

#13 Facts about Martial Law

The Caucus of Development NGOs (CODE-NGO) conducted its online forum entitled "Martial Law: Good or Bad?" last September 18, 2017 so that we will never forget about the atrocities of this dark segment in our history when Ferdinand Marcos declared it on September 21, 1972. The online session also aimed to respond to questions about the Martial Law declared in the entire Mindanao last May 23, 2017. Alternative Law Groups (ALG) National Coordinator Atty. Marlon Manuel was our resource person for the session.

Here's the summary of the discussion about Martial Law:

1. What is Martial Law?

The President has 3 powers as Commander-in-chief. One of these powers is to place the country or any part under Martial Law. The other 2 powers are the power to call out the armed forces and the power to suspend the privilege of writ of habeas corpus.

As defined, Martial Law is the exercise of government by giving power and control to the military authorities to protect the civilians under chaos. Since it is also described as an "extreme and rare measure", the 1987 Philippine Constitution provides very specific parameters of the powers under a Martial Rule. The constitution has numerous requirements in order for the President to fully justify a declaration of Martial Law, as indicated on Article VII, Section 18 of the Constitution. For instance, Martial Law can only be instituted "to prevent or suppress lawless violence, invasion or rebellion."

2. What are the prerequisites for declaring Martial Law?

The Constitution requires "conditions" as to when and to what degree can the President declare martial law: "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." The President is required to report to the Congress the declaration of martial law.

3. What is the legal definition of "rebellion"? What constitutes rebellion? Who determines this?

As defined in Article 134 of the Revised Penal Code, as amended by Republic Act No. 3815, the crime of rebellion or insurrection is committed by "rising publicly and taking up arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

The determination of the President that rebellion exists is subject to two review procedures: (1) the Congress, which may revoke the declaration; and (2) the Supreme Court, which is mandated to review the sufficiency of the factual basis of the declaration, when a petition is filed by a citizen.

The President makes the initial declaration, and the declaration of martial law will be good for not more than 60 days. However, the review can be immediate. Congress may revoke the declaration if the members, through majority of the members, voting jointly. The revocation will, in effect, be a reversal of the President's finding of rebellion and the necessity for martial law.

4. Are there valid grounds for the declaration and expansion of Martial Law in Mindanao?

Martial law in Mindanao was declared following deadly clashes between government and terrorist Maute Group in downtown Marawi City, which left 2 soldiers and a police officer dead and 12 others injured. However, lawless violence is not a ground for the declaration of martial law. There are only two grounds - invasion and rebellion. "Lawless violence" is a ground for the calling out of the armed forces, but not for martial law or the suspension of the privilege of the writ.

In the petition done by the Alternative Law Groups (ALG) before the Supreme Court, they questioned the factual basis of the declaration. Martial law is a remedy of last resort. The President must prove that even assuming there is actual rebellion or invasion, there is a public safety necessity for the declaration.

5. Under the 1987 Constitution, the declaration of Martial Law cannot exceed 60 days, but Congress can vote to extend it. Are there specific requirements for actually extending it?

There are no specific requirements for the extension of Martial Law declaration. There is a difference between revocation and extension. The revocation can be done by Congress on its own. But the extension can only be done "upon the initiative of the President". So, for both the revocation and the extension, the Congress must be guided by the general requirement of "existence of actual rebellion, and that public safety requires the declaration" as cited above.

6. What are the implications of declaring Martial Law?

The Constitution lists down which are NOT the implications of Martial Law.

- It does not suspend the Constitution thus, the Bill of Rights should still be in force.
- It does not automatically suspend the privilege of the writ of habeas corpus.
- Martial law does not mean that civil courts and other government agencies can be replaced. This means that the President does not acquire legislative powers. Civilians cannot be tried in military courts.

The Constitution does not provide for the effects. But in the past decisions of the US Supreme Court (where we generally derive our rule on Martial Law), Martial Law is supposedly for the administration of areas in the "theatre of war". The assumption is that the civil government is not functioning.

7. What is the power vested on the President under Martial Law?

If the civil government and the courts are not functioning (because of rebellion or invasion which caused the ML declaration), then the President and the military administer the affected areas. BUT IF the civil government and the courts are functioning, then their powers and authority remain with them and they cannot be replaced by the President and the military. As the Constitution says, "A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function..."

On the other hand, IF the civil government and the courts are functioning despite the rebellion or invasion, then martial law DOES NOT provide the President with additional powers. Because Martial Law is

supposedly needed only to address the actual rebellion or invasion when the public safety requires it. The necessity factor serves as a limitation.

8. Is there any reported human right abuses under Martial Law in Mindanao?

Yes. The Integrated Bar of the Philippines (IBP) Lanao Chapter has issued a statement narrating the abuses. This statement was submitted to the Supreme Court in the case.

9. Does Martial Law mean restriction of movement or peaceful assemblies?

No. Since the Bill of Rights is still in place, freedom of expression, freedom of assembly and others are still guaranteed even under Martial Law.

10. Could the President, under the state of martial law, suspend local elections and appoint local leaders instead?

No. The suspension of elections can only be done by the Legislative and the Commission on Election (in some cases). Since the President does not have Legislative powers, even under Martial Law, he cannot do the suspension of the local elections.

11. What are our options to ward off any infringement of due process and our rights under Martial Law?

In view of the decisions of the Supreme Court and the Congress, both were affirming the President's action, we should ensure that the limitations placed by the Constitution on the exercise of the martial law powers will be followed. We should rely on the enforcement of the guarantees in the Bill of Rights on arrests, searches, etc.

12. Is there any other mechanism to address the Marawi crisis other than through the declaration of Martial Law?

The problem can be solved even without Martial Law. The military and the police can pursue the Maute group even without its declaration. Which exactly proves the point that there is no necessity for Martial Law in the context of Marawi and Mindanao. The military is already there, even before the declaration. That is why the necessity of the declaration is questionable.

13. Is the declaration of Martial Law good or bad?

Based on the legal bases and facts, the Constitution itself shows A CLEAR AVERSION to Martial Law. It is recognized as a situation that adversely affects citizens' rights. In that sense, IT IS BAD. Government must be civilian. The reason why the President, who is civilian, is made the Commander-in-chief of the military is to assert civilian authority.

The Constitution has placed limitations and review procedures on the exercise of the Commander-in-chief powers in placing the country or any part under Martial Law. Martial Law must be an action of last resort. It is only needed under extreme circumstances, i.e., to address extraordinary emergencies of rebellion and invasion. So if Martial Law is declared even if not necessary, and the implementation goes beyond what is needed to address the situation, that is undeniably bad.