REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

EUFEMIA CAMPOS CULLAMAT, ET AL.,
Petitioners,

- versus - **G.R. No. 236061**

PRESIDENT RODRIGO DUTERTE, ET AL.
Respondents.
x----------x

LORETA ANN ROSALES
Petitioner,

- versus - **G.R. No. 236145**

PRESIDENT RODRIGO DUTERTE, ET AL.
Respondents.
x----------x

CHRISTIAN MONSOD, ET AL.,
Petitioners,

G.R. No. 236155

- versus -

SENATE PRESIDENT AQUILINO PIMENTEL, ET AL.
Respondents.
x----------x

CONSOLIDATED COMMENT

(On the Petitions dated January 3, 2018,[1] January 11, 2018,[2] and January 12, 2018[3])

---

[1] G.R. No. 236061, hereinafter "Cullamat, et al."
[2] G.R. No. 236145, hereinafter "Rosales."

Respondents President Rodrigo Duterte, Senate President Aquilino Pimentel III, Speaker Pantaleon D. Alvarez, Executive Secretary Salvador C. Medialdea, Defense Secretary Delfin N. Lorenzana, Budget Secretary Benjamin F. Diokno, Interior and Local Government Secretary (OIC) Eduardo M. Año, National Security Adviser Hermogenes C. Esperon Jr., the Senate and House of Representatives of the Philippine Congress, Armed Forces of the Philippines Chief of Staff Rey Leonardo Guerrero, and Philippine National Police Director-General Ronaldo Dela Rosa, through the Office of the Solicitor General, in compliance with this Honorable Court's Orders dated January 10, 2018 and January 12, 2018, respectfully state:

PREFATORY STATEMENT

The petitioners rail against the extension of the martial law and the suspension of the writ of *habeas corpus* because Marawi has been liberated, and there is no rebellion, or the communist rebellion in Mindanao allegedly does not endanger public safety to warrant the extension and suspension. In effect, the petitioners want this Honorable Court to disregard its ruling in *Lagman v. Medialdea* that there is rebellion in Mindanao and not just in Marawi. They also want the Court to believe that the communist rebellion is not detrimental to public safety notwithstanding the numerous attacks made on civilians in the name of the Marxist ideology.

THE SUBSTANTIVE AND PROCEDURAL FACTS

1. On May 23, 2017, President Duterte issued Proclamation No. 216 entitled "Declaring a State of Martial Law and Suspending the Privilege of Writ of Habeas Corpus in the Whole of Mindanao" for a period not exceeding sixty days, pursuant to Section 18, Article VII of the 1987 Constitution.[4]

---

[3] G.R. No. 236155, hereinafter "Monsod, et al."
[4] Proclamation No. 216 dated 23 May 2017, attached as Annex "1."

2. At 9:55 p.m. of May 25, 2017, President Duterte submitted to the Congress his Report on the declaration of martial law in Mindanao in compliance with the reportorial requirement under the Constitution. The report stated the factual basis for the President's issuance of Proclamation No. 216.

3. After President submitted his Report, the Senate adopted Senate P.S. Resolution No. 388 expressing full support to the martial law proclamation after finding Proclamation No. 216 "satisfactory, constitutional, and in accordance with law."[5]

4. On the following day, the House of Representatives issued House Resolution No. 1050 "EXPRESSING THE FULL SUPPORT OF THE HOUSE OF REPRESENTATIVES TO PRESIDENT RODRIGO DUTERTE AS IT FINDS NO REASON TO REVOKE PROCLAMATION NO. 216, ENTITLED 'DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO.'"[6]

5. Thereafter, petitions were filed before this Honorable Court assailing the factual basis of Proclamation No. 216, which were docketed as G.R. Nos. 231658, 231771, and 231774.[7]

6. In its Decision promulgated on July 4, 2017, the Court *En Banc* found sufficient factual basis for the issuance of Proclamation No. 216, declared it as constitutional, and dismissed the consolidated petitions.

7. On July 22, 2017, the Congress extended the period of martial law in Mindanao to December 31, 2017, pursuant to the Resolution of Both Houses No. 2.

---

[5] Senate P.S. Resolution No. 388 dated May 30, 2017, attached as Annex "2;" Resolution No. 49 dated May 30, 2017, attached as Annex "3."
[6] House Resolution No. 1050 dated May 31, 2017, attached as Annex "4."
[7] *Lagman v. Medialdea,* G.R. No. 231658, July 4, 2017.

8. Before the end of December 31, 2017, AFP General Rey Leonardo B. Guerrero wrote a letter to President Rodrigo Duterte recommending the further extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao for twelve months beginning on January 1, 2018. The request was based on the AFP's current security assessment. General Guerrero cited the following reasons for the extension of martial law:

> The AFP strongly believes that on the basis of the foregoing assessment, the following are cited as justification for the recommended extension, to wit:
>
> 1. The DAESH-Inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western, and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;
>
> 2. Other DAESH-inspired and like-minded threat groups such as BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato;
>
> 3. The CTs have been pursuing and intensifying their political mobilization (army, party and mass base building, rallies, pickets and demonstrations, financial and logistical build up), terrorism against innocent civilians and private entities, and guerilla warfare against the security sector, and public government infrastructures;
>
> 4. The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;
>
> 5. The threats being posed by the CTs, the ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;
>
> 6. The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of habeas corpus in Mindanao will

> significantly help not only the AFP, but also the other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and
>
> 7. In seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial Law to date, without any reported human rights violation and/or incident of abuse of authority.[8]

9. Secretary Delfin Lorenzana also wrote a letter to President Duterte dated December 1, 2017, wherein he also recommended the extension of martial law.[9]

10. Acting on the recommendations of General Guerrero and Secretary Lorenzana, President Duterte wrote to Senate President Aquilino Pimentel III and House Speaker Pantaleon Alvarez requesting a further extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao for another year.[10]

11. Both houses of the Congress approved President Duterte's request. In its Joint Session on December 13, 2017, the Senate and the House of Representatives approved a motion extending martial law in Mindanao from January 1, 2018 to December 31, 2018.[11]

12. The petitioners filed the present actions to assail the factual basis of the martial law extension in Mindanao,[12] claiming that: (1) the extension of martial law is unwarranted and unjustified as this would extend human rights violations[13]; (2) that the extension was granted with grave abuse of discretion amounting to lack or excess of

---

[8] AFP General Rey Leonardo B. Guerrero letter to President Duterte.
[9] Secretary Delfin Lorenzana's letter to President Duterte dated December 1, 2017.
[10] Letter of President Duterte to Senate President Pimentel and House Speaker Alvarez dated December 8, 2017.
[11] Resolution of Both Houses No. 4, attached as Annex "5."
[12] Petition in G.R. No. 236061, pp. 8, 19; Petition in G.R. No. 236145, p. 8, 23; Petition in G.R. No. 236155, p. 18.
[13] Petition in G.R. No. 236061, p. 19.

jurisdiction on the part of Congress[14]; (3) the communist rebellion in Mindanao does not endanger public safety[15]; (3) there is no actual rebellion in Mindanao[16]; (4) the combat has ended in Mindanao because Marawi has been liberated[17]; and (5) the NPA attacks do not constitute rebellion.[18]

13. On January 10, 2017, the Court required the respondents to comment on the petition of Eufemia Cullamat in G.R. No. 236061. The deadline for the Comment was set at 5:00 p.m. of January 13, 2018.

14. On January 12, 2018 the Court required the respondents to comment on the petitions of Loreta Ann Rosales in G.R. No. 236145, and Christian Monsod in G.R. No. 236155. The deadline for the Consolidated Comment was set at 5:00 p.m. of January 13, 2018 the following day. Hence, this consolidated Comment.

PROCEDURAL ARGUMENTS

I.

THE PETITIONS QUESTIONING THE EXTENSION OF MARTIAL LAW SUFFER FROM PROCEDURAL INFIRMITIES

a. The President is immune from suit.

b. The act of extending martial law is different from the act of proclaiming it.

c. The subsequent extension of martial law is a power vested in the Congress.

d. This Honorable Court had already ruled that there is actual rebellion in Mindanao.

[14] Petition in G.R. No. 236061, pp. 28-29.
[15] Petition in G.R. No. 236155, p.31.
[16] Petition in G.R. No. 236061, pp. 28-29; Petition in G.R. No. 236061, p. 15.
[17] Petition in G.R. No. 236155, p. 30; Petition in G.R. No. 236145, p. 6; Petition in G.R. No. 236061, p. 7.
[18] Petition in G.R. No. 236155, p. 33; Petition in G.R. No. 236061, p. 18-19.

SUBSTANTIVE ARGUMENTS

II.

THE PETITIONERS FAILED TO ESTABLISH GRAVE ABUSE OF DISCRETION ON THE PART OF BOTH HOUSES OF THE CONGRESS IN EXTENDING MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*

a. The Congress did not commit grave abuse of discretion when it extended martial law.

b. Proclamation No. 216 and the subsequent extensions granted by the Congress enjoy the presumption of constitutionality.

III.

THERE IS FACTUAL BASIS TO SUPPORT THE EXTENSION OF MARTIAL LAW FOR ONE YEAR IN MINDANAO.

a. The President does not have the burden to show sufficiency of the factual basis for the extension of martial law.

b. There is nevertheless sufficient factual basis for the extension of martial law.

c. Under the Constitution, the President as Commander-in-Chief has the sole prerogative to declare martial law, and the Congress has the sole prerogative to grant its extension.

d. The constitutionality of the martial law extension must be understood in light of the President's prerogative under Article VII, Section 18 of the 1987 Constitution.

IV.

ALLEGED HUMAN RIGHTS VIOLATIONS DO NOT WARRANT THE NULLIFICATION OF MARTIAL LAW

a. The alleged human rights violations in the implementation of martial law do not warrant the nullification of its extension.

b. The alleged human rights violations are unsubstantiated; irrelevant in the determination of whether the Congress had sufficient factual basis to further extend martial law and suspend the privilege of writ of *habeas corpus*.

c. The extension of martial law and the suspension of the privilege of the writ of *habeas corpus* are not designed to cause human rights violations nor quell the legitimate redress of grievances against the government.

V.

THE PETITIONERS HAVE NOT ESTABLISHED THE NEED FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR A WRIT OF INJUNCTION.

a. The petitioners have no clear legal right to be protected from the extension of martial law or the suspension of the writ of *habeas corpus*.

b. The petitioners failed to show that they will suffer any grave and irreparable injury if no injunctive relief is issued.

c. A temporary restraining order or writ of injunction will interfere with and impede the martial law powers granted to the President.

PROCEDURAL ARGUMENTS

I. THE PETITIONS QUESTIONING THE EXTENSION OF MARTIAL LAW SUFFER FROM PROCEDURAL INFIRMITIES

a. The President is immune from suit.

15. The President is immune from suit. He may not be impleaded as a respondent in any case, civil or criminal.[19] While there is no specific constitutional provision granting presidential immunity from suit, that immunity is beyond dispute. In *Rubrico v. Arroyo,*[20] the Court recognized presidential immunity from suit despite the lack of a constitutional provision providing for it:

> Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.
>
> Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:
>
> Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to

[19] Rubrico v. Arroyo, G.R. No. 183871, February 18, 2010; David v. Arroyo, G.R. No. 171396, May 3, 2006;
[20] *Supra*.

> fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government….[21]

16. Immunity from suit ensures the exercise of Presidential duties and functions free from any hindrance or distraction. The arduous task of being the Chief Executive of the Government is a burden that, aside from requiring all of the office holder's time, also demands his undivided attention.[22] Without this protection, the President would be devoting his time and attention to these cases rather than performing his duties, to the prejudice of the public.

17. In *David v. Arroyo*,[23] the Court held that there is even no need to provide for the immunity in the Constitution or law:

> Incidentally, it is not proper to implead President Arroyo as respondent. **Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in *any* civil or criminal case, and there is no need to provide for it in the Constitution or law.** It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[24] (Emphasis supplied)

---

[21] Citations omitted.
[22] Soliven v. Makasiar, G.R. No. 82585, November 14, 1988.
[23] *Supra.*
[24] Citations omitted.

18. Although they claim that the Congress violated the Constitution by extending martial law, petitioners Rosales and Cullamat, et al. themselves displayed a wanton disregard for the rules by impleading President Duterte in the present case. Ironically, the petitioners have impleaded a President who enjoys an trust rating from the Filipino people, especially those from Mindanao.[25]

b. The act of extending martial law is different from the act of declaring it.

19. The proclamation of martial law is a matter entirely different from its extension. Its declaration is an act of the President; on the other hand, its extension is the prerogative of the Congress. Without the presidential immunity principle being applied, the President should not have been impleaded because he did not extend Martial Law.

20. A proclamation of martial law takes effect immediately at the President's instance when he determines that there is a rebellion or invasion and public safety requires that the Philippines or any part thereof be placed under martial law. On the other hand, an extension of martial law is initiated by the President but takes effect upon the Congress' issuance of a resolution that rebellion and invasion persists and public safety requires that the Philippines or any part thereof be placed under martial law.

21. *Lagman*[26] explained that the proclamation of Martial Law has a maximum period of sixty days; however, the Congress may revoke or extend it:

> Section 18, Article VII of the Constitution provides that ''the President … may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippine or any part thereof under martial law…. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or

[25] https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20180111180300, last accessed on January 13, 2018 at 3:00 pm.
[26] *Lagman v. Medialdea, supra*.

> suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it."
>
> From the foregoing, it is clear that the President's declaration of martial law and/or suspension of the privilege of the writ of habeas corpus is effective for 60 days. As aptly described by Commissioner Monsod, "this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates." Any extension thereof should be determined by Congress. The act of declaring martial law and/or suspending the privilege of the writ of habeas corpus by the President, however, is separate from the approval of the extension of the declaration and/or suspension by Congress. The initial declaration of martial law and/or suspension of the writ of habeas corpus is determined solely by the President, while the extension of the declaration and/or suspension, although initiated by the President, is approved by Congress.
>
> In this case, Proclamation No. 216 issued on May 23, 2017 expired on July 23, 2017. Consequently, the issue of whether there were sufficient factual for the issuance of the said Proclamation has been rendered moot by its expiration. We have consistently ruled that a case becomes moot and academic when it "ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value." **As correctly pointed out by the OSG, "the martial law and suspension of the privilege of the writ of habeas corpus now in effect in Mindanao no longer finds basis in Proclamation No. 216" but in Resolution of Both Houses No. 11 (RBH No. 11) adopted on July 22, 2017. RBH No. 11 is totally different and distinct from Proclamation No. 216. The former is a joint executive-legislative act while the latter is purely executive in nature.**[27] (Emphasis supplied)

22. Inasmuch as the declaration of martial law is different from its extension, it follows that the judicial review of the proclamation of martial law is different from judicial review of the extension thereof.

23. According to *Lagman*,[28] the scope of judicial review of martial law is limited to three points of inquiry, to

[27] *Id*.
[28] Lagman v. Medialdea, *supra.*

wit: (1) Is there an actual rebellion or invasion? (2) Does public safety require the declaration of martial law? and (3) Is there probable cause for the President to believe that there is an actual rebellion or rebellion? In contrast, the Congress' extension of martial law only requires that the rebellion *persists* and that public safety requires the extension of martial law. In other words, the extension of martial law is premised on the existence of an ongoing rebellion.

c. The subsequent extension of martial law is a power vested in the Congress.

24. Rosales invokes the authority conferred on the Supreme Court by Section 18, Article VII of the Constitution as the basis of her petition.

25. The pertinent portion of Section 18 reads:

> The Supreme Court **may** review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

26. Section 18 used the word "may." In statutory construction, the word "may" has generally been construed as permissive. [29] It imports a directory and not mandatory nature.[30] When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced.[31]

27. Undeniably, the Court cannot be compelled to give course to all the petitions assailing validity of the extension of martial law.

---

[29] Vivares v. Reyes, G.R. No. 155408, February 13, 2008.
[30] See Office of the Ombudsman vs. Andutan, *Jr*., G.R. No. 164679, July 27, 2011.
[31] *Id*.

d. This Honorable Court had already ruled actual rebellion exists in Mindanao. The principle of conclusiveness of judgment bars the petitioners from relitigating the same issue.

28. In *Lagman v. Medialdea*[32] and *Padilla v. Congress*,[33] the Court held that "the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists."

29. The rulings in *Lagman* and *Padilla* should have laid to rest the issue of whether rebellion exists in Mindanao. Unconvinced, Cullamat, et al. claim that "[t]he President and his advisers failed to present validated and verifiable facts evincing the existence of actual rebellion,"[34] in disregard of the principle of *res judicata* under Section 47, Rule 39 of the Rules of Court.

30. Section 47(c), Rule 39 of the Rules of Court states:

> In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

31. Section 47(c), according to this Honorable Court, has the effect of preclusion of issues.[35] Elaborating on this provision, the Supreme Court ruled that by the doctrine of "conclusiveness of judgment" or *auter action pendant*, "issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action."[36]

---

[32] G.R. Nos. 231658, 231771 & 231774, July 4, 2017 [Decision]; December 5, 2017 [Resolution].
[33] G.R. No. 231671, July 25, 2017.
[34] Petition in G.R. No. 236061, p. 23.
[35] Enriqueta Rasdas v. Jaime Estenor, G.R. No. 157605, December 13, 2005.
[36] *Id.,* citing Chua v. Victorio, G.R. No. 157568, May 18, 2004, and Section 47(c), Rule 39 of the Rules of Court.

32. Otherwise stated, any fact directly adjudicated before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[37]

33. Inasmuch as the Court already ruled in *Lagman*[38] and *Padilla*[39] that the President had sufficient factual basis to show that actual rebellion does exist in Mindanao, such issue can no longer be raised in the present Petition. Relitigating the same issue sets a bad precedent for endless suits and runs counter to the principle of judicial economy. This is especially true considering that the petitioners in the 2017 *Lagman* case are the same of those now before this Honorable Court.

34. Indeed, any resolution of the Court should no longer touch on the existence of rebellion. The petitioners themselves admit that the activities of the communist rebel groups like the NPA constitute a rebellion.[40] This is a judicial admission. It requires no proof. What the Court has to resolve is the issue of whether public safety requires the extension of Martial Law.

SUBSTANTIVE ARGUMENTS

II. THE PETITIONERS FAILED TO ESTABLISH GRAVE ABUSE OF DISCRETION ON THE PART OF BOTH HOUSES OF THE CONGRESS IN EXTENDING MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

[37] *Id.,* citing Dapar v. Biascan, G.R. No. 141880, September 27, 2004.
[38] G.R. No. 231658, 231771 & 231774, July 4, 2017 [Decision]; December 5, 2017 [Resolution].
[39] G.R. No. 231671, July 25, 2017.
[40] Petition in G.R. No. 236061, par. 47, p. 13.

a. The Congress did not commit grave abuse of discretion when it extended martial law.

35. Cullamat, et al. assert that the Senate and the House of Representatives committed grave abuse of discretion when they voted to extend martial law and to continue the suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2018.[41] On the basis of the imputed arbitrariness, the petitioners ask the Court to nullify the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus*.

36. In turn, Monsod, et al. assail the decision of Congress to extend martial law, arguing that it was reached perfunctorily, "highlighted by the very limited time given to legislators to propound searching questions to respondent Chief of Staff or the Armed Forces of the Philippines, the Secretary of National Defense and other resource persons of the government during the deliberations to actually determine the factual basis for the extension of martial law in Mindanao."[42]

37. Cullamat, et al. did not provide the facts showing the supposed arbitrariness of the Congress. Monsod, et al., for their part, failed to provide specific details as to the alleged "limited time" given to the legislators to propound searching questions to respondent Chief of Staff or the Armed Forces of the Philippines, the Secretary of National Defense and other resource persons of the government. Both groups of petitioners failed to rebut the presumption that the members of the Congress performed their duties in a regular manner. It cannot be denied that public officers enjoy the presumption of regularity in the performance of their duties. They are presumed to have acted in good faith in the performance of their duties. Time limits do not automatically translate to arbitrariness: speed in the conduct of proceedings should not automatically be attributed to an injudicious performance of functions.

[41] Petition in G.R. No. 236061, pp. 28-30.
[42] Petition in G.R. No. 236155, p. 31 (paragraph 75).

38. There is likewise no truth in the argument of the petitioners that Resolution of Both Houses No. 4 dated December 13, 2017 did not state the Congress' own findings and justifications for approving the request of the President to extend martial law.[43] The findings and justifications of the Congress in approving the request of the President are stated in Resolution of Both Houses No. 4, *viz.*:[44]

> **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, 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

[43] Petition in G.R. No. 236155, pp. 31-32 (paragraphs 76-78).
[44] Emphasis supplied

> 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* in the Whole of Mindanao**: Now, therefore, be it**
>
> ***Resolved by the Senate and the House of Representatives in a Joint Session Assembled*, To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018.**

39. As stated in Resolution of Both Houses No. 4, dated December 13, 2017, the decision of Congress to extend martial law and the suspension of the privilege of the writ of *habeas corpus* is based on the finding by two hundred forty members of all members of both houses of the Congress that rebellion persists in Mindanao, and that public safety requires the further extension of 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 year or from January 1, 2018 to December 31, 2018.

40. Moreover, the claim of the petitioners that the rebellion that justifies an extension of martial law must pertain to exactly the same rebellion that was used as the basis for the initial proclamation of martial law results from a patently wrong understanding of Section 18, Article VII of the Constitution. [45]

41. Under Section 18, the extension of the martial law and the suspension of the privilege of the writ of *habeas corpus* is justified as a long as there is rebellion and the public safety requires them. The terms "the" and "persists" do not require that the group that started the rebellion should be the same group that should continue the uprising. Otherwise, it would lead to an absurd situation where the President has to proclaim martial law or suspend the privilege of the writ of *habeas corpus* each time a new group of rebels emerge during the course of the initial proclamation of martial law.

[45] Petition in G.R. No. 236155, (paragraphs 79-82) pp. 32-33.

42. It is beyond peradventure that Section 18 does not provide as the standard of review "grave abuse of discretion" under Rule 65 of the Rules of Court. The duty of the Court under Section 18 is limited to the determination of the sufficiency of the factual basis of the proclamation and the suspension of the writ or their extension. Ergo, the reliance of Cullamat, et al. on the alleged commission by the Congress of grave abuse of discretion as a ground for nullifying the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus* is misplaced. The intendment of *Lagman*[46] is unmistakable:

> It could not have been the intention of the framers of the Constitution that the phrase "in an appropriate proceeding" would refer to a Petition for *Certiorari* pursuant to Section 1 or Section 5 of Article VIII. **The standard of review in a petition for *certiorari* is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of his or her functions. Thus, it is not the proper tool to review the sufficiency of the factual basis of the proclamation or suspension**. **It must be emphasized that under Section 18, Article VII, the Court is tasked to review the sufficiency of the *factual* basis of the President's exercise of emergency powers.** Put differently, if this Court applies the standard of review used in a petition for *certiorari*, the same would emasculate its constitutional task under Section 18, Article VII.
>
> ...
>
> The unique features of the third paragraph of Section 18, Article VII clearly indicate that it should be treated as *sui generis* separate and different from those enumerated in Article VIII.... Said provision of the Constitution also limits the issue to the sufficiency of the factual basis of the exercise by the Chief Executive of his emergency powers....
>
> In fine, the phrase "in an appropriate proceeding" appearing on the third paragraph of Section 18, Article VII refers to any action initiated by a citizen for the purpose of questioning the sufficiency of the factual basis of the exercise of the Chief Executive's emergency powers, as in these cases....

[46] Lagman, et al. vs. Medialdea, *supra*; Emphasis supplied.

43. In any event, Cullamat, et al. failed to cite specific acts on the part of the Congress that can be characterized as grave abuse of discretion. In ascribing grave abuse of discretion on the part of the Congress, the petitioners merely made a general reference to their other arguments in the petition that can be reduced into whether there is no sufficient factual basis for the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2018. [47]

44. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[48] Clearly there is no grave abuse in this case.

45. There can be no grave abuse of discretion on the part of the Congress because public safety required the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2018. Both houses of the Congress gave due consideration to the fact relayed to them by President Duterte in his letter dated December 8, 2017, which showed that rebellion persists in Mindanao and that public safety required the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus*.[49] The Resolution of Both Houses No. 450 acknowledged that the extension was made because of the stepped-up terrorist attacks of the communist rebels against innocent civilians and private entities:

> 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

[47] Petition in G.R. No. 236061, (par. 90) p. 29.
[48] Padilla, et al. vs. Congress of the Philippines, G.R. No. 231671, July 25, 2017; AGG Trucking and/or Alex Ang Gaeid vs. Yuag, G.R. No. 195033, October 12, 2011.
[49] Annex "5."
[50] *Id.*

> 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;

46. No grave abuse of discretion can also be imputed to the Congress as regards the period of the extension because it complied with the requirements of the Constitution.

47. Indisputably, Section 18 of Article VII grants the Congress the authority to determine the period of time for which the martial law proclamation and the suspension of the privilege of the writ of *habeas corpus* shall be extended. The mere fact that the Congress extended the period to one year, or until December 31, 2018, is not a valid basis for imputing grave abuse of discretion to the Congress: no less than the Constitution grants the Congress the power to determine the period of extension.

48. It is patent from the Resolution of Both Houses No. 4, which was adopted by the House of Representatives and the Senate in a Joint Session on December 13, 2017, that the decision to extend martial law and the suspension of the privilege of the writ of *habeas corpus* was reached by both houses of the Congress only after a thorough discussion and extensive debate on the matter, to wit:

> 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* in the Whole of Mindanao: Now, therefore, be it
>
> *Resolved by the Senate and the House of Representatives in a Joint Session Assembled*, To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018. [51]

49. Judicial power to stay an act of Congress, like judicial power to hold an act unconstitutional, is an awesome responsibility calling for the utmost circumspection in its exercise."[52] Thus, the petitions should have at the very least provided the Court sufficient evidence for the exercise of its awesome power to revoke the acts of its two other co-equal branches of Government.

b. Proclamation No. 216 and the subsequent extensions granted by the Congress are favored with presumption of validity and constitutionality.

50. Petitioner Rosales asks the Court to test the constitutionality of the extension of Proclamation No. 216 in

[51] 6th and 7th paragraphs of the Resolution of Both Houses No. 4 dated December 13, 2017.
[52] *Vera vs. Hon. Arca*, G.R. No. L-25721, May 26, 1969.

accordance with the meaning and purpose of martial law as intended by the Constitutional Commission and as articulated in ***Lagman***.

51. In the din of every heated legal battle, it should escape notice that every constitutional inquiry into the official acts of the government begins with the presumption of constitutionality and validity. In ***Victoriano v. Elizalde Rope Workers' Union***,[53] the Court laid the principle on the presumption of validity and constitutionality of laws, viz:

> **(A)ll presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt;** that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted.(Emphasis supplied)

52. The same principle was affirmed in ***Drilon vs. Lim***,[54] which reads:

> **(T)he presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution**, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down. (Emphasis supplied)

53. ***Gerochi vs. Department of Energy***[55] therefore emphasized that Supreme Court emphasized to overturn the presumption of constitutionality, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative.

---

[53] *Victoriano v. Elizalde Rope Worker's Union*, G.R. No. L-25246, September 12, 1974
[54] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994.
[55] *Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007.

54. Tested against the preceding yardstick, Rosales has not overturned the presumption of constitutionality: she has not demonstrated that there is a clear breach of the Constitution in the extension of Martial Law and the extension of the privilege of the writ of *habeas corpus*.

55. *First*, Rosales did discharge her burden through empty claims that there is no rebellion in Mindanao.

56. The existence of an ongoing rebellion in Mindanao is undeniable. The validity of the Proclamation No. 216 which was grounded on the existence of rebellion in Mindanao was affirmed by the Congress in two separate instances. The validity of Proclamation No. 216 became conclusive when it was affirmed by the Court in ***Lagman***.

57. The present extension of Proclamation No. 216, as embodied in Resolution of Both Houses No. 4, carries with it a strong presumption of constitutionality.

58. This is in consonance with the long-established principle of checks and balances as explained in ***Angara vs. Electoral Commission***,[56] which emphasized the Constitution's elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. In view of the affirmation of both the Legislative and Judicial branch, presumption of constitutionality the extension enjoys should be respected.

59. *Second*, the determination of sufficiency of factual basis became the duty of the Congress after the request of President Duterte was transmitted. The question raised had assumed a political nature that can only be resolved by the Congress. The *Lagman,*[57] *Cullamat,*[58]and *Monsod* petitions[59] similarly assail the validity of the extension granted by the Congress anchored on its alleged lack of factual basis.

---

[56] *Angara v. The Electoral Commission*, G.R. No. L-45081, July 15, 1936.
[57] G.R. No. 235935.
[58] G.R. No. 236061.
[59] G.R. No. 236155.

60. The allegations of the petitions are devoid of factual moorings. Their doubtful, speculative, and argumentative statements unsupported by concrete evidence cannot overturn the presumption of constitutionality of the Resolution of Both Houses No. 4 as unconstitutional.

SUBSTANTIVE ARGUMENTS

III. THERE IS SUFFICIENT FACTUAL BASIS TO SUPPORT THE EXTENSION OF MARTIAL LAW FOR ONE YEAR IN MINDANAO

a. The President does not have the burden to show sufficiency of factual basis for the extension of martial law.

61. Rosales contends that the President has the *onus* of showing that his extension of martial law has sufficient factual bases.[60] This is not correct.

62. Section 18, Article VII of the Constitution states that the extension of martial law falls within the prerogative of the Congress. The President requests the martial law extension but it is the Congress that extends martial law, if it finds that invasion or rebellion persist and public safety requires it. In view of the presumption of constitutionality accorded to the extension of martial law, it is incumbent upon all the petitioners to overturn the presumption, meaning, show facts that the extension is without basis.

63. The presumption cannot just be ignored, especially since the Court had held in ***Lagman***[61] that it considers only the information and data available to the President prior to or at the time of the declaration; it is not

[60] Petition in G.R. No. 236145, p. 31.
[61] G.R. No. 231658, July 4, 2017.

allowed to "undertake an independent investigation beyond the pleadings," thus:

> In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings."
>
> ….
>
> To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategical value of other places in the military's efforts to quell the rebellion and restore peace. It would be engaging in an act of adventurism if it dares to embark on a mission of deciphering the territorial metes and bounds of martial law. To be blunt about it, hours after the proclamation of martial law none of the members of this Court could have divined that more than ten thousand souls would be forced to evacuate to Iligan and Cagayan de Oro and that the military would have to secure those places also; none of us could have predicted that Cayamora Maute would be arrested in Davao City or that his wife Ominta Romato Maute would be apprehended in Masiu, Lanao del Sur; and, none of us had an inkling that the Bangsamoro Islamic Freedom Fighters (BIFF) would launch an attack in Cotabato City. The Court has no military background and technical expertise to predict that. In the same manner, the Court lacks the technical capability to determine which part of Mindanao would best serve as forward operating base of the military in their present endeavor in Mindanao. Until now the Court is in a quandary and can only speculate whether the 60-day lifespan of Proclamation No. 216 could outlive the present hostilities in Mindanao. It is on this score that the Court should give the President sufficient leeway to address the peace and order problem in Mindanao.[62]

64. Bereft of any evidence to support their cavalier assertion that there is no factual basis to extend martial law in Mindanao, the petitioners cannot rightfully conclude that there is no justification of the extension of Martial Law.

---

[62] Id.

b. There is sufficient factual basis for the extension of martial law.

65. Even assuming that the burden of proof lies with the President or the Congress, such burden has already been overcome.

66. Monsod, et al., erroneously assail the extension of martial law for being unwarranted and unnecessary.[63] Allegedly, (i) the alleged bases for Proclamation No. 216 have already been resolved and no longer persist;[64] and (ii) the rebellion in Mindanao does not endanger public safety.[65] The petitioners erroneously claim that there is no more cause to re-extend martial law in Mindanao since combat in Mindanao has been terminated.[66] In support of their stance, they allege that the Secretary of National Defense announced the cessation of armed combat and the liberation of Marawi, as well as the death of the key leaders of the rebellion, therefore, martial law must be deemed to have lost its basis and its extension is no longer justified.[67]

67. Rosales posits that the extension of Martial Law in Mindanao is unconstitutional because the factual bases, as narrated in the Letter of the President to both Houses dated December 8, 2017, do not amount to actual rebellion.[68] At most, they only constitute imminent danger that does not justify the imposition or extension of Martial Law.[69] She adds that the President's enumerated factual antecedents in the letter seem to "only show capacity to rebel and/or imminent act of rebelling" instead.[70] And since it is the President's *onus* to show sufficient factual basis,[71] his alleged failure to do so will not lend any legitimacy to his initiative to extend Martial Law.

---

[63] Petition in G.R. No. 236061, p. 11.
[64] *Id. at* 8.
[65] *Id. at* 11.
[66] Petition in G.R. No. 236155, p. 30.
[67] *Id.* at p. 30, par. 69.
[68] Petition in G.R. No. 236145, pp. 24-28.
[69] *Id*. at 29-31.
[70] *Id*. at 27.
[71] *Id.* at 31-32.

68. Significantly, Rosales conveniently quoted only a few paragraphs that would favor her proposition that the facts relied upon for the extension are a mere series of movements that do not amount to actual rebellion.

69. Her contention that some phrases in the President's letter constitute an admission of the absence of rebellion in Mindanao cannot be given currency: she nitpicked certain phrases and interpreted them in isolation without regarding the bigger picture set out by the entirety of the letter.[72]

70. Marawi is not the entire Mindanao. The liberation of Marawi did not signal the end of the rebellion in of Mindanao. ***Lagman*** recognized that there are other rebel groups in Mindanao that have launched offensives:

> **Thus, there is reasonable basis to believe that Marawi is only the staging point of the rebellion, both for symbolic and strategic reasons. Marawi may not be the target but the whole of Mindanao**. As mentioned in the Report, "[l]awless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages;" there is also the plan to establish a *wilayat* in Mindanao by staging the siege of Marawi. The report that prior to May 23, 2017, Abdullah Maute had already dispatched some of his men to various places in Mindanao, such as Marawi, Iligan, and Cagayan de Oro for bombing operations, carnapping, and the murder of military and police personnel, must also be considered. Indeed, there is some semblance of truth to the contention that Marawi is only the start, and Mindanao the end.[73]
>
> . . .
>
> There were also intelligence reports from the military about offensives committed by the ASG and other local rebel groups. All these suggest that the rebellion in Marawi has already spilled over to other parts of Mindanao.
>
> Moreover, considering the widespread atrocities in Mindanao and the linkages established among rebel groups, the armed uprising that was initially staged in

[72] Id. at 28-29.
[73] *Id.*

> Marawi cannot be justified as confined only to Marawi. The Court therefore will not simply disregard the events that happened during the Davao City bombing, the Mamasapano massacre, the Zamboanga City siege, and the countless bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. The Court cannot simply take the battle of Marawi in isolation. As a crime without predetermined bounds, the President has reasonable basis to believe that the declaration of martial law, as well as the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao, is most necessary, effective, and called for by the circumstances.[74]

71. Although the leadership of the Mautes was decimated in Marawi, the rebellion in Mindanao persists as the surviving members of the militant group have not laid down their arms. The remnants remain a formidable force to be reckoned with, especially since they have established linkage with other rebel groups. These rebel groups – which include the NPAs – are waging rebellion in Mindanao.

72. Contrary to Rosales' suppositions, these rebel groups and their concerted destabilizing activities and actions pose not just mere threats or imminent danger of an invasion or rebellion. In fact, they constitute the very rebellion in Mindanao. These purported remnants are capable of launching retaliatory attacks against the Government and sowing acts of terrorism against the civilian population to wrest control of Mindanao and continue their bid to establish a *wilayah* in the region. In addition, they have established linkages with other rebel groups such as the BIFF, AKP, ASG, DI Maguid, DI Turaifie who are capable of perpetrating strategic and well-coordinated mass casualty attacks to overthrow the present government. With the persistence of rebellion in the region, the extension of martial law is, therefore, not just for preventive reasons.

73. The preceding facts were cited in the December 8, 2017 Letter of the President to both Houses of the Congress:

> 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

[74] *Id.*

training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-large and, in all probability, are presently regrouping and consolidating their forces.

More specifically, the remnants of 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 in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. **These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and of a *Wilayat* not only in the Philippines but also in the whole of Southeast Asia.**

Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and Southeast Asia.

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 Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.

Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.

Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion 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.**

74. Nonplussed, Rosales also points out that the cited NPA attacks were not a consideration in the President's original declaration and could not constitute as basis for the extension. Her contention is misleading.

75. Proclamation No. 216 referred to the violent acts and attacks committed by the Maute terrorist group and "other rebel groups."[75] ***Lagman***[76] accurately stated that there are other rebel groups in Mindanao that have launched offensives:

> **Thus, there is reasonable basis to believe that Marawi is only the staging point of the rebellion, both for symbolic and strategic reasons. Marawi may not be the target but the whole of Mindanao**. As mentioned in the Report, "[l]awless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages;" there is also the plan to establish a *wilayat* in Mindanao by staging the siege of Marawi. The report that prior to May 23, 2017, Abdullah Maute had already dispatched some of his men to various places in Mindanao, such as Marawi, Iligan, and Cagayan de Oro for bombing operations, carnapping, and the murder of military and police personnel, must also be considered. Indeed, there is some semblance of truth to the contention that Marawi is only the start, and Mindanao the end.[77]
>
> . . .
>
> There were also intelligence reports from the military about offensives committed by the ASG and other local rebel groups. All these suggest that the rebellion in Marawi has already spilled over to other parts of Mindanao.

76. Because of the widespread atrocities in Mindanao and the linkages established among rebel groups, the armed uprising in Marawi cannot be equated with the rebellion in the other parts of Mindanao. The Court should not simply

---

[75] Proclamation No. 216, Annex "1."
[76] Lagman v. Medialdea, *supra.*
[77] *Id*.

disregard the events that happened during the Davao City bombing, the Mamasapano massacre, the Zamboanga City siege, and the countless bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. It should not take the rebellion in Marawi as an isolated incident. As a crime without predetermined boundaries, the rebellion in various parts of Mindanao justified the extension of martial law, as well as the suspension of the privilege of the writ of *habeas corpus.*

77. It bears stressing that even as the National Democratic Front was engaged in peace talks with the Government, the communist terrorists have been launching offensives in certain parts of Mindanao. The NPAs forged a common front with the Muslim rebels to remove the allegiance of Mindanao to the duly-constituted government. The aforementioned letter of the President also cited the atrocities the NPAs committed even against civilians:

> The NPA has perpetrated a total of at least three hundred eighty-five (385) atrocities (both terrorism and guerilla warfare) in Mindanao, which resulted in forty-one (41) Killed-in-Action and sixty-two (62) Wounded-in-Action on the part of government forces. On the part of the civilians, these atrocities resulted in the killing of twenty-three (23) and the wounding of six (6) persons. The most recent was the ambush in Talakag, Bukidnon on 09 November 2017, resulting in the killing of one (1) PNP personnel and the wounding of three (3) others, as well as the killing of a four (4)- month-old infant and the wounding of two (2) civilians.

78. Rosales also hazards the opinion that the government's ability to respond to the threats posed by these various groups is appropriately and sufficiently covered by the President's calling out power.[78]

79. What she omits acknowledging is that the declaration of martial law is a prerogative of the President, as the Court stressed in ***Lagman***.[79]

---

[78] Petition in G.R. No. 236145, p. 32

[79] G.R. No. 236158, 4 July 2017, citing Sanlakas vs. Executive Secretary Reyes, G.R. Nos. 159085, 159103, 159185, and 159196, 3 February 2004; underscoring supplied.

80. The same principle applies, as far as the request for extension of martial law is concerned. The President has broad powers to ascertain the most appropriate measure to deal with the rebellion plaguing Mindanao. Those powers should not be niggardly construed. After all, it is a Martial Law far removed from its old version. The President as the commanding general has the authority to issue orders that have the effect of law but strictly in a theater of war. He exercises police power with the military's assistance to ensure public safety, among others. He would not be able to do this by just exercising his "calling out" power.

81. For their part, Cullamat, et al. claim that public safety does not require the further extension of martial law. They allege that the instances cited for the extension show several protracted incidents of violence and lawlessness that is well within the powers and authority of government armed forces and police force to suppress without resort to extraordinary powers.[80] This is wrong.

82. The effect on public safety of the rebellion being waged by the various rebel groups in Mindanao cannot be peremptorily dismissed. Public safety "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters."[81] Deference and respect should be accorded to the President's decisions on military affairs as he is in the best position to make these decisions in our constitutional structure of government. Apart from a wide array of information before him, the President also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.[82] The petitioners failed to show that the NPA attacks caused only military casualties and avoided harming civilians or destroying private property.

83. Since Cullamat, et al., admit the existence of rebellion in Mindanao, they cannot begrudge the Congress

[80] Petition in G.R. No. 236061, p. 31, par. 73.
[81] Lagman v. Medialdea, *supra*.
[82] *Id.*

from extending martial law in the interest of public safety. The danger posed by rebellion on public safety cannot be discounted. The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion, though crimes in themselves, are deemed absorbed in one single crime of rebellion.[83] As rebellion is a continuing offense, the armed hostilities and the acts in furtherance thereof are equally part of the continuing rebellion until quashed.[84]

84. The following deliberations of the 1987 Constitution Commission recognized that the legislature cannot refuse to extend Martial Law if the rebellion persists:

> MR. MAAMBONG: Just one inquiry. I do not want to engage in nitpicking, but when we say "FOR A PERIOD TO BE DETERMINED BY CONGRESS," can Congress do it by law or by resolution, because there are certain acts to be done by Congress which may be done by resolution and some done by law?
>
> FR. BERNAS: By resolution, Madam President.
>
> MR. MAAMBONG: Thank you very much.
>
> FR. BERNAS: If it is done by law, it would need a cumbersome process of three Readings plus the approval of the President.
>
> MR. PADILLA: Madam President.
>
> THE PRESIDENT: Commissioner Padilla is recognized.
>
> MR. PADILLA: According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.
>
> FR. BERNAS: I would believe what the former Chief Justice said about the initiation being essentially an

[83] *Id.*
[84] Garcia-Padilla v. Enrile, G.R. No. L-61388, April 20, 1983.

executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION: If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. **If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight.** Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.[85] (Emphasis supplied)

85. It is not the place of the petitioners to dictate on the President which of the three Commander-in-Chief powers is most appropriate in dealing with the ongoing rebellion. Neither can the petitioners ask the Court to nullify the continued imposition of martial law on the flimsy ground that they believe that the exercise of a more benign Commander-in-Chief power would suffice. ***Lagman***[86]already debunked the argument in this wise:

Indeed, the 1987 Constitution gives the "President, as Commander-in- Chief, a 'sequence' of 'graduated power[s]'. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of *habeas corpus,* and the power to declare martial law." It must be stressed, however, that the graduation refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does not dictate or restrict the manner by which the President decides which power to choose.

These extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; it therefore necessarily follows that the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of *habeas corpus;* or whether it calls for the declaration of martial law, also lies, at least initially, with the President.

[85] July 31, 1986, R.C.C. No. 44.
[86] G.R. Nos. 231658, 231771 & 231774, July 4, 2017.

> The power to choose, initially, which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. As Commander-in-Chief, his powers are broad enough to include his prerogative to address exigencies or threats that endanger the government, and the very integrity of the State.
>
> It is thus beyond doubt that **the power of judicial review does *not* extend to calibrating the President's decision pertaining to which extraordinary power to avail given a set of facts or conditions. To do so would be tantamount to an incursion into the exclusive domain of the Executive and an infringement on the prerogative that solely, at least initially, lies with the President**.[87]

86. Plainly stated, much leeway must be given to the President for him to fully and effectively discharge his functions as Commander-in-Chief. Due deference must be made to his judgment call, which the Court recognized as being based on "vital, relevant, classified, and live information" not ordinarily available to the public. The President is privy to such sensitive data, release or publication of which could do more harm than good.

c. Under the Constitution, the President as Commander-in-Chief, has the sole prerogative to declare martial law, and Congress has the sole prerogative to grant its extension.

87. Monsod, et al. claim that although the 1987 Constitution vests the sole power and discretion to declare martial law or suspend the privilege of the writ of *habeas corpus* on the President, the Charter has reshaped the roles of the other two co-equal branches of government, the Legislature and the Judiciary, in determining whether exercise of such power is factually and legally justified. [88] The respondents agree with the contention. They would like to clarify nevertheless that this does not necessarily mean

[87] *Id*.
[88] Petition in G.R. No. 236155, par. 56.

that the Court can substitute its own factual findings as the petitioners suggest.[89]

88. Section 18 of Article VII provides the Court's role is limited to *reviewing* the sufficiency of the President's factual basis with respect to (a) whether the invasion or rebellion persists; and (b) public safety requires it.

89. This means that the Court should limit itself to examining the pre-existing conditions that the President cited as justification for the extension of martial law.[90] ***Lagman***[91] already stated the extent of such judicial review:

> As Commander-in-Chief, the President has the **sole** discretion to declare martial law and/or to suspend the privilege of the writ of habeas *corpus,* subject to the revocation of Congress and the review of this Court. Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress. These may be based on the situation existing at the time the declaration was made or past events. As to how far the past events should be from the present depends on the President.
>
> Past events may be considered as justifications for the declaration and/or suspension as long as these are connected or related to the current situation existing at the time of the declaration.
>
> As to what facts must be stated in the proclamation and the written Report is up to the President. As Commander-in-Chief, he has sole discretion to determine what to include and what not to include in the proclamation and the written Report taking into account the urgency of the situation as well as national security. He cannot be forced to divulge intelligence reports and confidential information that may prejudice the operations and the safety of the military.

[89] *Id.,* par. 58.
[90] Petition in G.R. No. 236155, par. 56.
[91] G.R. No. 231658 (July 4, 2017).

> Similarly, events that happened after the issuance of the proclamation, which are included in the written report, cannot be considered in determining the sufficiency of the factual basis of the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* since these happened after the President had already issued the proclamation. If at all, they may be used only as tools, guides or reference in the Court's determination of the sufficiency of factual basis, but not as part or component of the portfolio of the factual basis itself.
>
> In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun,* to "immediately put an end to the root cause of the emergency". Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.[92]

90. ***Lagman*** held that in determining the existence of rebellion, the President only needs to convince himself that there is *probable cause* or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers.

91. The required standard of proof has been met by the President. The extension of martial law is justified considering that the rebellion in Mindanao persists as the surviving members of the Maute group have not laid down

[92] Underscoring supplied.

their arms. The remnants remain a formidable force to be reckoned with. They are capable of launching retaliatory attacks against the Government and acts of terrorism against the civilian population to wrest control of Mindanao and continue their bid to establish a *wilaya*h in the region.

92. Moreover, the violence committed by the other groups such as the BIFF, AKP, ASG, DI Maguid, DI Turaifie should be taken into consideration in determining whether the rebellion has been completely quelled. These groups are part of the rebellion. As such, they cannot be taken lightly as they are likewise capable of perpetrating strategic and well-coordinated mass casualty attacks to overthrow the present government and to establish a *wilayah* in Mindanao. For their part, the NPAs have been launching offensives in various parts of Mindanao, even as the National Democratic Front was engaged in peace talks with the Government. The NPAs have forged a common front with the Muslim rebels to remove the allegiance of Mindanao to the duly-constituted government.

93. Monsod, et al. rely on *Lansang vs. Garcia*[93] and *Aquino, Jr. vs. Enrile*[94] to unduly enlarge the extent of judicial review on the assailed acts of the President.[95] ***Lagman***, however, has already clarified the position of the Court in this matter, thus:

> To recall, the Court, in the case of *In the Matter of the Petition for Habeas Corpus of Lansang,* which was decided under the 1935 Constitution, held that it can inquire into, within proper bounds, whether there has been adherence to or compliance with the constitutionally-imposed limitations on the Presidential power to suspend the privilege of the writ of *habeas corpus. "Lansang* limited the review function of the Court to a very prudentially narrow test of arbitrariness." Fr. Bernas described the "proper bounds" in *Lansang* as follows:
>
> What, however, are these 'proper bounds' on the power of the courts? The Court first gave the general answer that its power was 'merely to check - not to supplant - the Executive, or to *ascertain merely whether*

[93] G.R. No. L-33964 (1971).
[94] G.R. No. L-33546 (1974).
[95] Petition in G.R. No. 236155, par. 65.

> *he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act. More specifically, the Court said that its power was not 'even comparable with its power over civil or criminal cases elevated thereto by appeal...in which cases the appellate court has all the powers of the court of origin,' nor to its power of quasi-judicial administrative decisions where the Court is limited to asking whether 'there is some *evidentiary basis'* for the administrative finding. Instead, the Court accepted the Solicitor General's suggestion that it *'go no* further than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily.'
>
> *Lansang,* however, was decided under the 1935 Constitution. The 1987 Constitution, by providing only for judicial review based on the determination of the sufficiency of the factual bases, has in fact done away with the test of arbitrariness as provided in *Lansang.*
>
> Similarly, under the doctrine of contemporaneous construction, the framers of the 1987 Constitution are presumed to know the prevailing jurisprudence at the time they were drafting the Constitution. Thus, the phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* under Section 18, Article VII of the Constitution. The Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases.
>
> We conclude, therefore, that Section 18, Article VII limits the scope of judicial review by the introduction of the "sufficiency of the factual basis" test.[96]

d. The constitutionality of the martial law extension must be understood in light of the President's prerogative under Section 18, Article VII of the 1987 Constitution.

94. Rosales suggests that the President should not have resorted to martial law. She draws a distinction

[96] Underscoring supplied.

between martial law and military force, or the calling out power. She then enumerates the differences between the two, in terms of the conditions, purposes, targets, and Constitutional restraints. According to her, the Constitution imposes upon the President an obligation to be very careful in the imposition of martial law, considering the potential impact on civil liberties of those not involved in invasion or rebellion.[97] The contentions of petitioner lack merit.

95. As Commander-in-Chief, the President is authorized to exercise powers, one of which is the martial law powers.[98] Martial law is a flexible concept. Depending on the conditions, the President may issue the corresponding orders to address a particular situation.[99]

96. On account of the persistence of terrorist groups, extending martial law, instead of invoking the calling out power, is necessary to protect the security of the nation. It ensures public safety, particularly in a situation where terrorist groups, ranging from DIWM, L/FTGs, ALGs, CTs, BIFF, and ASG, continue to cause harm to communities in Mindanao.

97. At the same time, Rosales' discussion regarding the distinction between martial law and the calling out power is irrelevant. She did not even advance the better course of action between the two powers. Despite the "graduated" powers of the President, martial law powers do not depend on the prior exercise of the calling out power. There is no Constitutional or jurisprudential requirement that the calling-out power should be resorted to ahead of martial law.[100]

98. Also, Rosales is mistaken in giving a negative perception on martial law, as compared to the calling out power. Her submission that the effects of the calling out power are directed on the enemies of the State, while the effects of martial law are directed towards the civilian

[97] Petition in G.R. No. 236145, paras. 41-60.
[98] Sanlakas vs. Executive Secretary Reyes, G.R. Nos. 159085, 159103, 159185, and 159196, 3 February 2004.
[99] See Separate Concurring Opinion of Justice Jose C. Mendoza in Lagman vs. Medialdea, *supra.*.
[100] Lagman vs. Medialdea, *supra*.

population and their liberties,[101] is unfounded. To be clear, martial law is conditioned on the existence of actual invasion or rebellion and public safety requires such resort thereto. Like the calling out power, it is a measure to quell enemies of the State, in the form of rebel groups.

99. The supposed gravity of the implications of martial law, as set forth by Rosales, does not constitute a bar to the President's exercise of discretion. Contrary to her fears,[102] martial law does not automatically equate to curtailment and suppression of civil liberties and individual freedom. After all, a state of martial law does not suspend the operation of the Constitution, including the Bill of Rights.[103]

100. The President's course of action is not anchored solely on the availability of judicial review.[104] Taking into consideration the differences between martial law and the calling out power, in terms of magnitude and impact, the President has a choice at his disposal. The prevailing scenario and the level of necessity serve as reference points for the invocation of the appropriate power. That there are "practically no restraints on the power of the President"[105] should not necessarily confine the President's discretion to the calling out power only.

101. The extension of martial law is a course of action within the prerogative of the President. As ***Lagman*** aptly stated:

> Indeed, the 1987 Constitution gives the "President, as Commander-in- Chief, a 'sequence' of 'graduated power[s]'. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of *habeas corpus,* and the power to declare martial law." It must be stressed, however, that the graduation refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does

[101] Petition in G.R. No. 236145, para 58.
[102] Petition in G.R. No. 236145, para. 46.
[103] Article VII, Section 18 of the 1987 Constitution.
[104] Petition in G.R. No. 236145, para. 44.
[105] *Id.*, para. 54.

> not dictate or restrict the manner by which the President decides which power to choose.
>
> These extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; it therefore necessarily follows that the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of *habeas corpus;* or whether it calls for the declaration of martial law, also lies, at least initially, with the President. The power to choose, initially, which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. As Commander-in-Chief, his powers are broad enough to include his prerogative to address exigencies or threats that endanger the government, and the very integrity of the State.
>
> It is thus beyond doubt that the power of judicial review does *not* extend to calibrating the President's decision pertaining to which extraordinary power to avail given a set of facts or conditions. To do so would be tantamount to an incursion into the exclusive domain of the Executive and an infringement on the prerogative that solely, at least initially, lies with the President.[106]

102. The same principle applies, as far as the request for extension of martial law is concerned. The President has broad powers to ascertain the most appropriate measure for the country, which is being prejudiced by the unlawful activities of terrorist and rebel groups in Mindanao.

103. At bottom, the petitioners cannot insist that the Court impose upon the President the proper measure to defeat a rebellion.[107] In light of the wide array of information in the hands of the President, as well the extensive coordination between him and the armed forces regarding the situation in Mindanao, it would be an overreach for the Court to encroach on the President's discretion.

---

[106] G.R. No. 236158, 4 July 2017, citing Sanlakas vs. Executive Secretary Reyes, G.R. Nos. 159085, 159103, 159185, and 159196, 3 February 2004; underscoring supplied.
[107] IBP vs. Zamora, GR No. 141284, August 15, 2000.

IV. THE ALLEGED HUMAN RIGHTS VIOLATIONS DO NOT WARRANT THE NULLIFICATION OF MARTIAL LAW

a. The petitioners' claim of alleged human rights violations should be resolved in a separate proceeding and should not be taken cognizance of by the Court.

104. Cullamat, et al., mistakenly claim that there is no need for the proclamation of martial law because the absence thereof has not restrained the AFP from bombing, killing or arresting the Maute, BIFF and other armed groups.[108] Allegedly, martial law is not intended for these armed groups but is actually against civilians who are critical of the incumbent administration.[109] Human rights violations supposedly intensified and escalated when President Duterte imposed martial law and suspended the privilege of the writ of *habeas corpus*.[110]

105. Assuming that there were human rights violations during the period of effectivity of martial law, the Court already categorically ruled in *Lagman*[111] that the alleged violations must be addressed in a separate proceeding:

> Neither could Proclamation No. 216 be described as vague, and thus void, on the ground that it has no guidelines specifying its actual operational parameters within the entire Mindanao region. Besides, operational guidelines will serve only as mere tools for the implementation of the proclamation. In Part III, we declared that judicial review covers only the sufficiency of information or data available to or known to the President prior to, or at the time of, the declaration or suspension. And, as will be discussed exhaustively in Part VII, the review will be confined to the proclamation itself and the Report submitted to Congress.

---

[108] Petition in G.R. No. 236061, p. 20, par. 74.
[109] *Id*., par. 76 at 20; par. 84, at 23.
[110] *Id.* at 22, par. 80.
[111] G.R. Nos. 231658, 231771 & 231774, 4 July 2017.

> Clearly, therefore, there is no need for the Court to determine the constitutionality of the implementing and/or operational guidelines, general orders, arrest orders and other orders issued after the proclamation for being irrelevant to its review. **Thus, any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding. Finally, there is a risk that if the Court wades into these areas, it would be deemed as trespassing into the sphere that is reserved exclusively for Congress in the exercise of its power to revoke.**"[112]

b. The alleged human rights violations are unsubstantiated; they are also irrelevant in determining whether the Congress had sufficient factual basis to extend martial law and suspend the privilege of writ of *habeas corpus*.

106. In an attempt to substantiate the alleged human rights violations, Cullamat, et al. mention a report prepared by Kalinaw Mindanaw[113] and by Karapatan.[114] Nevertheless, the petitioners did not attach any document to support their claim and thus cannot substantiate the alleged human rights violations. Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[115]

107. Besides, the claims of the leftist organizations above are contradicted by the facts. In the letter of the Armed Forces of the Philippines Chief of Staff Rey Leonardo Guerrero to the President requesting the extension of the proclamation of martial law,[116] there was a categorical statement that "[i]n seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same

[112] Emphasis and underscoring supplied.
[113] Petition in G.R. No. 236061, p. 22, par. 81.
[114] *Id.* at 24, par. 87.
[115] MOF Company, Inc. v. Shin Yang Brokerage Corporation, G.R. No. 172822, 18 December 2009.
[116] See Annex C-2 of the Petition in G.R. No. 235935.

manner that it had dutifully done so for the whole duration of Martial Law to date, **without any reported human rights violation and/or incident of abuse of authority.**"[117] According to the Armed Forces of the Philippines Human Rights Office, there are no formal complaints filed in their office for violation of human rights against any member or personnel of the AFP during the implementation of martial law in Mindanao.[118] The categorical statement of the AFP, who have in their favor the presumption of regularity in the performance of official duties which the records failed to rebut,[119] should prevail over any baseless and unsubstantiated allegation of the petitioners.

108. As to the argument of Cullamat, et al., that the President asked for the extension of martial law as a subterfuge to quell legitimate dissent, they cite as proof online news articles of the President's supposed pronouncements before the press against groups such as *Piston*, *Karapatan*, *Tindig Pilipino* and *Kilusang Mayo Uno*.[120] The petitioners also cite a news article by Inquirer entitled "Makabayan flags rights violations under martial law in Mindanao" in support of the allegation that Kabataan Partylist representative Sarah Jane Elago submitted a report to President Duterte about human rights violations as a consequence of martial law in Mindanao.[121]

109. For one, the Court had already settled in ***Lagman***[122] that "news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted." In fact, the Court stated in ***Lagman*** that online news articles are without probative value. The same well-settled ruling should apply with equal force now.

110. For another, the question of whether the Congress had sufficient factual basis to extend the proclamation and suspension may be resolved without delving into matters

---

[117] *Id.* at 4; emphasis supplied.
[118] Letter from AFPHRO to Office of the Judge Advocate General dated January 11, 2018, attached as Annex "6."
[119] G.R. No. 160718, 12 May 2010.
[120] Petition in G.R. No. 236061, pars. 79 and 80, pp. 20 – 21.
[121] *Id.* at p. 22, par. 80.
[122] G.R. No. 231658, July 4, 2017.

outside of what was considered by Congress, including, among others, the President's pronouncements before the press. Stated otherwise, any such statement or act on the part of the President is irrelevant in arriving at the determination of whether rebellion does persist, and that public safety requires that Congress extend martial law and the continue the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

111. It is also specious for Cullamat, et al. to assert that the inclusion of the phrase, "coddlers, supporters, and financiers" of armed rebel groups (in the Letter of the Secretary of National Defense to the President recommending the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao) further evinces the lack of any legitimate aim for such extension.[123]

112. The Court already pronounced in ***Lagman***[124] that "rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the [Revised Penal Code]." In this regard, Article 135 of the Revised Penal Code, as amended by Republic Act No. 6968, provides for those persons who may be held liable for rebellion, as follows:

> Art. 135. *Penalty for rebellion, insurrection or coup d'etat.* — **Any person who promotes, maintains, or heads rebellion or insurrection shall suffer the penalty of reclusion perpetua**.
>
> **Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of reclusion temporal.**
>
> Any person who leads or in any manner directs or commands others to undertake a coup d'etat shall suffer the penalty of reclusion perpetua.
>
> Any person in the government service who participates, or executes directions or commands of others

[123] Petition in G.R. No. 236061, p. 23, pars. 85 and 86.
[124] G.R. No. 231658, July 4, 2017.

> in undertaking a *coup d'etat* shall suffer the penalty of prision mayor in its maximum period.
>
> Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a *coup d'etat* shall suffer the penalty of reclusion temporal in its maximum period.
>
> When the rebellion, insurrection, or *coup d'etat* shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, as performed similar acts, on behalf or the rebels shall be deemed a leader of such a rebellion, insurrection, or *coup d'etat*.[125]

113. It is in the context of the Revised Penal Code that the term "coddlers, supporters, and financiers"[126] of armed rebel groups in Secretary Lorenzana's letter should be understood. Thus, even those who are merely participating or executing the commands of others in a rebellion as coddlers, supporters and financiers should be penalized under the crime of rebellion. The President, after all, has the solemn duty to faithfully execute all laws,[127] and may seek the prosecution and arrest of anyone whose acts constitute rebellion.

114. As the Court held in ***Lagman***,[128] "the importance of martial law in the context of our society should outweigh one's prejudices and apprehensions against it. The significance of martial law should not be undermined by unjustified fears and past experience. After all, martial law is critical and crucial to the promotion of public safety, the preservation of the nation's sovereignty and ultimately, the survival of our country. It is vital for the protection of the country not only against internal enemies but also against those enemies lurking from beyond our shores. As such, martial law should not be cast aside, or its scope and potency limited and diluted, based on bias and unsubstantiated assumptions."

---

[125] Emphasis supplied.
[126] Petition in G.R. No. 236061, p. 23, pars. 85 and 86; *See* Letter dated 4 December 2017.
[127] 1987 CONSTITUTION, Article VII, Sec. 17.
[128] G.R. Nos. 231658, 231771 & 231774, 4 July 2017.

c. The extension of martial law and the suspension of the privilege of the writ of *habeas corpus* did not intend to violate human rights or quell legitimate redress of grievances against the government.

115. Cullamat, et al. inappropriately argue that the absence of martial law has not restrained the armed forces from bombing, killing, or arresting the Maute and Bangsamoro Islamic Freedom Fighters. They aver that human rights violations intensified during martial law and the suspension of the privilege of the writ of *habeas corpus.* They rely on several reports documenting alleged human rights violations committed during the period of martial law. According to the petitioners, martial law constitutes an actual threat to the rights and liberties of Filipinos, particularly those who are critical of the President. They contend that the inclusion of "coddlers," "supporters," and "financiers" opens the floodgates to further attacks against anybody.[129]

116. The alleged human rights abuses can be best addressed through complaints filed before the courts. The abuses cannot be ventilated and redressed in a *sui generis* proceeding under Section 18, Article VII of the 1987 Constitution. In ***Lagman***,[130] the Court explained:

> Clearly, therefore, there is no need for the Court to determine the constitutionality of the implementing and/or operational guidelines, general orders, arrest orders and other orders issued after the proclamation for being irrelevant to its review. Thus, any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding….

[129] Petition in G.R. No. 236061, par. 80-89.
[130] G.R. No. 231658, July 4, 2017.

117. Indeed, in a petition filed under Section 18, the scope of judicial review is limited to determining 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...." Determining the sufficiency of the factual basis relates to the grounds upon which actual invasion or rebellion exists and poses a danger to public safety.[131] The alleged human rights violations and their possible recurrence are irrelevant to the determination of the validity of the proclamation of martial law or its extension.

118. In any event, the petitioners' fear of intensified human rights violations arising from the declaration and extension of martial law is unfounded. The 1987 Constitution itself lays down the safeguards to protect human rights in a state of martial law. For one, the Constitution, particularly the Bill of Rights, continues to operate. For another, the functioning of civil courts is not supplanted. The suspension of the privilege of the writ of *habeas corpus* applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion. Finally, any person arrested or detained shall be judicially charged within three days.[132]

119. Apart from the constitutional safeguards, there are various statutes that protect and uphold human rights during martial law. These include R.A. No. 7438 on persons under custodial investigation, R.A. No. 9372 on persons detained for the crime of terrorism, and R.A. No. 9745 on the non-employment of physical or mental torture on an arrested individual, among others.

120. In his Separate Concurring Opinion in ***Lagman***,[133] Justice Presbitero Velasco, Jr. enumerated other statutes intended for the protection of human rights. His list of laws was not confined to the rights of the accused: R.A. No. 8371 or the Indigenous Peoples' Rights Act of 1997, R.A. No. 9201

[131] Separate Concurring Opinion of Associate Justice Noel G. Tijam in Lagman vs. Medialdea, *supra*.
[132] Article VII, Section 18 of the 1987 Constitution.
[133] G.R. No. 231658, July 4, 2017.

or the National Human Rights Consciousness Week Act of 2002, R.A. No. 9208 or the Anti-Trafficking in Persons Act of 2003, R.A. No. 9262 or the Anti-Violence Against Women and their Children Act of 2004, R.A. No. 9344 or the Juvenile Justice and Welfare Act of 2006, R.A. No. 9710 or the Magna Carta of Women, R.A. No. 9851 or the Philippine Act on Crimes Against Humanitarian Law, Genocide, and Other Crimes Against Humanity, R.A. No. 10168 or the Philippine Disaster Risk Reduction and Management Act of 2012, R.A. No. 10353 or the Anti-Enforced or Involuntary Disappearance Act of 2012, R.A. No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012, R.A. No. 10368 or the Human Rights Victims Reparation and Recognition Act of 2013, and R.A. No. 10530 or the Red Cross and Other Emblems Act of 2013. These laws remain in full force and effect during a state of martial law. There is nothing in the 1987 Constitution that prescribes the suspension of their effectivity during martial law.

121. Human rights safeguards against abuses during martial law are undeniably in place. This is precisely how the framers envisioned a state of martial law under the 1987 Constitution. Thus ***Lagman*** elucidated:

> Conscious of these fears and apprehensions, the Constitution placed several safeguards which effectively watered down the power to declare martial law. The 1987 Constitution "[clipped] the powers of [the] Commander-in-Chief because of [the] experience with the previous regime." Not only were the grounds limited to actual invasion or rebellion, but its duration was likewise fixed at 60 days, unless sooner revoked, nullified, or extended; at the same time, it is subject to the veto powers of the Court and Congress.
>
> Commissioner Monsod, who, incidentally, is a counsel for the Mohamad Petition, even exhorted his colleagues in the Constitutional Convention to look at martial law from a new perspective by elaborating on the sufficiency of the proposed safeguards:
>
> MR. MONSOD…
>
> Second, we have been given a spectre of *non sequitur,* that the mere declaration of martial

> law for a fixed period not exceeding 60 days, which is subject to judicial review, is going to result in numerous violations of human rights, the predominance of the military forever and in untold sufferings. Madam President, we are talking about invasion and rebellion. We may not have any freedom to speak of after 60 days, if we put as a precondition the concurrence of Congress. That might prevent the President from acting at that time in order to meet the problem. So I would like to suggest that, perhaps, we should look at this in its proper perspective. We are only looking at a very specific case. We are only looking at a case of the first 60 days at its maximum. And we are looking at actual invasion and rebellion, and there are other safeguards in those cases.

Even Bishop Bacani was convinced that the 1987 Constitution has enough safeguards against presidential abuses and commission of human rights violations. In voting yes for the elimination of the requirement of prior concurrence of Congress, Bishop Bacani stated, *viz.:*

> BISHOP BACANI. Yes, just two sentences. The reason I vote II yes is that despite my concern for human rights, I believe that a good President can also safeguard human rights and human lives as well. And I do not want to unduly emasculate the powers of the President….

Commissioner Delos Reyes shared the same sentiment, to wit:

> MR. DE LOS REYES. May I explain my vote, Madam President.
>
> …. The power of the President to impose martial law is doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power, and the power to impose martial law is certainly felt to be one of no ordinary magnitude. But as presented by the Committee, there are many safeguards: 1) it is limited to 60 days; 2) Congress can revoke it; 3) the Supreme Court

> can still review as to the sufficiency of factual basis; and 4) it does not suspend the operation of the Constitution. To repeat what I have quoted when I interpellated Commissioner Monsod, it is said that the power to impose martial law is dangerous to liberty and may be abused. All powers may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power will be more safe and at the same time equally effectual. When citizens of the State are in arms against each other and the constituted authorities are unable to execute the laws, the action of the President must be prompt or it is of little value….[134] (Emphasis supplied)

122. Cullamat, et al. also advance the self-serving claim that martial law is directed against critics of the regime. Nevertheless, the President's letter[135] to Congress did not specifically refer to the "critics of the regime"[136] and "civilians who are critical of the present government"[137] as the targets of martial law.

123. On the contrary, the President's letter identified the following groups that need to be eradicated: "DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs), and their coddlers, supporters, and financiers …."[138]

124. The citation by Cullamat, et al., of several news articles[139] that reported the President's public attack on people's organizations is misplaced. They refer to issues outside of the subject matter of the instant case: the sufficiency of the factual basis for the extension of martial law. To be clear, the extension of martial law is premised on the urgency of crushing rebellion, not those critical of the government.

---

[134] G.R. No. 231658, July 4, 2017.
[135] Annex "A," Petition in G.R. No. 236061.
[136] Petition in G.R. No. 236061, par. 83.
[137] *Id.*, at par. 84.
[138] Annex "A," Petition in G.R. No. 236061.
[139] Petition in G.R. No. 236061, par. 79.

125. The inclusion of coddlers, supporters, and financiers within the coverage of martial law extension is nonetheless proper. They are within the ambit of Article 135 of the Revised Penal Code, particularly for those who promote or maintain rebellion. They can also fall within the coverage of Article 138 of the Revised Penal Code, for those who incite others to execute acts of rebellion, by means of speeches, proclamations, writings, emblems, banners or other representations.

126. The crime of rebellion is composed of a wide array of acts. In a state of rebellion, participants employ different means that are interconnected and geared towards the same objective.[140] Acting as coddler, expressing support for, and providing financial aid are acts in furtherance of rebellion. They tend to strengthen the resolve to take arms against the government and to remove from the allegiance to the government the territory of the Philippines, thereby depriving the President of his power or prerogatives.

127. Under the void-for-vagueness doctrine, a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.[141] The petitioners are mistaken in insisting on the vagueness of the terms "coddlers," "supporters," and "financiers."

128. In the first place, the Court is not dealing with a free speech case that would necessitate the application of the void-for-vagueness doctrine.[142] The factual sufficiency of the basis for the extension of martial law is not anchored on whether the freedom of speech is restricted.

129. Besides, Cullamat, et al. have not demonstrated that the President's letter requesting the Congress for another extension of martial law is vague in all its application.[143] They miserably failed to show that men of common intelligence cannot understand the meaning of

[140] People vs. Dasig, GR No. 100231, April 28, 1993.
[141] Ermita-Malate Hotel and Motel Operators Association v. City Mayor, G.R. No. L-24693, July 31, 1967.
[142] Cf. Romualdez vs. Sandiganbayan, G.R. No. 152259, July 29, 2004.
[143] See David vs. Arroyo, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, May 3, 2006.

"coddlers," "supporters," and "financiers." There is nothing technical about the definition of those terms. After all, words should be construed according to their ordinary meaning.[144]

V. THE PETITIONERS HAVE NOT ESTABLISHED THE NEED FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR INJUNCTION.

130. All the petitioners are applying for an injunctive relief before the Court allegedly "in order to protect their substantive rights and interests while this case is pending before the Honorable Court".[145] They pin their hopes on the general statement that "[f]rom all the foregoing, Petitioners were able to show that they are entitled to the to the issuance of an injunctive relief for having complied with the requirements set forth under the Rules, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage."

131. Both the writ of preliminary injunction and TRO are preservative remedies for the protection of substantive rights and interests. Essential to the grant of injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately.[146]

132. Under Section 3, Rule 58 of the Rules of Court, a preliminary injunction may be granted if the following grounds are established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b)

[144] Romualdez vs. Sandiganbayan, *supra*.
[145] Petition in G.R. No. 236061, par. 98, pp. 30-31.
[146] Australian Professional Realty, Inc., et al. vs. Municipality of Padre Garcia Batangas Province, G.R. No. 183367, March 14, 2012.

That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; and (c) That the party, court, agency or a person is doing, threatening, or is attempting to do or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

133. In other words, to be entitled to the injunctive writ, the petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[147]

a. The petitioners have no clear legal right as there is no violation of the Constitution. Thus, there is no invasion of right sought to be protected which is material and substantial.

134. The petitioners failed to show a clear and unmistakable right to a TRO and writ of injunction.

135. As a strong arm of equity, a temporary restraining order should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[148] The *onus probandi* is on the pleader to prove the existence of these requisites.[149] Indeed, before an injunction may be issued, the legal right of the applicant to said relief must not only exist, but must be **clear and unmistakable** and that the acts against which the writ is to be directed are violative of the said right.[150]

---

[147] *Id.*
[148] China Banking Corporation v. Sps. Harry Ciriaco and Esther Ciriaco, G.R. No. 170038, 11 July 2012.
[149] Tanduay Distillers, Inc. v. Ginebra San Miguel, Inc., G.R. No. 164324, 14 August 2009.
[150] Government Service Insurance System v. Florendo, G.R. No. 48603, 29 September 1989, 178 SCRA76.

136. This is the pronouncement of the Court in *Arcega v. Court of Appeals*:[151]

> For the issuance of the writ of preliminary injunction to be proper, it **must be shown that the invasion of the right** sought to be protected **is material and substantial**, that the **right of complainant is clear and unmistakable** and that **there is an urgent and paramount necessity for the writ** to prevent serious damage.
>
> In the absence of a clear and legal right, the issuance of the injunctive writ constitutes grave abuse of discretion [;] injunction is not designed to protect contingent or future rights. **Where the complainant's right or title is doubtful or disputed, injunction is not proper**. **The possibility of irreparable damage, without proof of actual existing right is no ground for an injunction**."[152]

137. In other words, the right of the applicant must be clear and unmistakable, that is, that the right is actual, clear and positive especially calling for judicial protection.

138. The petitioners have run smack into an insuperable obstacle. A TRO or a writ of preliminary injunction to restrain the implementation or extension of martial law is not provided for under the Constitution. No law permits it. The petitioners also failed to present and prove their clear and unmistakable right to prevent possible the alleged human rights violations.

139. Some of the petitioners are legislators who actively participated and cast their votes as members of Congress during the consideration, deliberation and voting on the resolution approving the request for extension of martial law and suspension of the writ of *habeas corpus* by the President. They cannot run to the courts to defeat the wisdom of the majority of the members of the Congress. If they have any right, that is merely to file a petition directly asking the Court to review the sufficiency of the basis of the

[151] 275 SCRA 176, 7 July 1997.
[152] *Id.* at 180; emphasis and underscoring supplied.

proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in an appropriate proceeding.

b. The petitioners failed to show that they will suffer any grave and irreparable injury if any injunctive relief is not issued.

140. Under Section 5, Rule 58 of the Rules of Court, the requirement for grave or irreparable injury must be established by an applicant for injunctive relief:

> No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to been joined, except as herein provided…."[153]

141. An injury will only be considered irreparable if the same cannot be measured with reasonable accuracy and it is not susceptible of mathematical computation. In *Australian Professional Realty, Inc., et al. v. Municipality of Padre Garcia Batangas Province,*[154] the Supreme Court explained:

> Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy. In this case, petitioners have alleged that the loss of the public market entails costs of about ₱30,000,000 in investments, ₱100,000 monthly revenue in rentals, and amounts as yet unquantified – but not unquantifiable – in terms of the alleged loss of jobs of APRI's employees and potential suits that may be filed by the leaseholders of the public market for breach of contract. Clearly, the injuries alleged by petitioners are capable of pecuniary estimation. Any loss petitioners may

[153] Emphasis and underscoring supplied.
[154] G.R. No. 183367, 14 March 2012.

> suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. With respect to the allegations of loss of employment and potential suits, these are speculative at best, with no proof adduced to substantiate them.[155]

142. In *Philippine Virginia Tobacco Administration v. De los Angeles*,[156] the Court explained that injury is irreparable if:

> [I]t is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.[157]

143. It is not sufficient for the petitioners to just make a general averment that they are entitled to injunctive relief stating the facts showing their entitlement thereto. The injunctive writ is conditioned on the existence of a clear and positive right of the applicant which should be protected, the writ being the strong arm of equity, an extraordinary peremptory remedy which can only be availed of only upon the existence of well-defined circumstances. Be that as it may, the writ must be used with extreme caution, affecting as it does the respective rights of the parties. In fine, the writ should be granted only when the court is fully satisfied that the law permits it and the emergency demands it, for the very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action, probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits. Where the facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[158]

144. While Cullamat, et al., claim that human rights violations intensified when President Duterte imposed martial law and suspended the privilege of the writ of

---

[155] *Id*. at 264; emphasis and underscoring supplied.
[156] G.R. No. L-27829, 19 August 1988.
[157] Emphasis and underscoring supplied; citations omitted.
[158] St. James College of Parañaque vs. Equitable PCI Bank, G.R. No. 179441, August 9, 2010.

habeas corpus,[159] they miserably failed to substantiate such allegation. The alleged human rights violations cited in the petition are based on unverified and hearsay reports which cannot be made the basis by the Court of its grant of an injunctive relief to petitioners. Besides, the petitioners miserably failed to show that the alleged human rights violations are directly attributable to President Duterte's imposition of martial law and suspension of the privilege of the writ of *habeas corpus* as there is in fact no proof that criminal cases had been actually instituted against the state agents who were allegedly responsible therefor. Certainly, a mere allegation, in the absence of any support in the record, does not meet the standard proof that would warrant the issuance of an injunctive relief.[160] An application for injunctive relief is construed strictly against the pleader. Also, the possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction to issue.[161]

145. The petitioners' fears that martial law "will target civilians who have no participation at all in any armed uprising or struggle"[162] and "that the inclusion of alleged 'coddlers', 'supporters' and 'financiers' will open the floodgates to further attacks against anybody,"[163] are more imagined than real. Injunction, whether preliminary or final, is to designed to protect contingent or future rights. An injunction will not issue to protect a right *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. The possibility of irreparable damage, without proof of violation of an actual existing right, is no ground for an injunction being mere *damnum absque injuria*.[164] Consequently, there is no urgent and paramount necessity for the injunctive writ to prevent serious and irreparable damage to petitioners in this case.

146. Besides, as a remedy anchored on equity, a TRO or writ of injunction cannot override, prevent or diminish an express power granted to the President of the Republic of

---

[159] Petition in G.R. No. 236061, p. 22.
[160] Sales and Agonias, et al. vs. SEC, State Investment House, Inc., G.R. No. L-53330, January 13, 1989.
[161] Palm Tree Estates, Inc. Vs, Philippine National Bank, G.R. No. 159370, October 3, 2012.
[162] Petition in G.R. No. 236061, p. 28.
[163] *Id.*
[164] Mamba, et al. vs. Lara, et al., G.R. No. 165109, December 14, 2009.

the Philippines by no less than the Constitution. Indubitably, the Commander-in-Chief powers of the President as vested by the Constitution can only be balanced by an Act of the Congress.

c. A TRO or writ of injunction interferes with and impedes the martial law power granted to the President.

147. A TRO or injunctive relief is not available to the petitioners in this case as the Honorable Court's power of review is limited only to the determination of whether is there is sufficient factual basis for the extension of the President's martial law proclamation.

148. Although they are remedies anchored on equity, a TRO and an injunctive relief cannot override, prevent or diminish an express power granted to the President of the Republic of the Philippines by no less than the Constitution.

149. The declaration or extension of Martial Law and suspension of the privilege of the writ of *habeas corpus* is an extraordinary power of the President granted unto him by the Constitution to quell a prevailing rebellion or invasion. As the Court emphasized in ***Kulayan vs. Gov. Tan***,[165] the Commander-in-Chief powers of the President as vested by the Constitution can only be balanced by the act of Congress:

> Springing from the well-entrenched constitutional precept of One President is the notion that there are certain acts which, by their very nature, may only be performed by the president as the Head of the State. One of these acts or prerogatives is the bundle of Commander-in-Chief powers to which the "calling-out" powers constitutes a portion. **The President's Emergency Powers, on the other hand, is balanced only by the legislative act of Congress** …:
>
> … … …

[165] G.R. No. 187298, July 03, 2012.

> Article 7, 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. 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, 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.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof. By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. **As noted in Villena, "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law**.[166]

150. If a TRO or an injunctive writ were to be issued to stop the proclamation of Martial Law or its extension, it would constitute an amendment of the Charter. It would also be tantamount to judicial legislation as it would fashion a "shortcut" remedy other than the power of review established under Section 18, Article VII of the Constitution.

[166] G.R. No. 187298, July 03, 2012; emphasis and underlining supplied; citations omitted.

151. The issuance of a TRO or an injunctive writ would set a bad precedent as it would effectively tie the hands of the President in addressing the dangers or emergencies at hand. As Justice Mendoza stated in his Concurring Opinion in ***Lagman***:

> It must be borne in mind that it is the people, through the Constitution, who entrusted to the president their safety and security. They gave him enough latitude and discernment on how to execute such emergency powers. If the Framers did not so cramp him, **it is not for the Court to impose restrictions. To do so is dangerous for it would tie up the hands of future presidents facing the same, if not more serious, critical situations.** At any rate, the Framers have put in place several safeguards to prevent violations of the constitutional and other human rights.[167]

PRAYER

Wherefore, the respondents respectfully pray that this Honorable Court:

1) **DENY DUE COURSE** to the Petitions, and

2) **DISMISS** the Petitions for lack of merit.

The respondents also request such other just and equitable relief as this Honorable Court may deem fit.

Makati City, for Manila, January 13, 2018.

[167] Separate Concurring Opinion, *Lagman* v. Medialdea, *supra,* p. 7.