G.R. No. 231658 – *Representatives Edcel C. Lagman, et al. v. Hon. Salvador Medialdea, et al.*

G.R. No. 231771 – *Eufemia Campos Cullamat, et al. v. President Rodrigo Duterte, et al.*

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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DISSENTING OPINION

SERENO, CJ:

The President was unable to lay down sufficient factual basis to declare martial law and suspend the privilege of the writ of *habeas corpus* in the **entire** islands group of Mindanao in Proclamation No. 216.[1] Neither was he able to accomplish that in his Report to Congress dated 25 May 2017. At most, he was able to establish the existence of actual rebellion, and the danger to public safety, in Marawi City.

Thus, the position taken by Justice Antonio T. Carpio that martial law[2] is valid only in Marawi City is correct, considering that respondents, who bear the burden of proving the existence of sufficient facts to justify the declaration of martial law, were unable to do so. However, I took one unique aspect of this case into consideration, and as a result, concluded that it is valid not only in the city of Marawi, but in the entire province of Lanao del Sur of which Marawi is a part, and in the provinces of Maguindanao and Sulu as well.

It must be borne in mind that this is the first post-Marcos examination of martial law that this Court will be undertaking under the 1987 Constitution. Neither rules nor jurisprudence exist to sufficiently guide the President on the declarative pronouncements and the evidentiary threshold that must be met for a martial law declaration to pass the test of constitutionality. A significant amount of interpretation and drawing up from analogous rules was therefore rendered necessary during the Court's handling of this proceeding.

Thus, this opinion takes a more permissive approach in weighing and admitting evidence or drawing from interpretative sources, simply because

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[1] Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" dated 23 May 2017.

[2] Unless the context otherwise indicates, I refer to the declaration of martial law here by President Rodrigo Roa Duterte to refer also to his suspension of the privilege of the writ of habeas corpus, both of which are contained in Proclamation No. 216.

this Court had no time to vet the same for precision, accuracy, and comprehensiveness.

This is but fair to the President and his security and military officials. It is difficult to conclude that on 23 May 2017 when they had to urgently respond to the violent resistance by the Maute and Hapilon group of supporters, that the President and his officials should have also foreseen the possibility that they would be required by this Court to state in both the proclamation order and the report to Congress, all the acts constituting rebellion that form the basis to declare martial law. The circumstances of this case compel me to accept the explanation subsequently made to this Court by the Defense Secretary and the AFP[3] Chief of Staff, as evidence to clarify Proclamation No. 216 and the President's Report to Congress.

The sworn statements of Secretary Delfin M. Lorenzana and General Eduardo M. Año were submitted to the Court on the 19 June 2017; no examination of the two thereafter could be undertaken under the timeline of this Court. Shorn of the ability to further question the two on their affidavits, this opinion has drawn from sources that are publicly available to understand the context of some of their material claims.

The approach taken in this opinion, like the *sui generis* proceeding under Article VII, Section 18, is also a "one-off" or *pro hac vice* approach, i.e., applicable only for these petitions, considering the paucity of rules and jurisprudence to guide the procedural, especially the evidentiary, aspects of the same. I have sought out what was procedurally fair to both sides in the present situation where the rules are not clear. And what do fairness and procedural due process require in such a situation?

> Due process has never been and perhaps can never be precisely defined. It is not a technical conception with a fixed content unrelated to time, place and circumstances. The phrase expresses the requirement of fundamental fairness, a requisite whose meaning can be as opaque as its importance is lofty. In determining what fundamental fairness consists of in a particular situation, relevant precedents must be considered and the interests that are at stake; private interests, as well as the interests of the government must be assessed.[4]

As examples, the Court refused in two decisions, to apply retroactively what purported to be the rules governing agrarian courts and the DARAB[5] rules of procedure. In *Land Bank of the Phils. v. De Leon,*[6] we emphasized that our ruling on the novel issue concerning proper procedure for appeals of decisions of Special Agrarian Courts must only be applied prospectively. We explained that prior to that case, there was no authoritative guideline on the matter and the Court of Appeals has, in fact,

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[3] Armed Forces of the Philippines

[4] *People v. Lacson,* 459 Phil. 330 (2003) and *Lassiter v. Department of Social Service of Durham City,* 452 U.S. 18, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640 (U.S. 1981).

[5] Department of Agrarian Reform Adjudicative Board.

[6] 447 Phil. 495 (2003).

rendered conflicting decisions on that issue. Consequently, a prospective application of the ruling was necessitated by equity and fair play.

The same underlying principle was also applied in *Limkaichong v. Land Bank of the Philippines*[7] to justify our refusal to retroactively apply the 15-day period for appeal provided in the DARAB Rules of Procedure. The Court recognized that the "jurisprudential conundrum" involving the applicability of those provisions was only made clear after the institution of the suit;[8] hence, the new rule could not be fairly applied in that case.

In addition to the effort to be fair to the President and his officials, the second reason this permissive approach to the evidence is being adopted is to demonstrate that with enough effort, even if we were deprived of the ability to ask interrogatory questions to Secretary Lorenzana and General Año in relation to their affidavits, the Court should still have undertaken a factual review of the coverage of martial law. Instead, in refusing to make such effort, the majority has effectively given a *carte blanche* to the President to exclusively determine this matter. Validating a Mindanao-wide coverage is indeed convenient for the Court, but it is not right. If, to use the words of the *ponencia*, the most important objective of Article VII, Section 18 is to "curtail the extent of the power of the President," then this Court has miserably failed.

After all, both the phraseology of the Constitution and jurisprudence require us to undertake a review of "where" martial law will be declared.

This opinion will demonstrate that the Court could have avoided defaulting on its duty to fully review the action of the President. Instead, the majority emaciated the power of judicial review by giving excessive leeway to the President, resulting in the absurdity of martial law in places as terrorism and rebellion-free as Dinagat Islands or Camiguin. The military has said as much: there are places in Mindanao where the Mautes will never gain a foothold.[9] If this is so, why declare martial law over the whole of Mindanao?

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[7] G.R. No. 158464, 2 August 2016.
[8] Id.
[9] JUSTICE LEONEN:
If they go to Dinagat, they will stick out like a sore tongue [thumb]?
GENERAL PURISIMA:
Yes, Your Honor
JUSTICE LEONEN:
They do not have *pintakasi* there?
GENERAL PURISIMA:
Yes, Your Honor.
JUSTICE LEONEN:
They do not have relations there, correct? So, why is it extended to Dinagat?
GENERAL PURISIMA:
Sir, the declaration of martial law is the whole of Mindanao that means, as I said before, the military is implementing martial law in the whole of Mindanao and we shall implement martial law if there is a necessity. For example, a group of Maute/ISIS escaped from Marawi and they go to Siargao or Dinagat then we can use the special power of martial law in order to get those people immediately. But if you go there, there is no semblance of martial law there even in other areas of Mindanao.
JUSTICE LEONEN:

The military admitted it succeeded repelling the Abu Sayyaf in Bohol without martial law,[10] should the fact that they can repeat the attempt mean that martial law can be imposed in Bohol?

What Proclamation No. 216 and the President's Report Contain

Proclamation No. 216 enumerates the following acts of the Maute group as follows:

> ... today, 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic States of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and 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;

The President's Report, on the other hand, attempts to detail facts supporting his claim of rebellion – on pages 4 and 5 – but again, falls short of claiming any other act committed by any other group in any other place in Mindanao other than in Marawi City.

No amount of strained reading of the two presidential documents comes close to a claim that rebellion is taking place anywhere else outside of Marawi City. Neither does the recitation of facts by the Office of the Solicitor General (OSG) in its Comment, add anything to the conclusion. The *ponencia* has already narrated all the events that happened in Marawi City in concluding that actual rebellion took place, so I will not repeat them here.

In addition, allow me to summarize the arguments of Justice Carpio, for brevity's sake, on why martial law is valid only in Marawi City: a) the Proclamation and Report contains no evidence of actual rebellion outside of

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I understand.
GENERAL PURISIMA:
We just implemented curfew and checkpoint in key areas, selected areas that we believe might have connection with the Marawi uprising, Your Honor.
[10] JUSTICE LEONEN:
Let me be more specific by a concrete example. Abu Sayyaf went to Bohol?
GENERAL PURISIMA:
Yes, Your Honor.
JUSTICE LEONEN:
And martial law was not in place but you were able to quell the intrusion of the fighters in Bohol?
GENERAL PURISIMA:
Yes, Your Honor.

Marawi City; b) they keep on referring to the Maute group's intent to remove from the Republic only "this part of Mindanao"; and c) the plan of the group was to wage the rebellion first in Marawi as a prelude to waging war in the rest of Mindanao, which means rebellion has not actually taken place in any other part.

What Lorenzana and Año Testified to

As earlier explained, I took the additional step of examining the evidence more closely with a view to actually understanding what the correct description of the realities in Mindanao should have been, beyond what has been described in Proclamation No. 216, the President's Report and the OSG's Comment.

During the Court's examination of General Año, it was clear that he believed that the military was doing its best within all available legitimate means, to bring peace and order to Mindanao and to crush the lawless violence that was taking place in its various parts. However, when further prodded, he stressed that the matter of declaring martial law was the sole prerogative of the President to which the AFP fully defers.

I have chosen to examine the totality of the President's claim that the whole of Mindanao is vulnerable to the ISIS-inspired rebellion led by the Maute group. I have listened very carefully to what the Secretary of Defense and the Chief of Staff of the Armed Forces of the Philippines (AFP) had to say about the realities on the ground.

It is true, what they said, that hundreds of violent incidents have wracked Mindanao. However, a large majority of them are unrelated to the alleged ISIS-inspired rebellion. They may have been committed by the MNLF, the MILF, or the NPA/NDF, but there is no causal nor factual nexus between those acts and the acts of rebellion alleged in the presidential proclamation.

Unless the President is saying that the publicly-announced peace negotiations being conducted with the MNLF, the MILF, and the NPA/NDF are being completely abandoned, acts attributable to these three rebel groups cannot serve as the factual basis for Proclamation No. 216.

Note that the justification presented by the President in Proclamation No. 216 is only the actual rebellion being waged in Marawi City by the Maute group and its capability to sow terror, and cause damage and death to property not only in Lanao del Sur but also in other parts of Mindanao.

In his Report, the President said:

> Considering the network of alliance-building activities among terrorist groups, local criminals and lawless armed men, the siege of 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.

All the claims of violence and networking in the President's Report refer solely to those perpetrated and nurtured by the Maute Group and its claimed ally, the Abu Sayyaf. The nexus therefore, must be demonstrated to these two groups' alleged alliance to establish an ISIS *wilayat* to justify coverage under Proclamation No. 216.

It is important to explain that martial law is not, under our Constitution, justifiable by the presence of violence alone. The unconstitutionality of Proclamation No. 216 in the entire islands group of Mindanao arises not because there is no violence in other parts of Mindanao; there is. It is not because the dangers posed by the Maute fighters are not serious; they are. Rather, it is because in parts of Mindanao other than in Lanao del Sur, Maguindanao, and Sulu, the requisites for a valid declaration of martial law have not been proven.

Our military and law enforcement establishments have always treated responses to the incidents in Mindanao as law enforcement or military actions against lawless violence. In response to this Court's questions, the military maintains that with or without martial law, it will perform its duty to quell rebellion, stop lawless violence, and preserve the territorial integrity of this country. This stance goes directly into the question of necessity; whether indeed, the military needed martial law in the entire islands group of Mindanao to restore order in Marawi City. Or is the armed conflict in Marawi City the only allowable purview of martial law under the present circumstances?

Should the Court allow the President to use martial law to solve all the problems in Mindanao as he himself has intimated, or should the Court remind him that martial law is a measure employable only when there is actual rebellion, and only when public safety requires the imposition of martial law? The President cannot broaden its use to solve other social ills.

The danger of misusing martial law is related to the need to protect the military from returning to its misshapen role during Marcos' Martial Law. Contrary to the sentiment of the *ponencia*, it is not fear and bias that animates magistrates of this Court when they seek to faithfully apply the words of the Constitution in the review of Proclamation No. 216; rather, it is the need to zealously protect the institutions of law and governance that have been very carefully designed by the Constitution. Of course, the Court is unanimous that all safeguards of constitutional rights must be kept in place as well.

I must emphasize that since 2005, the military establishment has taken institutional steps to professionalize its ranks in accordance with its

constitutional role.[11] It is of utmost importance therefore, that this Court not derail the reform efforts of the military to remove themselves from adventurism or from being unconstitutionally misdirected.

Further, this Court must ensure that any decision it will render does not unwittingly give the Maute gang of criminals a legal status higher than that of common local criminals or terrorists, or give them international notoriety that will facilitate financial and moral support from like-minded criminals. I agree with the caution being aired by Justice Marvic M.V.F. Leonen that any action this Court or the President takes may have international repercussions.

Points of Disagreement with the *Ponencia*'s Arguments

I wish to diverge from the arguments in the *ponencia* on several points:

1) The duty of the Court to inquire into the necessity of declaring martial law to protect public safety logically and inevitably requires the determination of proportionality of the powers sought to be exercised by the President. As pointed out by the *ponencia*, the exercise of the powers of the President under Section 18, Article VII "can be resorted to only under specified conditions."[12] This means that greater powers are needed only when other less intrusive measures appear to be ineffective. When it is deemed that the power exercised is disproportional to what is required by the exigencies of the situation, any excess therefore is deemed not required to protect public safety, and should be invalidated.

2) The duty of the Court to inquire into the necessity of declaring martial law to protect public safety logically and inevitably requires the definition of the metes and bounds of the areas to be validly covered by martial law. This is another aspect of proportionality. Put differently, if martial law is not necessary to protect public safety in a certain locality, then that locality cannot be included in the coverage of martial law. If it were otherwise, then this Court would be rendering nugatory the requirements of the Constitution that martial law can only be declared in case of an invasion or rebellion, and when the public safety requires it. This much was clarified by *Lansang*.

3) Contrary to the thinking of the *ponencia*, it is possible and feasible to define the territorial boundaries of martial law. No less than Section 18, Article VII provides that the President can place the entire country "or any part thereof" under martial law. For example, if the province is the largest administrative unit for law enforcement that covers the area of

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[11] See Philippine Military Academy Roadmap 2015 (2005); Philippine Navy Strategic Sail Plan 2020 (2006); Army Transformation Roadmap 2028 (2010); AFP Transformation Roadmap 2028 (2012).
[12] Decision, p. 31.

actual conflict, then that unit can be used. This opinion actually recognizes that the areas for a valid martial law operation cover much more than the actual area of combat. As will be shown below, there are only a handful of violent incidents in specific localities in which the elements of publicly taking up of arms against the government and endangerment to public safety are alleged by respondents.

4) When the Court makes a determination on the area coverage of martial law in accordance with the necessity of public safety test, the Court does not substitute its wisdom for that of the President, nor its expertise (actually, non-expertise) in military strategy or technical matters for that of the military's. The Court has to rely on the allegations put forward by the President and his subalterns and on that basis apply a trial judge's reasonable mind and common sense on whether the sufficiency and necessity tests are satisfied. The Court cannot be defending vigorously its review power at the beginning, with respect to the sufficiency-of-factual basis question, then be in default when required to address the questions of necessity, proportionality, and coverage. Such luxury is not allowed this Court by express directive of the Constitution. Such position is no different from ducking one's head under the cover of the political question doctrine. But we have already unanimously declared that Section 18, Article VII does not allow government a political question defense. When the military states that present powers are sufficient to resolve a particular violent situation, then the Court must deem them as sufficient, and thus martial law should be deemed as not necessary.

Sufficiency of the Factual Basis for Proclamation No. 216

a. Actual Rebellion

The Court is unanimous that there must be an actual invasion or rebellion, and that public safety calls for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, in order that the declaration or suspension can be constitutional.

Article 134 of the Revised Penal Code defines rebellion as the act of rising publicly and taking arms against the government for the purpose of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof – any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or the Legislature, wholly or partially, of any of its powers or prerogatives.

Since the Court is unanimous in affirming that only actual rebellion and not the imminence of rebellion is required for the declaration of martial law, then it follows as a matter of course that martial law can only be declared where the actual rebellion is taking place.

To construe otherwise is to validate martial law in any place where there is mere presence, actual or potential, of rebel forces or their supporters. It is to allow a limitless exercise of the President's power under Section 18, Article VII since there have always been rebellion in parts of the country from the 1920's.

It has only been in Marawi City where the element of rebellion that consists in the culpable purpose "of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof – any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or the Legislature, wholly or partially, of any of its powers or prerogatives" has been indisputably proven in the record.

For reasons already explained, I have stretched the limits of the allowable coverage of Proclamation No. 216 to areas which are the nesting grounds of human, financial, and logistical support to the Maute fighters that launched the actual rebellion in Marawi, and where actual acts of rebellion, even if not mentioned by Proclamation No. 216 and the President's Report, are described with sufficient specificity by the AFP Chief of Staff in his sworn statement. The same does not hold true with respect to supply corridors, or spillover arenas for as long as they remain only as potential, and not actual, areas of combat amounting to rebellion. Ordinary military blockades and other modes of interdiction are sufficient to address spillover and supply corridor situations as impressed upon us during the closed door session.

b. When Public Safety Requires It

Public safety has been said to be the objective of martial law. However, unlike the traditional concept of martial law, the 1987 Constitution removes from the military the power to replace civilian government except in an area of combat where the civilian government is unable to function. Attention must be paid to the categorical unction of the Constitution that legislative assemblies and civil courts must continue to function even in a state of martial law. It is only when civil courts are unable to function that military courts and agencies can conceivably acquire jurisdiction over civilians. Such is not the case here as civil courts in Marawi City continue to function from their temporary location in Iligan City. I will use excerpts from American jurists cited by Fr. Joaquin Bernas in describing martial law:

> In the language of Justice Black, it authorizes "the military to act vigorously for the maintenance of an orderly civil government." Or in the language of Chief Justice Stone, it is
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> > the exercise of the power which resides in the executive branch of the government to preserve order and insure the public safety in times of

> emergency, when other branches of the government are unable to function, or their functioning would itself threaten the public safety... It is the law of necessity to be prescribed and administered by the executive power. Its object, the preservation of the public safety and good order, defines the scope which will vary the circumstances and necessities of the case. The exercise of the power may not extend beyond what is required by the exigency which calls it forth...[13]

c. Sufficiency and necessity test requires calibration and delimitation of the coverage of martial law

The Court's statements in *Lansang* must be admired for their prescience. It pronounced that the suspension of the privilege of the writ of *habeas corpus* is a) judicially reviewable; b) such suspension is not covered by the political question exception; and c) its necessity for public safety must be reviewed according to the intensity of the rebellion, its location and time. In response to the question of the extent of review that the Court must undertake, the *ponencia* of Chief Justice Roberto Concepcion said:

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

[13] JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY, p. 901-902 (2009).

> **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.[14] (emphasis supplied)

Indeed, the Court had described instances of actual rebellion and the corresponding declaration of martial law as being often limited in geographical scope.

> This [referring to the area of actual rebellion] is apparent from the very provision of the Revised Penal Code defining the crime of rebellion, which may be limited in its scope to "any part" of the Philippines, and, also, from paragraph (14) of section 1, Article III of the Constitution, authorizing the suspension of the privilege of the writ "wherever" – in case of rebellion – "the necessity for such suspension shall exist." In fact, the case of *Barcelon v. Baker* referred to a proclamation suspending the privilege in the provinces of Cavite and Batangas only. The case of *In re Boyle* involved a valid proclamation suspending the privilege in a smaller area – a county of the state of Idaho.
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> **The magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege – namely, that the suspension be required by public safety.[15]**

While *Lansang* recognized that actual rebellion can be limited in geographical area, it nevertheless upheld the nationwide suspension of the privilege of the writ of *habeas corpus* because the evidence that the Court detailed in the Decision spoke of a nationwide spread of acts of rebellion and anarchy.

The only conclusion from the Court's pronouncements in *Lansang* is that this Court is required not only to determine the existence of actual rebellion, but also, **the time for and the place over which martial law can be declared.** The intensity of the rebellion, the areas over which it is being waged are matters that the Court must carefully examine.

Let us recall the relevant portions of the martial law provision in the Constitution in Article VII:

> 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**

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[14] *In re: Lansang v. Garcia*, supra note 4, at 586.
[15] Id. at 591-592

> **requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.** Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extends such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
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>
> The Supreme Court may **review**, in an appropriate proceeding filed by any citizen, **the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*** or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

The phraseology of the Constitution is purposive and directed. Martial law can only be declared: a) when there is actual invasion or rebellion; b) when public safety requires it; and c) over the entire Philippines or any part thereof. This Court cannot render inutile the second sentence of Article VII, section 18 by refusing to review the presidential decision on the coverage of martial law vis-à-vis the place where actual rebellion is taking place, and the necessity to public safety of declaring martial law in such places. The use of the phrase "when public safety requires it" can only mean that the Court must ask whether the powers being invoked is proportional to the state of the rebellion, and corresponds with its place of occurrence.

d. Terrorism and Rebellion

A question has been asked on the distinction between terrorism and rebellion and whether acts of terrorism can serve as factual basis for declaring martial law. *People v. Hernandez*[16] describes the various means by which rebellion may be committed, namely: "resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake – except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers."[17] Hence,

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[16] 99 Phil. 1956 (1956).
[17] Id. at 521

rebellion encompasses the entire portfolio of acts that a rebel group may commit in furtherance thereof and can include terrorism.

Republic Act No. (R.A.) 9372 (Human Security Act) defines terrorism as any punishable act that sows or creates a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.[18] Among the punishable acts enumerated in the definition of terrorism are those that may also fall under rebellion. It would thus appear that the crime of terrorism covers an even larger universe of crimes. Apparently, while terrorism does not always amount to a rebellion, acts of terrorism may be committed in furtherance of a rebellion.

Significantly, the Court in *Lansang* had the luxury of information on the ideology and methodologies utilized by the rebels in pursuance of their beliefs. Thus, bombing incidents, assassinations, attacks on the civilian population, violent demonstrations, the paralyzation of basic utilities, and even the establishment of front organizations were conclusively acknowledged as acts done in furtherance of rebellion.

That, however, is not the situation here.

Unlike the *Lansang* Court that was not constitutionally constrained to issue its Decision within a 30-day period from the filing of a petition questioning the factual basis for the declaration of martial law, this Court, because of the time limit, has not been able to vet evidence that were sought to be submitted by respondents to support a finding of the existence of the rebellious purpose behind the public taking up of arms.

At this point, I have chosen to rely on the Affidavit of General Eduardo M. Año dated 17 June 2017 in which he attested to the culpable political purpose of the rebels. According to Año, sometime in 2016, Isnilon Hapilon, head of the Abu Sayyaf Group in Basilan, was appointed *emir* or governor of the forces of the Islamic State of Iraq and Syria (ISIS) in the Philippines.[19] Hapilon's appointment started "the unification of the ISIS-linked rebel groups that have the common unified goal of establishing a *wilayat*, or Islamic province, in Mindanao."[20]

While it was ideal for the Court to have had the chance to examine General Año more closely, I am constrained to take at face value, that it was Hapilon's appointment as emir of ISIS in 2016 that is evidence of the culpable purpose of the ISIS-inspired Maute group's rebellion in Marawi City.

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[18] R.A. 9372, Sec. 3.
[19] Memorandum of the OSG, Annex 2 (Affidavit of General Eduardo M. Año), p. 5.
[20] Id.

e. Existence of Rebellion and the Need for Martial Law in the Three Provinces

I have already expressed my agreement with the *ponencia* that the President has established the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Marawi City.

Assuming the statement of General Año to be true, I believe that there is sufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in three provinces, including the one where Marawi City is situated.

I will enumerate below the following incidents alleged by General Año to have been orchestrated by ISIS-related groups that threaten the peace and security situation in other parts of Mindanao other than Marawi, after which I will analyze the same according to the tests earlier described:

Involving the Abu Sayyaf Group

1. Killing of 15 soldiers in a skirmish in Patikul, Sulu, on 29 August 2016[21]
2. Kidnapping of three Indonesian crew members near the east of Bakungan Island, Taganak, Tawi-Tawi on 19 January 2017[22]
3. Kidnapping of the six Vietnamese crew members of Giang Hai 05 in the north of Pearl Bank, Tawi-Tawi, on 19 February 2017[23]
4. Beheading of German kidnap victim Juergen Gustav Kantner on 26 February in Sulu[24]
5. Kidnapping of Jose and Jessica Duterte on 3 March 2017[25]
6. Kidnapping of Filipino crew members Laurencio Tiro and Aurelio Agac-Ac on 23 March 2017[26]
7. Beheading of Filipino kidnap victim Noel Besconde on 13 April 2017[27]
8. Kidnapping of Staff Sergeant (SSg) Anni Siraji of the Philippine Army (PA) on 20 April 2017 and his beheading on 23 April 2017[28]
9. Kidnapping of Filipinos Alidznur Halis and Aljimar Ahari on 29 April 2017[29]

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[21] Proclamation No. 55 dated 4 September 2016 (Declaring a State of National Emergency on Account of Lawless Violence in Mindanao).
[22] Memorandum of the Office of the Solicitor General (OSG), Annex 9 (Significant Atrocities in Mindanao Prior to the Marawi Incident), p. 1.
[23] Id.
[24] Id.
[25] Id.
[26] Id.
[27] Id.
[28] Id.
[29] Id.

10. Explosion of an improvised explosive device (IED) in *Barangay* Campo Uno, Lamitan City, Basilan, on 13 January 2017 resulting in the death of one civilian and the injury of another[30]
11. Explosion of an IED in *Barangay* Danapah, Albarka, Basilan, on 29 January 2017 causing the death of two civilians and the wounding of three others[31]

Involving the Maute Group

1. Attack against the 51st Infantry (INF) Battalion, PA, based in *Barangay* Bayabao, Butig, Lanao del Sur, on 20 February 2016[32]
2. Kidnapping of six sawmill workers and the beheading of two of the victims on 4 and 11 April 2016, respectively[33]
3. Attack on the Lanao del Sur Provincial Jail in Marawi City on 27 August 2016 to free detained rebels[34]
4. IED attack on a night market in Roxas Avenue, Davao City, on 2 September 2016, leading to the death of 15 people and the injury of 67 others[35]
5. Siege in Butig, Lanao del Sur, from 26 November to 1 December 2016, resulting in skirmishes with government troops and the injury of 32 civilians[36]
6. Carnapping in Iligan City on 24 February 2017, which led to government pursuit operations that killed two members of the Maute Group, as well as the apprehension of one member in Tagaloan, Lanao del Norte, on the same day[37]
7. Kidnapping of Omera Lotao Madid in Saguiaran, Lanao del Sur, on 5 March 2017[38]

Involving the Bangsamoro Islamic Freedom Fighters (BIFF)

1. Liquidation by BIFF elements of Corporal (Cpl) Joarsin K Baliwan (INF, PA) in *Barangay* Tambunan, Guindulungan, Maguindanao, on 16 February 2017[39]
2. Liquidation by BIFF elements of SSg Zaldy M Caliman (INF, PA) in *Barangay* Meta, Datu Unsay, Maguindanao, on 18 February 2017[40]
3. Two IED attacks against a government security patrol in Brgy. Timbangan, Shariff Aguak, on 3 March 2017, which resulted in the wounding of a military personnel[41]

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[30] Id.
[31] Id.
[32] Id. at Annex 2 (Affidavit of General Eduardo M. Año), p. 4.
[33] Id.
[34] Id.
[35] Id.
[36] Id.
[37] Id.
[38] Id. at p. 5.
[39] Id. at Annex 9 (Significant Atrocities in Mindanao Prior to the Marawi Incident), p. 2.
[40] Id.
[41] Id.

4. IED attack against a government security patrol along the national highway of Brgy. Labu-Labu, Datu Hoffer Ampatuan, Maguindanao, on 30 March 2017, which resulted in one wounded in action[42]
5. Harassment against government personnel in Brgy. Balanaken, Datu Piang, Maguindanao on 31 March 2017, which resulted in the killing of one Civil Aviation Authority personnel.[43]
6. IED explosion in front of the AFC eatery in Brgy. Poblacion 5, Midsayap, North Cotabato, on 1 April 2017, which resulted in the wounding of a civilian.[44]
7. Liquidation by BIFF elements of Cpl Tamana U. Macadatar, PA, in *Barangay* Tukanalipao, Mamasapano, Maguindanao, on 4 April 2017[45]
8. Two IED explosions targeting the Dragon Gas Station in Tacurong City, Sultan Kudarat, on 17 April 2017, which resulted in the wounding of eight persons (1 AFP, 1 Philippine National Police (PNP), and 6 civilians)[46]
9. IED attack on NGCP Tower #68 in *Barangay* Pagangan II, Aleosan, North Cotabato, on 18 April 2017[47]
10. IED explosion in Maitumaig Elementary School in *Barangay* Maitumaig, Datu Unsay, Maguindanao, on 5 May 2017[48]
11. Harassment of military detachments in *Barangay* Pagatin, Datu Salibo, Maguindanao, on 6 May 2017, which resulted in the wounding of seven military personnel[49]
12. IED attack targeting a PNP vehicle in Brgy. Mamasapano, Mamasapano, Maguindanao, on 9 May 2017 resulting in four wounded PNP personnel[50]
13. IED explosion while government troops were conducting a route security patrol in *Barangay* Timbangan, Shariff Aguak, Maguindanao, on 18 May 2017 resulting in one government personnel killed and another wounded[51]
14. IED explosion in Isulan Public Market, Isulan, Sultan Kudarat, on 22 May 2017[52]

All of the above incidents are acts of lawless violence directed against either civilians or government forces. Not only did they cause disturbance of the peace in the areas where they were committed; they were all criminal acts punishable under our laws to begin with.

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[42] Id.
[43] Id.
[44] Id.
[45] Id.
[46] Id.
[47] Id.
[48] Id. at p. 3.
[49] Id.
[50] Id.
[51] Id.
[52] Id.

Analysis of the Incidents Committed by the Abu Sayyaf Group

There can be no definitive conclusion that the welfare and general protection of the community are endangered by the kidnapping of foreigners in Tawi-Tawi and Sulu. The two incidents in Tawi-Tawi involved foreign crew members whose capture might have been perpetrated for various reasons, including illegal fishing. The killing of the German kidnap victim was absolutely deplorable. Nevertheless, as they were directed against tourists in the area, the kidnappings may be considered isolated incidents that have limited effect on the public safety of civilians in the community of course and cannot be counted as acts of rebellion.

The four cases of kidnapping of Filipinos committed by the Abu Sayyaf Group are a different matter, however. As the victims are members of the community, their kidnapping hits closer to home and creates a chilling effect on the people who may feel that their welfare is endangered. While public safety is endangered, it is not clear whether the kidnappings were committed for business or were in furtherance of a rebellion.

The two incidents involving IED explosions in Basilan that caused the death of civilians have absolutely created fear in the community. However, because this is not being related to an ongoing rebellion, we can only characterize them for now as acts of terrorism.

While the kidnapping and killing of SSg Anni Siraji (PA) may not necessarily endanger the public safety of the people, as the incident is directed against a member of government forces, it is definitely a form of publicly taking up arms against the government – an element of rebellion.

But it is the killing of 15 soldiers in Patikul, Sulu, upon which the element of publicly taking up arms against the government and the endangerment of public safety converge. The attack was directed against government forces. Considering the nature of a skirmish, which is not a respecter of time or place, the civilian population in the area could have been caught in the crossfire. It is also of common knowledge that the attacks on the soldiers are part of the ongoing campaign in Sulu to rid its islands of the Abu Sayyaf terrorist-rebel groups.

This is part of the continuous perpetration of attacks by the rebel group throughout the province of Sulu, wherein it is known to primarily operate.[53] Aside from the encounters between the rebels and the army, such as that which occurred just last April 2017,[54] there had been numerous

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[53] Garrett Atkinson, Abu Sayyaf: The Father of the Swordsman, A review of the rise of Islamic insurgency in the southern Philippines, American Security Project, March 2012, Available: <https://www.americansecurityproject.org/wp-content/uploads/2012/03/Abu-Sayyaf-The-Father-of-the-Swordsman.pdf> (Accessed: 4 July 2017).

[54] Roel Pareno, 10 Abu Sayyaf Killed, 32 Soldiers Hurt in Sulu Encounter, Available: http://www.philstar.com/nation/2017/04/03/1687306/10-abu-sayyaf-killed-32-soldiers-hurt-sulu-encounter (Acccessed: 4 July 2017).

assassinations of members of the armed forces and police in the province.[55] Further, many of its high-profile kidnappings have taken place in Sulu, specifically that of American missionary Charles Watson in 14 November 1993;[56] that of television evangelist Wilde Almeda in July 2000;[57] and that of American Jeffrey Schilling in 28 August 2000.[58] The protracted violence caused by the Abu Sayyaf group has affected the civilians in the community as well, as when members of the rebel group fired on two passenger jeepneys in Talipao, Sulu, killing 21 persons and wounding 11 in July 2014.[59]

To view and understand the killing of the soldiers in Patikul, Sulu within the foregoing context of protracted violence being perpetrated by the group in the entire province, would confirm the conclusion that the requirements for the declaration of martial law and suspension of the privilege of the writ are present in Sulu.

Analysis of the Incidents Committed by the Maute Group

The incidents of kidnapping of Filipinos and beheading of two of them, as well as the IED explosion in Davao City, endangered the public safety of the community. The same is true with regard to the incident of carjacking in Iligan City. However, while government forces were involved in the incident that led to the killing of two Maute Group members and the apprehension of another, the element of publicly taking up arms against the government has not been established. This is because the involvement of the government forces may have resulted from their pursuit of the perpetrators.

The element of publicly taking up arms against the government was present in the ambush of military elements in Marawi City, although it might not have necessarily endangered the public because the target of the ambush was government forces.

The rest of the incidents orchestrated by the Maute Group involved both the element of publicly taking up arms against the government and public safety endangerment.

The attack on the 51st Infantry Battalion and the siege that resulted in skirmishes, both in Butig, Lanao del Sur, were directed at government

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[55] Victor Taylor, Terrorist Activities of the Abu Sayyaf, The Mackenzie Institute, Available: http://mackenzieinstitute.com/terrorist-activities-abu-sayyaf/#reference-1 (Accessed: 4 July 2017).

[56] Zachary Abuza, Balik-Terrorism: The Return of the Abu Sayyaf, 4 (2005): Available:<https://ssi.armywarcollege.edu/pdffiles/PUB625.pdf> (Accessed: 4 July 2017).

[57] Abu Sayyaf Kidnappings, Bombings, and Other Attacks, Available: <http://www.gmanetwork.com/news/news/content/154797/abu-sayyaf-kidnappings-bombings-and-other-attacks/story/> (Accessed: 4 July 2017).

[58] Abu Sayyaf Kidnappings, Bombings, and Bther Attacks, Available: <http://www.gmanetwork.com/news/news/content/154797/abu-sayyaf-kidnappings-bombings-and-other-attacks/story/> (Accessed: 4 July 2017).

[59] Julie S. Alipala, Abu Sayyaf Gunmen Kill 21 in Sulu attack, Available: <http://newsinfo.inquirer.net/624137/abu-sayyaf-gunmen-kill-at-least-16-villagers#ixzz4lr5CQIb4> (Accessed: 4 July 2017).

forces. The attack necessarily created fear in the community, considering that such a brazen act could be directed at an armed government facility. The siege resulted in the injury of 32 civilians caught in the crossfire.

The attack on the Lanao del Sur Provincial Jail endangered the welfare of the community as a result of the escape of jailed rebels, among others. It may also be considered an act of publicly taking up arms against the government.

The context of the killing of Cpl Joarsin K Baliwan (INF, PA), SSg Zaldy M Caliman (INF, PA), and Cpl Tamana U Macadatar (PA) has not been established. It is unclear whether the element of publicly taking up arms against the government was present. The lack of more information also militates against a finding on whether the incident endangered the safety of the community.

The welfare of the community was endangered by the IED explosions in Midsayap, North Cotabato; Tacurong City, Sultan Kudarat; and Isulan, Sultan Kudarat. In fact, two of these explosions resulted in the wounding of civilians. However, other aspects of these incidents are unclear.

The IED attacks on a tower of the National Grid Corporation of the Philippines and on an elementary school in Datu Unsay, Maguindanao also endangered the welfare of the community, especially since one of these attacks was directed against a children's school. However, the element of publicly taking up arms against the government was not established, because the government facilities attacked were civilian in nature.

Neither was the element of publicly taking up arms against the government established in the IED attacks against a government security patrol in Datu Hoffer Ampatuan, Maguindanao; and against a PNP vehicle in Mamasapano, Maguindanao. In these cases, the government personnel attacked were also civilians. The same is true with regard to the harassment committed against government personnel in Datu Piang, Maguindanao. It is clear however, that these incidents endangered the welfare and safety of the community.

The two IED attacks against a government security patrol in *Barangay* Timbangan, Sharif Aguak, which resulted in the wounding of one military personnel, may be considered publicly taking up arms against the government because of the target, the number of attacks and the casualty.

Two incidents show the concurrence of the element of publicly taking up arms against the government and the endangerment of public safety: the harassment of military detachments in Datu Salibo, Maguindanao, which resulted in the wounding of seven military personnel; and the IED explosion directed against government troops in Sharif Aguak, Maguindanao, resulting in the death of one personnel and the wounding of another.

About 100 BIFF members were reportedly closing in on the military detachment in *Barangay* Gadong, Datu Salibo, on 4 May 2017 but government forces used air strikes to drive them away.[60] Reinforcements sent to the government soldiers manning the detachment became the target of a roadside improvised bomb. Meanwhile, another roadside bomb was set off about 15 kilometers away to divert the attention of the government forces. On 6 May 2017, elements of the 57th Infantry Battalion were on their way as reinforcements to the detachment in *Barangay* Pagatin, Datu Salibo, when they were ambushed by rocket-propelled grenades, injuring seven of them.[61]

The IED in Sharif Aguak was planted along the route of the 40th Infantry Battalion patrolling *Barangay* Timbangan.[62] It was detonated with the use of a cellular phone.

These attacks against government forces were clearly deliberate. The use of diversionary tactics and the attacks on reinforcements betrayed the clear intent of the BIFF members to take over the military detachment in Datu Salibo, Maguindanao. On the other hand, there was premeditation in the planting and detonation of the IED along the patrol route of the government forces.

In contrast, the other incidents perpetrated by the BIFF satisfy only one of the two elements of publicly taking up of arms against the government and endangerment to public safety. In others still, it is unclear whether any of the two are present.

Significantly, respondents have not cited any incident anywhere in Mindanao committed by Ansarul Khilafah Philippines (also known as "The Maguid Group"), which hails from Saranggani and Sultan Kudarat.

Based on the foregoing, actual rebellion and the endangerment of public safety took place and may still be taking place in three provinces: Sulu, Lanao del Sur, and Maguindanao.

Parenthetically, the Maute Group originated from Lanao del Sur, while the BIFF is from Maguindanao. Abu Sayyaf members largely come from Sulu.[63]

Thus, the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* appear to have sufficient factual basis in the following three provinces: Lanao del Sur, Maguindanao, and Sulu. Other than these provinces, the respondents have not alleged any other incident reasonably related to the Maute attack in Marawi City.

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[60] http://newsinfo.inquirer.net/895173/biff-sub-leader-killed-in-maguindanao-clash-with-soldiers. (Last accessed 4 July 2017).

[61] Id.

[62] http://www.philstar.com/nation/2017/05/18/1701212/2-soldiers-hurt-ied-blast-maguindanao. The news report stated that the casualty of the incident were two wounded soldiers. (Last accessed 4 July 2017)

[63] Memorandum of the OSG, Annex 2 (Affidavit of General Eduardo M. Año), p. 3

It is no coincidence that the acts of rebellion alleged by the AFP occurred in the nesting grounds of the combined Maute-Abu Sayyaf and BIFF forces. Such extension is not unwarranted, especially considering that these are forces who, at the same time, do not seek peace with government. Such would not be the case if the New People's Army (NPA), Moro National Liberation Front (MNLF), and Moro Islamic Liberation Front (MILF) forces were involved. Another analytical lens, this time involving the ongoing peace negotiations must then be employed.

Parameters for the Implementation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus*

During the oral arguments, it became evident that there is a variety of ideas on what additional powers martial law provides. This question was not definitively settled in the *ponencia*. It also became evident that there were serious concerns on whether constitutional rights will deteriorate in a martial law setting. One way of answering these questions is to provide the parameters for the valid implementation of martial law and the accompanying suspension of the privilege of the writ of habeas corpus.

The validity of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the three provinces specified above does not vest the President and his officials with unhampered discretion to wield his powers in any way and whichever direction he desires. Their actions must meet legal standards even in a martial law setting. These standards ensure that Marcosian martial law does not happen again and the foundations of a just and humane society envisioned by the Constitution remain intact. At the very core, the bedrock of these standards is the fourth paragraph of Section 18, Article VII of the Constitution:

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

From the foregoing provision springs a series of inhibitions in existing laws that are imposed on the government during martial law. It behooves this Court, as the guardian of the Constitution and protector of the constitutional rights of the citizens, to specify these limitations. It is this Court's duty, upon recognizing government's own difficulty with the concept of martial law, to sufficiently outline the legal framework upon which the implementation of martial law depends; and to ensure that the power to declare martial law is discharged in full accordance with this framework. To shirk from this duty would be a disservice to our men and women in uniform who, at this very moment, are rendering sacrificial

service in the field as implementors of martial law. Ultimately, it would be a disservice to the Filipino people.

The following discussion outlines the salient aspects of a martial law declaration that is accompanied by the suspension of the privilege of the writ of *habeas corpus* and what these mean to martial law implementors.

a. Ability to Legislate

The Constitution specifically provides that a state of martial law does not supplant the functioning of the legislative assemblies. Therefore, as reflected in the deliberations of the framers,[64] the President is not automatically vested with plenary legislative powers. Ordinary legislation continues to belong to the national and local legislative bodies even during martial law.[65] This necessarily connotes the continued operation of all statutes, even during a state of martial rule.

It has been opined that the martial law administrator has the authority to issue orders that have the effect of law, but strictly only within the theater of war[66] – an area that is not necessarily the same as the entire territorial scope of the martial law declaration. Should it happen that this opinion is upheld by this Court, it must however be noted that this does not give the administrator plenary legislative powers, since the orders issued must still be in accordance with the Constitution, especially the Bill of Rights. But outside the so-called theater of war, the operative law is ordinary law. [67]

b. Operation of Civil and Military Courts

The rule under the Constitution is that the civil courts cannot be supplanted by military courts.[68] Therefore, the civil courts remain open and fully functioning, and the Rules of Court continue to be applicable.

It seems to be implied that in an actual theater of war where the civil courts are closed and unable to function, military courts shall have jurisdiction even over civilians in that area. It must be emphasized that all

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[64] FATHER BERNAS: A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies . . .
The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case Aquino vs. COMELEC where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers. (II Record, CONSTITUTIONAL COMMISSION 398 ([29 July 1986]).

[65] BERNAS, supra note 12 at 920.

[66] FATHER BERNAS: The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: During martial law, the President may have the powers of a commanding general in a theatre of war. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theatre of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theatre of war. (II Record, CONSTITUTIONAL COMMISSION 398 [29 July 1986]).

[67] BERNAS, supra note 12 at 920.

[68] Constitution, Article VII, Sec. 18.

courts, including that in Marawi City are functioning, albeit in a nearby municipality.

c. Ability to Effect Arrests

***i.* Crime of Rebellion**

As in the conduct of searches, the continued operation of the Constitution during martial law necessarily connotes that the constitutional guarantee against arbitrary arrests under the Bill of Rights remains in full effect. As a general rule, a warrant of arrest is necessary before an arrest can be validly affected as provided in Section 2, Article III of the Constitution.

However, because rebellion, conspiracy, or proposal to commit rebellion and crimes or offenses committed in furtherance thereof constitute direct assaults against the State, they are in the nature of continuing crimes.[69] As such, arrests without warrant of persons involved in rebellion are justified because they are essentially committing an offense when arrested.[70] The interest of the state in the arrest of persons involved in rebellion is explained in *Parong v. Enrile*:[71]

> The arrest of persons involved in the rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously, the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but equally in pursuance of the rebellious movement. The arrest or capture is thus impelled by the exigencies of the situation that involves the very survival of society and its government and duly constituted authorities.[72]

The arrest of persons involved in rebellion is thus synonymous with a valid warrantless arrest of a person committing a crime in the presence of the arresting officer.

Since the privilege of the writ of *habeas corpus* is suspended under Proclamation No. 216, Section 18, Article VII of the Constitution mandates that all persons arrested or detained for rebellion or offenses directly

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[69] *Umil v. Ramos*, 265 Phil. 325 (1990).
[70] Id.
[71] 206 Phil. 392 (1983).
[72] Id. at 417.

connected with invasion shall be judicially charged within three days; otherwise they shall be released.

ii. Crime of Terrorism

Arrests of persons charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism may be made without judicial warrant only upon authority in writing by the Anti-Terrorism Council.[73] Immediately after taking custody, the arresting officers shall notify in writing the judge of the court nearest the place of apprehension or arrest.

The officer is allowed to detain the person for a period not exceeding three days from the moment the latter has been taken into custody.[74]

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[73] R.A. 9372, Sec. 18.

[74] SECTION 18. *Period of Detention Without Judicial Warrant of Arrest.* — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided*, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as *Provided* in the preceding paragraph.

SECTION 19. *Period of Detention in the Event of an Actual or Imminent Terrorist Attack.* — In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.* — The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails

Within three days, the arresting officers shall present the person suspected of the crime of terrorism before any judge of the place where the arrest took place at any time of the day or night. Judges shall ascertain the identity of the arresting officers and the persons presented and inquire as to the reasons for the arrest. They shall also determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture. They shall submit a written report within three calendar days to the proper court that has jurisdiction over the case of the person thus arrested.[75]

***iii.* Other Crimes**

Because the civil courts remain open and fully functional during martial rule, warrants of arrest can be issued only by a judge on the basis of probable cause. The regular operation of the courts necessarily maintains the applicability of the Rules of Court; thus, the procedure under Rule 112 of the Rules of Court on the issuance of an arrest order must be followed.

As in the case of searches, there can be instances of valid arrests without a warrant. The exceptions the Court recognizes that allow law enforcers or private persons to effect an arrest without a warrant are the following:

1. *When, in their presence, the persons to be arrested have committed, are actually committing, or are attempting to commit an offense.*[76] This arrest is also called an *in flagrante delicto* arrest, which is an exception that requires the concurrence of two elements for it to apply: (1) the person to be arrested must execute an overt act indicating that they have just committed, are actually committing, or are attempting to commit a crime; and (2) the overt act is done in the presence or within the view of the arresting officers.[77]

2. *When an offense has just been committed and the officers have probable cause to believe based on their personal knowledge of facts or circumstances, that the persons to be arrested have committed it.*[78] There are two elements for this exception to apply: (1) an offense has just been committed; and (2) the arresting officers have probable cause to believe, based on personal knowledge of facts or circumstances, that the persons to be arrested have committed it.[79] It is a precondition that, more than suspicion or hearsay,[80] the arresting officers know for a fact that a crime has just been committed.[81]

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to deliver such charged or suspected person to the proper judicial authority within the period of three days. (R.A. 9372)

[75] Id.

[76] Rules of Court, Rule 113, Sec. 5(a).

[77] *People v. Chua,* 444 Phil. 757 (2003).

[78] Rules of Court, Rule 113, Sec. 5(b).

[79] *Pestilos v. Generoso,* G.R. No. 182601, 10 November 2014.

[80] *Pestilos v. Generoso,* supra.

[81] *Sindac v. People,* G.R. No. 220732, 6 September 2016.

Too, this Court held in *Pestilos v. Generoso*[82] that the elements that *"the offense has just been committed"* and *"personal knowledge of facts and circumstances that the person to be arrested committed it"* depends on the particular circumstances of the case. Nevertheless, the Court clarified that the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of *immediacy.*[83]

3. When the persons to be arrested are prisoners who have escaped from a penal establishment or place where they are serving final judgment, or are temporarily confined while their cases are pending, or have escaped while being transferred from one place of confinement to another.[84]

4. If the persons lawfully arrested escape or are rescued.[85]

5. If the accused who are released on bail attempt to depart from the Philippines without permission of the court where the case is pending.[86]

The manner of the arrest, with or without a warrant, must be in a accordance with Sections 7[87] and 8,[88] Rule 113 of the Rules of Court.

Once a valid arrest has been affected, the procedure laid down in Section 3, Rule 113, shall be followed – the person arrested shall be delivered to the nearest police station or jail without unnecessary delay.[89] If it is a case of warrantless arrest under exception nos. 1 and 2 above, the arrested person shall be proceeded against in accordance with Section 6 (formerly section 7) of Rule 112, or through inquest proceedings.[90] If there is a warrant of arrest, it must be executed within 10 days from its receipt,

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[82] *Pestilos v. Generoso,* supra note 69.
[83] *Pestilos v. Generoso,* supra note 69.
[84] RULES OF COURT, Rule 113, Sec. 5(c).
[85] RULES OF COURT, Rule 113, Sec. 13.
[86] RULES OF COURT, Rule 114, Sec. 23.
[87] RULES OF COURT, Rule 113, Sec. 7.
Section 7. *Method of arrest by officer by virtue of warrant.* — When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.
[88] RULES OF COURT, Rule 113, Sec. 8:
Section 8. *Method of arrest by officer without warrant.* — When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest.
[89] RULES OF COURT, Rule 113, Sec. 5: "In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail"; Rule 113, Section 3, Rules of Court: "It shall be the duty of the officer executing the warrant to arrest the accused and deliver him to the nearest police station or jail without unnecessary delay"; *Pestilos v. Generoso,* G.R. No. 182601, 10 November 2014.
[90] RULES OF COURT, Rule 113, Sec. 5.

after which the officer executing it shall make a report to the judge issuing the warrant within 10 days after its expiration.[91]

In view of the regular operation of the courts, the rules on arraignment and plea under Rule 116 of the Rules of Court would have to be followed after the arrested person has been judicially charged.

d. Period of Detention

The allowable periods of detention in cases of valid warrantless arrests are based on the laws prescribing the period of time within which the arrested person must be judicially charged. These laws apply even during martial law, in view of the provision mandating the continued operation of the civil courts and applicability of the Rules of Court. Detained persons ought to be charged for acts and omissions punished by the Revised Penal Code and other special penal laws. It must be remembered that the theory that a person may be detained indefinitely without any charges and that the courts cannot inquire into the legality of the restraint not only goes against the spirit and letter of the Constitution, but also does violence to the basic precepts of human rights and a democratic society.[92]

i. Crime of Rebellion

Since the privilege of the writ of *habeas corpus* has been suspended, Section 18, Article VII of the Constitution mandates that that the arrested persons shall be judicially charged within three days from the arrest. Otherwise they shall be released.

ii. Crime of Terrorism

In case of a valid warrantless detention under the Human Security Act, the officer is allowed to detain the person arrested for terrorism or conspiracy to commit terrorism for a period not exceeding three days from the moment the latter has been taken into custody by the law enforcement personnel.[93]

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[91] RULES OF COURT, Rule 113, Sec. 4: *Execution of warrant.* — The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten (10) days from its receipt. Within ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reasons therefor.

[92] *In Re: Salibo v. Warden*, G.R. No. 197597, 8 April 2015, 755 SCRA 296.

[93] SECTION 18. *Period of Detention Without Judicial Warrant of Arrest.* — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided*, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the

In case the warrantless arrest was made during an actual or imminent terrorist attack, the arrested suspect may be detained for more than three days provided that arresting officer is able to secure the written approval of a municipal, city, provincial, or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. [94]

If the arrest was made during Saturdays, Sundays, holidays, or after office hours, the arresting police or law enforcement personnel shall bring the arrested suspect to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. It is necessary, however, that the approval in writing of any of the said officials be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned.

The arrested individuals whose connection with the terror attack or threat is not established, shall be released immediately and within three days after the detention.

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place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as *Provided* in the preceding paragraph.

x x x x

SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.* — The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

[94] SECTION 19. *Period of Detention in the Event of an Actual or Imminent Terrorist Attack.* — In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

The Human Security Act penalizes the law enforcers who shall fail to deliver the arrested suspects to the proper judicial authorities within three days.[95]

iii. Other Crimes

In case of a warrantless arrest for a legal ground involving other crimes, the period of detention allowed under the Revised Penal Code shall apply. The detained person must be judicially charged within

a. 12 hours for crimes or offenses punishable with light penalties, or their equivalent;

b. 18 hours for crimes or offenses punishable with correctional penalties, or their equivalent;

c. 36 hours for crimes or offenses punishable with afflictive or capital penalties, or their equivalent.[96]

Failure to judicially charge within the prescribed period renders the public officer effecting the arrest liable for the crime of delay in the delivery of detained persons under Article 125 of the Revised Penal Code.[97] Further, if the warrantless arrest was without any legal ground, the arresting officers become liable for arbitrary detention under Article 124.[98] However, if the arresting officers are not among those whose official duty gives them the authority to arrest, they become liable for illegal detention under Article 267 or 268.[99] If the arrest is for the purpose of delivering the person arrested to

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[95] SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.* — The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

[96] REVISED PENAL CODE, Art. 125: *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

[97] Id.

[98] Art. 124. *Arbitrary detention.* — Any public officer or employee who, without legal grounds, detains a person, shall suffer;

1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;
2. The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
3. The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and
4. That of *reclusion temporal*, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

[99] Art. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.

the proper authorities, but it is done without any reasonable ground or any of the circumstances for a valid warrantless arrest, the arresting persons become liable for unlawful arrest under Article 269.[100]

e. Treatment During Detention

The rights of a person arrested or detained must be respected at all costs, even during martial law. The main source of these rights is Section 12, paragraphs 1 and 2, Article III of the Constitution, which provide as follows:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> Section 19(2), Article III of the Constitution further provides:
>
> The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.[101]
>
> These rights are further spelled out in R.A. 7438:[102]

1. The right to be assisted by counsel at all times;[103]

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3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

Art. 268. *Slight illegal detention.* — The penalty of *reclusion temporal* shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prision mayor* in its minimum and medium periods and a fine not exceeding seven hundred pesos.

[100] Art. 269. *Unlawful arrest.* — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.

[101] CONSTITUTION, Art. III, Sec. 19(2),

[102] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof.

[103] R.A. 7438, Sec. 2(a).

2. The right to remain silent;[104]
3. The right to be informed of the above rights;[105]
4. The right to be visited by the immediate members of their family, by their counsel, or by any nongovernmental organization, whether national or international.[106]

R.A. 7438 likewise includes persons under custodial investigation within the ambit of its protection. The concept of custodial investigation was expanded by the law to include the practice of issuing an "invitation" to persons who are investigated in connection with an offense they are suspected to have committed.[107]

R.A. 7438 further requires any extrajudicial confession made by persons arrested, detained, or under custodial investigation to be in writing and signed by these persons in the presence of their counsel or, in the latter's absence, upon a valid waiver; and in the presence of any of their parents, elder brothers or sisters, their spouse, the municipal mayor, the municipal judge, the district school supervisor, or a priest or minister of the gospel chosen by them. Otherwise, the extrajudicial confession shall be inadmissible as evidence in any proceeding.[108]

The law provides that any waiver by persons arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by these persons in the presence of their counsel. Otherwise, the waiver shall be null and void and of no effect.[109]

The rights of persons detained for the crime of terrorism or conspiracy to commit terrorism are addressed and specifically provided for in the Human Security Act. These rights are the following: [110]

1. The right to be informed of the nature and cause of their arrest;
2. The right to remain silent;
3. The right to have competent and independent counsel;

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[104] R.A. 7438, Sec. 2(b).
[105] Id.
[106] R.A. 7438, Sec. 2(f).
[107] R.A. 7438, Sec. 2.
[108] R.A. 7838, Sec. 2(d).
[109] R.A. 7838, Sec. 2(e).
[110] R.A. 9372, Sec. 21: *Rights of a Person under Custodial Detention.* — The moment a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism is apprehended or arrested and detained, he shall forthwith be informed, by the arresting police or law enforcement officers or by the police or law enforcement officers to whose custody the person concerned is brought, of his or her right: (a) to be informed of the nature and cause of his arrest, to remain silent and to have competent and independent counsel preferably of his choice. If the person cannot afford the services of counsel of his or her choice, the police or law enforcement officers concerned shall immediately contact the free legal assistance unit of the Integrated Bar of the Philippines (IBP) or the Public Attorney's Office (PAO). It shall be the duty of the free legal assistance unit of the IBP or the PAO thus contacted to immediately visit the person(s) detained and provide him or her with legal assistance. These rights cannot be waived except in writing and in the presence of the counsel of choice; (b) informed of the cause or causes of his detention in the presence of his legal counsel; (c) allowed to communicate freely with his legal counsel and to confer with them at any time without restriction; (d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and, (e) allowed freely to avail of the service of a physician or physicians of choice.

4. The right to be informed of the cause or causes of their detention in the presence of their legal counsel;
5. The right to communicate freely with their legal counsel and to confer with them at any time without restriction;
6. The right to communicate freely and privately without restrictions with the members of their family or with their nearest relatives and to be visited by them;
7. The right to freely avail themselves of the service of a physician or physicians of choice; and
8. The right to be informed of the above rights.

R.A. 9745 (Anti-Torture Act of 2009) strengthens the right of an arrested person not to be subjected to physical or mental torture[111] while under detention. This law provides that, the freedom from torture and other cruel, inhuman, and degrading treatment and punishment is an absolute right, even during a public emergency.[112] Further, an "order of battle" cannot be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.[113] As in R.A. 7438, any confession, admission, or statement obtained as a result of torture shall be inadmissible in evidence in any proceeding, except if the same is used as evidence against a person or persons accused of committing torture.[114]

The Human Security Act also protects those detained, who are under investigation for the crime of terrorism or conspiracy to commit terrorism, from any form of torture.[115] However, while the Anti-Torture Act allows evidence obtained as a result of torture to be used against the person or persons accused of committing torture, the Human Security Act absolutely prohibits the admissibility of that evidence in any judicial, quasi-judicial,

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[111] Republic Act No. (R.A.) 9745 (Anti-Torture Act of 2009) defines torture as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (Sec. 3[a]).

[112] R.A. 9745, Sec. 6: *Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, an Absolute Right.* — Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

[113] Id.

[114] R.A. 9745, Sec. 8.

[115] R.A. 9372 (Human Security Act of 2007), Sec. 24.

Section 24. *No Torture or Coercion in Investigation and Interrogation.* — No threat, intimidation, or coercion, and no act which will inflict any form of physical pain or torment, or mental, moral, or psychological pressure, on the detained person, which shall vitiate his free-will, shall be employed in his investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism; otherwise, the evidence obtained from said detained person resulting from such threat, intimidation, or coercion, or from such inflicted physical pain or torment, or mental, moral, or psychological pressure, shall be, in its entirety, absolutely not admissible and usable as evidence in any judicial, quasi-judicial, legislative, or administrative, investigation, inquiry, proceeding, or hearing.

legislative, or administrative investigation, inquiry, proceeding, or hearing.[116]

f. Ability to Conduct Searches

Pursuant to the provision that the Constitution remains operational during martial law, the constitutional guarantee against unreasonable searches under the Bill of Rights continues to accord the people its mantle of protection. Further, as previously discussed, the regular operation of the courts even under martial rule, necessarily maintains the applicability of the Rules of Court.

The rule is that the Constitution bars State intrusions upon a person's body, personal effects or residence, except if conducted by virtue of a valid search warrant issued in compliance with the procedure outlined in the Constitution and reiterated in the Rules of Court.[117] Specifically, "no search warrant xxx shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched."[118] Rule 126 of the Rules of Court, in turn, lays down the procedure for the issuance of a valid search warrant.

It must be emphasized that the requirement of probable cause before a search warrant can be issued is mandatory and must be complied with; a search warrant not based on probable cause is a nullity or is void; and the issuance thereof is, in legal contemplation, arbitrary.[119] Further, any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[120]

Nevertheless, the interdiction against warrantless searches and seizures is not absolute, as there are exceptions known as valid warrantless searches. The following are the instances of valid warrantless searches:[121]

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court, and by prevailing jurisprudence. In searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.[122]

2. *Seizure of evidence in "plain view."* Under the plain view doctrine, objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be

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[116] Id.
[117] *People v. Canton*, 442 Phil. 743 (2002).
[118] CONSTITUTION, Art. III, Sec. 2.
[119] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875 (1996).
[120] *Miclat, Jr. y Cerbo v. People*, 672 Phil. 191 (2011).
[121] *People v. Aruta*, 351 Phil. 868 (1998).
[122] *Sy v. People*, 671 Phil. 164 (2011).

presented as evidence. The plain view doctrine applies when the following requisites concur: (1) law enforcement officers in search of evidence have a prior justification for an intrusion or are in a position from which they can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately apparent to the officers that the item they observed may be evidence of a crime, a contraband or is otherwise subject to seizure.[123]

3. *Search of a moving vehicle.* The rules governing search of a moving vehicle have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant can be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge — a requirement that borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity.[124] Further, a warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant is sought. The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause; still and all, the important thing is that there is probable cause to conduct the warrantless search.[125]

4. *Consented* warrantless search. It is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) the person involved had knowledge, either actual or constructive, of the existence of this right; and (3) that person had an actual intention to relinquish the right.[126]

5. *Customs search.* It has been traditionally understood that persons exercising police authority under the customs law may effect search and seizure without a search warrant in the enforcement of customs laws.[127]

6. *Stop and Frisk.* A "stop and frisk" situation, also known as the *Terry* search, refers to a case in which a police officer approaches a person who is acting suspiciously for the purpose of investigating possible criminal behavior, in line with the general interest of effective crime prevention and detection.[128] The objective of a stop and frisk search is either to determine the identity of a suspicious individual or to maintain the *status quo* momentarily while the police officer seeks to

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[123] *Sanchez v. People,* 747 Phil. 552 (2014).
[124] *People v. Lo Ho Wing,* 271 Phil. 120 (1991).
[125] *Caballes v. Court of Appeals,* 424 Phil. 263 (2002).
[126] *Dela Cruz v. People,* G.R. No. 209387, 11 January 2016.
[127] *Papa v. Mago,* 130 Phil. 886 (1968).
[128] *People v. Canton,* supra note 7.

obtain more information. A basic criterion is that the police officers, with their personal knowledge, must observe the facts leading to the suspicion of an illicit act. The concept of "suspiciousness" must be present in the situation in which the police officers find themselves in.[129]

7. *Exigent and Emergency Circumstances.* The doctrine of "exigent circumstance" was applied in *People v. De Gracia*[130] which was decided during a time of general chaos and disorder brought about by the *coup d'etat* attempts of certain rightist elements. Appellant was convicted of illegal possession of firearms in furtherance of rebellion. He was arrested during a warrantless raid conducted by the military operatives inside the Eurocar building, wherein they were able to find and confiscate high-powered bombs, firearms, and other ammunition. According to the military, they were not able to secure a search warrant due to ongoing disorder, with Camp Aguinaldo being "mopped up" by the rebel forces and the simultaneous firing within the vicinity of the Eurocar building, aside from the fact that the courts were consequently closed.

   Admittedly, the absence of a search warrant was not squarely put into issue. Nevertheless, the Court proceeded to delve into the legality of the raid due to the gravity of the offense involved. The Court then analyzed the context, taking into consideration the following facts: (1) the raid was precipitated by intelligence reports and surveillance on the ongoing rebel activities in the building; (2) the presence of an unusual quantity of high-powered firearms and explosives in a automobile sales office could not be justified; (3) there was an ongoing chaos at that time because of the simultaneous and intense firing within the vicinity of the office and in the nearby Camp Aguinaldo which was under attack by rebel forces; and (4) the courts in the surrounding areas were obviously closed and, for that matter, the building and houses therein were deserted.

   The Court ruled that the "case falls under one of the exceptions to the prohibition against a warrantless search. In the first place, the military operatives, taking into account the facts obtaining in this case, had reasonable ground to believe that a crime was being committed. There was consequently more than sufficient probable cause to warrant their action. Furthermore, under the situation then prevailing, the raiding team had no opportunity to apply for and secure a search warrant from the courts. The trial judge himself manifested that on December 5, 1989 when the raid was conducted, his court was closed. Under such urgency and exigency of the moment, a search warrant could lawfully be dispensed with."[131]

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[129] *People v. Cogaed,* 740 Phil. 212 (2014).
[130] 304 Phil. 118 (1994).
[131] Id. at 113.

> It is under this rare situation that a valid warrantless search or raid may be conducted in times of ongoing conflict, as when there is an ongoing fighting between rebels and the armed forces. However, great care must be observed before this exception can apply. The searching officers must take into consideration: (1) the urgency and exigency of the situation, (2) the attendant circumstances of chaos or disorder, and (3) the availability of the courts. It bears reiteration that all courts in the country are currently functioning.

Law enforcers may avail themselves of these exceptions, provided the requisites for their application are present. It must be emphasized that these exceptions do not give searching officers license to declare a "field day." The essential requisite of probable cause must always be satisfied before any warrantless search and seizure can be lawfully conducted.[132]

g. Ability to Enter Private Properties

The ability to enter private properties is closely related to the conduct of searches, so it must be exercised under the authority of a search warrant, unless it falls under any of the exceptions discussed above. This constitutional guarantee likewise finds its roots in Section 2, Article III of the Constitution, whose main purpose is to protect the sanctity and privacy of the home. This principle was affirmed as early as 1904 in *U.S. v. Arceo*:[133]

> The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.
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> *The privacy of the home — the place of abode, the place where man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to whom men are entitled.* Both the common and the civil law guaranteed to man the right to absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives xxx.
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> 'A man's house is his castle,' has become a maxim among the civilized peoples of the earth. His protection therein

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[132] *People v. Aruta*, supra note 111.
[133] 3 Phil. 381, 384 (1904).

> has become a matter of constitutional protection in England, America, and Spain, as well as in other countries.[134]

The limitations on the manner in which the search warrant shall be secured and implemented can be found in the Revised Penal Code, specifically as follows:

1. If public officers procure a search warrant without a just cause or, having legally procured the warrant, they exceed their authority or use unnecessary severity in executing the search, they shall be liable under Article 129 of the Revised Penal Code;

2. If public officers authorized to implement a search warrant or warrant of arrest (1) enter any dwelling against the will of the owner thereof; (2) search papers or other effects found therein without the prior consent of the owner; or (3) having surreptitiously entered the dwelling, and being required to leave the premises, shall refuse to do so, they shall be liable for violation of domicile under Article 128 of the Revised Penal Code.

h. Military Blockades

The ability to set up military blockades around the affected areas is related to the people's constitutionally protected freedom of movement, specifically the liberty of abode and right to travel. The limitations on this ability are found in Section 6, Article III of the Constitution, which provides as follows:

> The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Under the first paragraph, the liberty of abode and of changing it may be impaired only "upon lawful order of the court" as guided by the "limits prescribed by law."[135] The clear intent is to proscribe "*hamletting*" or the herding of people into a militarily-quarantined sanctuary within rebel areas as was done during the Marcos regime.[136] Therefore, the restrictive type of military blockade is not countenanced by law.

The impairment of the right to travel under the second paragraph can be done even without court order. However, the limitations can be imposed only on the basis of "national security, public safety, or public health, as may be provided by law."

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[134] Id. at 384.
[135] BERNAS, supra note 12 at 375-376.
[136] BERNAS, supra note 12 at 376.

Under the Human Security Act, the liberty of abode and right to travel of a person charged with terrorism may be restricted as follows:

> Section 26. *Restriction on Travel.* – In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.
>
> He/she may also be placed under house arrest by order of the court at his or her usual place of residence.
>
> While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.
>
> The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused.[137]

An allowable and "less restrictive" version of a military blockades is the setting up of police or military checkpoints, which has been ruled by this Court as not illegal *per se.* [138] Checkpoints are allowed for as long as they are warranted by the exigencies of public order and are conducted in a manner least intrusive to motorists.[139] As explained by this Court in *Caballes v. Court of Appeals*:[140]

> A checkpoint may either be a mere routine inspection or it may involve an extensive search.
>
> Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the

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[137] R.A. 9372, Sec. 26.
[138] *People v. Manago,* G.R. No. 212340, 17 August 2016; *Caballes v. Court of Appeals,* 424 Phil. 263 (2002).
[139] *Caballes v. Court of Appeals,* supra note 115.
[140] *Caballes y Taiño v. Court of Appeals,* supra.

> inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.[141]

However, subjecting a vehicle to an extensive search, as opposed to a mere routine inspection, has been held to be valid only for as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality, or evidence pertaining to a crime, in the vehicle to be searched. [142]

i. Ability to Conduct Surveillance

As provided in the Bill of Rights, the privacy of communication and correspondence shall be inviolable, except upon a lawful order of the court, or when public safety or order requires otherwise as prescribed by law.[143] Since the Constitution and the laws remain in effect during martial law, government authorities must comply with the following procedure for the conduct of a valid surveillance.

Under R.A. 4200 (Anti-Wire Tapping Law), the tapping of any wire or cable; or the use of any other device or arrangement to secretly overhear, intercept, or record communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder – or however described otherwise – shall be allowed only upon a written order of the Regional Trial Court (RTC) for cases involving the following crimes:

1. Treason,
2. Espionage,
3. Provoking war and disloyalty in case of war,
4. Piracy,
5. Mutiny in the high seas,
6. Rebellion,
7. Conspiracy and proposal to commit rebellion,
8. Inciting to rebellion,
9. Sedition,
10. Conspiracy to commit sedition,
11. Inciting to sedition,
12. Kidnapping as defined by the Revised Penal Code, and
13. Violations of Commonwealth Act No. 616, which punishes espionage and other offenses against national security.[144]

The written order of the RTC shall only be issued or granted upon a written application and the examination, under oath or affirmation, of the applicants and the witnesses they may produce, as well as a showing

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[141] Id. at 280.
[142] *People v. Manago y Acut,* supra note 124.
[143] CONSTITUTION Article III, Section 3(1).
[144] R.A. 4200, Sec. 3.

1. that there are reasonable grounds to believe that any of the crimes enumerated above has been committed or is being committed or is about to be committed: *Provided, however*, that in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or act of sedition, as the case may be, have actually been or are being committed;

2. that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or towards the solution, or the prevention of, any of those crimes; and

3. that there are no other means readily available for obtaining the evidence.[145]

The recordings made under court authorization shall be deposited with the court in a sealed envelope or sealed package within 48 hours after the expiration of the period fixed in the order. The envelope must be accompanied by an affidavit of the peace officer who was granted that authority, stating the number of recordings made; the dates and times covered by each recording; the number of tapes, discs, or records included in the deposit and certifying that no duplicates or copies of the whole or any part thereof have been made or, if made, that all those duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened; or the recordings replayed or used in evidence; or their contents revealed, except upon order of the court. The court order shall not be made except upon motion, with due notice and opportunity to be heard afforded to the person or persons whose conversations or communications have been recorded.[146]

If the subjects of the surveillance are members of a judicially declared and outlawed terrorist organization, association, or group of persons, or is any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the provisions of the Human Security Act shall apply. Under that law, the interception and recording of communications of terrorists are allowed upon a written order of the Court of Appeals.[147] Any organization, association, or group of persons may be declared a terrorist and

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[145] Id.

[146] Id.

[147] R.A. 9372, Sec. 7: *Surveillance of Suspects and Interception and Recording of Communications.* — The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

outlawed organization, association, or group of persons by the RTC upon application of the Department of Justice.[148]

j. Ability to Examine Bank Deposits, Accounts, and Records and to Freeze Properties or Funds

In *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*,[149] the Court ruled that that the source of the right to privacy governing bank deposits is statutory, not constitutional. Nevertheless, the regular operation of the legislative assemblies and civil courts even under martial rule necessarily maintains the applicability of the statutes and the Rules of Court. Therefore, there is a mandate to comply with the procedure existing in our laws with respect to the investigation and freezing of bank accounts and other properties.

Under the Human Security Act, only upon a written order of the Court of Appeals may there be an examination and gathering of any relevant information on the deposits, placements, trust accounts, assets, and records in a bank or financial institution of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; or of a judicially declared and outlawed terrorist organization, association, or group of persons; or of a member of such judicially declared and outlawed organization, association, or group of persons.[150] The bank or financial institution concerned cannot refuse to allow the examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.[151]

The financing of terrorism was more specifically dealt with under R.A. 10168 (Terrorism Financing Prevention and Suppression Act).[152] Under this law, the Anti-Money Laundering Council (AMLC), either upon its own initiative or at the request of the Anti-Terrorism Council (ATC), is

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[148] Id. at Sec. 17: *Proscription of Terrorist Organizations, Association, or Group of Persons.* — Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[149] G.R. No. 216914, 6 December 2016.

[150] R.A. 9372, Sec. 27: *Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records.* — The provisions of Republic Act No. 1405 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned shall not refuse to allow such examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.

[151] Id.

[152] Promulgated on 18 June 2012.

authorized to investigate (a) any property or funds that are in any way related to financing of terrorism or acts of terrorism; (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of terrorism or acts of terrorism as defined in the law.[153] For purposes of the foregoing investigation, the AMLC is authorized to inquire into or examine deposits and investments in any banking institution or non-bank financial institution without a court order.[154]

R.A. 10168 further authorizes the AMLC, either upon its own initiative or at the request of the ATC, to issue an *ex parte* order to freeze, without delay, (a) property or funds that are in any way related to the financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to which there is probable cause to believe that it is committing or attempting or conspiring to commit, or is participating in or facilitating the commission of the financing of terrorism or acts of terrorism.[155]

The freeze order shall be effective for a period not exceeding 20 days, which may be extended up to a period not exceeding six months upon a petition filed by the AMLC with the Court of Appeals before the expiration of the period.[156]

However, if it is necessary to comply with binding terrorism-related resolutions, including Resolution No. 1373 of the UN Security Council pursuant to Article 41 of the Charter of the UN, the AMLC shall be authorized to issue a freeze order with respect to the property or funds of a designated organization, association, group, or any individual. The freeze order shall be effective until the basis for its issuance shall have been lifted. During the effectivity of the freeze order, an aggrieved party may file with the Court of Appeals a petition to determine the basis of the freeze order within 20 days from its issuance.[157]

If the property or funds, subject of the freeze order, are found to be in any way related to the financing of terrorism or acts of terrorism committed within the jurisdiction of the Philippines, the property or funds shall be the subject of civil forfeiture proceedings as provided in R.A. 10168.[158]

k. Media Restrictions

The Bill of Rights guarantees that no law shall be passed abridging the freedom of speech, of expression, or of the press. [159] Under this guarantee, all forms of media, whether print or broadcast, are entitled to the broad

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[153] R.A. 10168, Sec. 10.
[154] Id.
[155] R.A. 10168, Sec. 11.
[156] Id.
[157] Id.
[158] Id.
[159] CONSTITUTION, Article III, Sec. 4.

protection of the freedom of speech and expression clause. [160] This proscription applies during martial law. To restrict media coverage and publication during a state of martial rule constitutes prior restraint, which is prohibited by the Constitution.

Nevertheless, there are exceptions under which expression may be subject to prior restraint. In this jurisdiction, prior restraint may be applied to four categories of expression, namely: pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security.[161]

Ultimately, the test for limitations on freedom of expression continues to be the clear and present danger rule – that words used in those circumstances are of such nature as to create a clear and present danger that they would bring about the substantive evils that the lawmaker has a right to prevent. As this Court ruled in *Eastern Broadcasting Corp. v. Dans, Jr.*,[162] the government has a right to be protected against broadcasts that incite the listeners to violently overthrow it. Radio and television may not be used to organize a rebellion or to signal the start of widespread uprising.[163] During a state of martial law, media restrictions may be countenanced, provided there is a danger to national security as justified by the clear and present danger rule.

l. Treatment of civilians and non-combatants

The obligations under the International Humanitarian Law (IHL) continue to be effective even during a state of martial law. R.A. 9851 (The Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity) continues to impose obligations on those who implement martial law.

If the declaration of martial law was precipitated by an armed conflict,[164] whether international[165] or non-international,[166] the parties thereto are obligated to protect persons who are not, or are no longer, participating in hostilities. Otherwise, the commission of any of the prohibited acts under the law as enumerated below will render the responsible person liable.

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[160] *Eastern Broadcasting Corp. v. Dans, Jr.*, 222 Phil. 151(1985).
[161] Concurring Opinion of J. Carpio, *Chavez v. Gonzales*, 569 Phil. 155 (2008).
[162] *Eastern Broadcasting Corp. v. Dans, Jr.*, supra note 150.
[163] Id.
[164] R.A. 9851, Sec. 3(c): "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. *Provided,* That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply.
[165] R.A. 9851, Sec. 3(c): Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation.
[166] R.A. 9851, Sec. 3(c): Armed conflict may be non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

Specifically, in case of an international armed conflict, the following acts constitute "war crimes" and shall be penalized under R.A. 9851:

1. Willful killing;
2. Torture or inhuman treatment, including biological experiments;
3. Willfully causing great suffering or serious injury to body or health;
4. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
5. Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; and
6. Arbitrary deportation or forcible transfer of population or unlawful confinement.[167]

In case of a non-international armed conflict, any of the following acts committed against persons taking no active part in the hostilities – including members of the armed forces who have laid down their arms and those placed *hors de combat*[168] by sickness, wounds, detention or any other cause – is considered a war crime and is penalized by the law:

1. Violence to life and person – in particular, willful killing, mutilation, cruel treatment and torture;
2. Outrages committed against personal dignity – in particular, humiliating and degrading treatment;
3. Taking of hostages; and
4. Passing of sentences and carrying out of executions without any previous judgment pronounced by a regularly constituted court, which affords all judicial guarantees which are generally recognized as indispensable.[169]

Whether international or non-international, the following serious violations of the laws and customs applicable to an armed conflict within the established framework of international law are likewise considered war crimes and penalized by R.A. 9851:

1. Intentionally directing attacks against the civilian population as such or against individual civilians not taking a direct part in hostilities;

2. Intentionally directing attacks against civilian objects, that is, against those that are not military objectives;

3. Intentionally directing attacks against buildings, materiel, medical units and modes of transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;

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[167] R.A. 9851, Sec. 4.

[168] R.A. 9851, Sec. 3(k): *"Hors de combat"* means a person who: (1) is in the power of an adverse party; (2) has clearly expressed an intention to surrender; or (3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself: *Provided,* That in any of these cases, the person abstains from any hostile act and does not attempt to escape.

[169] R.A. 9851, Sec. 4.

4. Intentionally directing attacks against personnel, installations, materiel, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

5. Launching an attack in the knowledge that the attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, which would be excessive in relation to the concrete and direct military advantage anticipated;

6. Launching an attack against works or installations containing dangerous forces in the knowledge that the attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and cause death or serious injury to body or health;

7. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings that are undefended and are not military objectives, or making non-defended localities or demilitarized zones the objects of attack;

8. Killing or wounding persons in the knowledge that they are *hors de combat,* including combatants who, having laid down their arms, or no longer having any means of defense, have surrendered at discretion;

9. Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

10. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether a building or place has been used to make an effective contribution to military action, it shall be presumed not to have been so used;

11. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the persons concerned nor carried out in their interest, and which cause death to or seriously endanger the health of those persons;

12. Killing, wounding or capturing an adversary by resort to perfidy;

13. Declaring that no quarter will be given;

14. Destroying or seizing the enemy's property unless the destruction or seizure is imperatively demanded by the necessities of war;

15. Pillaging a town or place, even when it is taken by assault;

16. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians is involved, or imperative military reasons so demand;

17. Transferring, directly or indirectly by the occupying power, of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

18. Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

19. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;

20. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

21. Intentionally using the starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided under the Geneva Conventions and their Additional Protocols;

22. In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

23. In an international armed conflict, declaring that the rights and actions of the nationals of the hostile party are abolished, suspended or inadmissible in a court of law;

24. Committing any of the following acts;
    a. Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces;
    b. Conscripting, enlisting or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and

c. Using children under the age of 18 years as active participants in hostilities; and

25. Employing means of warfare that are prohibited under international law, such as
    a. poison or poisoned weapons;
    b. asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
    c. bullets that expand or flatten easily in the human body, such as bullets with hard envelopes that do not entirely cover the core or are pierced with incisions; and
    d. weapons, projectiles and material and methods of warfare that are of such nature as to cause superfluous injury or unnecessary suffering, or that are inherently indiscriminate in violation of the international law of armed conflict. [170]

R.A. 9851 prohibits and penalizes genocide or any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such, as well as directly and publicly incite others to commit genocide:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group; and
5. Forcibly transferring children of the group to another group.[171]

Lastly, "other crimes against humanity" or any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, are penalized by R.A. 9851:

1. Willful killing;
2. Extermination;
3. Enslavement;
4. Arbitrary deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law;

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[170] R.A. 9851, Sec. 4.
[171] R.A. 9851, Sec. 5.

9. Enforced or involuntary disappearance of persons;
10. Apartheid; and
11. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.[172]

It must be emphasized that the crimes defined and penalized under R.A. 9851, their prosecution, and the execution of sentences imposed on their account, are not subject to any period of prescription.[173]

Further, the law specifically provides for the irrelevance of official capacity, so that it shall apply equally to all persons without any distinction based on official capacity, subject to the conditions specified therein.[174]

Lastly, the fact that a crime under R.A. 9851 has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility, unless all of the following elements concur:

1. The person was under a legal obligation to obey the orders of the government or the superior in question.
2. The person did not know that the order was unlawful.
3. The order was not manifestly unlawful.[175]

Implication in International Law

As a final point, I believe that it is necessary to clarify the international law implications of a declaration by this Court that there is rebellion in Marawi, in particular, its impact on the obligations of the Philippines under international humanitarian law (IHL). I submit that the characterization of the situation in Marawi is a crucial matter because it determines the applicable legal regime not only under domestic statutes, but also under international law.

As a state party to the 1949 Geneva Conventions and their Additional Protocols, the Philippines is bound to observe the laws and customs of war, in the course of its involvement in an international or non-international armed conflict. The existence of an armed conflict, and the exact nature thereof, determines the status, protections, rights, and obligations of both our armed forces and the opposing groups. In the case of an international armed conflict, i.e., the existence of war or armed hostilities between two or more

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[172] R.A. 9851, Sec. 6.
[173] R.A. 9851, Sec. 11.
[174] R.A. 9851, Sec. 9.
[175] R.A. 9851, Sec. 12.

states,[176] we are obligated to comply with the provisions of the four Geneva Conventions,[177] Additional Protocol I,[178] and relevant customary law.[179] On the other hand, a non-international armed conflict, i.e. the occurrence of "protracted armed violence between governmental authorities and organised armed groups or between such groups within a State,"[180] would bring into effect the provisions of Additional Protocol II[181] and norms of customary law applicable to such internal conflicts.[182]

The question now arises – would a declaration by this Court that there is actual rebellion in Marawi be tantamount to a recognition that there is an armed conflict that brings IHL into operation? I submit that it need not be.

Although both determinations are rooted in factual circumstances and evidence of a similar tenor, the factors that must be examined to reach a conclusion under domestic and international law are distinct. As earlier discussed, the existence of rebellion domestically is determined by looking at two elements: (a) the taking up of arms against the government; and (b) the purpose for which the acts are committed. In contrast, the determination of whether there is an armed conflict under IHL entails an examination of completely different factors, such as the parties involved, i.e., whether they are states or non-state entities; the level of organization of the parties to the conflict, for instance, whether they are organized armed groups or dissident armed forces; the intensity of the violence, and even the length of time that the conflict has been ongoing.[183] These factors are particularly important in making a distinction between a non-international armed conflict and mere internal disturbances or domestic tensions.

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[176] Common Article 2 to the 1949 Geneva Conventions provides:

> In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

[177] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,12 August 1949, 75 U.N.T.S. 31 ; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Convention (III) relative to the Treatment of Prisoners of War,, 12 August 1949, 75 UNTS 135; Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

[178] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3.

[179] *See* HENCKAERTS, J. M., STUDY ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, INTERNATIONAL REVIEW OF THE RED CROSS, Volume 87 Number 857, pp. 198-212, March 2005; International Committee of the Red Cross, Customary IHL Database, Available at: <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>, accessed on 30 June 2017.

[180] *The Prosecutor v. Dusko Tadić*, International Criminal Tribunal for the Former Yugoslavia, IT-94-1-AR72, Appeals Chamber Decision, 2 October 1995.

[181] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.

[182] *See* Henckaerts, supra note 169.

[183] *See* International Committee of the Red Cross, *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?* (Opinion Paper), March 2008.

In this case, I submit that our recognition that there is rebellion in Marawi and that the circumstances are sufficient to warrant the declaration of Martial Law does not automatically mean that there is an armed conflict that warrants the application of IHL. However, should the President or this Court characterize the Marawi conflict as an international one, then complications may set in.

Thus, I believe that a word of caution is necessary. As is evident from the foregoing discussion, the characterization of the conflict in Marawi is exceptionally significant with respect to our obligations under IHL. It is therefore important for this Court, the President, the military and other government officials to exercise the utmost prudence in characterizing the Maute group and describing the nature of the ongoing conflict. Lack of precision in this regard may trigger the provisions of IHL and unwittingly elevate the status of the members of the Maute group from common criminals to combatants or fighters under IHL. This would only invite further complications for the country.

Conclusion

Martial law is an extraordinary measure necessitating the exercise of extraordinary powers. Nevertheless, the President, in the exercise of his commander-in-chief powers, does not have unbridled discretion as to *when, where,* and *how* martial law is to be declared.

This is apparent in the parameters clearly set forth in the Constitution. The Supreme Court, as the guardian of the Constitution, has the obligation to see to it that these parameters are complied with. The Constitution itself makes this a mandate of this Court by removing the matter of sufficiency of the factual basis of the declaration of martial law from the untouchable arena of political questions.

Further, the manner as to how martial law is implemented is not subject to the plenary discretion of the President. There are clear legal standards dictating what he can and cannot do. The Court, as the vanguard of the rule of law, must see to it that the rule of law is upheld.

By engaging in the foregoing tasks, the Supreme Court realizes the fullness of its existence as envisioned in our Constitution.

Accordingly, I vote to declare that the President had sufficient factual basis for the issuance of Proclamation No. 216 only insofar as it covers the following provinces: Lanao del Sur, Maguindanao, and Sulu.

Proclamation No. 216 should be struck down insofar as it covers the following provinces and cities: Agusan del Norte, Agusan del Sur, Basilan, Bukidnon, Butuan City, Cagayan de Oro City, Camiguin, City of Isabela, Compostela Valley, Cotabato City, Davao City, Davao del Norte, Davao del Sur, Davao Occidental, Davao Oriental, Dinagat Islands, General Santos City, Iligan City, Lanao del Norte, Misamis Occidental, Misamis Oriental,

North Cotabato, Sarangani, South Cotabato, Sultan Kudarat, Surigao del Norte, Surigao del Sur, Tawi-Tawi, Zamboanga City, Zamboanga del Norte, Zamboanga del Sur, and Zamboanga Sibugay.

The Petitions are hereby accordingly **PARTLY GRANTED.**

MARIA LOURDES P. A. SERENO
Chief Justice