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G.R. No. 252578 (Atty. Howard M. Calleja, et al. v. Executive Secretary, et al.); **G.R. No. 252579** (Representative Edcel C. Lagman v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252580** (Melencio S. Sta. Maria, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252585** (Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, et al. v. President Rodrigo Duterte, et al.); **G.R. No. 252613** (Rudolf Philip B. Jurado v. The Anti-Terrorism Council, et al.); **G.R. No. 252623** (Center Trade Union And Human Rights [CTUHR], et al. v. Hon. Rodrigo R. Duterte, et al.); **G.R. No. 252624** (Christian S. Monsod, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252646** (SANLAKAS, Represented By Marie Marguerite M. Lopez v. Rodrigo R. Duterte, as President and Commander-in-Chief of All The Armed Forces, et al.); **G.R. No. 252702** (Federation of Free Workers [FFW-NAGKAISA] Herein Represented by Its National President Atty. Jose Sonny Matula, et al. v. Office of the President of the Republic of the Philippines, et al.); **G.R. No. 252726** (Jose J. Ferrer, Jr. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252733** (Bagong Alyansang Makabayan (BAYAN) Secretary General Renato Reyes, Jr., et al. v. Rodrigo R. Duterte, et al.); **G.R. No. 252736** (Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.); **G.R. No. 252741** (Ma. Ceres P. Doyo, et al. v. Salvador Medialdea, in His Capacity as Executive Secretary, et al.); **G.R. No. 252747** (National Union of Journalists of the Philippines, et al. v. Anti-Terorrism Council, et al.); **G.R. No. 252755** (Kabataang Tagapangtanggol ng Karapatan, Represented by Its National Convener, Bryan Ezra C. Gonzales, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252759** (Algamar A. Latiph, et al. v. Senate, et al.); **G.R. No. 252765** (The Alternative Law Groups, Inc. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252767** (Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al.); **G.R. No. 252768** (General Assembly of Women for Reforms, Integrity, Equality, Leadership and Action [GABRIELA], Inc., et al. v. President Rodrigo Roa Duterte, et al.); **G.R. No. 252802** (Henry Abendan of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, in His Capacity as Executive Secretary and Chairperson of the Anti-Terrorism Council, et al.); **G.R. No. 252809** (Concerned Online Citizens Represented and Joined by Mark L. Averilla, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252903** (Concerned Lawyers For Civil Liberties [CLCL] Members Rene A.V. Saguisag, et al. v. President Rodrigo Roa Duterte, et al.); **G.R. No. 252904** (Beverly Longid, et al. v. Anti-Terrorism Council, et al.); **G.R. No. 252905** (Center for International Law [CENTERLAW], Inc., et al. v. Senate of the Philippines, et al.); **G.R. No. 252916** (Main T. Mohammad, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252921** (Brgy. Maglaking, San Carlos City, Pangasinan Sangguniang Kabataan [SK] Chairperson Lemuel Gio Fernandez Cayabyab, et al. v. Rodrigo R. Duterte, et al.); **G.R. No. 252984** (Association of Major Religious Superiors, Represented by Its Co-Chairpersons, Fr. Cielito R. Almazan OFM and Sr.

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Marilyn A. Java RC, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 253018** (University of the Philippines [UP]-System Faculty Regent Dr. Ramon Guillermo, et al. v. Rodrigo Roa Duterte, et al.); **G.R. No. 253100** (Philippine Bar Association, Inc. v. The Executive Secretary, et al.); **G.R. No. 253118** (Balay Rehabilitation Center, Inc., et al. v. Rodrigo Roa Duterte, in His Capacity as President of the Republic of the Philippines, et al.); **G.R. No. 253124** (Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.); **G.R. No. 253242** (Coordinating Council for People's Development and Governance, Inc. [CPDG], Represented by Vice-President Rochelle M. Porras, et al. v. Rodrigo R. Duterte, President and Chief Executive, and Commander-in-Chief of the Armed Forces of the Philippines, et al); **G.R. No. 253252** (Philippine Misereor Partnership, Inc., Represented by Yolanda R. Esguerra, et al. v. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 253254** (Pagkakaisa Ng Kababaihan Para Sa Kalayaan [Kaisa Ka] et al. v. Anti-Terrorism Council, et al.); **G.R. No. 253420** (Haroun Alrashid Alonto Lucman, Jr., et al. v. Salvador C. Medialdea in His Capacity as Executive Secretary, et al.); **G.R. No. 254191** [Formerly Udk 16714] (Anak Mindanao [AMIN] Party-List Representative Amihilda Sangcopan, et al. v. Executive Secretary Hon. Salvador C. Medialdea, et al.); **UDK 16663** (Lawrence A. Yerbo v. Offices of the Honorable Senate President, et al.);

Promulgated:

December 7, 2021

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SEPARATE OPINION

LAZARO-JAVIER, *J.*:

The Anti-Terrorism Act of 2020 is a law of noble intentions at such a bad timing. For starters, we have the **pandemic** to deal with. Along with this crisis came **want**. In terms of the economy, we are **wanting in resources**. The pandemic has forced many businesses to fold shop. For good measure, the government has kept its firm hands on the saddle. As a polity, we **want to secure a steady grasp of our future**. After all, we are in the midst of choosing our next leaders. We **want** a **safe environment** for ourselves and our children and the generations after them. At the same time, we **want** the **freedom** and the **right** to **express** ourselves and **be the best** that we and our children would ever become.

The **peace and order sector** is doing its best to help build safe and secure communities, and in the middle of this pandemic, is **often asked to do more** than what its duties call it to accomplish. They attend to satisfying the **want** for **safe** and **peaceful** communities while respecting the **want** for full human rights. At times **they succeed** but at times they do not. They have programs that fail as much as programs that our people have **unanimously**

lauded. In other words, these are **perilous times** that have been made much **more dangerous** and **anxious** because of the invisible virus that has ruined already two (2) years of our existence.

This is the context that drives both the support for and opposition to ***The Anti-Terrorism Act of 2020***. There is something immeasurably wrong in the world, and this statute has been laid down to try to fix it. But in presenting itself to be the solution, it has become a source of problem and confusion. This Court is caught in the middle of this swirling vortex. While politics cannot dictate its decision, one way or another, since law as an independent scholarship has its own driving force, I cannot be all that blind to the circumstances that surround how we should make sense of the provisions of the statute.

I am happy to note and fully concur in the careful balancing of the contending forces which the scholarly *ponencia* of Associate Justice Rosmari D. Carandang has achieved. Her insightful analysis and extensive references provided an accurate summary and easy-to-understand discussion of the varied and complex issues raised in the thirty-seven (37) petitions and the government's responses thereto. My inputs, therefore, will only modestly supplement the *ponencia*'s analysis arising from its conceptual framework that I also wholeheartedly endorse.

ONE. Section 4 of ***The Anti-Terrorism Act of 2020*** defines the crime of ***Terrorism*** as follows –

> SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside thePhilippines, 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 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, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code:" ***Provided***, That, terrorism 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.

The *ponencia* correctly ruled that Section 4 identifies the ***actus reus*** and ***mens rea*** of ***Terrorism***.

A. Actus Reus

The ***actus reus*** of ***Terrorism*** are the **acts** referred to in Section 4 (a) to (e). There are, however, **three (3) other components** to consider.

First, the **acts** do **not** need to be consummated. This is because Section 4 contemplates acts ***regardless of the stage of execution*** – the acts do **not** have to produce the ***stated consequences*** mentioned in Section 4 (a) to (e) nor the ***stated purposes*** in the ***when-the-purpose*** **clause** of Section 4. A mere **attempt** or a **frustration** of any of the **acts** will commit ***Terrorism***. To stress, the **consummation** or **actual occurrence** of the ***stated consequences*** or the ***stated purposes*** are **not part** of the ***actus reus*** of ***Terrorism***. Instead, as will be explained below, these ***consequences*** and ***purposes*** are **elements** of the ***mens rea*** of ***Terrorism***.

Second, we **cannot eliminate** at once **conduct** or **acts** mentioned in Section 4 (a) to (e) from their categorization as **speech**. As **Justice Leonen** explained in ***Diocese of Bacolod v. Commission on Elections***[1] –

> Communication is an essential outcome of protected speech.
>
> Communication exists when "(1) a speaker, seeking to signal others, uses conventional actions because he or she reasonably believes that such actions will be taken by the audience in the manner intended; and (2) the audience so takes the actions." "[I]ncommunicative action[,] the hearer may respond to the claims by . . .either accepting the speech act's claims or opposing them with criticism or requests for justification."
>
> **Speech is not limited to vocal communication.** "**[C]onduct is treated as a form of speech sometimes referred to as 'symbolic speech[,]'**" such that "'when 'speech' and 'nonspeech' elements are combined in the same course of conduct,' the 'communicative element' of the conduct may be 'sufficient to bring into play the [right to freedom of expression].'"
>
> **The right to freedom of expression, thus, applies to the entire**

[1] 751 Phil. 301, 355-356 (2015).

> **continuum of speech from utterances made to conduct enacted,** and **even to inaction itself** as a **symbolic manner of communication.** (Emphases added)

But while **conduct** or **acts** mentioned in Section 4 (a) to (e) may be categorized as **speech,** Section 4 has already classified each of them as **unprotected speech**. Then Chief Justice Puno expounded in his *Dissent* in ***Soriano v. Laguardia***[2] that the free speech clause is based on the idea that any **harm** that speech may cause can be avoided or addressed by **more speech** since truth will emerge from the "free trade of ideas." **Unprotected speech,** on the other hand, is **harmful,** and because such harm is simply **not curable** by **more speech,** it is thus **not protected** by the right to free speech.[3]

The **conduct** or **acts** mentioned in Section 4 (a) to (e) are categories of speech determined **wholesale** and **in advance** to be **harmful.**[4] They have minimal or no value.[5] According to **Associate Justice Presbitero J. Velasco, Jr.** in his *ponencia* in ***Soriano v. Laguardia***, the **regulation** of **unprotected** speech does **not** require the application of the *clear and present danger test* or *other balancing tests* that weigh competing values or interests, as they are deemed to fall under established categories[6] – here, the category of **fighting words.**

Then **Chief Justice Puno** described this **category** of **unprotected speech** –

> **"[F]ighting words"...** are **"words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace."** In *Chaplinsky v. New Hampshire*, the U.S. Supreme Court held that **a state may forbid the use in a public place of words** that ***would be likely to cause an addressee to fight.*** Accordingly, it found that Chaplinsky's calling the city marshall a "damned fascist" and "damned racketeer" qualified as "fighting words." It is **not sufficient, however, for the speech to stir anger or invite dispute, as these are precisely among the functions of free speech.** In the case at bar, as public respondent has not shown that **the subject speech caused or would be likely to cause** private respondent Sandoval **to fight** petitioner, the speech cannot be characterized as "fighting words."[7] (Emphases added)

"Likely to cause immediately" is the **necessary quality** of the **conduct** or **act** in Section 4 (a) to (e) to **qualify** as **punishable *fighting words.*** Thus, **not every act** under Section 4 (a) to (e) will be deemed **fighting words** to merit **punishment** with having to pass through the tests for regulating speech and **symbolic speech.**

To repeat, the **consummation** or **actual occurrence** of the ***desired***

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[2] 605 Phil. 43, 96 (2009).
[3] Chief Justice Puno, Dissent, *Soriano v. Laguardia*, supra at 148.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Dissent, *Soriano v. Laguardia*, supra 150.

consequences or the ***desired purposes*** is **not** required to be able to say that the ***actus reus*** of ***Terrorism*** has been proved. And, we also do **not** have to **read-in** the ***clear-and-present danger test*** into the definition of the ***actus reus*** of ***Terrorism*** in Section 4 (a) to (e) because Section 4 has categorized each of these conducts or acts beforehand as **unprotected speech** as **fighting words**.

It is **essential, nonetheless,** that the **conduct** or **acts** mentioned in Section 4 (a) to (e) ***must likely cause immediately*** the ***desired consequences*** in Section 4 (a) to (c) or the ***desired purposes*** under Section 4's ***when-the-purpose*** **clause**. This is **because** speech including **symbolic speech** becomes **fighting words** only when the speech is ***likely to cause*** an ***immediate*** **breach of the peace.**

Stated differently, **not every** conduct or act mentioned in Section 4 (a) to (e) would constitute the ***actus reus*** of ***Terrorism***, even if the necessary ***mens rea*** is present, or even if Section 4 penalizes the conduct or acts **regardless of the stage of execution**. To constitute the ***actus reus*** of ***Terrorism***, the **conduct** or **acts** in Section 4 (a) to (e) should be **of such gravity** as to **likely cause immediately** the ***desired consequences*** or the ***desired purposes*** under Section 4.

Third, by virtue of the **exempting proviso** under Section 4, the ***actus reus*** must **not**, directly or indirectly, **relate** to *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*. So long as the **animating factor** or **purpose** surrounding the speech and symbolic speech is the *advocacy, protest, dissent, etc.*, it **ought to be understood** by the criminal justice sectors that these activities are **covered** by the **protective mantle** of the **proviso.**

But what is *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*?

As ordinarily understood, *advocacy* refers to the act or process of supporting a cause or proposal. On the other hand, *protest* is something said or done that shows disagreement with or disapproval of something. **Not every speech**, verbal or conduct though would fall under and qualify for the **protective mantle** of the **proviso. Not just because** one group *advocates* for or *protests* against something will their speech be constitutionally **immune from prosecution.**

The **general rule** is where *advocacy, protest, etc.* are an integral part of **unlawful conduct**, they have ***no*** constitutional protection.[8] The **protective ambit** of the **proviso** is **built** on the **right of free speech** which **contemplates** only an *advocacy, protest, etc.* using **legal** and **constitutional means** to **bring about changes in governments.**[9] The **right to free speech** is **lost** when it is

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[8] *McNally v. Bredemann*, 2015 IL App (1st) 134048, 391 Ill. Dec. 287, 30 N.E.3d 557 (App. Ct. 1st Dist. 2015).

[9] *People v. Gitlow*, 234 N.Y. 132, 136 N.E. 317 (1922), aff'd, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138

abused by **using** or **urging** the **use** of **illegal** or **unconstitutional methods.**[10]

An **important** and **pervasive gloss** over this **general rule** is the **doctrine** that *advocating* the **use of force, law violation,** or **breach of the peace** *per se* is **not** forbidden or proscribed.[11] **Rather,** this *advocacy or protest* **confers no protection ONLY** where it is **purposely directed towards** inciting or producing **imminent lawless action** *and* is **likely to incite or produce** such action.[12]

Thus, **unprotected** advocacy or protest **requires** the **concurrence** of these **elements**: (1) the speech "**explicitly** or **implicitly encouraged** ... lawless action,"[13] (2) "the speaker **intends** that the speech will result in ... lawless action," and (3) "the imminent use of ... lawless action is the **likely result** of [the] speech."[14] By **lawless action**, we mean bodily injury or death, destruction of property, and other forms of violence such as discrimination, rape, sexual abuse, emotional and psychological abuse, pillage, arson, and the like.

In determining whether the **elements** of **unprotected** advocacy or protest exist, we must also account for such **factors** as the **nature of the speech** (whether *persuasive* or *coercive*), the **nature of the wrong** advocated or induced (whether *violent* or merely *offensive to the morals*, whether patently *criminal* or merely an *advocacy of law violation*, *i.e.*, not to pay taxes, block traffic flow, etc.), and the **degree of probability** that the substantive evil **actually** will result (the standard is one of *probability* or *likelihood of occurrence*).[15]

When the subject conduct or acts take place in the context of an *advocacy, protest, etc.*, the **burden** is upon the government to prove that the conduct or acts are **unprotected** by the right to free speech.[16]

B. Mens Rea

The *ponencia* also correctly held that Section 4 identifies the requisite ***mens rea*** of ***Terrorism***. To clarify, Section 4 requires **two (2) stages** of ***mens rea***.

(1925) and (overruled in part on other grounds by, *People v. Epton*, 19 N.Y.2d 496, 281 N.Y.S.2d 9, 227 N.E.2d 829 (1967)).

[10] *Musser v. Utah*, 333 U.S. 95, 68 S. Ct. 397, 92 L. Ed. 562 (1948).

[11] *Salonga v. Paño*, 219 Phil. 402, 426 (1985); *U.S. v. Fleschner*, 98 F.3d 155 (4th Cir. 1996).

[12] *Salonga v. Paño*; supra; *Colten v. Kentucky*, 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972).

[13] *Higgins v. Kentucky Sports Radio*, LLC, 951 F.3d 728, 736–37 (6th Cir. 2020): "Speech that does not **'specifically advocate' for listeners to take unlawful action** does not constitute incitement. Id. at 245. Even if communications have the 'tendency ... to encourage unlawful acts,' and even if the speaker intended the communications *737 to have that effect, those facts do not furnish a 'sufficient reason for banning' the communications, absent **direct advocacy**. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). Higgins has not identified any statement made by the defendants, explicitly or implicitly, that fans should attack his business.

[14] *Higgins v. Kentucky Sports Radio*, LLC, 951 F.3d 728, 736 (6th Cir. 2020).

[15] *Shuttlesworth v. City of Birmingham, Ala.*, 373 U.S. 262, 83 S. Ct. 1130, 10 L. Ed. 2d 335 (1963).

[16] *Nicolas-Lewis v. Commission on Elections*, G.R. No. 223705, August 14, 2019.

Each of Section 4 (a) to (c) has its own **explicit *mens rea*** element. Section 4 (a) **requires** the actor's **intent** to cause death or serious bodily injury to any person, or to endanger a person's life. Section 4 (b) refers to the **intent** to cause extensive damage or destruction to a government or public facility, public place or private property. Under Section 4 (c), the **intent** is to cause extensive interference with, damage, or destruction to critical infrastructure.

In contrast, Section 4 (d) and (e) do **not** require such **act-specific intent**. It is **only essential** that the acts mentioned in (d) and (e) are done **voluntarily**.

The **next stage** of ***mens rea*** is found in the ***when-the-purpose clause*** of Section 4. This is the **overarching intent** characterizing the mental element of each of the conduct or acts in Section 4 (a) to (e). Notably, as regards ***mens rea*, purpose** is the same as **intent**. The **overarching intent** or purpose is either of the following **intents** or purposes –

a. to intimidate the general public or a segment thereof,
b. to create an atmosphere or spread a message of fear,
c. to provoke or influence by intimidation the government or any international organization,
d. to seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or
e. to create a public emergency or seriously undermine public safety.

C. Summary

In sum, to prove liability for the crime of ***Terrorism***, the prosecution has to prove beyond reasonable doubt that –

I. Actus Reus

- **voluntary commission** of the acts in Section 4 (a) to (e), **regardless** of the *stage of execution* thereof;

- even if the conduct or act was performed only in its attempted or frustrated stage, or when it was consummated, the act is of **such gravity as to *likely cause immediately*** the relevant **consequences** mentioned in Section 4 (a) to (c) and the relevant **purposes** in the ***when-the-purpose*** **clause of Section 4**; and,

- the conduct or act must **not**, directly or indirectly, **relate** to *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*.

where the conduct or act directly or indirectly **relates**

> to *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*, the **government** has the burden to prove that (1) the speech, verbal or conduct, "**explicitly** or **implicitly encouraged** ... lawless action," (2) the actor or speaker "**intends** that the speech will result in ... lawless action," and (3) "the imminent use of ... lawless action is the **likely result** of the speech."

II. Mens Rea

- the conduct or act was **done with the mental element** specified in Section 4 (a) to (c) *and* the ***when-the-purpose* clause** of Section 4.

TWO. I agree with the ruling on the **proviso** of Section 4, **retaining** its **main clause** but **excising** its **subordinate clause**, illustrated visually as follows:

> ***Provided***, That, terrorism 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~~.

The *ponencia* is correct that the **subordinate clause** makes every actor in any *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights* on the **defensive;** that it **effectively chills** the actor's exercise of their[17] right to free speech and its cognate rights. **Reading-out** this **subordinate clause** for **unconstitutionality** is therefore the **proper remedy** for this infirmity.

Further to the remedy granted by the *ponencia*, there are **four (4) more components** of this **exempting circumstance** of *advocacy, protest, etc.* that I wish to stress.

First, *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights* are **not a one-day** or **one-night** or **one-off affair** that end **when the day of culmination closes**.

For instance, the **activities on the President's State of the Nation Address** (SONA), every third Monday of July each year, do **not** begin and terminate only on SONA. **Planning** takes weeks even months before the SONA, and the **post SONA impact activities,** and **assessment** also takes weeks or months after. Typically, **preparatory** activities include *organizing*,

[17] I use "their" to indicate gender sensitivity, neutrality, and non-affiliation.

teach-ins and *discussion groups*, *coordination for mass transportation*, *preparation* and *circulation* of *propaganda/agitation materials* including *press statements*, *banners* and *effigies*, *mobilization*, *camping*, *more teach-ins* and *discussion groups*, and *mobilization to rally sites* and *back*. After December 10, we will both hear and witness **some more speech** and **symbolic speech** from these groups to keep the ante and its message alive. Given the **democratic space** that our *Constitution* has promised, the *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights* in relation to the SONA has become a **ritual** that we, from circles outside the activists' groups, have watched and listened to, reveled at, ruminated on, and perhaps snarled at due to the traffic slow-down or stand-still on Commonwealth Avenue and its arterial roads.

My point is precisely that the **protective** or **exempting circumstance** of the **proviso** should **NOT** be *restricted to the activities of the day* of the advocacy or protest **but must extend as well** to those of the days **prior** and **after**. So long as the **activities** are **connected** to the *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights,* whether **directly** or **indirectly**, *and* so long as the **animating factor** or **purpose** of the surrounding speech and symbolic speech is **still** the *advocacy, protest, etc.*, it **ought to be understood** by the criminal justice sectors that these activities are **covered** by the **protective mantle** of the **proviso**.

Second, it bears emphasis that the **proviso exempts** only from a criminal charge of ***Terrorism*** and other criminal provisions where the ***gravamen*** is fundamentally ***Terrorism***. Obvious examples of these would of course be the other criminal provisions of ***The Anti-Terrorism Act of 2020*** and Sections 4 to 9 of ***The Terrorism Financing Prevention and Suppression Act of 2012***.

Just as often is the case, protesters and rally leaders and participants are criminally charged with violation of the Public Assembly Act of 1985 or Direct Assault. The **proviso** does **not** relate to these offenses. The **proviso** does **not exempt** them from criminal liabilities, if any, for these offenses. Advocates, rally organizers and attendees, protesters, and strikers are **bound to answer** for the offenses they commit under **OTHER** criminal statutes, **if any**, in the *course of their advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*. The hope of course is that law enforcers, prosecutors, and protesters and advocates alike would come to a **reasonable modus vivendi** so that **none** of these *public–assembly and petition-to-redress-grievances matters* would **reach the courts** and further use up judicial resources. These matters happen year-in and year-out. Maximum tolerance and reasonable expectations of conduct could be mapped out well in advance.

I further stress that the **efficacy** of the **proviso** as an **exempting circumstance** should **not** be made dependent on the **formal legality,** or more

precisely, the **compliance** of the *advocacy, protest, etc.* with *content-neutral regulations* such as the ***Public Assembly Act of 1985*** and its implementing rules. I believe that this is a **reasonable inference** from the **proviso**'s **exempting** effect from the otherwise **substantive** coverage of Section 4 and the other criminal provisions of ***The Anti-Terrorism Act of 2020*** and other criminal provisions in other statutes on ***Terrorism***. If the **proviso** is **effective** against a criminal charge of ***Terrorism*** and related criminal statutes, there is **no reason** to **bar** the **efficacy** of this **proviso** solely because rules on time and place of rallies or protests, which are of *lesser impact* and *magnitude*, have not been complied with.

Third, may I refer again to Section 4 (c) –

> SECTION 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:
>
> ...
>
> (c) Engages in acts intended to cause **extensive interference with**, damage or destruction to **critical infrastructure**....(Emphases added)

My concern has to do with the **criminalization** of ***extensive interference with... critical infrastructure***. Of the five (5) classes of ***Terrorism***, this category would have to be the **most intimately connected** with the **exempting proviso** in Section 4. This is **because** the point and impact of every *advocacy, protest, etc.* is **precisely** to **interfere extensively** to the widest scope and greatest extent possible with the State's **critical infrastructure** ***AT ISSUE***.

Consistent with the *ponencia* of Justice Carandang, I think Section 4 (c) must be applied with utmost care so as **not** to become **overbroad**. This is to say that Section 4 (c) should be **read down** as **not covering acts** or conduct that **relate**, directly or indirectly, to the **proviso** on *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*.

Notably, **critical infrastructure** is defined in Section 2 of ***The Anti-Terrorism Act of 2020*** as follows –

> (a) Critical Infrastructure shall refer to an asset or system, whether physical or virtual, so essential to the maintenance of vital societal functions or to the delivery of essential public services that the **incapacity** or destruction of such systems and assets **would have a debilitating impact** on national defense and security, **national economy**, public health or safety, the administration of justice, and other functions analogous thereto. It may include, but is not limited to, **an asset or system affecting telecommunications, water and energy supply**, emergency services, **food security, fuel supply, banking and finance, transportation, radio and television**, information systems and technology, chemical and nuclear sectors....(Emphases added)

Critical infrastructure provides the many battle points for advocates,

protesters, dissenters, and every mass action known to human kind. For example, **mining** is a controversial industry. It impacts on a wide variety of rights and interests. Stopping its operations would have a huge, if not debilitating impact on the economy. **Yet** doing so also protects the rights of sundry others. But doing so would potentially **extensively interfere** with a **critical infrastructure.** In this instance, the criminal justice sector would be well-advised to study carefully the **proviso** when considering a prosecution under Section 4 (c) so as not to infringe but to protect mightily the right to free speech and its cognate rights.

To further illustrate, when Georgie Man San Mateo, a fictional Chairperson of the transport group PISTON, calls on the people to protest on May 4, 2022, or just days before the May 9, 2022 elections, specifically, to denounce

> (i) the weekly oil price and spare parts hike; (ii) the government's program to phase-out and declare illegal the use of traditional jeepneys as public transport; (iii) the use of alleged trolls in telecommunications to bash and intimidate government critics; (iv) the non-renewal of ABS-CBN's franchise; (v) the red-tagging of every known critic of the government; (vi) the rising food and medicine prices, the non-availability of some critical food items such as rice, fish and meat, the importation of essential food stuff to the prejudice of local producers, the rising prices of water and energy borne by the end-consumers, and the incursion of Chinese militias into Philippine territories,

and his calls resulted in traffic gridlocks, massive immobilization, lack of fuel supply nationwide, massive protests affecting banking and finance, with potential debilitating impact on the national economy, Mr. San Mateo **cannot be charged with** and **convicted** of ***Terrorism*** under Section 4 (c). His acts are not and cannot be ***Terrorism*** by authority of the **proviso.**

Fourth, this is where we relate Section 4 (c) with Section 9 on ***Inciting to Terrorism.***[18] In the same fictional example, Mr. San Mateo **cannot be held liable** for ***Inciting to Terrorism*** because he **cannot be said** to have incited others to the execution of any of the **PUNISHABLE acts** specified in Section 4. There are **no punishable acts** since the **proviso exempts** *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights* from the **definition** of ***Terrorism*** and therefore the **punishment** arising from such criminalization.

This conclusion is **consistent with** the thesis that the **proviso exempts** not only from a criminal charge of ***Terrorism*** but also from other criminal provisions where the ***gravamen*** is fundamentally ***Terrorism.***

I cannot stress enough that a speaker by verbal or symbolic speech

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[18] SECTION 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.

cannot be held liable for ***Inciting to Commit Terrorism*** *unless* another or others have **first executed** any of the ***actus reus*** with ***mens rea*** of ***Terrorism*** under Section 4.[19] Since the whole gamut of speech relating to *advocacy, protest, etc.* **cannot** give rise to ***Terrorism***, there is **no way** that this **protected speech** would result in ***Inciting to Commit Terrorism***.

This **notwithstanding** the **quality** or **gravity** of the speech in question as being *provocative* or *inductive of a condition of unrest* or *likely to agitate people to be dissatisfied with government, to inflict injury* or *to incite an immediate breach of the peace*. As the *ponencia* bravely elucidated –

> In this regard, the Court wishes to convey, as a final point on Section 4, that terrorism is not ordinarily the goal of protests and dissents. **Such exercises of the freedom of speech are protected, even if they might induce a condition of unrest or stir people to anger.** Incitement aside, **intimidating the government or causing public unrest is not unlawful *per se* if the means taken to cause such intimidation or unrest is through speech, discourse, or "expressive conduct[."]** The foundation of democracy, by design, is a populace that is permitted to influence or intimidate its government with words, even those that induce anger or create dissatisfaction. (Emphases added)

In this light, the **balancing test** found in Rule 4.920 of the

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[19] I use "their" to indicate gender sensitivity, neutrality and non-affiliation.

[20] RULE 4.9. Inciting to Commit Terrorism. – It shall be unlawful for any person who, without taking any direct part in the commission of terrorism, shall incite others to commit the execution of any of the acts specified as terrorism as defined in Section 4 of the Act.

There is incitement to commit terrorism as defined in Section 4 of the Act when a person who does not takeany direct part in the commission of terrorism incites others to the commission of the same in whatever form by means of:

i. speeches;
ii. proclamations;
iii. writings;
iv. emblems;
v. banners; or
vi. other representations.

and the incitement is done under circumstances that show reasonable probability of success in inciting the commission of terrorism.

In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners, or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:

a. Context
   Analysis of the context should place the speeches, proclamations, writings, emblems, banners, or other representations within the social and political context prevalent at the time the same was made and/or disseminated;
b. Speaker/actor
   The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;
c. Intent
   What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;
d. Content and form
   Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;
e. Extent of the speech or act
   This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience; and
f. Causation
   Direct causation between the speech or act and the incitement.

Implementing Rules and Regulations of ***The Anti-Terrorism Act of 2020*** for the prosecution of incitement under Section 9 **does not apply** to acts relating to the panoply of speech relating to *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*. Again, this is because these acts are not ***Terrorism*** by virtue of the **proviso**.

Rather, the **balancing test** would be **relevant** only when the speaker's verbal or symbolic speech is classified as **unprotected speech**, specifically, ***plainly*** and ***simply*** **fighting words** as it is **not** related to *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights* **AND** is **likely to cause injury** or **breach of the peace** ***immediately***. It is of course the **government's burden** to prove that the *advocacy, protest, etc.* to which the conduct or act ostensibly relates **is not** the *advocacy, protest, etc.* that the **proviso** in Section 4 refers to, that is, they are actually **unprotected speech**.

THREE. I agree with the *ponencia* that Section 12 of ***The Anti-Terrorism Act of 2020*** is **not** unconstitutionally vague or overbroad. Section 12 states:

> SECTION 12. Providing Material Support to Terrorists. – Any **person who provides material support** to any terrorist individual or terrorist organization, association or group of persons **committing any of the acts punishable under Section 4** hereof, **knowing** that such individual or organization, association, or group of persons **is committing or planning to commit such acts**, shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto. (Emphases added)
>
> Section 3 (e) defines "material support" –
>
> (e) **Material Support** shall refer to **any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses,** false documentation or **identification, communications equipment, facilities,** weapons, lethal substances, explosives, **personnel** (one or more individuals who may be or include oneself), and **transportation**...(Emphases added)

There are **two (2)** other **points** that I would wish to reflect on.

First, I think that Section 12 implicates freedom of speech **beyond** the provision of "training, expert advice or assistance." The provision of **service** or **property** including **currency** or **monetary instruments** or **financial securities, safe houses** and **transportation** are **symbolic speech** that **articulate** one's *advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*.[21] As a

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Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

[21] See *e.g.*, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

result, the **provision** thereof **as material support** under Section 12 could very well be the subject of a **facial challenge**.

Second, Section 12 is **relevant** only when the predicate crime of ***Terrorism*** was **in fact committed** or is **being committed** in *whatever stage of execution*, and the **material supporter** *knew* of such fact and **still** gave **material support**. All the **elements** of the crime of ***Terrorism*** must be canvassed and proved to exist before the **provision of material support** can be held to be criminal. Given the **proper construction** of Section 4, including the **proviso** therein which **exempts** acts related to legitimate *advocacy, protest, dissent, etc.*, which should henceforth guide law enforcers in their enforcement of this and other provisions of ***The Anti-Terrorism Act of 2020***, it can hardly be said that Section 12 is vague or overbroad.

FOUR. I concur with the *ponencia* that Section 29[22] **supplements** Article 125 of the Revised Penal Code (RPC) by providing an **exceptional rule** with specific application only in cases where: (1) there is **probable cause** to believe that the crime committed is that which is punished **under Sections 4 to 12** of ***The Anti-Terrorism Act of 2020***; and (2) a **written authorization** from the Anti-Terror Council (ATC) is secured for the purpose. Both requisites must be complied with; otherwise, the arresting officer must observe the periods provided under Article 125, RPC.[23]

To be sure, Article 125 of the RPC is an **evolving law** which *adapts* to the situations surrounding the passage of its amendments. Revisiting its history is therefore *apropos:*

Article 202 of the Old Penal Code mandates the delivery of an arrested person to the judicial authorities within **twenty-four (24) hours** from his or her arrest, *viz.*:

> **ARTICLE 202.** Any public officer, other than a judicial officer, or one not acting under the authority mentioned in article two hundred, who shall arrest a person upon a charge of crime and shall fail to deliver such person to the judicial authorities within twenty-four hours after his arrest, if such arrest be made at the capital of the district, or as soon as possible, according to the distance and means of communication, shall suffer the penalties next higher in degree than those designated in said article two hundred.[24]

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[22] SECTION 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, 5, 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 terrorism or complete the investigation; (2) furtherdetention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.....

[23] Ponencia, p. 184.

[24] The Revised Penal Code.

The **original iteration of Article 125** under Act 3815 required the delivery of the arrested person within **one (1) hour** from his or her delivery. Realizing that the one (1) hour prescribed period caused the deluge of hastily filed complaints, the Congress saw fit to extend the delivery to **six (6) hours. Act 3940** amended Act 3815:

> **ART. 125.** *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall beimposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours.[25]

It was **Republic Act No. (RA) 1083** which initiated the **graduated schedule** of delivery ofarrested persons depending on the gravity of the offense committed:

> **Art. 125.** *Delay in the delivery of detained persons to the proper judicial authorities.* – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: **six hours**, for crimes or offenses punishable by light penalties, or their equivalent; **nine hours**, for crimes or offenses punishable by correctional penalties, or their equivalent; and **eighteen hours**, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.
>
> In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.[26] (Emphases added)

Then **Presidential Decree 1404** extended the period of detentionup to **thirty (30) days** in the interest of **national security**:

> **Art. 125.** *Delay in the delivery of detained persons.* – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties,or their equivalent: Provided, however, That the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as, in the determination of the President, the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Article 134, 136, 138, 139, 141, 142, 143, 144, 146, and 147, and for subversive acts in violation of Republic Act No. 1700, as amended by Presidential Decree No. 885, in whatever form such subversion

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[25] Amendment to Article 125 of Act No. 3815 (Revised Penal Code), Act No. 3940, November 29, 1932.

[26] Amending Article 125 of the Revised Penal Code Re: Delay in Delivery of Detained Persons, Republic Act No. 1083, June 15, 1954.

may take; as well as for the attempt on, or conspiracy against, the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his Cabinet or that of any member of the latter's family; the kidnapping or detention, or, in any manner, the deprivation of the Chief Executive of the Republic of the Philippines, any member of his family, or any member of his Cabinet or members of the latter's family, of their liberty, or the attempt to do so; the crime of arson when committed by a syndicate or for offenses involving economic sabotage also when committed by a syndicate, taking into consideration the gravity of the offenses or acts committed, the number of persons arrested, the damage to the national economy or the degree of the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.

As used herein, Economic Sabotage means any act or activity which undermines, weakens or renders into disrepute the economic system or viability of the country or tends to bring about such effects to include, but not necessarily limited to, the following offenses: trafficking, counterfeiting, blackmarketing or mass movement of local or foreign currency in violation of existing laws and regulations, price manipulation to the prejudice of the public especially in the sale of prime commodities in violation of price control laws, tax evasion, bank swindling and violation of land reform laws and regulations. For purposes of this Decree, Economic Sabotage as herein above defined and Arson as defined and penalized in this Code are considered committed by a syndicate if planned and carried out by a group of at least three persons organized for the purpose of committing such or any other unlawful or illegal transaction, enterprise or scheme.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at anytime with his attorney or counsel, and to be visited by his immediate relatives.[27]

Executive Order (EO) 191[28] reinstated Article 125 *sans* the amendments introduced by PD 1404.

The present iteration of Article 125 was by virtue of **EO 272**:

ART. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person 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 or offenses punishable by correctional penalties, or their equivalent, and **thirty-six (36) hours**, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and

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[27] Amending Article 125 of Revised Penal Code as Amended, Presidential Decree No. 1404, June 9, 1978.
[28] Modifying Executive Order No. 59, dated June 10, 1987.

confer at anytime with his attorney or counsel.[29] (Emphases added)

The above amendments have the following common denominators: the graduated schedule of delivery of arrested persons was enacted taking into consideration the gravity of offense committed, to provide sufficient time for the public prosecutor to study the case, and to do away with unjust and hastily filed complaints for compliance purposes only.

Verily, setting the period of detention has always been a **legislative prerogative,** circumscribed only by **Section 18, Article VII of the Constitution**, thus:

> The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, norauthorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connectedwith invasion.
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> **During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.** (Emphasis added)

It is clear, however, that the constitutional mandate that the person

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[29] Amending Article 125 of Revised Penal Code Re: Delivery of Detained Persons to Proper Judicial Authorities, Executive Order No. 272, July 25, 1987.

arrested or detained be judicially charged within three (3) days is **only applicable when the privilege of the writ of *habeas corpus* has been suspended.** Otherwise, the periods specified in Article 125 of the RPC or any other relevant laws prescribing the period of detention would govern.

During the Senate deliberations, Senator Ronald M. Dela Rosa called the attention of his colleagues to these periods and the compelling need to put them in place if we have to succeed in our fight against terrorism.[30] He asserted that should we not put these periods in place, suspected terrorists would easily end up getting released as they simply have to wait for the lapse of at most seventy-two (72) hours. There is absolutely no reasonable time left for the police officers to process the case, let alone, complete the collation of evidence required to support an indictment for terrorism against the suspected terrorists. Should we then decline to give tooth to the law against terrorism by rejecting to grant our law enforcement authorities a wider window to process the case against suspected terrorists, we would never become a terror free country.

At any rate, compared to how other countries deal with terrorism, ours is the most lenient. We take a look at the periods of detention of the first world countries:

Country	Period of Detention
United States	7 days extendible up to 6 months if detained under section 412. There must be "reasonable grounds to believe" that the alien: (1) entered the United States to violate espionage or sabotage laws; (2) entered to oppose the government by force; (3) engaged in terrorist activity; or (4) endangers the United States' national security. (USA Patriot Act)[31]
United Kingdom	28 days (Terrorism Act of 2006)[32]
Australia	14 days (Terrorism (Preventative Detention)Act 2005)[33]
Singapore	3 months (Singapore Constitution)[34]

To dispel badges of erroneous points of comparison, we take a look at the periods of detention of our neighboring countries and other developing countries like ours:

Country	Period of Detention
Malaysia	29 days (Security Offences: Special Measures Act 2012)[35]

[30] Ponencia, p. 207.
[31] https://www.justice.gov/archive/ll/subs/add_myths.htm#s412 Accessed: November 3, 2021.
[32] https://www.legislation.gov.uk/ukpga/2006/11/part/2/crossheading/detention-of-terrorist-suspects/enacted Accessed: November 3, 2021.
[33] https://www.legislation.sa.gov.au/LZ/C/A/TERRORISM%20(PREVENTATIVE%20DETENTION)%20ACT%202005/CURRENT/2005.71.AUTH.PDF Accessed: November 3, 2021.
[34] https://www.icj.org/wp-content/uploads/2013/07/Singapore-Constitution-1963-eng.pdf Accessed: November 4, 2021.
[35] https://www.icj.org/wp-content/uploads/2012/12/Malaysia-Security-Offences-Special-Measures-Act-2012-eng.pdf Accessed: November 3, 2021.

Indonesia	6 months (Government Regulation in lieu of Legislation of the Republic of Indonesia No1/2002 on Combating Criminal Acts of Terrorism)[36]
Thailand	30 days (Emergency Decree on Public Administration In Emergency Situation)[37]
Brunei-Darussalam	2 years (Internal Security Act)[38]

As well, the longer period of detention is not without concomitant **protection of the detained person's rights**. The following are the key safeguards provided under ***The Anti-Terrorism Act of 2020*** to protect the rights and ensure humane treatment of a detained suspected terrorist:

1. Before the period of detention is extended to another ten (10) days, the arresting officer must first establish the following circumstances: (a) the need to preserve evidence related to the terrorist act or to complete the investigation; (b) the need to prevent the commission of another terrorist act; and (c) the investigation is being conducted properly and without delay.[39]

2. The law enforcement officer or military personnel is required to notify in writing the judge of the court nearest the place of the arrest of a person suspected of committing terrorism on the following facts: a) time, date, and manner of arrest; b) location or locations of the detainee; and c) the physical and mental condition of the detainee. The law enforcement officer or military personnel is likewise required to furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.[40]

3. Upon detention, the detainee has the right to be informed of the nature and cause of his or her arrest, to remain silent, and to have competent and independent counsel preferably of his or her own choice. These rights cannot be waived except in writing and in the presence of his or her counsel of choice: 1) be informed of the cause of his or her detention; 2) communicate freely with his or her counsel; 3) communicate freely with the members of his or her family; and 4) avail of the services of a physician or physicians of choice.[41]

4. The law enforcement custodial unit is required to maintain an Official Custodial Logbook. This logbook shall record all details

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[36] http://www.vertic.org/media/National%20Legislation/Indonesia/ID_Law_Criminal_Act_Terrorism.pdf Accessed: November 3, 2021.
[37] https://www.icj.org/wp-content/uploads/2012/12/Thailand-Emergency-Decree-on-Public-Administration-in-Emergency-Situation-2005-eng.pdf Accessed: November 3, 2021.
[38] https://www.icj.org/wp-content/uploads/2012/12/Brunei-Internal-Security-Act-1982-2002-eng.pdf Accessed: November 4, 2021.
[39] Section 29, Anti-Terrorism Act.
[40] *Id.*
[41] Section 30, Anti-Terrorism Act.

concerning the treatment of the detained person while under custodial arrest and detention. The same is a public document accessible to the lawyer of the detainee or any member of his or her family or relative by consanguinity or affinity within the fourth civil degree or his or her physician subject to reasonable restrictions by the custodial facility.[42]

5. Absolute prohibition on the use of torture and other cruel, inhumane, and degrading treatment or punishment as defined in Sections 4 and 5 of RA 9745 otherwise known as the ***Anti-Torture Act of 2009*** at any time during the investigation or interrogation of a detainee.[43]

6. Speedy investigation and prosecution of all persons detained.[44]

7. The ATC is mandated to monitor the progress of the investigation and prosecution of all persons detained.[45]

8. The CHR is granted the highest priority in the investigation and prosecution of violations of the rights of persons in relation to the implementation of the Act. This is to ensure the observance of due process.[46]

9. The welfare of detainees who are elderly, pregnant, disabled, women, and children is considered.[47]

10. The penalty of ten (10) years imprisonment shall be imposed upon law enforcement agent or military personnel who fails to notify any judge in case of warrantless arrests of a suspected person under the Act.[48]

11. The same penalty of the ten (10) years imprisonment shall be imposed upon any law enforcement agent or military personnel who has violated the rights of persons under their custody. Unless the law enforcement agent or military personnel who violated the rights of a detainee is duly identified, the same penalty shall be imposed on the head of the law enforcement unit or military unit having custody of the detainee.[49]

12. The penalty of six (6) years imprisonment shall be imposed upon any person who knowingly furnishes false testimony, forged document, or spurious evidence in any investigation or hearing

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[42] Section 32, Anti-Terrorism Act.
[43] Section 33, Anti-Terrorism Act.
[44] Section 46(c), Anti-Terrorism Act.
[45] Section 46, Anti-Terrorism Act.
[46] Section 47, Anti-Terrorism Act.
[47] Section 51, Anti-Terrorism Act.
[48] Section 29, Anti-Terrorism Act.
[49] Section 31, Anti-Terrorism Act.

conducted in relation to any violations under the Act.[50]

13. The Bureau of Jail Management and Penology and the Bureau of Corrections are mandated to establish a system of assessment and classification for persons charged for committing terrorism and preparatory acts punishable under the Act. This system shall cover the proper management, handling, and interventions for the detainees.[51]

Indeed, the law has specifically provided for procedures and safeguards to those detained for possible terrorism charges. This gives flesh to the decreed policy under ***Section 2 of The Anti-Terrorism Act of 2020*** that *the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.* Thus, the key measures indicated here enforce the commitment to justice and respect for human rights of detained individuals and also strengthen a necessary building block to counter terrorism.

FIVE. Petitioners raise fears of possible abuses in the implementation of Section 29 of the ***The Anti-Terrorism Act of 2020*** since whether a person ought to be detained for up to fourteen (14) days, extendible to twenty-four (24) days, allegedly rests solely on the discretion of the arresting officer or officers.[52]

But the Court does not strike down laws as unconstitutional because of mere possibility of abuses in their implementation[53] or probability of law enforcers acting arbitrarily in pursuit thereof. Neither can the Court adjudge a law or any of its provisions as unconstitutional on ground that the implement or committed illegal acts.[54] There must be a clear and unequivocal, not a doubtful, breach of the Constitution to justify the nullification of the law or its implementation. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation *because "to invalidate [a law] based on.... baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it."*[55]

For the most part, I agree with the government's thrust that ***The Anti-Terrorism Act of 2020*** is not invalid, only misunderstood. Thus, during the oral arguments, I prodded on the government's efforts, if any, in allaying the fears of the public on possible abuses in the implementation of the law, *viz.*:

> J. Javier: Can I have Mr. ASG Rigodon first.... Many of the petitioners including their respective counsel are *bona fide* members of the bar. Two (2) of them are former members of the Court who to this very date hold our highest respect and admiration. They are our compatriots whose love for

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[50] Section 43, Anti-Terrorism Act.
[51] Section 52, Anti-Terrorism Act.
[52] Petitioners' Memorandum for Cluster II Issues, pp. 53-54.
[53] *See Joint Ship Manning Group, Inc. v. Social Security System,* G.R. No. 247471, July 7, 2020.
[54] *See David v. Macapagal-Arroyo,* 522 Phil. 705-854 (2006).
[55] *Rama v. Moises,* 802 Phil. 29, 80-81 (2016).

> this country like ours cannot be measured. **They assert that instead of assuring our people protection, security, and safety, the anti-terror law triggers fears of massive rights abuses in view of what petitioners refer to as the grant of excessive and unchecked powers of the state under the law.** That the law is a legalized **form of capital punishment that can be inflicted anytime by one trigger-happy law enforcer or military officer. What is the government's position on this?**
>
> ASG Rigodon: The assertions of the petitioners are **highly speculative**, your Honor and ... jurisprudence teaches us that assuming that there is a possibility of abusing the implementation, **such possibility is not a ground to invalidate the law your Honor.**
>
> J. Javier: Okay, very well. If the government says that fears and apprehensions are merely speculative, then, baseless, **what has the government done to allay the fears, the apprehension, ... the suspicion, and feeling of repugnance of the public toward the ATL**?
>
> ASG Rigodon: For one, your Honor, ... in his opening statement, the Solicitor General pointed out that the **government is not the enemy here but the terrorist your Honor.** And as ... ASG Galandines has stated ... **[if you are not] a terrorist, you have nothing to fear.**
>
> J. Javier: Alright, **is that enough to allay the fears, the apprehensions, the suspicion, and repugnance of the public toward the ATL**? ...
>
> ASG Rigodon: Your Honor, the State recognizes that the fight against terrorism requires a comprehensive approach comprising political, economic, diplomatic, military, and legal means taking into account the root cause of terrorism and or criminal activities. Such measures shall include conflict management and post-conflict peace building addressing the rules of conflict by building state capacity and promoting equitable economic development your Honor.
>
> J. Javier: Alright. Please pardon me but I think the **answer is not responsive to my question**. ... please present this in your memorandum. (Emphases added)

In their memorandum, however, respondents did **not** bother propound on the **concrete** measures undertaken by the government to quell the fears, apprehensions, suspicions, and general feeling of repugnance of the public toward ***The Anti-Terrorism Act of 2020***. On the contrary, they merely quoted President Rodrigo Duterte's statement that "*for the law-abiding citizen of this country, ... Huwag ho kayong matakot kung hindi ka terorista*"[56] and added "*fear, however, is common in all things new, but unfounded fear should not cause a paralysis of a law seeking to protect the country and its people.*"[57]

The deafening silence of respondents on this front pales in comparison to the efforts of other countries in correcting any misinformation among its citizens regarding their respective anti-terror laws.

For instance, the official website of the US Department of Justice (DOJ)

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[56] Respondents' Memorandum, Volume I, p. 2.
[57] *Id.* at 118.

contains a comparative presentation between the myths regarding their ***Terrorist Expatriation Act of 2010***, on the one hand, and what the reality is, on the other. All throughout the presentation, only the ordinary language known to the ordinary citizens is used. Hence, the US DOJ is able to inform and educate citizens about the real impact of the law on their lives, limbs, and fundamental liberties -- that it is truly for their protection, not for their damnation.

For another, Canada has devoted an official website[58] for public safety, explaining what their anti-terror law is all about, as well as its policies and strategies to ensure its effective and efficient implementation. The Canadian government also devoted online space for consultations with stakeholders, meaning any organization, association, or concerned citizen can ask questions or express their opinions about the law, whether for or against it. The purpose is to encourage an open discussion between the citizens and the government concerning the law. Their website, too, enumerates their efforts to counter terrorism, their response plan, and strategies to mitigate threats of terrorism.[59] It also has a page on Listed Terrorist Entities, its listing process,[60] and complete publications and reports.[61] It provides transparency on how the law works and what the citizens could reasonably expect in its implementation.

In stark contrast, the official websites of our country's Department of National Defense, Department of Justice, Official Gazette, and the Presidential Communications Operations Office have no helpful content for purposes of explaining the provisions of ***The Anti-Terrorism Act of 2020*** to the Filipino citizens. They bear nothing that would aid the lay person in understanding the law and to ease whatever fears, misconception, suspicion, or aversion they may have toward it.

What I discovered instead was a post by the Philippine National Police Human Rights Affairs Office captioned as Frequently Asked Questions or FAQs. But this post was made before ***The Anti-Terrorism Act of 2020*** got enacted and way before its IRR was issued.[62] Also, the FAQs were written in a language known only to lawyers. In fact, some portions of the post simply copied and pasted the provisions of the then anti-terror bill. But is this enough to enlighten and convince the Filipino people that the law is not their enemy, nor is the government; that if they are not terrorists, they need not be afraid; and that the law is meant to protect them, not to annihilate them? I believe not.

Meantime, the people, through mainstream and social media, are bombarded with news about alleged extrajudicial killings perpetrated in line

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[58] https://www.publicsafety.gc.ca/index-en.aspx, Last accessed May 14, 2021, 22:30.

[59] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/index-en.aspx. Last accessed May 14, 2021, 22:31.

[60] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/bt-lstng-prcss-en.aspx. Last accessed May 14, 2021, 22:31.

[61] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/pblc-rprts-trrrst-thrt-en.aspx. Last accessed May 14, 2021, 22:32.

[62] https://hrao.pnp.gov.ph/images/FAQ_AntiTerrorismAct2020.pdf?fbclid=IwAR0NdocAkRntDwmRwrWHs-IKuBVahm0xzxtNZIIFRPW8pqI5Jjn7S9f3Q1AY. Last accessed May 14, 2021, 22:40.

with the counterinsurgency program of the government, among them, of known activists following accusations against them of working with armed guerrillas, or of labor leaders in the course of the implementation of search warrants on them.

We, too, must remain cognizant of the fact that the law was enacted at the time of rampant "**red-tagging**."

Red-tagging, whoever coined it, is the meta legal version of proscription and designation; one need not go through the formal processes but could still achieve some of their desired effects. All it requires is a platform which in this case could be as simple as banners, flyers, street tarpaulins, or social media posts. It does not require any official document, let alone, a judicial order. In ordinary times, red-tagging would be considered a libelous offense. But now, red-tagging is deadly. It is a threat to life, security and liberty.

As the Court itself has observed, not even lawyers and judges are spared from red-tagging. In fact, the Court just this year issued a strongly worded statement condemning in the strongest sense every instance where lawyers are threatened, and a judge, unfairly labeled, as in the case of Mandaluyong City Regional Trial Court Judge Monique Quisumbing-Ignacio who was linked to rebel groups after dismissing charges against two (2) identified activists.

On the other hand, on March 12, 2021, a certain Police Lieutenant sent a letter to the Clerk of Court, Hall of Justice, Calbayog City requesting for a list of lawyers who represent "communist terrorist group personalities" for submission to "PNP higher offices." Attached to the letter was a form to be filled out by the clerk of court. The form bore several columns for the name of the lawyer, the name of the communist terrorist client, the case handled by the lawyer, and one column asked for the "mode of neutralization" for each personality involved, whatever that means.

Considering the foregoing backdrop, how then do we expect the public to positively react to ***The Anti-Terrorism Act of 2020***?

Indeed, anyone with internet access can read the provisions of the law and its implementing rules and regulations. But knowing the provisions of the law is one thing, understanding these provisions is another. And as it has been often said, people fear what they do not understand.

Obviously, respondents have fallen short in launching and sustaining an effective, far-reaching, and massive information dissemination campaign to the people to make them understand what ***The Anti-Terrorism Act of 2020*** is truly all about -- that the law is their protector, not their enemy. The public requires, nay deserves more than lip service for their peace of mind. **They need assurance. They cannot be left submerged in their fears — a cryptonym for terror.**

In another vein, our law enforcement officers and military personnel must be properly guided in the implementation of ***The Anti-Terrorism Act of 2020.*** Their respective heads of agency must ensure that they undergo relevant trainings and seminars on how the law ought to be implemented. Our law enforcement officers and military personnel must be apprised of the boundaries of the law and the limits of their exercise of discretion. Not only would this help assure our citizens that their fundamental liberties would be respected, but also prevent incidents similar to what transpired in Calbayog City.

It all boils down to transparency in what can and cannot be done by both the citizens and state actors under ***The Anti-Terrorism Act of 2020.*** Thus, I call on the implementing agencies to conduct relevant trainings and information drives on the ***The Anti-Terrorism Act of 2020***, its purposes, implications, impact on the lives of ordinary citizens, and manner of enforcement. For information is a vital need of our society; good governance is ensured when there is a flow of information between the State and the people it defends.

SIX. I would like to offer my ruminations on the constitutionality of Sections 16 and 17 of ***The Anti-Terrorism Act of 2020*** which was not discussed in the *ponencia* of Justice Carandang.

Under Section 16 of ***The Anti-Terrorism Act of 2020***, law enforcement or military personnel may perform **surveillance activities** on suspected terrorists when so authorized by the Court of Appeals, thus:

> **SECTION 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, a 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 andpenalized under the provisions of this Act: *Provided*, That, surveillance, 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 3 (i) specifies what these "surveillance activities" refer to:

SECTION 3. *Definition of Terms.* — As used in this Act:

. . . .

(i) *Surveillance Activities* shall refer to the act of tracking down, following,or investigating individuals or organizations; or the tapping, listening, intercepting, and recording of messages, conversations, discussions, spoken or written words, including computer and network surveillance, and other communications of individuals engaged in terrorism as defined hereunder.

Meanwhile, Section 17 enumerates the conditions before the Court of Appeals may issue the requisite authorization:

SECTION 17. *Judicial Authorization, Requisites.* — The authorizing division of the Court of Appeals shall issue a written order to conduct the acts mentioned in Section 16 of this Act upon:

(a) Filing of an *ex parte* written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council (ATC); and

(b) After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines:

(1) that there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and

(2) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.

According to petitioners, Section 16 violates the constitutional right to due process, against unreasonable searches and seizures, and to privacy of communication and correspondence. They, too, assail Section 17 as it allegedly infringes on the constitutional right against unreasonable searches and seizures and forecloses the remedies under the rules on *amparo* and *habeas data.*

Petitioners are mistaken.

A. Surveillance Activities under RA 11479 do not violate the right to privacy of communications.

The present and previous iterations of the Constitution have invariably upheld the **right of all individuals to privacy of communications**, *viz.*:

> **Article III, Section 1(5) of the 1935 Constitution:**
>
> The privacy of communication and correspondence shall be inviolable **except upon lawful order of the court or when public safety and orderrequire otherwise.**
>
> **Article III, Section 4(1) of the 1973 Constitution:**
>
> The privacy of communication and correspondence shall be inviolable **except upon lawful order of the court, or when public safety and order require otherwise.**
>
> **Article III, Section 3(1) of the 1987 Constitution:**
>
> 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**. (Emphases added)

Notably though, the right to privacy of communications is far from absolute. It exempts from the guarantee, intrusions ***upon lawful order of the court***, or ***when public safety or order requires otherwise, as prescribed by law.***

The **first exception** is in accordance with the search warrant requirement under Article III, Section 2 of the 1987 Constitution, thus:

> **SECTION 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In the landmark case of ***Katz v. US***, the Supreme Court of the United States (SCOTUS)[63] set the criteria when prior judicial warrant is necessary before there could be valid government intrusion of the right to privacy. There, the government introduced evidence of Katz' telephone conversations which were overheard by Federal Bureau of Investigation (FBI) agents using electronic listening and recording devices attached to the outside of the public telephone booth from which Katz placed his calls. SCOTUS held, however, that Katz had a **reasonable expectation** that his telephone conversations from inside a phone booth are **private,** hence, constitutionally protected. An **antecedent judicial authorization** was therefore a precondition for the kind of electronic surveillance involved.[64] As it was, however, no such prior judicial authorization was issued in that case. The FBI agents had no right to

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[63] 389 U.S. 347.

[64] See *People v. Canton*, 442 Phil. 743-764 (2002).

listen to Katz' conversations; whatever they heard and recorded during surveillance were in fact treated inadmissible in evidence under the exclusionary rule.

As for **the second exception,** *i.e., when public safety or order requires otherwise, as prescribed by law,* retired Associate Justice Antonio T. Carpio elucidated in his Concurring and Dissenting Opinion in ***Disini v. Secretary of Justice,***[65] thus:

> When the members of the 1971 Constitutional Convention deliberated on Article III, Section 4 (1) of the 1973 Constitution, the counterpart provision of Article III, Section 3 (1) of the 1987 Constitution, the phrase "public safety or order" was understood by the convention members to encompass "the security of human lives, liberty and property *against the activities of invaders, insurrectionists and rebels*." This narrow understanding of the public safety exception to the guarantee of communicative privacy is consistent with Congress' own interpretation of the same exception as provided in Article III, Section 1 (5) of the 1935 Constitution.

He, too, noted that compared to the previous 1935 and 1973 versions of the constitutional guarantee, the present iteration expressly states that it is **Congress who decides which are matters of public safety and order**. The inclusion of the phrase "as prescribed by law" removed from the executive branch of government its erstwhile authority to decide *motu proprio* when an intrusion on the right to privacy would be warranted by public exigencies.

Hence, in ***Lagman v. Medialdea***[66] the Court noted two (2) pieces of legislature wherein intrusion into the right to privacy was justified for the higher causes of public safety and order. For one, **RA 10173,** or the *Data Privacy Act of 2012*, sanctions the processing of one's personal information, even without the consent of the data subject, whenever "necessary in order to respond to **national emergency**, to comply with the requirements of **public order and safety**, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of (the National Privacy Commission's) mandate," thus:

> SECTION 12. *Criteria for Lawful Processing of Personal Information.* – The **processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists**:
>
> . . . .
>
> (e) The processing is necessary in order to respond to **national emergency, to comply with the requirements of public order and safety**, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate;
>
> SECTION 3. *Definition of Terms.* – Whenever used in this Act, the

[65] 727 Phil. 28-430 (2014).
[66] 812 Phil. 179-853 (2017).

following terms shall have the respective meanings hereafter set forth:

. . . .

(j) ***Processing*** **refers to** any operation or any set of operations performed upon personal information including, but not limited to, the **collection, recording,** organization, storage, updating or modification, retrieval, consultation, **use**, consolidation, blocking, erasure or destruction **of data.** (Emphases added)

For another, Section 3 of **RA 4200**, the ***Anti-Wiretapping Act***, allows any peace officer, upon court authorization in cases involving national security "to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or walkie-talkie or tape recorder, or however otherwise described," thus:

SECTION 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, **who is authorized by a written order of the Court**, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the **crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security:** *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated herein above has been committed or is being committed or is about to be committed: *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence. . . . (Emphases added)

The provision **exempts** from the ban on wiretapping "cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the RPC, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security."[67]

Even then, the ***Anti-Wiretapping Act*** provides that in these specific and limited cases where wiretapping has been allowed, a court warrant is

[67] *Carpio*, Concurring and Dissenting Opinion, *Disini v. Secretary of Justice*, 727 Phil. 28-430 (2014).

nevertheless required before the government can record the conversations of individuals. In other words, despite the use of the conjunction "or" in Article III, Section 3 (1) of the 1987 Constitution, both exceptions require **judicial authorization** before a person's right to privacy may be encroached. The difference is that **under the first exception**, the rules on the application and implementation of search warrants under **Rule 126 of the Rules of Criminal Procedure would apply**. On the other hand, the procedure for obtaining a judicial authority under the **second exception** is **outlined in the law prescribing such measure** in the interest of public order and safety, as in Section 3 of RA 4200.

I find that Sections 16 and 17 of ***The Anti-Terrorism Act of 2020*** on surveillance, just like RA 4200, falls within the **second exception** to the right to privacy of communications, hence, the same are **valid**. As eloquently discussed in the *ponencia* of Justice Carandang, terrorism has far-reaching repercussions beyond the immediate target or victim. It is deemed the most prevalent danger to the security of national states and the citizens thereof.[68] Section 2 of RA 11479 further recognizes terrorism as a national security concern and must be dealt with as such:

> SECTION 2. *Declaration of Policy.* — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations....

Clearly, **countering terrorism** has become a **top national security priority**, so much so that mere threats thereof must be nipped in the bud. One way of achieving this is through surveillance activities sanctioned under Article III, Section 3 (1) of the 1987 Constitution which allows the Legislature to prescribe measures by which the government may intrude on a person's right to privacy of communications in pursuit of the above-cited State policy. As it was, the Congress codified such measures under Sections 16 and 17 of RA 11479, as implemented through Rule 5 of the law's Implementing Rules and Regulations.

B. Surveillance Activities do not constitute unreasonable searches and seizures

Petitioners' claim that surveillance activities constitute unreasonable searches and seizures is likewise untenable.

To recall, Article III, Section 2 of the 1987 Constitution decrees:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects **against unreasonable searches and seizures** of

[68] Ponencia, p. 43.

> whatever nature and for any purpose shall be inviolable, **and no search warrant or warrantof 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. (Emphases added)

Generally, a search or seizure is deemed **"reasonable"** if the law enforcement officer has a **warrant from a judge based on probable cause** to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched. Although a search may be reasonable without a warrant if an exception applies under the circumstances,[69] intrusions on the right to privacy of communications, such as surveillance activities, invariably require an antecedent judicial authorization.

Under Section 17 of ***The Anti-Terrorism Act of 2020***, the requisite judicial authorization may only be issued by the Court of Appeals upon written application by the duly-authorized law enforcement agent or military personnel. During the proceedings, the applicant must establish:

> (1) that there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and
>
> (2) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.

In fine, the requirement of probable cause under Article III, Section 2 of the 1987 Constitution is still retained under Section 17, albeit determined by a Division of the Court of Appeals, rather than a trial court judge. There is no reason therefore to consider Section 17 as a deviation from the constitutional guarantee.

The provisions of RA 4200 may also be used as benchmark for determining whether the provisions of RA 11479 pass the test of reasonableness, thus:

RA 4200	RA 11479

[69] In *Manibog v. People*, G.R. No. 211214, March 20, 2019, the Court enumerated the instances ofreasonable warrantless searches and seizures, thus:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules ofCourt and by prevailing jurisprudence;
2. Seizure of evidence in "plain view;"
3. Search of a moving vehicle;
4. *Consented* warrantless search;
5. Customs search;
6. *Stop and Frisk*; and
7. *Exigent and Emergency Circumstances*.

Section 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: . . . The court referred to in this section shall be understood to mean the **Court of First Instance** within whose territorial jurisdiction the acts for which authority is applied for are to be executed.	**SECTION 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, a 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: *Provided*, That, surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.** 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; and (2) furnish the National Telecommunications Commission (NTC) a copy of said application. **The NTC shall likewise be notified upon the issuance of the order for the purpose of ensuring immediate compliance.**

Section 3. . . . That such written order shall only be issued or granted upon **written application** and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: **(1) that there are reasonable grounds to believe that any of the crimes enumerated herein above has been committed or is being committed or is about to be committed:** *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that **evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes;** and (3) **that there are no other means readily available for obtaining such evidence.** (Emphases added)	**SECTION 17.** *Judicial Authorization, Requisites.* — The authorizing **division of the Court of Appeals** shall issue a written order to conduct the acts mentioned in Section 16 of this Act upon: (a) Filing of an *ex parte* **written application** by a law enforcement agent or military personnel, who has been duly **authorized in writing by the Anti-Terrorism Council (ATC)**; and (b) After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines: (1) that there is **probable cause** to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under **Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed**; and (2) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is **essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.** (Emphases added)
Section 3. . . . . The order granted or issued shall specify: (1) the **identity of the person or persons** whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) **the identity of the peace officer authorized to overhear**, intercept, or record the communications, conversations, discussions, or spoken words; (3) **the offense or offenses committed or sought to be prevented**; and (4) **the period** of the authorization. . . . .(Emphases added)	**SECTION 18.** *Classification and Contents of the Order of the Court.* — The written order granted by the authorizing division of the Court of Appeals as well as the application for such order, shall be deemed and are hereby declared as classified information. Being classified information, access to the said documents and any information contained in the said documents shall be limited to the applicants, duly authorized personnel of the ATC, the hearing justices, the clerk of court and duly authorized personnel of the hearing or issuing court. The written order of the authorizing division of the Court of Appeals shall specify the following: (a) **the identity,** such as name and address, if known, of the person or persons whose communications, messages, conversations, discussions, or spoken or written words are to be tracked down, tapped, listened to,

	intercepted, and recorded; and, in the case of radio, electronic, or telephonic (whether wireless or otherwise) communications, messages, conversations, discussions, or spoken or written words, the electronic transmission systems or the telephone numbers to be tracked down, tapped, listened to, intercepted, and recorded and their locations or if the person or persons suspected of committing any of the crimes defined and penalized under the provisions of this Act are not fully known, such person or persons shall be the subject of continuous surveillance; (b) **the identity of the law enforcement agent or military personnel**, including the individual identity of the members of his team, judicially authorized to undertake surveillance activities; (c) **the offense or offenses committed, or being committed,** or sought to be prevented; and, (d) the **length of time** within which the authorization shall be used or carried out. (Emphases added)
Section 3. . . . The authorization shall be effective for the period specified in the order which shall **not exceed sixty (60) days** from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest. (Emphases added)	**SECTION 19.** *Effective Period of Judicial Authorization.* — Any authorization granted by the Court of Appeals, pursuant to Section 17 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 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: *Provided*, That the issuing court is satisfied that such extension or renewal is **in the public interest**: and *Provided, further*, That the *ex parte* application for extension or renewal, which must be filed by the original applicant, has been duly **authorized in writing by the ATC.** In case of death of the original applicant or in case he/she is physically disabled to file the application for extension or renewal, the one next in rank to the original applicant among the members of the team named in the original written order shall file the application for extension or renewal: *Provided, finally*, That, the

	applicant law enforcement agent or military personnel shall have thirty (30) days after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act. For purposes of this provision, the issuing court shall require the applicant law enforcement or military official **to inform the court, after the lapse of the thirty (30)-day period of the fact that an appropriate case for violation of this Act has been filed with the Public Prosecutor's Office.** (Emphases added)
Section 3. . . . . All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.	**SECTION 20.** *Custody of Intercepted and Recorded Communications.* — All tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies thereof obtained under the judicial authorization granted by the Court of Appeals shall, within forty-eight (48) hours after the expiration of the period fixed in the written order or the extension or renewal granted thereafter, be deposited with the issuing court in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant law enforcement agent or military personnel and the members of his/her team. In case of death of the applicant or in case he/she is physically disabled to execute the required affidavit, the one next in rank to the applicant among the members of the team named in the written order of the authorizing division of the Court of Appeals shall execute with the members of the team that required affidavit. **It shall be unlawful for any person, law enforcement agent or military personnel or any custodian of the tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies thereof to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever.** **Any person who removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above**

	shall suffer the penalty of imprisonment of ten (10) years. (Emphases added)

The foregoing provisions readily show that ***The Anti-Terrorism Act of 2020*** has more safeguards in place to protect the constitutional right to privacy of communications as compared to RA 4200. Consider:

First. Under RA 4200, the authorization is issued by a lone trial court judge. Under RA 11479, it is issued by a Division of the Court of Appeals.

Second. The Anti-Terrorism Act of 2020 explicitly limits the subject of surveillance to communications (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of the law; (b) between members of a designated person as defined in Section 3(e) of RA 10168; or (c) of any person charged with or suspected of committing any of the crimes defined and penalized under the same law; communications between lawyers and clients, doctors and patients, journalists and their sources, and confidential business correspondence are expressly excluded. No such limitation is contained in RA 4200.

Third. Under ***The Anti-Terrorism Act of 2020,*** the applicant for judicial authority must be duly authorized by the ATC to do so. The ATC may therefore install a vetting process and screen applicants before allowing them to go to court.

Fourth. In ***The Anti-Terrorism Act of 2020,*** the applicant is mandated by law to report within thirty (30) days whether the appropriate case has been filed before the prosecutor's office.

Fifth. The Anti-Terrorism Act of 2020 criminalizes infidelity in the custody of recorded communications, unauthorized opening or disclosure of deposited materials, and malicious interception of communications.[70]

Finally. Rule 5.25 of the Implementing Rules and Regulations of ***The Anti-Terrorism Act of 2020*** elucidates how RA 10173 or the Data Privacy Act bears upon surveillance activities under RA 11479:

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[70] RULE 5.17. *Crime in the Custody of Recorded Communications.*—
It shall be unlawful for any person, law enforcement agent or military personnel, or any custodian of the tapes, discs, other storage devices recordings, notes, memoranda, summaries, excerpts and all copies thereof to remove, delete, expunge, incinerate, shred, or destroy in any manner the items enumerated in Section 20 of the Act in whole or in part under any pretext whatsoever.
Any such person found guilty therefor shall suffer the penalty of imprisonment of ten (10) years..

. . . .

RULE 5.20. *Crime of Unauthorized Opening or Disclosing of Deposited Material.* —
It shall be unlawful for any person to open, disclose, or use as evidence the sealed envelope or sealed package referred to in Section 22 of the Act without the authority granted by the authorizing division of the Court of Appeals.
Any such person found guilty therefor shall be penalized by imprisonment of ten (10) years.

. . . .

RULE 5.22. *Crime of Unauthorized or Malicious Interceptions and/or Recordings.* —
It shall be unlawful for any law enforcement agent or military personnel to conduct surveillance activities without a valid judicial authorization pursuant to Section 17 of the Act.
Any such person found guilty therefor shall suffer the penalty of imprisonment of ten (10) years.

RULE 5.25. *Compliance with the Data Privacy Act.* —

The processing of personal data for the purpose of surveillance, interception, or recording of communications shall comply with Republic Act No. 10173, or the "Data Privacy Act of 2012," including adherence to the principles of transparency, proportionality, and legitimate purpose.

Thus, if RA 4200 which affords fewer protection to the constitutional right to privacy of communications passes the test of reasonableness and remains to be valid for 56 years and counting, with more reason the provisions of ***The Anti-Terrorism Act of 2020*** pertaining to surveillance ought to be upheld.

C. RA 11479 does not foreclose the application of other judicial remedies

Aside from the safety features enumerated above, judicial remedies are available to parties aggrieved by surveillance activities, thus:

RULE 5.23. Remedy of the Aggrieved Party. —

The aggrieved party in the crime of unauthorized or malicious interceptions and/or recordings shall be furnished with all information that have been maliciously procured so he or she may avail of the remedies provided by law.

RULE 5.24. Remedy in Surveillance without Legal Ground. —

Any person who suspects that his communications are unlawfully being intercepted or kept without legal grounds has the right to file a petition for writ of habeas data in accordance with the Supreme Court's "Rule on the Writ of Habeas Data" (A.M. No. 08-1-16-SC, 22 January 2008).

These provisions single-handedly negate petitioners' claim that there is no judicial recourse available in relation to surveillance activities under ***The Anti-Terrorism Act of 2020***.

SEVEN. Although technically it is not part of the arguments raised in the petitions, I **shudder** at the thought that the military establishment has purged some university libraries of printed materials referencing communism or anything related to it.[71] In this age of the internet and the world wide web, the endeavor is incredibly **useless**, if not unwise. In the first place, how many students access printed materials? On the other hand, this endeavor is **chilling** and **terrifying**. If there is anything **terroristic**, it is this **purge of the libraries** – printed materials now, internet and social media next?

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[71] Kurt Dela Peña, "Purge of 'subversive' PH books draws images of Nazi book-burning orgies" at https://newsinfo.inquirer.net/1496689/purge-of-subversive-ph-books-draws-images-of-nazi-book-burning- orgies#ixzz78KnJg0ye (last accessed October 4, 2021).

This endeavor to rid libraries of reading materials on communism not only **violates the right to be informed** and **the right of academic institutions to academic freedom**, both cognates of the right to free speech.

The purge is also outrightly **illegal**. It is the **sole professional prerogative** of **professional librarians** under ***The Philippine Librarianship Act of 2003*** to –

- **select** and **acquire** multi-media sources of information that would best respond to clientele's need for adequate, relevant, and timely information;
- **catalogue** and **classify** knowledge or sources of information into relevant organized collections and creation of local databases for speedy access, retrieval or delivery of information;
- **establish** library systems and procedures; **disseminate** information; **render** information, reference and research assistance; archive; and educate users;
- **render** services involving ... the preparation of bibliographies, subject authority lists, thesauri and union catalogues/lists;
- **prepare, evaluate** or **appraise** plans, programs and/or projects for the establishment, organization, **development** and **growth** of libraries or information centers, and the **determination of library requirements** for space, buildings, structures or facilities; and, **organize, conserve, preserve** and **restore** historical and cultural documents and other intellectual properties.

What the military establishment has been doing is **contrary to law**. The university libraries that have been approached to purge its contents of anything that bears the word "communism" or the like is doing a disservice to ***The Philippine Librarianship Act of 2003***, most especially the **goal** of **professionalizing** and **raising the standards** of librarians throughout the country.

In the *ponencia*'s understanding of Section 6 of ***The Anti-Terrorism Act of 2020***, the following practice, act, or conduct should **not** be held criminal –

> Accordingly, the foregoing construction should foreclose any interpretation that would include "skill" as ordinarily and broadly understood, especially considering that the teaching of "general knowledge," as in classroom instruction done for purely academic purposes and in good faith, is expressly excluded from the definitionof training under Section 3(k). To the Court's mind, the parameters found in Section 3(k) betrays a legislative intent to put a stop to the knowing and deliberate transfer of specific skills in connection with projected terrorist acts, and not the imparting of knowledge in the general and broad sense.

As if resolving the arguments **against** the constitutionality of Section 6 of ***The Anti-Terrorism Act of 2020*** were not worrisome by itself, the **purging**

of the libraries of the word *commies* or *communism* or *communist* is **not any bit reassuring** that the criminal provisions under attack would **not** be misused and misapplied. I really see **no logic** in this endeavor **except** somehow to **validate** petitioners' claims in challenging Section 6 that –

> To expound, for the petitioners, "training" in Section 6 is vague or overly broad because even though it is defined under Section 3 (k), the term "instruction" is nevertheless undefined. The petitioners in G.R. No. 252580, for example, point out that the ATA curtails the academic freedom of professors who teach Marxism or Thomas Aquinas' philosophy on the justification of war. They fear that under this provision, the study or re-enactment of Dr. Jose Rizal's El Filibusterismo, a work which the Spanish colonial government had considered subversive, might be considered as pretext for the state to arrest teachers and students.

The *ponencia* of Justice Carandang then says that the above-quoted argument ***fails to impress***. But with this latest caper in the **reincarnated** form of a once failed cultural and political censorship scheme, I hope the State itself is **not** undermining the Court's effort to let this otherwise noble law see the light of day.

EIGHT. An important focus of the discussions here pertains to the limits of the Court's authority to construe a statute to make it conformable to the *Constitution*. The discussions reflect the age-old tension between models of judicial decision-making, the *declaratory model* against the *policy-making approach*, and debate on the propriety or impropriety of **reading in** and **reading out** meanings into the statutory language.

The *declaratory* model conceives of the judge as an adjudicator of specific and concrete disputes who decides cases by the mechanical application of legal rules as already established in the legal system. These rules are binding on judges and a judge's personal opinion about the wisdom of the rules is irrelevant. On the other hand, the *policy-making* approach is rooted in legal realism which posits that the mechanical application of rigid and automatic rules cannot adequately dispose of individual cases. This approach sees judges as living in an active polity where everyone who wields authority is actively engaged in making policies for the governmental system to survive.

The expanded and expansive power of judicial review has made each member of the Court a critical overseer of government policy. We have been thrusted into the role of being among the guardians of the *Constitution* and its values but ultimately the final say, or the buck, stops at the halls of the Court.

With constitutional values oftentimes broadly expressed and defined and statutory expressions vetted and inked to balance a myriad of competing interests, the Court has inevitably relied much more heavily upon the balancing of policy considerations. This has consequently ushered in an era of activism that every member of the Court from time immemorial cherishes to affirm or even deny, a denial that I say is nonetheless pregnant with muted

admissions of such activism.

The supremacy of the *Constitution* above all else in the legal order seems to suggest that the only remedy is for the Court to *declare* the invalidity of inconsistent laws to the extent of their inconsistency. Some of the opinions sway to this suggestion.

In constitutional interpretative practice, however, the Court has developed a **number of remedial variations** ranging from *nullification* or striking down and *severance* or reading out the offending section without striking down the entire statute, to the remedy of *reading-in* provisions under existing laws which after all were deemed to have been considered by the legislature whenever it enacted a new law.

I believe that the *ponencia* of Justice Carandang canvassed these considerations when it chose to read in a meaning to the contentious provisions of ***The Anti-Terrorism Act of 2020*** in order to sustain its validity and so we may continue to live as a peaceful and safe community where terrorism, destruction, and mayhem if not totally avoided is effectively reduced to the barest of bare minimum, without unnecessarily sacrificing the human rights of our people.

ACCORDINGLY, I join in full the dispositions of the *ponencia* of Associate Justice Rosmari D. Carandang to grant in part the petitions, declare identified portions of ***The Anti-Terrorism Act of 2020*** as unconstitutional, and decree a few other ancillary forms of relief.

Further, I call on the Executive Branch of government, particularly the implementing agencies, law enforcement officers, and military personnel to launch a more extensive, yet, simplified information campaign on the implications of the ***The Anti-Terrorism Act of 2020***, highlighting its safeguards against abuses, to allay the fears of the public. Too, our law enforcement officers and military personnel ought to be trained and educated on the proper implementation of the law, including the limits of their authority under it.

AMY C. LAZARO-JAVIER
Associate Justice