Republic of the Philippines
Supreme Court
Manila

EN BANC

JAMAR M. KULAYAN, TEMOGEN S. TULAWIE, HJI. MOH. YUSOP ISMI, JULHAJAN AWADI, and SPO1 SATTAL H. JADJULI	**G.R. NO. 187298**
Petitioners,	Present:
	CARPIO, *J.*,
	VELASCO, JR.,
	LEONARDO-DE CASTRO,
- versus -	BRION,
	PERALTA,
	BERSAMIN,*
GOV. ABDUSAKUR M. TAN, in his capacity as Governor of Sulu; GEN. JUANCHO SABAN, COL. EUGENIO CLEMEN PN, P/SUPT. JULASIRIM KASIM and P/SUPT. BIENVENIDO G. LATAG, in their capacity as officers of the Phil. Marines and Phil. National Police, respectively,	DEL CASTILLO, ABAD,* VILLARAMA, JR., PEREZ, MENDOZA, SERENO, REYES, and PERLAS-BERNABE, *JJ.*
Respondents.	Promulgated:
	JULY 03, 2012

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DECISION

SERENO, *J.*:

On 15 January 2009, three members from the International Committee of the Red Cross (ICRC) were kidnapped in the vicinity of the Provincial Capitol in Patikul, Sulu.[1] Andreas Notter, a Swiss national and head of the ICRC in Zamboanga City, Eugenio Vagni, an Italian national and ICRC delegate, and Marie Jean Lacaba, a Filipino engineer, were purportedly inspecting a water and sanitation project for the Sulu Provincial Jail when

* On leave.
[1] Petition for Certiorari and Prohibition, *rollo*, p. 8.

inspecting a water and sanitation project for the Sulu Provincial Jail when they were seized by three armed men who were later confirmed to be members of the Abu Sayyaf Group (ASG).[2] The leader of the alleged kidnappers was identified as Raden Abu, a former guard at the Sulu Provincial Jail. News reports linked Abu to Albader Parad, one of the known leaders of the Abu Sayyaf.

On 21 January 2009, a task force was created by the ICRC and the Philippine National Police (PNP), which then organized a parallel local group known as the Local Crisis Committee.[3] The local group, later renamed Sulu Crisis Management Committee, convened under the leadership of respondent Abdusakur Mahail Tan, the Provincial Governor of Sulu. Its armed forces component was headed by respondents General Juancho Saban, and his deputy, Colonel Eugenio Clemen. The PNP component was headed by respondent Police Superintendent Bienvenido G. Latag, the Police Deputy Director for Operations of the Autonomous Region of Muslim Mindanao (ARMM).[4]

Governor Tan organized the Civilian Emergency Force (CEF), a group of armed male civilians coming from different municipalities, who were redeployed to surrounding areas of Patikul.[5] The organization of the CEF was embodied in a "Memorandum of Understanding"[6] entered into between three parties: the provincial government of Sulu, represented by Governor Tan; the Armed Forces of the Philippines, represented by Gen. Saban; and the Philippine National Police, represented by P/SUPT. Latag. The *Whereas* clauses of the Memorandum alluded to the extraordinary situation in Sulu, and the willingness of civilian supporters of the municipal

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[2] "Red cross won't return to Sulu yet," 27 October 2010, 5:44:00, by Jerome Aning, at http://www.inquirer.net/specialfeatures/redcrossabduction/view.php?db=1&article=20101027-299979. Last visited 11 September 2011.
[3] Supra note 1.
[4] *Rollo*, p. 9.
[5] "State of emergency in Sulu; attack looms," The Philippine Star, updated 1 April 2009, 12:00, by Roel Pareño and James Mananghaya, at http://www.philstar.com/Article.aspx?articleid=454055. Last visited 11 September 2011.
[6] *Rollo*, pp. 242- 244.

mayors to offer their services in order that "the early and safe rescue of the hostages may be achieved."[7]

This Memorandum, which was labeled 'secret' on its all pages, also outlined the responsibilities of each of the party signatories, as follows:

> Responsibilities of the Provincial Government:
>
> 1) The Provincial Government shall source the funds and logistics needed for the activation of the CEF;
> 2) The Provincial Government shall identify the Local Government Units which shall participate in the operations and to propose them for the approval of the parties to this agreement;
> 3) The Provincial Government shall ensure that there will be no unilateral action(s) by the CEF without the knowledge and approval by both parties.
>
> Responsibilities of AFP/PNP/ TF ICRC (Task Force ICRC):
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> 1) The AFP/PNP shall remain the authority as prescribed by law in military operations and law enforcement;
> 2) The AFP/PNP shall ensure the orderly deployment of the CEF in the performance of their assigned task(s);
> 3) The AFP/PNP shall ensure the safe movements of the CEF in identified areas of operation(s);
> 4) The AFP/PNP shall provide the necessary support and/or assistance as called for in the course of operation(s)/movements of the CEF.[8]

Meanwhile, Ronaldo Puno, then Secretary of the Department of Interior and Local Government, announced to the media that government troops had cornered some one hundred and twenty (120) Abu Sayyaf members along with the three (3) hostages.[9] However, the ASG made contact with the authorities and demanded that the military pull its troops back from the jungle area.[10] The government troops yielded and went back to their barracks; the Philippine Marines withdrew to their camp, while police and civilian forces pulled back from the terrorists' stronghold by ten (10) to fifteen (15) kilometers. Threatening that one of the hostages will be beheaded, the ASG further demanded the evacuation of the military camps

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[7] Id. at 242.
[8] Memorandum of Understanding, p. 2 of 3; *rollo*, p. 243.
[9] Supra note 5.
[10] Petition for Certiorari and Prohibition, *rollo*, p. 9.

and bases in the different *barangays* in Jolo.[11] The authorities were given no later than 2:00 o'clock in the afternoon of 31 March 2009 to comply.[12]

On 31 March 2009, Governor Tan issued Proclamation No. 1, Series of 2009 (Proclamation 1-09), declaring a state of emergency in the province of Sulu.[13] It cited the kidnapping incident as a ground for the said declaration, describing it as a terrorist act pursuant to the Human Security Act (R.A. 9372). It also invoked Section 465 of the Local Government Code of 1991 (R.A. 7160), which bestows on the Provincial Governor the power to carry out emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence.

In the same Proclamation, respondent Tan called upon the PNP and the CEF to set up checkpoints and chokepoints, conduct general search and seizures including arrests, and other actions necessary to ensure public safety. The pertinent portion of the proclamation states:

> NOW, THEREFORE, BY VIRTUE OF THE POWERS VESTED IN ME BY LAW, I, ABDUSAKUR MAHAIL TAN, GOVERNOR OF THE PROVINCE OF SULU, DO HEREBY DECLARE A STATE OF EMERGENCY IN THE PROVINCE OF SULU, AND CALL ON THE PHILIPPINE NATIONAL POLICE WITH THE ASSISTANCE OF THE ARMED FORCES OF THE PHILIPPINES AND THE CIVILIAN EMERGENCY FORCE TO IMPLEMENT THE FOLLOWING:
>
> 1. The setting-up of checkpoints and chokepoints in the province;
> 2. The imposition of curfew for the entire province subject to such Guidelines as may be issued by proper authorities;
> 3. The conduct of General Search and Seizure including arrests in the pursuit of the kidnappers and their supporters; and
> 4. To conduct such other actions or police operations as may be necessary to ensure public safety.
>
> DONE AT THE PROVINCIAL CAPITOL, PROVINCE OF SULU THIS 31ST DAY OF MARCH 2009.
>
> Sgd. Abdusakur M. Tan
> Governor.[14]

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[11] Supra note 5.
[12] Supra note 10.
[13] Petition for Certiorari and Prohibition, *rollo*, pp. 9-10.
[14] Id.

On 1 April 2009, SPO1 Sattal Jadjuli was instructed by his superior to report to respondent P/SUPT. Julasirim Kasim.[15] Upon arriving at the police station, he was booked, and interviewed about his relationship to Musin, Jaiton, and Julamin, who were all his deceased relatives. Upon admitting that he was indeed related to the three, he was detained. After a few hours, former *Punong Barangay* Juljahan Awadi, Hadji Hadjirul Bambra, Abdugajir Hadjirul, as well as PO2 Marcial Hajan, SPO3 Muhilmi Ismula, *Punong Barangay* Alano Mohammad and jeepney driver Abduhadi Sabdani, were also arrested.[16] The affidavit[17] of the apprehending officer alleged that they were suspected ASG supporters and were being arrested under Proclamation 1-09. The following day, 2 April 2009, the hostage Mary Jane Lacaba was released by the ASG.

On 4 April 2009, the office of Governor Tan distributed to civic organizations, copies of the "Guidelines for the Implementation of Proclamation No. 1, Series of 2009 Declaring a State of Emergency in the Province of Sulu."[18] These Guidelines suspended all Permits to Carry Firearms Outside of Residence (PTCFORs) issued by the Chief of the PNP, and allowed civilians to seek exemption from the gun ban only by applying to the Office of the Governor and obtaining the appropriate identification cards. The said guidelines also allowed general searches and seizures in designated checkpoints and chokepoints.

On 16 April 2009, Jamar M. Kulayan, Temogen S. Tulawie, Hadji Mohammad Yusop Ismi, Ahajan Awadi, and SPO1 Sattal H. Jadjuli, residents of Patikul, Sulu, filed the present Petition for Certiorari and Prohibition,[19] claiming that Proclamation 1-09 was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, as it threatened fundamental freedoms guaranteed under Article III of the 1987 Constitution.

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[15] Id. at 8-9.
[16] Id. at 9.
[17] Affidavit of the Apprehending Officer, attached as Annex B to respondents' Comment, id. at 245.
[18] Attached as Annex B to Petition, id. at 69-73.
[19] Id. at 3- 66.

Petitioners contend that Proclamation No. 1 and its Implementing Guidelines were issued *ultra vires,* and thus null and void, for violating Sections 1 and 18, Article VII of the Constitution, which grants the President sole authority to exercise emergency powers and calling-out powers as the chief executive of the Republic and commander-in-chief of the armed forces.[20] Additionally, petitioners claim that the Provincial Governor is not authorized by any law to create civilian armed forces under his command, nor regulate and limit the issuances of PTCFORs to his own private army.

In his Comment, Governor Tan contended that petitioners violated the doctrine on hierarchy of courts when they filed the instant petition directly in the court of last resort, even if both the Court of Appeals (CA) and the Regional Trial Courts (RTC) possessed concurrent jurisdiction with the Supreme Court under Rule 65.[21] This is the only procedural defense raised by respondent Tan. Respondents Gen. Juancho Saban, Col. Eugenio Clemen, P/SUPT. Julasirim Kasim, and P/SUPT. Bienvenido Latag did not file their respective Comments.

On the substantive issues, respondents deny that Proclamation 1-09 was issued *ultra vires*, as Governor Tan allegedly acted pursuant to Sections 16 and 465 of the Local Government Code, which empowers the Provincial Governor to carry out emergency measures during calamities and disasters, and to call upon the appropriate national law enforcement agencies to suppress disorder, riot, lawless violence, rebellion or sedition.[22] Furthermore, the *Sangguniang Panlalawigan* of Sulu authorized the declaration of a state of emergency as evidenced by Resolution No. 4, Series of 2009 issued on 31 March 2009 during its regular session.[23]

The threshold issue in the present case is whether or not Section 465, in relation to Section 16, of the Local Government Code authorizes the

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[20] Id. at 14.
[21] Id. at 118.
[22] Comment, pp. 7-10; id. at 123-126.
[23] Attached as Annex A to the Comment, id. at 247- 249.

respondent governor to declare a state of emergency, and exercise the powers enumerated under Proclamation 1-09, specifically the conduct of general searches and seizures. Subsumed herein is the secondary question of whether or not the provincial governor is similarly clothed with authority to convene the CEF under the said provisions.

We grant the petition.

I. Transcendental public importance warrants a relaxation of the Doctrine of Hierarchy of Courts

We first dispose of respondents' invocation of the doctrine of hierarchy of courts which allegedly prevents judicial review by this Court in the present case, citing for this specific purpose, *Montes v. Court of Appeals* and *Purok Bagong Silang Association, Inc. v. Yuipco*.[24] Simply put, the doctrine provides that where the issuance of an extraordinary writ is also within the competence of the CA or the RTC, it is in either of these courts and not in the Supreme Court, that the specific action for the issuance of such writ must be sought unless special and important laws are clearly and specifically set forth in the petition. The reason for this is that this Court is a court of last resort and must so remain if it is to perform the functions assigned to it by the Constitution and immemorial tradition. It cannot be burdened with deciding cases in the first instance.[25]

The said rule, however, is not without exception. In *Chavez v. PEA-Amari*,[26] the Court stated:

> PEA and AMARI claim petitioner ignored the judicial hierarchy by seeking relief directly from the Court. The principle of hierarchy of courts applies generally to cases involving factual questions. As it is not a trier of facts, the Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional questions of transcendental

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[24] Respectively, G.R. No. 143797, 4 May 2006, 489 SCRA 432, and G.R. No. 135092, 4 May 2006, 489 SCRA 382.
[25] *Montes v. CA*, supra note 24.
[26] 433 Phil. 506 (2002).

> importance to the public. The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for mandamus which falls under the original jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case.[27]

The instant case stems from a petition for certiorari and prohibition, over which the Supreme Court possesses original jurisdiction.[28] More crucially, this case involves acts of a public official which pertain to restrictive custody, and is thus impressed with transcendental public importance that would warrant the relaxation of the general rule. The Court would be remiss in its constitutional duties were it to dismiss the present petition solely due to claims of judicial hierarchy.

In *David v. Macapagal-Arroyo*,[29] the Court highlighted the transcendental public importance involved in cases that concern restrictive custody, because judicial review in these cases serves as "a manifestation of the crucial defense of civilians 'in police power' cases due to the diminution of their basic liberties under the guise of a state of emergency."[30] Otherwise, the importance of the high tribunal as the court of last resort would be put to naught, considering the nature of "emergency" cases, wherein the proclamations and issuances are inherently short-lived. In finally disposing of the claim that the issue had become moot and academic, the Court also cited transcendental public importance as an exception, stating:

> *Sa kabila ng pagiging akademiko na lamang ng mga isyu tungkol sa mahigpit na pangangalaga (restrictive custody) at pagmonitor ng galaw (monitoring of movements) ng nagpepetisyon, dedesisyunan namin ito (a) dahil sa nangingibabaw na interes ng madla na nakapaloob dito, (b) dahil sa posibilidad na maaaring maulit ang pangyayari at (c) dahil kailangang maturuan ang kapulisan tungkol dito.*

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[27] Id. at 524.

[28] In relation to Sections 1 and 2, Rule 65 of the Revised Rules of Court, par. 2, Sec. 4 thereof states: "The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the *Sandiganbayan* if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals."

[29] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, 3 May 2006, 489 SCRA 160.

[30] Id. at 214.

> The moot and academic principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when [the] constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.
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> **…There is no question that the issues being raised affect the public interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, the military and the police, on the extent of the protection given by constitutional guarantees. And lastly, respondents contested actions are capable of repetition. Certainly, the petitions are subject to judicial review.**
>
> **Evidently, the triple reasons We advanced at the start of Our ruling are justified under the foregoing exceptions. Every bad, unusual incident where police officers figure in generates public interest and people watch what will be done or not done to them. Lack of disciplinary steps taken against them erode public confidence in the police institution. As petitioners themselves assert, the restrictive custody of policemen under investigation is an existing practice, hence, the issue is bound to crop up every now and then. The matter is capable of repetition or susceptible of recurrence. It better be resolved now for the education and guidance of all concerned.**[31] (Emphasis supplied)

Hence, the instant petition is given due course, impressed as it is with transcendental public importance.

II. Only the President is vested with calling-out powers, as the commander-in-chief of the Republic

i. One executive, one commander-in-chief

As early as *Villena v. Secretary of Interior*,[32] it has already been established that there is one repository of executive powers, and that is the President of the Republic. This means that when Section 1, Article VII of the

[31] As cited and applied in *Manalo v. Calderon*, G.R. No. 178920, 15 October 2007, 536 SCRA 290, 304.
[32] 67 Phil. 451 (1939).

Constitution speaks of executive power, it is granted to the President and no one else.[33] As emphasized by Justice Jose P. Laurel, in his *ponencia* in *Villena*:

> With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive**.** The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other.[34]

Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof.

ii. The exceptional character of Commander-in-Chief powers dictate that they are exercised by one president

Springing from the well-entrenched constitutional precept of One President is the notion that there are certain acts which, by their very nature, may only be performed by the president as the Head of the State. One of these acts or prerogatives is the bundle of Commander-in-Chief powers to which the "calling-out" powers constitutes a portion. The President's Emergency Powers, on the other hand, is balanced only by the legislative act of Congress, as embodied in the second paragraph of Section 23, Article 6 of the Constitution:

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[33] Fr. Joaquin Bernas, S.J., *The 1987 Philippine Constitution A Comprehensive Reviewer*, (2006), p. 290.
[34] Supra note 32, at 464.

> Article 6, Sec 23(2). In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.[35]
>
> Article 7, 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 the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.[36]

The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof. [37] By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. As noted in *Villena*, "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law x x x.[38]

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[35] 1987 CONSTITUTION.
[36] Id.
[37] 1987 CONSTITUTION, Art. VII, Sec. 18 (2).
[38] Supra note 32.

Indeed, while the President is still a civilian, Article II, Section 3[39] of the Constitution mandates that civilian authority is, at all times, supreme over the military, making the civilian president the nation's supreme military leader. The net effect of Article II, Section 3, when read with Article VII, Section 18, is that a civilian President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his.[40] As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual.[41]

In the case of *Integrated Bar of the Philippines v. Zamora*,[42] the Court had occasion to rule that the calling-out powers belong solely to the President as commander-in-chief:

> **When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom.** This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis.
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> **There is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power.[43]** (Emphasis supplied)

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[39] The provisions reads: "Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."
[40] Supra note 33, at 314.
[41] Id., citing *Fleming v. Page*, 9 How 603, 615 U.S. (1850).
[42] 392 Phil. 618.
[43] Id. at 640.

Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification.[44]

That the power to call upon the armed forces is discretionary on the president is clear from the deliberation of the Constitutional Commission:

> FR. BERNAS. It will not make any difference. I may add that **there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus,* then he can impose martial law. This is a graduated sequence.**
>
> When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.
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> x x x x x x x x x
>
> MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.
>
> The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.
>
> **x x x Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is**

[44] Supra note 33, at 314-315.

> **necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion.**[45] (Emphasis Supplied)

In the more recent case of *Constantino, Jr. v. Cuisia*,[46] the Court characterized these powers as exclusive to the President, precisely because they are of exceptional import:

> These distinctions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of habeas corpus, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.[47]

In addition to being the commander-in-chief of the armed forces, the President also acts as the leader of the country's police forces, under the mandate of Section 17, Article VII of the Constitution, which provides that, "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." During the deliberations of the Constitutional Commission on the framing of this provision, Fr. Bernas defended the retention of the word "control," employing the same rationale of singularity of the office of the president, as the *only* Executive under the presidential form of government.[48]

Regarding the country's police force, Section 6, Article XVI of the Constitution states that: "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority

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[45] Record of the Constitutional Commission, 29 July 1986, Tuesday, Vol. 2, p. 409.
[46] G.R. No. 106064 , 13 October 2005, 472 SCRA 505.
[47] Id. at 534.
[48] Journal of the Constitutional Commission, 29 July 1986, Tuesday, Vol. 1, p. 488.

of local executives over the police units in their jurisdiction shall be provided by law."[49]

A local chief executive, such as the provincial governor, exercises operational supervision over the police,[50] and may exercise control only in day-to-day operations, *viz*:

> Mr. Natividad: **By experience, it is not advisable to provide either in our Constitution or by law full control of the police by the local chief executive and local executives, the mayors. By our experience, this has spawned warlordism, bossism and sanctuaries for vices and abuses.** If the national government does not have a mechanism to supervise these 1,500 legally, technically separate police forces, plus 61 city police forces, fragmented police system, we will have a lot of difficulty in presenting a modern professional police force. So that **a certain amount of supervision and control will have to be exercised by the national government.**
>
> **For example, if a local government, a town cannot handle its peace and order problems or police problems, such as riots, conflagrations or organized crime, the national government may come in, especially if requested by the local executives. Under that situation, if they come in under such an extraordinary situation, they will be in control.** But if the day-to-day business of police investigation of crime, crime prevention, activities, traffic control, is all lodged in the mayors, and if they are in complete operational control of the day-to-day business of police service, what the national government would control would be the administrative aspect.
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> x x x x x x x x x
>
> Mr. de los Reyes: so the operational control on a day-to-day basis, meaning, the usual duties being performed by the ordinary policemen, will be under the supervision of the local executives?
>
> Mr. Natividad: Yes, Madam President.
>
> x x x x x x x x x
>
> **Mr. de los Reyes: But in exceptional cases, even the operational control can be taken over by the National Police Commission?**
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> **Mr. Natividad: If the situation is beyond the capacity of the local governments.[51]** (Emphases supplied)

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[49] 1987 CONSTITUTION, Art. VXI, Sec. 6.
[50] *Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290.
[51] Record of the Constitutional Commission, 1 October 1986, Wednesday, pp. 293-294.

Furthermore according to the framers, it is still the President who is authorized to exercise supervision and control over the police, through the National Police Commission:

> Mr. Rodrigo: Just a few questions. The President of the Philippines is the Commander-in-Chief of all the armed forces.
>
> Mr. Natividad: Yes, Madam President.
>
> Mr. Rodrigo: Since the national police is not integrated with the armed forces, I do not suppose they come under the Commander-in-Chief powers of the President of the Philippines.
>
> Mr. Natividad: They do, Madam President. By law, they are under the supervision and control of the President of the Philippines.
>
> Mr. Rodrigo: Yes, but the President is not the Commander-in-Chief of the national police.
>
> Mr. Natividad: He is the President.
>
> Mr. Rodrigo: Yes, the Executive. But they do not come under that specific provision that the President is the Commander-in-Chief of all the armed forces.
>
> Mr. Natividad: No, not under the Commander-in-Chief provision.
>
> Mr. Rodrigo: There are two other powers of the President. The President has control over ministries, bureaus and offices, and supervision over local governments. Under which does the police fall, under control or under supervision?
>
> Mr. Natividad: Both, Madam President.
>
> Mr. Rodrigo: Control and supervision.
>
> Mr. Natividad: Yes, in fact, the National Police Commission is under the Office of the President.[52]

In the discussions of the Constitutional Commission regarding the above provision it is clear that the framers never intended for local chief executives to exercise unbridled control over the police in emergency situations. This is without prejudice to their authority over police units in their jurisdiction as provided by law, and their prerogative to seek assistance from the police in day to day situations, as contemplated by the Constitutional Commission. But as a civilian agency of the government, the police, through the NAPOLCOM, properly comes within, and is subject to, the exercise by the President of the power of executive control.[53]

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[52] Id. at 296.
[53] Supra note 50.

iii. The provincial governor does not possess the same calling-out powers as the President

Given the foregoing, respondent provincial governor is *not* endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police, and his own Civilian Emergency Force. The calling-out powers contemplated under the Constitution is *exclusive* to the President. An exercise by another official, even if he is the local chief executive, is *ultra vires*, and may not be justified by the invocation of Section 465 of the Local Government Code, as will be discussed subsequently.

Respondents, however, justify this stance by stating that nowhere in the seminal case of *David v. Arroyo*, which dealt squarely with the issue of the declaration of a state of emergency, does it limit the said authority to the President alone. Respondents contend that the ruling in *David* expressly limits the authority to declare a **national** emergency, a condition which covers the entire country, and does not include emergency situations in local government units.[54] This claim is belied by the clear intent of the framers that in all situations involving threats to security, such as lawless violence, invasion or rebellion, even in localized areas, it is still the President who possesses the sole authority to exercise calling-out powers. As reflected in the Journal of the Constitutional Commission:

> Thereafter, Mr. Padilla proposed on line 29 to insert the phrase OR PUBLIC DISORDER in lieu of "invasion or rebellion." Mr. Sumulong stated that the committee could not accept the amendment because under the first section of Section 15, the President may call out and make use of

[54] Comment, *rollo*, p. 128.

> the armed forces to prevent or suppress not only lawless violence but even invasion or rebellion without declaring martial law. He observed that by deleting "invasion or rebellion" and substituting PUBLIC DISORDER, the President would have to declare martial law before he can make use of the armed forces to prevent or suppress lawless invasion or rebellion.
>
> **Mr. Padilla, in reply thereto, stated that the first sentence contemplates a lighter situation where there is some lawless violence in a small portion of the country or public disorder in another at which times, the armed forces can be called to prevent or suppress these incidents. He noted that the Commander-in-Chief can do so in a minor degree but he can also exercise such powers should the situation worsen.** The words "invasion or rebellion" to be eliminated on line 14 are covered by the following sentence which provides for "invasion or rebellion." He maintained that the proposed amendment does not mean that under such circumstances, the President cannot call on the armed forces to prevent or suppress the same.[55] (Emphasis supplied)

III. Section 465 of the Local Government Code cannot be invoked to justify the powers enumerated under Proclamation 1-09

Respondent governor characterized the kidnapping of the three ICRC workers as a terroristic act, and used this incident to justify the exercise of the powers enumerated under Proclamation 1-09.[56] He invokes Section 465, in relation to Section 16, of the Local Government Code, which purportedly allows the governor to carry out emergency measures and call upon the appropriate national law enforcement agencies for assistance. But a closer look at the said proclamation shows that there is no provision in the Local Government Code nor in any law on which the broad and unwarranted powers granted to the Governor may be based.

Petitioners cite the implementation of "General Search and Seizure including arrests in the pursuit of the kidnappers and their supporters,"[57] as being violative of the constitutional proscription on general search warrants and general seizures. Petitioners rightly assert that this alone would be sufficient to render the proclamation void, as general searches and seizures

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[55] Journal of the Constitutional Commission, 30 July 1986, Wednesday, Vol. 1, p. 513.
[56] Proclamation No. 01, Series of 2009, attached to the Comment as Annex A, *rollo*, p. 67.
[57] Id. at 68.

are proscribed, for being violative of the rights enshrined in the Bill of Rights, particularly:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[58]

In fact, respondent governor has arrogated unto himself powers exceeding even the martial law powers of the President, because as the Constitution itself declares, "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 the jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ."[59]

We find, and so hold, that there is nothing in the Local Government Code which justifies the acts sanctioned under the said Proclamation. Not even Section 465 of the said Code, in relation to Section 16, which states:

> **Section 465.** *The Chief Executive: Powers, Duties, Functions, and Compensation.*
>
> x x x x x x x x x
>
> (b) For efficient, effective and economical governance the purpose of which is the general welfare of the province and its inhabitants pursuant to Section 16 of this Code, the provincial governor shall:
>
> (1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection, shall:
>
> x x x x x x x x x

[58] 1987 CONSTITUTION, Art. III, Sec. 2.
[59] 1987 CONSTITUTION, Art. XVII, Sec. 18 (4).

> (vii) **Carry out such emergency measures as may be necessary during and in the aftermath of man-made and natural disasters and calamities;**
>
> (2) Enforce all laws and ordinances relative to the governance of the province and the exercise of the appropriate corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing, shall:
>
> x x x x x x x x x
>
> **(vi) Call upon the appropriate national law enforcement agencies to suppress disorder, riot, lawless violence, rebellion or sedition or to apprehend violators of the law when public interest so requires and the police forces of the component city or municipality where the disorder or violation is happening are inadequate to cope with the situation or the violators.**
>
> **Section 16.** *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (Emphases supplied)

Respondents cannot rely on paragraph 1, subparagraph (vii) of Article 465 above, as the said provision expressly refers to calamities and disasters, whether man-made or natural. The governor, as local chief executive of the province, is certainly empowered to enact and implement emergency measures during these occurrences. But the kidnapping incident in the case at bar cannot be considered as a calamity or a disaster. Respondents cannot find any legal mooring under this provision to justify their actions.

Paragraph 2, subparagraph (vi) of the same provision is equally inapplicable for two reasons. *First*, the Armed Forces of the Philippines does not fall under the category of a "national law enforcement agency," to which the National Police Commission (NAPOLCOM) and its departments belong.

Its mandate is to uphold the sovereignty of the Philippines, support the Constitution, and defend the Republic against all enemies, foreign and domestic. Its aim is also to secure the integrity of the national territory.[60] *Second*, there was no evidence or even an allegation on record that the local police forces were inadequate to cope with the situation or apprehend the violators. If they were inadequate, the recourse of the provincial governor was to ask the assistance of the Secretary of Interior and Local Government, or such other authorized officials, for the assistance of national law enforcement agencies.

The Local Government Code does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted by the Constitution to the President in matters of security and defense.

The intent behind the powers granted to local government units is fiscal, economic, and administrative in nature. The Code is concerned only with powers that would make the delivery of basic services more effective to the constituents,[61] and should not be unduly stretched to confer calling-out powers on local executives.

In the sponsorship remarks for Republic Act 7160, it was stated that the devolution of powers is a step towards the autonomy of local government units (LGUs), and is actually an experiment whose success heavily relies on the power of taxation of the LGUs. The underpinnings of the Code can be found in Section 5, Article II of the 1973 Constitution, which allowed LGUs to create their own sources of revenue.[62] During the interpellation made by Mr. Tirol addressed to Mr. de Pedro, the latter emphasized that "Decentralization is an administrative concept and the

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[60] 1987 Constitution, Art. II, Sec. 3.
[61] Journal and Record of the House of Representatives Proceedings and Debates, Fourth Regular Session 1990-1991, Vol. 1 (July 23-September 3, 1990), prepared by the Publication and Editorial Division under the supervision of Hon. Quirino D. Abad Santos, Jr., Secretary, House of Representatives, Proceedings of 14 August, 1990, Tuesday.
[62] Id., Proceedings of 25 July 1990, Wednesday.

process of shifting and delegating power from a central point to subordinate levels to promote independence, responsibility, and quicker decision-making. … ***(I)t does not involve any transfer of final authority from the national to field levels, nor diminution of central office powers and responsibilities. Certain government agencies, including the police force, are exempted from the decentralization process because their functions are not inherent in local government units.***"[63]

IV. Provincial governor is not authorized to convene CEF

Pursuant to the national policy to establish one police force, the organization of private citizen armies is proscribed. Section 24 of Article XVIII of the Constitution mandates that:

> Private armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces (CHDF) not consistent with the citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force.

Additionally, Section 21of Article XI states that, "The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government."

Taken in conjunction with each other, it becomes clear that the Constitution does not authorize the organization of private armed groups similar to the CEF convened by the respondent Governor. The framers of the Constitution were themselves wary of armed citizens' groups, as shown in the following proceedings:

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[63] Id.

> MR. GARCIA: **I think it is very clear that the problem we have here is a paramilitary force operating under the cloak, under the mantle of legality is creating a lot of problems precisely by being able to operate as an independent private army for many regional warlords. And at the same time, this I think has been the thrust, the intent of many of the discussions and objections to the paramilitary units and the armed groups.**
>
> MR. PADILLA: My proposal covers two parts: the private armies of political warlords and other armed forces not recognized by constituted authority which shall be dismantled and dissolved. In my trips to the provinces, I heard of many abuses committed by the CHDF (Civilian Home Defense Forces), specially in Escalante, Negros Occidental. But I do not know whether a particular CHDF is approved or authorized by competent authority. If it is not authorized, then the CHDF will have to be dismantled. If some CHDFs, say in other provinces, are authorized by constituted authority, by the Armed Forces of the Philippines, through the Chief of Staff or the Minister of National Defense, if they are recognized and authorized, then they will not be dismantled. But I cannot give a categorical answer to any specific CHDF unit, only the principle that if they are armed forces which are not authorized, then they should be dismantled.[64] (Emphasis supplied)

Thus, with the discussions in the Constitutional Commission as guide, the creation of the Civilian Emergency Force (CEF) in the present case, is also invalid.

WHEREFORE, the instant petition is **GRANTED**. Judgment is rendered commanding respondents to desist from further proceedings in implementing Proclamation No. 1, Series of 2009, and its Implementing Guidelines. The said proclamation and guidelines are hereby declared **NULL** and **VOID** for having been issued in grave abuse of discretion, amounting to lack or excess of jurisdiction.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Associate Justice

[64] Supra note 45, p. 386.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO- DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

(On leave)
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

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ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296
The Judiciary Act of 1948, as amended)