

EN BANC

G.R. No. 235935 – REPRESENTATIVES EDCCEL C. LAGMAN, et al., *Petitioners*, v. SENATE PRESIDENT AQUILINO PIMENTEL III, et al., *Respondents*.

G.R. No. 236061 – EUFEMIA CAMPOS CULLAMAT, et al., *Petitioners*, v. PRESIDENT RODRIGO DUTERTE, et al., *Respondents*.

G.R. No. 236145 – LORETA ANN P. ROSALES, *Petitioner*, v. PRESIDENT RODRIGO DUTERTE, et al., *Respondents*.

G.R. No. 236155 – CHRISTIAN S. MONSOD, et al., *Petitioners*, v. SENATE PRESIDENT AQUILINO PIMENTEL III, et al., *Respondents*.

Promulgated:

February 6, 2018

x-----*Alfonso C. Briones*-----x

DISSENTING OPINION

CARPIO, J.:

The Case

These are consolidated petitions filed under the Court’s power to review the sufficiency of the factual basis of the extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* (writ) under paragraph 3, Section 18, Article VII of the Constitution. The consolidated petitions challenge the constitutionality of Joint Resolution No. 4 dated 13 December 2017 (Joint Resolution No. 4)¹ issued by the Senate and the House of Representatives, *further*² extending the proclamation of martial law and suspension of the privilege of the writ in the whole Mindanao group of islands until 31 December 2018.

The Antecedent Facts

On 13 December 2017, the Senate and the House of Representatives, voting jointly, adopted Joint Resolution No. 4. The assailed issuance reads:

¹ Annex “D” of Monsod Petition; Annex “5” of OSG Consolidated Comment.

² On 23 May 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, series of 2017, declaring a state of martial law and suspending the privilege of the writ in the whole of Mindanao. During a Special Joint Session on 22 July 2017, Congress extended Proclamation No. 216 until 31 December 2017.

X X X X

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, Series of 2017, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao”, to address the rebellion launched by the Maute Group and elements of the Abu Sayyaf Group and elements of the Abu Sayyaf Group in Marawi City, and to restore peace and order in Mindanao;

WHEREAS, the Senate and the House of Representatives, in a Special Joint Session held on July 22, 2017, extended the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole Mindanao until December 31, 2017;

WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines “to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) year, from 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution”;

WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain a serious security concern; and last, the New People’s Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country’s democratic form of government with Communist rule;

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;



WHEREAS on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus on the Whole Mindanao; Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session Assembled, [t]o further extend Proclamation No. 216, Series of 2017, entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao for a period of one (1) year from January 1, 2018 to December 31, 2018.”³

Petitioners in G.R. Nos. 235935, 236061, 236145, and 236155 impugn the constitutionality of Joint Resolution No. 4.

Discussion

I vote to grant the consolidated petitions for three reasons. *First*, the Maute rebellion, which was the basis of Proclamation No. 216, already ceased. *Second*, threats to security posed by remnants of the defeated rebel groups do not constitute an actual rebellion. *Third*, neither can the NPA rebellion justify the extension of Proclamation No. 216, considering that the NPA rebellion was not the same rebellion that led to the initial martial law declaration and suspension of the privilege of the writ under Proclamation No. 216. Thus, Joint Resolution No. 4 lacks sufficient factual basis, thereby making it unconstitutional.

Preliminarily, I shall address petitioners' invocation of *Ex Parte Milligan*⁴ as basis to define martial law as “the assumption of jurisdiction by the military over the civilian population x x x.”⁵ Petitioners view martial law “in the context of a theater of war, wherein the government civilian functions such as the civil courts and other civil services cannot function x x x.”⁶

I disagree.

Decided by the United States (US) Supreme Court in 1866, *Ex Parte Milligan* involved Lambden P. Milligan who was charged with acts of disloyalty and faced trial before a military commission in Indiana during the civil war. He was found guilty on all charges and sentenced to death by hanging. He then sought release through *habeas corpus* from a federal court. While trials of civilians by presidentially created military commissions were invalidated, the US Supreme Court recognized martial law as a necessary

³ Annex “D” of Monsod Petition; Annex “5” of OSG Consolidated Comment.

⁴ 711 U.S. 4 Wall. 2 (1866).

⁵ Memorandum of petitioner Rosales, pp. 15-16. See Memorandum of petitioners Monsod, *et al.*, p. 46.

⁶ Memorandum of petitioners Monsod, *et al.*, pp. 46, 50-51.



substitute for the civil authority in the theater of active military operations, thus:

It follows from what has been said on this subject that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, *then*, on the theat[er] of active military operations, where war really prevails, **there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society, and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course.** As necessity creates the rule, so it limits its duration, for, if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.⁷ (Emphasis supplied)

This pronouncement of the US Supreme Court has no application in this jurisdiction because *Ex Parte Milligan* conflicts with the Philippine Constitution. Paragraph 4, Section 18, Article VII of the Constitution reads:

Sec. 18. x x x

x x x x

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. (Emphasis supplied)

To repeat, a state of martial law does not suspend the operation of the Constitution. Contrary to the theory of petitioners, the clause “nor supplant the functioning of the civil courts or legislative assemblies” already precludes the “existence of a vacuum in civilian authority in a theater of war.”⁸ Not even the phrase “conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function” can serve as basis for the military to immediately acquire jurisdiction. Under Section 2, Article VIII of the Constitution, “Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts.” Applied to military courts, this means that Congress needs to enact a law vesting military courts with jurisdiction. In other words, a state of martial law does not *ipso facto* confer jurisdiction on military courts over civilians. Rather, the conferment comes from Congress through a separate law.



⁷ *Ex Parte Milligan*, *supra* note 4, at 127.

⁸ Memorandum of petitioner Rosales, p. 16.

During the oral arguments, I made the same clarification on the inapplicability of *Ex Parte Milligan*, thus:

JUSTICE CARPIO:

Okay. x x x *Ex Parte Milligan* x x x. The US Constitution (does) not have that provision that in case of martial law the Bill of Rights (is) not suspended x x x.

ATTY. HILBAY:

Correct, Your Honor.

JUSTICE CARPIO:

It was the old concept of necessity.

ATTY. HILBAY:

Correct, Your Honor.

JUSTICE CARPIO:

Okay. So, I think, you agree with me that when (this) Court adopted the *Ex Parte Milligan* definition of martial law, it did not jibe with the present Constitution, correct?

ATTY. HILBAY:

Well, in fact, Your Honor, *Milligan* is seen in the United States as a civil liberties case decided by the United States Supreme Court against the military.

JUSTICE CARPIO:

x x x the definition x x x that martial law is the assumption of jurisdiction by the military cannot apply here because our Constitution says, *martial law shall not supplant legislative assemblies*. So, there is no instance where the military can exercise supervision and control over legislative assemblies, correct?

ATTY. HILBAY:

Your Honor, I think the cover of phrase is where civil courts are able to function.

JUSTICE CARPIO:

No, x x x. "*Shall not nor supplant the functioning of civil courts or the legislative assemblies, nor authorize the conferment of jurisdiction on military courts over civilians where civil courts are able to function.*" x x x that provision "*nor authorize the conferment of jurisdiction on military courts,*" you're talking of conferment of jurisdiction, which is conferred by what?

ATTY. HILBAY:

By martial law, Your Honor.

JUSTICE CARPIO:

No. Jurisdiction is conferred by Congress, correct?

x x x x



JUSTICE CARPIO:

Because it says here, *it does not confer jurisdiction on military courts*. The act of declaration of martial law – can (that) confer jurisdiction on (the) military? x x x there has to be a separate law. So that this definition, 1866 definition, is not appropriate today, correct?

x x x x

JUSTICE CARPIO:

It's only appropriate in that it says you can declare martial law in a theater of war...

ATTY. HILBAY:

Okay, Your Honor, I agree.⁹

To be clear, all of the provisions of the Constitution, including the Bill of Rights, remain operative during the proclamation of martial law and the suspension of the privilege of the writ. **The Constitution clearly prohibits the automatic assumption of jurisdiction by military courts during a state of martial law or when the privilege of the writ is likewise suspended.**

With the liberation of Marawi City and the end of the Maute rebellion, the initial declaration of martial law and suspension of the privilege of the writ under Proclamation No. 216 can no longer be extended.

Paragraph 1, Section 18, Article VII of the Constitution reads:

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x. Upon the initiative of the President, the **Congress may**, in the same manner, **extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.** [Emphasis supplied]

The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ “**if the x x x rebellion shall persist.**” Literally and without need of constitutional construction, the word “persist” means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended. In the deliberations of the Constitutional Commission, the framers understood that

⁹ TSN, 16 January 2018, pp. 107-109.

the extension could be justified “if the invasion (or rebellion) is **still going on.**”¹⁰ **The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension.** In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President.

Proclamation No. 216, signed by President Rodrigo Roa Duterte (President Duterte) and attested by Executive Secretary Salvador C. Medialdea on 23 May 2017, clearly identifies the “Maute group” as the rebel group who committed the crime of rebellion by “rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance to said [g]overnment.” The pertinent paragraphs of Proclamation No. 216 read:

x x x x

WHEREAS, Section 18 Article VII of the Constitution provides that “x x x In case of invasion or rebellion, when the public safety requires it, he (the President) 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 x x x”;

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that “the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or ay part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives”

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, 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 State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to

¹⁰ The portion of the records read:

MR. REGALADO: Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, **if the invasion is still going on.** But there is already the cutoff of 60-day period. Do they have to meet all over again and agree to extend the same? (Records of the Constitutional Commission, Vol. 2, 31 July 1986)

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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; and

WHEREAS, **this recent attack shows the capability of the Maute group** and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.¹¹ (Emphasis and underscoring supplied)

Moreover, on 25 May 2017, when President Duterte submitted his Report to Congress, he identified the Maute group as the perpetrator of the crime of rebellion in Marawi City, to wit:

Based on verified intelligence reports, **the Maute Group, as of the end of 2016, consisted of around two hundred sixty-three (263) members, fully armed and prepared to wage combat in furtherance of its aims.** The group chiefly operates in the province of Lanao del Sur, but has extensive networks and linkages with foreign and local armed groups such as the Jemaah Islamiyah, Mujahidin Indonesia Timur and the ASG. It adheres to the ideals being espoused by DAESH, as evidenced by, among others, its publication of a video footage declaring its allegiance to the DAESH. **Reports abound that foreign-based terrorist groups, the ISIS (Islamic State of Iraq and Syria) in particular, as well as illegal drug money, provide financial and logistical support to the Maute Group.**

The events commencing on 23 May 2017 put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities – the President, foremost – of their powers and prerogatives.

x x x x

These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao.¹² (Emphasis supplied)

On 17 October 2017, President Duterte declared the liberation of Marawi City, a day after the death of Isnilon Hapilon and Omar Maute, the leaders of the Maute rebellion. In his speech to the soldiers on 17 October 2017, the President said, **“Ladies and gentlemen, I hereby declare Marawi City liberated from the terrorist influence that marks the beginning of rehabilitation [of the city].”**¹³

¹¹ Annex “A” of Rosales Petition

¹² *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017.

¹³ Eimor P. Santos, *Duterte declares liberation of Marawi* <<http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html>> [last accessed 2 February 2018]. See also Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> [last accessed 2 February 2018]; Trisha Macas and Raffy Tima, *Duterte declares Marawi City is free* <<http://www.gmanetwork.com/news/news/nation/629820/duterte-declares-marawi-city-is-free/story/>> [last accessed 2 February 2018]; Allan Nawal, Jeffrey Maitem, Richel Umel and Divina Suson,

This statement was bolstered by National Defense Secretary Delfin Lorenzana in his speech at the ASEAN Defense Ministers meeting held last October 2017. He said, “**After 154 days of the siege of Marawi by the Daesh-inspired Maute-ISIS group, or after a week since the Commander-in-Chief declared liberation of Marawi, we now announce the termination of all combat operations in Marawi.**”¹⁴

Joint Task Force Ranao Deputy Commander Colonel Romeo Brawner clarified what “termination of combat operations” means. He said, “x x x [T]his means that **we are terminating the assault, the offensive attack on the position of the Maute-ISIS.**”¹⁵

These three separate statements made by President Duterte, the National Defense Secretary and the Joint Task Force Ranao Deputy Commander, respectively, clearly confirm that actual rebellion no longer persisted in Marawi City beginning 17 October 2017.

Moreover, the government did not present any evidence of an on-going rebellion by the Maute group in other places of Mindanao outside of Marawi City to justify the extension of Proclamation No 216. In various media appearances, representatives from the government and the army confessed that Marawi City was already contained and under control.

In one media interview, Major General Restituto Padilla, Jr., spokesperson for the military, said that the remaining twenty (20) to thirty (30) terrorists left in Marawi City had “**no way to get out anymore**” and “**there is no way for anyone to get in x x x [s]o choking them to death at this point will be very key for our troops to do since the area is very much contained and very controlled.**”¹⁶

National Defense Secretary Lorenzana Delfin told reporters that “**there were no more militants**, known locally as coming from the Maute

Marawi 'liberated' from terrorists but battle drags on <<http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists>> [last accessed 2 February 2018]; AFP, AP and Francis Wakefield, *Battle of Marawi ends* <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> [last accessed 2 February 2018]; Catherine S. Valente, *Marawi free* <<http://www.manilatimes.net/marawi-free/357155/>> [last accessed 2 February 2018]; Rosette Adel, *Duterte declares Marawi freed from terrorists* <<http://www.philstar.com/headlines/2017/10/17/1749752/duterte-declares-marawi-freed-terrorists>> [last accessed 2 February 2018]; PTV News, *President Duterte declares liberation of Marawi City* <<https://ptvnews.ph/president-duterte-declares-liberation-marawi-city/>> [last accessed 2 February 2018].

¹⁴ Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> [last accessed 2 February 2018]. See also AFP, AP and Francis Wakefield, *Battle of Marawi ends* <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> [last accessed 2 February 2018].

¹⁵ Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> [last accessed 2 February 2018].

¹⁶ Allan Nawal, Jeffrey Maitem, Richel Umel and Divina Suson, *Marawi liberated' from terrorists but battle drags on* <<http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists>> [last accessed 2 February 2018].



Group, **providing resistance** following an intense final battle x x x.” He continued, “All terrorists, fighting troops. All hostages have been recovered. x x x **In crushing thus far the most serious attempt to export violent extremism and radicalism in the Philippines and in the region, we have contributed to preventing its spread in Asia and gave our share to maintaining global peace, stability and security.**”¹⁷

Indeed, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the rebellion that “persists,” the same rebellion cited by President Duterte in Proclamation No. 216. **Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216. Any extension pursuant thereto is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City.** To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.

The capability of the remnants of the defeated rebel groups to sow terror, and cause death and damage to property, does not constitute an actual rebellion.

Congress also justifies the extension of the declaration of martial law and suspension of the privilege of the writ by citing the capability of the remnants of the defeated rebel groups to sow terror, and cause death and damage to property.

I disagree.

Paragraph 1, Section 18, Article VII of the Constitution vests in the President, as the Commander-in-Chief, the power to declare martial law or suspend the privilege of the writ, provided an actual rebellion or invasion exists and public safety requires the declaration or suspension. While Congress may extend the proclamation or suspension, the Constitution expressly requires, “the invasion or rebellion shall persist and public safety requires it.” In other words, the twin requirements of actual rebellion or invasion, and public safety imposed on the initial proclamation and suspension are continuing requirements for any subsequent extension of the proclamation or suspension. As aptly put by the petitioners, “what persists must be actual.”¹⁸

¹⁷ AFP, AP and Francis Wakefield, *Battle of Marawi ends* <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> [last accessed 2 February 2018].

¹⁸ Memorandum of Lagman Petition, p. 14.

By issuing Joint Resolution No. 4, the House of Representatives and the Senate adopted the justification of the President in extending Proclamation No. 216. The Letter dated 8 December 2017 of President Duterte to Congress reads in pertinent part:

First, despite the death of Hapilon and the Maute brothers, the **remnants of their Groups** have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. x x x

More specifically, the **remnants of the DAESH-inspired DIWM members** and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as their consolidation/reorganization in Central Mindanao. x x x

Second, the Turafie Group has likewise been monitored to be **planning to conduct** bombings, notably targeting the Cotabato area. x x x

Third, the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguinadao and North Cotabato. x x x

Fourth, the **remnants of the Abu Sayyaf Group (ASG)** in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. x x x

x x x x

x x x Public safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao **to pursue the bigger task of rehabilitation** and the promotion of a stable socio-economic growth and development.¹⁹ (Emphasis supplied)

Respondents cannot rely on the **capability** of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, **capability** to rebel, **absent an actual rebellion or invasion**, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law on the basis of an imminent danger or threat would unlawfully reinstate the ground of “imminent danger” of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution. This is a gross violation of the clear letter and intent of the Constitution, as gleaned from the following deliberations of the Constitutional Commission:



¹⁹ Annex C of Lagman Petition.

Mr. de los Reyes. As I see it now, the **Committee envisions actual rebellion and no longer imminent rebellion**. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacanang, for example? Let us take for example a contemporary event – this Manila Hotel incident; everybody knows what happened. Would the committee consider that an actual act of rebellion?

Mr. Regalado. If we consider the definition of rebellion under Articles 134 and 135 of the Revised penal Code, **that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed in Article 135.** x x x.²⁰ (Emphasis supplied)

The NPA rebellion, with the concurrence of public safety, requires a separate martial law declaration for a period not exceeding 60 days; it cannot justify the extension of Proclamation No. 216, the factual basis of which was solely the Maute rebellion.

To repeat, under Section 18, Article VII of the Constitution, the extension of the proclamation of martial law or suspension of the privilege of the writ requires the concurrence of the following two elements: *one*, the invasion or rebellion **persists**; and *two*, public safety requires the extension. Strict compliance with Section 18, Article VII of the Constitution is imperative because the provision distinguishes the initial proclamation or suspension from the subsequent extension. The former can only last for a period not exceeding 60 days, while the duration of the latter is subject to the discretion of Congress. **By belatedly invoking the NPA rebellion as factual basis for the extension of Proclamation No. 216, the government effectively circumvented the temporal limitation set by the Constitution that the initial proclamation of martial law or suspension of the privilege of the writ can only last for 60 days.** Worse, the extension set a maximum period of one year.

When the Court reviewed in *Lagman v. Medialdea*²¹ the sufficiency of the factual basis of Proclamation No. 216, the Court ruled in the affirmative on the sole basis of the Maute rebellion, to wit:

After the assessment by the President of the aforementioned facts, he arrived at the following conclusions, as mentioned in Proclamation No. 216 and the Report:

1) The **Maute Group** is "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."

²⁰ II RECORD, CONSTITUTIONAL COMMISSION 412 (1987).

²¹ G.R. No. 231658, July 4, 2017.

2) "[L]awless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao — starting with the City of Marawi, Lanao del Sur — from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole."

3) The May 23, 2017 events "put on public display the groups' clear intention to establish an **Islamic State** and their capability to deprive the duly constituted authorities — the President, foremost — of their powers and prerogatives."

4) "These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a **DAESH** wilayat or province covering the entire Mindanao."

5) "The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of **DAESH** flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government."

6) "There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments."

7) "Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered."

8) "The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao."



9) "Considering the network and 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."

Thus, the President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogatives, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the imposition of martial law and suspension of the privilege of the writ of habeas corpus. [Emphasis supplied]

Similarly, when the Court examined the impact of the rebellion on public safety, the Court never attributed the acts of violence to the NPA as to warrant the proclamation of martial law or suspension of the privilege of the writ in the whole of Mindanao, thus:

Invasion or rebellion alone may justify resort to the calling out power but definitely not the declaration of martial law or suspension of the privilege of the writ of habeas corpus. For a declaration of martial law or suspension of the privilege of the writ of habeas corpus to be valid, there must be a concurrence of actual rebellion or invasion and the public safety requirement. In his Report, the President noted that the **acts of violence perpetrated by the ASG and the Maute Group were directed not only against government forces or establishments but likewise against civilians and their properties**. In addition and in relation to the armed hostilities, bomb threats were issued; road blockades and checkpoints were set up; schools and churches were burned; civilian hostages were taken and killed; non-Muslims or Christians were targeted; young male Muslims were forced to join their group; medical services and delivery of basic services were hampered; reinforcements of government troops and civilian movement were hindered; and the security of the entire Mindanao Island was compromised.

These particular scenarios convinced the President that the atrocities had already escalated to a level that risked public safety and thus impelled him to declare martial law and suspend the privilege of the writ of habeas corpus. In the last paragraph of his Report, the President declared:

While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao until such time that the rebellion is completely quelled.



Based on the foregoing, we hold that the parameters for the declaration of martial law and suspension of the privilege of the writ of habeas corpus have been properly and fully complied with. Proclamation No. 216 has sufficient factual basis there being probable cause to believe that rebellion exists and that public safety requires the martial law declaration and the suspension of the privilege of the writ of habeas corpus. (Emphasis supplied)

Even the *ponencia* concedes that Proclamation No. 216 did not contemplate the NPA rebellion as factual basis. For one, the NPA merely “took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist attacks x x x, as well as guerilla warfare,” all of which suggests that the perceived “intensified” insurgence happened after the issuance of Proclamation No. 216. For another, when Proclamation No. 216 was issued, the government and the NPA were undergoing peace negotiations. Hence, to belatedly expand the factual basis of Proclamation No. 216 as to include the NPA rebellion will violate Section 18, Article VII of the Constitution.

The *ponencia* holds that the inclusion of the NPA rebellion as basis for the martial law extension is justified because the NPA shares with the DAESH/ISIS-inspired rebels the same purpose of overthrowing the government and inflicts the same degree of violence as in the Marawi siege.

I disagree.

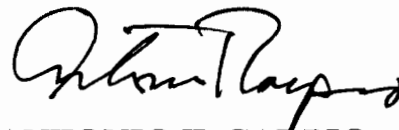
Contrary to the holding of the *ponencia*, mere identity of purpose and capacity for violence between the NPA and the DAESH/ISIS-inspired rebels cannot justify the inclusion of the NPA rebellion as factual basis for the extension of Proclamation No. 216. The Constitution limits the initial martial law declaration or suspension of the privilege of the writ to a period of 60 days. Only when this period is not enough to quell the rebellion can an extension be sought. By citing the NPA rebellion as factual basis for the extension, the government bypassed the mandatory 60-day period prescribed by the Constitution for the initial declaration of martial law and suspension of the privilege of the writ. The government can cite the NPA rebellion as a ground for the imposition of martial law and suspension of the privilege of the writ, but the initial 60-day period prescribed by the Constitution must first be observed before the government can ask for an extension of such emergency measures.

Neither can the concurrence of Congress with the President cure the unconstitutionality of the extension. The concurrent power of the legislative and the executive to extend the proclamation or suspension is circumscribed by the clause “if the invasion or rebellion shall persist and public safety requires it.” To give effect to this clause, paragraph 3, Section 18, Article VII of the Constitution vests the Court with the power to review the sufficiency



of the factual basis of the extension. In other words, mere concurrence of the two political branches is not enough. The Court is the final arbiter of the constitutionality of the extension.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155 and **DECLARE** Joint Resolution No. 4 dated 13 December 2017 of the Senate and the House of Representatives **UNCONSTITUTIONAL** for failure to comply with Section 18, Article VII of the 1987 Constitution.



ANTONIO T. CARPIO
Associate Justice