



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
OFFICE OF THE MINORITY FLOOR LEADER
BARMM Compound, Cotabato City

No Room for Error: Why a Review of the Anti-Terrorism Bill is Necessary

Office of the Minority Floor Leader - BTA

3 June, 2020

Background and Brief Timeline

On February 26, 2020, the Senate approved Senate Bill No. 1083, or the Anti-Terrorism Bill of 2019, which sought to revise the country's anti-terrorism rules and repeal the Human Security Act of 2007. The contents of SB No. 1083 garnered wide attention for containing vague provisions. Some feared that such provisions would allow law enforcement to construe different forms of protest, such as labor strikes, rallies, and mass gatherings, to be acts of terrorism, thereby stifling dissent with threats of steep punishment.

On June 1, President Rodrigo Duterte certified the bill as urgent, asking Congress for its immediate enactment. The counterpart bill in the House of Representatives, House Bill No. 6875, adopted the Senate's version, and has been approved jointly by the House committees on Public Order and Safety, and National Defense and Security. On June 2, the House approved the said bill on its second reading. It is believed that both Houses seek to pass the Anti-Terrorism bill before the beginning of their two-month recess on June 6.¹

Official Position

The Minority Leader of the Bangsamoro Parliament respectfully submits that **the timeline for enacting the Anti-Terrorism Bill should be extended, in order to accommodate prolonged free and open discussion, and to properly consult key stakeholders such as subnational governments and civil society organizations.** There is no doubt that terrorism is a societal menace that needs a holistic approach to solve. But since the provisions of the bill have broad and wide-reaching application, due course must be given to scrutinizing every detail embodied therein.

Points for Consideration

¹ The bill was approved on third and final reading on June 3, 2020.



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
OFFICE OF THE MINORITY FLOOR LEADER
BARMM Compound, Cotabato City

In the main, three points for consideration arising from the proposed versions of the Anti-Terrorism Bill have been identified, summarized as follows:

1. Unconstitutionality of detention without judicial warrant of arrest
2. Overbreadth and vagueness
3. Susceptibility to abuse

Discussion

1. Unconstitutionality of detention without judicial warrant of arrest

Art. III, sec. 1 of the Bill of Rights guarantees that no person shall be deprived of life, liberty, or property without due process of law.² Absent a valid warrant of arrest, it is within the sole province of the courts to determine the necessity of ordering the temporary detention or confinement of a person charged with a crime. This is by virtue of the Judiciary's duty to settle all controversies involving legally demandable and enforceable rights,³ which could not be usurped by the Executive.⁴ Sec. 29 of this bill essentially allows the Executive to perform a judicial power: the authority to determine for itself if there are sufficient grounds for prolonging a person's deprivation of liberty.

In fact, the Revised Penal Code prescribed a maximum of only 36 hours of detention for those arrested without a warrant and suspected of committing crimes with afflictive penalties or higher. Such limits were imposed to prevent any abuse resulting from confining persons without informing them of their offense and without permitting them to go on bail.⁵ So great a respect is afforded to a person's right to liberty that should no judge be available after being detained for the maximum number of hours, the arresting officer is duty-bound to release the detained person.⁶

2. Overbreadth and vagueness

² CONST., art. III, sec. 1.

³ CONST., art. VIII, sec. 1, par. 2.

⁴ *Angara v. Electoral Commission*, G.R. No. L-45081, July 15, 1936.

⁵ REVISED PENAL CODE, art. 125.

⁶ *Albior vs. Auguis*, A.M. No. P-01-1472, June 26, 2003



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
OFFICE OF THE MINORITY FLOOR LEADER
BARMM Compound, Cotabato City

While in general, facial challenges on constitutionality do not apply to criminal laws because such are intended to discourage the commission of acts penalized therein,⁷ certain provisions of this bill could easily be questioned for overbreadth and vagueness. In particular, sec. 16 of the bill provides that even mere suspected offenders could be wiretapped, and their private data could be accessed upon a written order from the Court of Appeals. According to secs. 17-19, the order is to be issued if probable cause is found, based on the personal knowledge of the law enforcement agent/military personnel, and shall be effective for a maximum of 60-90 days.

This also brings into question the constitutionality and ethics of invading the privacy of those incidentally in contact with the suspect, having nothing to do with terrorism at all. Given the highly confidential nature of wiretapping and data-mining as described in the bill, it is not unimaginable that the reasonable expectation of privacy will effectively be stripped from all forms of communication.⁸ The right to free speech, too, could be indirectly curtailed in fear of constant surveillance.

3. Susceptibility to abuse

The bill, as it is currently worded, leaves a wide berth of discretion to the Executive, particularly the Anti-Terrorism Council. Pursuant to sec. 25, the ATC is empowered to unilaterally designate as a terrorist any individual, group of persons, organization or association. Among the consequences of being branded as such by the ATC are:

- a. Increased likelihood of being approved for wiretapping, surveillance, and tracking, through the Court of Appeals;
- b. Warrantless detention for 14-24 days;
- c. Investigation and freezing of assets, through the AMLC;
- d. Hold order on travels, through the RTC;
- e. Preliminary proscription, through the RTC

There is a significant and marked reliance on judgment calls made by the ACT, aggravated by multiple gaps in accountability. For example, it seems as if any law enforcement agent or military personnel could simply claim good faith or an “honest mistake” upon investigating, wiretapping, or protractedly detaining an innocent person. There is also no mention of LGU or CSO participation — not even any consultations — in making high-level decisions.

⁷ Romualdez v. Sandiganbayan, G.R. No. 152259, July 29, 2004.

⁸ CONST., art. III, sec. 3, par. 1.



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

The proposal should also enlist the participation of independent national institutions, such as the constitutionally mandated Ombudsman and Commission on Human Rights, in investigating and prosecuting public officials and law enforcers who abuse powers in implementing the law. These monitoring bodies and mechanisms can enhance public confidence in the integrity and acceptability of government's activities under this Act.

Certain worries regarding abuse of power also must be addressed. There are no embedded safeguards against red-tagging, or religious and racial profiling. Systematic and targeted harassment against certain groups are part of our political reality, with the victims left to seek relief from the courts. These same victims are forced to "spend valuable time, money and effort in unnecessarily defending themselves, incurring damages in the process."⁹ This is true in a number of cases in the Bangsamoro Autonomous Region, where incidences of mistaken identity and tagging of Islamic schools or *Madrasa* as training grounds for terrorists continue to exist. The national counter-terrorism policy should therefore prevent any direct or indirect discrimination and consider issues arising out of cultural rights of the people.

Summarized in the matrix below are specific observations and clarificatory questions pertaining to certain provisions of HB No. 6875.

Particular Issues	Relevant Provisions	Comments/Questions
Violation of separation of powers; undue deprivation of liberty; accountability	SEC. 29. <i>Detention Without Judicial Warrant of Arrest.</i> – 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	<p><i>Only the Judiciary is vested with the power to order the temporary detention or confinement of a person charged with having committed a public offense without a valid warrant. (Const., Art. VIII, sec. 1, in relation to RPC, Art 125)</i></p> <p><i>Is this not undue deprivation of liberty and</i></p>

⁹ Industrial Insurance v. Bondad, G.R. No. 136722, April 12, 2000.



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p>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.</p>	<p><i>due process, by detaining a mere suspect for a maximum 14-24 days (a) only on the basis of probable cause (b) determined by the Executive? (Const., Art. III, sec. 1)</i></p>
	<p>The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to the terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.</p>	<p><i>Aren't all of these self-justifying conditions based entirely on probable cause?</i></p> <p><i>Who determines if these conditions are satisfied? The ATC? Or the law enforcement agent/military personnel?</i></p>
	<p>Sec. 47. Commission on Human Rights (CHR). – The CHR shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act.</p>	<p><i>Expound on the role of the CHR, consistent with its constitutional mandate, in investigating and prosecuting public officials and law enforcers who violate the rights of suspected or detained persons under the Act. This may include provisions on setting out guidelines on human rights principles and standards relative to the Act or designating an office/unit exclusive for such cases.</i></p>
<p>Undue invasion of privacy</p>	<p>SEC. 16. Surveillance of Suspects and Interception and Recording of</p>	<p><i>Does this pertain to proscribed organizations</i></p>



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p>Communications. – The provisions of Republic Act No. 4200, otherwise known as the “Anti-Wire Tapping Law” to the contrary notwithstanding, law enforcement agent or military personnel may, upon a written order of the Court of Appeals secretly wiretap, overhear and listen to, intercept, screen, read, surveil, record or collect, with the use of any mode, form, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known to science or with the use of any other suitable ways and means for the above purposes, any private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of this Act;</p>	<p>only?</p>
	<p>(b) between members of a designated person as defined in Section 3(E) of Republic Act No. 10168; or</p>	<p><i>Amend to “between designated persons;” as per cited law, pertains to persons declared as terrorists, terrorist financiers, or terrorist organizations by pertinent UN Security Council Resolutions</i></p>
	<p>(c) any person charged with or suspected of committing any of the crimes defined and penalized under the provisions of this Act</p>	<p><i>Is wiretapping, for a maximum of 60-90 days, solely on the basis of probable cause, legally sound and proper? (In relation to Sec. 19 of this bill)</i></p>



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

		<p><i>Isn't there undue invasion of privacy of those persons communicating with the suspects? Does this not violate reasonable expectations of privacy? (Const., Art. III, sec. 3[1])</i></p>
	<p><i>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.</i></p>	<p><i>Given this proviso on respecting confidentiality, how will these persons be investigated for terrorism? Why not make their protocols universal?</i></p>
	<p>SEC. 35. Anti-Money Laundering Council Authority to Investigate, Inquire into and Examine Bank Deposits. – Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to investigate:</p> <p>(a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or violation of Sections 4, 6, 7, 10, 11 or 12 of this Act;</p> <p>(b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act.</p>	<p><i>Is mere probable cause determined by a non-judicial body (ATC) sufficient to invade the privacy afforded to a person's finances?</i></p>
Undue deprivation of	<p>SEC. 36. Authority to Freeze. – Upon the issuance by the court of a</p>	<p><i>Is mere probable cause determined by a</i></p>



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

<p>property</p>	<p>preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay:</p> <p>(a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act;</p> <p>(b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act.</p> <p>The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon order of the Court of Appeals: Provided, That, the twenty-day period shall be tolled upon filing of a petition to extend the effectivity of the freeze order</p>	<p><i>non-judicial body (ATC) sufficient to deprive persons of their property for 20 days?</i></p>
<p>Unclear/improper standards</p>	<p>SEC. 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:</p> <p>(1) Filing of an <i>ex parte</i> written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council</p>	<p><i>Is it the case that probable cause will be evaluated solely upon personal knowledge of the applicant (law enforcement agent/military personnel)?</i></p> <p><i>Is it possible that the agent/personnel can claim</i></p>



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p>(ATC); and (2) After examination under oath or affirmation of the applicant and the witnesses he may produce, the issuing court determines:</p> <p style="padding-left: 40px;">(a) 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</p> <p style="padding-left: 40px;">(b) 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.</p>	<p><i>a good faith mistake to evade accountability, given the presumption of regularity?</i></p>
	<p>SEC. 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. – Pursuant to our obligations under United Nations Security Council Resolution No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.</p> <p>Request for designations by other</p>	



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p>jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR 1373.</p> <p>The ATC may designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.</p>	<p><i>What safeguards are in place to protect persons and organizations from arbitrary or wrongful designations made by the ATC?</i></p>
	<p>SEC. 27. Preliminary Order of Proscription. – Where the Court has determined that probable cause exists on the basis of the verified application which is sufficient in form and substance, that the issuance of an order of proscription is necessary to prevent the commission of terrorism, he/she shall, within seventy-two (72) hours from the filing of the application, issue a preliminary order of proscription declaring that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act.</p>	<p><i>Is it sufficient to rely on the personal knowledge of the applicant to find probable cause, and consequently, declare suspected individuals as terrorists?</i></p> <p><i>What other basis may the court use in determining sufficiency in substance?</i></p>
	<p>SEC. 34. Restriction on the Right to Travel. – Prior to the filing of an information for any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, the investigating prosecutor shall apply for the issuance of a precautionary hold departure order (PHDO) against the</p>	



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
OFFICE OF THE MINORITY FLOOR LEADER
BARMM Compound, Cotabato City

	<p>respondent upon a preliminary determination of probable cause in the proper Regional Trial Court.</p> <p>X X X</p> <p>In cases where evidence of guilt is not strong, and the person charged is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he/she resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. The court shall immediately furnish the DOJ and the Bureau of Immigration with the copy of said order. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his/her bail, which shall be forfeited as provided under the Rules of Court.</p> <p>He/she may also be placed under house arrest by order of the court at his/her usual place of residence.</p> <p>While under house arrest, he/she may not use telephones, cellphones, e-mails, computers, the internet, or other means of communications with people outside the residence until otherwise ordered by the court.</p> <p>If the evidence of guilt is strong, the court shall immediately issue an HDO and direct the DFA to initiate the procedure for</p>	<p><i>What standard will differentiate when evidence of guilt is strong or not strong?</i></p>
--	---	--



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p>the cancellation of the passport of the accused.</p> <p>The restrictions above-mentioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him/her or earlier upon the discretion of the court on motion of the prosecutor or of the accused.</p>	
<p>Ambiguity in light of religious teachings and cultural practices</p>	<p>SEC. 4. Terrorism. – Subject to Section 49 of this Act, terrorism is committed by any person who within or outside the Philippines, regardless of the stage of execution:</p> <p>(a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person’s life;</p> <p>(b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;</p> <p>(c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;</p> <p>(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and</p> <p>(e) Release of dangerous substances, or causing fire, floods or explosions</p> <p>when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any of its international organization, or seriously destabilize</p>	<p><i>How will this provision distinguish acts of terrorism from valid armed demands for self-determination? If this law was passed 5 years ago, then the Bangsamoro would be adjudged to be full of terrorists.</i></p>



Republic of the Philippines
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Transition Authority
 OFFICE OF THE MINORITY FLOOR LEADER
 BARMM Compound, Cotabato City

	<p> 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”: </p> <p> <i>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,</i> 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. </p>	
	<p> SEC. 9. Inciting to Commit Terrorism. – Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years. </p>	<p> <i>By what rule will the danger imputed to inciting others be judged? The clear and present danger rule, or the dangerous tendency rule?</i> </p> <p> <i>How does this interact with religious teachings, cultural practices, and benevolent neutrality? E.g. won't preachings on Jihad by Imams be easily misconstrued as a violation of sec. 9?</i> </p>