

46 <https://dictionary.thelaw.com/continuous-crime/> (visited June 30, 2017); emphasis and underscoring supplied.

47 *People v. Hernandez*, 99 Phil. 515 (1956).

> Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense [such as rebellion], are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty. [48]

Accordingly, in light of the nature of rebellion (1) as a movement, (2) as a complex net of intrigues and plots, (3) as a continuing crime, and (4) as a political offense, it is my view that this Court cannot confine the concept of rebellion to the actual exchange of fire between the accused rebels and the forces of the government. As above-intimated, the taking up of arms against the government is only what consummates the crime of rebellion in order to prosecute those accused thereof under the RPC. However, up until that movement stops (for instance, when the rebels surrender or are caught by government operatives), it is my opinion that the rebellion continues to survive in legal existence.

For instance, when rebels temporarily cease with their offensive and later on regroup, it is illogical to posit that the rebellion had already ended. Skirmishes at various places, at different times, are common occurrences in a surviving rebellion. This reality had, in fact, been the subject of the exchange of Commissioners De Los Reyes and Regalado, wherein it was conveyed that isolated attacks in different provinces, despite the lack of any attack on the capital, are enough to show that an actual rebellion exists, provided, however, that there is clearly an attempt to destabilize the government in order to supplant it with a new government:

> MR. DE LOS REYES: The public uprisings are not concentrated in one place, which used to be the concept of rebellion before.
>
> MR. REGALADO: No.
>
> MR. DE LOS REYES: But the public uprisings consist of isolated attacks in several places – **for example in one camp here; another in the province of Quezon; and then in another camp in Laguna; no attack in Malacañang** – but there is complete paralysis of the industry in the whole country. If we place these things together, the impression is clear – that there is an attempt to destabilize the government in order to supplant it with the new government.[49]

Likewise, we should not lose sight of a rebellion's intricate workings. Reconnaissance of government movement and espionage on military strategy are very well essential to both a brooding and an ongoing rebellion. The establishment of outposts and installations, escape routes and diversion

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[48] Id. at 535-541.

[49] II RECORD, CONSTITUTIONAL COMMISSION, p. 413 (July 29, 1986); Emphasis and underscoring supplied

points, all spread over numerous areas of interest, also entails tactical activity to further the rebellion. In the same vein, the recruitment/radicalization of conscripts and the resupply of provisions and arms, are incidents to a rebellion whose wheels have been put into motion.

In *Aquino, Jr.*, the Court pointed out that:

> The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence – all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.[50]

We need not look any further than the published chronicles about the Abu Sayyaf Group (ASG) – currently led by Isnilon Hapilon (Hapilon) and affiliated with the Maute Group – to paint a picture of how a rebellion may intricately operate:

> **Logistics, Tactics and Training of the ASG**
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> x x x x
>
> In tactics, the ASG fighters are capable of reinforcing beleaguered comrades when in the general area of conflict, or sometimes from one island to another island like in the case of the ASG from Basilan reinforcing comrades in Sulu by watercraft. It can conduct offensive action against platoon, section, or squad-sized military formations, and disable armor assets using rocket propelled grenades, 90mm, and 57 mm recoilless rifles. Its fighters usually employ "hit and run" tactics in view of their limited ammunition. Having no concern even for the Muslim residents, it resorts to hostage taking, to delay pursuing government troops and whenever cornered. Tactically, the ASG cannot sustain a prolonged armed engagement against the government forces. The islands and vast water area favors the ASG as it affords freedom of movement. Therefore, the curtailment of movement along mobility corridors would be their critical vulnerability.
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> The ASG creates political, economic, and social disorders to force Christians and non-Muslims to vacate areas it claims as its own. This is best exemplified by the ASG's raid and massacre in Ipil town mentioned

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[50] *Aquino, Jr. v. Enrile*, supra note 17, at 48-49.

> earlier, but the results were obviously unfavorable to them. It has exploited the power of media to discredit the administration and prop up their cause. This included the use of a popular Filipino actor who is an Islam convert, as a negotiator in one of their hostage activity in their Basilan jungle hideout.
>
> While some of the ASG members were former MNLF rebels, it is most certain that some of them were trained in the Middle East and Malaysia. Most of the recruits were locally trained on guerrilla warfare in Basilan and Sulu. Their training included combat tactics, demolition, marksmanship, and other military subjects. Comparatively speaking, the ASG is inferior to the military forces arrayed against it. However, the mastery of the terrain and ability to survive in extreme jungle conditions makes the ASG fighter more adept to his environment. This is a major challenge in Philippine counter terrorism operations. [51]

With all of these in tow, I believe that the crime of rebellion defies our ordinary impression that a crime's occurrence can be pinpointed to a definite territory, much less its existence bounded to a particular moment in time. **Because of its nature, rebellion is hardly compatible with the norms of spatial and temporal limitability, as usually applied in our criminal law**. It is in this specific light that we should understand the concept of an actual rebellion under the Constitution's martial law provision.

That being said, I therefore submit that, for the purposes of assessing compliance with the first requirement of Section 18, Article VII of the 1987 Constitution, this Court should ascertain whether there is adequate proof to conclude that a rebellion, in light of its elements under the RPC, has already been consummated. **Once these elements are established, a state of actual rebellion (and not merely an "imminent danger thereof") already exists as a fact, and thus, it may be concluded that the said first requisite has already been met.**

Consequently, the President would then have ample discretion to determine the territorial extent of martial law, provided that the requirement of public safety justifies this extent. **Since as above-discussed rebellion, by nature, defies spatial limitability, the territorial scope of martial law becomes pertinent to Section 18, Article VII's second (when public safety requires) and not its first requirement (actual rebellion)**. By these premises, it is also erroneous to think that the territorial extent of martial law should be only confined to the area/s where the actual exchange of fire between the rebels and government forces is happening. To reiterate, rebellion is, by nature, a movement; it is much more than the actual taking up of arms. While the armed public uprising consummates the crime for purposes of prosecuting the accused under the RPC, its legal existence is not confined by it. It is a complex net of intrigues and plots, a movement that ceases only until the rebellion is quelled. Commissioner Regalado had, in fact, observed

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[51] <http://www.dtic.mil/dtic/tr/fulltext/u2/a404925.pdf> (visited June 30, 2017).

that it is not necessary for an armed public uprising to happen "all over the country" so as to consider the situation "within the ambit of rebellion":

> MR. REGALADO: **x x x If they conclude that there is really an armed public uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion**. x x x.[52]

At any rate, the 1987 Constitution or its deliberations did not mention anything regarding the need to show the presence of armed attacks all over a certain territory in order to declare martial law therein. The President is, in fact, empowered to "place the Philippines or any part thereof under martial law," provided that a rebellion already exists and that the public safety requires it.

As above-intimated, it is this second requirement of public safety which determines the territorial coverage of martial law. The phrase "when the public safety requires it" under Section 18, Article VII is similarly uncharted in our jurisprudence. Since it has not been technically defined, the term "public safety" may be likewise construed under its common acceptation – that is, "[t]he welfare and protection of the general public, usually expressed as a governmental responsibility."[53] For its part, "public welfare" has been defined as "[a] society's well-being in matters of health, safety, order, morality, economics and politics."[54] Under Section 18, Article VII, the obvious danger against public safety and the society's well-being is the existence of an actual invasion or rebellion. Adopting the generic definition of the term "public safety," it may then be concluded that the phrase "when the public safety requires it" under Section 18, Article VII would refer to the government's responsibility to declare martial law in a particular territory as may be reasonably necessary to successfully quell the invasion or rebellion. In this sense, the territorial extent of martial law is therefore malleable in nature, as it should always be relative to the exigencies of the situation.

Under our prevailing constitutional order, no one except the President is given the authority to impose martial law. By necessary implication, only he has the power to delimit its territorial bounds. In the case of *Spouses Constantino, Jr. v. Cuisia*,[55] the Court had occasion to discuss the extraordinary nature of the President's power to declare martial law, stating that the exercise thereof, among others, call for the supersedence of executive prerogatives:

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52 II RECORD, CONSTITUTIONAL COMMISSION, 413 (July 29, 1986); Emphasis and underscoring supplied.
53 Black's Law Dictionary, Eighth Edition, p. 1268.
54 Id. at 1625.
55 509 Phil. 486 (2005).

> These distinctions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least **call for the supersedence of executive prerogatives over those exercised by co-equal branches of government**. The **declaration of martial law**, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, **all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power**. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.[56]

In the same vein, this Court, in *Villena v. The Secretary of the Interior*,[57] stated that:

> There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and **proclaim martial law**.[58]

Considering the Constitution's clear textual commitment of the power to impose martial law to the President, this Court, in assessing compliance with Section 18, Article VII's public safety requisite, must give due deference to his prudential judgment in not only determining the need to declare martial law in the Philippines, but also determine its territorial coverage. However, as will be elaborated below, our deference to the President must be circumscribed within the bounds of truth and reason. Otherwise, our constitutional authority to check the President's power to impose martial law would amount to nothing but an empty and futile exercise.

While the Court's power under Section 18, Article VII is designed as an important check to the President's martial law power, the reality is that this Court carries no technical competence to assess the merits of a particular military strategy. Meanwhile, "the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call [(as well as the power to declare martial law]), on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property."[59] This resonates with the fact that:

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56 Id. at 518; emphases and underscoring supplied.
57 67 Phil. 451 (1939).
58 Id. at 462-463; emphasis supplied.
59 *Integrated Bar of the Philippines v. Zamora*, supra note 28, at 644.

> [The] President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his. As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual. [60]

With these in mind, **the Court's task – insofar as the second requisite under Section 18, Article VII is concerned – should therefore be limited to ascertaining whether the facts stated as basis for a martial law proclamation are reasonable enough to warrant its imposition and that its territorial extent is likewise rationally commensurate with the perceived exigencies attending an actual invasion or rebellion**.

As I see it, the reasonableness of the President's declaration of martial law as well as its extent may be determined by multiple factors. This Court may, for instance, consider the reported armed capabilities, resources, influence, and connections of the rebels; the more capable, wealthy, influential, and connected the rebels are, the greater the danger to the public's safety and consequently, the greater the necessity to impose martial law on a larger portion of territory. Also, this Court may consider the historical background of the rebel movement. Past acts may reflect the propensity of a rebel group to cause serious damage to the public. Further, the Court should give leeway to the President's estimation of the rebels' future plan of action. If the estimation, when taken together with all the foregoing factors, does not seem implausible or farfetched, then this Court should defer to the President's military strategy.

In this relation, Fr. Bernas, in the *Fortun* case, pointed out that:

> [The issue of] whether there exists a need to take action in favor of public safety is a factual issue different in nature from trying to determine whether rebellion exists. **The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements**.[61]

Truth be told, there are no fixed factors or requisites that go into this standard of reasonableness. However, as a guiding principle, this Court should always keep in mind that martial law is but a means to an end. It is an extraordinary measure that empowers the President to act as if he were a

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[60] *Kulayan v. Tan*, 690 Phil. 72, 90-91 (2012).

[61] *Fortun v. Macapagal-Arroyo*, supra note 10, at 629-630; emphasis and underscoring supplied.

commanding general engaged in the theater of war;[62] a legal mechanism which – as history has taught us – may bear unintended consequences to the liberties of our people. Therefore, this Court should always ask itself whether or not the President's call to impose martial law in a certain territory is rationally commensurate to the needs of the public. For after all, the dangers to society's well-being, both actual and perceived, are what justify the imposition of martial law.

Summary of Adjudicative Process under Section 18, Article VII

To recap, the parameter "sufficient factual basis" under Section 18, Article VII of the Constitution simply means that there is adequate proof to show that the President had complied with the two requisites to impose martial law. These requisites are: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same.

There is adequate proof that the President complied with the first requisite if the elements of rebellion as defined in Article 134 of the RPC concur; this means that the rebellion is not merely imminent but has been actually consummated.

On the other hand, there is adequate proof that the President complied with the second requisite if it is shown that the public safety demands the imposition of martial law under a particular territorial extent; since public safety is a malleable concept, the Court should then gauge whether or not there is a reasonable need to impose martial law in light of the exigencies of the situation and concomitantly, whether its territorial extent is rationally commensurate to the said exigencies.

In proving compliance with these two requisites, it goes without saying that the Court should first ascertain the veracity of the facts presented by the government. This is for the obvious reason that the Court applies its legal analysis only to established facts. As a general rule, the information provided by the executive agencies to the President is presumed to have been acquired and released to the public in the regular performance of their official functions. Moreover, as the information would be contained in public documents issued in the performance of a duty by a public officer, they constitute *prima facie* evidence of the facts stated therein.[63] Therefore, it is incumbent upon the citizen-petitioner to overcome this burden and debunk the information's veracity. If the objections against the facts stand unobjected or turn out to be invalid, then this Court may take them as true and correct, *unless* the falsity of the facts is apparent on its face, or that their

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62 II RECORD, CONSTITUTIONAL COMMISSION, p. 398 (July 29, 1986).

63 RULES OF COURT, Rule 132, Section 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

inaccuracy surfaces throughout the court proceedings (for instance, when conflicting statements are made by the executive in their pleadings or during oral argumentation). This is because of the Court's institutional incapacity to externally vet the information submitted by the executive, as some of them may be even classified as confidential.

It should be clarified that the foregoing evidentiary rules do not negate the government's burden of proving compliance with the requirements of Section 18, Article VII of the 1987 Constitution. The government's initial burden of stating the factual basis of a martial law proclamation is likewise not dispensed with. To be sure, the presumption of regularity *in the sense discussed above* is only limited to the quality of the information that the government presents. **This presumption is not equivalent to a presumption of the entire proclamation's constitutionality or validity**. The facts sought to be established through such information must still be shown to legally comply with the adjudicative parameters set forth above. Verily, the presumption of regularity should only apply to issues of fact and not to conclusions of law. For instance, the fact that events A, B, and C, as presented by the government through official reports, have indeed occurred does not mean that an actual rebellion already exists or that martial law over the whole of Mindanao is already reasonable under the circumstances. Clearly, the duty of the Court is to determine the **sufficiency** of the proclamation's factual basis. Such presumption only touches on the facts' veracity, which is but one aspect of the standard of "sufficiency." To reiterate, the presumption does not amount to a presumption of constitutionality or validity. The government remains duty bound to assert the factual basis of the martial law proclamation and prove compliance with the requirements of the Constitution. The petitioner then holds the burden of evidence to debunk the basis proffered by the government and likewise, prove its own affirmative assertions.

III. Factual Basis for the Imposition of Martial Law

After a careful study of this case, it is my view that the President had sufficient factual basis to issue Proclamation No. 216 and thereby, legally proclaimed martial law over the whole of Mindanao.

It is apparent that the tipping point for President Duterte's issuance of Proclamation No. 216 was the May 23, 2017 Marawi siege. The events leading thereto were amply detailed by the government as follows:

> (a) At 2:00 PM, members and sympathizers of the Maute Group and ASG attacked various government and privately-owned facilities;
>
> (b) At 4:00 PM, around fifty (50) armed criminals forcibly entered the Marawi City Jail; facilitated the escape of inmates; killed a member of a PDEA; assaulted and disarmed on-duty personnel and/or locked them

inside the cells; confiscated cellphones, personnel-issued firearms, and vehicles;

(c) By 4:30 PM, interruption of power supply; sporadic gunfights; city-wide power outage by evening;

(d) From 6:00 PM to 7:00 PM, Maute Group ambushed and burned the Marawi Police Station; commandeered a police car;

(e) BJMP personnel evacuated the Marawi City Jail and other affected areas;

(f) Control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell to the rebels;

(g) Road blockades and checkpoints set up by lawless armed groups at the Iligan-Marawi junction;

(h) Burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony;

(i) Taking of hostages from the church;

(j) Killing of five faculty members of Dansalan College;

(k) Burning of Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School;

(l) Overrunning of Amai Pakpak Hospital;

(m) Hoisting of ISIS flag in several areas;

(n) Attacking and burning of the Filipino-Libyan Friendship Hospital;

(o) Ransacking of a branch of Landbank of the Philippines and commandeering an armored vehicle;

(p) Reports regarding Maute Group's plan to execute Christians;

(q) Preventing Maranaos from leaving their homes;

(r) Forcing young Muslims to join their group; and

(s) Intelligence reports regarding the existence of strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the Government.[64]

Petitioners attempted to debunk some of the factual details attendant to the foregoing events with the following counter-evidence:[65]

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[64] See Report of President Duterte to Congress, pp. 4-5.

[65] See *ponencia*, pp. 63-64; emphases in the original.

FACTUAL STATEMENTS	COUNTER EVIDENCE
1. that the Maute group attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among several locations. As of 0600H of 24 May 2017, members of the Maute group were seen guarding the entry gates of the Amai Pakpak Hospital and that they held hostage the employees of the Hospital and took over the PhilHealth office located thereat (Proclamation No. 216 and Report);	Statements made by: (a) Dr. Amer Saber, Chief of the Hospital; (b) Health Secretary Paulyn Ubial; (c) PNP Spokesperson Senior Supt. Dionardo Carlos; (d) AFP Public Affairs Office Chief Co. Edgard Arevalo; and (e) Marawi City Mayor Majul Gandamra denying that the hospital was attacked by the Maute Group **citing on-line news articles of Philstar, Sunstar, Inquirer, and Bombo Radyo.**
2. that the Maute Group ambushed and burned the Marawi Police Station (Proclamation No. 216 and the Report);	Statements made by PNP Director General Ronald dela Rosa and Marawi City Mayor Majul Gandamra **in the on-line news reports of ABS CBN New and CNN Philippines** denying that the Maute group occupied the Marawi Police Station.
3. that lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles (Report);	Statement made by the bank officials **in the on-line news article of Philstar** that the Marawi City branch was not ransacked but sustained damages from the attacks.
4. that the Marawi Central Elementary Pilot School was burned (Proclamation No. 216 and the Report);	Statements **in the on-line news article of Philstar** made by the Marawi City Schools Division Assistant Superintendent Ana Alonto denying that the school was burned and Department of Education Assistant Secretary Tonisito Umali stating that they have not received any report of damage.
5. that the Maute Group attacked various government facilities (Proclamation No. 216 and the Report).	Statement **in the on-line news articles of Inquirer** made by Marawi City Mayor Majul Gandamra stating that the ASG and the Maute Terror Groups have not taken over any government facility in Marawi City.

However, the counter-evidence presented by petitioners largely consist of uncorroborated news reports, which are therefore inadmissible in evidence on the ground that they are hearsay. In *Feria v. Court of Appeals*:[66]

> [N]ewspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted.[67]

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66 382 Phil. 412 (2000).

67 Id. at 423; citations omitted.

That being said, and without any other cogent reason to hold otherwise, the government's account of the May 23, 2017 events as above-detailed are to be taken as true and correct. In fact, even if the objections of petitioners are admitted, there are other incidents which remain unrefuted.

In his Report relative to Proclamation No. 216, President Duterte explained that the events of May 23, 2017 "put on public display the [Maute] group's clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities – the President, foremost – of their powers and prerogatives."[68] In consequence, "[l]aw enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered."[69]

To understand the Maute Group's political motive, a brief discussion on the origin and cause behind the Islamic State movement (ISIS or DAESH) remains imperative.

According to the OSG, the Maute Group from Lanao del Sur led by Omar Maute is but one of the four (4) ISIS-linked local rebel groups that operate in the different parts of Mindanao. These groups – the other three (3) being (*a*) the ASG from Basilan (ASG-Basilan), led by Hapilon, (*b*) the Ansarul Khilafah Philippines, also known as the Maguid Group from Saranggani and Sultan Kudarat led by Mohammad Jaafar Maguid, and (*c*) the Bangsamoro Islamic Freedom Fighters (BIFF) based in Liguasan Marsh, Maguindanao – have formed an alliance for the purpose of establishing a *wilayah* or Islamic Province, in Mindanao. The establishment of different *wilayah* provinces is part of ISIS's grand plan to impose its will and influence worldwide. It captures and administers territories all over the world, which conquered territories are referred to as a caliphate. The success of ISIS in conquering territories means that it has the capacity to acquire fighters and modern weaponry. As conveyed by the OSG, the United Nations has labeled ISIS as the world's most wealthiest organization (with an estimated income of $400 to $500 Million in 2015 alone), pointing out that it derives its income from operating seized oil fields, obtaining protection money from businesses, and profits from black market transactions.[70]

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[68] Report of President Duterte to Congress, pp. 3-4.
[69] Id. at 6.
[70] See respondents' Consolidated Comment dated June 12, 2017, pp. 4-5.

Based on military intelligence, Hapilon performed a symbolic *hijra* or pilgrimage to unite with the ISIS-linked groups in mainland Mindanao. This was geared towards realizing the five step process of establishing a *wilayah,* which are: first, the pledging of allegiance to the Islamic State; second, the unification of all terrorist groups who have given *bay'ah* or their pledge of allegiance; **third, the holding of consultations to nominate a *wali* or a governor of a province; fourth, the achievement of consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao**; and finally, the presentation of all these to the ISIS leadership for approval or recognition.[71] In this light, the OSG asserted that the ISIS had already appointed Hapilon as the *emir* in the Philippines, which is the third step in the establishment of *wilayah* in Mindanao.[72] This fact was validated through an announcement in the ISIS weekly newsletter, Al Naba, and confirmed in a June 21, 2016 video by ISIS entitled "The Solid Structure."[73] Notably, the foregoing evidence belie petitioners' supposition, based once more on an uncorroborated news article, that "the Maute Group is more of the clan's private militia latching into the IS brand to inflate perceived capability."[74]

In gauging the danger to the public safety, President Duterte provided information on the Maute Group's armed capability, as well as its connections. He disclosed that "[b]ased on verified intelligence reports, the Maute Group, as of the end of 2016, consisted of around 263 members, fully armed and prepared to wage combat in furtherance of its aims. The group chiefly operates in the province of Lanao del Sur, but has extensive networks and linkages with foreign and local armed groups such as the Jemaah Islamiyah, Mujahadin Indonesia Timur and the ASG. It adheres to the ideals being espoused by the DAESH, as evidenced by [the ISIS publication and video footage as above-stated]."[75]

Also, it remains evident that President Duterte considered the history of Mindanao in calibrating the gravity of the danger presented by the ISIS situation. In fact, he began his Report to Congress by stating that "Mindanao has been the hotbed of the violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority of the duly constituted authorities, *i.e.*, the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan x x x."[76] According to the President, "two armed groups [(which are the same armed groups involved in this case)] have figured prominently in all these, namely, the [ASG] and the ISIS-backed Maute Group."[77]

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71 See respondents' Memorandum, pp. 7-8.
72 See id. at 8.
73 Id. at 7.
74 See Petition (G.R. No. 231658), p. 15.
75 Report of President Duterte to Congress, p. 3.
76 Id.
77 Id.

In light of the foregoing, it is my conclusion that the President was justified in declaring martial law over the whole Mindanao. Indeed, there exists sufficient factual basis that he had complied with the requirements of Section 18, Article VII of the 1987 Constitution, namely: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same.

In particular, the government has established that an actual rebellion (and not merely an imminent danger thereof) already exists at the time President Duterte issued Proclamation No. 216. The May 23, 2017 Marawi siege is evidently an armed public uprising, which motive is to further the ISIS's global agenda of establishing a *wilayah* in Mindanao, and in so doing, remove from the allegiance of the Philippine Government or its laws, the aforesaid territory. Furthermore, it was amply demonstrated that the incidents in furtherance thereof would deprive the Chief Executive wholly or partially, of his powers or prerogatives. As the President correctly explained, the events of May 23, 2017 "constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH [*wilayah*] or province covering the entire Mindanao."[78] "The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government."[79] Accordingly, "[t]here exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments."[80]

Likewise, the second requirement of public safety was met. It is my opinion that President Duterte's imposition of martial law over the whole of Mindanao is rationally proportionate to meet the exigencies of the situation at the time he made such declaration. Without a doubt, the potency of the ISIS threat to complete its mission in establishing a *wilayah* here is a public safety concern, which affects not only Marawi City but the entire Mindanao. Again, as uncovered through unrefuted intelligence reports, the ISIS is already on the third step of this establishment process. The next step would be the consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao. Surely, the President could not sit idly by and wait for the ISIS's plan to reach its full fruition before

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78 Id. at 6.
79 Id.
80 Id.

declaring martial law in order to respond to this exigent situation. More so, the historical actuations of the Maute Group and ISIS-related Groups, as well as that of the ISIS itself,[81] showcase that the danger to Mindanao is not only apparent but real. In other words, a widespread outbreak of violence, if left unpacified, looms in the horizon.

The President also factored-in the armed capability of the Maute Group, which platoon of 263 armed members as of the year 2016, further coordinates with other ISIS-related groups operating all over various areas in Mindanao. As such, the government is faced with the possibility of a consolidated offensive from the Maute Group together with these other groups, such as the ASG-Basilan, the AKP, and the BIFF. Amidst all these, President Duterte similarly considered the historical and cultural context of Mindanao. It is a known fact that the secessionist movement has been extant in Mindanao for decades. Likewise, Islam has been used as a rallying cry to radicalize fellow Muslims. These historical and cultural factors tend to provide fertile ground for the ISIS to capitalize and foster its mission in establishing a firm foothold not only in minor sections but, in fact, in the entire Mindanoan province. By and large, I find it reasonable to conclude that all of the foregoing factors could very well coalesce into a perfect storm of disaster that genuinely endangers the public safety of those in Mindanao.

Finally, it is important to note that the source of the Maute Group's support does not merely remain local. The main ISIS caliphate abroad, which is one of the world's richest organizations according to the UN, including its other cell groups all over the world, can be variably tapped as funding or arms sources. In this regard, President Duterete aptly stated that "[t]he taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao."[82] "Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of

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[81] Other events were cited by the government to demonstrate that the atrocities were not confined to Marawi City:

> a. On January 13, 2017, an improvised explosive device (IED) exploded in Barangay Campo Uno, Basilan. A civilian was killed while another was wounded.
> b. On January 19, 2017, the ASG kidnapped three (3) Indonesians near Bakungan Island, Tawi-Tawi.
> c. On January 29, 2017 the ASG detonated an IED in Barangay Danapah, Basilan resulting in the death of two children and the wounding of three others.
> d. From February to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. This resulted in the death and wounding of several personalities.
> e. On February 26, 2017, the ASG beheaded its kidnap victim, Juergen Kantner in Sulu.
> f. On April 11, 2017, the ASG infiltrated Inabaga, Bohol resulting in firefights between rebels and government troops.
> g. On April 13, 2017, the ASG beheaded Filipino kidnap victim Noel Besconde.
> h. On April 20, 2017, the ASG kidnapped SSg. Anni Siraji and beheaded him three days later.

(See respondents' Memorandun, pp. 10-11.)

[82] Report of President Duterte to congress, p. 6.

Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity."[83]

In fine, since it was adequately proven that Proclamation No. 216 rests on sufficient factual basis and thus, complies with both requirements of Section 18, Article VII of the Constitution, I therefore vote to **DISMISS** the petitions. After all, it is this Court's bounden duty to rule based on what the law requires, unswayed by unfounded fears or speculation. The ghosts of our past should not haunt, but instead, teach us to become a braver, wiser and more unified nation.

ESTELA M. PERLAS-BERNABE
Associate Justice

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[83] Id. at 7.