Republic of the Philippines
SUPREME COURT
Manila

REP. EDCEL C. LAGMAN,

PETITIONER,

- versus-

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; ANTI-TERRORISM COUNCIL (ATC); ANTI-MONEY LAUNDERING COUNCIL (AMLC); SENATE OF THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III; AND THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER ALAN PETER S. CAYETANO,

RESPONDENTS.

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G.R. No. 252579
(Petition for Certiorari and Prohibition in relation to Sec. 1 of Article VIII of the Constitution, with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)

PETITION FOR CERTIORARI AND PROHIBITION

PETITIONER, on his own and on behalf of the citizens of the Republic of the Philippines, most respectfully manifests:

I.
PRELIMINARY STATEMENT

1. The maintenance and preservation of national security as well as the protection and promotion of civil liberties are mandatory dual obligations of the State.

2. These are not antagonistic governmental obligations because national security and fundamental freedoms are mutually reinforcing.

3. The effective defense of national security redounds to the benefit of civil liberties even as the protection of civil liberties makes for a vibrant democracy and empowers the people to defend the integrity and existence of a protective government.

4. It is therefore grossly errant, even malevolent, for the government to strengthen national security under the "Anti-Terrorism Act of 2020", and in the process derogate civil liberties and fundamental freedoms.

5. It is in this context that the new "Anti-Terrorism Act of 2020" should be assessed and adjudged unconstitutional for being a grave assault on the people's sacrosanct fundamental rights.

6. Unconstitutionality fatally infirms the "Anti-Terrorism Act of 2020" as will be discussed hereunder.

7. In seeking the invalidity of the "Anti-Terrorism Act of 2020", instructive are the exhortations of American political leaders in the **immediate aftermath** of the terrorist assault on September 11, 2001 of the World Trade Center and Pentagon where 2,600 people died in addition to wanton destruction of properties.

8. The following statements made following the 9/11 heinous terroristic attacks reverberate with relevance and truism today as we confront the constitutional infirmities of the "Anti-Terrorism Act of 2020":

> **(a) Rep. Tammy Baldwin**: **"Our constitutional liberties shall not be sacrificed in our search for greater security, for that is what our enemies and all enemies of freedom and democracy hope to achieve."**

Rep. Baldwin, a Democrat, has been subsequently elected United States Senator from Wisconsin since January 2013 after serving as Representative from 1999 to 2013. She was the first openly gay woman to have been elected to the United States House of Representatives and Senate.

In November 2013 Baldwin introduced a bill that would bring greater government transparency, oversight and due process

whenever authorities use information gathered for intelligence against Americans.

(b) Sen. Chuck Hagel: **"If we abandon the liberties we cherish, the terrorists will have won."**

Senator Hagel is an American military veteran of the Vietnam War and a Republican who served as United States Senator from Nebraska from 1997 to 2009 and as the 24th United States Secretary of Defense from 2011 to 2015 in the Obama administration.

In his first term in the Senate, Hagel voted in favor of the "Chemical and Biological Weapons Threat Reduction Act", establishing criminal penalties for possession of chemical or biological weapons, and he co-sponsored the "American Missile Protection Act", deploying an effective National Missile Defense system capable of defending the United States against limited ballistic missile attacks.

Despite his military background, he remained steadfast in his advocacy for civil liberties, and he voted in favor of Senate Amendment 2022, restoring *habeas corpus* and the right to due process to American citizens detained in Guantanamo Bay detention camp.

(c) Rep. Timothy Johnson: **"I encourage my colleagues to be wary of any suggested government action that would infringe on our freedoms. Any encroachment of our civil liberties is a victory for the perpetrators of yesterday's heinous crimes."**

Rep. Johnson was the U.S. Representative for Illinois's 15th congressional district from 2001 to 2013. He was the sole Republican Congressman to vote against the FISA (Foreign Intelligence Surveillance Act) Amendments Act of 2008 granting immunity for American telecommunications companies that implemented warrantless wiretaps outside of the scope of the FISA program of the Bush Administration.

On February 8, 2011, Johnson was one of the six Republicans who voted against extending the PATRIOT Act which allows, among others, the use of new technologies in the campaign against terrorism.

(d) Rep. Marty Meehan: **"In the days to come, we must take a hard look at the state of our defenses against terrorism. It is a delicate task to prevent terror while preserving the civil liberties that have long distinguished our nation. We must**

rededicate ourselves to finding a balance that both protects and empowers the American people."

Rep. Meehan is an American educator who served as President of the University of Massachusetts and was elected as a Democrat to the United States House of Representatives from 1993 to 2007.

(e) Sen. Bill Nelson: **"We have experienced all too personally a new kind of warfare, and in the process of us exacting this justice—I say justice; I did not say revenge—we will protect the constitutional rights of all people; we will respect them."**

Sen. Nelson served as United States Senator from Florida from 2001 to 2019. In the US Senate, he was generally considered a centrist and a moderate Democrat. He supported same sex marriage, lowering taxes on low and middle-income families, expanding environmental programs and regulation, protecting the Affordable Care Act, and expanding Medicaid.

He also supported the "Denying Firearms and Explosives to Dangerous Terrorists Act" and the "Terrorist Firearms Prevention Act of 2016", but he has an enduring fealty to the protection of constitutional rights of all people.

(f) Rep. Bob Barr: **"What we must avoid, however, is the knee-jerk reaction to pass more laws restricting the civil liberties of American citizens. The tragedies of this attack will only be compounded by giving the government more power at the expense of our civil liberties. If we cannot stop this sort of attack with all of the power our government agencies already have, then we are in very serious trouble."**

Rep Barr served in the US Congress as a Republican from 1995 to 2003. Earlier from 1971 to 1978, Barr worked for the Central Intelligence Agency (CIA) as an analyst of Latin American issues. Barr's criticism of the Bush administration's policies on privacy and other civil liberties after the 9/11 attacks was unusual among House Republicans and earned him the label of "Libertarian".

During the debates over President Bill Clinton's "Comprehensive Anti-Terrorism Act of 1995", he played a major role in crafting pro-civil liberties amendments to the original text.

His having worked with the CIA did not deter him from protecting civil liberties against the invasion by the State.

9. Verily, the war against suspected terrorists and the campaign against terrorism cannot be pursued and intensified by sacrificing human rights, civil liberties and fundamental freedoms which are enshrined in and protected by the Constitution. At no instance should these sacrosanct rights and freedoms of the Filipino people be derogated and forfeited.

II.
NATURE OF THE PETITION

10. This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court in connection with the expanded power of judicial review of the Honorable Supreme Court under Section 1 of Article VIII of the Constitution which reads:

> "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"**. (Emphasis supplied).

11. The Honorable Supreme Court in many cases has confirmed the High Court's expanded power of judicial review. Among these cases is ***Araullo v. Aquino*** (G.R. No. 209287, July 1, 2014), the ruling in which was reiterated in ***SPARK v. Quezon City*** (G.R. No. 225442, August 8, 2017), ***Ifurung v. Office of the Ombudsman*** (G.R. No. 232131, April 24, 2018), and ***Kilusang Mayo Uno v. Aquino*** (G.R. No. 210500, April 22, 2019), among others.

12. The expanded power of judicial review extends to departments and agencies which do not exercise judicial, quasi-judicial

or ministerial functions like the Senate of the Philippine and the House of Representatives.

13. Thus, in ***Araullo***, it was held that:

> "With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions **but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions**." (Emphasis supplied).

14. Amplifying the expanse of judicial review over departments and agencies which do not exercise judicial, quasi-judicial and ministerial functions like the legislative department as pronounced in ***Araullo***, the Supreme Court in ***Ifurung*** held:

> "**Where an action of the legislative branch is seriously challenged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial, rather than political** x x x". (Emphasis supplied).

15. In ***Araullo***, it was also ruled that certiorari and prohibition are the remedies to challenge the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or any instrumentality of the government which could be subject to judicial review, in this wise:

> "What are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution?

> "The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. **These are the special civil actions for certiorari and prohibition, and both are governed by Rule 65**…" (Emphasis supplied).

16. The petition for certiorari and prohibition is in compliance with the above pronouncement of the Honorable Supreme Court for respectively annulling the "Anti-Terrorism Act of 2020" for being unconstitutional, and prohibiting respondents Executive Secretary Medialdea, Anti-Terrorism Council (ATC) and Anti-Money Laundering Council (AMLC) from implementing the new anti-terrorism law.

17. There is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law except the interposition of the instant petition.

18. The Senate and House of Representatives have acted without or in excess of their jurisdiction in legislating the patently unconstitutional proposed "Anti-Terrorism Act of 2020" (Senate Bill No. 1083 and House Bill No. 6875) which is now the challenged statute.

19. The action of the Senate and House of Representatives was tainted with grave abuse of discretion amounting to excess or lack of jurisdiction.

20. What is more grave abuse of discretion and lack of jurisdiction than the respondents Senate and the House of Representatives having approved a patently unconstitutional statute? After showing hereunder the unconstitutionality of the "Anti-Terrorism Act of 2020", there is no need to expound on the Congress' having acted in excess of its jurisdiction, which excess is stained with grave abuse of discretion, because the thing speaks for itself (*res ipsa loquitur*).

III.
EXEMPTION FROM THE "HIERARCHY OF COURTS" DOCTRINE

21. Considering the tremendous public interest, concern and apprehension which the new anti-terror law has generated even before

it was enacted and signed into law by President Rodrigo Duterte, there are sufficient justified reasons for exempting the instant Petition from the "hierarchy of courts" doctrine.

22. Multi-sectoral protests against the measure from lawyers' groups to ordinary citizens, business organizations, student and labor fronts, the academe, women's groups, and even the Catholic Church, among many others, are escalating nationwide. Uproar continues against the new anti-terrorism law from the international community and worldwide human rights organizations. Michelle Bachelet, UN High Commissioner for Human Rights, stressed that the new law intensifies concerns on the "blurring of important distinctions between criticism, criminality, and terrorism."

23. Verily, there is urgent necessity for the Honorable Supreme Court, as the final arbiter of transcendental issues, to adjudicate the herein constitutional challenge without the Petitioner having to go through the hierarchy of courts which could be a long process.

24. In pertinent cases involving transcendental issues and great public interest, it was ruled that the "hierarchy of courts" doctrine is not inflexible and appropriate cases are exempted from its ambit. (***Republic v. CA***, 107 SCRA 504; ***Burgos, Sr. v. Chief of Staff***, 133 SCRA 500; ***Yong Chan Kim v. People***, 176 SCRA 277; and ***Enrile v. Salazar***, 189 SCRA 217.

25. In ***Diocese of Bacolod v. Commission on Elections*** (G.R. No. 205728, January 21, 2015) it was held that:

> "… the Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.
>
> "Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has 'full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for certiorari . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition.'"

26. In ***Diocese of Bacolod***, the Honorable Supreme Court provided a number of exceptions to the doctrine of hierarchy of courts,

which exceptions do not have to be concurrent. Two of these exceptions are:

> "First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of certiorari and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.
>
> xxx xxx xxx
>
> "A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection."

27. Verily, the subject petition falls under the aforecited two provisions, among others.

28. When a case is exempted from the hierarchy of courts doctrine, the Honorable Supreme Court becomes the court of first resort because transcendental issues involving great national interest should be resolved with finality at the very first instance, instead of waiting for the judicial process to reach the Honorable Supreme Court as the tribunal of last resort.

29. No less than the authors and proponents of the new anti-terrorism law, like Senate President Vicente Sotto III and Sen. Panfilo Lacson, said that they welcome the elevation to the Supreme Court of petitions challenging the constitutionality of the new anti-terrorism law.

IV.
TIMELINESS OF THE PETITION

30. The "Anti-Terrorism Act of 2020" is now a law as Republic Act No. 11479. The enrolled bill was signed on 03 July 2020 by President Duterte, albeit its effectivity, which is a foregone conclusion, will be "fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation."

It must be recalled that the constitutionality of the "Reproductive Health Law" (R.A. No. 10354) was challenged before the Honorable Supreme Court on January 2, 2013 in ***Spouses Imbong v. Ochoa*** (G.R. No. 204819, April 8, 2014), 12 days after it was signed into law on December 21, 2013, and before it became effective on January 17, 2013. Verily, it is now seasonable to interpose the instant petition to declare R.A. No. 11479 unconstitutional and prohibit its enforcement.

31. Pending the availability of a certified true copy of Republic Act No. 11479, said statute can be accorded judicial notice by the Honorable Supreme Court. Attached as **Annex "A"** is a certified true copy of the enrolled bill.

V.
LEGAL STANDING (LOCUS STANDI) OF THE PETITIONER

32. The Petitioner is a Member of the House of Representatives representing the First Congressional District of Albay. He is sworn to uphold the Constitution.

33. Petitioner belongs to the independent opposition in the House of Representatives. He is among the 36 Representatives who voted against the proposed "Anti-Terrorism Act of 2020" (H.B. No. 6875), which included some members of the super-majority coalition.

34. The Petitioner is also a taxpayer and obviously a citizen of the Republic of the Philippines as a duly elected Representative.

35. This Petition is likewise filed as a taxpayer suit. As a taxpayer, the petitioner has the legal personality to prevent and challenge the allocation and expenditure of funds to support the implementation of an unconstitutional law. As held in ***Public Interest Center, Inc. v. Roxas*** (G.R. No. 125509, January 31, 2007), "taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law".

36. This Petition is likewise filed as a citizen suit. As a Filipino citizen, the petitioner has the legal personality on his own and on behalf of all Filipino citizens to challenge the new anti-terrorism law which will bedevil the nation and derogate the citizens' civil liberties and fundamental freedoms. It has been ruled that in "public suits, the plaintiff, representing the general public, asserts a 'public right' in assailing an allegedly illegal official action". (*Ibid*).

37. Since the rule on *locus standi* is a procedural technicality, the Honorable Supreme Court has relaxed its application in order to adjudicate cases on the constitutionality of statutes and those involving transcendental issues of great public interest.

38. Thus, in ***Kilosbayan, Inc. v. Guingona*** (G.R. No. 113375, May 5, 1994) it was held that: "Objections to taxpayers' suits for lack of sufficient personality standing or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, this Court has brushed aside technicalities of procedure and has taken cognizance of these petitions."

39. Of similar import is ***Zabal v. Duterte*** (G.R. No. 238467, February 12, 2019) which ruled that: "Notwithstanding petitioners' lack of *locus standi*, this Court will allow this petition to proceed to its ultimate conclusion due to its transcendental importance. After all, the rule on *locus standi* is a mere procedural technicality, which the Court, in a long line of cases involving subjects of transcendental importance, has waived or relaxed, thus **allowing nontraditional plaintiffs such as concerned citizens, taxpayers, voters and legislators to sue in cases of public interest, albeit they may not have been personally injured by a government act**." (Emphasis supplied).

VI.
APPLICABILITY OF THE "FACIAL CHALLENGE" DOCTRINE

40. As will be discussed later hereunder, the instant petitions for certiorari and prohibition are justiciable under the doctrine of "facial challenge" because the "Anti-Terrorism Act of 2020" criminalizes "proposal", "threats", and "inciting" to commit terrorism which

infringes on the right to free speech as its exercise or articulation is prevented by the chilling and deterrent effects consequent to their criminalization and imposition of penalties.

41. It has to be underscored that these acts were not proscribed and punishable under the "Human Security Act of 2007".

42. It is respectfully submitted that the doctrine of "facial challenge" should be extended to the judicial inquiry on the new anti-terrorism law's derogation of other civil liberties and fundamental freedoms which are similarly guaranteed and protected by the Constitution, like the freedom of expression or free speech.

43. Notwithstanding the foregoing statement, it is likewise respectfully submitted that when the Honorable Supreme Court exercises its expanded power of judicial review to rule on the constitutionality of a law, the inapplicability of the doctrine of "facial challenge" cannot defeat the Honorable Supreme Court's expanded power of judicial review. In other words, the expanded power of judicial review is ascendant over the "facial challenge" doctrine.

VII.
PARTIES

44. Petitioner **Rep. Edcel C. Lagman** is the duly elected Representative of the First District of Albay to the current 18th Congress. He may be served with the processes of the Honorable Supreme Court at N-411 House of Representatives, Batasan Complex, Quezon City.

45. Respondent **Executive Secretary Salvador C. Medialdea** is the principal alter ego of President Rodrigo R. Duterte who, unless restrained, will implement the "Anti-Terrorism Act of 2020". He may be served with summons and other processes of the Honorable Supreme Court at the Office of the Executive Secretary, Ground Floor, Premier Guest House, Malacañang, J.P. Laurel St., San Miguel, Manila.

46. Respondent **Anti-Terrorism Council (ATC)**, with the Executive Secretary as its Chairperson, is the administrative agency charged with the implementation of the "Anti-Terrorism Act of 2020". It may be served with summons and other processes of the Honorable Supreme Court at Rm. 472 Mabini Hall, J.P. Laurel St., San Miguel, Manila.

47. Respondent **Anti-Money Laundering Council (AMLC)**, is another agency which has been granted power and authority to implement the "Anti-Terrorism Act of 2020". It may be served with summons and processes of the Honorable Supreme Court at 5th Floor, EDPC Building, Bangko Sentral ng Pilipinas (BSP) Complex, Mabini corner Vito Cruz Streets, Malate, Manila.

48. Respondent **Senate of the Republic of the Philippines**, represented by Senate President Vicente C. Sotto III, is one of the two Chambers composing the Congress of the Philippines. It may be served with summons and processes of the Honorable Supreme Court at the Office of the Senate President, GSIS Financial Center, Roxas Boulevard, Pasay City.

49. Respondent **House of Representatives**, represented by Speaker Alan Peter S. Cayetano, is the other legislative Chamber composing the Congress of the Philippines. It may be served with summons and processes of the Honorable Supreme Court at the Office of the Speaker, Main Building, House of Representatives, Batasan Complex, Quezon City.

50. The Senate of the Republic of the Philippines and House of Representatives are impleaded as respondents for having acted without or in excess of jurisdiction in passing the unconstitutional "Anti-Terrorism Act of 2020" and whose bilateral action in approving the identical Senate Bill No. 1083 and House Bill No. 6875 is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

51. The bill which proposed the constitutionally infirm "Anti-Terrorism Act of 2020" originated from the Senate as Senate Bill No. 1083. It was adopted verbatim by the House of Representatives as House Bill No. 6875 with all its infirmities. The immediate necessity of the enactment of H.B. No. 6875 was certified by President Rodrigo Duterte. The House of Representatives railroaded the approval of H.B. No. 6875, as a copycat of the Senate version, on second and third reading, thus foreclosing the holding of a bicameral conference committee meeting.

VIII.
ISSUES

(a) Whether or not the war against terrorism can be intensified and the Anti-Terrorism Law can be made harsher and more severe at the expense of civil liberties and fundamental freedoms.

(b) Whether or not the "Anti-Terrorism Act of 2020" is replete with provisions violating civil liberties and fundamental freedoms, particularly the freedom of expression, freedom from warrantless arrests, right to privacy, non-impairment of property rights, and right to due process of law.

(c) Whether facial challenge can be mounted against the "Anti-Terrorism Act of 2020" for being unconstitutional.

(d) Whether or not the "Anti-Terrorism Act of 2020" abandoned the salient safeguards protective of civil liberties and fundamental freedoms provided for in the repealed "Human Security Act of 2007".

(e) Whether or not the "Anti-Terrorism Act of 2020" provides for adequate safeguards to guarantee civil liberties and fundamental freedoms.

(f) Whether or not the "Anti-Terrorism Act of 2020" contains vague provisions conducive to arbitrary interpretation and abusive implementation by law enforcers and administrative agencies like the Anti-Money Laundering Council (AMLC) and the Anti-Terrorism Council (ATC).

IX.
GROUNDS RELIED UPON FOR THE PETITION

A.
THE REPEAL OF THE "HUMAN SECURITY ACT OF 2007" BY THE "ANTI-TERRORISM ACT OF 2020" SEEKS TO INTENSIFY THE WAR AGAINST TERRORISM TO PROTECT NATIONAL SECURITY AT THE EXPENSE OF CIVIL LIBERTIES AND FUNDAMENTAL FREEDOMS.

B.
FACIAL CHALLENGE AGAINST THE CONSTITUTIONALITY OF THE "ANTI-TERRORISM ACT OF 2020" CAN BE SUCCESSFULLY MOUNTED BECAUSE ITS CRIMINALIZATION OF "PROPOSAL", "THREAT", AND "INCITING" TO COMMIT TERRORISM HAS

CHILLING EFFECTS WHICH DETER THE EXERCISE OF THE FREEDOM OF SPEECH.

C.

THERE IS STRONG JUSTIFICATION TO EXTEND THE APPLICABILITY OF THE DOCTRINE OF "FACIAL" CHALLENGE TO OTHER FUNDAMENTAL FREEDOMS IN ADDITION TO THE FREEDOM OF EXPRESSION BECAUSE THEY ARE ALL EQUALLY PROTECTED BY THE CONSTITUTION.

D.

THE MAXIMUM OF TWENTY-FOUR (24) DAYS DETENTION WITHOUT JUDICIAL WARRANT OF ARREST ODIOUSLY RESTRAINS PERSONAL LIBERTY FAR MORE THAN THE MAXIMUM THREE-DAY PERIOD WHICH IS INSTITUTIONALIZED IN THE CONSTITUTION EVEN WHEN THE PRIVILEGE OF WRIT OF *HABEAS CORPUS* IS SUSPENDED.

E.

IN LIEU OF THE SAFEGUARDS PROVIDED FOR IN THE REPEALED "HUMAN SECURITY ACT OF 2007" WHICH HAD BEEN ABANDONED, THE "ANTI-TERRORISM ACT OF 2020" PROVIDES FOR MERE MOTHERHOOD SAFEGUARDS WHICH ARE ORPHANED BY REPRESSIVE PROVISIONS CAPPED BY A KILLER PROVISO.

X.
DISCUSSION

A. THE REPEAL OF THE "HUMAN SECURITY ACT OF 2007" BY THE "ANTI-TERRORISM ACT OF 2020" SEEKS TO INTENSIFY THE WAR AGAINST TERRORISM TO PROTECT NATIONAL SECURITY AT THE EXPENSE OF CIVIL LIBERTIES AND FUNDAMENTAL FREEDOMS.

52. The proponents of the "Anti-Terrorism Act of 2020" drumbeat that there is a need to strengthen the law on anti-terrorism because the hitherto existing "Human Security Act of 2007" is "weak", as it does not deter terrorism and makes difficult the prosecution of terrorists.

53. There is no deficiency in the "Human Security Act of 2007". The weakness is in the enforcement of the law. The problem why there were few prosecutions under the previous anti-terrorism law is that instead of according suspected terrorists with judicial process, they were extra-judicially executed like the carnage in Marawi where the combined military and police offensive annihilated suspected terrorists, and even killed and displaced thousands of innocent civilians.

54. Those who are not subjected to summary "justice" are prosecuted for common crimes under the Revised Penal Code which have been identified as predicate crimes under the repealed "Human Security Act of 2007".

55. The account of former Philippine National Police Director General Ronald dela Rosa that he freed alleged ISIS international terrorist Mohammad Reza Kiram because a three-day detention was not sufficient for filing appropriate charges against him was not due to the inadequacy of the "Human Security Act of 2007" but rather to the ineptness of military and police intelligence.

56. The horrific record shows that there is an infinitesimal number of victims of terrorists compared to the magnitude of persons extrajudicially killed in the present administration's war against drugs which is a heinous form of state terrorism. The Philippine Drug Enforcement Agency (PDEA) acknowledged that as of June 30, 2019, 5,526 have died due to the government's anti-drug operations, but the data of human rights groups record that 27,000 have perished.

57. Proponents of the "Anti-Terrorism Act of 2020" assert that the "Human Security Act of 2007" has to be jettisoned in favor of a harsher law in order to discourage foreign terrorists from making the Philippines a terrorist haven. It is ironic that under the so-called "weak" "Human Security Act of 2007" of 13 years, there has been no avalanche of foreign terrorists seeking refuge or operating in the country, much less an increase in the number of homegrown terrorists.

58. In a democratic society, security must never be attained nor maintained at the expense of human rights and civil liberties. Derogation of freedom is not the price for security and peace, but the precursor of people's unrest and righteous resistance.

59. Freedom and security must co-exist as government's dual obligation to protect and promote. The exercise of freedom may be legitimately regulated but never proscribed or preempted from being enjoyed. The threat of punishment is more insidious and abusive than the actual penalty after the fact of exercise.

60. The more power given to police and military enforcers as well as to administrative implementors like the ATC and AMLC without or with diluted accountability, the more they are emboldened to commit abuses and excesses derogating civil liberties and fundamental freedoms.

61. The "Human Security Act of 2007" and other penal laws and anti-terrorism statutes like (a) R.A. No. 10166 (Terrorism Financing, Prevention and Suppression Act of 2012); (b) R.A. No. 10697 (Strategic Trade Management Act); (c) R.A. No. 10175 (Cybercrime Prevention Act of 2012); (d) R.A. No. 10592 (An Act Amending Articles 29, 94, 97, 98 and 99 of Act. No. 385, As Amended, Otherwise Known as the Revised Penal Code); (e) R.A. No. 9160 (Anti-Money Laundering Act, As Amended); (f) R.A. No. 6981 (Witness Protection, Security and Benefit Act); and (g) R.A. No. 3916 (The Revised Penal Code) are more than adequate to deter terrorism and prosecute terrorists.

62. Enforcers should not rely on more excessive powers and authority which would ensnare into contrived culpability well-meaning activists and legitimate dissenters.

63. The claim that the Philippines faces sanctions from the Paris-based anti-money laundering watchdog Financial Action Task Force (FATF) if it fails to pass a new anti-terrorism law is specious because there is no exactitude what amendments FATF recommended to the then-existing "Human Security Act of 2007" or the reasons for the calling for the latter's repeal. Moreover, the FATF never demanded that the Philippines should pass an anti-terror law which would violate the Philippine Constitution by trampling on fundamental freedoms.

64. It is truly lamentable that both the Congress and the Executive have prioritized the enactment of this odious new anti-terrorism law over the passage of an economic stimulus package to rescue distressed Filipinos and rehabilitate devastated businesses, and reenergize the battered economy.

65. While other countries have put in place their respective stimulus responses to the pandemic, the Philippines has yet to pass its own version to the detriment of our people and our economy.

66. While as of 02 July 2020, 40,336 Filipinos were confirmed positive for the COVID-19 virus, of whom 1,266 have died due to the pandemic's onslaught, our people's basic freedoms will also perish due to the assault of the new anti-terrorism law.

67. As we try to save those afflicted by the deadly virus, we pray that the judicial scalpel should excise the constitutional infirmities afflicting the "Anti-Terrorism Act of 2020".

68. The draconian features of the "Anti-Terrorism Act of 2020", which will be enumerated and discussed hereunder, have placed national security on a pedestal and demoted civil liberties and fundamental freedoms to a footstool.

B. FACIAL CHALLENGE AGAINST THE CONSTI-TUTIONALITY OF THE "ANTI-TERRORISM ACT OF 2020" CAN BE SUCCESSFULLY MOUNTED BECAUSE ITS CRIMINALIZATION OF "THREAT", "PROPOSAL", AND "INCITING" TO COMMIT TERRORISM HAS CHILLING EFFECTS WHICH DETER THE EXERCISE OF THE FREEDOM OF SPEECH.

69. For the first time under the "Anti-Terrorism Act of 2020", "threat", "proposal", and "inciting" to commit terrorism are criminalized and penalized. The pertinent provisions are the following:

(a) "Sec. 5. *Threat to Commit Terrorism*. – Any person who shall threaten to commit any of the acts mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years."

(b) "Sec. 8. *Proposal to Commit Terrorism*. – Any person who proposes to commit terrorism as defined in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years."

(c) "Sec. 9. *Inciting to Commit Terrorism*. – Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years."

70. The criminalization of the foregoing acts infringes on the freedom of expression under Sec. 4 of Art. III (Bill of Rights) which reads: "No law shall be passed abridging the freedom of speech, of expression or of the press or the right of the people peaceably to assemble and petition the government for redress of grievances."

71. The following have to be underscored:

(a) The "Human Security Act of 2007" did not criminalize and penalize "threat", "proposal", and "inciting" to commit terrorism. The reason is obvious as there is an abiding deference to and respect for the freedom of speech or expression which could have been curtailed had the said acts been earlier criminalized and penalized.

(b) Under the "Anti-Terrorism Act of 2020", "threat", "proposal", and "inciting" to commit terrorism are criminalized and penalized irrespective of whether acts of terrorism have been actually committed or consummated.

(c) The penalty of twelve (12) years imprisonment for the subject acts is severe and cruel considering that the consummation of the terroristic acts threatened, proposed, and/or incited is not an element of the crime by reason or as consequence of said acts.

(d) The criminalization of the "threat", "proposal" and "inciting" to commit terrorism refers to the vague, overbroad and incomplete attempt to define "terrorism" under Section 4 of the challenged statute.

72. It is well-settled that the proposal and inciting to commit a crime is only punishable if the crime itself which is the object of the proposal and inciting is actually committed.

73. It is utterly ironic that a person who threatens, proposes or incites the commission of terrorism is punished even if no act of

terrorism is committed consequent to the said proscribed utterances or actions. One who threatens, proposes or incites terrorism is held criminally liable even if there are no terrorists indicted for acts of terrorism. **It is inordinately strange that there is a culpable threatener, proponent, or inciter but there is no terrorist.**

74. By parity of reasoning, in the crime of subornation of perjury, the suborner is only punished if the party so persuaded actually commits perjury. (***United States v. Laserna***, G.R. No. 6668, January 10, 1912)

75. An inducement to commit a crime "does not constitute an act penalized by law if the crime which was the principal and sole object of the inducement was not committed". (***Ibid.***)

76. What the government must pursue is the apprehension, prosecution, and conviction, once warranted, of terrorists without ensnaring into contrived culpability persons who simply exercise their right of free speech.

77. In a republican government "**the censorial power is in the people over the government, and not in the government over the people**." (Letter dated December 4, 1794 of James Madison to James Monroe, quoted in ***New York Times Co. v. Sullivan***, New York Times Co. v. Sullivan, 376 U.S. 254 [1964]) wherein the Sedition Act was declared inconsistent with the First Amendment "**because of the restraint it imposed upon criticism of government and public officials**". (Emphasis supplied).

78. To reiterate, the instant petitions for certiorari and prohibition are justiciable under the doctrine of "facial challenge" because the "Anti-Terrorism Act of 2020" criminalizes "proposal", "threats", and "inciting" to commit terrorism which infringes on the right to free speech as well as the right to petition the government for redress of grievances, which is a component of the freedom of expression, as their exercise or articulation is prevented by the chilling and deterrent effects consequent to their criminalization and imposition of penalties.

79. The criminalization and punishment of "threat", "proposal", and "inciting" to commit terrorism effectively restrains people from exercising their freedom of speech to seek redress of grievances and criticize the government and its officials for fear that their expression of contrary opinion and legitimate dissent, even outrage, will be considered criminal acts for which they can be jailed for 12 long years.

80. The proscription and punishment of acts invariably done by articulation, and the consequent deterrence from exercising free speech, are more insidious than the penalty after the fact of expression.

81. The rationale for allowing a facial challenge "is to counter the 'chilling effect' on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply refuse to speak to avoid being charged of a crime. The overbroad or vague law chills him into silence." (Dissenting Opinion of Mr. Justice Antonio Carpio in ***Romualdez v. COMELEC***, G.R. No. 167011, April 30, 2008).

82. ***Romualdez v. Sandiganbayan*** (G.R. No. 152259, July 29, 2004) quoting Mr. Justice Vicente Mendoza's Separate Opinion in ***Estrada v. Sandiganbayan*** (G.R. No. 148560, November 19, 2001) also held that:

> "The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes."

83. Mr. Justice Vicente Mendoza in ***Estrada v. Sandiganbayan, supra,*** explained that:

> "A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech. The theory is that '[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, **the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity**.' The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others

> may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes." (Emphasis supplied).

84. The proscription of "threat", "proposal" and "inciting" to commit terrorism borders on criminalizing thought which is inviolable. In fact, it effectively prevents the articulation of thought or the expression of one's opinion or advocacy, however radical, yet legitimate.

85. The fear factor that pervades the criminalization of the subject acts restrains the exercise of free speech. This is the precise gravamen of unconstitutionality.

86. The criminalization of "threats", "proposals", and "inciting" to commit terrorism leads to the obesity of criminal legislation infringing on free speech even as Filipinos are wont to articulate hyperbole and confrontational speech which law enforcers can use as basis for the apprehension and long detention of hapless and well-meaning citizens. This brings to relevance a passage in the article of Benjamin Means in the Marquette Law Review (https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1286&context=mulr) which reads:

> "Applying the Brandenburg test, the Supreme Court overturned the conviction of a defendant accused of treason who, in declaring his opposition to the draft, exclaimed that "[i]f they ever make me carry a rifle the first man I want to get in my sights is L.B.J. ' "The Court found that the speech was mere hyperbole." Similarly, in Hess v. Indiana, the Court struck down the conviction of a demonstrator who shouted, "[w]e'll take the fucking street later," declaring that the lawlessness advocated was not sufficiently immediate, because "later" was not "imminent." Likewise, a NAACP organizer was not liable for inciting violence when he addressed a crowd as follows: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck." In short, it is very difficult to impose liability on speech, even speech that advocates crime, if it falls within the scope of the First Amendment as set forth in Brandenburg. For that reason, a court faced with speech it finds intolerable may be sorely

> tempted to find a way to escape free speech strictures."

87. Moreover, the subject "crimes" constitute criminalization without representation as the multi-sectoral protests escalate against the constitutionality of the "Anti-Terrorism Act of 2020". The governed by their ongoing protests have withdrawn their mandate to be represented in the enactment and enforcement of the "Anti-Terrorism Act of 2020".

88. Under the foregoing jurisprudential standards, the criminalization of "threat", "proposal", and "inciting" to commit terrorism under the "Anti-Terrorism Act of 2020" on its very face intrudes into the people's exercise of free speech by chilling into silence citizens who are restrained from exercising their freedom of expression for fear of reprisal, prosecution and imprisonment.

89. Particularly vulnerable are political activists, lawful dissenters, human rights defenders, crusading lawyers, militant students, reformist workers and beleaguered farmers, all of whom have long been the target of harassment and persecution by agents of the State. *Kilusang Magbubukid ng Pilipinas* and *Tanggol Magsasaka* reported that some 262 farmers and peasant leaders had been killed since July 2016, 190 of them slain in the past five months.

90. Corollary to the doctrine of "facial challenge" is the doctrine of "vagueness and overbroad or overbreadth".

91. In ***Disini v. Secretary of Justice*** (G.R. No. 203335, February 11, 2014) it was held that "A petitioner may for instance mount a 'facial' challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute."

92. However, in ***Southern Hemisphere Engagement Network, Inc. et. al. v. Anti-Terrorism Council, et. al.*** (G.R. No. 178552, October 5, 2010) the Honorable Supreme Court opined that the doctrine of vagueness and overbreadth can be applicable to cases which do not involve impairment of free speech:

> "Very recently, the US Supreme Court, in Holder v. Humanitarian Law Project, allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds,

since plaintiffs faced a 'credible threat of prosecution' and 'should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.' The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. §2339B (a) (1), proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations. They claimed that they intended to provide support for the humanitarian and political activities of two such organizations."

93. **In the instant case, the very core of the "Anti-Terrorism Act of 2020" which is Sec. 4 thereof, the attempt to define "terrorism" is cast in vague and overbroad language so much so that there is no certainty as to what the law actually seeks to proscribe.**

94. Section 4 of the new anti-terrorism law provides that:

"Sec. 4. Terrorism. - Subject to Section 49 of this Act, terrorism is committed by any person who within or outside the Philippines, regardless of the stage of execution:

"(a) **Engages in acts intended** to cause death or serious bodily injury to any person, or endangers a person's life;

"(b) **Engages in acts intended** to cause extensive damage or destruction to a government or public facility, public place or private property:

"(c) **Engages in acts intended** to cause extensive interference with, damage or destruction to critical infrastructure;

"(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and

"(e) Release of dangerous substances, or causing fire, floods or explosions

> **when the purpose of such *act*, by its nature and context, is to intimidate the general public or a segment thereof create an atmosphere or spread a message of fear, to provoke or**
>
> **influence by intimidation the government or any of its international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety**, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592 …" (Underscoring supplied)

95. The vagueness and overbreadth of the aforequoted Section 4 is patent on its face because:

(a) what is criminalized are mere intentions to commit certain acts; and

(b) the purported acts of terrorism which reads "**when the purpose of such *act*, by its nature and context, is to intimidate the general public or a segment thereof create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any of its international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety"** qualifies only letter "e" on "the release of dangerous substances or causing floods or explosion"; and the reference to letter "e" is limited by the phrase "**when the purpose of such *act***" which follows immediately letter "e" on the release of dangerous substances or causing fire, floods or explosion.

96. Retired Associate Justice Vicente V. Mendoza in his commentary entitled "A vague, badly written anti-terror bill" (Philippine Daily Inquirer, Opinion, dated June 28, 2020) said that "the proposed 'Anti-Terrorism Act of 2020' is hard to understand, yet a criminal statute must be clearly and precisely drawn to give guidance to those concerned." He added: "The fact is that Section 4 badly needs a rewriting. A statute whose terms are so vague that persons of common understanding must necessarily guess at its meaning or differ to its application offends due process."

97. The vagueness and overbreadth of Section 4 is compounded by its deletion of the indispensable inculpatory element of political motive which is internationally prescribed. According to the Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 32 "Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of **political or ideological aims**". (Emphasis supplied).

98. In Section 3 on defining terrorism, the repealed "Human Security Act of 2007" explicitly provides that an element of terrorism is "**to coerce the government to give in to an unlawful demand" which is the political or ideological motive**. (Emphasis supplied).

99. The clear purpose of deleting the element of political motive in the "Anti-Terrorism Act of 2020" is to facilitate the apprehension, prosecution and conviction of a suspected terrorist without imputing and proving any political or ideological motive.

100. It is gravely tragic that the criminalization of "threat", "proposal" and "inciting" to commit terrorism refers back to the aforequoted vague and overbroad provisions of Section 4.

C. THERE IS STRONG JUSTIFICATION TO EXTEND THE APPLICABILITY OF THE DOCTRINE OF "FACIAL CHALLENGE" TO OTHER FUNDAMENTAL FREEDOMS IN ADDITION TO THE FREEDOM OF EXPRESSION BECAUSE THEY ARE ALL EQUALLY PROTECTED BY THE CONSTITUTION.

101. The prevailing rule in our jurisdiction is that only statutes derogating free speech are subject to facial challenge consistent with the tradition of protecting the freedoms provided for under the American First Amendment which also includes religious freedom, peaceful assembly and the right to petition the government for redress of grievances, which are components of freedom of expression.

102. However, it is respectfully submitted that there should be no total adherence to the precedence of the American First Amendment cases because there is strong justification to extend the

applicability of "facial challenge" to statutes which violate other fundamental freedoms particularly those enshrined in the Bill of Rights which are equally protected by the Constitution.

103. The "Anti-Terrorism Act of 2020" also violates, among others, the following fundamental rights guaranteed by the Constitution under the Bill of Rights:

(a) "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." (Sec. 2 of Art. III);

(b) "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." (Sec. 2 of Art. III);

(c) "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety or order requires otherwise as prescribed by law." (Sec. 3 of Art. III);

(d) "The right of the people including those employed in the public and private sectors, to form unions, associations, or societies for purpose not contrary to law shall not be abridged." (Sec. 8 of Art. III); and

(e) "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Sec. 1 of Art. III).

104. The Constitution does not prioritize its protection of any of the fundamental rights. All civil liberties and fundamental freedoms are equally guaranteed by the Constitution.

105. The freedom from warrantless arrest will be separately discussed under Ground D hereunder. The discussion in this section shall be limited to the other fundamental rights mentioned above.

106. ***Surveillance of suspects and interception and recording of communications***. – Sections 16 and 19 of the "Anti-Terrorism Act of 2020" respectively, provide that:

"Sec. 16. *Surveillance of Suspects and Interception and Recording of Communications*. - The provisions of Republic Act No. 4200, otherwise known as the "Anti-Wire Tapping Law", to the contrary notwithstanding, law enforcement agent or military personnel may, upon a written order of the Court of Appeals secretly wiretap, overhear and listen to, intercept, screen, read, surveil, record or collect, with the use of any mode, form, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known to science or with the use of any other suitable ways and means for the above purposes, any private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of this Act; (b) between members of a designated person as defined in Section 3(E) of Republic Act No. 10168; or (c) any person charged with or suspected of committing any of the crimes defined and penalized under the provisions of this Act … "

"The law enforcement agent or military personnel shall likewise be obligated to (1) file an ex-parte application with the Court of Appeals for the issuance of an order, to compel telecommunications service providers (TSP) and internet service providers (ISP) to produce all customer information and identification records as well as call and text data records, content and other cellular or internet metadata of any person suspected of any of the crimes defined and penalized under the provisions of this Act …"

"Section 19. *Effective Period of Judicial Authorization*. – Any authorization granted by the Court of Appeals, … **shall not exceed a period of sixty (60) days** from the date of

> receipt of the written order by the applicant law enforcement agent or military personnel.
>
> "The authorizing division of the Court of Appeals **may extend or renew the said authorization to a non-extendible period, which shall not exceed thirty (30) days** from the expiration of the original period…" (Emphasis supplied).

107. The foregoing provisions infringe on the constitutionally guaranteed privacy of communication for the following reasons:

(a) The maximum of 90 days for wiretapping of a suspected terrorist is inordinately long and repressive. After the law enforcers have secured an authority to wiretap from the Court of Appeals based on probable cause, it does not stand to reason that the surveillance and wiretapping would extend to 90 days unless the evidence on "probable cause" was contrived and manufactured to justify a fishing expedition or a witch hunt which definitely unduly offends a person's privacy and that of his communication.

Under the repealed "Human Security Act of 2007", the maximum is only 60 days, as provided for under Section 10 of the said repealed law, which provides:

> "Any authorization granted by the authorizing division of the Court of Appeals, pursuant to Section 9(d) of this Act, shall only be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals, which **shall not exceed a period of thirty (30) days** from the date of receipt of the written order of the authorizing division of the Court of Appeals by the applicant police or law enforcement official.
>
> "The authorizing division of the Court of Appeals may **extend or renew the said authorization for another non-extendible period, which shall not exceed thirty (30) days** from the expiration of the original period…" (Emphasis supplied).

It should also be underscored that under the "Human Security Act of 2007", the original period is only 30 days, while under the "Anti-Terrorism Act of 2020" the initial period is already 60 days.

(b) Under Section 8 of the "Human Security Act of 2007", surveillance and wiretapping can only be authorized by the Court of Appeals if "**there is no other effective means readily available for acquiring such evidence**." This safeguard was completely obliterated in the "Anti-Terrorism Act of 2020" which means it is open season for the invasion of one's privacy of communication.

(c) Under Section 9 of the "Human Security Act of 2007", the person subject to the wiretap has the right to be informed that wiretapping is being conducted against him so that he can move to quash the order authorizing the said wiretap:

> "… **has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference before the Court of Appeals which issued the written order** xxx xxx xxx."(Emphasis supplied).

This safeguard is deleted in the "Anti-Terrorism Act of 2020" thereby allowing the wiretapping to persist for a maximum of 90 days without the person subjected to the wiretap having any opportunity to object to the same.

(d) No sanction whatsoever is imposable on the law enforcers who secure maliciously and baselessly an order authorizing the wiretapping. This lack of penalty would embolden the law enforcers to arbitrarily contrive an ex-parte application to obtain an order authorizing a wiretap.

As an additional safeguard, the second paragraph of Section 16 of the "Human Security Act of 2007" imposes a penalty upon a law enforcement personnel who maliciously obtains an authority from the Court of Appeals to wiretap in this wise:

> "… the penalty of ten (10) years and one day to twelve (12) years of imprisonment and the accessory penalty of perpetual absolute disqualification from public office **shall be imposed upon any police or law enforcement personnel who maliciously obtained an authority from the Court of Appeals** to track down, tap, listen to, intercept, and record in whatever manner or form any communication, message,

> conversation, discussion, or spoken or written words of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism xxx xxx xxx" (Emphasis supplied).

(e) Compelling telecommunications services providers and internet service providers "to produce all customer information and identification records as well as call and text data records, content and other cellular or internet metadata" of a suspected terrorist without any particular timeframe and specificity contravenes the Honorable Supreme Court's ruling in ***Disini v. Secretary of Justice*** (*supra*), which held that "the grant of the power to track cyberspace communications in real time and determine their sources and destinations must be narrowly drawn to preclude abuses." It was further ruled that "All the forces of a technological age x x x operate to narrow the area of privacy and facilitate intrusions into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society. The Court must ensure that laws seeking to take advantage of these technologies be written with specificity and definiteness as to ensure respect for the rights that the Constitution guarantees."

108. The "Anti Wiretapping Law" or R.A. No. 4200 was enacted more than half a century ago in order to implement the constitutional provision safeguarding privacy of communication. Any exception from the "Anti-Wiretapping Law" must be coupled with stringent safeguards which the "Anti-Terrorism Act of 2020" completely disregarded.

109. **The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall be inviolable**. – The "Anti-Terrorism Act of 2020" provides that:

> "Sec. 35. *Anti-Money Laundering Council Authority to Investigate, Inquire into and Examine Bank Deposits*. – Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to investigate: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or violation of Sections 4, 6, 7, 10, 11 or 12 of this Act; (b) property or funds of any person or

persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act. The AMLC may also enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government owned and controlled corporations in undertaking measures to counter the financing of these terrorism, which may include the use of its personnel, facilities and resources. For purposes of this Section and notwithstanding the provisions of Republic Act No. 1405, otherwise known as the "Law on Secrecy of Bank Deposits", as amended; Republic Act No. 6426, otherwise known as the "Foreign Currency Deposit Act of the Philippines", as amended; Republic Act No. 8791, otherwise known as "The General Banking Law of 2000" and other laws, **the AMLC is hereby authorized to inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates <u>without a court order</u>**." (Emphasis supplied).

"Sec. 36. *Authority to Freeze*. - Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to investigate: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or violation of Sections 4, 6, 7, 10, 11 or 12 of this Act; (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act.

"The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon the order of the Court of Appeals: *Provided*, That, the twenty-day period shall be tolled upon filing of a petition to extend the effectivity of the freeze order.

"Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to issue a freeze order with respect to the property and funds of a designated organization, association, group or any individual to comply with binding terrorism-related resolutions, including Resolution No. 1373 of the UN Security Council pursuant to Article 41 of the charter of the UN. **Said freeze order shall be effective until the basis for the issuance thereof shall have been lifted**. During the effectivity of the freeze order, an aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection: *Provided*, That the person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person.

"However, if the property or funds subject of the freeze order under the immediately preceding paragraph are found to be in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act committed

> within the jurisdiction of the Philippines, said property or funds shall be the subject of civil forfeiture proceedings as provided under Republic Act No. 10168.
>
> xxx xxx xxx
>
> "Sec. 38. *Safe Harbor*. - No administrative, criminal or civil proceedings shall lie against any person acting in good faith when implementing the targeted financial sanctions as provided under pertinent United Nation Security Resolutions." (Emphasis supplied).

110. The foregoing provisions of the "Anti-Terrorism Act of 2020" transgress the constitutional guarantee on the inviolability of the right of the people to be secure in their papers and effects against unreasonable searches and seizures, and the right to due process for the following overriding reasons:

(a) No prior judicial authorization is required for the Anti-Money Laundering Council (AMLC) to investigate, inquire into and examine bank deposits, unlike in the repealed "Human Security Act of 2007" under Section 27 thereof which categorically requires prior judicial authorization for the examination of bank deposits, accounts, and records.

Under Section 2 of Article III of the Constitution no search or seizure, like AMLC's authority to investigate and search bank accounts and records and freeze property or funds, can be effected without a judicial order.

In the new anti-terrorism law, in lieu of a judicial authorization, the designation of a person or group as terrorist by the Anti-Terrorism Council (ATC), which is a non-judicial body, or the issuance by the Court of Appeals of a preliminary order of proscription, which does not include an authority to investigate bank accounts, is sufficient to trigger the authority of ALMC to investigate, inquire into and examine bank deposits.

It should be underscored that a preliminary order of proscription issued by the Court of Appeals is limited under Sec. 27 of the "Anti-Terrorism Act of 2020" to "declaring that the respondent is a terrorist and outlawed organization or association within the meaning of Sec. 26 of this Act. To reiterate, it does not include a judicial authorization

for the AMLC to investigate, inquire into and examine bank deposits and/or freeze funds.

It also needs emphasis that under Sec. 35 of the "Anti-Terrorism Act of 2020" it is unequivocally provided that the "AMLC is hereby authorized to inquire into and examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates **without a court order**."

In ***Comerciante v. People*** (G.R. 205926, July 22, 2015), it was held that:

> "Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause; in the absence of such warrant, such search and seizure becomes, as a general rule, 'unreasonable' within the meaning of said constitutional provision."

(b) Similarly, under Sec. 26 of the new anti-terrorism law, the AMLC's "authority to freeze" does not require a prior judicial authorization. Moreover, the AMLC, which is not a judicial or quasi-judicial authority, is empowered to determine probable cause to justify its authority to freeze.

The freeze order of AMLC is effective for a period not exceeding 20 days, but it is authorized to secure from the Court of Appeals an extension of the freeze order for a maximum of six months. However, there are no standards provided under the new law on which an extension can be granted.

The second paragraph of Sec. 36 of the "Anti-Terrorism Act of 2020" vaguely provides:

> "The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon order of the Court of Appeals: *Provided,* That, the 20-day period shall be tolled upon the filing of a petition to extend the effectivity of the freeze order."

It is manifest that under the foregoing provision, there are definitely no standards upon which an extension of the freeze order for a maximum of six (6) months can be assessed and granted.

However, notwithstanding the supposed intervention of the Court of Appeals, the AMLC is "authorized to issue a freeze order with respect to the property and funds of a designated organization, association, group or any individual to comply with binding terrorism-related resolutions including Resolution No. 1373 of the UN Security Council... **Said freeze order shall be effective until the basis for the issuance thereof shall have been lifted**." (Emphasis supplied). This amounts to granting the AMLC the authority to freeze property or funds in perpetuity even as it allows an international resolution to supplant the sacrosanct guarantees of the Constitution to civil and fundamental rights.

No similar authorization is granted under the "Human Security Act of 2007".

(c) **It needs emphasis that under Sec. 2 of the Bill of Rights, prior judicial intervention and authorization is absolutely necessary to legitimize any search or seizure of a person's property, papers and effects.** The subject provision unequivocally provides that no search warrant (like authority to investigate and search bank accounts and authority to freeze funds) 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**". (Emphasis supplied).

Verily, the authority of the AMLC to (i) investigate, inquire into and examine bank accounts; and (ii) freeze any property or funds are void because there is no prior judicial authorization, and not being a court or judicial authority, the AMLC has no power to determine probable cause.

(d) The maximum of six (6) months granted to the AMLC to investigate, inquire into and examine bank deposits and its authority to implement a freeze order in perpetuity are unduly prolonged periods which are repressive and violative of the subject constitutional rights. The maximum period under the repealed Human Security Act of 2007 is only 90 days.

(e) There is no penalty imposed for securing a baseless and malicious extension of a freeze order for a period of six (6) months and the new law deleted the liquidated damages of P500,000.00 a day

awarded to a person who is acquitted, which amount corresponds to the period during which a person's properties, assets or funds were seized as previously provided for under the last paragraph of Sec. 41 of the "Human Security Act of 2007".

(f) The additional safeguard under Sec. 29 of the "Human Security Act of 2007" on the right of the concerned person to be informed of the acts of the AMLC is deleted in the new anti-terrorism law. The safeguard under the repealed law provides:

> "That the person whose bank deposits, placements, trust accounts, assets and records have been examined, frozen, sequestered and seized by law enforcement authorities **has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference**.

(g) Under the new anti-terrorism law, there is no provision on who shall determine whether the property or funds subject of a freeze order are found to be related to terrorist financing for purposes of having such property or funds forfeited in favor of the government. There is also no provision on who shall determine whether in the process of investigating bank accounts and freezing funds, a concerned person acted in good faith in order to be exempt from administrative, criminal or civil liability. It appears that in the absence of a determinant provision, it is AMLC, not a judicial authority, which is unduly granted the authority which would lead to unrestrained, arbitrary and abusive determination violative of due process.

111. **Right to due process of law and freedom of association.** – Section 25 of the "Anti-Terrorism Act of 2020" provides:

> "xxx xxx xxx
>
> "**The ATC may designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of**

> **the acts defined and penalized under Sections 4, 5, 6, 7. 8, 9, 10, 11 and 12 of this Act**. (Emphasis supplied).
>
> "The assets of the designated individual, groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> "The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act."

112. The foregoing provision infringes on both the right to due process of law and the freedom of association which are protected by the Bill of Rights for the following reasons:

(a) It needs emphasis that the designation of an individual, groups of persons, organization or association as a terrorist has disastrous consequences like stigmatization as a terrorist and the investigation of the subjects' bank deposits, accounts and records, as well as the freezing of their properties and funds. Consequently, there is need to fully observe due process and to respect the freedom of association before any person or group or association is designated as a terrorist, which requires a prior judicial determination.

(b) In the instant case, the designation is not made by a competent court or judicial authority. It is decreed by the Anti-Terrorism Council (ATC) which, as mere administrative agency, is bereft of judicial authority.

(c) Not being a court or a judicial authority, the ATC cannot be vested with the jurisdiction to determine probable cause that an individual, group or organization is a terrorist or engaged in terrorism.

(d) The ex-parte designation of an individual, group or association as a terrorist also transgresses the people's freedom of association which can only be denied after due process of law.

(e) Being ex-parte, the affected individual, group or association does not have the opportunity to challenge or controvert any arbitrary or unwarranted designation.

(f) It needs reiteration that the AMLC's authority to investigate and search bank deposits as well as freeze property or funds of a designated terrorist is without prior judicial authorization under Sections 35 and 36 of the "Anti-Terrorism Act of 2020", notwithstanding any reference to Section 11 of R.A. No. 10168.

113. **Penal statutes like the "Anti-Terrorism Act of 2020" must be subject to "facial challenge" insofar as they infringe on civil liberties because there is no need to wait for the actual occurrence of damage or violation of constitutional rights as a prior condition for judicial intervention and adjudication in instances of blatant constitutional violations which are patent on the very face of the challenged statute.**

114. The claim that if penal statutes will be subject to "facial challenge", this would lead to mass acquittal and immobilization of prosecution is, aside from being hyperbolic, does not realize that any halt in the prosecution of crimes is only temporary pending final resolution of a "facial challenge" in the event a temporary restraining order or a writ of preliminary injunction is issued.

115. Moreover, any restraint on the implementation of the "Anti-Terrorism Act of 2020" or its eventual nullification will not prejudice the prosecution of terrorists because, as earlier cited, there are existing laws which could be the bases for prosecuting suspected terrorists like the following: (a) R.A. No. 10166 (Terrorism Financing, Prevention and Suppression Act of 2012); (b) R.A. No. 10697 (Strategic Trade Management Act); (c) R.A. No. 10175 (Cybercrime Prevention Act of 2012); (d) R.A. No. 10592 (An Act Amending Articles 29, 94, 97, 98 and 99 of Act. No. 385, As Amended, Otherwise Known as the Revised Penal Code); (e) R.A. No. 9160 (Anti-Money Laundering Act, As Amended); (f) R.A. No. 6981 (Witness Protection, Security and Benefit Act); and (g) R.A. No. 3916 (The Revised Penal Code).

116. In the event the "Anti-Terrorism Act of 2020" is voided for being unconstitutional, the implementation of the "Human Security Act of 2007" will be reinstated, which is less repressive.

117. **Furthermore, the exercise by the Honorable Supreme Court of its expanded power of judicial review is ascendant over the doctrine of "facial challenge". Such exercise of an expanded judicial review cannot be defeated by the limited application of the doctrine of "facial challenge".**

118. Of particular relevance is the pronouncement in ***Spouses Imbong v. Ochoa*** (G.R. No. 204819, April 8, 2014) on the emerging

departure from the limited application of the doctrine of "facial challenge" in the mold of the American First Amendment Cases. The Honorable Supreme Court opined:

> "**The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution**.
>
> "Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. **To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people**." (Emphasis supplied).

D. THE MAXIMUM OF TWENTY-FOUR (24) DAYS DETENTION WITHOUT JUDICIAL WARRANT OF ARREST ODIOUSLY RESTRAINS PERSONAL LIBERTY FAR

MORE THAN THE MAXIMUM THREE-DAY PERIOD WHICH IS INSTITUTIONALIZED IN THE CONSTITUTION EVEN WHEN THE PRIVILEGE OF WRIT OF *HABEAS CORPUS* IS SUSPENDED.

119. Section 29 of the "Anti-Terrorism Act of 2020" authorizes detention without a judicial warrant of arrest of a suspected terrorist for a maximum of 24 days. The provision reads in full:

> "Sec. 29. *Detention Without Judicial Warrant of Arrest*. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority **within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days** if it is established that (1) further detention of the person/s is necessary to preserve evidence related to the terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.

> "Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> "The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities. The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph." (Emphasis supplied).

120. This provision on a maximum 24-day detention without a judicial warrant has been the unanimous target of those protesting the unconstitutionality of the "Anti-Terrorism Act of 2020".

121. This is rightly so because this provision exceedingly infringes on a person's personal liberty and his right against warrantless arrests or detention without judicial warrant of arrest, and the violation is compounded by the maximum detention of 24 days without the detained person being brought to the proper judicial authority.

122. The long period of detention is conducive to the person detained being tortured or coerced into involuntary confession by law enforcers, notwithstanding motherhood declarations of safeguards. Moreover, prolonged interrogation amounts to mental/psychological torture under the "Anti-Torture Act of 2009".

123. The following constitutional safeguards are blatantly violated:

(a) Sec. 2 of Article III on the Bill of Rights which pertinently provides that no "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 persons … to be seized."; and

(b) The institutionalization of a maximum of three days detention as provided for under Section 18 of Article VII which provides that "During the suspension of the privilege of the writ (of *habeas corpus*), any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released."

124. Aside from the three exceptions when warrantless arrests can be effected under Sec. 5 of Rule 113 of the Rules of Court, the inflexible rule is that no arrest can be made without a judicial warrant.

125. Even in cases of warrantless arrests, the arrested person shall be delivered to the "proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes of offenses punishable by correctional penalties, or their equivalent; and thirty-six (36), for crimes or offenses punishable by afflictive or capital penalties, or their equivalent." (Article 125 of the Revised Penal Code).

126. It is grossly ironic that in times of emergency when the privilege of the writ of *habeas corpus* is suspended, the Constitution mandates that the period of detention of a person shall not exceed three days during which he shall be judicially charged, otherwise he shall be released, but during ordinary times under the "Anti-Terrorism Act of 2020", the detention can be a maximum of 24 days.

127. In ***Pestilos v. Generoso and People*** (G.R. No. 182601, November 10, 2014), the Honorable Supreme Court traced the history of the right of persons from unreasonable searches and seizure, including arrest, and stated that "The organic laws of the Philippines, specifically, the Philippine Bill of 1902, and the 1935, 1973 and 1987 Constitutions all protect the right of the people to be secure in their persons against **unreasonable** searches and seizures. **Arrest falls under the term seizure**." (Emphasis supplied).

128. Verily, the seizure or arrest of a person is unreasonable in contemplation of the Constitution when the arrest is without a judicial warrant and is not a legitimate warrantless arrest.

129. The odiousness of Section 29 finds no mitigation in the face of the abandoned safeguards provided for in the repealed "Human Security Act of 2007" which pertinently provided that:

> "SEC. 18. *Period of Detention Without Judicial Warrant of Arrest*. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the **delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel**: **Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.**
>
> "The police or law enforcement personnel concerned shall, **before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night**. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, **to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the**

suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

"Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

"The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and [*sic*] judge as provided in the preceding paragraph. (Emphasis supplied).

"SEC. 19. *Period of Detention in the Event of an Actual or Imminent Terrorist Attack*. - **In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest**. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested

> to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That **within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately**. (Emphasis supplied).
>
> "SEC. 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days*. - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days."

130. The following safeguards provided for in the aforequoted provisions of the repealed "Human Security Act of 2007" have been deleted and abandoned by the "Anti-Terrorism Act of 2020":

(a) Maximum of three days detention without judicial warrant;

(b) The arrest of those suspected of terrorism or conspiracy to commit terrorism must result from the surveillance of the said suspects under Section 7 and examination of bank deposits under Section 27 of the "Human Security Act of 2007". The aforesaid Section 7 is now Section 16 and the examination of bank deposits under Section 27 is now Sections 35 and 36 of the "Anti-Terrorism Act of 2020", the provisions of which are not anymore conditions precedent for effecting arrest and detention.

(c) Before detaining the person suspected of the crime of terrorism, the law enforcers shall present him or her before any judge at the latter's residence or office nearest the place where the arrest

took place at any time of the day or night in order for the judge to ascertain the identity of the law enforcers and the person they have arrested, inquire on the reasons why they have arrested the subject person, and determine personally whether or not the subject person has been subjected to any physical, moral or psychological torture;

(d) After taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the law enforcer shall notify in writing the judge of the court nearest the place of apprehension or arrest;

(e) In the event of an actual or imminent terrorist attack, the suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of the Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice in the Court of Appeals nearest the place of arrest; and

(f) Within three days after the detention of the suspect, whose connection with the terror attack or threat is not established, he shall be released immediately.

131. Verily, the challenged Section 29 of the new anti-terrorism law is patently unconstitutional on its very face. Perforce, it has to be jettisoned as rubbish.

E. IN LIEU OF THE SAFEGUARDS PROVIDED FOR IN THE REPEALED "HUMAN SECURITY ACT OF 2007" WHICH HAD BEEN ABANDONED, THE "ANTI-TERRORISM ACT OF 2020" PROVIDES FOR MERE MOTHERHOOD SAFEGUARDS WHICH ARE ORPHANED BY REPRESSIVE PROVISIONS CAPPED BY A KILLER PROVISO.

132. The abandonment by the "Anti-Terrorism Act of 2020" of the safeguards protective of civil liberties and fundamental freedoms

provided for under the repealed "Human Security Act of 2007" has been abundantly stressed in the foregoing discussions.

133. Despite the utter deletion of said safeguards, the proponents of the new anti-terrorism law maintain that adequate safeguards on human rights and basic freedoms are still provided for in the challenged law.

134. However, the so-called "safeguards" provided for in the "Anti-Terrorism Act of 2020" are mere motherhood declarations vainly echoing already recognized constitutional rights, statutory guarantees, and jurisprudential pronouncements.

135. These motherhood safeguards which are orphaned or eroded by repressive provisions in the challenged law consist of the following:

(a) "In the implementation of the policy (Declaration of Policy) stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution." (Section 2 of the "Anti-Terrorism Act of 2020").

This is a pretended safeguard because even without such declaration, the Constitution on "basic rights and fundamental liberties" shall always prevail.

(b) "Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times." (Section 2 of the "Anti-Terrorism Act of 2020").

Although this declaration is not necessary because the Constitution already provides for the same, this engenders a sneaking suspicion that this is being made because there is a hidden agenda to derogate human rights as confirmed in the regressive provisions of the new anti-terror law.

(c) "[S]urveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized." (Section 16 of the "Anti-Terrorism Act of 2020").

Similarly, this is a restatement of what is already provided for under Section 24 of Rule 130 of the Rules of Court on privileged communication and pertinent jurisprudence.

(d) "Any listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words, or any part or parts thereof, or any information or fact contained therein, including their existence, content, substance, purport, effect, or meaning which have been secured in violation of the pertinent provisions of this Act shall be inadmissible and cannot be used as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding or hearing." (Section 23 of the "Anti-Terrorism Act of 2020").

Again, this is a mere restatement of Section 3 (2) of Article III on the Bill of Rights which provides that "Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." It also parrots prevailing jurisprudence on inadmissibility of illegally procured evidence which states that "evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of the poisoned tree." (***People v. Bronola***, G.R. No. 213225, April 4, 2018).

(e) "Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge." (Section 29 of the "Anti-Terrorism Act of 2020").

This requirement of notice is a superficial safeguard because what the Constitution and jurisprudence require is that the apprehended suspect should be first brought personally to the proper judicial authority in order for the judge to determine probable cause of such apprehension.

(f) "Rights of a Person Under Custodial Detention" provided for in Section 30 of the "Anti-Terrorism Act of 2020" are mere repetition of the rights of a detained person as recognized in various statutes and jurisprudential rulings.

(g) "The use of torture and other cruel, inhuman or degrading treatment or punishment, as defined in Sections 4 and 5 of Republic Act No. 9745 otherwise known as the 'Anti-Torture Act of 2009', at any time during the investigation or interrogation of a detained suspected terrorist is absolutely prohibited…" (Section 33 of the "Anti-Terrorism Act of 2020").

Again, this is a pseudo safeguard because this is already covered, as admitted in the provision, by the "Anti-Torture Act of 2009". More importantly, Section 19 (2) of Article III on the Bill of Rights provides "No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him (person under investigation)."

(h) "The program (legal affairs program of the ATC) shall ensure respect for human rights and adherence to the rule of law as the fundamental bases of the fight against terrorism." (Section 45 of the "Anti-Terrorism Act of 2020")

Likewise, this is a cosmetic safeguard because under the new anti-terrorism law the war against terrorism is made ascendant over human rights and the rule of law.

(i) "[T]errorism as defined in this Section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, **which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety**." [Emphasis supplied]. (Section 4 of the "Anti-Terrorism Act of 2020").

This is an inordinately superficial and artificial recognition of the people's exercise of civil and political rights because what has been supposedly acknowledged and protected is decimated by a killer proviso which reads "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety". All that a devious and underhanded law enforcer or prosecutor has to do is to conveniently invoke the killer proviso to stifle political dissent and peaceable assembly for redress of grievances.

136. This killer proviso is the malevolent torpedo that destroys all of the so-called safeguards provided for in the "Anti-Terrorism Act of 2020".

137. Even before the "Anti-Terrorism Act of 2020" was signed into law, police officers have already shown their dangerous predisposition to crush freedom of speech by (a) rounding up and detaining students who were protesting inside the University of the Philippines (UP) Cebu campus against the passage of the anti-terrorism bill; and (b) dispersing and apprehending members of the LGBT community who were demonstrating near Malacañang against the then-proposed "Anti-Terrorism Act of 2020". Many were detained for days before they were released.

138. These ominously portend of the police harassment and illegal arrests of legitimate dissenters once the new anti-terrorism law is implemented.

139. **The genuine safeguards were those abandoned as enshrined in the erstwhile "Human Security Act of 2007", like the following**:

(a) Inclusion of political or ideological motive as an indispensable element of the crime of terrorism to distinguish it from common crimes of violence;

(b) Non-criminalization of "threat", "proposal", and "inciting" to commit terrorism to preclude abridgement of the freedom of speech;

(c) Maximum of only three (3) days detention without a judicial warrant of arrest;

(d) Before detaining a suspected terrorist, it is mandated that he must be personally presented to a judge who shall determine why he has been arrested and observe whether he has been tortured;

(e) Arrest of suspected terrorist must be based on prior surveillance and/or examination of bank accounts;

(f) Requirement of prior judicial authorization for the investigation and search of bank deposits and records as well as the freezing of property or funds of a suspected terrorist;

(g) Right of a suspected terrorist to be informed about the ongoing surveillance against him and the wiretapping of his communication, and the investigation of his bank accounts and deposits to afford him the opportunity to challenge and controvert the actions of the law enforcers and AMLC;

(h) The surveillance and wiretapping can only be made if there is no other effective means of securing the needed evidence; and

(i) There is adequate penal sanction for securing maliciously an order authorizing wiretapping based on ex-parte application.

XI.
FINAL STATEMENT

140. Considering that the "Anti-Terrorism Act of 2020" is replete with unconstitutional provisions, it must be jettisoned in its entirety. Moreover, it was crafted in imprecise and vague language so much so that there is no certitude as to what acts the law actually proscribes, thus leaving citizens perplexed on what to avoid doing, even as its vagueness is conducive to conflicting interpretations and arbitrary enforcement.

141. Some authors of the infirm law have belatedly undertaken that any deficiency or excess in the "Anti-Terrorism Act of 2020" can be rectified by the Implementing Rules and Regulations (IRR). This cannot be done because the IRR cannot modify, amend and/or repeal any provision of the concerned statute (***Lokin v. COMELEC***, G.R. No. 179431 – 32, June 22, 2010; ***Purisima v. Lazatin***, G.R, No. 210558, November 29, 2016; ***CIR v. Philippine-Aluminum Wheels, Inc.***, G.R. No. 216161, August 9, 2017).

It is also contended that other countries have harsher laws. This is of no moment since our laws must be made and measured in accordance with the standards and prescriptions of the Constitution and consistent with our enviable heritage of democratic institutions.

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

142. Petitioner repleads the foregoing allegations insofar as they are relevant to support the prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

143. Injunction is a preservative remedy for the protection of one's substantive rights or interest (***Land Bank of the Philippines v. Listana, Sr.***, 408 SCRA 328). Injunction is designed to preserve or maintain the status quo and is generally availed of to prevent actual or threatened acts until the merits of the case can be heard. [***Toyota Motor Philippines Corporation Worker's Association (TMPCWA) v. Court of Appeals***, 412 SCRA 69].

144. The subject acts complained of if not restrained before the matter can be heard on notice pending litigation will result in grave injustice and irreparable damage to the petitioner and the citizens of the Republic of the Philippines whom he represents.

145. The firm resolve of the respondents, whether singly or collectively, to proceed with the enforcement of the "Anti-Terror Act of 2020", will be consummated if not restrained immediately, and will thus render the instant petition moot and academic.

146. The collective right of the petitioner and the Filipino citizens would be derogated with the implementation of the challenged Anti-Terror Act of 2020" wherein public funds would be misused, unless the respondents are restrained by the Honorable Supreme Court through the issuance of the prayed for temporary restraining order or writ of preliminary injunction.

147. Finally, petitioner is willing to post a bond, in an amount to be fixed by the Honorable Supreme Court, to answer for any damage which the respondents may suffer as a consequence of the issuance of injunctive relief.

PRAYER

ACCORDINGLY, it is respectfully prayed that the Honorable Supreme Court:

1. ISSUES a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, upon filing of the instant petition or soonest thereafter, restraining the respondents from enforcing the controverted "Anti-Terror Act of 2020";

2. RENDERS a Decision after due proceedings nullifying as unconstitutional the "Anti-Terror Act of 2020" for being replete with constitutional infirmities; and

3. ISSUES a Writ of Prohibition directed to the respondents Executive Secretary Salvador C. Medialdea, Anti-Terrorism Council (ATC) and Anti-Money Laundering Council (AMLC) and all public functionaries acting on their behalf, permanently prohibiting them from enforcing the "Anti-Terror Act of 2020".

Petitioner prays for other just and equitable reliefs.

Quezon City for Manila
03 July 2020

EDCEL C. LAGMAN
Petitioner

VERIFICATION AND CERTIFICATION ON NON-FORUM SHOPPING

I, Rep. Edcel C. Lagman, of legal age, Filipino citizen, and with official address at Room N-411, House of Representatives, Batasan Complex, Quezon City, after having been duly sworn in accordance with law, depose and state that:

1. I am the Petitioner in the foregoing Petition for Certiorari and Prohibition;

2. I have personally prepared the foregoing Petition; I have read the subject pleading and I understand the import of the same; and the allegations therein are true and correct of my personal knowledge as well as based on authentic records and/or documents;

3. I hereby certify that (a) I have not heretofore commenced any action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof or any other tribunal or agency, (b) to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof or any other tribunal or agency; (c) if there is such other actions or proceedings pending, I shall state the status of the same; and (d) if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof or any other tribunal or agency, I undertake to promptly inform the Honorable Supreme Court of that fact within five (5) days from such notice or knowledge.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 3rd day of July 2020 in Quezon City, Metro Manila.

EDCEL C. LAGMAN
Affiant-Petitioner
Senior Citizen ID No. 84506
Issued at Quezon City
Issued on 09 July 2007

SUBSCRIBED AND SWORN to before me, a Notary Public for Quezon City, this 3rd day of July 2020, affiant-petitioner

exhibiting to me his Senior Citizen ID No. 84506 issued at Quezon City on 09 July 2007 and he swore to the truth of the foregoing "Verification and Certification on Non-Forum Shopping".

WITNESS MY HAND AND SEAL at the place and date above-written.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2020