

EN BANC

[G.R. No. 190293, March 20, 2012]

PHILIP SIGFRID A. FORTUN AND ALBERT LEE G. ANGELES, PETITIONERS, VS. GLORIA MACAPAGAL-ARROYO, AS COMMANDER-IN-CHIEF AND PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, EDUARDO ERMITA, EXECUTIVE SECRETARY, ARMED FORCES OF THE PHILIPPINES (AFP), OR ANY OF THEIR UNITS, PHILIPPINE NATIONAL POLICE (PNP), OR ANY OF THEIR UNITS, JOHN DOES AND JANE DOES ACTING UNDER THEIR DIRECTION AND CONTROL, RESPONDENTS.

[G.R. NO. 190294]

DIDAGEN P. DILANGALEN, PETITIONER, VS. EDUARDO R. ERMITA IN HIS CAPACITY AS EXECUTIVE SECRETARY, NORBERTO GONZALES IN HIS CAPACITY AS SECRETARY OF NATIONAL DEFENSE, RONALDO PUNO IN HIS CAPACITY AS SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

[G.R. NO. 190301]

NATIONAL UNION OF PEOPLES' LAWYERS (NUPL) SECRETARY GENERAL NERI JAVIER COLMENARES, BAYAN MUNA REPRESENTATIVE SATUR C. OCAMPO, GABRIELA WOMEN'S PARTY REPRESENTATIVE LIZA L. MAZA, ATTY. JULIUS GARCIA MATIBAG, ATTY. EPHRAIM B. CORTEZ, ATTY. JOBERT ILARDE PAHILGA, ATTY. VOLTAIRE B. AFRICA, BAGONG ALYANSANG MAKABAYAN (BAYAN) SECRETARY GENERAL RENATO M. REYES, JR. AND ANTHONY IAN CRUZ, PETITIONERS, VS. PRESIDENT GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY EDUARDO R. ERMITA, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL VICTOR S. IBRADO, PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL JESUS A. VERZOSA, DEPARTMENT OF JUSTICE SECRETARY AGNES VST DEVANADERA, ARMED FORCES OF THE PHILIPPINES EASTERN MINDANAO COMMAND CHIEF LIEUTENANT GENERAL RAYMUNDO B. FERRER, RESPONDENTS.

[G.R. NO. 190302]

JOSEPH NELSON Q. LOYOLA, PETITIONER, VS. HER EXCELLENCY PRESIDENT GLORIA MACAPAGAL-ARROYO, ARMED FORCES CHIEF OF STAFF GENERAL VICTOR IBRADO, PHILIPPINE NATIONAL POLICE (PNP), DIRECTOR GENERAL JESUS VERZOSA, EXECUTIVE SECRETARY EDUARDO ERMITA, RESPONDENTS.

[G.R. NO. 190307]

JOVITO R. SALONGA, RAUL C. PANGALANGAN, H. HARRY L. ROQUE, JR., JOEL R. BUTUYAN, EMILIO CAPULONG, FLORIN T. HILBAY, ROMEL R. BAGARES, DEXTER DONNE B. DIZON, ALLAN JONES F. LARDIZABAL AND GILBERT T. ANDRES, SUING AS TAXPAYERS AND AS CONCERNED FILIPINO CITIZENS, PETITIONERS, VS. GLORIA MACAPAGAL-ARROYO, IN HIS (SIC) CAPACITY AS PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, HON. EDUARDO ERMITA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY, AND HON. ROLANDO ANDAYA IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, GENERAL VICTOR IBRADO, IN HIS CAPACITY AS ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF, DIRECTOR JESUS VERZOSA, IN HIS CAPACITY AS CHIEF OF THE PHILIPPINE NATIONAL POLICE, RESPONDENTS.

[G.R. NO. 190356]

BAILENG S. MANTAWIL, DENGCO SABAN, ENGR. OCTOBER CHIO, AKBAYAN PARTY LIST REPRESENTATIVES WALDEN F. BELLO AND ANA THERESIA HONTIVEROS-BARAQUEL, LORETTA ANN P. ROSALES, MARVIC M.V.F. LEONEN, THEODORE O. TE AND IBARRA M. GUTIERREZ III, PETITIONERS, VS. THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF JUSTICE, THE SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, THE SECRETARY OF BUDGET AND MANAGEMENT, AND THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE, RESPONDENTS.

[G.R. NO. 190380]

CHRISTIAN MONSOD AND CARLOS P. MEDINA, JR., PETITIONERS, VS. EDUARDO R. ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, RESPONDENT.

D E C I S I O N

ABAD, J.:

These cases concern the constitutionality of a presidential proclamation of martial law and suspension of the privilege of *habeas corpus* in 2009 in a province in Mindanao which were withdrawn after just eight days.

The Facts and the Case

The essential background facts are not in dispute. On November 23, 2009 heavily armed men, believed led by the ruling Ampatuan family, gunned down and buried under shoveled dirt 57 innocent civilians on a highway in Maguindanao. In response to this carnage, on November 24 President Arroyo issued Presidential Proclamation

1946, declaring a state of emergency in Maguindanao, Sultan Kudarat, and Cotabato City to prevent and suppress similar lawless violence in Central Mindanao.

Believing that she needed greater authority to put order in Maguindanao and secure it from large groups of persons that have taken up arms against the constituted authorities in the province, on December 4, 2009 President Arroyo issued Presidential Proclamation 1959 declaring martial law and suspending the privilege of the writ of *habeas corpus* in that province except for identified areas of the Moro Islamic Liberation Front.

Two days later or on December 6, 2009 President Arroyo submitted her report to Congress in accordance with Section 18, Article VII of the 1987 Constitution which required her, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, to submit to that body a report in person or in writing of her action.

In her report, President Arroyo said that she acted based on her finding that lawless men have taken up arms in Maguindanao and risen against the government. The President described the scope of the uprising, the nature, quantity, and quality of the rebels' weaponry, the movement of their heavily armed units in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and 14 other municipal halls, and the use of armored vehicles, tanks, and patrol cars with unauthorized "PNP/Police" markings.

On December 9, 2009 Congress, in joint session, convened pursuant to Section 18, Article VII of the 1987 Constitution to review the validity of the President's action. But, two days later or on December 12 before Congress could act, the President issued Presidential Proclamation 1963, lifting martial law and restoring the privilege of the writ of *habeas corpus* in Maguindanao.

Petitioners Philip Sigfrid A. Fortun and the other petitioners in G.R. 190293, 190294, 190301, 190302, 190307, 190356, and 190380 brought the present actions to challenge the constitutionality of President Arroyo's Proclamation 1959 affecting Maguindanao. But, given the prompt lifting of that proclamation before Congress could review it and before any serious question affecting the rights and liberties of Maguindanao's inhabitants could arise, the Court deems any review of its constitutionality the equivalent of beating a dead horse.

Prudence and respect for the co-equal departments of the government dictate that the Court should be cautious in entertaining actions that assail the constitutionality of the acts of the Executive or the Legislative department. The issue of constitutionality, said the Court in *Biraogo v. Philippine Truth Commission of 2010*, [1] must be the very issue of the case, that the resolution of such issue is unavoidable.

The issue of the constitutionality of Proclamation 1959 is not unavoidable for two reasons:

One. President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* before the joint houses of Congress could fulfill their automatic duty to review and validate or invalidate the same. The

pertinent provisions of Section 18, Article VII of the 1987 Constitution state:

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

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Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, he shares such power with the Congress. Thus:

1. The President's proclamation or suspension is temporary, good for only 60 days;
2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;
3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and
4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.

Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

Here, President Arroyo withdrew Proclamation 1959 before the joint houses of Congress, which had in fact convened, could act on the same. Consequently, the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of *habeas corpus* in Maguindanao was a supervening event that obliterated any justiciable controversy.^[2]

Two. Since President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in just eight days, they have not been meaningfully implemented. The military did not take over the operation and control of local government units in Maguindanao. The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress. No indiscriminate mass arrest had been reported. Those who were arrested during the period were either released or promptly charged in court. Indeed, no petition for *habeas corpus* had been filed with the Court respecting arrests made in those eight days. The point is that the President intended by her action to address an uprising in a relatively small and sparsely populated province. In her judgment, the rebellion was localized and swiftly disintegrated in the face of a determined and amply armed government presence.

In *Lansang v. Garcia*,^[3] the Court received evidence in executive session to determine if President Marcos' suspension of the privilege of the writ of *habeas corpus* in 1971 had sufficient factual basis. In *Aquino, Jr. v. Enrile*,^[4] while the Court took judicial notice of the factual bases for President Marcos' proclamation of martial law in 1972, it still held hearings on the petitions for *habeas corpus* to determine the constitutionality of the arrest and detention of the petitioners. Here, however, the Court has not bothered to examine the evidence upon which President Arroyo acted in issuing Proclamation 1959, precisely because it felt no need to, the proclamation having been withdrawn within a few days of its issuance.

Justice Antonio T. Carpio points out in his dissenting opinion the finding of the Regional Trial Court (RTC) of Quezon City that no probable cause exist that the accused before it committed rebellion in Maguindanao since the prosecution failed to establish the elements of the crime. But the Court cannot use such finding as basis for striking down the President's proclamation and suspension. For, firstly, the Court did not delegate and could not delegate to the RTC of Quezon City its power to determine the factual basis for the presidential proclamation and suspension. Secondly, there is no showing that the RTC of Quezon City passed upon the same evidence that the President, as Commander-in-Chief of the Armed Forces, had in her possession when she issued the proclamation and suspension.