The Future of Martial Law and *Habeas Corpus* Cases Before the Supreme Court: An Examination of the Precedents Laid Down in *Lagman v. Medialdea* (2017), *Lagman v. Pimentel III* (2018), and *Lagman v. Medialdea* (2019)

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I. INTRODUCTION

On 23 May 2017, following the infamous Marawi siege, martial law was declared, and the privilege of the writ of *habeas corpus* was suspended in the

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whole of Mindanao.[1] Since then, there have been three extensions of the initial proclamation and, as of the time that this Article was in the process of being written, the whole of Mindanao has been under a state of martial law, with the privilege of the writ of *habeas corpus* having been suspended thereat for more than two years.[2] While the current extension expires by the end of the year, there is no guarantee that the proclamation will not be extended again.

Unsurprisingly, the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao, along with its extensions, have caused strong and impassioned reactions from different sectors of society.[3] Perhaps, this is a natural response from a citizenry still haunted by a dark past — when a dictator made a mockery of the country's democratic institutions

1. Jonathan de Santos, *Duterte declares martial law in Mindanao*, PHIL. STAR, May 23, 2017, *available at* https://www.philstar.com/headlines/2017/05/23/1703088/duterte-declares-martial-law-mindanao (last accessed July 25, 2019) & Audrey Morallo, *Habeas corpus suspended in Mindanao, says Duterte*, PHIL. STAR, May 24, 2017, *available at* https://www.philstar.com/headlines/2017/05/24/1703191/habeas-corpus-suspended-mindanao-says-duterte (last accessed July 25, 2019).

2. Mara Cepeda, Congress extends martial law in Mindanao to end of 2019, *available at* https://www.rappler.com/nation/218733-congress-extension-martial-law-mindanao-december-2019 (last accessed July 25, 2019).

3. Ronron Calunsod, Concerns linger over martial law in Mindanao, *available at* https://news.abs-cbn.com/news/05/23/18/concerns-linger-over-martial-law-in-mindanao (last accessed July 25, 2019); Antonio L. Colina IV, Protesters urge Duterte to lift martial law in Mindanao, *available at* https://www.mindanews.com/top-stories/2017/09/protesters-urge-duterte-to-lift-martial-law-in-mindanao1 (last accessed July 25, 2019); Frances Mangosing, *Groups protest against martial law extension in Mindanao*, Dec. 6, 2017, *available at* https://newsinfo.inquirer.net/950248/groups-protest-against-martial-law-extension-in-mindanao (last accessed July 25, 2019); Dan Manglinong, Reasons why one-year martial law extension is being opposed, *available at* http://www.interaksyon.com/politics-issues/2018/12/12/140284/protests-congress-joint-session-martial-law-extension (last accessed July 25, 2019); & Mark Demayo, Protesting martial law in Mindanao, *available at* https://news.abs-cbn.com/news/multimedia/photo/05/24/19/protesting-martial-law-in-mindanao (last accessed July 25, 2019).

and used martial law as a tool to establish a one-man rule.[4] With cries of *Never Again* to a recurrence of such a debauched version of martial law, the public is understandably wary of any imposition of martial law or suspension of the privilege of the writ of *habeas corpus*.[5]

Notably, this is not the first instance under the regime of the 1987 Constitution that a President has declared a state of martial law — the first one having been declared over the province of Maguindanao in 2009, following the horrific massacre of 57 innocent people.[6] However, the declaration of martial law currently in effect in Mindanao provided the first instance wherein the Supreme Court was able to discharge its duty under the present Constitution.[7]

Indeed, the treatment of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* under jurisprudence has evolved, conforming to the changes in the applicable fundamental law. One of the significant progressions in jurisprudence is the role of the Supreme Court in exercising its judicial review when the President declares martial law or suspends the privilege of the writ of *habeas corpus*.[8]

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4. *See* Katerina Francisco, Martial Law, the dark chapter in Philippine history, *available at* https://www.rappler.com/newsbreak/iq/146939-martial-law-explainer-victims-stories (last accessed July 25, 2019).

5. *See* Dexter Cabalza, et al., *'Never again to martial law'*, PHIL. DAILY INQ., Sep. 22, 2017, *available at* https://newsinfo.inquirer.net/932565/never-again-to-martial-law (last accessed July 25, 2019).

6. CNN, Philippines president declares martial law in Maguindanao, *available at* http://edition.cnn.com/2009/WORLD/asiapcf/12/04/philippines.massacre/index.html (last accessed July 25, 2019).

7. *See* Antonio G. M. La Viña & Regina Ongsiako, High noon in the SC: Is martial law legal?, *available at* https://www.rappler.com/thought-leaders/173963-supreme-court-martial-law-legality (last accessed July 25, 2019).

8. *Id.*

The Philippine Bill of 1902 already contained a provision on the suspension of the privilege of the writ of *habeas corpus*.[9] The seventh paragraph of Section 5 provides

> [t]hat the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist.[10]

The text of the Philippine Bill is demonstrably silent as to the role of the Court in the suspension of the privilege of the writ of *habeas corpus*. This was tested in the 1905 case of *Barcelon v. Baker*.[11] It involved an application for the writ of *habeas corpus* on behalf of Felix Barcelon, who was detained in Batangas.[12] Respondents therein claimed that the Court cannot inquire into the reasons for Barcelon's detention by virtue of the Resolution of the Philippine Commission dated 31 January 1905 and Executive Order No. 6 issued on even date by the Governor-General suspending the privilege of the writ of *habeas corpus* in the provinces of Cavite and Batangas.[13]

The main issue faced by the Court in *Barcelon* was whether it may investigate the facts relied upon by the Legislative and Executive branches in suspending the privilege of the writ of *habeas corpus* in the said provinces.[14] Answering in the negative, the Court therein ruled that the factual basis upon which the privilege of the writ of *habeas corpus* was suspended is not subject to judicial review, it being within the political domain.[15] Instead, the Court limited itself to resolving only the following issues:

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9. An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes [Philippine Bill], Act of Congress of July First, Nineteen Hundred and Two (1902).

10. Philippine Bill, § 5, para. 7.

11. Barcelon v. Baker, 5 Phil. 87 (1905).

12. *Id.*

13. *Id.* at 91.

14. *Id.*

15. *Id.* at 96.

> (1) Admitting the fact that Congress had authority to confer upon the President or the Governor-General and the Philippine Commission authority to suspend the privilege of the writ of *habeas corpus*, [whether] such authority was actually conferred[;] and
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> (2) [Whether] the Governor-General and the Philippine Commission, acting under such authority, [acted] in conformance with such authority[.][16]

As for the 1935 Constitution,[17] the power to declare martial law, along with the power to suspend the privilege of the writ of *habeas corpus*, had been included in the provisions for the Executive Department. [18] These Commander-in-Chief powers of the President, along with the calling-out power, are contained in Section 10 of Article VII, which provides —

> The President shall be 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, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.[19]

Similar to the Philippine Bill, the 1935 Constitution does not provide any duty on the part of the Court when the President declares martial law and/or suspends the privilege of the writ of *habeas corpus*.[20] The Court would affirm this in the 1952 case of *Montenegro v. Castañeda and Balao*,[21] wherein the validity of Proclamation No. 210, suspending the privilege of the writ of *habeas corpus*, was questioned.[22] Like in *Barcelon*, the Court in *Montenegro* displayed a deferring stance in favor of the President, ruling that "the authority to decide whether the exigency has arisen requiring suspension belongs to the President

16. *Id.*

17. 1935 PHIL. CONST. (superseded 1973).

18. 1935 PHIL. CONST. art. VII, § 10 (2) (superseded 1973).

19. 1935 PHIL. CONST. art. VII, § 10 (2) (superseded 1973).

20. 1935 PHIL. CONST. art. VIII (superseded 1973).

21. Montenegro v. Castañeda and Balao, 91 Phil. 882 (1952).

22. *Id.* at 883.

and 'his decision is final and conclusive' upon the courts and upon all other persons."[23] The Court reasoned that

> whereas the Executive branch of the Government is enabled [through] its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the [J]udicial department, with its very limited machinery [cannot] be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.[24]

The ruling in *Montenegro* would later be reversed in the 1971 case of *In re Lansang v. Garcia*,[25] though the latter case was similarly promulgated under the 1935 Constitution. In *Lansang*, President Ferdinand Marcos issued Proclamation No. 889 suspending the privilege of the writ of *habeas corpus* in the wake of the Plaza Miranda bombing.[26] While the Court upheld the validity of the Proclamation, it nevertheless *unanimously* upheld that it has the authority to inquire into the existence of the factual bases for the issuance of the proclamation suspending the writ of *habeas corpus* to determine the constitutional sufficiency thereof.[27] The Court made the following interpretation of the relevant constitutional provision on the power of the President vis-à-vis the power of the Court in the suspension of the privilege of the writ of *habeas corpus* —

> Indeed, *the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional.* The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that '(t)he privilege of the writ of *habeas corpus* shall *not* be suspended [...]' It is only by way of *exception* that it permits the suspension of the privilege 'in cases of invasion, insurrection, or rebellion' — or, under Art. VII of the Constitution, 'imminent danger thereof' — 'when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.' For from being full and plenary, the authority to suspend the

23. *Id.* at 887 (citing *Barcelon*, 5 Phil. at 99-100).

24. *Montenegro*, 91 Phil. at 887.

25. Lansang v. Garcia, 42 SCRA 448 (1971).

26. *Id.* at 454.

27. *Id.* at 473.

> privilege of the writ is thus circumscribed, confined[,] and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. *These factors and the aforementioned setting or conditions mark, establish*[,] *and define the extent, the confines*[,] *and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the* [*L*]*egislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice.* Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[28]

Proclamation No. 889, the subject of *Lansang*, was issued by President Marcos on 23 August 1971.[29] More than a year later, he would issue Proclamation No. 1081 on 21 September 1972, placing the entire country under martial law.[30] In the exercise of the powers he bestowed upon himself under the said Proclamation, President Marcos would order the arrest and detention of several persons through General Order No. 2, which was issued on 22 September 1972.[31] The persons arrested and detained pursuant thereto became the petitioners in the case of *Aquino, Jr. v. Enrile*.[32]

Aquino, Jr. was likewise decided on the basis of the 1935 Constitution, and the majority therein ruled that President Marcos did not act arbitrarily when he declared martial law.[33] However, unlike in *Lansang*, wherein the members of the Court unanimously held that the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* was subject to judicial review, the Court in *Aquino, Jr.* was divided on the issue.[34] Several justices believed that the question was political, and therefore its determination was

28. *Id*. at 473-74 (emphases supplied).

29. *Id*. at 517.

30. Official Gazette, Declaration of Martial Law, *available at* https://www.officialgazette.gov.ph/featured/declaration-of-martial-law (last accessed July 25, 2019).

31. Office of the President, General Order No. 2, Series of 1972 (Sep. 22, 1972).

32. Aquino, Jr. v. Enrile, 59 SCRA 183 (1974).

33. *Id*. at 240.

34. *Id*. at 238.

beyond the jurisdiction of the Court, with one of them holding that *Lansang* should be overturned and advocating a return to *Barcelon* and *Montenegro*.[35] On the other hand, there were some justices who believed that the constitutional sufficiency of the proclamation may be inquired into by the Court and the principle laid down in *Lansang* would thus apply.[36]

Soon after President Marcos declared martial law throughout the entire country in 1972, the 1973 Constitution took effect.[37] It contained the same provision as in the 1935 Constitution with respect to the President's Commander-in-Chief powers.[38] Section 9, Article VII of the 1973 Constitution provides that

> [t]he President shall be 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, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.[39]

During the effectivity of the 1973 Constitution, the case of *Garcia-Padilla v. Enrile*[40] was filed before the Court, wherein several petitions for the issuance of the writ of *habeas corpus* were filed to question the legality of the arrests and detentions of the petitioners.[41] The Court, however, denied these petitions.[42] With regard to the power of judicial review, the Court had once again ruled

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35. *Id.* at 239. This is referring to Justices Makasiar, Antonio, Esguerra, Fernandez, and Aquino. *Id.*

36. *Id.* This is referring to Justices Castro, Fernando, Teehankee, and Muñoz-Palma. *Aquino, Jr.*, 59 SCRA at 239.

37. Official Gazette, Constitution Day, *available at* https://www.officialgazette.gov.ph/constitutions/constitution-day (last accessed July 25, 2019).

38. 1973 PHIL. CONST. art. VII, § 9 (superseded 1987).

39. 1973 PHIL. CONST. art. VII, § 9 (superseded 1987).

40. Garcia-Padilla v. Enrile, 121 SCRA 472 (1983).

41. *Id.* at 484.

42. *Id.* at 488.

that the President's exercise of the power to suspend the privilege of the writ of *habeas corpus* was beyond judicial review, thereby reverting to the political question doctrine.[43] The *ponencia* therein explicitly stated that the 1973 Constitution afforded further reason for the reexamination of the *Lansang* doctrine and reversion to the doctrine laid down in *Barcelon* and *Montenegro*.[44] In this regard, the Court made the following pronouncements —

> In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? *Verily, the existence of the emergencies should be left to* [*the*] President's *sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of habeas corpus on the occasion thereof* [ ] *should also be beyond judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but* [*is*] *impractical and unrealistic*, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. *For the Court to insist on reviewing Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of 'political question' in reference to the power of judicial review.*[45]

Notwithstanding these unmistakable pronouncements, the Court would seemingly reverse itself and revert again to *Lansang* in the case of *Morales, Jr. v. Enrile*.[46] The petitioners therein filed their petitions for *habeas corpus*, which were dismissed by the Court.[47] In discussing the powers of the Court, the *ponencia* categorically stated that the Court was reiterating the *Lansang* doctrine, adding the following discussions —

> Furthermore, We hold that under the judicial power of review and by constitutional mandate, in all petitions for *habeas corpus*[,] the [C]ourt must inquire into every phase and aspect of [the] petitioner's detention — from

43. *Id.* at 502.

44. *Id.* at 503.

45. *Id.* at 502-03 (emphases supplied).

46. Morales, Jr. v. Enrile, 121 SCRA 538 (1983).

47. *Id.* at 552.

> the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied.
>
> The submission that a person may be detained indefinitely without any charges[,] and the courts cannot inquire into the legality of the restraint[,] goes against the spirit and letter of the Constitution[,] and does violence to the basic precepts of human rights and a democratic society.[48]

The flip-flopping by the Court with regard to its power of judicial review would finally be settled in the 1987 Constitution, where the framers deemed it wise to categorically and positively define the duty of the Court.[49] Mindful of the conflicting rulings on martial law and *habeas corpus* cases, the eminent constitutionalist Fr. Joaquin G. Bernas, S.J. explained that "[i]t was under the shadow of the jurisprudential legacy of the Marcos regime that the 1986 Constitutional Commission went about formulating the martial law doctrine of the 1987 Constitution."[50] According to Fr. Bernas, the framers recognized that, under the previous Constitutions, the role of the Court was not specified and jurisprudence did not arrive at a definitive decision on the matter.[51]

In her speech at the closing session of the 1986 Constitutional Commission, Commission President Cecilia Muñoz-Palma made the following statements —

> The executive power is vested in the President of the Philippines elected by the people for a six-year term with no reelection for the duration of his/her life. While traditional powers inherent in the office of the President are granted, nonetheless[,] *for the first time, there are specific provisions which curtail the extent of such powers. Most significant is the power of the Chief Executive to suspend the privilege of the writ of habeas corpus or proclaim martial law.*
>
> The flagrant abuse of that power of the Commander-in-Chief by Mr. Marcos caused the imposition of martial law for more than eight years and the suspension of the privilege of the writ even after the lifting of martial law in

48. *Id.* at 563.

49. PHIL. CONST. art. VII, § 18, para. 3.

50. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 916 (2009 ed.).

51. *Id.* at 917.

> 1981. The new Constitution now provides that those powers can be exercised only in two cases, invasion or rebellion when public safety demands it, only for a period not exceeding 60 days, and reserving to Congress the power to revoke such suspension or proclamation of martial law which congressional action may not be revoked by the President. *More importantly, the action of the President is made subject to judicial review, thereby again discarding jurisprudence which render the executive action a political question and beyond the jurisdiction of the courts to adjudicate.*[52]

Thus, the 1987 Constitution laid down in unequivocal terms the role of the Court. Section 18, Article VII thereof provides —

> 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, 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 any need of a call.
>
> *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.*
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over

52. Cecilia Muñoz-Palma, President, Constitutional Commission, Closing Remarks at the Final Session of the Constitutional Commission (Oct. 15, 1986) (emphases supplied).

> civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.[53]

The current text of the Constitution dispels any uncertainty as to the power of the Court to review the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. The unambiguous intent of the aforementioned provision is to empower the Court to take on a more active role in ensuring that the President will not abuse the powers granted to him or her.

This Article will focus on the Court's discharge of its duty under the 1987 Constitution, analyzed against the backdrop of the three cases covering the current declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao, i.e., *Lagman v. Medialdea*[54] (*Lagman 2017*), *Lagman v. Pimentel III*[55] (*Lagman 2018*), and *Lagman v. Medialdea*[56] (*Lagman 2019*). For ease of reference, these cases will be referred to collectively as the *three martial law and habeas corpus cases*.

II. OVERVIEW OF THE THREE MARTIAL LAW AND *HABEAS CORPUS* CASES

The three martial law and *habeas corpus* cases are based on the same factual backdrop which is discussed briefly below.

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53. PHIL. CONST. art. VII, § 18 (emphasis supplied).

54. Lagman v. Medialdea, 829 SCRA 1 (2017).

55. Lagman v. Pimentel III, G.R. Nos. 235935, 236061, 236145, & 236155, Feb. 6, 2018, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63920 (last accessed July 25, 2019).

56. Lagman v. Medialdea, G.R. Nos. 243522, 243677, 243745, & 243797, Feb. 19, 2019, *available at* http://sc.judiciary.gov.ph/2069 (last accessed July 25, 2019).

A. The Initial Proclamation

On 23 May 2017, President Rodrigo Duterte issued 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," spanning a period not exceeding 60 days.[57] Proclamation No. 216 cited the taking over by the Maute terrorist group of "a hospital in Marawi City, Lanao del Sur, establish[ing] several checkpoints within the City, burn[ing] down certain government and private facilities and inflict[ing] casualties on the part of Government forces, and [the] flying [of] the flag of the Islamic State of Iraq and Syria (ISIS) in several areas" as the justifications of the declaration of martial law and the suspension of the writ of *habeas corpus*.[58]

On 25 May 2017, President Duterte submitted to Congress his Report on Proclamation No. 216.[59] Thereafter, the Senate adopted Senate Resolution No. 388, while the House of Representatives issued House Resolution No. 1050, both of which expressed full support for Proclamation No. 216.[60]

Subsequently, three consolidated petitions assailing the sufficiency of the factual basis of Proclamation No. 216 were filed and heard before the Court.[61] In its Decision dated 4 July 2017, the Court, in *Lagman 2017*, found sufficient factual bases for the issuance of Proclamation No. 216, declaring the said Proclamation constitutional.[62]

B. The First Extension

On 18 July 2017, President Duterte requested Congress to extend the effectivity of Proclamation No. 216 to 31 December 2017. [63] On 22 July 2017, after holding a Special Joint Session, Congress adopted Resolution of Both

57. *Lagman*, 829 SCRA at 125.

58. *Id*. at 126.

59. *Id*.

60. *Id*. at 132.

61. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 6.

62. *Id*.

63. *Id*.

Houses (RBH) No. 2, extending the period of martial law and the suspension of the privilege of the writ of *habeas corpus* over Mindanao to 31 December 2017.[64] No petition was filed in the Court to assail the extension.

C. The Second Extension

Acting on the recommendations of the Armed Forces of the Philippines (AFP) Chief of Staff and the Department of National Defense (DND) Secretary, in a Letter dated 8 December 2017, President Duterte requested the Congress to further extend the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao for another year, from 1 January 2018 until 31 December 2018.[65] On 13 December 2017, after holding a Special Joint Session, the Congress adopted RBH No. 4, further extending Proclamation No. 216 from 1 January 2018 to 31 December 2018 as requested by President Duterte.[66]

Thereafter, four consolidated petitions were filed before and heard by the Court, all of which assailed the constitutionality of the second extension of Proclamation No. 216.[67] The Court, in *Lagman 2018*, dismissed the petitions and found sufficient factual bases for the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.[68]

D. The Third Extension

Similarly, acting on the recommendations of the AFP Chief, DND Secretary, and Philippine National Police (PNP) Director-General, President Duterte once again requested Congress to further extend the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao for yet another year, from 1 January 2019 to 31 December 2019.[69] On 12 December 2018, the Senate and the House, in a joint session, adopted

64. *Id.*

65. *Id.*

66. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at ★4.

67. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 6.

68. *Id.* at 7.

69. *Id.*

Resolution No. 6 further extending Proclamation No. 216 from 1 January 2019 to 31 December 2019.[70]

Four petitions were likewise filed before the Court assailing the third extension of Proclamation No. 216. The Court, in *Lagman 2019*, denied these petitions after finding sufficient factual basis for the extension of the Proclamation from 1 January 2019 to 31 December 2019.[71]

III. ANALYSIS

As mentioned earlier, President Duterte's Proclamation No. 216 is not the first instance of the exercise of the President's power to declare martial law under the 1987 Constitution. The first was Proclamation No. 1959 issued by President Gloria Macapagal-Arroyo on 4 December 2009, declaring martial law and suspending the privilege of the writ of *habeas corpus* in the province of Maguindanao.[72] The constitutionality of Proclamation No. 1959 was brought before the Court in the 2012 case of *Fortun v. Macapagal-Arroyo*.[73] However, the Court ultimately dismissed the case on the ground of mootness. This was because Proclamation No. 1959 had been withdrawn by President Arroyo merely eight days after its issuance, before the Congress or the Court could even act on it. The Court ruled that, while there are exceptional cases when the Court passes upon issues that ordinarily would have been regarded as moot, the case before it did not present sufficient basis for the exercise of the judicial power of review.[74] A review of jurisprudence, however, shows that the case therein fell within the exceptions.

In the 2006 case of *David v. Macapagal-Arroyo*,[75] President Arroyo issued Proclamation No. 1017 declaring a state of national emergency and calling out the armed forces, citing intensified acts by the extreme left and extreme right groups which allegedly presented clear and present danger to the safety and

70. *Id.* at 9.

71. *Id.* at 32.

72. CNN, *supra* note 6.

73. Fortun v. Macapagal-Arroyo, 668 SCRA 504 (2012).

74. *Id.* at 524.

75. David v. Macapagal-Arroyo, 489 SCRA 160 (2006).

integrity of the State.[76] Exactly a week later, and after petitions had been filed questioning the constitutionality of the proclamation, she issued Proclamation No. 1021, lifting Proclamation No. 1017.[77] The Court therein held that President Arroyo's lifting of the proclamation did not render the petitions moot.[78] Verily, it was held therein that

> [c]ourts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[79]

The Court ruled that these exceptions were present in *David*.

As applied to *Fortun*, the Court therein could have decided the case on the basis of the exceptions to dismissing the case on the ground of mootness. Notably, both *David* and *Fortun* involved President Arroyo's exercise of Commander-in-Chief powers under Article VII, Section 18 of the Constitution. The most important factor in *Fortun* that could have militated against its dismissal on the ground of mootness is that constitutional issues were raised which require formulation of controlling principles to guide the bench, the bar, and the public. As elucidated by Justice Antonio T. Carpio in his dissenting opinion,

> [t]he present controversy, being the first case under the 1987 Constitution involving the President's exercise of the power to declare martial law and suspend the writ, provides this Court with a rare opportunity, which it must forthwith seize, to formulate controlling principles for the guidance of all sectors concerned, most specially the Executive which is in charge of enforcing the emergency measures. *Dismissing the petitions on the ground of*

76. *Id*. at 199.

77. *Id*. at 201-02.

78. *Id*. at 214.

79. *Id*. at 214-15 (citing Province of Batangas v. Romulo, 429 SCRA 736, 757 (2004); Lacson v. Perez, 357 SCRA 756 (2001); Albaña v. Commission on Elections, 435 SCRA 98, 105 (2004); Acop v. Guingona, Jr., 383 SCRA 577, 582 (2002); & Sanlakas v. Executive Secretary, 421 SCRA 656, 664 (2004)).

> *mootness will most certainly deprive the entire nation of instructive and valuable principles on this extremely crucial national issue.*
>
> ...
>
> Moreover, the fact that every declaration of martial law or suspension of the writ will involve its own set of circumstances peculiar to the necessity of time, events or participants should not preclude this Court from reviewing the President's use of such emergency powers. Whatever are the circumstances surrounding each declaration of martial law or suspension of the writ, the declaration or suspension will always be governed by the same safeguards and limitations prescribed in the same provisions of the Constitution.[80]

Perhaps the case of *Fortun* may be viewed as a lost opportunity for the Court to lay down the precedents for future cases involving the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. *Fortun* could have been a good avenue for the Court to lay down the guiding principles, especially considering that it was not constrained by any urgency to decide the case in view of the lifting of the initial Proclamation. The ramifications of the Court's refusal to rule in *Fortun* could be seen in how *Lagman 2017* was decided, where the Court was evidently constricted in hearing the parties on oral arguments, deliberating issues and principles, and ultimately deciding the case — all within the 30-day limit imposed by the Constitution.

A. On the Declaration of Martial Law and Suspension of the Privilege of the Writ of Habeas Corpus

In view of the Court's refusal in *Fortun* to rule on the merits, *Lagman 2017* became the test case for resolving martial law and *habeas corpus* cases under the 1987 Constitution. Among the notable precedents laid down by the Court in *Lagman 2017* are as follows:

(1) The jurisdiction of the Court under paragraph 3, Section 18, Article VII of the Constitution is a special and specific jurisdiction that has been characterized as *sui generis*. Thus, a petition invoking the jurisdiction of the Court under said constitutional provision is the "appropriate proceeding" required therein. It does not refer

80. *Fortun*, 668 SCRA at 551-53 (J. Carpio, dissenting opinion) (emphasis supplied).

to a petition for *certiorari* filed under Section 1, Article VIII of the Constitution on grave abuse of discretion;[81]

(2) The power of the Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus is independent of the actions taken by Congress;[82]

(3) The judicial power to review the sufficiency of factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* does not extend to the calibration of the President's decision on which among his graduated powers he will avail of in a given situation;[83] and

(4) The President's Proclamation declaring martial law and/or suspending the privilege of the writ of *habeas corpus* cannot be facially challenged using the void-for-vagueness doctrine.[84]

For purposes of this Article, however, the focus will be on the pronouncements of the Court on its constitutional power to review.

According to the *ponencia* in *Lagman 2017*, the scope of the Court's power to review under the Constitution refers only to the determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.[85] As for the parameters for this determination, the Constitution itself provides the same: (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power.[86] Both conditions must concur in order to uphold the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*.[87]

81. *Lagman*, 829 SCRA at 193.

82. *Id.* at 478.

83. *Id.* at 208.

84. *Id.* at 222.

85. *Id.* at 181-82.

86. *Id.* at 182.

87. *Lagman*, 829 SCRA at 182.

The Court clarified that the rebellion mentioned in the Constitution refers to rebellion as defined under Article 134 of the Revised Penal Code;[88] hence, the following elements must be present:

> (1) there is a (a) public uprising and (b) taking up arms against the Government; and
>
> (2) the purpose of the uprising or movement is either
>
> (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or
>
> (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[89]

As for the allowable standard of proof for the President, the *ponencia* adopted Justice Carpio's dissent in *Fortun* and ruled that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law.[90]

Regarding scope, the *ponencia* ruled that the President is granted discretion under the Constitution to determine the territorial coverage or application of martial law or suspension of the privilege of the writ of *habeas corpus*.[91]

Guided by these principles, the majority ultimately upheld the validity of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region after finding sufficient factual basis for such.[92] Eleven justices comprised the majority, while four justices dissented:[93] Justice Carpio found that the Proclamation was only valid in Marawi City because the requirements under the Constitution was satisfied

88. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 134 (1930).

89. *Lagman*, 829 SCRA at 183-84.

90. *Id.* at 184 (citing *Fortun*, 668 SCRA 504, 560 (2012) (J. Carpio, dissenting opinion)).

91. *Lagman*, 829 SCRA at 202.

92. *Id.* at 215

93. *Id.* at 216.

only as to such area and not for the entire Mindanao.[94] Chief Justice Maria Lourdes P.A. Sereno expanded Justice Carpio's findings and asserted that the President had sufficient factual basis for the issuance of the Proclamation insofar as it covers the provinces of Marawi, Lanao del Sur, Maguindanao, and Sulu.[95] This view was adopted by Justice Alfredo Benjamin S. Caguioa.[96] For his part, Justice Marvic M.V.F. Leonen opined that the Proclamation was completely unconstitutional, mainly based on his finding that the acts committed in the places concerned amounted to terrorism, not rebellion.[97]

1. Deference to the Executive

Delving deeper into the Court's power to review the factual basis, the *ponencia* made it clear that such power would be limited to an examination of whether the President acted within the bounds set by the Constitution, i.e., "whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of *habeas corpus*."[98] Such is indeed the constitutional duty of the Court. However, the *ponencia* expounded on the Court's duty in a way that may have diminished its power to review the President's actions, while granting too much leeway for the President. Consider the following pronouncements —

> *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.*
>
> ...
>
> 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

94. *Id*. at 329 (J. Carpio, dissenting opinion).

95. *Id*. at 217 (C.J. Sereno, dissenting opinion).

96. *Lagman*, 829 SCRA at 668 (J. Caguioa, dissenting opinion).

97. *Id*. at 602 (J. Leonen, dissenting opinion).

98. *Id*. at 182 (majority opinion).

> 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.
>
> ...
>
> Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. *The Constitution, as couched, does not require precision in establishing the fact of rebellion*. The President is called to act as public safety requires.
>
> Corollary, as the President is expected to decide quickly on whether there is a need to proclaim martial law even only on the basis of intelligence reports, *it is irrelevant, for purposes of the Court's review, if subsequent events prove that the situation had not been accurately reported to him*. After all, *the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration or suspension*; subsequent events do not have any bearing insofar as the Court's review is concerned. In any event, safeguards under Section 18, Article VII of the Constitution are in place to cover such a situation, e.g., the martial law period is good only for 60 days; Congress may choose to revoke it even immediately after the proclamation is made; and, this Court may investigate the factual background of the declaration.
>
> Hence, the maxim *falsus in uno*, *falsus in omnibus* finds no application in this case. Falsities of and/or inaccuracies in some of the facts stated in the proclamation and the written report are not enough reasons for the Court to invalidate the declaration and/or suspension as long as there are other facts in the proclamation and the written Report that support the conclusion that there is an actual invasion or rebellion and that public safety requires the declaration and/or suspension.[99]

To an extent, the sentiments of the *ponencia* are understandable, considering that the Court was time bound in resolving such a novel issue; hence, a certain degree of reliance on the President's claims is unavoidable. However, such reliance should still be balanced with the Court's duty to

99. *Id*. at 178-81 (emphases supplied).

examine the sufficiency of the factual basis of the proclamation. Otherwise, giving too much leeway in favor of the President may have severe consequences, as conveyed in the dissenting opinions.

For instance, Justice Carpio recognized that in reviewing the sufficiency of the factual basis for the declaration of martial law or suspension of the privilege of the writ, the Court can rely on evidence from the Government such as the Proclamation and Report issued by the President himself, General Orders and Implementing Orders issued pursuant to the Proclamation, the Comment of the Solicitor General, and briefings made by defense and military officials before the Court.[100] However, Justice Carpio maintained that

> [t]he Court cannot simply trust blindly the President when he declares martial law or suspends the privilege of the writ. While the 1987 Constitution vests the totality of executive power in one person only, the same Constitution also specifically empowers the Court to 'review' the 'sufficiency of the factual basis' of the President's declaration of martial law or suspension of the writ if it is subsequently questioned by any citizen.[101]

Justice Carpio further warned that

> *Justices of the Court took an oath to preserve and defend the Constitution. Their oath of office does not state that they must trust the President when he declares martial law or suspends the privilege of the writ.* On the contrary, paragraph 3, Section 18, Article VII of the 1987 Constitution expressly authorizes and specifically tasks the Court to review the judgment of the President as one of the two checking mechanisms on the President's power to declare martial law or suspend the privilege of the writ. *The 1987 Constitution would not have entrusted this specific review power to the Court if it intended the Justices to simply trust the judgment or wisdom of the President.* Such obeisance to the President by the Court is an abject abdication of a solemn duty imposed by the Constitution.[102]

Likewise, Justice Leonen opined that for the factual basis to be deemed sufficient, the facts alleged by the respondents cannot be accepted as *per se* accurate and credible, for to do so would be tantamount to a refusal of the

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100. *Id.* at 298 (J. Carpio, dissenting opinion).

101. *Id.* at 299.

102. *Lagman*, 829 SCRA at 300 (emphases supplied).

Court to perform its constitutional mandate.[103] He averred that "[to insist] on a deferential mode of review suggests that the Court is incapable of making an independent assessment of the facts and implies that the Court is powerless to overturn a baseless and unfounded proclamation of martial law or suspension of the privilege of the writ."[104] While Justice Leonen recognized that the President, in exercising his role as Commander-in-Chief, cannot be expected to personally gather intelligence information and would necessarily have to rely heavily on reports given by those under his command, it is still imperative that the reports submitted to the President be sufficient and worthy of belief. Intelligence information relied upon by the President are credible only when they have undergone a scrupulous process of analysis.[105]

Justice Leonen insisted that the bases on which a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* are grounded must factually be correct with a satisfactory level of confidence at the time when it is presented.[106] He cautioned that

> [a]lthough some may consider the duty imposed in Article VII, Section 18 of the Constitution as a heavy burden, it is one that this Court must willingly bear to ensure the survival of our democratic processes and institutions. The mandate imposed under the Constitution is so important that to blindly yield to the wisdom of the President would be to commit a culpable violation of the Constitution.[107]

2. Finding a Balanced Approach

Despite the limitations faced by the Court, it is still possible to faithfully carry out its constitutional duty without providing for too much leeway in the President's favor.

Chief Justice Sereno acknowledged that this is the first post-Marcos examination of martial law that the Court has embarked on under the 1987 Constitution, and that there existed no rules or jurisprudence that could sufficiently guide the President on the declarative pronouncements, and the

103. *Id.* at 551 (J. Leonen, dissenting opinion).

104. *Id.* at 552.

105. *Id.*

106. *Id.*

107. *Id.*

evidentiary threshold that must be met for a declaration of martial law to pass the test of constitutionality.[108] Consequently, Chief Justice Sereno recognized that a significant amount of interpretation and drawing up from analogous rules is necessary in the Court's handling of the case.[109] Thus, she suggested a "permissive approach" in weighing and admitting evidence or drawing from interpretative sources, considering that the Court had no time to vet the same for precision, accuracy, and comprehensiveness.[110] She, however, clarified that the same will be a *pro hac vice* approach, considering the paucity of rules and jurisprudence to guide the procedural and evidentiary aspects of the same.[111]

Such approach is appropriate in the given situation as it affords fairness to the President and eases the burden on the Court in resolving this novel and challenging task. However, permissive does not mean that the Court would simply concede to the President the sufficiency of the factual basis. A certain level of scrutiny is still necessary.

In addition, Justice Caguioa clarified that the proceeding under Section 18, Article VII of the Constitution is "a neutral and straightforward fact-checking mechanism, shorn of any political color whatsoever,"[112] which serves the following functions:

> (1) preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties[;]
>
> (2) providing the sovereign people a forum to be informed of the factual basis of the Executive's decision[;] or, at the very least
>
> (3) assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ.[113]

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108. *Lagman*, 829 SCRA at 217 (C.J. Sereno, dissenting opinion).

109. *Id.*

110. *Id.*

111. *Id.* at 218.

112. *Id.* at 642 (J. Caguioa, dissenting opinion).

113. *Id.* at 644-45.

In view of such an approach, Justice Caguioa called upon the Executive to embrace the mechanism as it provided another opportunity to lay before the public its reasons for issuing the Proclamation.[114] Similarly, he also called upon the Court "to embrace this fact-checking mechanism, and not find reasons of avoidance by, for example, resorting to procedural niceties."[115]

3. Establishing Parameters

Regarding the permissive approach to evidence, Chief Justice Sereno opined that in addition to extending fairness to the President, with enough effort, the Court should still have undertaken a factual review of the coverage of martial law.[116] Unfortunately, in refusing to make such effort, the majority had effectively given a *carte blanche* authority to the President to exclusively determine such.[117] This can be seen in the majority decision upholding the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the *entirety* of Mindanao.

The *ponencia* ruled that the President has the discretion to determine the territorial coverage or application of martial law or suspension of the privilege of the writ.[118] According to the majority, the Constitution has already provided sufficient safeguards against possible abuses of the President's Commander-in-Chief powers, and further curtailment of Presidential powers should not only be discouraged but also avoided.[119] The majority counselled that the Court must stay within the confines of its power, to wit —

> The Court can only act within the confines of its power. *For the Court to overreach is to infringe upon another's territory*. Clearly, the power to determine the scope of territorial application belongs to the President. 'The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system.'

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114. *Lagman*, 829 SCRA at 645.

115. *Id.*

116. *Id.* at 219 (C.J. Sereno, dissenting opinion).

117. *Id.*

118. *Id.* at 202.

119. *Id.* at 151 (majority opinion).

> 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.*[120]

In her dissent, Chief Justice Sereno lamented that

> *the Court could have avoided defaulting on its duty to fully review the action of the President. Instead, the majority emaciated the power of judicial review by giving excessive leeway to the President*, resulting in the absurdity of martial law in places as terrorism and rebellion-free as Dinagat Islands or Camiguin. The military has said as much: there are places in Mindanao where the Mautes will never gain a foothold. If this is so, why declare martial law over the whole of Mindanao?[121]

Indeed, the Constitution provides that the President has the power to suspend the privilege of the writ of *habeas corpus* or place the Philippines *or any part thereof* under martial law. Thus, contrary to the statement of the *ponencia*, the metes and bounds of martial law is determinable. This is where the element of necessity — as embodied in the public safety requirement — comes into play.

To reiterate, the sufficiency of the factual basis determines the existence of two concurring factors: (1) actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the

120. *Lagman*, 829 SCRA at 209-10 (emphases supplied).

121. *Id.* at 219 (C.J. Sereno, dissenting opinion) (emphasis supplied).

writ of *habeas corpus*.[122] In interpreting the second requirement, Chief Justice Sereno cited *Lansang* and asserted that the necessity of the declaration of martial law or suspension of the privilege of the writ must be reviewed according to the intensity of the rebellion, its location, and time.[123] In short, the sufficiency and necessity test under the Constitution requires calibration and delimitation of the coverage of martial law. According to her, the public safety requirement can only mean that the Court must ask whether the powers being invoked are proportional to the state of the rebellion and corresponds with its place of occurrence.[124]

Justice Caguioa shared this view and went further to clarify that the requirement of actual rebellion serves to *localize* the scope of martial law to cover only the areas of armed public uprising.[125] *Elsewhere*, there must be a clear showing of the requirement of public safety necessitating its inclusion.[126]

Contrary to the sentiments expressed by the *ponencia*, the Court's act of calibrating the scope of martial law and suspension of the privilege of the writ does not amount to an encroachment into the President's domain. As amply put by Chief Justice Sereno,

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

122. *Id*. at 182.

123. *Id*. at 228.

124. *Id*. at 230.

125. *Id*. at 661 (J. Caguioa, dissenting opinion).

126. *Lagman*, 829 SCRA at 661.

> powers are sufficient to resolve a particular violent situation, then the Court must deem them as sufficient, and thus martial law should be deemed as not necessary.[127]

All things considered, it appears that the majority of the Court failed to heed the cautions of the dissenters. The fear that the sweeping pronouncements on undue deference to the Executive may have dire consequences seemed to have been realized in the succeeding cases dealing with the extensions of Proclamation No. 216.

B. On the Extensions of the Proclamation

Regarding the extension of the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, Section 18, Article VII of the Constitution provides —

> 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, 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 any need of a call.
>
> 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

127. *Id.* at 225 (C.J. Sereno, dissenting opinion) (emphases supplied).

> 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.[128]

As discussed earlier, there have already been three extensions of Proclamation No. 216: (1) from the end of the initial proclamation until 31 December 2017; (2) from 1 January to 31 December 2018; and (3) from 1 January 2019 to 31 December 2019. The last two extensions were the subjects of *Lagman 2018* and *Lagman 2019*, respectively. The discussion henceforth will focus on these two cases.

1. The Second Extension

Lagman 2018 is the first instance when the Court decided the constitutionality of the extension of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Below are some notable precedents laid down therein, in addition to what have already been established in *Lagman 2017*:

(1) Congress is an indispensable party to petitions questioning the constitutionality of the extension of the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*;[129]

(2) The doctrine of conclusiveness of judgment from examining the persistence of rebellion in Mindanao does not apply to the extension of the proclamation; petitioners are not barred from questioning the alleged persistence of the rebellion owing to the transitory nature of the Court's judgment on the sufficiency of the factual basis for a declaration of martial law;[130] and

(3) The manner in which Congress deliberated on the President's request for extension is not subject to judicial review.[131]

By Constitutional design, the extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is a joint Executive-Legislative act: the President initiates the extension, and Congress is ultimately

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128. PHIL. CONST. art. VII, § 18 (emphases supplied).

129. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at *13.

130. *Id.* at *15.

131. *Id.* at *22.

the body that extends the proclamation.[132] As for the Court, it is likewise mandated by the Constitution to determine the existence of two factual bases for the extension: (1) that the invasion or rebellion persists; and (2) public safety requires the extension.[133]

With a vote of 10-5, the Court in *Lagman 2018* dismissed the petitions and declared the extension of Proclamation No. 216 under Resolution of Both Houses No. 4 as constitutional.[134] The same justices who dissented in *Lagman 2017* also dissented in this case, with the addition of Justice Francis H. Jardeleza, bringing the total number of dissenters to five.[135]

a. The Problem with Too Much Deference

Similar to *Lagman 2017*, it seems that the *ponencia* in *Lagman 2018* again made some pronouncements that can be interpreted as giving too much leeway in favor of the Executive. Consider the following excerpts from the *ponencia*, which even cited the statements made in *Lagman 2017*, as previously discussed in this Article —

> Indeed, *absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation*. Under the circumstances, the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern. The following pronouncement in *Lagman*, thus, finds relevance —
>
> 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

132. *Id.* at *94.

133. *Id.* at *94-95.

134. *Id.* at *58.

135. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at *58.

> 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.
>
> In the same vein, *to require the President to render a meticulous and comprehensive account in his Proclamation or Report will be most tedious and will unduly encumber his efforts to immediately quell the rebellion.*[136]

While in *Lagman 2017*, it was understandable — to a certain extent — for the Court to make pronouncements such as these, it would be harder to find a similar justification for the same in *Lagman 2018*. The exigencies extant when the Court decided *Lagman 2017* were not commensurate with those faced by the Court in *Lagman 2018*. As Chief Justice Sereno emphasized, the application of the permissive approach in *Lagman 2017* was *pro hac vice* in view of the paucity of rules and jurisprudence to guide an evidentiary determination of the sufficiency of the factual basis for Proclamation No. 216.[137] In contrast, the same cannot be said about the circumstances of *Lagman 2018*. Hence, the permissive approach should not have been applied.

The danger of making the permissive approach as the norm was acknowledged by Justice Jardeleza. As mentioned earlier, he voted with the majority in *Lagman 2017* but sided with the dissenters in *Lagman 2018*. His statements on his shift of perspective are enlightening and deserve to be reproduced here —

> Indeed, when our [f[ramers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, *it certainly did not mean for the Court to verify only the factual bases for the alleged rebellion and 'permissively' rely on the President's assessment of the public safety requirement given the facts presented.*
>
> For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to 'shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power' and '[create] an objective test to

136. *Id.* at *37-38 (emphases supplied).

137. *Id.* at *95-96 (C.J. Sereno, dissenting opinion).

> determine whether the President has complied with the constitutionally prescribed conditions.'
>
> In fact, *I realize that I have previously articulated some views on public safety which may seem opposed to the views I now embrace*. I initially took the position that since the requirements of public safety appear to be phrased in discretionary terms, it would be difficult to set parameters *in a vacuum* as to what predicate facts should exist. *The facts and experience from this case, however, have opened my eyes to the mischief that a 'permissive' approach to the President's 'prudential estimation' of the public safety requirement can cause. Permissive deference can be used to justify the imposition or extension of martial law by the simple expedient of alleging the existence or persistence of 'rebel' groups capable of opposing the Government*. I fail to see the difference between sustaining the extension of martial law based on the *capability* of hostile 'rebel' groups to sow discord against the Government and sustaining martial law on the basis of an imminent danger of rebellion. That would be a movement back to the *Lansang* formulation, and an abject abdication of this Court's 'newly assumed power' to review the declaration, or extension, of martial law based on sufficiency of factual basis.[138]

Through *Lagman 2018*, it had become clearer that the pronouncements in *Lagman 2017* had the effect of granting too much leeway in favor of the President while diluting the Court's power to review. This outcome is demonstrated in the Court's failure to set sufficient parameters for its factual review exercise.

b. Lack of Parameters

Chief Justice Sereno observed that

> [t]he Court is still adrift, unable in the Majority Decision, to find its mooring either on a well-reasoned interpretation of the text of the Constitution, or to present a logical continuum of this Court's jurisprudence. Instead, it has taken an extreme view, ceding all substantive points to respondents and allowing thereby no significant quarters to petitioners. In demonstrating its serious lack of balance, it has made itself even more vulnerable to political forces, rendering itself inert in exercising the power of judicial review.[139]

The dissenters held that the bare minimum requirement of existence — or persistence — of rebellion had not been satisfactorily proven. As succinctly

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138. *Id.* at *263-64 (J. Jardeleza, dissenting opinion) (emphases supplied).

139. *Id.* at *71 (C.J. Sereno, dissenting opinion).

put by Justice Carpio, the Maute rebellion, which was the basis of Proclamation No. 216, already ceased with the death of its leader and the liberation of Marawi City; mere threats to security posed by remnants of the defeated rebel groups, which was used by the President to justify the request for extension, do not constitute an actual rebellion.[140]

The lack of sufficient parameters in the Court's exercise of factual review is also exemplified in its failure to provide limits as to the length or number of extensions on the declaration of martial law and suspension of the privilege of the writ, as well as its acquiescence to the inclusion of other rebel groups and other social ills as justification for the extension.

A review of the *ponencia* shows that it did not scrutinize the length of the extension of the declaration of martial law and suspension of the privilege of the writ in Mindanao. While Congress ultimately determines the period of extension, such is not unbridled. The *ponencia* merely accepted the one-year period, just as Congress accepted the requested period by the President.

On the inclusion of other rebel groups, recall that Proclamation No. 216 was issued on the basis of the Maute rebellion. However, when the President requested Congress for the extension of Proclamation No. 216, it included the acts attributed to the Bangsamoro Islamic Freedom Fighters (BIFF), the Turaife Group, and the New People's Army (NPA) as justifications for the extension. The *ponencia* considered the acts of these other groups when it upheld the validity of the extension.[141] This clearly contradicts the wording of the Constitution, which requires that rebellion *persists* in order to justify an extension of the declaration of martial law or suspension of the privilege of the writ. The simplest and most logical interpretation should be that the *same* rebellion that warranted the initial proclamation should *persist* to merit an extension.

The danger with the *ponencia*'s view is articulated by Justice Caguioa in this wise —

> In this scenario espoused by the *ponencia*, violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there are 'overlaps' in the attacks. To this end, the *ponencia* is accommodating practical concerns over the clear mandate of the country's

140. *Id.* at *124 (J. Carpio, dissenting opinion).

141. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at *37.

> fundamental law. *This precedent dangerously supports the theoretical possibility of perpetual martial law.*[142]

As regards the inclusion of other justifications for the extension, the President, in his letter to Congress, sought the extension of martial law not just for public safety but for other objectives as well, including "rehabilitation and the promotion of a stable socio-economic growth and development."[143] This is clearly outside the scope of martial law and the suspension of the privilege of the writ as they can be achieved even without the exercise of the President's Commander-in-Chief powers. Justice Leonen warned that these statements are "a grave cause for concern as they imply sinister motives to use martial law to undermine the legal order."[144]

c. Reexamination of the Court's Duty

In view of the seeming leniency of the Court in discharging its mandate under Section 18, Article VII of the Constitution, there is a need to reexamine how the Court discharges its duty of reviewing the sufficiency of factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, as well as its extension.

Chief Justice Sereno averred that in the context of invasion or rebellion, the doctrine of necessity should always be considered.[145] The Court must apply the "necessity of public safety test" or a calibration exercise wherein the Court determines whether the crisis at hand poses such a danger to public safety that martial law becomes necessary — in other words, whether the declaration of martial law is a proportionate response to the problem.[146] It also entails a determination of the scope, coverage, and duration of martial law.[147]

Similarly, Justice Caguioa maintained that the President's exercise of extraordinary powers must be measured against the scale of necessity and

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142. *Id.* at *285 (J. Caguioa, dissenting opinion) (emphasis supplied).

143. *Id.* at *4 (majority opinion).

144. *Id.* at *124 (J. Leonen, dissenting opinion).

145. *Id.* at *76 (C.J. Sereno, dissenting opinion).

146. *Id.*

147. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at *76 (C.J. Sereno, dissenting opinion).

calibrated accordingly.[148] However, Justice Caguioa clarified that in determining the sufficiency of the factual basis, the Court does not thereby assume to do the calibration in the President's stead, but only checks the said calibration in hindsight.[149]

As for Justice Leonen, other than the sufficiency of the factual basis, the Court must also determine the reasonability of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, as well as its extension.[150] For the sufficiency of the factual basis, the Court must distinguish between the ultimate facts (*factum probandum*) and the evidentiary facts (*factum probans*) and the reasonability of the inferences to arrive at the allegations.[151] The reasonability of the extension of the declaration of martial law and suspension of the privilege of the writ will depend on the following inquiries:

> (1) whether the powers originally granted were properly exercised and it was not the inability to effectively and efficiently wield them that caused the extension;
>
> (2) whether the past application of defined powers, under the declaration of a state of martial law and the suspension of the writ of *habeas corpus*, was conducted in a manner which did not unduly interfere with fundamental rights. In other words, the Court needs to be convinced that the powers requested under martial law were and will be exercised in a manner least restrictive of fundamental rights;
>
> (3) whether the proposed extension has clear, reasonable, and attainable targets, and therefore, whether the period requested is supported by these aims;
>
> (4) whether there are credible and workable rules of engagement for the exercise of the powers properly disseminated through the ranks of the military that will implement martial law; and

148. *Id.* at ★289 (J. Caguioa, dissenting opinion).

149. *Id.*

150. *Id.* at ★186 (J. Leonen, dissenting opinion).

151. *Id.*

(5) whether there is basis for the scope of the area requested for the extension of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*.[152]

For his part, Justice Jardeleza expounded on the second requirement of public safety and interpreted the same as requiring a level of *scale* to qualify the first requirement of the existence of an actual rebellion or invasion.[153] He construes the public safety requirement as a limit to the exercise of the President's extraordinary powers only to rebellions or invasions of *a certain scale* as to sufficiently threaten public safety.[154] Thus, the factual basis must show not only that actual rebellion or invasion exists, but that the situation has reached such a *scale* as to threaten public safety. [155]

As can be gathered from the dissenting opinions, it is evident that the majority decision had left much to be desired in terms of formulating the proper approach to cases involving the declaration of martial law and suspension of the privilege of the writ. It seems, however, that the trend had been carried on to the succeeding case.

2. The Third Extension

The Court in *Lagman 2019* upheld the constitutionality of the third extension of Proclamation No. 216 for another year, from 1 January to 31 December 2019.[156] As it was the second case that reached the Court which involved an extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*, the *ponencia* mostly took its cue from *Lagman 2018* and adopted the principles laid down therein. However, the *ponencia* in *Lagman 2019* further broadened the leeway granted in favor of the President.

152. *Id*.

153. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at ★255 (J. Jardeleza, dissenting opinion).

154. *Id*.

155. *Id*.

156. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 15.

a. The Dangers of Extreme Deference

Among the three martial law and *habeas corpus* cases subject of this Article, the one with the most deferential approach is undoubtedly the case of *Lagman 2019*. It seems that the trend in these cases is to grant more and more leeway to the President. Consider the following pronouncements —

> The sufficiency of the factual basis for the extension of martial law in Mindanao must be determined from the facts and information contained in the President's request, supported by reports submitted by his alter egos to Congress. These are the bases upon which Congress granted the extension. *The Court cannot expect exactitude and preciseness of the facts and information stated in these reports, as the Court's review is confined to the sufficiency and reasonableness thereof. While there may be inadequacies in some of the facts, i.e., facts which are not fully explained in the reports, these are not reasons enough for the Court to invalidate the extension* as long as there are other related and relevant circumstances that support the finding that rebellion persists and public safety requires it.
>
> Contrary to *Monsod, et al., the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of habeas corpus. The Court is not a fact-finding body required to make a determination of the correctness of the factual basis for the declaration or extension of martial law and suspension of the writ of habeas corpus*. It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions.
>
> ...
>
> *The Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision* to declare martial law or suspend the writ, for this is an executive function. *The threshold or level (degree) of sufficiency is, after all, an executive call*. The President, who is running the government and to whom the executive power is vested, is the one tasked or mandated to assess and make the judgment call which was not exercised arbitrarily.
>
> ...
>
> The *test of sufficiency is not accuracy nor preciseness but reasonableness* of the factual basis adopted by the Executive in ascertaining the existence of rebellion and the necessity to quell it.[157]

157. *Id*. at 15-20 (emphases supplied).

Further, it was held that

> [t]he Constitutional safeguards found in Section 18, Article VII does not demand that a city be first taken over or people get killed and billions of properties go up in smoke before the President may be justified to use his options under Section 18. What the Constitution asks is only that there be actual rebellion, an existing rebellion in the territory where Martial rule is to be imposed. *The declaration should not be arbitrary or whimsical, but its basis should not also be so accurate that there is no room for changes or correction*. Considering the volatility of conflict, situations may change at the blink of an eye. And the Executive is burdened with such responsibility to act decisively.[158]

Evidently, *Lagman 2019* adopted the approach of the two previous cases, but it went further and granted more leniency in appreciating the factual basis for martial law and *habeas corpus* cases. This trend goes against logic. The permissiveness of the Court's approach towards the evidence provided by the Executive ought to have been less and less with every succeeding case. Since Proclamation No. 216 had already been in effect for more than two years, it should no longer be unreasonable for the Court to demand more accurate evidence to support the sufficiency of factual basis for such.

One of the striking pronouncements quoted above is that the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ. The *ponencia* justified this by saying that the Court is not a fact-finding body required to make a determination of the factual basis for such declaration or extension and that it need only assess and evaluate the written reports of the Executive.[159] Objectively speaking, this statement goes against the very mandate imposed by the Constitution upon the Court to conduct a fact-checking mechanism.

Indeed, the Court is not a trier of facts. However, jurisprudence had long recognized the exceptions to this rule, when the Court nonetheless reviews questions of fact.[160] Further, in cases involving the writs of *amparo*, *habeas data*,

158. *Id.* at 32.

159. *Id.* at 15.

160. *See, e.g.*, Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., 650 SCRA 656, 660 (2011). The Court enumerated the following exceptions to the general rule:

and *kalikasan*, the rules of which have been promulgated by the Court, direct relief from the Court is sanctioned regardless of the presence of questions which are heavily factual in nature.[161] More importantly, in martial law and *habeas corpus* cases, the Court has explicitly been tasked by the Constitution to undertake a factual examination of the President's exercise of its Commander-in-Chief powers. Thus, the Court cannot simply avoid this duty by the mere expedient of claiming that it is not a trier of facts and conceding that the Executive is more equipped at gathering facts and information on the ground. As aptly put by Justice Caguioa, the President's far superior information-gathering machinery is precisely why evidence presented which is unsubstantiated, uncorroborated, and based on conjectures, rumor, and hearsay, is unacceptable.[162]

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(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

Id. (emphases omitted).

161. Gios-Samar, Inc. v. Department of Transportation and Communications, G.R. No. 217158, Mar. 12, 2019, at 30, *available at* http://sc.judiciary.gov.ph/2331 (last accessed July 25, 2019).

162. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 55 (J. Caguioa, dissenting opinion).

In addition to these gratuitous pronouncements, the *ponencia* also cited the cases of *Montenegro v. Castañeda*[163] and *Aquino* and included them in the discussion as follows —

> Thus, in determining the sufficiency of the factual basis for the extension of martial law, the Court needs only to assess and evaluate the written reports of the government agencies tasked in enforcing and implementing martial law in Mindanao.
>
> Indeed, in *Montenegro v. Castañeda*, the Court pronounced that [ ]
>
> > [w]hereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.
>
> But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.
>
> ...
>
> *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile*, which was decided in 1974 under the 1973 Constitution, the Court has already acknowledged that [ ]
>
> > [t]he state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually

163. Montenegro v. Castañeda, 91 Phil. 882 (1952).

> conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.

Equally relevant pronouncement is in *Montenegro v. Castañeda* in relation to the suspension of the privilege of the writ of *habeas corpus* under Proclamation No. 210, s. 1950, describing the nature of rebellious acts [—]

> To the petitioner's unpracticed eye[,] the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow his government *vi et armis*, by force and arms.[164]

The cases of *Montenegro* and *Aquino* have been discussed earlier in this Article. To recall, *Montenegro* contained the following pronouncement: "the authority to decide whether the exigency has arisen requiring suspension belongs to the President and 'his decision is final and conclusive' upon the courts and upon all other persons."[165] Regarding *Aquino*, it was mentioned earlier that the Court therein was divided on whether the sufficiency of the proclamation of martial law was a political question, with some justices advocating to overturn *Lansang* and return to *Barcelon* and *Montenegro* which applied the political question doctrine.[166]

It should be noted that the cases of *Montenegro* and *Aquino* were decided under the regime of the 1935 Constitution, when there was yet no mandate for the Court to review the President's declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. Thus, it was utterly inappropriate for the *ponencia* in *Lagman 2019* to cite these cases as they are wholly inconsistent with the current Constitution where the political question doctrine had already been rendered inapplicable in martial law and *habeas corpus* cases.

Another unique observation that could be made of the *ponencia* in *Lagman 2019* is its lack of discussion on how public safety required the extension of

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164. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 15-16 & 22.

165. *Montenegro*, 91 Phil. at 887 (citing *Barcelon*, 5 Phil. at 99-100).

166. *Aquino, Jr.*, 59 SCRA at 239.

Proclamation No. 216. The only discussion on public safety is quoted in its entirety as follows —

> PUBLIC SAFETY REQUIRES THE EXTENSION OF MARTIAL LAW IN MINDANAO
>
> The Resolutions coming from the Regional Peace and Order Council (RPOC) of Region XI (Davao City) and Region XIII (Caraga); the Provincial Peace and Order Council (PPOC) of the Province of Agusan del Norte, Agusan del Sur, and Dinagat Islands; and the Office of the Governor, Province of Saranggani, expressing support for the President's declaration of martial law and its extension, reflect the public sentiment for the restoration of peace and order in Mindanao. These resolutions are initiated by the people of Mindanao, the very same people who live through the harrows of war, things and experiences that we can only read about. Importance must be given to these resolutions as they are in the best position to determine their needs.
>
> Citing the *Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J.* in Justice Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, the demands of public safety [are] determined through the application of prudential estimation, thus:
>
> > The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in [favor] of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the [E]xecutive's judgment.
> >
> > In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under

> the Penal Code is different from looking for rebellion under the Constitution.
>
> Ultimately, it is the Commander-in-Chief, aided by the police and military, who is the guardian and keeper of public safety.[167]

As can be gleaned from the discussion above, there is a glaring lack of examination of the facts to prove that public safety indeed requires the extension of martial law in Mindanao. While the *ponencia* did discuss the first requisite on the persistence of rebellion, the same is not enough — for equally vital is the public safety requirement. It is not enough that rebellion persists. Public safety must require the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. These are distinct requirements, both of which must be established by sufficient factual basis.

b. Developing the Parameters for Review

That the majority opinion once again failed to set parameters for its review of the President's exercise of its powers was not lost on the justices who dissented — the same justices who dissented in *Lagman 2018*, with the exception of Chief Justice Sereno who was no longer part of the *Lagman 2019* Court. While the *ponencia* can be characterized as too lax and accommodating, the dissenting opinions have developed more concrete parameters for the Court's exercise of its power to review under Article VII, Section 18 of the Constitution.

For example, Justice Jardeleza had observed that the AFP uses certain metrics by which the armed forces measure enemy capability, thereby showing that there *is* some science behind the military's recommendation to declare martial law or suspend the privilege of the writ of *habeas corpus*.[168] This emanated from the Defense Secretary's statement before the Joint Session of Congress, as reiterated during oral arguments, that the *military definition of destruction of the enemy* is its reduction of their capability by 30% in terms of strength, firearms, and support system.[169] In such case, the conflict will be

167. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 23-24.

168. *Id.* at 10 (J. Jardeleza, dissenting opinion).

169. *Id.*

considered as a law enforcement matter rather than a military one and on the basis of which, the AFP can recommend the lifting of martial law.[170]

In this regard, Justice Jardeleza made the following statements —

> More importantly, as a Member of the Court specifically mandated by the Constitution to determine the sufficiency of the factual bases for the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, *I appreciate the AFP's use of science and metrics. To me, these serve as objective and reasonable measures by which I can arrive at a conclusion. In fact, it is my view that the Court should inquire into its application in similar future cases as a way of measuring the factual existence of the twin requirements for the declaration or extension of martial law.*[171]

For his part, Justice Leonen reminded the Court that it is mandated to reassess and independently determine the sufficiency of the factual basis as presented by the government and not accept the President's conclusion *pro forma*.[172] Accordingly, standards must be set to guide the Court in its review of the innumerable reports given by the Executive.[173] He maintained that the facts alleged and relied upon by the President must be: (1) credible; (2) complete or sufficient to establish a conclusion; (3) consistent with each other; and (4) able to establish a sensible connection between the incidents reported and the existence of rebellion, and the consequent need for martial law's proclamation or extension.[174] Moreover, he stressed that the credibility of the information rests upon the degree of validation used to confirm its authenticity, which must be demonstrated to the Court.[175]

While Justices Jardeleza and Leonen made valuable suggestions as to how the Court can make a better assessment of the facts, Justice Caguioa took it a step further and painstakingly examined each and every evidence presented by the government. Through his meticulous and detailed evaluation of the facts,

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170. *Id.*

171. *Id.* at 12 (emphasis supplied).

172. *Id.* at 30 (J. Leonen, dissenting opinion).

173. *Lagman*, G.R. Nos. 243522, 243677, 243745, & 243797, at 30.

174. *Id.*

175. *Id.*

he was able to concretize what the Court was actually reviewing. All in all, his review of the totality of evidence yielded the following observations:

> The evidence readily shows certain gaps that needed to either be completed or supplemented in order to make a showing of relevance and comprehensibility.
>
> (1) As adverted to above, fifteen (15) incomplete entries do not allow the Court the full information on these reports.
>
> (2) There were reports that did not identify the perpetrators. Of the one hundred fifty (150) incidents, the entries on fifty-four (54) incidents did not identify the perpetrators.
>
> (3) Almost ninety percent (90%) of the entries, or one hundred thirty-three (133) entries, do not identify the motive or state that the motive is undetermined.
>
> (4) Fifty-three (53) entries neither identify the perpetrators nor supply the motive.
>
> (5) For the eighteen (18) total entries that do identify the perpetrators as members or suspected members of the said groups and supplies the motive, in at least sixteen (16) of these entries, the specific details supplied tend to show that these crimes were committed for private motives or purposes or without the political motivation required in rebellion.[176]

In evaluating all submissions of the government, Justice Caguioa emphasized that the review of the Court in Article VII, Section 18 of the Constitution is a judicial proceeding. Thus, when the government is tasked to show sufficient factual basis, it must be through evidence — more importantly, evidence which is accurate.[177]

The pronouncements made by the dissenting justices only show that the Court is very much capable of setting parameters in the discharge of its duty to review under the Constitution, and that the Court can make an independent finding on the sufficiency of factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.

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176. *Id.* at 25-26 (J. Caguioa, dissenting opinion).

177. *Id.* at 46.

IV. Conclusion

The Court's duty whenever the President proclaims martial law or suspends the privilege of the writ of *habeas corpus* has come a long way from *Barcelon* up to *Lagman 2019*. The present Constitution already provides the safeguards for the exercise of the President's Commander-in-Chief powers, and it is the Court's solemn duty to ensure that these safeguards are upheld.

As the first cases under the 1987 Constitution that dealt with the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, it was incumbent upon the Court in *Lagman 2017*, *Lagman 2018*, and *Lagman 2019* to lay down the fundamental principles that will serve as guides for the future cases. However, it would seem that the three cases have left much to be desired. Specifically, two glaring observations can be had in these cases: (1) they afforded too much leeway and deference to the President and (2) there were no concrete parameters laid down in determining how the Court should exercise its power to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, as well as its extension.

As demonstrated earlier in this Article, it appears that the decisions in these three cases have made sweeping and overly gratuitous and deferential statements in favor of the President in evaluating the sufficiency of the factual basis for the issuance of Proclamation No. 216 and its extensions. Perhaps the most dangerous pronouncement common to the three cases is the distinction between sufficiency and accuracy — that when the Court reviews the factual basis for the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*, it is evaluating the sufficiency, not accuracy, of the evidence presented. With due respect to the Court, such amounts to a false — and perilous — dichotomy. In this regard, Justice Caguioa reasonably observed —

> In layman's terms, *how can something that is inaccurate and untrue be considered sufficient?* Thus, the repeated insistence and talismanic reliance on the phrase 'accuracy is not equivalent to sufficiency' amounts to nothing more than a complete and total abdication by the Court of its duty under Section 18. *The recurrent use of the foregoing pronouncement renders nugatory the power and duty of the Court under Section 18, for it binds the Court to view as gospel truth — whether supported by evidence or otherwise — any claim of untoward incidents put forth by the Executive and the military to justify the existence of rebellion and the perils to public safety*. If this is the majority's formulation, Section 18 can just as well

> be deleted from the Constitution as it is totally useless within the checks and balances framework of the Constitution.[178]

Giving undue deference to the President could be seen as a revival of a different version of the political question doctrine — a tamer, but nonetheless potent version. While the Court is already expressly tasked by the Constitution to review the President's exercise of the least benign Commander-in-Chief powers, such duty will come to naught if the Court fails to properly conduct its review. To completely defer to the President would be tantamount to accepting his or her claims *pro forma*.

Unless the Court adopts concrete parameters in the discharge of its duty to review the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, it will be reduced to a mere rubber stamp for the President's exercise of its awesome powers. As Chief Justice Sereno warned the Court,

> [w]orse than the Court's act of effectively abdicating its duty to fully review the President's action under Article VII, Section 18 of the Constitution, is its failure to lay down parameters for the future review of the President's same or similar actions. *Weak, sweeping statements today can encourage their misuse as precedents in future cases*.[179]

The framers of the Constitution recognized the importance of martial law. Wielded properly, the same may aid the President in quelling rebellions or insurrections that threaten the public safety. Yet, along with this recognition is the acknowledgment that martial law may also be used as a tool to weaken our democratic institutions and concentrate the powers of the State into one person — as our history during the Marcos rule have shown. This is the reason why the Constitution provided several safeguards in the exercise of such power. As the guardian of the Constitution and the last bastion of democracy, it is the Court's most solemn duty to ensure that these safeguards are realized. To this end, it must meaningfully and faithfully discharge its mandate. Its failure to do so may once again lead this country into a slippery slope towards another judicially-sanctioned authoritarian rule.

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178. *Id*. at 46-47 (emphases supplied and omitted).

179. *Pimentel III*, G.R. Nos. 235935, 236061, 236145, & 236155, at *96 (C.J. Sereno, dissenting opinion) (emphasis supplied).