

Republic of the Philippines
SUPREME COURT
Manila

**BAYAN MUNA PARTYLIST
REPRESENTATIVE CARLOS
ISAGANI T. ZARATE, GABRIELA
WOMEN'S PARTY
REPRESENTATIVES
EMERENCIANA A. DE JESUS
AND ARLENE D. BROSAS,
ANAKPAWIS REPRESENTATIVE
ARIEL B. CASILAO, ACT
TEACHERS REPRESENTATIVES
ANTONIO L. TINIO AND
FRANCE L. CASTRO, AND
KABATAAN PARTYLIST
REPRESENTATIVE SARAH
JANE I. ELAGO,**

Petitioners,

- versus -

G.R. No. _____

**PRESIDENT RODRIGO
DUTERTE, CONGRESS OF THE
PHILIPPINES, REPRESENTED
BY SENATE PRESIDENT
VICENTE C. SOTTO III AND
HOUSE SPEAKER GLORIA
MACAPAGAL-ARROYO,
EXECUTIVE SECRETARY
SALVADOR MEDIALDEA,
DEFENSE SECRETARY DELFIN
LORENZANA, ARMED FORCES
OF THE PHILIPPINES CHIEF-OF-
STAFF LIEUTENANT GENERAL
BENJAMIN MADRIGAL JR.,
PHILIPPINE NATIONAL POLICE
DIRECTOR-GENERAL OSCAR**

DAVID ALBAYALDE,

Respondents.

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PETITION

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

PREFATORY

When Respondents ask that the imposition of martial law be extended, what additional power do they wish to exercise in order to quell the claimed rebellion? This is the question that eludes an answer until now. It must be a power that they cannot exercise without the imposition of martial law.

It seems that the only additional power given to government under martial law or martial rule, is the power to take over civilian authorities and their functions. All other powers can be exercised under their calling out powers.

This essentially is what the public safety requirement in the Constitution means—that public safety requires the military taking over of civilian function of government in the area of the rebellion.

This is the main argument employed by herein Petition—that government has failed to allege and prove that this specific public safety requirement has been fulfilled, considering that in Mindanao the civilian government continues to function; and that government has failed to prove that public safety requires that the military take over civilian authorities and functions in Mindanao.

Any other interpretation of the public safety requirement allows the government to impose martial law on the mere claim that rebellion exists since, government can always assert that rebellion inherently threatens public safety.

This Honorable Court cannot allow the imposition of the extreme weapon of martial law for psychological purposes. Any admission by the Respondents to this purpose spells immediate defeat to their request that they be granted martial law powers much less the extension of the same.

NATURE OF THE PETITION

1. This is a Petition under Section 18, Article VII of the 1987 Constitution which seeks to declare as UNCONSTITUTIONAL the approval of both Houses of Congress of yet another one-year extension of Proclamation No. 216 or the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao from 01 January 2019 to 31 December 2019.
2. Petitioners invoke the power of judicial review to determine the sufficiency of the factual basis for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* (or any extension thereof) under the aforesaid constitutional provision which states that:

Article VII EXECUTIVE DEPARTMENT

Section 18. xxx.

xxx.

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

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

PARTIES

THE PETITIONERS

4. BAYAN MUNA REPRESENTATIVE **CARLOS ISAGANI T. ZARATE**, was born in Mindanao and currently resides in Davao City. He is a Filipino, of legal age, and the incumbent BAYAN MUNA Representative with office address at Room N-210 House of Representatives, Quezon City.

5. ANAKPAWIS REPRESENTATIVE **ARIEL B. CASILAO**, was born in Mindanao and currently resides in Davao City. He is a Filipino, of legal age, and the incumbent ANAKPAWIS Partylist Representative with office address at Room S-608 House of Representatives, Quezon City.

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

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

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

9. ACT TEACHERS PARTYLIST REPRESENTATIVE **FRANCE L. CASTRO**, is a Filipino, of legal age, and the incumbent ACT TEACHERS PARTY-LIST Representative with office address at Room 611 South Building, House of Representatives, Quezon City.

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

THE RESPONDENTS

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

12. **CONGRESS OF THE PHILIPPINES, REPRESENTED BY:**

a. **SENATOR VICENTE C. SOTTO III**, is the current Senate President with office address at Rooms 603 & 24 (New Wing 5/F) GSIS Building, Financial Center, Diokno Blvd., Pasay City.

b. **SPEAKER GLORIA MACAPAGAL-ARROYO**, is the current Speaker of the House of Representatives, with office address at Rm. MB-2F House of Representatives, Quezon City.

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

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

15. **LIEUTENANT GENERAL BENJAMIN MADRIGAL JR.**, is the Chief of Staff of the Armed Forces of the Philippines. His office address is at the Armed Forces of the Philippines, Camp General Emilio Aguinaldo, EDSA, Quezon City.

16. **DIRECTOR-GENERAL OSCAR DAVID ALBAYALDE**, is the Director General of the Philippine National Police tasked to implement Proclamation No. 216. His office address is at the Philippine National Police, Camp Crame, EDSA corner Boni Serrano Avenue, Quezon City.

STATEMENT OF RELEVANT FACTS

17. On 24 May 2017, while in Russia, President Duterte issued **Proclamation No. 216** declaring martial law and suspending the privilege of the writ of *habeas corpus* in the entire Mindanao. The full text of the Proclamation reads as follows:

“WHEREAS, Proclamation No. 55, series of 2016, was issued on 04 September 2016 declaring a state of national emergency on account of lawless violence in Mindanao;

“WHEREAS, Section 18, Article VII of the Constitution provides that 'x x x In case of invasion or rebellion, when

the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x';

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

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

“WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

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

“NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim as follows:

“SECTION 1. There is hereby declared a state of martial law in the Mindanao group of islands for a period not exceeding sixty days, effective as of the date hereof.

“SECTION 2. The privilege of the writ of habeas corpus shall likewise be suspended in the aforesaid area for the duration of the state of martial law.

“DONE in the Russian Federation, this 23rd day of May in the year of our Lord, Two Thousand and Seventeen.”

The text of the said Proclamation is also quoted in full in this Honorable Court’s **Decision dated July 4, 2017** in the consolidated cases of *Lagman et al. vs. Medialdea*¹ (“Lagman 2017 Decision”).

18. The President submitted to Congress on May 25, 2017 a written **Report** on the factual basis of Proclamation No. 216. The Report is also heavily-quoted in this Honorable Court’s aforesaid Decision.

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

20. These documents, **Senate PS Resolution No. 388** (*Resolution Expressing the Sense of the Senate, Supporting the Proclamation No. 216 dated May 23, 2017, Entitled “Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao” and Finding No Cause to Revoke the Same*) and **House Resolution No. 1050** (*Resolution Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it finds no reason to revoke Proclamation No. 216, Entitled Declaring as State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*), were likewise mentioned in this Honorable Court’s *Lagman 2017 Decision*.

¹ GR Nos. 231658, 231771, 231774

21. Various groups, including some of the Petitioners herein, filed separate petitions before the Supreme Court questioning the sufficiency of the factual basis for the issuance of Proclamation No. 216.

22. Resolving the petitions, this Honorable Supreme Court issued the aforementioned *Lagman 2017 Decision*², upholding the constitutionality of Proclamation No. 216.

23. On 18 July 2017, President Duterte wrote a letter to both Houses of Congress requesting to extend the effectivity of Proclamation No. 216 until 31 December 2017 (“First Extension”). According to his letter, the existing rebellion in Mindanao will not be quelled completely within the 60-day period granted by the 1987 Constitution.

24. On 22 July 2017, Congress in a Special Joint Session, approved the extension of Martial Law in Mindanao to 31 December 2017. A total of 245 House Members voted for, while 14 voted against the extension; 16 Senators voted for, while 4 voted against the extension. Petitioners herein voted against the extension.

25. President Duterte’s **Letter to Congress dated July 18, 2017**, and **Resolution of Both Houses No. 2** were likewise quoted by this Honorable Court in its **Decision dated February 9, 2018** in the consolidated cases of *Lagman, et al. vs. Senate* (GR Nos. 235935, 236061, 236145, and 236155) (“Lagman 2018 Decision”)

26. On 17 October 2017, President Duterte declared the liberation of Marawi after a five-month battle with the Maute Group.

27. Despite the declaration of the liberation of Marawi from the Maute Group, President Duterte forwarded a **Letter dated 08 December 2017**, to both Houses of Congress requesting for another extension of Proclamation No. 216, this time for a period of one year, from 1 January 2018 to 31 December 2018 (“Second Extension”). The letter states:

*“On 04 December 2017 I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, stating that, “**based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the***

² *Lagman et al. vs. Medialdea et al.*, G.R. No. 231658, G.R. No. 231771, and G.R. No. 231774, July 4, 2017.

extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure the total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers xxx." xxx."

28. On 13 December 2017, in a Special Joint Session, Congress approved the extension of Proclamation No. 216 for a period of one year, as requested by the President. **Resolution of Both Houses No. 4** provides:

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

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

“WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the

Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule;

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

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

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

“Adopted,”

29. The President's Letter to Congress dated December 8, 2017 and the Resolution of Both Houses No. 4 were mentioned, discussed, and their constitutionality passed upon by this Honorable Court in its

Decision dated February 9, 2018 in the consolidated cases of *Lagman et al vs. Senate*³ (“Lagman 2018 Decision”)

30. Petitioners herein strongly opposed the proposed one-year extension and decried the precipitous process by which the approval was reached.

31. Again, various groups, including Petitioners herein, questioned the sufficiency of the factual basis for the extension of the Proclamation No. 216 before the Honorable Supreme Court.

32. On 6 February 2018, the Supreme Court issued its Decision⁴ upholding the one-year extension of Proclamation No. 216.

33. On 6 December 2018, President Duterte again wrote a **Letter to both Houses of Congress**, seeking for a second one-year extension of Proclamation No. 216 (“Third Extension”). In the letter he said:

“Notwithstanding these gains, the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

“The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 01 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

“The DI forces continue to pursue their rebellion against the government by furthering the conduct of their

³ GR Nos. 235935, 236061, 236145, and 236155

⁴ *Lagman et al vs. Senate President Pimentel et al.*, G.R. Nos. 235935, 236061, 236145, 236155

radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

“While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country’s democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

“Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

“The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.

“A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the

government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.”

A copy of the said Letter is attached herein as **ANNEX “A”**.

34. President Duterte recognized that his narration of factual averments in aforesaid Letter “merely illustrates in general terms the continuing rebellion in Mindanao.” He promised to submit “a more detailed report on the subsisting rebellion” to Congress.

35. However, when Congress convened in a special joint session, on December 13, 2018, no such detailed report, or any other report was given to the members of Congress. These reports include the ones committed to be produced by resource persons from the Executive Branch during the interpellations in the separate security briefings to the two Houses and in the joint session.

36. Nevertheless, on same date, Congress once again granted the Third Extension of Proclamation No. 216. In the House of Representatives, 223 voted for the extension and 23 voted against. In the Senate, 12 voted for the extension and 5 voted against, with 1 abstention. Petitioners herein voted against the further extension to one year of the Proclamation No. 216.

37. A copy of the Resolution approving the Third Extension of martial law in Mindanao and suspension of the privilege of the writ of habeas corpus is not available to Petitioners nor the public as of the filing of this Petition. However, being an official act of the legislative, this Honorable Court could take judicial notice of the same, pursuant to Section 1, Rule 129 of the Rules of Court, as well as the pronouncement of this Honorable Court in the *Lagman 2018 Decision*. The Court said:

“Resolution of Both Houses No. 4 is an official act of Congress, thus, this Court can take judicial notice thereof. The Court also notes that respondents annexed a copy of the Resolution to their Consolidated Comment. Hence, We see no reason to consider petitioners’ failure to submit a certified copy of the Resolution as a fatal defect that forecloses this Court’s review of the petitions.”

38. Hence, this Petition.

ISSUE

WHETHER OR NOT THERE IS SUFFICIENT FACTUAL BASIS FOR THE THIRD EXTENSION OF PROCLAMATION NO. 216

DISCUSSION/ARGUMENTS

39. Petitioners submit that there is no sufficient factual basis for the Third Extension of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao.

I. THE RESOLUTION EXTENDING THE IMPOSITION OF MARTIAL LAW UNDER PROCLAMATION 216 FAILED TO SATISFY PUBLIC SAFETY REQUIREMENT IN THE 1987 CONSTITUTION

40. The Constitution requires two concurring requisites for the validity of the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*: first, the existence of actual rebellion and second, that public safety so requires such imposition or suspension. Article VI Section 18 of the 1987 Constitution states that:

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. x x x Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

41. Respondents have until now, failed to answer the question of this Honorable Court since Proclamation 216 was first promulgated: “what specific martial law powers do you need that you cannot exercise without the imposition of martial law?”

42. Respondents refused to answer this question and lamely argued that the imposition of martial law was merely for

“psychological purposes”. After all, during the 2013 Zamboanga siege the government conducted aerial bombings, mortar bombings, check points and intense surveillance operations even if there was no martial law.

43. Respondents refuse to answer the question as they are aware that if they reveal the power they may actually exercise, the same would create a public uproar because the only plausible answer to that question is: the only additional power they can exercise under martial law is **the military takeover of civilian positions in government.**

44. The essence of martial law is the taking over by the military taking over of civilian functions because public safety requires it.

45. Under the 1987 Constitution, therefore, the only power that can be exercised by the President under martial law that he cannot exercised under the calling out power is to order the replacement of the civilian government and its functions by the military.

46. This differentiation, therefore, defines the public safety requirement for the exercise of martial law powers—that the civilian government in the area of the rebellion can no longer function effectively and that public safety requires the military take over said civilian functions.

47. Petitioners contend that the civilian government continues to function in all of Mindanao; hence, the public safety requirement of the Constitution for the imposition of martial law has not been fulfilled.

48. It must be reiterated that while government may assert that all rebellions threaten the safety of the public, this generic definition of public safety is not the same as the definition of public safety that triggers the imposition of martial law. Otherwise, there is no difference at all between the rebellion that necessitates the imposition of martial law, from the rebellion that merely triggers the calling out powers. Otherwise, Section 18 Article VI of the Constitution could delete the public safety requirement and the essence of Section 18 will not be altered to wit:

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, [DELETE when the public safety requires it], he may ALSO, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. X X X Upon the initiative of the

President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist [DELETE and public safety] requires it.

49. A review of the President's Letter to Congress seeking this present extension exhibits the absence of facts that would show that public safety has been seriously threatened sufficiently enough to require the extension of Proclamation No. 216.

50. The alleged rebellion being staged by the different groups does not endanger public safety as contemplated by the Constitution to justify the imposition of martial law and the suspension of the privilege of the writ of habeas corpus.

51. On the contrary, the Letter does not allege that the situation has deteriorated that the civilian government no longer functions effectively, requiring the exercise of the powers of martial rule to ensure public safety.

52. In fact, the Letter shows the significant progress of government to quell the rebellion in the Mindanao region, that in fact, the government no longer qualifies or categorizes such rebellion as being "actual."

53. In the Letter, President Duterte reported the following government successes:

"I am pleased to inform the Congress that during the Martial Law period, as extended, in Mindanao, we have achieved significant progress in putting the rebellion under control, ushering in substantial economic gains in Mindanao. In a joint security assessment report, General Carlito G. Galvez Jr., the Armed Forces of the Philippines (AFP) Chief of Staff and Martial Law Implementor, and Director-General Oscar D. Albayalde, Chief of the Philippine National Police (PNP), highlighted the following accomplishments, among others, owing to the implementation of Martial Law in Mindanao: reduction of the capabilities of different terrorist groups, particularly the neutralization of 685 members of the local terrorist groups (LTG) and 1,073 members of the communist terrorist group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms (more than eight thousand from January to November 2018); 19% reduction of

atrocities committed by CTG in 2018 compared to those inflicted in 2017; 29% reduction of terrorist acts committed by LTG in 2018 compared to 2017; and substantial decrease in crime incidence (Cotabato City – 51% reduction and Maguindanao – 38% reduction). All of these gains in security and peace and order have resulted in remarkable economic gains in Mindanao. In fact, private sectors, local and regional peace and order councils, and local government units in Mindanao are now also clamoring for a further extension of the subject proclamation and suspension.”

54. The government claims that it has “reduced”, “neutralized”, “dismantled”, “weakened” the rebels; that it has caused the reduction in the number of atrocities, and that crime incidence has decreased. All these brought about, in 2018, “remarkable economic gains in Mindanao.” If the civilian government was capable of functioning in 2018, then the more reason that it can effectively function in 2019 because of the “gains” reported by President Duterte.

55. These very pronouncements, assuming to be true, strip the government of any right to request to further extend the imposition of martial law in the Mindanao region. Otherwise, why is government asking this Honorable Court to grant or extend its martial law powers and give it the option to replace civilian functions? It cannot be for psychological purposes.

56. These very pronouncements negate any claim that public safety requires the continued implementation of Proclamation No. 216 in the Mindanao region.

57. As has been discussed repeatedly in the *Duterte Martial Law* cases, especially by the petitioners therein, the second indispensable element for the activation of the martial law powers of the President is the “requirement of public safety”. This has been recognized by this Honorable Court in the *Lagman 2017 Decision*, and further formulated by Chief Justice Sereno as “Doctrine of Necessity” in her dissent in *Lagman 2018 Decision*, and also by Justice Leonen in his dissent in the same case.

58. Per Justice Leonen:

“The resulting damage or injuries cannot simply be the usual consequences of rebellion or invasion. It must be of such

nature that the powers to be exercised under the rubric of martial law or with the suspension of the writ of habeas corpus are indispensable to address the scope of the conflagration. The mere allegation of the existence of rebellion is not enough.”

59. It is also what Justice Jardeleza, in his dissenting opinion in the same case, termed as “element of scale” that qualifies the requirement of existence of actual rebellion. Justice Caguioa, for his part, discussed the requirement of “necessity” or necessity in the context of martial law.

60. Petitioners, on its part, must once again assert and forward their previous formulation with respect the concepts and interrelation of rebellion and public safety for the purposes of activating the martial law powers of the President under Sec. 18, Art. VII of the 1987 Constitution.

61. The Honorable Court, already clarified in the *Lagman 2017 Decision* that the President’s exercise of the graduation of powers refers to the hierarchy based on scope and effect, from the most benign to the least benign, to wit: the calling out power, the power to suspend the privilege of the writ of *habeas corpus*, and the power to declare martial law.

62. Being the least benign of all of the President’s extraordinary Commander-in-Chief powers, martial law should be imposed with extreme caution, as a last resort and only within the constitutional safeguards found in Section 18, Article VII of the 1987 Constitution.

63. Given the foregoing, it is logical and reasonable to conclude that for the purpose of imposing martial law, the 1930 Revised Penal Code definition, concept and its constitutive elements **are not sufficient by themselves** to warrant the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*.

64. The importance of concretely defining the public safety component, therefore, is crucial to resolve the issue of **whether public safety indeed requires the extension of the imposition of martial law in the entire Mindanao and the suspension of the privilege of the writ of *habeas corpus*.**

65. While rebellion may be claimed by government to threaten public safety in general, that “generic” threat to public safety is not the same as the threat to public safety that requires the imposition of martial law. Thus, the Constitutional Commission has declared that

the existence of rebellion and its resulting threat to public safety does not automatically justify the imposition of martial law:

FR. BERNAS. Besides, **it is not enough that there is actual rebellion.** Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: “when the public safety requires it.”

So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.

MR. DE CASTRO. That is why I said in case of actual invasion or actual rebellion, the President will have no more time to say “I declare martial law.” He will just order the Armed Forces to go there and repel the enemy.

MR. NOLLEDO. Madam President, the argument of Commissioner de Castro seems to indicate that the President is powerless without declaring martial law. The first sentence is very clear, that in case of lawless violence, invasion or rebellion, the President may immediately call the Armed Forces to prevent or suppress the same. And it is only when public safety requires it that the President may decide to declare martial law or suspend the privilege of the writ of habeas corpus. So, I would like to correct the impression that the President has no power to meet the invasion or rebellion without the declaration of martial law.⁵

66. If the rebellion that is also a ground for the calling out powers also threatens public safety, what is its difference to the rebellion that similarly threatens public safety but becomes a ground for the imposition of martial law?

67. It is important that the distinction is not cast aside, because these powers cannot be imposed interchangeably. If the factual

⁵ Volume II, page 480 July 30, 1986 Constitutional Commission

bases are sufficient to justify the imposition of martial law, but the President decided to only exercise his calling out powers, that is his “judgment call” as the Court correctly pointed out in the Lagman 2017 Decision. In fact, incidents similar, if not graver than what happened in Marawi City, did not merit a martial law declaration.

68. It is Petitioners’ firm assertion that **it is the public safety requirement and not rebellion or invasion alone, which is the most decisive element in the martial law powers of the President.**

69. Given such importance and in the context that Section 18, Article VII of the 1987 Constitution was put in place – as the Honorable Court held in the Lagman 2017 Decision – “*to provide additional safeguard against possible abuse by the President on the exercise of the extraordinary powers*” and “*to curtail the extent of the powers of the President,*” **it is therefore imperative that the Honorable Court define public safety according to such constitutional intent.**

70. The Honorable Court must, we respectfully assert, step out of the traditional understanding of public safety and must contextually define, nuance or at least describe the level of threat to public safety, which “**requires**” the imposition of martial law and not merely “**necessitates**” the calling out powers of the President.

71. Petitioners posit that the threat to public safety referred to in Article VII, Section 18 that requires the imposition of martial law is not the generic definition that simply means any threat to the safety of the public. In employing it as a ground to impose martial law or suspend the privilege of the writ of *habeas corpus*, the threat to public safety must have ***risen to a level that government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions.***

72. If there is rebellion or invasion but government continues to function nonetheless, the calling out powers may be employed by the President, but not martial law or the suspension of the privilege of the writ of *habeas corpus*. Only in cases where the rebellion or invasion has made it extremely difficult, if not impossible, for the government (or the courts) to function, to the extent that **government or the local government in the area affected by the rebellion can no longer assure public safety and the delivery of government services, that the imposition of martial law is constitutionally permissible.**

73. This assertion is not only logically sound but is in consonance with the intent of the framers of the Constitution. This can be clearly deduced when the Constitutional Commission declared that martial law is imposed in an area considered a “theater of war” where courts are unable or at least having difficulty of functioning, hence:

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

MR. FOZ. It is a state of things brought about by the realities of the situation in that specified critical area.

FR. BERNAS. That is correct.

MR. FOZ. And it is not something that is brought about by a declaration of the Commander-in-Chief.⁶

74. Clearly, the framers differentiated the public safety requirement for the imposition of martial law from the “generic” public safety threats generated by ordinary lawless violence and even rebellion or invasion. When they formulated and approved Article VI, Section 18, the framers were thinking of this ‘theater of war’ conditions where government functions are heavily affected.

⁶ Volume II, Record of the Constitutional Commission, p. 402, July 29, 1986.

75. In fact, this Honorable Court ruled in Lagman 2017 Decision that public safety equates to “government agencies being unable to cope with the conditions in a locality, to wit:

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

76. This Honorable Court already understood that there must be something in this concept of “military rule” and the appointment of martial law administrators that requires a condition different from those resulting from lawless violence or rebellion or invasion. Petitioners respectfully implore this Honorable Court to judicially pioneer clarity on the nature of public safety and specifically define it so that future martial law proclamations cannot simply claim that martial law is justified because “public safety is threatened.”

77. If the threat to public safety in a rebellion has not risen to a level that requires the imposition of martial law, then the Court should intervene if the President, instead of exercising his already powerful calling out powers, imposes the more heavy handed power of martial law. While this Honorable Court cannot generally ‘calibrate’ the President’s choice of which of presidential powers to use, it can strike down its exercise if the selected power is not supported by the constitutionally required factual basis.

78. In this case, the enumerated incidents of violence by the different rebel groups lumped together by the government (presuming they are considered as actual rebellion) and the damage they inflicted were not serious threats to public safety.

79. It is undeniable that civilian government in the island of Mindanao continues to function, local governments continue to govern, the courts remain open and effective. The President’s Letter did not cite any place where local courts or civilian authorities can no longer function or where their functions are substantially impaired because of the enumerated incidents of violence.

80. Most notable are the assertions of defense and security officials during the interpellation of Petitioner Representative Zarate,⁷ when the AFP proudly said that “Marawi is no longer under siege” and that “Functions ng mga local officials ay patuloy pa rin, yung ating mga courts they’re still functioning normally, and everything.”⁸

81. That “private sectors, local and regional peace and order councils, and local government units in Mindanao are now also clamoring for a further extension of the subject proclamation and suspension” is not evidence and could not cure the defect of lack of public safety requirement for the extension. Similarly, that Congress granted the Third Extension could not cure the defect of lack of sufficient factual basis that public safety requires the extension.

82. Justice Caguioa in his dissent warns about government falling into the slippery slope of expediency and convenience:

“In the end, as the country grapples with all these conflicts, it cannot fall into the slippery slope of expediency as the standard with which to attempt to solve these problems. No matter how beneficial or preferable the psychic effects the state of martial law may have upon government officials and the population at large, it cannot be wielded in the absence of the conditions required by the Constitution for its imposition.”

83. Even if we follow this Honorable Court’s reasoning and application as to the requirement of public safety in its *Lagman 2018 Decision*, within the framework of “permissive approach”, the conclusion remains that there is no sufficient factual basis to hold that “the present and past acts constituting the actual rebellion are of such character that endanger and will endanger public safety.” The facts presented by the government do not even come close or approximate the factual circumstances passed upon by this Honorable Court in the *2017 and 2018 Duterte Martial Law cases*. In fact, if we believe the claims of government, the incidents of violence of the different rebel groups are on a marked decline since they have already been substantially “weakened”, “neutralized”, etc..

84. The real reasons for yet another extension of Proclamation 216 were admitted during the joint session.

85. At the joint session, Senator Drilon repeated for the record what the defense and security officials said during the security briefing for

⁷ Viedo of the Joint Session, beginning at 1:35:24

⁸ *Ibid*, at 1:36:21

the Senate—that the continued extension of martial law is a “psywar.”⁹ Later, the AFP admitted that martial law “makes governance more effective,”¹⁰ and that during martial law, “our local chief executives are more cooperative, supportive in our campaign against the rebel groups.”¹¹

86. Elsewhere, Secretaries Lorenzana and Medialdea answered that military is hampered by laws and the normal functioning of the civilian government, so much so that military authorities “need more time,” implying that that time should be comparable to the five decades-long revolution being waged by the CPP:

Lorenzana: “Functions ng mga local officials ay patuloy pa rin, yung ating mga courts they’re still functioning normally, and everything. ‘Yun po ang hirap dito sa kalagayan namin dahil gusto naming mahuli lahat yung ating mga kalaban, pero meron po tayong sinusunod na batas. Di naman sinasabi namin na aming iba-violate yung batas para...para gawin namin ang aming trabaho. Kaya lang po siguro ay uh...we need more...we need more time to catch these people, to neutralize them, to reduce their capability to create trouble...”¹²

Medialdea: ‘Yung threshold po na minamadali niyo kami na tapusin na—Ang rebolusyon ho ng Pilipinas ho ay magpi-50 years na ho on the 27 (*sic*). ‘No? So i think it is just but fair that you also give us a chance to quell this.’¹³

87. With such answers being given by the resource persons for the President, Representative Zarate noted:

“Lumalabas dito na, kayo na rin ang umaamin, na hindi epektibo yung batas militar sa Mindanao at dahil sa **gusto ninyong maging unlimited itong martial law.**”¹⁴

⁹ *Ibid*, at 46:28

¹⁰ *Ibid*, at 47:51

¹¹ *Ibid*, at 1:10:43

¹² *Ibid*, at 1:40:02

¹³ *Ibid*, at 1:40:17

¹⁴ *Ibid*, at 1:38:24

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“Kanina lang po, inamin ninyo nang tinanong kayo ng mga economic indicators, ‘no. x x x Hindi ho kayo makapagbigay ng economic indicators. You don’t even know ano ‘yung inflation rate sa Mindanao, wala kayong, uh, sa sinagot kanina. **Ang lumalabas dito, x x x ang inyong goal para tapusin ang rebelyon sa Mindanao, and for that matter, uh, sa ibang bahagi ng bansa, is through martial law.** Malinaw na sinasabi sa dito sa sulat ni Pangulo na **tapusin na ang rebelyon sa Mindanao kaya kailangan ng martial law—x x x forgetting that the root causes of these problems in Mindanao [are] not military, but in fact complex problem na nakaugnay, naka-ugat doon sa usapin ng kahirapan, at marami pang isyu sa Mindanao.**¹⁵

“Malinaw, na inaamin ninyo, kung supilin man natin ang kaguluhan sa Mindanao, to improve the peace and order, paghahabol doon sa mga loose firearms—We don’t need martial law for that. Trabaho ‘yan ng pulis. Trabaho ‘yan ng militar, ‘no. In fact, inamin na rin natin na at present, ang Pilipinas ay nasa state of emergency pa rin. Ginamit ng Pangulo ang kanyang call out power. So, my next question now, Mr. Speaker, sa ating mga resource persons: Ano talaga ang gusto niyong kapangyarihan na dagdag, na gusto niyong unlimited ang paglagay sa rehiyon ng Mindanao sa martial law? Kasi inamin na ninyo, pwede namang habulin ‘yan kahit walang martial law, pwedeng mag-improve ang peace and order kahit walang martial law, at nabanggit din kanina,¹⁶ nag-improve ang ekonomiya sa Mindanao noong kapanahunan na walang martial law.

“Ang martial law ay, gaya ng nabanggit kanina, ay from 60 days, inextend natin to 222 days, then 587 days. At ngayon, gusto nating palawigin pa ito hanggang 952 days. What is there [with martial law]?”

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“Ang malinaw na gusto niyong i-short circuit ‘yong mga legal processes natin kahit na pwede niyo itong [running after rebels] without martial law.”¹⁷

¹⁵ *Ibid*, at 1:41:45

¹⁶ Senator Pangilinan’s interpellation, at 1:31:12

¹⁷ *Ibid*, at 1:42:58

88. The Letter itself stated that martial rule “will enable the government...to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development.”

89. Evident from these statements from the President and his resource persons is the fact that martial law—a reversal of the civilian supremacy principle mandated by the Constitution—has been used and will continue to be used not to address rebellion but as a tool for “psywar,” to subject or supplant civilian authorities, to sustain economic gains, or to solve a long-running and complex socio-economic problem using a purely military solution. Not a single one of these can be found in Sec. 18, Art. VII of the Constitution as a justifiable ground for martial law.

90. In fact the reasons for the issuance of Proclamation No. 216 in 2017 are the Maute rebellion and the Marawi City seige. This can be gleaned from a reading of the Proclamation No. 216 itself, the President’s Report to Congress, and this Honorable Court’s discussion in its Decision in *Lagman vs. Medialdea* in 2017.

91. President Duterte’s Letter to Congress, dated December 6, 2018, itself confirms that, indeed, Proclamation No. 216 has achieved its objective. They have “achieved significant progress in putting the rebellion under control.”

92. These admissions will be discussed at length below.

93. The authority of the President and Congress to extend the proclamation of martial law and suspension of the writ of habeas corpus under the 1987 Constitution is limited. The Constitution allows the President and Congress to seek the extension of the proclamation only “if the invasion or rebellion shall persist.” (Art. VII, Sec. 18)

94. By using the term “*persist*” – that in relation to the extension of martial law and the continued suspension of the privilege of the writ of *habeas corpus*, the 1987 Constitution pertains to the grounds from which the original proclamation and suspension were based and NOT on additional or new grounds such as what is being invoked in the further extension.

95. The 1987 Constitution also used the definite article “the”- and not the indefinite article “a”- to modify “rebellion,” that is, the specific “rebellion” that gave ground for the original declaration of martial law.

96. As elucidated by Justice Carpio, as well as Justice Caguioa in their respective dissenting opinions in the *Lagman* 2018 Decision, the rebellion that should “persist” should be the actual rebellion that triggered the declaration sought to be extended.

97. Considering that the actual rebellion for which the Proclamation No. 216 was issued has ceased, there is no longer cause or basis for its further extension. There is no persisting actual rebellion in the entire Mindanao.

II. PETITIONERS ALSO ALLEGE THAT THE CONGRESS FAILED TO EXERCISE ITS POWER AND DUTY TO CHECK THE MARTIAL LAW POWERS OF THE PRESIDENT

98. The joint session is riddled with marks of a failure or collapse of the constitutional safeguards set by Art. VII, Sec. 18 as well as other provisions in our Constitution.

99. When the Letter was subjected to the test via the open joint session, the lack of factual basis for a third extension was revealed. A rundown of what transpired in the joint session will yield admissions (1) that the rebellion forming the basis of Proclamation No. 216 no longer exists or at the very least, the rebellion is not of such character that public safety requires martial law and (2) that the third extension is not intended to address any rebellion but to supplant civilian government and authorities.

100. It will also yield factual errors mainly on (1) the existence of rebellion and (2) the human rights violations enabled and worsened by martial law and by the suspension of the privilege of the writ of habeas corpus.

101. The most blatant lie is on the matter of the Talaingod 18. Petitioner Representative Tinio revealed this during his interpellation:¹⁸

¹⁸ *Ibid*, at 2:16:49

TINIO: “Batay sa report na ‘yan na inyong isa-submit, isa sa mga, sabi niyo, batayan daw para sabihin na nagpapatuloy ang rebelyon sa Mindanao, the incident that happened in Talaingod was cited. If I may paraphrase, sabi do’n, “kidnapping of 14 Lumad children by the group of Saturnino Ocampo.” Tama po ba, Secretary Lorenzana?”

LORENZANA: “That’s correct, Madam Speaker and Mr. President.”

TINIO: “Okay, so isang batayan daw ‘yon na may nagpapatuloy na rebelyon. Kidnapping daw ng grupo ni Saturnino Ocampo. Madam Speaker, has Saturnino Ocampo or anyone else involved in the Talaingod incident, including my colleague Representative France Castro, has anyone been judicially charged with kidnapping as of this moment? Yes or no?”

LORENZANA: “That is already with the courts, Mr. President.”

TINIO: “Is anything in the courts?”

LORENZANA: “So kung nasa korte na ‘yun, let the court resolve it.”

TINIO: “Ang tanong ko po, kung meron po bang nasasakdal sa korte ngayon na sinampahan ng kaso ng kidpping kaugnay dun sa insidente sa Talaingod. Meron o wala?”

GALVEZ: “Ah, ‘yung pong mga affidavit po na ano ay naka...pinoproceso po sa korte ngayon ‘yung sinabi niyo...”

TINIO: “Hindi. So meron na po bang nakasampang kaso sa korte o wala? Isang bagay po, madali lang mag-file ng complaint, pero meron bang, ah, indicted sa korte ng kidnapping kaugnay dun sa Talaingod incident? Meron po o wala”

GALVEZ: “Meron po, your Honor.”

TINIO: “Anong korte po?”

PRESIDING OFFICER: “Mr. Tinio, can you please wind down? Time is expired.”

TINIO: “Di, Mr. Speaker, **ang pinaka-minimum na kailangan natin sa mga resource persons ng executive branch ay**

magsabi ng totoo. At ang sinasabi po nila, meron daw sampa sa, naka-file sa korte na complaint for kidnapping relating to Talaingod. Wala po. This is an outright lie. Mr. Speaker.

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“Ang punto ko po, hinihiling ang Kongreso na ito na i-extend ang martial law, tapos ang isa sa mga batayan na, na pinepresenta nila sa atin ay kasinungalingan. Wala naman pong sinampahan, at this moment, wala pong nakasampang kaso sa anumang korte ng kidnapping. Di po si Sat—wala pong kasong gano’n kay Saturnino Ocampo, kay Representative Castro, o sino pa man, Mr. Speaker. I think that is very relevant to this discussion. PInagpapasya tayo na i-extend ang martial law t’as ang sinasabi nila na isang basis, ‘Kasi nga, may nagyayaring rebelyon. Case in point, the kidnapping of Lumad children.’ Wala naman pong, ah, humaharap sa kaso ng kidnapping ngayon, Mr. Speaker.”

GUEVARRA: “Your Honor, if I may interject something. It is my understanding that the charges is (*sic*) is currently undergoing preliminary investigation by the prosecutors in the field.”

TINIO: “Yes. In fact, ang nangyari po, Mr. Speaker, my colleague and Mr. Satur Ocampo, they were arrested, and those charges were filed, but the prosecutor, ah, rejected the charges of kidnapping. Kaya nga they’re here e. So wala po ‘yon. Ngayon, nilalagay niyo sa report na batayan diyan?”

102. The arrest, detention, and release on bail of former BAYAN MUNA Party-List Representative Satur Ocampo, Petitioner Castro, and 16 teachers, pastors, and other delegates of a humanitarian and rescue mission in Talaingod Davao del Norte is a well-publicized case. The Talaingod 18 filed on January 8 their counter-affidavits to the charge of other acts of child abuse (and not kidnapping, with the prosecutor finding no probable cause for such a charge). The Court can also confirm its details and status with the Tagum City Prosecution Office, and the Petitioners will also be ready to provide information if ordered by the Court.

103. Suffice is to say that the resource persons made a material misrepresentation in their briefing to Congress (both in and out of the

public session) as to a core issue in the extension of martial law—the issue of the existence of rebellion.

104. Another is the fact that there are indeed cases filed before the Commission on Human Rights (CHR) for human rights violations committed during martial law, as elaborated in the interpellation of Petitioner Representative Castro¹⁹ and Petitioner Representative Casilao.²⁰ Petitioner Castro spoke as a victim of human rights violations herself, while Petitioner Casilao revealed that there are 155 cases filed and pending with the CHR, highlighting the Lake Sebu massacre of seven Manobo and B'laan and wounding of two others by military elements. He also cited the finding of probable cause for the murder of Lumad student Obello Bay-ao against elements of the CAFGU.

105. The joint session also yielded inconsistencies (1) between the President speaking through the Letter and the President speaking through his resource persons and (2) between the statements of the resource persons themselves.

106. For instance: The Letter first diminishes the threat to assure Congress that the first and second extensions served their purpose. On the next page, the Letter bloats the same to justify that there is a “subsisting rebellion.”

107. The President’s resource persons echoed this line in the joint session.

108. Indications of lack of exhaustive and serious hearing of the facts and lack of transparency include:

- a. The “more detailed report” which the Letter promised, the joint security assessment report it referred to as main basis, and the reports which the resource persons committed to be provided did not come. The interpellation of Petitioner Tinio revealed that no such “more detailed report” is forthcoming.²¹

TINIO: “Madam Speaker, sa sulat ni Pangulong Duterte sa Kongreso at Senado na humihiling ng extension, sa page 4, may paragraph po na babasahin ko: ‘The foregoing merely illustrates in general terms the

¹⁹ *Ibid*, at 1:47:13

²⁰ *Ibid*, at 57:06

²¹ *Ibid*, at 2:10:45

continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.'

"The Letter was dated December 6. December 12 na po. Tanong ko po kay Executive Secretary Medialdea, dala niyo na po ba yung detailed report ni Pangulo na isa-submit niya sa Kongreso?"

MEDIALDEA: "The report was given during the briefing, Sir."

TINIO: "A, 'yung briefing, 'yun 'yung report? Pero, ang nagbigay po ng report ay AFP. So, hindi po Presidente."

MEDIALDEA: "Opo, he's the duly authorized representative of the President."

TINIO: "Well, in the Constitution, ang requirement po...in a declaration of martial law is the President, either to appear in person before Congress or submit a written report. 'Di po sinabi dito na AFP o some official of AFP ang mag-submit. So, pa'no po 'yon? Wala na po ba tayong maaasahang written report from the President?"

Petitioner Tinio echoed the requests of earlier lawmaker-interpellators, asking that the report given by the AFP during the security briefings form part of the record, insisting that it should be delivered in plenary.

"Kasi napakahalaga po na may nakasulat at malinaw na batayan, 'no, na ibinigay ang Presidente na malinaw sa lahat ng miyembro at maging sa publiko, Madam Speaker, dahil ang piag-uusapan natin dito ay ang pagpapatuloy ng martial law at palimita sa mga garantisadong karapatan ng mamamayang Pilipino sa Mindanao."

This was not done, merely "noted" by the Congress leaders, despite the fact that the resource persons said that they were ready.

The President and the resource persons also failed to provide before the time of voting the documents, figures, and other data that could have substantiated, confirmed, or clarified the Letter. In other words, Congress approved the third extension relying only on the say-so of the President and his resource persons.

b. Bulk of the justification was presented outside of the public joint session.

c. Unlike in the first extension (when a token opportunity was given to a single witness), there were no witnesses presented against the third extension—not even the Commission on Human Rights which could have presented evidence contrary to the allegations of the resource persons.

d. The Members of the House of Representatives and the Senate, especially those who have voiced their opposition to martial law, were not provided sufficient time for debate (with only three minutes to pose questions and a minute to explain votes, both periods interrupted near the end of the time limit).

e. The fast-tracked manner by which the entire joint session was conducted, with the report of Secretary Medialdea—supposedly a substantiation of the Letter—lasting for less than ten minutes and the session itself lasting for a little less than five hours.

109. Despite all these factual errors, inconsistencies, and lack of transparency, the two Houses of Congress approved the third extension of Proclamation No. 216. The constitutional safeguards set by Art. VII, Sec. 18 as well as other provisions in our Constitution and supposed to be upheld by Congress collapsed.

110. What results from this collapse is the exact opposite of the spirit behind Art. VII, Sec. 18, the reason why the people vow and shout “never again”—the people’s human rights trampled by unbridled and unchecked martial law powers and by military rule reigning supreme over civilians.

III. THE HONORABLE COURT MUST CONSIDER THE IMPACT ON HUMAN RIGHTS IN DECIDING WHETHER TO UPHOLD THE EXTENSION OF PROCLAMATION NO. 216

111. Justice Jardeleza stated in his Dissenting Opinion, that the President’s martial law powers have tremendous effect on civilian lives:

“That there are laws in place which would rectify possible abuses *after the fact* also does not justify this “permissive” approach. The best safeguard is still vigilance on the part of the

agencies tasked to check the exercise of the power *in the first place*. Ensuring that the President has enough flexibility and discretion on when to impose martial law is not sufficient justification for taking on a “permissive” approach. If at all, the identification of reasonable indicators to determine whether the danger to public safety has reached such scale as to warrant the exercise of the President's extraordinary powers is recognition of the extreme nature of the extraordinary powers and its tremendous effect on civilian lives. (Emphasis in the original)²²

112. In this case, the existence of such safeguards in fact failed to guarantee that the citizens will not bear the brunt of the exercise of the undefined martial law powers of the executive during the period. On the contrary, the farmers, national minorities and the civilian population became the targets of repression, threats, harassments and extrajudicial killings.

113. For the period of the Second Extension, human rights abuses intensified and escalated in Mindanao. And by virtue of these abuses, the civilian populace asserted that the martial law is not really intended for the armed groups but rather against the opposition, activists, media, as what happened during Marcos' Martial Law.

114. In its *Mindanao Under Martial Law, A Year of State Terror: A Report on the First Year of Imposition of Martial Law in Mindanao* (May 23, 2018), human rights monitor Karapatan said that it:

"documented at least 49 victims of extrajudicial killings in Mindanao, with an average of one victim killed every week. Most of the victims are indigenous peoples and members of local peasant organizations targeted for their local campaigns for genuine agrarian reform and against militarization. Karapatan also documented 22 cases of torture, 116 victims of frustrated extrajudicial killings, 89 victims of illegal arrest and detention, and 336,124 victims of indiscriminate gunfire and aerial bombings. At least 404,654 individuals have been displaced, largely because of these bombings. Many more reported cases reveal a much graver magnitude of the effects of martial law. The dangers of ensuring security in traveling across the area prevent news gatherers and documentors from looking into field conditions so as to fully report on the human rights situation."

²² Dissenting Opinion, *Lagman 2018 Decision*

A copy of the Karapatan Report²³ is attached herein as **ANNEX “B”**.

115. Showing the bleak human rights situation in Mindanao, Karapatan also included in this report particular cases of the following:

1. Torture and illegal arrests: hallmark features of Duterte’s martial law in Mindanao
2. Forced evacuations, aerial bombings and community occupation of combat troops intensify in Mindanao under martial law
3. Forced or fake surrenders
4. Instilling military authority and presence as the new normal in Mindanao 2017

116. The International Fact Finding and Solidarity Mission (IFFSM) launched in April 6-9 also published its findings in “The Real Face of Terror: Unmasking Duterte’s Martial Law in Mindanao.” This publication was recognized as a top book of 2018, along with other publications on human rights, impunity, and the Lumad by CNN Philippines, which said in its blurb for the book:

“The Real Face of Terror: Unmasking Duterte’s Martial Law in Mindanao” by International Fact Finding and Solidarity Mission

"A sobering report on the effects of martial law on Mindanao. The delegates of the IFFSM (which includes Sister Patricia Fox) uncover the abuses done by the military and police against farmers, their families, and indigenous people. From harassment to illegal detainment to torture to extrajudicial killings, the report shows the scope of abuses the government has committed against the people it's supposed to serve. Even the delegates themselves were not immune from the military's harassment. And one can only wonder who benefits from a militarized Mindanao? Certainly not its people, not the farmers and the Lumad who lose their lives and land. But rather, as the report concludes, the big foreign and local businesses carving out the countryside and stealing ancestral lands."

Attached is the copy of the 4-page summary of the book as **ANNEX “C”**.

²³ Also available online at

<http://www.karapatan.org/Mindanao+Under+Martial+Law%2C+A+Year+of+State+Terror>; last accessed January 14, 2019.

117. The ASEAN Parliamentarians for Human Rights likewise issued a statement that “the continued imposition of martial law threatens to facilitate a culture of impunity in Mindanao and intensify human rights violations already taking place there.”²⁴

118. As such, Petitioners call on this Honorable Court to recognize these facts in its determination of the sufficiency of factual basis for the extension of Proclamation No. 216. Surely, “these claims bring this Court to a point of transcendental importance, one that goes into its very reason for existence when petitioners make out a case of probable excess in the exercise of power that leads to the violation of constitutional rights, and when Government is unable to categorically put its finger on why it needs Martial Law, then this Court must define the parameters according to the tests of necessity; otherwise, it ceases to genuinely exist as a bastion of democracy.”²⁵

119. Justice Leonen forwards that, in order for the Court to determine the reasonability of the extension, inquiry must likewise be made as to whether the government’s implementation of martial law did not unduly interfere with the citizen’s human rights:

“On one hand, the reasonability of the extension of the state of martial law and the suspension of the writ of habeas corpus will depend on the following inquiries:

xxx

(b) 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. xxx” (Dissenting Opinion, Lagman 2018 Decision)

²⁴ “Prolonged martial law in Mindanao a danger to human rights, ASEAN lawmakers warn”, published online on December 12, 2018 at <https://www.philstar.com/headlines/2018/12/12/1876455/prolonged-martial-law-mindanao-danger-human-rights-asean-lawmakers-warn>; last accessed January 14, 2019

²⁵ Justice Serreno, dissenting in the *Lagman 2018 Decision*

120. The human rights situation in Mindanao during Duterte’s Martial Law is relevant, more so when such martial law declaration has no basis:

“The baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses and renders nugatory the explicit conditions and limitations clearly spelled out in the Constitution for the protection of individual citizens.” (Justice Caguioa, dissenting opinion in the *Lagman 2018 Decision*)

121. Petitioners reiterate: The Constitution placed stringent checks, in at least two separate, independent levels (congressional and judicial), as regards the presidential exercise of the extraordinary powers of martial law—ultimately because the dark Marcosian days should never again happen. Failure in these checks means failure to prevent vile history from repeating itself.

122. It is thus the duty of this Honorable Court to factor in the human rights situation in the entire Mindanao region and claims of escalated and enhanced human rights abuses in its determination of sufficiency of factual basis.

PRAYER

WHEREFORE, premises considered, Petitioners humbly pray that this Honorable Court declare:

1. That there is no sufficient factual basis for the Third Extension of Proclamation No. 216; and
2. That the Resolution of Both Houses extending further Proclamation No. 216 for another year or until December 31, 2019 be struck down as UNCONSTITUTIONAL.

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

RESPECTFULLY SUBMITTED, 16 January 2018, Quezon City for the City of Manila.

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EXPLANATION

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

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