

# Counterterrorism in the Philippines: Review of Key Issues

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## Abstract

*Terrorism has taken root in almost all corners of the world with terrorist organizations thriving in both rich and poor countries. In the Philippines, the Human Security Act of 2007 came into force to address the threat of terrorism to the national security of the country. However, the law has never been fully utilized. To provide law enforcers with a stronger legal measure to address acts of terrorism in the country, President Duterte certified a new Anti-Terrorism Bill as urgent, with Congress adopting the Senate version and approving it in the shortest time possible. Despite opposition from various sectors and growing concerns over some of its provisions, President Duterte signed this into law, officially becoming Republic Act No. 11479 or the Anti-Terrorism Act of 2020. This article briefly reviews some key issues of counterterrorism measures in the Philippines.*

**Keywords:** anti-terrorism, anti-terrorism law, counterterrorism, human rights, terrorism, Philippines

## Introduction

On June 1, 2020, President Rodrigo Duterte certified the Anti-Terrorism Bill as urgent. Subsequently, Congress adopted the Senate version and passed it as quickly as possible.[1] The bill was intended to provide measures for the protection of the ordinary Filipino from acts of terrorism, and should have been passed with support and approval under normal circumstances. However, this time is far from normal, and the bill has attracted opposition not only from the left,[2] but from a broader sector of society.

This brings us to these questions: what were the compelling reasons to certify the bill as more urgent than say, the extension of the extraordinary powers of the President to address the effects of the COVID-19 pandemic on the ordinary Filipino and the economy? Is the bill aligned with the Philippine Constitution? Will it solve the domestic security problems festering in the country for decades? What drives the objections against the bill? But perhaps the most disturbing concern among most members of society—do we have a common understanding of what terrorism is and who is a terrorist?

## I. Demand and Supply of Terrorism

There are two main trends in terrorism: 1) one that involves the supply of access to radical technologies, financing, technology among other terror ‘capacity building’ efforts, which is in part how the Islamic State of Iraq and Syria (ISIS) has rapidly become an international phenomenon; 2) one that is linked to cogent demand for terrorist ideas, influence, and support particularly in poorly governed areas (failed states) and within countries, where pockets of bad governance, poverty, and social injustice fester and weaken social cohesion.[3] The latter is often further highlighted by growing inequality and a ‘left behind’ narrative for minorities, whose young people can be susceptible to terrorist recruitment. This factor highlights why terrorism can spread into both rich countries like the United Kingdom (e.g. 7/7 London bombings in 2005 perpetrated by homegrown terrorists who were far from poor) and developing countries like the Philippines involving both poor and middle-class perpetrators (e.g. Davao City bombing in 2016 perpetuated by three men linked to the Maute Group).

Terrorism is an elusive concept having no universally accepted definition. In its broadest sense, it is the use or threat of use of violence against persons [4] and property,[5] instilling fear and causing the intimidation of a larger audience—beyond that of the immediate victims [6] to obtain a political or ideological objective.[7]

While the motives of terrorists may vary, the most common forms of terrorist action include assassinations, bombings, kidnappings, hostage seizures, suicide attacks, and airplane hijackings. The University of Maryland's Global Terrorism Database (GTD) defines terrorist attacks as "the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation." [8] The GTD reports how terrorist attacks have risen from 651 in 1997 to 9,607 in 2018 and reached as high as 16,908 in 2014. Terrorism has become one of the most important threats to the national security of many countries in the world.

International empirical studies suggest terrorism is associated with complex contextual factors such as: socioeconomic inequality, deep historical injustice faced by marginalized groups, lack of judicial impartiality, ethnic fractionalization, and political instability. For instance, research findings indicate that some forms of poverty are related to the emergence of terrorism, suggesting that terrorism is more likely to occur when a large percentage of the population lives below the poverty line. [9] Meanwhile, research on the impact of increased or decreased gross domestic product (GDP) per capita on terrorism yields varying results. On the one hand, studies indicate an inverse relationship between the two variables, suggesting that an increase in a country's GDP per capita makes terrorism less likely due to increasing opportunity costs resulting from people's higher level of material wealth. [10] On the other hand, Fearon and Laitin suggest a direct relationship between the two variables, as higher GDP per capita also reflects higher state capacity, which may make violent clandestine activities more likely. [11] Freytag et al. meanwhile, find a nonlinear relationship between GDP per capita and terrorism: GDP per capita is negatively related to terrorism only after a certain income threshold is reached. [12]

Research findings also suggest that less terrorism is associated with an absence of major human rights abuses [13] and a strong impartial judiciary. [14] Meanwhile, Piazza finds that political instability—indicated by indices of civil war and state failure—is conducive to terrorism. [15] All these factors relate critically to governance—both domestic and cross-national—emphasizing how counterterrorism initiatives cannot simply be addressed as a policing issue.

### ***Terrorism in the Philippines***

There is the adage that one man's terrorist is another one's freedom fighter. In the context of the Philippine modern history, acts of terrorism have been attributed to the actions of the two groups. First are the secessionist groups in Mindanao—the Moro National Liberation Front (MNLF) and its splinter, the Moro Islamic Liberation Front. In more recent times, the Abu Sayyaf Group (ASG) came into being, and its permutations—the Rajah Solaiman Movement, which emerged from 'Balik-Islam' or 'Return to Islam' movement; the Bangsamoro Islamic Freedom Fighters, an Islamic separatist organization, among others. Second is the Communist Party of the Philippines and its armed component, the New People's Army.

In the early 1970s, MNLF was established and launched a guerrilla warfare campaign to struggle for an independent Moro state, separate from the Philippines. Since then, spin-off terrorist groups have also staked claims in the struggle for 'Moro Liberation,' the most notorious of which is the ASG founded by Abdurajak Abubakar Janjalani in 1991. [16] According to the Mapping Militants Project (MMP) of Stanford University:

Throughout the 1990s, the ASG gained recognition by turning to violence, engaging in bombings, kidnapping, assassinations, and other attacks with a special focus on Christians and foreigners. The ASG also targeted the Philippine military, consistent with the organization's professed goal of resisting the Philippine government and establishing an independent Moro state. [17]

The other major strand of modern terrorism in the Philippines can be traced to the Communist insurgency. With the aim of overthrowing the government, the Communist Party of the Philippines, New People's Army (CPP-NPA) is considered one of the oldest communist insurgencies in the world. Included in the list of foreign

terror organizations of the U.S. State Department, the CPP-NPA had its ranks swell during the Marcos years, due in part to poverty, political strife, and repression during the dictatorship—from an estimated high point of over 40,000 fighters, the CPP-NPA is estimated now to number only around 4,000.[18]

### ***Terrorist Attacks***

In the Philippines, the terrorist threat has taken a bloody evolution—from killings, kidnappings, and armed attacks in the past, to a deadly ramp up of suicide bombings in more recent years. Between July 2018 and November 2019, there were six suicide bombings in the country, with evidence that further waves of bombings were set to take place but were foiled.[19]

- July 2018: Believed to be a Moroccan citizen, Abu Khatir al-Maghribi allegedly intended to drive and remotely detonate a van-load of explosives toward a graduation ceremony in Lamitan City, Basilan, meant to kill up to 4,000 schoolchildren. However, the van was stopped at a government checkpoint and was believed to be detonated by al-Maghribi, killing 10, to avoid arrest.
- January 2019: An Indonesian couple, who had tried to enter Syria but were deported by Turkish authorities, blew themselves up at a cathedral in the southern Philippine town of Jolo, killing 23 and wounding more than 100 during a Sunday Mass.
- June 2019: Two men detonated their explosives outside an Army camp in Sulu, killing five, including themselves, and wounding 22 others. The incident has been identified as the first officially confirmed case of a suicide bombing in the Philippines perpetrated by a Filipino, with one of the bombers identified as Norman Lacusa. Investigators have not yet identified the identity and nationality of the second bomber.
- September 2019: A woman, believed to be an Egyptian, blew herself up at the gate of a military base in Jolo, causing no further casualties.
- November 2019: Suspected suicide bombers were foiled by government forces and two of the three suspected would-be bombers were believed to be the Egyptian bomber's husband and their son.[20]

Table 1: Number of Terrorist Attacks from 2004 to 2018

PROVINCE	NUMBER OF ATTACKS	PROVINCE	NUMBER OF ATTACKS
Abra	30	Lanao del Norte	57
Agusan del Norte	95	Lanao del Sur	106
Agusan del Sur	101	Leyte	18
Aklan	4	Maguindanao	643
Albay	60	Masbate	142
Antique	4	Misamis Occidental	16
Apayao	2	Misamis Oriental	43
Aurora	9	Mountain Province	12
Basilan	283	NCR	0
Bataan	10	Negros Occidental	114
Batangas	92	Negros Oriental	70
Benguet	10	Northern Samar	36
Biliran	2	Nueva Ecija	62
Bohol	11	Nueva Vizcaya	6
Bukidnon	127	Occidental Mindoro	13
Bulacan	28	Oriental Mindoro	12
Cagayan	47	Palawan	30
Camarines Norte	22	Pampanga	15
Camarines Sur	69	Pangasinan	41
Camiguin	0	Quezon	56
Capiz	28	Quirino	7
Catanduanes	17	Rizal	18
Cavite	25	Romblon	1
Cebu	26	Samar	42
Compostela Valley	199	Sarangani	46
Cotabato	485	Siquijor	3
Davao del Norte	70	Sorsogon	107
Davao del Sur	183	South Cotabato	92
Davao Oriental	51	Southern Leyte	0
Eastern Samar	15	Sultan Kudarat	110
Guimaras	1	Sulu	208
Ifugao	7	Surigao del Norte	55
Ilocos Norte	28	Surigao del Sur	103
Ilocos Sur	28	Tarlac	5
Iloilo	69	Tawi-Tawi	20
Isabela	66	Zambales	12
Kalinga	21	Zamboanga del Norte	61
La Union	14	Zamboanga del Sur	118
Laguna	35	Zamboanga Sibugay	159

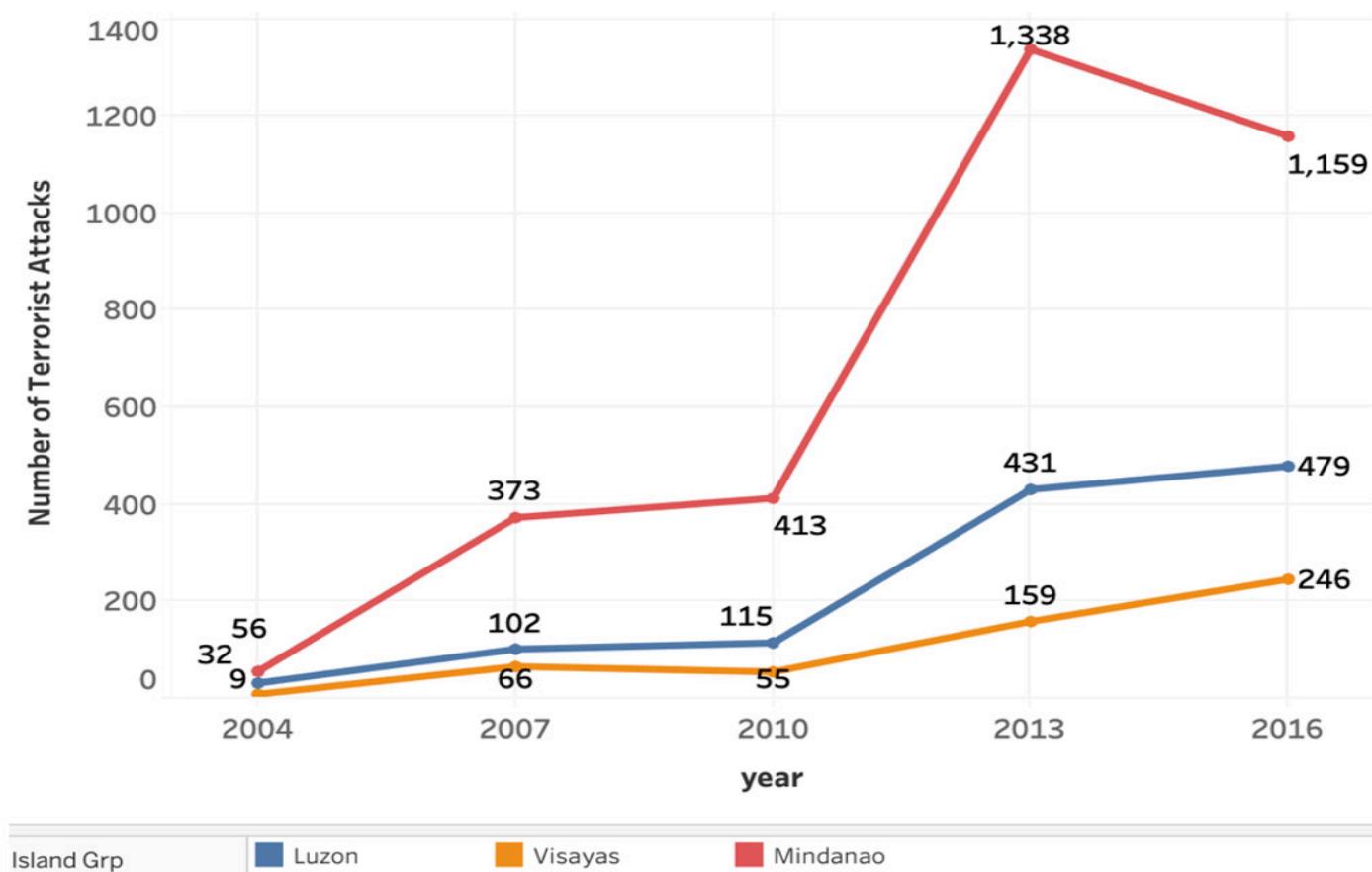
Source: UM Global Terrorism Database [21]

The suicide attacks were all in the Sulu archipelago, ASG's stronghold, and were all claimed by Islamic State of Iraq and the Levant (ISIL, also known as ISIS).[22] It is worth noting, however, that there have been recent incidents for which ISIS-inspired groups have falsely taken responsibility for terrorist attacks (e.g. 2017 suicide attack in Resorts World Manila). Homegrown terrorists in the Philippines who also sought to align with ISIL/ISIS attempted to take Marawi City in May 2017, provoking a five-month siege and inspiring foreign fighters to join the fight. Delays in rebuilding Marawi City and returning residents to their properties and homes have

raised concerns among highly disgruntled residents that terrorist groups are using this to recruit.[23]

Despite the presence of terrorist organizations in the country over the years, Filipino terrorists have not embraced suicide bombing as a tactic. Indeed, most of the suicide bombers in the Philippines are foreigners. However, reports by both the media and the Armed Forces of the Philippines (AFP) confirm that the first suicide bombing perpetrated by a Filipino took place in June 2019. This is a watershed moment in the country, since it signals an escalation of terrorist tactics used by local terrorists. It also demonstrates how ISIS militants have been able to achieve a certain level of support and cooperation from homegrown terrorists in the country.

**Figure 1: Number of Terrorist Attacks per Election Term per Major Island Group**



Source: UM Global Terrorism Database [24]

Drawing on data compiled by the University of Maryland in the GTD—a dataset of terrorist attacks available publicly, but with certain limitations and aspects that remain contested [25] —an analysis of trends in terror attacks in the Philippines reveals a large spike particularly in Mindanao between 2010 and 2016. The GTD of the University of Maryland compiles information for each attack event, and the database logs different variables such as location, success of the attack, involvement of weapons or explosives, and number of casualties. *Table 1* tabulates number of attacks per province from 2004 to 2018. Most of the terrorist activities for that time period have been concentrated in Mindanao, with Cotabato and Maguindanao being the hot spots for attacks. *Figure 1* reveals a positive trend line on the number of attacks logged in the database over the last five election terms. However, Mindanao, which has consistently logged more attacks than the two other island groups in the country, has seen a decrease in number of terrorist attacks in 2016—from 1,338 in 2013 to 1,159 attacks in 2016.

## II. *Anti-Terrorist Bill*

The Ateneo Policy Center held on June 17, 2020 a closed-door, non-attribution roundtable discussion hosted by defense and counterterrorism analysts. The meeting looked at the Anti-Terrorism Bill from the perspective of invited speakers who have contributed to the discussion and inputs toward the crafting of the bill. They were ably interpellated by a representative from Ateneo's Political Science Department. In distilling the discussions, four (4) issues were identified, with regards to the Anti-Terrorism Bill. To wit:

- *First*, there is evidence pointing to the risk of terrorist attacks in the country. As noted previously here, there is a positive trend line on the number of terrorist attacks in the Philippines during the last five election years, despite the decrease in the number of terrorist attacks in Mindanao in 2016. Qualitatively, different levels of terrorism appear to be evolving. In terms of the number of fatalities and injuries from logged terrorist attacks, the number has increased over the last five election years. In terms of tactics, the recent ramp up of suicide bombings, and the first officially confirmed case of a Filipino suicide bomber suggest a modification if not development of terrorist tactics used by local terrorists.
- *Second*, there is some evidence that the current legal framework for countering terrorism appears to be inadequate, requiring a consideration of legal reforms as part of the counterterrorism agenda.
- *Third*, part of the problem can also be traced to the array of impediments to counterterrorism strategy, along with the compromised credibility of State institutions critical to countering terrorism, including the country's key national security agencies and institutions in the judiciary. For instance, the Human Security Act of 2007—the country's former principal law against terrorism—contained provisions that deterred government and law enforcement agencies from fully utilizing the said law. Moreover, human rights violations across administrations have resulted in a diminished trust if not distrust of the public toward the government.
- *Finally*, in the present context, the reform discussion on counterterrorism appears to be ill-timed, particularly given the still-looming concern over the COVID-19 pandemic, combined with lingering concerns over the potential abuse of State power against legitimate opposition, and over recent human rights issues in the government's anti-illegal drugs campaign.

### ***Root Problems of Terrorism in the Philippines***

The roundtable meeting identified key challenges to a successful counterterrorism effort by the government. *First*, the porous nature of the Basilan, Sulu, and Tawi-Tawi (BASULTA) littoral areas enhances the weaknesses of border control mechanisms, further aggravated by capability gaps among various state and security institutions—thus creating entry points for terrorists.[26] *Second*, the ethno-national connection, in terms of language, religion, and customs, facilitates the ease of connection among terrorist networks within the region.[27] *Third*, dysfunctional political practices and skewed socioeconomic outcomes create “misgoverned spaces”[28] which perpetuate long-standing grievances in certain parts of the country. These spaces provide sanctuary to terrorists and render the local populace vulnerable to terrorists' coercive influence and recruitment. Further, the hybrid nature of terrorism (i.e. armed groups combined with engagement in political or community issues to generate support from the people) makes it difficult for the state to counteract terrorist influence. A recent study, for instance, has pointed out that armed conflicts are a consequence of political, economic, and social issues that revolve around “shadow economies” which “include a broad range of actors and motives, ranging from political and economic elites in pursuit of wealth and power to individuals and groups that rely on the shadow economy for their economic survival”.[29] *Finally*, it is only recently that the state was able to come up with a ‘whole-of-nation’ approach in dealing with terrorist groups. It will take time before it gains sufficient traction.

### ***Human Security Act (HSA) of 2007: An Inadequate Legal Framework?***

Republic Act No. 9731, also known as the Human Security Act (HSA) of 2007, came into force in July 2007 to help the government and law enforcement agencies to address the threat of terrorism to the security of the country. Upon signing into law, former president Gloria Macapagal-Arroyo described the measure as a “legal muscle to help end the paralysis of fear, empowered with a law that identifies terrorism and penalizes it, a law that preserves and protects freedom”.[30] However, the HSA of 2007—the country’s principal law against terrorism—has never been fully utilized, having been used only twice since its enactment: the first time was to proscribe the ASG as a terrorist organization. The second was against a person who was involved in the Marawi siege, but this case was eventually settled out of court.[31] The HSA of 2007 has also been criticized by implementing agencies as ineffective because some of its provisions make it legally and practically difficult to use:

“The HSA, with good intentions, has provided numerous safeguards for the protection of the people’s constitutional rights and fundamental liberties. ... Wittingly or unwittingly, however, the HSA in the final analysis, tilted the scales in favour of one side, disturbing the balance. ... The HSA while commendable for extending due regard to human rights, needs to be reviewed as to its efficacy as a counter-terror measure”.[32]

Among others, Section 18 provides for only three days’ detention period without a judicial warrant of arrest of suspected terrorists.[33] While this provision may be viewed from a human rights perspective as protection for the rights of individuals, law enforcement officers found the three days too short, especially when gathering evidence in doing a case buildup against suspected terrorists.[34] Furthermore, Section 7 of the HSA of 2007 requires written approval from the Court of Appeals prior to the surveillance and investigation of suspected terrorists by law enforcement authorities.[35] If granted, the person being investigated retains the right to be informed of his/her surveillance and investigation, and to challenge the legality of such acts before the issuing Court.[36]

The HSA of 2007 also provides that any person accused of terrorism charges who is later acquitted by court shall be entitled to Php 500,000.00 or around USD 10,400.00 in damages for each day that he/she has been detained or deprived of liberty or arrested without a warrant as a result of such accusation, with the number of damages automatically charged against the appropriations of the police agency or the Anti-Terrorism Council that brought or sanctioned the filing of the charges against the accused.[37] Moreover, a person acquitted from terrorism charges is also entitled to Php 500,000.00 in liquidated damages for each day in which his/her properties, assets, or funds were seized as terrorist assets, with the number of damages to be taken from appropriations of the police or law enforcement agency that caused the filing of the enumerated charges against him/her.[38] While these provisions serve as protective measures against malicious prosecution of individuals, these have also deterred law enforcement authorities from using the HSA of 2007: the police and the military have never attempted to use this law precisely because of fear that their institution might be penalized to pay hefty fines.[39]

In a proposal to provide law enforcers with a stronger legal measure to address acts of terrorism in the country, the Senate approved on third and final reading Senate Bill No. 1083 on February 26, 2020. The provisions of the said bill were adopted by House Committees on Public Order and Safety and on National Defense into House Bill No. 6875 or the proposed “Anti-Terrorism Act of 2020”, certified as urgent by President Duterte on June 1, 2020. The House of Representatives with 173 affirmative votes approved the proposed legislation on third and final reading on June 3, 2020, only two days after the president’s certification. This brings to the fore the effect and legal significance of the power of the president to certify a bill as urgent. Section 26 (2), Article VI of the 1987 Philippine Constitution states that:

“(2) No bill passed by either House shall become a law unless it has passed ***three readings on separate days***, and ***printed copies thereof in its final form*** have been distributed to its Members ***three days before its passage***, except when the President certifies to the necessity of its enactment to meet a public calamity or emergency. Upon the last reading of the bill, no amendment thereto

shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal”.[40] (*emphasis added*)

A certification of a bill as ‘urgent’ means that the enactment of the proposed law is necessary to address public calamities or emergencies. With President Duterte’s certification of House Bill No. 6875 as ‘urgent’, the requirement of separate days for three readings is removed, as well as the requirement for the distribution of printed copies of the bill in final form three days before its passage. This essentially accelerates the legislative process, whereas normally it takes months for bills to be passed by both Houses of Congress.

On July 3, 2020, President Duterte signed the bill into law, officially designated as Republic Act No. 11479 or the “Anti-Terrorism Act of 2020”, effectively replacing the HSA of 2007 as the country’s principal law against terrorism, and rewriting some of its provisions, despite opposition from various sectors and growing concerns over some of its provisions. For instance, the Anti-Terrorism Act of 2020, like the HSA of 2007, also allows the arrest and detention of suspected terrorists through the Anti-Terror Council (ATC). However, the new law allows law enforcement agents to arrest without warrant and detain anyone suspected of engaging in terrorist activity for up to 14 days, and may be extended by a maximum of 10 days.[41] Apart from increasing the number of days of arrest and detention without a judicial warrant, the Anti-Terrorism Act of 2020 also imposes no liabilities for law enforcement agencies if the suspicion turns out to be false.[42] The law also provides for contradicting provisions on extraordinary rendition—Section 3 allows it “without framing formal charges, trial or approval of the court”, but Section 48 prohibits it without providing for penalties for the violation thereof. More importantly, Section 4 of the law fails to state what terrorism is and who is guilty of terrorism in clear and precise terms. Instead, the law provides for an ambiguous and overbroad definition of what qualifies as terrorism, making it susceptible to various interpretations, and to governmental abuse of authority especially when safeguards are reduced. As retired Associate Justice Vicente V. Mendoza puts it, “a statute whose terms are so vague that persons of common understanding must necessarily guess at its meaning or differ as to its application offends due process. And a statute that sweeps unnecessarily broadly both prohibited and protected conduct is overbroad and likewise offends due process.”[43]

### ***III. Addressing the Credibility of State Actors***

Meanwhile, the country’s national security and law enforcement agencies face lingering issues over credibility and trust. The proponents of the Anti-Terrorism Act of 2020 are working on a presumption that the current institutions—the whole gamut of the security, executive, and judicial institutions—would give high regard to human rights and would exercise a robust degree of accountability. However, the strong public reaction against the law could be inferred as a manifestation of diminished trust in key government institutions tasked with implementing the Anti-Terrorism Act of 2020.

The stigma of extrajudicial killings and the reported abuses committed on behalf of the war against illegal drugs by some police personnel, the controversial red-tagging practiced by some government personalities, and the lingering concerns over human rights violations committed across various administrations are some of the serious factors that affect people’s trust toward the government. In recent years, the government has publicly tagged legitimate organizations and party-list groups as communist fronts (e.g. Gabriela, Kabaataan, and IBON Foundation). A multiagency report from the Presidential Communications Operations Office (PCOO), for example, submitted a multiagency report to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2020 describing the ACT Teachers Party-List as “Communist Party of the Philippines-created and led above-ground or front mass organization and institution”.

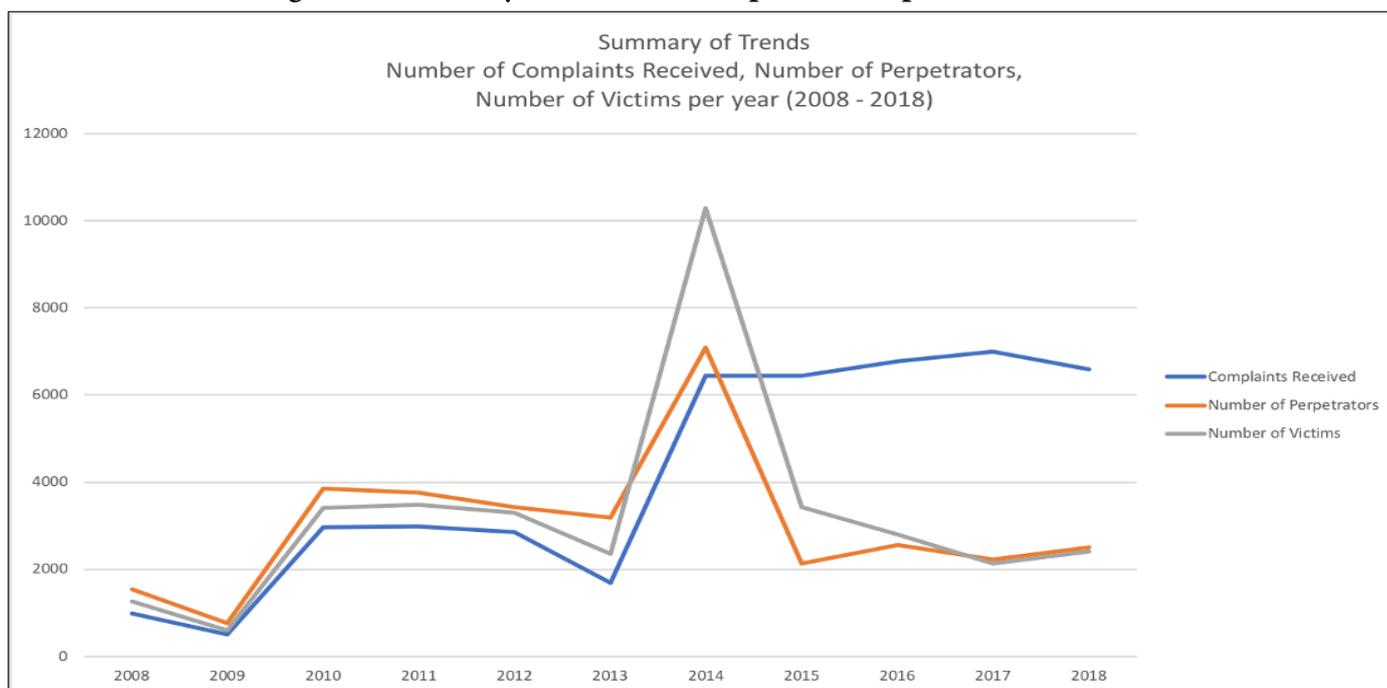
Table 2. Complaints, Perpetrators, Victims per Year

Year	Complaints Received	Number of Perpetrators	Number of Victims
2008	986	1541	1264
2009[44]	499	770	602
2010	2964	3856	3405
2011	2988	3766	3476
2012	2846	3422	3301
2013	1683	3180	2359
2014	6433	7096	10295
2015	6448	2126	3437
2016	6775	2558	2806
2017	7005	2219	2133
2018	6582	2507	2418
<b>TOTAL:</b>	<b>45209</b>	<b>33041</b>	<b>35496</b>

Source: 2008–2018 Annual Reports of the Commission on Human Rights [45]

In a recent report, the OHCHR describes the Philippines as marked with an overarching focus on public order and national security—including counterterrorism and illegal drugs—often at the expense of human rights, due process, accountability, and the rule of law.[46] Drawing on data from the Annual Accomplishment Reports from the Commission on Human Rights (CHR) from 2008 to 2018, figures show that since 2008, there has been an increasing trend in the number of human rights violations in the country. *Table 2* summarizes the number of human rights violation complaints, perpetrators, and victims documented in the country per year, while *Figure 2* plots these figures in a graph to show the trend.

Figure 2. Summary of Trends – Complaints, Perpetrators, Victims



Source: 2008–2018 Annual Reports of the Commission on Human Rights [47]

Furthermore, the CHR has recorded a total of 1,632 cases of extrajudicial killings, 163 cases of enforced disappearances, and 466 cases of torture from 2008 to 2018. Extrajudicial killings have increased almost twofold from 142 in 2008 to 239 10 years later, and reached as high as 530 in 2016.

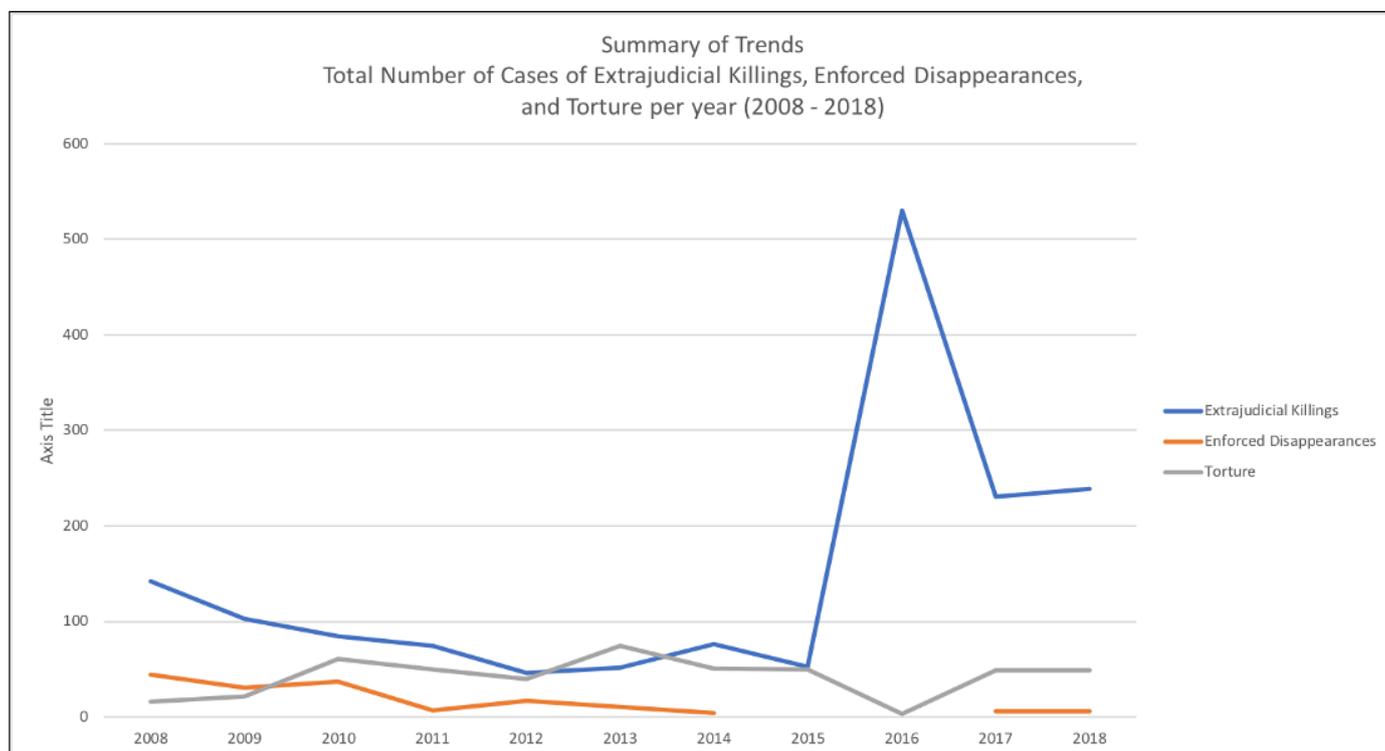
**Table 3. Alleged Extrajudicial Killings, Enforced Disappearances, and Torture Cases per Year**

<b>Year</b>	<b>Extrajudicial Killings</b>	<b>Enforced Disappearances</b>	<b>Torture</b>
2008	142	44	16
2009	103	31	22
2010	85	37	61
2011	75	7	50
2012	46	17	40
2013	52	11	75
2014	76	4	51
2015	53	-	50
2016	530	-	3
2017	231	6	49
2018	239	6	49
<b>TOTAL:</b>	<b>1632</b>	<b>163</b>	<b>466</b>

*Source: 2008–2018 Annual Reports of the Commission on Human Rights [48]*

*Table 3* summarizes the number of cases of extrajudicial killings, enforced disappearances, and torture per year from 2008 to 2018, while *Figure 3* plots these figures in a graph to show trends. These incidents of human rights violations committed by state agents, supported by the data indicating an increase in the trend of extrajudicial killings, affect the credibility of the law-enforcement institutions in implementing provisions of the law that may curtail some fundamental rights.

**Figure 3. Summary of Trends –Alleged Extrajudicial Killings, Enforced Disappearances, and Torture Cases per Year**



Source: 2008–2018 Annual Reports of the Commission on Human Rights [49]

Another controversial program where human rights violations have been allegedly committed is the anti-illegal drugs campaign called ‘Double Barrel’. One of its components, project ‘Tokhang’, does “house to house visitations to persuade suspects to stop illegal drug activities”.[50] Related to this, barangay officials compiled lists of suspected ‘drug personalities’ and passed them to the police. However, individuals had no legal recourse to challenge their inclusion in the said list. Police data further reveals that of the 42,286 police’s anti-illegal drugs operations conducted from July 1, 2016, until November 30, 2017, 507 incidents—or only 1.2 percent—were based on an arrest warrant. According to the Philippine Drug Enforcement Agency, since the launch of Double Barrel on July 1, 2016, and until January 31, 2020, the police killed 5,601 persons—with other estimates thrice that number. This clearly illustrates the need for a transparent and comprehensive reporting system by State and non-State actors.

Soon after the Anti-Terror Law was passed, an incident involving AFP and Philippine National Police (PNP) personnel in Jolo, Sulu resulted in the death of four Army intelligence personnel.[51] The details and the conditions obtaining on the ground that led to this incident are still being investigated, but looking at it from all possible scenarios, it does not look well for the PNP, which will be one of the principal implementors of the Anti-Terrorism Act of 2020. Distrust permeates not only among civil society, but also among the state actors themselves, in this case the AFP and the PNP. This further concretizes the trust deficit and the issue of competence among state actors to implement the law without abuse.

This issue of trust also moved many of the different sectors—such as academia, law groups, rights-based organizations, and other vulnerable sectors that may be affected by the implementation of the law—to challenge the constitutionality of the Anti-Terrorism Act of 2020. At present, there are 37 petitions pending at the Supreme Court,[52] and these cases have been consolidated and set for oral arguments in February 2021. [53] Some of the common constitutional issues put forward in the petitions are as follows:

- Section 4, as previously mentioned, provided a vague and overbroad definition of terrorism such that anyone or any group can easily be tagged as terrorist, especially if an act is interpreted as creating the

atmosphere of fear, or is seen as provoking or influencing the government by intimidation. Petitioners argued that the law could be declared unconstitutional as the definition of ‘terrorist’ and ‘terrorist act’ may be void for vagueness and overbreadth, leaving law enforcers wide discretion for its execution.

- Section 29, on the provision on warrantless arrest by mere suspicion and without warrant from the court is also a controversial issue, as it allows authorities to arrest and detain suspected persons as long as they have the authorization of the ATC. This is an exception to the general rule that requires court warrant before arrest and detention.
- Petitioners also argue that the provision on surveillance and wiretapping may violate due process, as it allows law enforcement agents to conduct the same by mere application, even without a case filed in court. There is a danger, therefore, of abuse that will effectively authorize unreasonable searches and seizure against anyone who has been suspected of being a terrorist.

Lastly, it is critical to note that these trust issues extend far beyond the current administration. This might be a signal that there are structural and institutional challenges in implementing policies and laws—so that even well-designed laws must take into consideration these deficits and weaknesses. These issues are rather fundamental and the government will find it difficult to gain the trust and confidence of the public with regards to the law, unless these are addressed.

#### ***IV. Assessment of the Anti-Terrorism Act of 2020***

There is a common understanding amongst various sectors about several implications of the Anti-Terrorism Act of 2020 on national security. To wit:

- *First*, the law equips the state forces with a stronger arsenal to prevent acts of terrorism. The increase in pre-charge detention from three days to 14 days, and extendible to another 10 days, without warrant would allow the law enforcers sufficient time to build the case against suspected terrorists.[54]
- *Second*, the expansion of coverage to include extraterritorial terrorist acts strengthens the legal framework for international cooperation. The use of whole-of-nation strategy to address the changing nature of terrorist organizations would trigger agility among state agencies to coordinate efforts, share intelligence, and streamline processes.
- *Third*, the law does not address existing structural problems. Disfunctional governance is still present, added by untuned policy directives between national and local governments as regards dealing with terrorist groups: national government does not deal with certain anti-terrorist measures, while some local governments in Lanao del Sur and Basilan have programs to rehabilitate members of terrorist organizations.[55]
- *Fourth*, there must be a separate effort to strengthen intelligence-gathering capacity, resources, and protocols. Currently, intelligence sharing does not directly contribute to a legal case buildup. As in the past, the intelligence efforts were insufficient to prosecute suspected terrorists. Gaps in the technical capacity of authorities in managing intelligence continue to exist and the border security issues remain to be problematic. This does not necessarily require an act of legislation, but there should be appropriate mechanisms by which intelligence can be strengthened.

#### ***V. Conclusion***

In summary, the curious prioritization of the Anti-Terrorism Act of 2020 amidst the pandemic crisis has affected the public’s perception about the bill’s real intent. In much of the academic community, the ill-timed passage of the law only raised skepticism. To many, the government should have focused its attention on containing the impact of the COVID-19 pandemic on the populace and on resuscitating the local economy.

There is merit in coming up with a constitutionally compliant and effective legal tool to combat terrorism, and under normal circumstances it would have been welcomed by the public since it will strengthen the ability of the state to protect society. However, these are not normal times. It does not also help that the prevailing style of governance, the incidents of abuses by law enforcement agencies, and the perceived loss of decency in the way political discourse is being conducted provided a toxic environment fostering distrust in government.

Clearly, there is a need to strike a balance between developing an effective legal strategy as an immediate approach, and at the same time addressing the root causes of terrorism, which is rather fundamental in nature and can be addressed only by efficient and effective governance strategies as headway toward trust rebuilding. While the Anti-Terrorism Act of 2020 should address the defects of the HSA of 2007, it should also contribute to efforts to address the root causes of terrorism. Addressing the root causes might require government to synergize the law with other strategies or efforts that look at improving the standards of governance and strengthening the local economy, and create opportunities for improved education among the youth, especially for women. The government should also look at capacitating institutions involved in the implementation of the law—law enforcement, judiciary, and human rights groups, among others—and fix the way it manages its strategic communications to the general public, as many state and non-state personalities identified with the government contribute to the confusing discourse on the law.

The government should also find the space to address the public's fear over perceived ambiguity between acts of terrorism and the legitimate exercise of free speech and assembly. The determination of probable cause against persons suspected of committing acts of terrorism or inciting terrorism must be revisited, articulating a convincing justification as to why such determination should be given to the executive branch rather than the judiciary, and outweighing the danger of possible abuse. Provisions to prevent abuses and ensure accountability must be emphasized and strengthened, if only to mitigate against the trust deficit between the general public and the government. Otherwise, the Anti-Terrorism Act of 2020, as it is written, would be considered a draconian measure increasing insecurity and terror, rather than offering security and a path to national peace. The irony here is that it may actually exacerbate dissent and terrorism, if abused and unchecked. There is a need therefore to step back and ask again: would the Anti-Terrorism Act of 2020 effectively address the current threats of terrorism in the country, given the premises stated?

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## Notes

- [1] More specifically the lower house adopted the Senate version of the bill in what many thought was an unusually expedited move. The House of Representatives approved with 173 affirmative votes the proposed legislation on third and final reading on June 3, 2020, despite opposition from various sectors and growing concerns over some of its provisions.
- [2] Traditionally, the Philippine Left refers to the Communist Party of the Philippines (CPP), its armed wing, the New People's Army (NPA), and/or its political front, the National Democratic Front of the Philippines (NDFP). Openly espousing a Maoist ideology to achieve national liberation, the CPP-NPA-NDFP triumvirate claims to speak on behalf of landless peasants, indigenous peoples, oppressed religious minorities, workers, and youth in the country.
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