EN BANC

G.R. No. 231658 (*Representative Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al.*); G.R. No. 231771 (*Eufemia Campos Cullamat, et al. v. President Rodrigo Duterte, et al.*) and G.R. No. 231774 (*Norkaya S. Mohamad, et al. v. Executive Secretary Salvador C. Medialdea, et al.*)

Promulgated:

July 4, 2017

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SEPARATE CONCURRING OPINION

PERALTA, *J.*:

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. The proclamation cited the Maute terrorist group's efforts to "remove Marawi City from the allegiance to the Philippine Government" and to deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion.

On May 25, 2017, President Duterte submitted to Congress a *Report relative to Proclamation No. 216*. The document was received at 21:55 hours by respondents Senate President Aquilino "Koko" Pimentel III and Speaker of the House of Representatives Pantaleon Alvarez.

On May 29, 2017, the House of Representatives resolved to constitute itself as a Committee of the Whole to formally receive and consider the Report on Proclamation No. 216.

On May 31, 2017, the last day of its First Regular Session, the Senate adopted P.S. Resolution No. 388, declaring Proclamation No. 216 as satisfactory, constitutional, and in accordance with the law. The Senate supported it fully as it found no compelling reason to revoke the same. Likewise, a majority of the Senators voted to reject P.S. Resolution No. 390 entitled *"Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216."*

On even date, the House of Representatives, led by Speaker Alvarez, convened itself as a Committee of the Whole to discuss President Duterte's *Report*. Thereafter, the Committee introduced to the plenary House Resolution No. 1050, expressing full support to President Duterte's declaration of Proclamation No. 216. A majority of the representatives voted to adopt House Resolution No. 1050.

On June 2, 2017, the First Regular Session of Congress adjourned. No joint session of the Senate and the House of Representatives was convened.

Issues

The issues, as stated in the revised Advisory, are as follows:

1. Whether or not the petitions docketed as G.R. Nos. 231658, 231771, and 231774 are the "appropriate proceeding" covered by paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required of this Court when a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is promulgated;

2. Whether or not the President in declaring martial law and suspending the privilege of the writ of *habeas corpus*:

   a. is required to be factually correct or only not arbitrary in his appreciation of the facts;
   b. is required to obtain the favorable recommendation thereon of the Secretary of National Defense;
   c. is required to take into account only the situation at the time of the proclamation, even if subsequent events prove the situation to have not been accurately reported;

3. Whether or not the power of this Court to review the sufficiency of the factual basis [of] the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* is independent of the actual actions that have been taken by Congress jointly or separately;

4. Whether or not there were sufficient factual [basis] for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*;

   a. What are the parameters for review?
   b. Who has the burden of proof?
   c. What is the threshold of evidence?

5. Whether the exercise of the power of judicial review by this Court involves the calibration of the graduated powers granted the President as Commander-in-Chief, namely: calling out powers, suspension of the privilege of the writ of *habeas corpus*, and declaration of martial law;

6. Whether or not Proclamation No. 216 of May 23, 2017 may be considered vague and thus null and void:

a. with its inclusion of "other rebel groups," or
b. since it has no guidelines specifying its actual operational parameters within the entire Mindanao region;

7. Whether or not the armed hostilities mentioned in Proclamation No. 216 and in the Report of the President to Congress are sufficient basis:

a. for the existence of actual rebellion;
b. for a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region;

8. Whether or not terrorism or acts attributable to terrorism are equivalent to actual rebellion and the requirements of public safety sufficient to declare martial law or suspend the privilege of the writ of *habeas corpus*;

9. Whether or not nullifying Proclamation No. 216 of May 23, 2017 will:

a. have the effect of recalling Proclamation No. 55, s. 2016; or
b. also nullify the acts of the President in calling out the Armed Forces to quell lawless violence in Marawi and other parts of the Mindanao region.

In a democratic and republican State such as ours, everyone must abide by the Rule of Law. More so, in momentous events affecting the life of the nation and the welfare of its people it is imperative to properly determine how power is to be allocated, exercised and recognized *vis-à-vis* the competing mandate of the three equal branches of the government to safeguard the civil liberties of the sovereign from whom their authority emanates. That is the gist of the issues presented in this case. Here, President Duterte, pursuant to his constitutional powers, has proclaimed martial law and suspended the privilege of the writ of *habeas corpus*. Apparently, the Congress has manifested its approbation thereto. Now, the Court is pleaded to discharge its solemn duty, similarly conferred by the Fundamental Law, to review the sufficiency of the factual basis of the President's action.

Indubitably, under Section 18, Article VII of the 1987 Constitution, the President, as the Commander-in-Chief of all armed forces of the Philippines, is authorized to place the country or any part thereof under martial law or to suspend the privilege of the writ of *habeas corpus* in case of invasion or rebellion, when the public safety requires it. The same provision of the organic act empowers the Supreme Court, upon the initiation of an appropriate proceeding by any citizen, to inquire into the sufficiency of the factual basis of such action. There is no question then that this Court is mandated to determine the validity of the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*, in the same way that the Congress is given the license to revoke such proclamation or suspension.

The "appropriate proceeding" under paragraph 3, Section 18, Article VII of the Constitution

The preliminary issue to take into account is the nature of the *"appropriate proceeding"* by which the Court could exercise its prerogative and discharge its responsibility as well as the extent of such authority to look into the assailed actions of the President.

While the present Constitution does not specifically state the kind of proceeding, the same could be ascertained from the antecedent of Section 18, Article VII in relation to the significant and novel feature of the 1987 Constitution that expands the concept of judicial power:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[1]

The aforequoted provision constitutionalized the ruling in *In the Matter of the Petition for Habeas Corpus of Lansang et al.*[2] as it appears clear that paragraph 2, Section 1, Article VIII of the Constitution incorporates in the Fundamental Law the teaching therein.[3] It was observed that:

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1 1987 CONSTITUTION, Art. VIII, Sec. 1, par. 2.

2 149 Phil. 547 (1971).

3 See *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 696.

> This new provision was enacted to preclude this Court from using the political question doctrine as a means to avoid having to make decisions simply because they are too controversial, displeasing to the President or Congress, inordinately unpopular, or which may be ignored and not enforced.
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> The framers of the Constitution believed that the free use of the political question doctrine allowed the Court during the Marcos years to fall back on prudence, institutional difficulties, complexity of issues, momentousness of consequences or a fear that it was extravagantly extending judicial power in the cases where it refused to examine and strike down an exercise of authoritarian power. x x x The Constitution was accordingly amended. We are now precluded by its mandate from refusing to invalidate a political use of power through a convenient resort to the political question doctrine. We are compelled to decide what would have been non-justiceable under our decisions interpreting earlier fundamental charters.[4]

Given the *Lansang* background of paragraph 2, Section 1, Article VIII, it is appropriate to echo what the Court said way back in 1971, which pronouncement finds vitality, illumination and relevance today as it was then, if not more in view of the many features of the present Constitution that were influenced by the Marcos martial law experience. We held in *Lansang*:

> The first major question that the Court had to consider was whether it would adhere to the view taken in Barcelon v. Baker and reiterated in Montenegro v. Castañeda, pursuant to which, "the authority to decide whether the exigency has arisen requiring suspension (of the privilege of the writ of *habeas corpus*) belongs to the President and his 'decision is final and conclusive' upon the courts and upon all other persons." Indeed, had said question been decided in the affirmative, the main issue in all of these cases, except L-34339, would have been settled, and, since the other issues were relatively of minor importance, said cases could have been readily disposed of. Upon mature deliberation, a majority of the Members of the Court had, however, reached, although tentatively, a consensus to the contrary, and decided that the Court had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ; but before proceeding to do so, the Court deemed it necessary to hear the parties on the nature and extent of the inquiry to be undertaken, none of them having previously expressed their views thereon. Accordingly, on October 5, 1971, the Court issued, in L-33964, L-33965, L-33973 and L-33982, a resolution stating in part that –

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[4] See Dissenting Opinion of Justice Hugo E. Gutierrez, Jr. in *Marcos v. Manglapus*, at 708. Likewise, In his separate opinion in *Araullo v. Aquino III* (G.R. No. 209287, July 1, 2014, 728 SCRA 1, 249), Justice Arturo D. Brion observed that "[t]his addition was apparently in response to the Judiciary's past experience of invoking the ***political question doctrine*** to avoid cases that had political dimensions but were otherwise justiciable. The addition responded as well to the societal disquiet that resulted from these past judicial rulings."

> x x x a majority of the Court having tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A (suspending the privilege of the writ of *habeas corpus* for all persons detained or to be detained for the crimes of rebellion or insurrection throughout the Philippines, which area has lately been reduced to some eighteen provinces, two subprovinces and eighteen cities with the partial lifting of the suspension of the privilege effected by Presidential Proclamations Nos. 889-B, 889-C and 889-D) and thus determine the constitutional sufficiency of such bases in the light of the requirements of Article III, Sec. 1, par. 14, and Article VII, Sec. 10, par. 2, of the Philippine Constitution; and considering that the members of the Court are not agreed on the precise scope and nature of the inquiry to be made in the premises, even as all of them are agreed that the Presidential findings are entitled to great respect, the Court RESOLVED that these cases be set for rehearing on October 8, 1971 at 9:30 A.M.
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> x x x x

In our resolution of October 5, 1971, We stated that "a majority of the Court" had "*tentatively* arrived at a consensus that *it may inquire* in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A x x x and thus *determine the constitutional sufficiency of such bases* in the light of the requirements of Article III, Sec. 1, par. 14, and Article VII, Sec. 10, par 2, of the Philippine Constitution x x x." Upon further deliberation, the members of the Court are now *unanimous* in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended x x x." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" – or, under Art. VII of the Constitution, "imminent danger thereof" – "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." Far from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance

therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.

Much less may the assumption be indulged in when we bear in mind that our political system is essentially democratic and republican in character and that the suspension of the privilege affects the most fundamental element of that system, namely, individual freedom. Indeed, such freedom includes and connotes, as well as demands, the right of every single member of our citizenry to freely discuss and dissent from, as well as criticize and denounce, the views, the policies and the practices of the government and the party in power that he deems unwise, improper or inimical to the commonwealth, regardless of whether his own opinion is objectively correct or not. The untrammelled enjoyment and exercise of such right – which, under certain conditions, may be a civic duty of the highest order – is vital to the democratic system and essential to its successful operation and wholesome growth and development.

Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the Rule of Law. Accordingly, when individual freedom is used to destroy that social order, *by means of force and violence*, in defiance of the Rule of Law – such as by rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion – there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of *habeas corpus*, when public safety requires it. Although we must be forewarned against mistaking mere dissent – no matter how emphatic or intemperate it may be – for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse – when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied – to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize.

x x x x

Article VII of the Constitution vests in the Executive the power to suspend the privilege of the writ *of habeas corpus* under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is *supreme* within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only *if* and *when* he acts *within* the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, *in this respect*, is, in turn, constitutionally *supreme*.

In the exercise of such authority, the function of the Court is merely to *check* – not to *supplant* – the Executive, *or to ascertain merely whether he 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. To be sure, the power of the Court to determine the validity of the contested proclamation is far from being identical to, or even comparable with, its power over ordinary civil or criminal cases elevated thereto by ordinary appeal from inferior courts, in which cases the appellate court has *all* of the powers of the court of origin.

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines *only* whether there is *some evidentiary basis* for the contested administrative finding; *no quantitative* examination of the supporting evidence is undertaken. The administrative finding can be interfered with *only* if there is *no* evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in *both* jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds equally reasonable might conceivably opine otherwise.

Manifestly, however, this approach refers to the review of administrative determinations involving the exercise of quasi-judicial functions calling for or entailing the reception of evidence. It does not and cannot be applied, in its aforesaid form, in testing the validity of an act of Congress or of the Executive, such as the suspension of the privilege of the writ of *habeas corpus*, for, as a general rule, neither body takes evidence – in the sense in which the term is used in judicial proceedings – before enacting a legislation or suspending the writ. Referring to the test of the validity of a statute, the Supreme Court of the United States, speaking through Mr. Justice Roberts, expressed, in the leading case of Nebbia v. New York, the view that:

> x x x If the laws passed are seen to have a *reasonable relation* to a proper legislative purpose, and are *neither arbitrary nor discriminatory*, the requirements of due process are satisfied, and *judicial determination to that effect renders a court functus officio* … With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both *incompetent* and *unauthorized* to deal …

Relying upon this view, it is urged by the Solicitor General –

> x x x that judicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *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*.
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> No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government, under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not correctness, but arbitrariness.[5]

The foregoing considered, it necessarily follows that the *"appropriate proceeding"* under paragraph 3, Section 18, Article VII of the Constitution refers to the *certiorari* jurisdiction of the Court where the inquiry is on whether the President acted arbitrarily.[6] The proper role of the Supreme Court, in relation to what it has been given as a duty to perform whenever the Commander-in-Chief proclaims martial law or suspends the privilege of the writ of *habeas corpus,* is merely to determine whether he acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It is not for Us to rule on whether he decided rightly or otherwise, but whether he acted without factual basis, hence, acted whimsically or capriciously. If he had factual basis, there was no arbitrariness. We cannot second guess what he should have done under the prevailing circumstances. If the President was wrong in his assessment and in exercising his judgment call, he shall be answerable to the people and history and not to this Court.

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5 *In the Matter of the Petition for Habeas Corpus of Lansang, et al., supra* note 2, at 577-594. (Citations omitted; emphasis in the original)

6 *Cf. Aratuc v. Commission on Elections*, 177 Phil. 205, 222-224 (1979), the Court, after noting the change in the phraseology in the 1973 Constitution, as against the 1935 Constitution, with regard to review of COMELEC decisions, pointed out:

> Now before discussing the merits of the foregoing contentions, it is necessary to clarify first the nature and extent of the Supreme Court's power of review in the premises. The Aratuc petition is expressly predicated on the ground that respondent Comelec "committed grave abuse of discretion, amounting to lack of jurisdiction" in eight specifications. On the other hand, the Mandangan petition raises pure questions of law and jurisdiction. In other words, both petitions invoked the Court's *certiorari* jurisdiction, not its appellate authority of review.
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> This is as it should be. While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "*certiorari* or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3, Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission may be *brought* to the Supreme Court on *certiorari* by the aggrieved party within thirty days from his receipt of a copy thereof" (Section 11, Article XII), even as it ordains that the Commission shall "be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials" (Section 2[2].)
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> We hold, therefore, that under the existing constitutional and statutory provisions, the certiorari jurisdiction of the Court over orders, rulings and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process. Accordingly, it is in this light that We shall proceed to examine the opposing contentions of the parties in these cases.

We are aware that our decision-making authority is based on considerations that are vastly different from what the political departments regard in arriving at their own, especially on discretionary acts for which the latter are basically accountable to the electorate. Particularly, when it comes to the exercise of a power lodged in the Commander-in-Chief, the Court is cognizant of the practical necessity that there are certain matters and pieces of information that may only be available to the President and no one else in view of their sensitivity as well as their effect to public safety and national security. To make delicate matters available to the general public may compromise the ability of the government to do its job of protecting the Republic and its people. Confidentiality still has its place in a free and transparent society, otherwise greater danger may ensue. There is, therefore, a presumption in favor of the Chief Executive that he knows what he is doing, unless it could clearly be shown that he acted arbitrarily in the sense that he did not have any acceptable factual basis to justify what he did. Presumably, the Office of the President is equipped with facilities where the implications of certain facts and circumstances could be appreciated and acted upon in a holistic manner.

Existence of actual rebellion defined and penalized under the Revised Penal Code

The factual basis of the President in declaring martial and suspending the privilege of the writ of *habeas corpus* is the rebellion being committed by the Maute terrorist group. The elements of the crime are as follows:

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

In my interpellation during the oral argument, it has been established that public uprising and taking arms against the government are present, thus:

> **JUSTICE PERALTA:**
> For clarification, Congressman. Now, you could not admit that there is now public uprising in the Marawi City?

CONGRESSMAN LAGMAN:

There is public uprising, Your Honor, but there is no…

JUSTICE PERALTA:

Yah, there is also taking up arms rebellion against the government, you also admit that?

CONGRESSMAN LAGMAN:

Yes, Your Honor, we agree to that.

JUSTICE PERALTA:

What we are saying is that, because you believe that, what we are saying is that there are essential elements of rebellion: one, public uprising; two is taking up arms against the government. What you are disputing is that, the focus of public uprising and taking up arms against the government is not political?

CONGRESSMAN LAGMAN:

No, we are saying that essential element of culpable purpose is not present.

JUSTICE PERALTA:

That's correct, that's what I'm saying. So, the purpose of the violence or the taking up arms against the government is not political in nature?

CONGRESSMAN LAGMAN:

Yes, Your Honor, we can say that because it is merely to saw fear and apprehension, Your Honor.

JUSTICE PERALTA:

When do you say the purpose is not political? May I know why you are saying that the purpose of the violence or taking up arms against the government is not political?

CONGRESSMAN LAGMAN:

Well, we just agreed with your statement, Your Honor, but if you see the context of the present violence in Marawi City, there is no culpable purpose of removing Marawi City from the allegiance to the Republic or there is no culpable purpose of depriving the President to exercise its powers and prerogatives because the channels of civilian and Military authority is not destructive.

JUSTICE PERALTA:

By the extent of the violence committed, Mr. Congressman, the Chief Executive is deprived of his power to enforce the laws in Marawi City?

CONGRESSMAN LAGMAN:

At the time the proclamation was issued, Your Honor, there was no such kind of multitude in the violence, no less than the Military officials hours before the President issued the Proclamation said that the situation is

under control. What this abuse in the mind of the public, Your Honor, is that what is happening now in Marawi City is the aftermath of the declaration of martial law, which was not the reality of the ground when martial law was imposed.

JUSTICE PERALTA:
The Chief...

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CHIEF JUSTICE SERENO:
So, we can now resume the interpellation of Justice Peralta. Thank you.

JUSTICE PERALTA:
We, therefore, agree, Congressman, that there are two political purposes of rebellion. One is the removal of the allegiance from the government or any part of its laws, that's number one. Number two, is the deprivation of the Chief Executive or the Legislator in the exercise of its powers and prerogatives. Am I correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

JUSTICE PERALTA:
And then you said that presently, there is now a factual basis of the existence of rebellion, because it is now impossible for the President to exercise its power or the power enforcing the laws in Marawi, because of the extent of violence, did I heard *(sic)* you right?

CONGRESSMAN LAGMAN:
Your Honor, I think that was not my statement. There is now a factual basis for rebellion.

JUSTICE PERALTA:
Now, do you agree now that the President can now exercise its power to enforce the laws because of the extent of violence in Marawi City?

CONGRESSMAN LAGMAN:
Well, even without declaring martial law, Your Honor, the violence in Marawi City did not prelude the President from exercising its powers and prerogatives, because the channels of civilians and military authority are there.

JUSTICE PERALTA:
But I thought you said a while ago that there is no question that there is now public uprising. You also said that the violence, the taking up arms against the government is already there?

CONGRESSMAN LAGMAN:
Yes, Your Honor...

JUSTICE PERALTA:
So, all these essential elements are already present?

CONGRESSMAN LAGMAN:
The culpable purpose is not there.

JUSTICE PERALTA:
So, what was the culpable purpose?

CONGRESSMAN LAGMAN:
The culpable purpose, Your Honor, of rebellion, is to remove the Philippines or part thereof from allegiance to the republic or to prevent the President from the legislator from exercising its powers and prerogatives.

JUSTICE PERALTA:
So, what would you like the President to do under the circumstances?

CONGRESSMAN LAGMAN:
Under the circumstances, Your Honor, he has done what is supposed to do, except the fact that he declared martial law, because he could call the armed forces of the Philippines to subdue this terrorism being perpetrated.

JUSTICE PERALTA:
Despite the presence of public uprising and taking up arms against the government?

CONGRESSMAN LAGMAN:
Your Honor, the presence of an uprising, the presence of taking arms against the government is only one of the elements.

JUSTICE PERALTA:
That's what I was saying.

CONGRESSMAN LAGMAN:
It does not conclude or presume that the other element is present.

JUSTICE PERALTA:
That's what I was saying. How can the President exercise or execute the laws under the circumstances?

CONGRESSMAN LAGMAN:
Your Honor, he can, and he must be doing that, Your Honor.

JUSTICE PERALTA:
How?

CONGRESSMAN LAGMAN:
Because the channels of civilian and military commands [have] not been broken, Your Honor. As a matter of fact, the DND of Marawi City, the LGUs of the entire Mindanao region are existing and operational. He can exercise his prerogatives and powers through the channels of these local government units, including the functioning departments of the government.[7]

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7 TSN, Oral Arguments, June 14, 2017, pp. 41-49.

Although petitioner Lagman did not agree that the element of culpable purpose is present, his adamant position is contrary to what is actually happening in Marawi City. As pointed out by the OSG, the siege in the City cannot be characterized as merely a result of counter-measures against the government's pursuit of Isnilon Hapilon, but is, in fact, a strategic and well-coordinated attack to overthrow the present government and to establish a *wilayah* in Mindanao. Needless to say, the Marawi siege shows a clear purpose to take over a portion of the Philippine territory.

Validity of the declaration of martial law and the suspension of habeas corpus in the entire Mindanao

In view of President Duterte's possession of information involving public safety which are unavailable to us, the Court cannot interfere with the exercise of his discretion to declare martial law and suspend the privilege of the writ of *habeas corpus* in the whole of Mindanao.

The OSG, representing the public respondents, averred that the Maute Group has banded with three other radical terrorist organizations, namely: the ASG from Basilan headed by Hapilon, the AKP (formerly known as the Maguid Group) from Saranggani and Sultan Kudarat, and the BIFF from Maguindanao. These groups are also affiliated with local cell groups located throughout the country. Even prior to the Marawi siege, the ASG, AKP, Maute Group, and BIFF as well as the numerous ISIS cell groups have already committed numerous bombings, assassinations, and extortion activities in the country, especially in Mindanao. These violent activities are widespread in several areas of Mindanao, such as Basilan, Sulu, Tawi-Tawi, Zamboanga, Davao Del Norte, Lanao Del Sur, and Maguindanao. The AFP intelligence reports also disclosed that as early as April 18, 2017, Abdullah Maute had dispatched his followers to the cities of Marawi, Iligan, and Cagayan de Oro to conduct bombing operations, carnapping and "liquidation" of AFP and PNP personnel in the areas. As the OSG emphasized, the primary goal of the ISIS-linked local rebel groups is to establish a *wilayah* in Mindanao. In a video retrieved by the AFP, Abdullah Maute was shown saying: "*O kaya, unahin natin dit x x x tapos sunod-sunod na ito x x x O kaya unahin natin ditto x x x at separate natin dito isa (circled Marawi) para may daanan tayo.*" Based on these, it cannot be said that the danger to public safety is isolated and contained only in Marawi City. At the very least, the danger stretches in the entire Mindanao.

I cannot accede to petitioner Lagman's proposition that it is only when the acts of rebellion are actually committed outside Marawi City that the President could declare martial law or suspend the privilige of the writ of *habeas corpus* in other affected towns or cities. Quoted below is my interpellation during the oral argument:

JUSTICE PERALTA:
Okay, I'll go to another point. Do [you] agree that the crime of rebellion is a continuing offense?

CONGRESSMAN LAGMAN:
Well, yes, there are jurisprudence to that effect, Your Honor.

JUSTICE PERALTA:
In other word...

CONGRESSMAN LAGMAN:
But I would say that rebellion should not be extrapolated.

JUSTICE PERALTA:
No, I'm not after that. The other meaning of continuing offense is that; several acts are committed in different places, but their purpose is the same, do you agree with that?

CONGRESSMAN LAGMAN:
Yes, Your Honor, but in this particular case, the acts are not committed in other places.

JUSTICE PERALTA:
No, I'm not going to that yet, I will ask that question later, Congressman. What is the principle of continuing offense, you agree with that, the other principle of continuing offense?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

JUSTICE PERALTA:
That several acts might be committed in different places?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

JUSTICE PERALTA:
But the purpose is the same?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

JUSTICE PERALTA:
Now, if assuming this is hypothetical, assuming that there is rebellion in Marawi City, and some of the acts are committed outside Marawi City, supposing the guns come from the nearby town of Marawi

City and the other members of the rebel groups are based in that place and they bring their guns inside Marawi City. Will that not be rebellion in the other place?

CONGRESSMAN LAGMAN:

In the first place, Your Honor, that hypothetical question is not actually happening in Marawi City and other parts of Mindanao region.

JUSTICE PERALTA:

Supposing it happens, will it not be covered by the principle of continuing offense? If the acts are committed in another place and the actual rebellion takes place in another place, all of them will be liable under the theory of conspiracy.

CONGRESSMAN LAGMAN:

When we say, Your Honor, that it's a continuing offense, that rebellion is a continuing offense, it assumes that the inculpatory elements of rebellion are present.

JUSTICE PERALTA:

Of course, we assume that, that's why it's hypothetical. Now, if there's a rebellion, I will not use anymore Marawi City, because you might be presuming that I'm referring martial law in Marawi. Supposing in one place, there is a rebellion ongoing, the declaration is to cover the whole area, outside the place where the actual rebellion is happening, can the President likewise cover the other areas nearby, as part of the declaration of rebellion?

CONGRESSMAN LAGMAN:

Your Honor, that may not be legally possible because with respect to the other areas, there is only an imminent danger of a rebellion and imminent danger has been deleted...

JUSTICE PERALTA:

What I understand from the deliberations of an imminent danger is, the initial declaration of martial law should not be based on imminent danger. Because if there is already a declaration of rebellion, you need not anymore ask or require imminent danger, because if there is a rebellion in one place, let's say in Marawi City, and then the rebels will go to the other place committing rebellion, the President will issue again a proclamation in that place? And then declare martial law in order to suspend the writ of *habeas corpus* in other place?

CONGRESSMAN LAGMAN:

While we say, Your Honor, that the President declares martial law, or suspends the privilege of the writ of habeas corpus, there must be an actual rebellion in the place occurring. When there is no actual rebellion in the other place because there is only a possibility that it is cover, I think that would, the imminent danger is not anymore ground.

JUSTICE PERALTA:

Can he not declare rebellion in Mindanao? Because Marawi City is part of Mindanao? You are suggesting that for every town that there is rebellion and declaration should be made?

CONGRESSMAN LAGMAN:

Yes, Your Honor, martial law can only be declared where there is actual rebellion in the coverage of President's proclamation.

JUSTICE PERALTA:

Yeah, because what I understand from the imminent danger as the reason why the possibility is that, in the initial proclamation of rebellion, under the old law, you can use that as a ground, but if the initial, if the proclamation is rebellion, that's it. It's covered in the Constitution.

CONGRESSMAN LAGMAN:

Rebellion, Your Honor, with respect to the place it is covered by marital law, not to other places where there is no rebellion or there is only a threat.

JUSTICE PERALTA:

But if the President declares Mindanao and Marawi City is part of Mindanao, what's wrong with it?

CONGRESSMAN LAGMAN:

Your Honor, Marawi City is only 0.0% of the entire Mindanao.

JUSTICE PERALTA:

But the groups who are involved are located in several places in Mindanao, some are based in Lanao, based in Davao, based in Basilan, based in Sulu, all of these places.

CONGRESSMAN LAGMAN:

That is only a threat, because of their presence there, but they have not activated, Your Honor. The word "a threat" is a key to imminent danger, it is not a ground.

JUSTICE PERALTA:

That's not what I mean, what I mean is that the President declares martial law in Mindanao, will that not cover the whole Mindanao because rebellion is taking place in Mindanao?

CONGRESSMAN LAGMAN:

Your Honor, that has no factual basis, the sufficiency of the basis of that declaration is not there because there is no rebellion in the other parts of Mindanao, particularly the areas mentioned yesterday by some members of this Honorable Court.

JUSTICE PERALTA:

Okay, so, the President should specifically declare certain place[s] where the actual rebellion is happening.

CONGRESSMAN LAGMAN:

Yes...

JUSTICE PERALTA:
So, if the rebellion will spread to the other towns, the President must declare, must again come out with the proclamation, declaring martial law in that place, is that your theory?

CONGRESSMAN LAGMAN:
Where there is actual rebellion in that place, Your Honor.

JUSTICE PERALTA:
Yeah, there is actual rebellion in the other place, so, the rebels are now in certain place[s]. They now expand the rebellion in the nearby town, so the President will declare another proclamation in that nearby town. If we follow the theory, that there is no imminent danger, [then] he can only declare martial law, when the actual rebellion already takes place in that nearby town.

CONGRESSMAN LAGMAN:
We are just following the intention of the Constitution, Your Honor, that there must be actual rebellion as the basis for the declaration of martial law.

JUSTICE PERALTA:
Of course, that's always the requirement, that there must be actual rebellion. Thank you, thank you, Congressman.

CONGRESSMAN LAGMAN:
Thank you, Your Honor.[8]

To limit the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Marawi City alone where there is actual rebellion verges on the absurd. If we are to follow a "*piece-meal*" proclamation of martial law, the President would have to declare it repeatedly. Where there is already a declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, considering that rebellion is a continuing crime, there is no need for actual rebellion to occur in every single town or city of Mindanao in order to validate the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* in the entire island. Indeed, there is no need for a separate declaration because the declaration itself already covers the whole of Mindanao.

The validity of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao is further bolstered by the fact that rebellion has no "predetermined bounds." Quoting *People v. Lovedioro,*[9] the OSG raised:

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8 *Id.* at 49-54.

9 G.R. No. 112235, November 29, 1995, 250 SCRA 389.

> The 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.** One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character. This peculiarity was underscored in the case of *People v. Hernandez*, thus:
>
> > In short, political 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 Philippine Islands or any part thereof,' then it 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.[10]

Consistent with the nature of rebellion as a continuing crime and a crime without borders, the rebellion being perpetrated by the ISIS-linked rebel groups is not limited to the acts committed in Marawi City. The criminal acts done in furtherance of the purpose of rebellion, which are absorbed in the offense, even in places outside the City are necessarily part of the crime itself. **More importantly, the ISIS-linked rebel groups have a common goal of taking control of Mindanao from the government for the purpose of establishing the region as a *wilayah*. This political purpose, coupled with the rising of arms publicly against the government, constitutes the crime of rebellion and encompasses territories even outside Marawi City, endangering the safety of the public not only in said City but the entire Mindanao.**

It is true that the 1987 Constitution has a number of safeguards to ensure that the President's exercise of power to declare martial law or suspend the privilege of the writ of *habeas corpus* will not be abused. Nonetheless, it does not do away with the powers necessarily included in the effective exercise of such authority. Indeed, certain things taken for granted during times of peace and quietude may have to adapt to meet the exigencies of the moment. What may be considered as unreasonable during normal times may become justifiable in cases of invasion or rebellion. When the threat to society becomes evident, there must be corresponding adjustments in the manner by which the government addresses and responds to it. For instance, would ordinary rules regarding visual search or inspection in checkpoints still be reasonable if vehicles are used as car bombs? Or should appropriate remedial measures be adopted to ensure that the lives of the

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[10] *People v. Lovedioro,* G.R. No. 112235, November 29, 1995, 250 SCRA 389, 394-395. (Emphasis ours)

people are not unwittingly exposed to such danger, such as undertaking more comprehensive inspections and not just relying on the apparent, if not deceptive, appearances of the vehicles and their occupants?

The Constitution is a living, responsive, and adaptable instrument for effective governance. It should not be seen as providing permanently framed and fossilized rules. The nation could not stand still and be a helpless victim of ordinary crimes, terrorism, rebellion or invasion. It has its own defenses and means to protect itself, which are primarily entrusted to the President who remains to be accountable to the sovereign people. The Court also has its part in that duty, yet it can only do so within the confines of its own constitutionally vested authority, including the limitation not to overstretch itself and encroach on the domain of the Executive Department.

Wherefore, I vote to **DISMISS** the consolidated petitions.

DIOSDADO M. PERALTA
Associate Justice