

Republic of the Philippines
SUPREME COURT
Manila

EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, ATTY. NERI JAVIER COLMENARES, DR. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., CRISTINA E. PALABAY, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN’S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS’ REPRESENTATIVES ANTONIO L. TINIO AND FRANCISCA L. CASTRO, AND KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO,

Petitioners,

- versus -

G.R. No.

**PRESIDENT RODRIGO DUTERTE,
SENATE PRESIDENT AQUILINO
PIMENTEL III, HOUSE SPEAKER
PANTALEON ALVAREZ, EXECUTIVE
SECRETARY SALVADOR MEDIALDEA,
DEFENSE SECRETARY DELFIN
LORENZANA, ARMED FORCES OF THE
PHILIPPINES CHIEF-OF-STAFF GEN. REY
LEONARDO GUERRERO, PHILIPPINE
NATIONAL POLICE DIRECTOR-GENERAL
RONALDO DELA ROSA,**

Respondents.

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PETITION
WITH URGENT PRAYER FOR THE ISSUANCE OF A
TEMPORARY RESTRAINING ORDER AND/OR WRIT OF
PRELIMINARY INJUNCTION

PETITIONERS, through Counsel, unto this Honorable Court,
most respectfully state:

PREFATORY

A specter is haunting Mindanao – the specter of Martial Law. The executive and the legislative branches of government have entered into an unholy alliance to summon this specter: peddling imagined fears of the persistence of enemies the government had claimed to have already vanquished, whimsically shifting the discourse on a decades-old armed struggle rooted in prevailing poverty and social inequality towards a nebulous narrative of “terrorism.” None serves as basis for the extension of Martial Law, its previous declaration a tragedy, its perpetuation a farce.

Nonetheless, whether the extension of Martial Law in Mindanao is rooted in fear, fancy, or plain and simple malevolence, its effects on people’s rights, lives and liberties are all too real. Petitioners come before this Honorable Court, armed with the enduring tenets of the Constitution, to seek the exorcism of this specter. After all, it is **every** Filipino’s sworn duty to guard against and oppose any attempt, any threat and any transgression to our vital freedoms and democracy.

NATURE OF THE PETITION

1. This is a Petition under Section 18, Article VII of the 1987 Constitution which seeks to declare as NULL and VOID the approval of both Houses of Congress of the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao from 01 January 2018 to 31 December 2018.

2. Petitioners invoke the power of judicial review to determine the sufficiency of the factual basis for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* (or any extension thereof) under the aforesaid constitutional provision which states that:

Article VII EXECUTIVE DEPARTMENT

Section 18. xxx.

xxx.

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

3. Petitioners are all suing in their capacity as citizens in accordance with the abovementioned provision.

PARTIES

THE PETITIONERS

4. The following Petitioners are all residents from the Mindanao region:

- a. **EUFEMIA CAMPOS CULLAMAT**, is a Filipino, of legal age, and a Lumad residing in *Han-Ayan Diatagon*, Surigao del Sur. She is a council member of *Maluhutayong Pakigbisog Alang Sumusunod (MAPASU) or Continuing Struggle for the Next Generation* with office address at United Church of Christ in the Philippines (UCCP), Haran Compound, Fr. Selga St., Madapo Hills, Davao City;
- b. **NOLI VILLANUEVA**, is a Filipino, of legal age, and from Compostela Valley. He is the Chairperson of the Compostela Farmers Association (CFA) with office address at United Church of Christ in the Philippines (UCCP), Haran Compound, Fr. Selga St., Madapo Hills, Davao City;
- c. **RIUS VALLE**, is a Filipino, of legal age, and the Spokesperson of Save Our

Schools Network. His office address is at with office address at United Church of Christ in the Philippines (UCCP), Haran Compound, Fr. Selga St., Madapo Hills, Davao City;

- d. REPRESENTATIVE **CARLOS ISAGANI T. ZARATE**, was born in Mindanao and currently resides in Davao City. He is a Filipino, of legal age, and the incumbent BAYAN MUNA Representative with office address at Room N-210 House of Representatives, Quezon City;
- e. REPRESENTATIVE **ARIEL B. CASILAO**, was born in Mindanao and currently resides in Davao City. He is a Filipino, of legal age, and the incumbent ANAKPAWIS Partylist Representative with office address at Room S-608 House of Representatives, Quezon City;

5. **ATTY. NERI JAVIER COLMENARES**, is a Filipino, of legal age, a former lawmaker, a human rights victim during martial law and currently the Chairperson of the National Union of Peoples' Lawyers (NUPL). His office address is at the 3/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

6. **DR. MARIA CAROLINA P. ARAULLO**, Filipino, of legal age, and chairperson of the Bagong Alyansang Makabayan (BAYAN) with office address at 4/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

7. **RENATO M. REYES, JR.**, is a Filipino, of legal age, is the Secretary-General of the Bagong Alyansang Makabayan (BAYAN) with office address at 4/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

8. **CRISTINA E. PALABAY**, is a Filipino, of legal age, is the Secretary-General of KARAPATAN with office address at 2/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

9. REPRESENTATIVE **EMERENCIANA A. DE JESUS**, is a Filipino, of legal age, and the incumbent GABRIELA WOMEN'S PARTY Representative with office address at Room SWA-426 House of Representatives, Quezon City;

10. REPRESENTATIVE **ARLENE D. BROSAS**, is a Filipino, of legal age, and the incumbent GABRIELA WOMEN'S PARTY Representative with address at Room 604 South Building, House of Representatives, Batasan Hills Quezon City;

11. REPRESENTATIVE **ANTONIO L. TINIO**, is a Filipino, of legal age, and the incumbent ACT TEACHERS PARTYLIST Representative with office address at Room 511 South Building, House of Representatives, Quezon City;

12. REPRESENTATIVE **FRANCISCA L. CASTRO**, is a Filipino, of legal age, and the incumbent ACT TEACHERS PARTYLIST Representative with office address at Room 611 South Building, House of Representatives, Quezon City;

13. REPRESENTATIVE **SARAH JANE I. ELAGO**, is a Filipino, of legal age, and the incumbent KABATAAN PARTYLIST Representative with office address at Room 616 North Building, House of Representatives, Quezon City.

THE RESPONDENTS

14. **PRESIDENT RODRIGO ROA DUTERTE** is the current President of the Philippines. He issued Proclamation No. 216 on May 23, 2017 placing the entire Mindanao region under martial law and sought its extension before the House of Representatives. His office address is at the Office of the President, Malacañang Palace, Manila;

15. **SENATOR AQUILINO PIMENTEL III** is the current Senate President with office address at Rooms 606-609 & 1 (New Wing 5/F) GSIS Building, Financial Center, Diokno Blvd., Pasay City;

16. **SPEAKER PANTALEON D. ALVAREZ**, is the current Speaker of the House of Representatives, with office address at Room 217-218 House of Representatives, Quezon City;

17. **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA** is tasked with overseeing the issuance of Proclamation No. 216 under the authority of President Duterte. His office address is at Malacañang Palace, Manila;

18. **SECRETARY DELFIN LORENZANA** is the Secretary of National Defense also tasked to implement Proclamation No. 216. His office address is at the Office of the Secretary, Department of National Defense, Segundo Ave., Camp General Emilio Aguinaldo, Quezon City;

19. **GENERAL REY LEONARDO GUERRERO** is the Chief of Staff of the Armed Forces of the Philippines. His office address is at the Armed Forces of the Philippines, Camp General Emilio Aguinaldo, EDSA, Quezon City; and

20. **CHIEF SUPERINTENDENT RONALDO “BATO” DELA ROSA** is the Director General of the Philippine National Police tasked to implement Proclamation No. 216. His office address is at the Philippine National Police, Camp Crame, EDSA corner Boni Serrano Avenue, Quezon City.

STATEMENT OF RELEVANT FACTS

21. On 23 May 2017, former Palace spokesperson Ernesto Abella conducted a press conference in Moscow announcing the declaration of martial law in Mindanao, claiming that fighting has erupted in Marawi City when state security forces attempted “to serve a warrant of arrest on Isnilon Hapilon” in Barangay Basak, Marawi City.

22. President Duterte announced on 24 May 2017 the issuance of Proclamation No. 216 declaring martial law and suspending the privilege of the writ of *habeas corpus* in the entire Mindanao on the ground of rebellion.

23. Petitioner-Representatives Tinio, Brosas and Elago, with the other Makabayan Representatives, filed on 30 May 2017 the House Joint Resolution No. 13, Joint Resolution To Convene Both Houses of Congress in Joint Session For the Revocation of Proclamation No. 216, Series of 2017 (Declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao) in Accordance with Art. VII, Sec. 18 of the 1987 Constitution.

24. Both Houses of Congress, however, did not convene in Joint Session and subsequently passed their separate respective resolutions expressing support for the imposition of Martial Law in Mindanao. The leaders of both Houses argued that there is no need to convene a joint session since the action of both Houses supported the imposition. They claimed that both Houses will hold a joint session only in instances where they will revoke the imposition of martial law.

25. Petitions questioning the proclamation were filed before the Honorable Court, anchored on the ground that there is no sufficient factual basis for the declaration of martial law in the entire Mindanao. Some of the Petitioners in this instant case are also

Petitioners in the Cullamat Petition in Cullamat et. al. vs Duterte et. al. (G.R. No. 231658).

26. In a Decision dated 04 July 2017, the Honorable Court upheld the constitutionality of Proclamation 216.

27. On 22 July 2017, Congress approved the extension of Martial Law in Mindanao to 31 December 2017.

28. On 17 October 2017, President Duterte declared the liberation of Marawi after a five-month battle with the Maute Group. During this period, 98% of the population of Marawi or about 353,921 were displaced and up to 205,018 children and adolescents between the ages of 18 and 19 were affected by the conflict.¹

29. Despite the declaration of the liberation of Marawi from the Maute Group, President Duterte forwarded a letter dated 08 December 2017, to both Houses of Congress requesting for the extension of the proclamation of martial law and the suspension of the Writ of Habeas Corpus citing the grounds thereof. A copy of the said letter is attached hereto as **Annex “A.”** The letter states:

*“On 04 December 2017 I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, stating that, **“based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure the total eradication of 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 xxx.” xxx.”***

30. Petitioner lawmakers from the Makabayan block, strongly opposed the proposed extension and in fact decried the precipitous process by which the approval was reached.

¹<https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Philippines%20Humanitarian%20SitRep%20Marawi%20City%20November%2010%20-%20FINAL.pdf> last accessed on 04 January 2018.

31. The opposition to martial law extension is even stronger outside Congress as 62% of Filipinos opposed the extension according to a survey.²

32. Despite all these, both Houses of Congress approved the extension of Martial law in the entire Mindanao from 01 January 2018 to 31 December 2018.

ISSUE

THE PRIMORDIAL ISSUE IS WHETHER THERE IS SUFFICIENT FACTUAL BASIS FOR THE ONE-YEAR EXTENSION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE ENTIRE MINDANAO.

DISCUSSION/ARGUMENTS

I. THERE IS NO SUFFICIENT FACTUAL BASIS THAT WOULD WARRANT THE EXTENSION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN MINDANAO FOR ANOTHER 12 MONTHS.

a. The Marawi siege and other grounds under Proclamation 216 that were used as the alleged bases to justify the assailed declaration of martial law and the suspension of the privilege of the Writ of Habeas Corpus have already been resolved and no longer persist, thus there is with even more reason no sufficient factual basis for the extension of martial law or the suspension of the privilege.

33. What is at the core here is Section 18, Article VII of the 1987 Constitution which provides in part:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may,

² <http://newsinfo.inquirer.net/954489/62-oppose-martial-law-extension-in-mindanao-sws> last accessed on 04 January 2018.

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.**

xxx

34. It is clear from this constitutional provision that the extension of martial law and/or the suspension of the privilege of the writ of *habeas corpus* pertains to the original proclamation and suspension containing the grounds and the factual bases upon which the President exercised his extraordinary and strongest Commander-in-Chief powers.

35. It should be stressed that President Duterte announced on 24 May 2017, the issuance of Proclamation 216 declaring martial law and suspending the privilege of the writ of *habeas corpus* in the entire Mindanao on the ground of rebellion by the Maute Group, alleging the following factual bases:

a. that the government issued Proclamation No. 55 as a result of the attack of a military outpost by the Maute Group in February 2016 in Lanao del Sur and another attack on a Marawi prison in August 2016 to free their comrades.

b. That on May 23, 2017, the Maute group:

- i. attacked a hospital in Marawi City;
- ii. established checkpoints;
- iii. burned down government and private facilities inflicting casualties on government; and

iv. started flying the ISIS flag “in several areas.”

and that “*this (sic) recent attacks shows (sic) the capability of the Maute group and other rebel groups to sow terror and cause death and damage to property not only in Lanao del Sur but in other parts of Mindanao.*”

36. Proclamation 216 used the above acts of the Maute to prove the existence of rebellion. Assuming *arguendo* that Respondents have validly argued in Proclamation 216 that public safety requires the imposition of martial law, although they horrendously failed to mention this in said proclamation, these same grounds no longer constitute factual bases for its extension.

37. During the declaration of the liberation of Marawi last 17 October 2017, President Duterte announced: “***I hereby declare Marawi City liberated from the terrorist influence that marks the beginning of the rehabilitation of Marawi.***”³

38. On the same day and event, Col. Romeo Brawner, Deputy Commander of Joint Task Force Ranao was quoted *verbatim* as saying, “(The) declaration of the liberation of Marawi is a strategic statement, meaning it’s a message that we want to tell the world, **that tapos na po itong problema ng Maute-ISIS (that the Maute-ISIS problem is over). They cannot be victorious anymore. Wala na po, patapos na po.**”⁴

39. The Armed Forces of the Philippines (AFP), through its Spokesperson Major Gen. Restituto Padilla, in defending that the declaration of the liberation of Marawi was not premature, confirmed that the remnants of the Maute group in Marawi are mere stragglers “*that has no bearing in the security of the area.*”⁵

40. Hence, by the government’s own admission, there actually exists no factual nor legal basis to support the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao – **for a longer period than the original one at that** - considering that the facts constituting the rebellion and threat to public safety in the assailed original proclamation, have already been resolved and no longer persist.

³ <http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html> last accessed on 04 January 2018.

⁴ *Id.*

⁵ <http://newsinfo.inquirer.net/942686/afp-no-premature-declaration-of-liberation-in-marawi-afp-marawi-padilla-stragglers> last accessed on 04 January 2018.

41. Even in the letter forwarded by the President to both Houses of Congress citing the new alleged grounds that would warrant the extension, assuming without conceding that these are true, would still not logically and legally justify an extension because they do not rise to the level of rebellion that constitutes a threat to public safety as contemplated by the Constitution

42. Being new and different from those relied upon in Proclamation No. 216, the Honorable Court's ruling affirming the validity of Proclamation No. 216 cannot be employed to justify the extension based on the grounds in the 08 December 2017 letter of Presidente Duterte to Congress.

b. There is no sufficient factual basis to extend the imposition of martial law and the suspension of the privilege of the writ of habeas corpus for the entire Mindanao because the rebellion relied upon by the public Respondents does not endanger public safety as contemplated by the Constitution.

43. In the 08 December 2017 letter of President Duterte to the Philippine Congress, citing the report of Respondent DND Secretary and Martial Law Administrator Delfin N. Lorenzana, Respondent Duterte claimed that the request for one year extension of martial law was "**primarily** to ensure the total eradication of the DAESH inspired DIWM, other like minded Local/Foreign terrorist groups and Armed Lawless Groups, and the communist terrorists (CTs), and their coddlers, supporters and financiers".

44. Respondent Duterte also cited the following allegations as factual bases that rebellion exists and that public safety requires the continued imposition of martial rule and the suspension of the privilege of the writ of *habeas corpus*, to wit:

(a) "*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; You will please note that at least 185 persons listed in the Martial Law Arrest Orders have remained at large and IN ALL PROBABILITY are presently regrouping*

and consolidating their forces.(underscoring supplied)”⁶

- (b) *“the Turaife 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,”⁷*
- (c) *“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,”⁸*
- (d) *“the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboaga Peninsula remain as a serious security concern. xxx,”⁹*
- (e) *“the New People’s Army (NPA) 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 government infrastructure, purposely to seize political power through violent means and supplant the country’s democratic form of government with Communist rule.”¹⁰*

45. It is plain and simple that the Constitution requires two concurring requisites for the validity of the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*: first, the existence of actual rebellion and the second, that public safety so requires such imposition or suspension. Are these requisites present in this case?

46. The answer is in the negative

⁶ Page 2, Annex “A,” hereof.

⁷ Page 3, *id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Page 4, *id.*

47. To reiterate, at the risk of being repetitious, the alleged rebellion, being staged by these groups named in the 08 December 2017 letter of President Duterte, citing the report of the DND Secretary, ***does not endanger public safety as contemplated by the Constitution to justify*** the imposition of martial law and the suspension of the privilege the writ.

48. First, actual rebellion as contemplated under the 1987 Constitution as one of the requirements for the justified and valid imposition of martial law, is different from the general definition and concept of rebellion under Article 134 of the Revised Penal Code as the former qualifies the same to include the necessity of public safety.

49. Petitioners refer to the general definition of rebellion under Article 134 of the Revised Penal Code, to wit:

Art. 134. *Rebellion or insurrection; How committed.*

- The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

50. The Honorable Court, already clarified in the Mindanao Martial Law Petitions that the President's exercise of the gradation of powers refers to the hierarchy based on scope and effect, from the most benign to the least benign, to wit: the calling out power, the power to suspend the privilege of the writ of *habeas corpus*, and the power to declare martial law.¹¹

51. Being the least benign of all of the President's extraordinary Commander-in-Chief powers, martial law should be imposed with extreme caution, as a last resort and only within the constitutional safeguards found in Section 18, Article VII of the 1987 Constitution. These safeguards were borne out of the experience of the Filipino people who lost life, liberty and dignity during the dark years of martial law under the Marcos dictatorship. In this connection, it is once again instructive to remember that:

¹¹ See Note 3.

The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence. The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.¹²

52. Given the foregoing, it is logical and reasonable to conclude that for the purpose of imposing martial law, the Revised Penal Code definition, concept and its constitutive elements **are not sufficient by themselves** to warrant the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*.

53. Because, second, it is the **indispensable requirement of public safety** that qualifies the existence of actual rebellion that would justify the imposition of martial law._

54. The public safety requirement that qualifies actual rebellion is not the generic definition that simply means threat to the safety of the public. It is Petitioners' strong assertion that in employing it as a ground to impose martial law or suspend the privilege of the writ of *habeas corpus*, the threat to public safety must have **risen to a level that government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government offices, or at least the extreme difficulty of the courts, the local government and other government services to perform their functions.**

55. Such constitutional definition was reflected in Proclamation 1959 issued by President Gloria Arroyo in 2009 declaring martial law in Maguindanao:

¹² Bernas, The Intent of the 1986 Constitution Writers, 1995 ed., p. 456.

a) Proclamation 1959 first alleged the factual basis of rebellion, thus “Whereas, heavily armed groups in the province of Maguindanao have established positions to resist government troops thereby depriving the Executive of its powers and prerogatives to enforce the laws of the land to maintain public order and safety.

b) Proclamation 1959 then alleged the factual basis of the public safety requirement thus, “*Whereas, the condition of peace and order in the province of Maguindanao has deteriorated to the extent that local judicial system and other government mechanisms in the province are not functioning; thus, endangering public safety”.*

56. This is a logical conclusion based on the fact that martial law is essentially military rule: the military is called in because civilian authority can no longer function and is already substantially impaired. This conclusion finds support in the minutes of the deliberations of the 1987 Constitution where a key 1986 Constitutional Commission member and constitutional law authority was quoted as saying:

FR. BERNAS. This phrase was precisely put here because **we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are open then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.**

57. Hence, the Honorable Court, in the Mindanao Martial Law Petitions, mentioned public safety and enunciated it in this wise:

A state of martial law is peculiar because the President, at such a time, exercises police power, which is normally a function of the Legislature. In particular, the President exercises police power, with the military's assistance, **to ensure public safety and in place of government agencies**, which for the time being, **are unable to cope with the condition in a locality**, which remains under the control of the State.¹³

58. The question now therefore is, in the instant case, does the actual rebellion being perpetrated by the armed groups enumerated in the 08 December 2017 letter of President Duterte to the House of Representatives and the Senate, compromise public safety that would warrant the imposition of martial law?

59. Again, the answer is in the negative.

60. Martial law not only requires actual rebellion but that public safety requires its imposition. Imposing martial law to “**primarily** ensure the total eradication of the rebels”, absent these requisites, falls short and violates, *nay* mocks, the letter and intent of the Constitution.

61. The government's justification that public safety requires the extension of martial law in order to “**more importantly**, enable the government and the peoples of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development” only exposes the absence of factual basis for the extension.

62. In fact, a perusal of the President's Letter to Congress would show that the grounds used by Respondents to justify the extension of Proclamation is grasping at straws and may not even be used to justify the exercise of the President's calling out powers, much less martial law powers:

- a) The December 8 Letter's allegation of the rebels' efforts to “rebuild their organization through *recruitment and training of new members and fighters to carry on the rebellion*” cannot be the factual basis for martial law nor its extension, otherwise, the Philippines will be under martial law 24-7 as it is not unexpected of rebels to try to regroup and rebuild their organization .

¹³ Page 34, Decision.

- b) The claim that *“the Turaife Group has likewise been monitored to be planning to conduct bombings”* cannot be the factual basis for martial law, otherwise, the Philippines will be under martial law 24-7 as it is not unexpected of rebels to plan to conduct bombings.
- c) The claim that *“the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government”* cannot be the factual basis for martial law, otherwise, the Philippines will be under martial law 24-7 as it is natural for rebels to defy the government.

63. Additionally, official government pronouncements themselves negate Public Respondents’ grounds for the continued imposition of martial law in entire Mindanao.

64. In a statement made by then Presidential Spokesperson Ernesto Abella, he dismissed the attacks being perpetrated by the Bangsamoro Islamic Freedom Fighters (BIFF) in North Cotabato last June 2017 as a mere *“attempt to recover from more than two weeks of setbacks from ongoing operations of the Army’s 6th Infantry Division.”*¹⁴

65. Similarly, while the military is of course on guard against these attacks by the BIFF, Captain Arvin Encinas, the public affairs chief of the 6th Infantry Division of the Philippine Army admitted that they *“doubt the capability of the BIFF to proceed to areas far from Central Mindanao to sow terror xxx.”*¹⁵

66. AFP Spokesperson Brig. Gen. Restituto Padilla likewise declared last May 2017 that the Abu Sayyaf Group (ASG)’s strength was already reduced in half numbering to about 500, more or less. Padilla attributed this reduction to relentless military operations saying that, *“Nahihirapan na silang makipagsagupaan dahil nauubos na ang kanilang supply, kanilang mga bala, at ang kanilang suporta sa mga kababayan natin. Hindi na nalalayo ang pagbagsak ng grupong ito.”*¹⁶ In its latest report, Lt. Gen. Carlito Galvez, Jr., the head of the Western Mindanao Command, the

¹⁴ <http://www.philstar.com/headlines/2017/06/24/1713103/biff-attack-not-connected-marawi-siege-palace-military> last accessed on 04 January 2018.

¹⁵ *Id.*

¹⁶ <http://www.gmanetwork.com/news/news/nation/610704/abu-sayyaf-strength-reduced-to-half-afp-spokesman-padilla/story/> last accessed on 04 January 2018.

number had been reduced to 300 ASG fighters as of November 2017.¹⁷

67. Using the decades-old **pre-existing** armed struggle of the CPP-NPA-NDF to justify martial law's extension does not cure the fatal flaw of the absence of sufficient factual basis especially since this protracted armed conflict was not a ground in the original Proclamation 216. In fact, President Duterte, after declaring martial law, asked the CPP-NPA-NDF to join government efforts at battling the Maute as exemplified by the following media report:¹⁸

MANILA -- President Rodrigo Duterte has appealed to Muslim separatists and Maoist-led rebels to join his government's fight against Islamic State-linked militants.xxx

During a visit on Saturday to an army base on Jolo island, where government forces are fighting another Islamist group, the Abu Sayyaf, Duterte said he would treat communist and separatist guerrillas the same as government troops if they join his fight.

"I will hire you as soldiers - same pay, same privileges, and I will build houses for you in some areas," Duterte said, according to a video of his speech made available on Sunday. x x x

Duterte's offer to the Maoists comes after his government cancelled the latest round of peace talks with the NPA's political arm, accusing the rebels of planning more attacks.

68. While the armed struggle waged by the New People's Army (NPA) is unique and distinct, the Philippine communist rebellion being the longest-running in all of Asia and the rest of the world, and despite Respondents' claim that the NPA has launched intensified offensives against government forces, these do not constitutionally amount to a higher quantum of threat to public safety as of the moment to justify the need for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao.

¹⁷ <http://www.philstar.com/nation/2017/11/21/1761101/military-pushes-back-deadline-vs-abu-sayyaf> last access 04 January 2017.

¹⁸ <http://news.abs-cbn.com/news/05/28/17/duterte-asks-separatists-maoists-to-join-fight-against-maute-group>

69. In fact, civilian government or authority in Mindanao exists and is functioning. The 08 December 2017 letter of President Duterte requesting the one year extension of martial law did not cite any place where local courts or civilian authorities can no longer function or where their functions are substantially impaired because of the armed activities of the CPP-NPA.

70. No less than President Duterte himself belittled the capacity of the CPP-NPA in substantially impairing the functioning of or supplanting the civilian government or authority as he said *“even if we have to fight each other for another one hundred years, they cannot occupy and control one barangay. They cannot even capture one barangay, that’s the truth,”* he said.¹⁹

71. The National Security Policy 2017-2022, approved by President Duterte in April 2017 claimed that the CPP-NPA from a peak of 26,000 in 1980s has been reduced to 4,000; to wit: *“The communist rebellion being waged by, continues to pose serious peace and order problem in the country... While the NPA is believed to have fewer than 4,000 soldiers now, down from a peak of 26,000 in the 1980s, it retains support among the extremely poor in the rural Philippines.”*²⁰

72. There is no sufficient factual basis to impose martial law and suspend the privilege of the writ of *habeas corpus* to quell the CPP-NPA rebellion if we are to believe the claim of the AFP and the government that the armed strength of CPP-NPA has declined from a peak of 26,000 in 1980s to 4,000 sans martial law and the said writ suspension. According to the government itself, the CPP-NPA rebellion had not significantly impaired the functioning of civilian courts and local governments and authorities; hence said rebellion does not warrant the imposition of martial law as the constitutional standard of public safety is not met.

II. TO EXTEND MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS UNAWARRANTED AND UNJUSTIFIED AS THIS WOULD EXTEND THE ALARMINGLY INTENSIFIED AND INCREASED HUMAN RIGHTS VIOLATIONS AND IS AIMED AT QUELLING LEGITIMATE REDRESS OF GRIEVANCES AGAINST THE GOVERNMENT

¹⁹ (<http://www.philstar.com/headlines/2017/12/17/1769110/military-anticipating-stepped-npa-attacks>) last accessed on 05 January 2018.

²⁰ (<http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf>)

73. Respondents have until now failed to answer a very important question: what specific martial law powers does government need to quell the supposed armed rebels they wish to “completely eradicate”.

74. The absence of martial law has not previously restrained the AFP from bombing, killing or arresting the Maute, BIFF and other armed groups. The government has waged a relentless war against the CPP-NPA-NDF for decades now without need of martial law.

75. During the Zamboanga siege in 2014, the AFP set up massive checkpoints, conducted aerial bombings, used tanks in house to house combat, and used mortars against MNLF positions in the city all without the benefit of martial law.

76. Petitioners assert that martial law is not intended for these armed groups but actually against those who legitimately dissent or oppose government’s repressive policies and draconian actions in violation of the right to assembly, expression, association, redress of grievances and other constitutional rights, as the opposition, activists and media experienced when the dictator Marcos imposed martial law in 1972, an evident fact of which this Honorable Court has not only taken judicial notice but has clearly established in a line of decided cases .

77. President Duterte has by and large shown a paucity of tolerance for dissent and has publicly attacked institutions such as the Church, the Ombudsman, the Commission on Human Rights and even the media as well as Petitioners from people’s organizations like BAYAN and Piston for criticizing his anti-drug campaign, human rights record and other anti-people policies.

78. President Duterte has, without citing any basis, asserted that the opposition and the “left” are conspiring to overthrow him. The Duterte administration has used, and will use, its martial law powers against dissenters by using the Marcosian martial law tactic of linking dissenters with the communists and the terrorists.

79. President Duterte has by and large shown a paucity of tolerance for dissent and has publicly attacked institutions such as the Church, the Ombudsman, the Commission on Human Rights and even the media as well as Petitioners from people’s organizations like BAYAN and Piston for criticizing his anti-drug campaign, human rights record and other anti-people policies. **He public mentioned BAYAN, Karapatan, Tindig Pilipino and KMU, for example, without citing any evidence except that they are “in conspiracy with the rebellion going on” and threatened Piston merely**

because it opposed his jeepney phaseout policy. President Duterte's attacks are well-documented in legitimate news sources:

- ***“President Rodrigo Duterte calls some of the militant groups in the country as legal fronts of the Communist Party of the Philippines.”²¹***

Among the groups the President named are Piston, Karapatan, Tindig Pilipino and Kilusang Mayo Uno. The President also accused the groups of being rebels for supporting the enemies of the state.

Mr. Duterte cited Piston as an example, saying it poisons the minds of the people by opposing the Jeepney Modernization Program and even held a transport strike to cause inconvenience to the public.

The Chief Executive said the militants should not expect their aim of establishing a communist government, to happen. “We know you are one with the NPA. You are one great conspiracy. All of you are really committing rebellion right now,” he said.

- *Inquirer report on arrest of legal fronts:²²*

FORT MAGSAYSAY, Nueva Ecija — President Rodrigo Duterte on Wednesday said he would order the arrest not only of the communist rebels but “all legal fronts” aiding the Left.

“We will treat you as criminals; we will arrest you, including legal fronts. [The] legal fronts helping to topple government and sow terror,” Duterte said in a speech before the troops here.

The President had earlier said he would declare the New People's Army (NPA) as terrorists, adding that he would no longer want to pursue peace talks with the communists.

²¹ <https://www.untvweb.com/news/prrd-tags-militant-groups-cpps-legal-fronts/> last accessed on 07 January 2018.

²² <http://newsinfo.inquirer.net/946945/duterte-npa-new-peoples-army-communist-rebels-left-arrest-legal-front> last accessed on 07 January 2018.

80. In fact, human rights violations intensified and escalated when President Duterte imposed martial law and suspended the privilege of the writ of *habeas corpus*. Petitioner lawmaker Kabataan Partylist Representative Sarah Jane Elago submitted a report to President Duterte about human rights violations as a consequence of martial law in Mindanao. She enumerated, among others, 68 victims of political killings, 842 victims of illegal arrests, 416,000 displaced individuals and 357,659 victims of indiscriminate gunfire and airstrikes.²³ These did not even include properties devastated to the ground during the battle in Marawi. There are also documented cases of threats, harassment and intimidation in evacuation centers.²⁴

81. In a report prepared by Kalinaw Mindanaw, during the International Interfaith Humanitarian Mission, they cited the following abuses , among others:

- a. The arrest of Lala Arafat, a mechanic who became a leader of a group of evacuees in Lanao del Sur. After volunteering to help a man fix his motorcycle, he was arrested by the police after accusing him of fixing a motorcycle belonging to a Maute member.²⁵
- b. The killing of Ramos Malik, a mentally disabled person who was helping his family financially by collecting scraps and selling them. He was found dead after being seen in a video being apprehended by the military.²⁶
- c. The arrest, detention and torture of a 36-year old man and his two sons, who, after seeking shelter at an evacuation center, were picked up by the military and were forced to admit that they were members of the ISIS after having been heavily tortured by the military.²⁷

82. The Lumad community may have suffered some of the biggest blows before and most especially during martial rule in Mindanao. Militarization continues to displace many of them. President Duterte himself threatened the Lumad during a press briefing after his State of the Nation Address last July 2017. In a

²³ <http://newsinfo.inquirer.net/916197/makabayan-flags-rights-violations-under-martial-law-in-mindanao> last accessed on 05 January 2018.

²⁴ Breaking the Silence: Report of the National Interfaith Humanitarian Mission 2, Page 15.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

wanton and blatant violation of international human rights and humanitarian law, the AFP imposed food blockade and denied the entry of relief goods in evacuation centers in Lianga, Surigao del Sur. The evacuation center provides shelter to indigenous people belonging to the Lumad community who are continuously displaced by the ongoing military presence and operations in their communities.

83. To extend the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus* is not merely a dangerous precedent but is an actual threat to the rights and liberties of the Filipino people. First, it would result to increasing human rights violations and second, pronouncements made by the President and the military have made it expressly clear that the target of martial law are not only members of these armed groups but also critics of the regime.

84. The President's letter to both Houses of Congress shows the underlying intent in the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*: it is not only aimed against armed rebel groups but also against civilians who are critical of the present government. It is of judicial notice that President Duterte has of late publicly threatened so-called "legal fronts" of the CPP-NPA which are actually legal and legitimate mass-based organizations with long and consistent track records of social advocacy and human rights defense that maximize all legal and legitimate platforms including serious petitions periodically and promptly filed before this Honorable Court on matters of public interest and welfare.

85. Given such presidential pronouncements, there is reasonable ground to believe and fear that these progressive organizations may be, wittingly or unwittingly, as they in fact have been, identified, associated or implicated under the nebulous rubric of "supporters, coddlers or financiers" of the armed groups cited in the 8 December 2017 letter of Respondent Duterte. It is in this context that the nexus between the extension of martial law and the suspension of the privilege vis-à-vis attacks on unarmed civilians must be appreciated.

86. Thus, the Secretary of National Defense, in its letter dated 04 December 2017, did not bat an eyelash when he recommended the extension of martial law

to ensure the total eradication of 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 xxx.” xxx.”

87. In this connection, Petitioners cite the recent report of human rights group Karapatan on human rights violations against ordinary activists and civilians:

- *March 23, 2017 - Araw ng pagdeklara ng Martial Law sa Mindanao, pinatay ng 6 na suspected state agents ng 71st IBPA si Pedroa Pandagay sa Sitio Biao, Brgy Anitapan, Mabili, Campostela Valley*
- *March 24, 2017 - Ramos Malik guned down by the AFP in Brgy Cameri, Lanao del Sur*
- *March 26, 2017 - Virgilio Balungag was gunned down by 3 suspected state agents in Purok 8-A, North Poblacion, Don Carlos, Bukidnon*
- *April 2, 2017 - Danilo Nadal was killed by 2 unnamed soldiers from the 46th IBPA in Purok 2, Barangay Tibagun, Pantukn, Campostela Valey*
- *April 6, 2017 - Soldiers from the 60th IBPA killed ELias Pureza in Purok Palmera, Brgy Mamangan, San Isidro, Davao Oriental*
- *April 8, 2017 - Bernardo Ripdos was gunned down by 5 unnamed soldiers of the 46th and 71st IBPA in Purok 1, Brgy Sangab, Maco, Campostela Valley*
- *April 23, 2017 - San Fernando Bombing by the Philippine Airforce, 30 soldiers of the 60th IBPA. Apektado ang 19 families sa Sitio Salumpikit, Brgy. Bunacao, San Fernando, Bukidnon*
- *May 3, 2017 - Federico Plaza was killed by 2 unnamed agents of the 66th IBPA in Brgy. Poblacion, Maragusan, Campostela Valley*
- *May 9, 2017 - Soldiers of the 3rd IB Task Force Harribon under the 7th infantry division bomb Barangay Dominga, Calinan District, Davao City, affecting 251 families or 1014 residents. On the same day, Rodolfo Jr Dagahuya was killed by the same state agents*

- *May 27, 2017 - Suspected element of 67th IBPA killed Ana Marie Aumada in Brgy Lucod, Bagana, Davao Oriental*
- *May 31, 2017 - Soldiers of the 46th IBPA killed Jessie Cabeza in Brgy Mascareg, Mabini, Campostela Valley*
- *June 1, 2017 - Napilitang mag-bakwit (evacuate) ang 105 residente ng Sitio Salumpikit, Brgy. Bunacao, San Fernando, Bukidnon, dahil sa pagkakampo ng 60th IBPA*
- *June 9, 2017 - 1,014 residents of BRGY Dominga, Calinan District, Davao City forcibly evacuated due to the presence of the 3rd IB Task Force Harribon under the 7th ID*
- *June 10, 2017 - Forced evacuation of 1,820 residents of Sitios Nges, Luyong, Kubo, Sakugan, Tinagdanan due to militarization brought by 12 soldiers of Marine Battalion Landing Team 2 and 50 DMCI Consunji Guards*
- *June 23, 2017 - Forced evacuation of 1000 residents of Pres. Roxas, North Cotabato and Damulog, Bukidnon due to presence of 240 soldiers of the 39th IBPA*
- *June 25, 2017 - Bombing of Pres Roxas, North Cotabato*
- *June 25, 2017 - Forced evacuation of more than 1,000 residents of Sitio Datalfitao, Brgy. Colonsabac, Matano, Davao Del Sur due to the presence of the 73rd IB and 39th IBPA*
- *July 1, 2017 - Purok 4, Tagbawi and sitio Inuburan, Barangay Rial, Monkayo, Campotela Valley was bombed by the 25th IBPA, Phil. Airforce, affecting 40 families*
- *July 4, 2017 - dahil sa pagkakampo ng 60 sundalo ng 75th IBPA, 36th IBPA at 16th SFB ay napilitang lumikas ang mga residente ng Brgys. Han-yan, Mike, Km. 16, Km. 14, Manluy-a,*

Kabuluhan, Panukmoan, Km. 15, Decoy, Llanga, Surigao del Sur. Napilitang lumikas ang residente ng Brgys. Han-yan, Mike, Km. 16, Km. 14, Manluy-a, Kabuluhan, Panukmoan, Km. 15, Decoy, Llanga, Surigao del Sur

- *July 6, 2017 - 5 members of the Alamara paramilitary group under leadership of Sammy Diwangan killed Ande Latuan in Cadanglasan, Bukidnon*

- *July 10, 2017 - riding in tandem suspected state agents gunned down Meliton Villagorda Catampungan in Brgy. Ouano, Alegris, Surigao Del Norte*

- *July 12, 2017 - Remond Tinoy Lino killed by "Certain Jr. Bahaw, Certain Jemuel Masayang, Certain Domingo Salimaco, Baltazar Tinoy Lino in Sitio Maagad, Brgy Kidawa, Laak, Campostela Valley*

- *July 13, 2017 - persons believed to be from the 67th IBPA killed Carolina Arado in Purok Masagana 5, Kidaraan Brgy Anitapan, Mabini Campostela Valley*

- *July 16, 2017 - suspected 2nd Special Forces Battalion gunned down Silvestre MAratas in Brgy. Magroyong, San Miguel, Surigao del Sur*

- *August 4, 2017 - Napilitang mag-bakwit ang 218 residente ng Purok 8, Brgy Zillovia, Talacogon dahil sa pagkakampo ng mga sundalo ng 26th IBPA*

- *August 12, 2017 - 2 unnamed suspected state agents from 46th IBPA killed Eddie Alyawan in Brgy. Pindasan, Mabini, Campostela Valey*

- *August 23, 2017 - Roger "Titing" Timboco was gunned down by suspected agents of the 71st IBPA in Mawab, Campostela Valley*

- *September 5, 2017 - a CAFGU named Ben Salangani of Sitio barobo killed Obello Bay-ao in Sitio Dulyan, Talangod, Davao del norte*

- September 12, 2017 - dahil sa 300 soldiers of the 29th IB, Phil. Army, lumikas ang 122 pamilya/ 674 residente kasama ang mga bata mula sa Brgy. Anticala, Butuan City
- September 20, 2017 - Magpet Bombing. Bombing of Purok 1, Sitio Kimampang, Sitio Ranzo, Purok 2, Brgy Balite, Magpet, North Cotabato affecting ang forced evacuation of 4 families (24 residents including children) from Purok 2, Brgy Balite; 17 families (102 residents including children) from Sitio Ranzo, Brgy Balite; 20 families (120 residents including children) from Sitio Kimampang, Brgy Balite; 41 families (246 residents including children) from Purok 1, Brgy Balite; Jessie Delgado Mabuti and Joseph Malones Esparagosa | Perpetrators: unnamed soldiers of 39th Infantry Battalion, Philippine Army, Philippine Airforce
- September 28, 2017 - Reneboy Magayano gunned by 2 military agents fo the 66th IBPA in Maragusan Public Market, Maragusan Campostela Valley
- October 28, 2017 - Arnel Otacan, EJK victim in Brgy Cabasagan, Boston, Davao Oriental. Pepertrator: 67th IBPA
- November 16, 2017 - Binaril ng mga elemento ng 29th IB ng Phil. Army si Perfecto "Boy" Hoyle, sa Purok-4, Barangay Canaway, Kitcharao, Agusan Del Norte
- November 23, 2017 - Binaril ng hinihinalang state agent si Vivencio Sahay sa Brgy. Mahaba, Cabadbaran City, Agusan Del Norte
- November 25, 2017 - 2 riding in tandem and 4 look outs gunned down Apolonio Maranan in DDF Village, Brgy Mandug, Duhangin District, Davao City, Davao Del Sur
- November 26, 2017 - 12 Lumad communities in Lianga and Brgy. Buhisan, San Aguistin, Surigao Del Sur, ang napilitang lumikas dahil sa pagkukuta ng 75th IB ng Phil. Army sa kanilang communities. 538 TRIFPSS students, 12 families (55 individuals

including children) from Sitio Km 14, 60 teachers of ALCADDEV and TRIFPSS from Lianga, 47 families (217 individuals including children) from Sitio Km 9, 35 families (135 individuals including children) from Sitio Emerald, 37 families (146 individuals including children) from Sitio Han-ayan, 47 families (181 individuals including children) from Sitio Km 16, 15 families (85 individuals including children) from Sitio Mike, 30 families (190 individuals including children) from Sitio Old Kabulohan, 13 families (64 individuals including children) from Sitio New Kabulohan, 168 ALCADDEV Students, 8 families (29 individuals including children) from Sitio Yadawan

- *November 29, 2017 - 13 armed security guards and two suspected goons of Filipinas Palm Oil Plantaton Inc gunned down Lando Moreno in Brgy. Maligaya, Rosario, Agusan Del Sur*

88. Historical and contemporary experience indubitably prove that the monster of Martial law has targeted and will target civilians who have no participation at all in any armed uprising or struggle. The inclusion of alleged “coddlers,” “supporters,” and “financiers” opens the floodgates to further attacks against just about anybody. The vagueness and ambiguity of said pronouncement sends a chilling effect that violates the people’s right to exercise vital freedoms and liberties.

89. It is this factual context and concrete situation that the constitutional and bounden duty, not only of the whole Court as an institution but also for each and every individual honorable member of this Court, to exercise judicial review to check on abuse of power, protect and defend freedoms and liberties, and breathe life, guidance and inspiration to its role as a supposed last bastion of democracy instead of allowing it to be an empty shibboleth to the delight and pleasure of fleeting tyrants of any time.

III. THE TWO HOUSES OF CONGRESS COMMITTED GRAVE ABUSE OF DISCRETION IN ALLOWING THE EXTENSION OF MARTIAL LAW AND THE CONTINUED SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE ENTIRE MINDANAO

90. Given the discussion in the preceding paragraphs, it is evident that both the House of Representatives and the Senate’s

approval of the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is misplaced, unwarranted and unjustified.

91. In the Mindanao Martial Law Petitions, the Honorable Court differentiated the judicial power to review and the congressional power to revoke. The Honorable Court held that in reviewing the sufficiency of the factual basis of the proclamation or suspension, Congress

(a) *“may take into consideration not only data available prior to, but likewise events supervening the declaration;”*

(b) *“Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it;”*

(c) *“Congress’ review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.”²⁸*

92. On top of all the foregoing, in fine, what is the cogent basis for extending Martial Law for a full year, way longer than the original declaration and first extension when fighting in Marawi was still ongoing? Is it not strange that the second extension is set for a period that is much longer than the period when fighting was still ongoing, there being no fighting in Marawi now? What are the parameters for setting the time frame? What would be the parameters for the possible earlier lifting of martial law? How will the AFP gauge their success? Or is this arbitrary or subjective left entirely to absolute discretion beyond the pale of legislative query or judicial review? Is martial law intended to quell a rebellion or is martial law just intended to restore public order and make government function again? If there are no parameters, then martial law can exist until there are rebels in Mindanao, even if such rebels do not pose a threat to public safety. These are nagging questions begging for satisfactory constitutional and factual answers.

93. The rather precipitate and arguably perfunctory manner by which the extension was approved by both Houses, despite the lack of any sufficient much less cogent factual basis that threatens public safety, unmask how Congress gravely abused its

²⁸ See Note 3.

discretion and failed to perform its duty under the Constitution to uphold the constitutional safeguards it is tasked to protect.

94. In addition, both Houses of Congress cannot rely on a goal or an objective that is not within the ambit of martial law to cure or even prevent.

95. In the 08 December 2017 letter of the President to Congress, he further justified the extension of martial law and the suspension of the privilege of the *writ of habeas corpus* “to quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country.”²⁹

96. To quell and completely put an end to rebellion in Mindanao and the rest of the country is not the objective of imposition of any martial law. Martial law intends to restore peace and order and bring back or reinstate civilian power or authority during the existence of an actual rebellion that substantially compromises public safety. The history of nations is a living proof that the only way to eliminate rebellion is to address the roots of the conflict which is in most cases, the severe poverty, injustice and inequity that have stripped humanity of its very dignity.

97. Indeed, if the two co-equal branches of our government abused their powers or reneged on their duty, it is but incumbent on this Honorable Court to correctly check and balance excesses of governmental authority of the governors with the more fundamental rights and liberties of the governed.

**APPLICATION FOR THE ISSUANCE OF A WRIT OF
PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING
ORDER (TRO)**

98. Petitioners move for the issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order (TRO) to enjoin the further implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao. This is in order to protect their substantive rights and interests while this case is pending before the Honorable Court.

99. From all the foregoing, Petitioners were able to show that they are entitled to the issuance of an injunctive relief for

²⁹ Page 5, Annex “A.”

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.³⁰

PRAYER

WHEREFORE, premises considered, Petitioners humbly pray that:

1. Upon the filing of this Petition, a Temporary Restraining Order and/or a Writ of Preliminary Injunction be issued enjoining Respondents from implementing martial law and from suspending the privilege of the writ of *habeas corpus*;
2. To conduct an open, inclusive, thorough and public factual determination of the sufficiency of the factual basis for such extension or suspension;
3. After due hearing and deliberation, declaring NULL AND VOID the extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* for lack of sufficient factual basis.

Other reliefs just and equitable under the premises are likewise prayed for.

RESPECTFULLY SUBMITTED, 03 January 2018, Quezon City for the City of Manila.

³⁰

PSBA vs Tolentino-Genilo, G.R. No. 159277 December 21, 2004.

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EXPLANATION

Copies of this Petition were sent to the parties by registered mail due to time and personnel constraints.

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