

EN BANC

G.R. No. 212426 – RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO “DODONG” NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN “STEVE” SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAULLO, DR. ROLAND SIMBULAN, AND TEDDY CASIÑO, Petitioners, v. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, JR., DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO ABAD, AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, Respondents.

G.R. No. 212444 – BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES AND CARLOS ZARATE, GABRIELA WOMEN’S PARTY-LIST REPRESENTATIVES LUZ ILAGAN AND EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY-LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), REPRESENTED BY SATURNINO OCAMPO AND LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, AND CLEMENTE G. BAUTISTA, Petitioners, v. DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, DEFENSE UNDERSECRETARY PIO LORENZO BATINO, AMBASSADOR LOURDES YPARRAGUIRRE, AMBASSADOR J. EDUARDO MALAYA, DEPARTMENT OF JUSTICE UNDERSECRETARY FRANCISCO BARAAN III, AND DND ASSISTANT SECRETARY FOR STRATEGIC ASSESSMENTS RAYMUND JOSE QUILOP AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE NEGOTIATING PANEL FOR THE PHILIPPINES ON EDCA, Respondents.

KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR



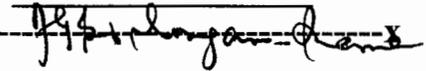
UNIONS-KILUSANG MAYO UNO, REPRESENTED BY ITS NATIONAL PRESIDENT JOSELITO USTAREZ, NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, AND ARMANDO TEODORO, JR., Petitioners-in-Intervention,

RENE A.Q. SAGUISAG, JR., Petitioners-in-Intervention.

Promulgated:

July 26, 2016

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DISSENTING OPINION

LEONEN, J.:

I reiterate my Dissent Opinion,¹ which was promulgated with the initial Decision² on this case. In so doing, I am honored to join Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, and Estela M. Perlas-Bernabe. I briefly recall the points that I previously made.

I do not agree that the Enhanced Defense Cooperation Agreement (EDCA) is a binding executive agreement that escapes scrutiny under Article XVIII, Section 25³ of the Constitution. It is not merely an implementation of the 1998 Visiting Forces Agreement.

EDCA substantially amends and modifies the Visiting Forces Agreement. When the Visiting Forces Agreement was ratified, the Senate and the public did not consider whether their actions would later on allow the presence of foreign military bases in any part of this country. It is pure legal sophistry to say that the “Agreed Locations” in EDCA are not foreign military bases. These “Agreed Locations” are foreign military bases of the United States.

To now say that it was so would be to imply that the Senate at that

¹ J. Leonen, Dissenting Opinion in *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, et al.*, G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426_leonen.pdf> [Per C.J. Sereno, En Banc].

² *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, et al.*, G.R. No. 212426, January 12, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426.pdf>> [Per C.J. Sereno, En Banc].

³ CONST., art. XVIII, sec. 25 provides:
SECTION 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

time was engaged in a grand deceit. Nothing in the Visiting Forces Agreement hints at permanent bases under any kind of control of a foreign power, pre-positioning of men and material to be used for internal or external operations other than training purposes, and the acceptance of the presence of “contractors,” which may consist of private armed groups or “mercenaries” chosen by the United States to be stationed in our country.

Our Constitution has introduced elaborate safeguards before any foreign military base—no matter how it is called—will be again allowed within our territory. Article XVIII, Section 25 requires that this undergo a conscious, deliberate, and publicly transparent process with the Senate. The same provision requires that the stationing of foreign troops in foreign bases or “Agreed Locations” must be through a treaty—not merely through an implementing executive agreement. Although the President is free to negotiate such an agreement, the basic law contemplates that the results of the negotiation should be the subject of public discussion.

The presence of foreign military bases is of such consequence that the Constitution itself also provides the possibility of an alternative mechanism for its allowance. Hence, Article XVIII, Section 25 also provides for the possibility of approval through a national referendum, should that be the preference of Congress.

EDCA was negotiated in the strictest confidentiality, and its contents were made known to the public only when it was signed by the Secretary of National Defense and ratified by the President. It does not take much to see how obviously it deviates from the constitutional mandate.

The presence of foreign military bases in our country, especially that of the United States, has grave repercussions on our independence and on our governance. If there is any historical lesson that we must learn from the 1947 Military Bases Agreement, it is that our national interest can easily be co-opted and made subservient to the interests of the United States. Rather than an independent and sovereign state, our country can easily be reduced to a Base Nation: a platform from which to project the military strength of the United States for its own defense.

I am fully aware of the political dynamics occasioned by the intrusions of another foreign interest in the West Philippine Sea. However, the recent arbitral award issued by the international arbitral panel created under the auspices of the United Nations Law of the Sea has elevated our stature in the field of international law. It provides material for our diplomacy on the basis of respect for the rule of law.

We cannot afford to weaken our position by showing the world that



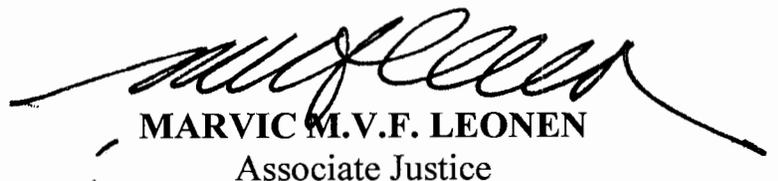
we cannot even follow the clear and legible provisions of our own Constitution.

Neither can we be driven by what we conceive as the necessities of national security or foreign policy. That is not our mandate. It is not our place to predict what the Senate will do or doubt that it will not be able to appreciate the same complexities and concerns on national security and foreign policy, which have animated some of our discussions. Certainly, there can be more creative solutions that augur better with our sense of independence, sovereignty, and dignity than abject surrender to this planet's superpowers.

With the majority's position on the nature of the EDCA, we effectively rendered the Senate constitutionally impotent. We have smuggled foreign military bases into our country. We have succumbed to views that assume our vulnerability and our surrender to the hegemonic expediency of the United States.

This is not what the Constitution requires. Our basic law imagines more for us as a People.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petitions and to **DECLARE** the Enhanced Defense Cooperation Agreement between the Republic of the Philippines and the United States of America as a formal and official memorial of the results of the negotiations concerning the allowance of United States military bases, troops, or facilities in the Philippines, which is **NOT EFFECTIVE** until it complies with the requisites of Article XVIII, Section 25 of the 1987 Philippine Constitution, namely: (1) that the agreement must be in the form of a treaty; (2) that the treaty must be duly concurred in by the Philippine Senate and, when so required by Congress, ratified by a majority of votes cast by the People in a national referendum; and (3) that the agreement is either (a) recognized as a treaty, or (b) accepted or acknowledged as a treaty by the United States before it becomes valid, binding, and effective.



MARVIC M.V.F. LEONEN
Associate Justice