

G.R. No. 243522 – Representatives EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAUNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE, and ARLENE “KAKA” J. BAG-AO, *Petitioners* v. Hon. SALVADOR C. MEDIALDEA, Executive Secretary, Hon. DELFIN N. LORENZANA, Secretary of the Department of National Defense and Martial Law Administrator; Gen. BENJAMIN MADRIGAL, JR., Chief of Staff of the Armed Forces of the Philippines and Martial Law Implementor, Hon. BENJAMIN E. DIOKNO, Secretary of the Department of Budget and Management, and the HOUSE OF REPRESENTATIVES and the SENATE OF THE PHILIPPINES as component houses of the Congress of the Philippines, respectively represented by Hon. Speaker GLORIA MACAPAGAL-ARROYO and Hon. Senate President VICENTE C. SOTTO III, *Respondents*.

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G.R. No. 243677 – 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* v. 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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G.R. No. 243745 – CHRISTIAN S. MONSOD, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS, III, MARIE HAZEL E. LAVITORIA, DOMINIC AMON R. LADEZA, XAMANTHA XOFIA A. SANTOS, *Petitioners* v. SENATE OF THE PHILIPPINES (represented by Senate President VICENTE SOTTO III), HOUSE OF REPRESENTATIVES (represented by Speaker GLORIA MACAPAGAL-ARROYO), Executive Secretary SALVADOR C. MEDIALDEA, Department of National Defense Secretary DELVIN N. LORENZANA, Department of Interior and Local Government Secretary EDUARDO M. AÑO, Armed Forces of the Philippines Chief of Staff Gen. BENJAMIN R. MADRIGAL, JR., Philippine National

Police Director General OSCAR D. ALBAYALDE, and National Security Adviser HERMOGENES C. ESPERON, JR., Respondents.

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G.R. No. 243797 – RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY and RORELYN MANDACAWAN, Petitioners v. The SENATE OF THE PHILIPPINES, represented by the Senate President VICENTE C. SOTTO III, the House of Representatives, represented by the Speaker of the House of Representatives, GLORIA MACAPAGAL-ARROYO, the EXECUTIVE SECRETARY, the SECRETARY OF NATIONAL DEFENSE, the SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, the CHIEF OF STAFF, Armed Forces of the Philippines, the DIRECTOR GENERAL, Philippine National Police, and all persons acting under their control, direction, instruction and/or supervision, Respondents.

Promulgated:

February 19, 2019,

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DISSENTING OPINION

JARDELEZA, J.:

Through Resolution of Both Houses No. 6 dated December 12, 2018, the Congress of the Philippines, in a Joint Session, by 235 affirmative votes comprising the majority of all its members, has voted 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,*" from January 1, 2019 to December 31, 2019. Once again, this Court's power under Section 18, Article VII of the Constitution is invoked to determine the sufficiency of the factual bases for yet another year's *extension* of martial law.

Similar to my position in *Lagman v. Medialdea*,¹ which involved the constitutionality of the *first* extension of Proclamation No. 216, I do not dispute that a state of rebellion exists in Mindanao. However, I remain unconvinced that the Government has met the burden of the Constitution's public safety requirement as to support the continued extension of martial law and suspension of the privilege of the writ of *habeas corpus*. To me, the Government's own evidence shows that the *scale* of the rebellion which started in 2016, and continued into 2017, has been materially *degraded* in 2018, as a result of the success and bravery of the men and women of the

¹ G.R. Nos. 231658, 231771, & 231774, July 4, 2017, 829 SCRA 1. 4

Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). As a result, I do not believe that there is sufficient factual basis to support any further extension of martial law in Mindanao. I thus vote to GRANT the petitions.

Furthermore, I submit this Opinion to reiterate my grave concerns over the Court's seeming abdication of its duty under Section 18, Article VII of the Constitution as a consequence of its adamant refusal to "substitute [its] own judgment"² over that of the President or Congress. Respect for the President's assessment of the necessity of the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* is not incompatible with the Court's faithful fulfillment of its duty to determine the sufficiency of the President's factual bases. Such "permissive deference" becomes all the more objectionable when presentation by the Government of its factual bases is allowed to be made *in camera*.

I

To begin, I reiterate my position that public interest is better served when proceedings such as these are conducted with full transparency.³ In fact, our actual experience with three successive years of martial law litigation convinces me that the Court should reject, for being anathema to our constitutional system, any plea from the Government to present its evidence *in camera*. By requiring authorship of its own evidence and submissions, full accountability can be exacted from the Government to justify its resort to such an extreme measure as the declaration of martial law and/or suspension of the privilege of the writ.

In his Compliance⁴ dated January 21, 2019, the Solicitor General manifested that the Government would submit in "an executive session" the Monthly/Periodic Reports on Martial Law Implementation made by the Department of National Defense (DND) to the Congress from January 1, 2018 to December 31, 2018 (the Reports). According to the Solicitor General, presentation of its evidence in an executive session is necessary as the Reports "involve highly sensitive and confidential matters affecting the security of the State."⁵ The Court issued a Resolution⁶ directing the OSG to submit the Reports in 15 sealed copies, to be filed directly with the Office of the Clerk of Court *En Banc* only, for the Members of the Court to make a preliminary assessment of whether the Reports may only be appropriately discussed and deliberated upon in an executive session. By noon of January

² Ponencia, p. 27.

³ See Jardeleza, J., Separate Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, & 231774, July 4, 2017, 829 SCRA 1, 602-668.

⁴ See Resolution, *Lagman v. Medialdea*, G.R. No. 243522, January 21, 2019.

⁵ That the Government would deign to renew a plea for *in camera* proceedings (after having decided not to do so in *Lagman v. Pimentel*) is for me a lamentably disappointing experience of constitutional *déjà vu*.)

⁶ Rollo, pp. 716-720.

25, 2019, the Solicitor General submitted 15 copies of the Reports in sealed envelopes,⁷ which were promptly distributed to the Members of the Court.

In its *En Banc* session in the morning of January 29, 2019, the Court briefly discussed the Reports and decided to call for an executive session to be held just before the oral argument scheduled in the afternoon of the same day. During this executive session, and in the presence of counsel for petitioners, the Solicitor General again argued against the release of the Reports to the public. After I expressed the view that the Reports did not contain sensitive material, such as secret sources of information or names of confidential informants, and thus should be made available to the public,⁸ the Solicitor General changed tack and asked to seek clearance from his principals on the matter.

As it would turn out, the Government had no objections and the Reports were eventually made available to petitioners. Still, and considering the effects of a declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, I feel strongly that such a decision (whether to make public the presentation of the Government's factual bases) should not be left to the latter's will or benevolence.

Furthermore, I feel that the Court could have had a *more robust* response to the Government's claims of confidentiality. In cases such as this, transparency should be the rule, confidentiality the exception. The Court should be neither allayed nor cowed by general invocations of reasons of national security; to be the meaningful check the Constitution intended it to be, the Court should require more than general invocations of confidentiality. All evidence should be made public, save for instances when the Government is able to immediately show how a specific piece of evidence, if publicly disclosed, may reveal critical information.⁹

For the same reasons, it is my view that the public, through petitioners and their counsel, must be given access to the Government's evidence *at the earliest possible time*. Here, although copies were made available to petitioners the same afternoon of the oral argument, they (and, more importantly, the public) were still deprived of four days, from the time the Reports were made available to the Court, to vet the Government's evidentiary claims.¹⁰ As shown by Justice Benjamin S. Caguioa's thoughtful and detailed analysis, the accuracy of the Government's Reports leaves much to be desired, including, but not limited to, its identification of its sources, attribution of responsible groups, and the number and location of

⁷ *Supra* note 4.

⁸ To my mind, the Reports did not implicate the types of information falling within the "single, extremely narrow class of cases" that the United States Supreme Court, in the leading case of *New York Times Co. v. United States* (403 U.S. 713, 1971), held may be validly covered by prior restraint. These types of information include, for example, sailing dates of transports or the number and location of troops, when the Nation is at war. (See also Separate Opinion in *Lagman v. Medialdea*, *supra*.)

⁹ *Supra* note 3.

¹⁰ Given the unusually short timeframe in martial law litigation, four days is an eternity.

violent incidents. An approach that gives the public more time to independently verify the facts as presented by the Government would also serve to sharpen the sense of obligation and responsibility of the concerned Government functionaries to make their Reports as accurate as possible, and, in turn, enable the Court to better ascertain the truth respecting the matters of fact presented to it.

I shall now discuss the grounds on which I base my judgment that these petitions should be granted.

II

I have previously articulated my views on the definition of “rebellion” as used under Section 18, Article VII of the Constitution, which is simply “armed public resistance to the Government.”¹¹ A “rebel,” on the other hand, is defined as “a person who refuses allegiance to, resists, or rises in arms against the government or ruler of his or her country,” or a “person who resists any authority, control, or tradition;”¹² one “who unjustly take up arms against the ruler of the society, or the lawful and constitutional government, whether their view be to deprive him of the supreme authority or to resist his lawful commands in some instance, and to impose conditions on him.”¹³

These definitions overlap with what is considered “terrorism” or a “terrorist” under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007,¹⁴ which lists rebellion under Article 134 of the Revised Penal Code (RPC) as one of the predicate crimes for the commission of terrorism.

¹¹ *Supra* note 3.

¹² <https://www.dictionary.com/browse/rebel>, last accessed on February 9, 2019.

¹³ <https://thelawdictionary.org/rebel/>, last accessed on February 9, 2019.

¹⁴ Sec. 3. *Terrorism*. – Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

- a. Art. 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
- b. **Art. 134 (Rebellion or Insurrection);**
- c. Art. 134-a (*Coup d' Etat*), including acts committed by private persons;
- d. Art. 248 (Murder);
- e. Art. 267 (Kidnapping and Serious Illegal Detention);
- f. Art. 324 (Crimes Involving Destruction), or under:
 1. Presidential Decree No. 1613 (The Law on Arson);
 2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
 3. Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
 4. Republic Act No. 6235 (Anti-Hijacking Law);
 5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and
 6. Presidential Decree No. 1866, as amended (Decree codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives)

Thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Emphasis supplied.)

Since a rebel, as above defined, can fit the profile of the local and communist terrorist groups sought to be quelled by the Government in this present extension of martial law in Mindanao, I take no issue on the question of whether local or communist terrorist groups are actually perpetrating rebellion as defined in the RPC, or merely carrying out terrorist attacks or lawless violence. As long as these groups commit public, armed resistance to the government, to me, the requirement of rebellion as used under Section 18, Article VII of the Constitution has been reasonably met. In fact, I have no serious disagreement with the majority's conclusion that, with the proliferation of both local and communist terrorist groups, a state of rebellion continues to exist in Mindanao.

I thus maintain my view that the Court should accord "rebellion" a meaning that will not unduly tie the government's hands and unwittingly make it ill-equipped to deal with the exigencies of the times. To be sure, there are many lives lost, ruined, and threatened by the presence of communist and local terrorist groups. The present administration should be allowed reasonable leeway to mitigate these groups' impact on society and the economic development of our nation.

In any case, I believe that the purpose of the strict proscriptions under Section 18, Article VII of the Constitution is not so much to limit the meaning of rebellion but more to limit the instances calling for the President's exercise of his power to declare martial law and/or suspend the privilege of the writ of *habeas corpus*. Otherwise stated, the restrictions in Section 18, Article VII of the Constitution are directed mainly on the exercise of presidential power; it is not necessarily fixated on the meaning of the terms used. If the purpose of martial law is self-preservation, then the government should be allowed to wield that power as a potent tool to realize its purpose, unhampered by technicalities in meaning that was neither placed nor intended by the framers in the first place.

III

A

Even conceding that a state of rebellion exists in Mindanao, I still do not find that the situation has reached such scale as to satisfy the public safety requirement under Section 18, Article VII of the Constitution.

In *Lagman v. Pimentel*,¹⁵ involving the constitutionality of the second extension of martial law in Mindanao, I had occasion to express my view that "the public safety requirement under Section 18, Article VII of the Constitution operates to limit the exercise of the President's extraordinary powers *only to rebellions of a certain scale as to sufficiently threaten public*

¹⁵ G.R. No. 235935, February 6, 2018.

safety.”¹⁶ I, thereafter, sought to identify certain circumstances present in the rebellion in Marawi City which, in my view, could serve as minimum indicators of scale as to reasonably justify the President’s resort to extraordinary measures: (1) there are actual and *sustained* armed hostilities with government forces; and (2) armed groups have actually *taken over*, and are *holding, territory.*¹⁷

In these present petitions, the Government attempts once more to present evidence showing the magnitude of the rebellion for purposes of extending martial law in Mindanao until December 31, 2019. After going over the Government’s evidence, I do not find any of the circumstances present which reasonably indicate that the state of rebellion in Mindanao has reached a scale as to justify the President’s exercise of his extraordinary powers.

Nowhere in its presentation or its pleadings did the Government assert that there are actual and sustained armed hostilities (*e.g.*, continuous exchange of fire) between government troops and the terrorist groups in any place in Mindanao. Neither was there any claim (much less, actual evidence) that these terrorist groups have taken over, or are actually holding, territory, similar to what the Maute rebels were able to achieve during the Marawi siege. At most, the Government’s data shows that the armed terrorist groups have not been quelled, and that they continue to be dangerous and capable of inflicting violence and terror in Mindanao. This notwithstanding, the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, given their tremendous effect on certain civil liberties, are measures of last resort, not knee-jerk responses, to address such terror threats.

B

Even if taken in their best light and for the avowed purposes for which they were presented, the totality of the Government’s evidence still does not support a reasonable conclusion that they meet the Constitution’s public safety requirement as to justify the extension of martial law in Mindanao.

In defending against the petitions that led to *Lagman v. Pimentel*, the Government, using data supplied by the AFP, introduced into evidence, for the first time in the history of martial law litigation, certain *metrics* by which to gauge the magnitude of the rebellion waged by the two terrorist groups in the year 2017. The AFP’s metrics, as reaffirmed by Lieutenant General Madrigal (Gen. Madrigal) during oral arguments in this case,¹⁸ has four

¹⁶ See Jardeleza, *J.*, Dissenting Opinion, *Lagman v. Pimentel*, G.R. No. 235935, February 6, 2018.

¹⁷ *Id.* After finding that none of the above indicators obtained in *Lagman v. Pimentel*, I voted against the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

¹⁸ Transcript of Oral Arguments-*En Banc*, pp. 52-53; In the oral argument on January 29, 2019, the following exchanges were made between Associate Justice Jardeleza and Gen. Madrigal:

components: (1) the manpower count; (2) firearms count; (3) number of controlled barangays; and (4) number of violent incidents (which include harassment, liquidation, ambush, arson, carjacking, grenade throwing, improvised explosive device (IED) explosions, kidnapping and murder).

For the year 2017, the figures corresponding to these metrics, as summarized from the AFP Presentation¹⁹ in *Lagman v. Pimentel*, are as follows:

Rebel/Terrorist Groups	Manpower	Firearms	Controlled Barangays	Violent Incidents
Communist Rebels	1,748	2,123	426	422
Dawlah Islamiyah	137	162	-	53
BIFF	388	328	59	116
ASG	508	598	52	44
GRAND TOTAL	2,781	3,211	537	635²⁰

For purposes of the present petitions, the Government employed the same *metrics* and presented as evidence the following statistics²¹ for the year 2018:

Rebel/Terrorist Groups	Manpower	Firearms	Controlled Barangays	Violent Incidents
Communist Rebels	1,636 ²²	1,568 ²³	232 ²⁴	193
Dawlah Islamiyah	150	91	16	10
BIFF	264	254	50	76
ASG	424	473	138	66
GRAND TOTAL	2,474	2,386	436	345²⁵

Justice Jardeleza: x x x I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...

Gen. Madrigal: Yes, Your Honor.

Justice Jardeleza: And no. (4) violent incidents?

Gen. Madrigal: Yes, Your Honor.

Justice Jardeleza: So those four, which are in your data and as presented today and as presented to Congress. The sum total is what you call capability?

Gen. Madrigal: Yes, Your Honor.

¹⁹ AFP presentation in *Lagman v. Pimentel*, slide nos. 19, 26, 37, 52 and 75.

²⁰ *Id.*

²¹ OSG Comment, Annexes "4," "5," "6," and "7"; undated letter of Major General Fernando T. Trinidad to Cong. Edcel C. Lagman, Annex "E-14" of Lagman petition; OSG Comment, paragraph 33 states that these are 2018 "end of first semester data" without citing sources or providing figures for communist terrorist groups. In addition, I note that the 2018 figures vary per source of information. For example, the figures on firearms and controlled barangays corresponding to communist rebels are not found in the government's submissions. They were instead provided by Major General Lorenzo (Maj. Gen. Lorenzo) in his presentation at the oral arguments. Moreover, in his testimony before the Joint Session of Congress, Gen. Madrigal stated that the government is still pursuing a total of 2,435 communist and local terrorist groups, which is less than the total manpower tallied above.

²² Testimony of Gen. Madrigal during the Joint Session of Congress on December 12, 2018, Transcript, p. 27. Per Gen. Madrigal, the figures were "current... at this point."

²³ Presentation of Maj. Gen. Lorenzo, Transcript of the Oral Arguments-*En Banc*, pp. 18-19.

²⁴ *Id.*

²⁵ OSG Comment, Annexes "4," "5," "6," and "7."

Even the most cursory comparison of the 2017 and 2018 data would show that all five components of the AFP's capability metrics went **down**.

In his letter to President Duterte recommending the extension of martial law, Secretary of National Defense Delfin N. Lorenzana attributed the “**degradation** in manpower and capabilities” of rebel groups to be “a result of the continued operations of the security forces of the National Government.”²⁶

AFP Chief of Staff, General Carlito Galvez, Jr. (Gen. Galvez), for his part, also reported a “*significant reduction* on the capability of the threat groups.”²⁷ In his letter to President Duterte, he mentioned a 62% and 45% **reduction** in the manpower and firepower, respectively, of *local* terrorist groups, and a 31% and 38% reduction in manpower and firepower, respectively, of *communist* terrorist groups. He also reported a **reduction** in threat atrocities from local and communist terrorist groups by 22% and 36%, respectively.²⁸

Thus, and as a trier of fact who previously voted *against* the extension of martial law in 2018 due to lack of reasonable showing of scale, I find even less reason to further extend martial law here, when even by the Government's own estimation, the *scale* or *magnitude* of the rebellion in Mindanao has been significantly reduced or degraded.

Notably, publicly available information seems to validate the government's findings of degradation/reduction. A report to the United States (US) Congress,²⁹ for example, gave the following account: (1) the “force strength” of violent extremist Philippine organizations affiliated with the ISIS,³⁰ which was around “300 to 550 members” in the last quarter of 2018, is “significantly less than the group's peak strength during the Marawi siege,” where “more than 1,000 militants fought;” (2) “there were “approximately 40 foreign fighters, mostly from Malaysia and Indonesia, in the Philippines during the [last quarter of 2018],” and there is “no evidence of either an influx or exodus of foreign fighters during the [same] quarter;”³¹ and (3) ISIS-Philippines “neither gained nor lost territory during the quarter,

²⁶ OSG Comment, Annex “1.” Letter of Gen. Delfin N. Lorenzana to President Duterte dated December 4, 2018.

²⁷ OSG Comment, Annex “1.” Undated Letter of Gen. Carlito Galvez, Jr. to President Duterte, emphasis supplied.

²⁸ *Id.*

²⁹ Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31, 2018, p. 5, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF (last accessed February 17, 2019)

³⁰ Collectively referred as “ISIS-Philippines” or “ISIS-P” in the Report, https://media.defense.gov/2018/Jun/18/2001932643/1/1/1/FY2018_LIG_OCO_OIR_Q1_12222017_2.PDF (last accessed on February 17, 2019).

³¹ Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31, 2018, p. 6, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF (last accessed on February 17, 2019).

and extremist activity was limited to the Sulu archipelago xxx [It] made no progress in expanding its operations or influence outside of the Sulu archipelago.”³²

C

I now take this occasion to share some further observations:

First. The AFP’s use of certain metrics by which our armed forces measures enemy capability appears consistent with the practice of the United States military in their war against terror, specifically as waged against ISIS and ISIS-related or ISIS-inspired groups.³³

Second. Statements made by our top military officials confirm that there *is* some science behind the military’s recommendation to declare martial law and/or suspend the privilege of the writ of *habeas corpus*. This, I feel, is important to help assuage any fears that the President’s exercise of his extraordinary powers was made without rhyme or reason, or worse, on pure whim.

In his testimony before the Joint Session of Congress on December 12, 2018, Secretary Lorenzana professed:

We need more time to catch these people, to neutralize them, to reduce their capability to create trouble. *Kapag po nai-reduce iyan ng* about 30 percent *ng kanilang* capability and they become law enforcement problems, then the police forces can take over without the military. *Kaunti na lang kami siguro, so support na lang kami.*³⁴

During the oral argument, Gen. Madrigal affirmed Secretary Lorenzana’s statement before Congress³⁵ and explained that the “military definition of destruction of the enemy,” is “[reduction of their capability] by 30% in terms of strength, firearms, the support system.”³⁶ In such case, the conflict will be considered a law enforcement, rather than military, matter, on the basis of which the AFP “will gladly recommend the lifting of martial law.”³⁷ Gen. Madrigal’s statements were seconded by Solicitor Calida, who afterwards declared:

³² *Id.*

³³ *Id.* My appreciation of the use of metrics by the American military was reinforced when I came across the report submitted to the United States Congress that I earlier adverted to. In the report, the United States Indo-Pacific Command was stated to be using “four metrics to track the degradation of ISIS-Philippines,” namely: (1) lack of an ISIS-Core designated ISIS-Philippines emir; (2) the amount of funding ISIS-Core provides ISIS-Philippines; (3) the quality of ISIS-Core media coverage of ISIS-Philippines activities; and 4) cohesion or fragmentation of ISIS-Philippines’ individual elements.

³⁴ Transcript of the Joint Session of Congress, p. 57.

³⁵ I asked the Government to explain Secretary Lorenzana’s statement. My question was, “Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the president that martial law is over?” (Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 51.)

³⁶ Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 52.

³⁷ Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 52-54.

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.³⁸

Third. Although Solicitor General Calida committed to clarify, through the Memorandum to be submitted by the Government, the baseline on which the 30% capability reduction threshold will be applied,³⁹ he would unfortunately renege on this commitment. Instead of clarifying the 70%-30% baseline as initially promised, the Solicitor General, in the Government's Memorandum, would thereafter assert that: "[t]he assessment of whether to extend martial law defies computation: it is not subject to any mathematical formula;"⁴⁰ the AFP's calculus "cannot bind the President who is only bound by Section 18, Article VII of the Constitution;"⁴¹ "it would be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego;"⁴² and "an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent."⁴³

I find the above assertions by the Solicitor General to be worrisome and disconcerting, to say the least. Having heard the explanation of the AFP, admitted the existence of the mathematical formula, and committed to clarify the baseline for its application during oral arguments, the Solicitor General now refuses to admit responsibility to any of these. This effectively puts the cart before the horse and adopts a stance of self-preservation that is inconsistent with the ideal of public accountability.

Indeed, the power to declare martial law rests solely in the executive. Gen. Madrigal exhibited sufficient discernment when he stated during oral

³⁸ Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 55.

³⁹ Transcript of Oral Arguments-*En Banc*, January 29, 2019, pp. 56-58. In the oral argument, the following exchanges transpired:

Justice Jardeleza: So, Mr. SolGen, the position we would like to know from the government and please cover it in the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

Solicitor General Calida: Yes, Your Honor.

Justice Jardeleza: If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

Solicitor General Calida: That's correct, Your Honor.

Justice Jardeleza: So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

Solicitor General Calida: Capability.

x x x x

Justice Jardeleza: So we have a deal. That's the...

Solicitor General Calida: Yes, Your Honor.

⁴⁰ OSG Memorandum, para. 82.

⁴¹ OSG Memorandum, para. 82.

⁴² OSG Memorandum, para. 83.

⁴³ OSG Memorandum, paras. 82-83.

arguments that the AFP's role is recommendatory,⁴⁴ meaning it does not bind the president. I find that the position taken by the Solicitor General underrates the military's competence to recommend the lifting of martial law based on verifiable facts, as it also undermines the president's ability to act upon the recommendation of his own subordinates. The stance taken by the Solicitor General, to my mind, is not only unfair to the Court, but also unfair to its principals.

Fourth. The AFP's statements on its use of certain metrics and the baselines considered for a recommendation on martial law are entitled to the highest credibility, having been conveyed by high-ranking military officials in proceedings sanctioned by the Constitution.

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 objective⁴⁵ 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. In the same manner, the government is duty-bound to make a truthful reporting and make information transparent. This is the essence of public accountability of all government entities whose primary duty is to serve and protect the People.

Finally, public office is a public trust; public officers and employees must, first and foremost, be accountable to the people at all times. They must serve the people with utmost responsibility, integrity, loyalty, and efficiency.⁴⁶ Public officials and employees are expected to discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.⁴⁷ Consequently, the AFP is expected to remain as faithful to its duty make the correct reporting of facts as it is with its mandate to protect the people⁴⁸ and safeguard their rights.⁴⁹ Thus, it should stand to reason that if the AFP finds that there is no longer a need to extend martial law based on facts gathered from its intelligence activities and the application of the 30%

⁴⁴ Transcript of Oral Arguments-*En Banc*, p. 54; Gen. Madrigal stated that "We will gladly recommend the lifting of martial law if we attain that," referring to 70% reduction of rebel and terrorist capability.

⁴⁵ As circumstances would allow.

⁴⁶ CONSTITUTION, Art. XI, Sec. 1.

⁴⁷ Sec. 4, R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

⁴⁸ Sec. 3, Art. II, of the 1987 Constitution provides: The Armed Forces of the Philippines is the protector of the people and the State.

⁴⁹ Sec. 5, Art. XVI of the 1987 Constitution provides:

1. All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.
2. The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.

rule on degradation, it is duty-bound to make a recommendation to the President to lift the declaration.

Similarly, if the President determines that there is no longer any factual basis to extend martial law based, among others, on the recommendation of the AFP, then it is also his duty to lift it. He is no less accountable to the people by virtue of his position. In fact, it is his first and foremost duty to uphold the sanctity of our laws.

To end, the proceeding provided for under the third paragraph of Section 18, Article VII of the Constitution is not a game of superiority or popularity. It is, in essence, a proceeding to determine whether the actions undertaken by the Government are in furtherance of the welfare of its constituents. It is of such nature that, regardless which of the opposing parties win, the outcome should be a victory of the people.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 243522, 243677, 243745 and 243797 and **DECLARE INVALID** Resolution of Both Houses No. 6 of the Senate and the House of Representatives dated December 12, 2018, for failure to comply with Section 18, Article VII of the 1987 Constitution.


FRANCIS H. JARDELEZA
Associate Justice