



THE PHILIPPINES

Human Rights Committee Consideration of the 5th Periodic Report of The Philippines

Submission for the Review of the State report of The Philippines by the Lawyers for Lawyers Foundation

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Lawyers for Lawyers
P.O. Box 15732
1001 NE Amsterdam
The Netherlands

T +31(0)207171638
E Info@lawyersforlawyers.org
@ www.lawyersforlawyers.org

I Introduction

Submitting Party

1. Lawyers for Lawyers is an independent civil society organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has special consultative status with ECOSOC since 2013.¹
2. Our mission is to promote and preserve the independence of the legal profession worldwide and to defend the professional rights of lawyers enabling them to provide legal services safely and independently, without fear of reprisal. We safeguard the lawyers' role in protecting the rule of law and human rights and ensuring effective justice for all.²
3. To achieve our mission, we advocate for adherence to core values underpinning the legal profession in accordance with internationally recognized laws and standards, including but not limited to the International Covenant on Civil and Political Rights ('Covenant')³ and the Basic Principles on the Role of Lawyers ('Basic Principles').⁴

State under Review and Our Engagement

4. At its 128th session (2-17 March 2020), the Human Rights Committee ('Committee') adopted the list of issues in relation to the fifth periodic report of the Philippines ('List of Issues').⁵ In January 2022, the Philippines ('State party') submitted its replies to the List of Issues ('Replies').⁶ The Committee will consider the State party's fifth periodic report⁷ at its 136th session (10 October – 4 November 2022).
5. Before the adoption of the List of Issues, Lawyers for Lawyers submitted a report to the Committee on the State party's implementation of the Covenant (also attached as Annex 1 to this submission).⁸ The report focused on lawyers as central theme - particularly the State party's failure to ensure that all persons have effective access to legal services provided by an independent legal profession and the consequences thereof for the proper functioning of the rule of law and the protection of fundamental rights and freedoms to which all persons are entitled – in relation to the State party's implementation of article 14 as well as articles 2, 6, 9, 17 and 19 of the Covenant.
6. In this report, Lawyers for Lawyers will provide updated and targeted information on the issues and questions raised in the List of Issues that have an impact on the proper functioning of lawyers and the consequences thereof in the State party. In doing so, we will follow the order of the List of Issues, consider the State party's Replies, and suggest recommendations and highlight concrete actions to be undertaken by the State party.

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>

² For more information visit our website: <https://lawyersforlawyers.org/en/about-us/what-we-do/>

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. See also General Assembly 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and invited Governments to respect them and to take them into account within the framework of their national legislation and practice.

⁵ List of Issues in relation to the fifth periodic review of the Philippines, Human Rights Committee, 30 June 2020, CCPR/C/PHL/Q/5.

⁶ Replies of the Philippines to the list of issues in relation to its fifth periodic report, 18 March 2022, CCPR/C/PHL/RQ/5 ('State party's Replies').

⁷ Fifth periodic report submitted by the Philippines under article 40 of the Covenant, due in 2016, CCPR/C/PHL/5, 3 October 2019 (Fifth Periodic Report').

⁸ Consideration of the 5th Periodic Report of the Philippines - Submission on the list of issues by the Lawyers for Lawyers Foundation, 13 January 2020, available at <https://lawyersforlawyers.org/submission-to-un-human-rights-committee-philippines/>.

Methodology

7. Lawyers for Lawyers has been closely following the situation of lawyers in the State party for over 20 years. The information for this submission is collected through ongoing desk-research, interviews, and engagement with and reports from Filipino lawyers and other local and international stakeholders.

II Substantive Part – Issues and Questions raised in the List of Issues in relation to the State party’s fifth periodic report

Counter-terrorism measures (arts. 2, 4, 7, 9 and 14)

Paragraph 7 of the List of Issues - Paragraphs 13, 14, and 15 of the State party’s Replies

Current legal status of the new anti-terrorism law

8. The Anti-Terrorism Act of 2020 ('ATA'), which replaced the Human Security Act of 2007 ('HSA') was signed into law by former President Duterte on July 3, 2020.⁹ It came into effect on July 21, 2020, i.e., fifteen days after its publication.¹⁰ Prior to the signing of the ATA, the Philippine Senate approved Senate Bill No. 1083 on February 26, 2020.¹¹ The bill's counterpart in the House of Representatives, House Bill No. 6875, was approved on June 3, 2020.¹²

Enactment process of the ATA, reflecting wide-spread opposition to the new law

9. In its reply to paragraph 7 of the List of Issues, the State party indicated that the process leading up to the enactment of the ATA was subject to “inclusive national deliberation” resulting in broad support for the new law, noting that “human rights-based input” from “the Commission on Human Rights (CHR)”, “Human Rights Defenders”, and “Civil Society Organizations” had been incorporated “in the drafting of the legislation” and that “173 out of 204 votes cast in Parliament were in favour of passing the legislation of ATA 2020.”¹³
10. The State party added that the provisions of the ATA “were not crafted in a vacuum”, but rather accounted for “(...) the standards by international and supranational organizations, and the international human rights framework”.¹⁴
11. In practice, however, the ATA was adopted into law after former President Duterte certified the bill as urgent,¹⁵ prompting the House of Representatives to expedite the passage of the bill

⁹ Congress of the Philippines, Republic Act No. 11479: An Act to Prevent, Prohibit and Penalize Terrorism, Thereby repealing Republic Act No. 9372, Otherwise Known as the “Human Security Act of 2007”, <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200703-RA-11479-RRD.pdf>

¹⁰ Ibidem, Section 58 of the ATA.

¹¹ Senate Bill No. 1083, <https://senate.gov.ph/Lisdata/31632292421.pdf>.

¹² House Bill No. 6875, https://www.congress.gov.ph/legisdocs/first_18/CR00340.pdf.

¹³ State party’s Replies, see footnote 6, paragraph 14. The State party added: “Of the 173 that voted in favour of the ATA 2020, 25 of them were elected parliamentarians representing vulnerable and marginalized sectors such as students, youth, teachers, academe, urban poor, worker-laborers, peasant farmers, agricultural workers, fisher folks and internally displaced persons.” However, legal experts in the Philippines have argued that the party-list system has been taken over by political dynasties who use the system as a back-door entry to Congress, winning seats “by cheating, vote-buying and patronage politics”. See: <https://globalvoices.org/2021/11/21/political-dynasties-and-billionaires-hijack-democratic-party-list-system-in-the-philippines/>.

¹⁴ Ibidem, paragraph 15.

¹⁵ Azer Parrocha, “Duterte certifies anti-terror bill as urgent”, Philippine News Agency (2020), <https://www.pna.gov.ph/articles/1104615>.

during the coronavirus pandemic¹⁶ and short-circuiting a more thorough debate of the legislation¹⁷ despite broad domestic and international opposition to the bill.¹⁸

12. The proposed antiterrorism law was widely qualified by experts as dangerous as it is prone to abuse and not in conformity with the State party's Constitution and international human rights obligations. The Commission on Human Rights (CHR)¹⁹ as well as academics,²⁰ business groups,²¹ church leaders,²² civil society, including human rights and media organizations,²³ indigenous peoples,²⁴ the Integrated Bar of the Philippines,²⁵ lawyers,²⁶ lawmakers,²⁷ and students,²⁸ amongst others, expressed grave concerns about the bill's overbroad definitions, vagueness, and dilution of human rights safeguards. They also feared that it would be used to further extend the practice of red-tagging, calling it a weapon to target activists and critics of the government, stifle free speech and peaceful dissent, allow for violations of privacy²⁹, and weaken judicial independence.³⁰ In addition to these concerns, citizens felt upset that the Duterte government had pushed the ATA as an urgent priority in the middle of the coronavirus pandemic and the ensuing economic crisis.³¹

¹⁶ Ibidem. Former President Duterte, in a letter to Congress of June 1, 2020, certified House Bill 6875 as urgent to allow the House of Representatives to fast-track the legislative process. He called for the immediate passage of the bill "to address the urgent need to strengthen the law on anti-terrorism in order to adequately and effectively contain the menace of terrorist acts for the preservation of national security and the promotion of general welfare." On the same day, former Defense Secretary Delfin Lorenzana also urged Congress to pass the bill before it would go on recess on June 5, 2020.

¹⁷ For a proposed law to be valid, [Section 26\(2\) of Article IV of the 1987 Constitution of the Philippines](#) requires, amongst others, that it must: (a) be passed on three readings which must be done on separated days, and (b) be printed in its final form and distributed three days before it is finally approved. A certification that the bill is urgent – which is allowed to meet a public calamity or emergency - removes the requirement of separate days for the three readings (in other words, all three approvals can be done on the same day).

¹⁸ Jim Gomez, "Philippine president signs widely opposed anti-terror law, July 3, 2020 [Associated Press], available at <https://abcnews.go.com/International/wireStory/philippine-president-signs-widely-opposed-anti-terror-law-71593954>. The bill "has triggered online and street protests even as community quarantine restrictions are in place due to the coronavirus outbreak" and a "multisectoral backlash has also ensued, but supporters of the bill are pressing on." In: Cliff Venzon, "The Philippines' Anti-Terrorism Act of 2020: Five things to know", June 10, 2020, <https://asia.nikkei.com/Politics/The-Philippines-Anti-Terrorism-Act-of-2020-Five-things-to-know>.

¹⁹ Statement of the Philippine Commission on Human Rights on the proposed Anti-Terrorism Act of 2020, June 5, 2020, <https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-proposed-anti-terrorism-act-of-2020/> ('CHR Statement ATA bill').

²⁰ Kristine Joy Patag, "UP law profs: Anti-terrorism bill a 'clear and present danger'", June 12, 2020, <https://www.philstar.com/headlines/2020/06/12/2020447/law-profs-anti-terrorism-bill-clear-and-present-danger>. See also: <https://www.philstar.com/headlines/2020/06/05/2018853/feu-law-professors-call-caution-passage-controversial-anti-terrorism-bill>.

²¹ Leslie Ann Aquino, "The Philippines: Trade Union Congress calls on Congress to reject anti-terrorism bill, June 29, 2020, Manila Bulletin; "Tax Reform more important than new anti-terror bill: Financial executives group", ABS-CBN News, 9 June 2020, and "The Philippines: Several business associations jointly voice strong opposition to anti-terrorism Act, Makati Business Club & Others, June 2020, all available at <https://www.business-humanrights.org/en/latest-news/the-philippines-trade-union-congress-calls-on-congress-to-reject-anti-terrorism-bill/>.

²² Devin Watkins, "Philippine Christian leaders unite against new anti-terrorism law", June 4, 2020, available at <https://www.vaticannews.va/en/church/news/2020-06/philippines-churches-bishops-unite-against-antiterrorism-law.html>.

²³ Jove Moya, "Activists hold protests against new anti-terror bill," June 3, 2020, <https://www.sunstar.com.ph/article/1858805/manila/local-news/activists-hold-protests-against-new-anti-terror-bill>.

²⁴ See for instance Jake Grinyer, "Controversial Anti-Terrorism Law approved in the Philippines", July 4, 2020, available at <https://theowp.org/controversial-anti-terrorism-law-approved-in-the-philippines/>.

²⁵ Joel R. San Juan, "IBP: Anti-Terrorism Bill provisions are unconstitutional", June 23, 2020, Business Mirror, available at <https://businessmirror.com.ph/2020/06/23/ibp-anti-terrorism-bill-provisions-are-unconstitutional/>. The Integrated Bar of the Philippines (IBP) is the official organization for all Philippine lawyers. In addition to attorneys, members of the IBP also include other legal professionals, including judges and prosecutors. For more information about the IBP visit their website: <https://www.ibp.ph/about.html>.

²⁶ Lian Buan, "Fears of losing freedoms escalate as Congress rushes to pass anti-terror bill, May 30, 2020; Ratzel San Juan, "Over 700 lawyers, law students worldwide oppose anti-terror bill", June 6, 2020, <https://www.philstar.com/headlines/2020/06/06/2019046/over-700-lawyers-law-students-worldwide-oppose-anti-terror-bill>.

²⁷ Krissy Aguilar, "Duterte certifies as urgent anti-terror bill" (Inquirer.net), June 1, 2020, noting that "[T]he bill was met with criticism from lawmakers," <https://newsinfo.inquirer.net-1284472/duterte-certifies-as-urgent-anti-terror-bill>.

²⁸ See for instance: Nestle Semilla, "7 Cebu students protesting anti-terrorism bill nabbed," June 5, 2020, <https://newsinfo.inquirer.net/1286795/7-cebu-students-protesting-anti-terrorism-bill-nabbed>.

²⁹ See, for instance, Sofia Tomacruz, "Duterte certifies as urgent anti-terrorism bill feared to clamp down on basic rights", June 1, 2020, noting that "lawyers warned the proposed bill contained provisions that practically criminalized opposition against the government as it would authorize the arrest and detention of anyone who expresses dissent to government" and "[H]ouse opposition members had also questioned certain provisions of the bill, as broader definitions on terrorist acts and fewer restrictions on law enforcement could leave the measure prone to abuse", <https://rappler.com/nation/262565-duterte-certifies-urgent-tougher-anti-terrorism-bill/>. See also CHR Statement ATA Bill, footnote 19.

³⁰ Reiven Pascasio, "Anti-terror law weakens judicial independence", August. 10, 2020, available at: <https://verafiles.org/articles/anti-terror-law-weakens-judicial-independence>.

³¹ The Diplomat (2021). Battle Over Anti-Terror Law Opens at the Philippines' Top Court. Available at: <https://thediplomat.com/2021/02/battle-over-anti-terror-law-opens-at-the-philippine-top-court/>.

13. The international community also sounded the alarm about provisions in the proposed antiterrorism law.³² Nine UN special rapporteurs urged former President Duterte to reconsider certain aspects of the bill to ensure that it complies with the State party's international human rights obligations.³³ They particularly referred to Articles 2, 9, 14, 19, 21, 22, and 26 of the Covenant as well as to provisions of various United Nations resolutions from the Security Council, the Human Rights Council, and the General Assembly, which resolutions require that States must ensure that any measure taken to combat terrorism and violent extremism comply with all of their obligations under international law.³⁴
14. The State party, however, dismissed the concerns and the human rights-based inputs of various societal actors were not incorporated into the ATA.³⁵ Soon after the law was enacted, a total of 37 petitions were filed before the Supreme Court³⁶ asking the Court to declare the law unconstitutional.³⁷ Most of the petitioners also pleaded for the issuance of a Temporary Restraining Order (TRO) that would stop the implementation of the ATA, fearing that the ATA would only exacerbate the very precarious human rights situation in the country.³⁸
15. Despite the serious flaws in the law, the Supreme Court upheld the legality of most of the ATA. On December 9, 2021, the Supreme Court announced in a media statement that apart from two phrases of the law, which it struck down, all other challenged provisions were declared not unconstitutional.³⁹ The full ruling, dated December 7, 2021, was released on February 15, 2022.⁴⁰

³² The then UN High Commissioner for Human Rights, Michelle Bachelet, has criticized the proposed bill saying it could have a "chilling effect" on human rights work in the country and called for restraint on signing the bill from President Duterte,

<https://globalnation.inquirer.net/189097/un-human-rights-chief-urges-duterte-refrain-from-signing-anti-terror-bill>. Human Rights Watch called the act "a human rights disaster in the making". Statement of June 5, 2020, at <https://www.hrw.org/news/2020/06/05/philippines-new-anti-terrorism-act-endangers-rights>. Amnesty International called on the Philippine government to reject the anti-terror bill, as it "contains dangerous provisions and risks further undermining human rights in the country. The bill is overly broad and can be used to stifle peaceful dissent or target civil society and other legitimate groups amid increasing attacks on human rights defenders and critics of the Duterte administration, as the country continues to battle the COVID-19 pandemic. It is essential that problematic provisions are removed from the legislation before it is finalised." Statement of June 4, 2020 at <https://www.amnesty.org/en/documents/asa35/2476/2020/en/>.

³³ Joint Communication OL PHL 4.2020, 29 June 2020, ('Joint Communication') available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25384>.

³⁴ *Ibid.* page 2.

³⁵ The House of Representatives adopted the Senate's version without amendments, which version was subsequently signed into law by former President Duterte.

³⁶ According to the CHR the 37 petitions reflected the wide-spread opposition against the law. The CHR itself also repeated its concerns about the ATA on various occasions, including through the filing of a Brief of Amicus Curia to the Supreme Court, in which it expressed its view that the law was unconstitutional and not in conformity with international human rights principles. Among others, the brief argued that the law violates the right to freedom of expression and opinion, the right to due process, and the right to presumption of innocence. Commission on Human Rights, "Rights during a Pandemic. The 2020 Annual Report on the Human Rights Situation in the Philippines", 30 June 2021, p.68-69, available at <https://chr.gov.ph/wp-content/uploads/2021/08/CHR-V-No.POL2021-006-The-2020-Annual-Report-on-the-Human-Rights-Situation-in-the-Philippines.pdf>.

³⁷ Nick Aspinwall, Philippine Court Asked to Annul Anti-Terror Law Amid Concerns It will Target Dissidents, *The Diplomat*, July 10, 2020, <https://thediplomat.com/2020/07/Philippine-court-asked-to-annul-anti-terror-law-amid-concerns-it-will-target-dissidents/>; Michael Beltran, 'Battle Over Anti-Terror Law Opens at the Philippines' Top Court', *The Diplomat*, February 4, 2021, <https://thediplomat.com/2021/02/battle-over-anti-terror-law-opens-at-the-philippines-top-court/>.

³⁸ Rey Panaligan, "37 petitions filed with SC against Anti-Terrorism Act", *Manila Bulletin*, October 8, 2020, available at <https://mb.com.ph/2020/10/08/37-petitions-filed-with-sc-against-anti-terrorism-act/>. The oral arguments on the petitions were initially delayed due to pandemic related restrictions, but ultimately took place between February and May 2021.

³⁹ Jim Gomez, "Top Philippine Court: Anti-terror law largely constitutional", *December 9, 2021*, <https://apnews.com/article/business-philippines-manila-terrorism-7090c42a912695866c32d361fa124621>.

⁴⁰ "Read: Supreme Court's full decision on anti-terrorism law", February 15, 2022, available at <https://www.cnnphilippines.com/news/2022/2/15/Supreme-Court-full-decision-anti-terrorism-law.html>.

Paragraph 7 of the List of Issues – paragraphs 16, 17, and 18 of the State party’s Replies

Why the ATA is seen as dangerous

16. Experts have called the ATA a “dark new chapter” for the Philippines.⁴¹ The overall concern is that the State party has effectively crafted a new weapon to target any perceived enemies of the state.⁴² It is important to note that this concern is legitimate given (i) the State party’s history to misuse national security and counterterrorism legislation and policies to target human rights defenders, including lawyers, and critics of the government, particularly through the practice of ‘red-tagging,’ and the severe consequences thereof, in combination with (ii) the most problematic provisions of the ATA, including the overbroad definition of terrorism, the expansion of the powers of the executive branch, and the dilution of due process, which disproportionately restrict human rights in the name of security and basically institutionalize the practice of ‘red-tagging,’ and (iii) the State party’s culture of impunity.

The State party’s track record in weaponizing the law, particularly through vilification

17. The practice of ‘red-tagging’ or ‘guilt by association’ in the State party is the act of publicly branding or labelling individuals or organizations as ‘communists,’ ‘leftists’ or ‘terrorists’ and thus ‘enemies of the state,’ regardless of their actual beliefs or affiliations. It is used as a strategy against voices who are critical of the government, including human rights defenders, lawyers, journalists, and civil society activists, in attempts to silence them and delegitimize their professional and human rights work.⁴³ Practice has shown that once individuals are labelled as ‘enemies of the state’ they are seen as legitimate targets, constituting a grave threat to their lives, liberty, and security.⁴⁴
18. The State party has a long history of using ‘red-tagging,’ including in the context of its continuing counter-insurgency programs.⁴⁵ Although UN human rights experts have routinely condemned this practice for violating the rights of human rights defenders and others,⁴⁶ as of today, it continues unabated.⁴⁷ Findings of the United Nations Office of the High Commissioner for Human Rights (‘OHCHR’)⁴⁸ and the CHR,⁴⁹ corroborated by information from numerous domestic and international organizations, show that the scale at which the practice of ‘red-tagging’ has been used since 2016, either by government officials or online trolls, is

⁴¹ Rebecca Ratcliffe, “Duterte’s anti-terror law a dark new chapter for Philippines, experts warn”, July 9, 2020, <https://www.theguardian.com/world/2020/jul/09/dutertes-anti-terror-law-a-dark-new-chapter-for-philippines-experts-warn>.

⁴² See, for instance, Cliff Venzon, “The Philippines’ Anti-Terrorism Act of 2020: Five things to know”, June 10, 2020, <https://asia.nikkei.com/Politics/The-Philippines-Anti-Terrorism-Act-of-2020-Five-things-to-know>, citing human rights lawyer Manuel Diokno: “It’s not about going after terrorists, but critics of this administration”. See also sources in footnotes 29 and 32.

⁴³ In his [dissenting opinion](#) in *Zarate vs. Aquino III*, Supreme Court Associate Justice Marvic Leonen cited a 2011 journal [article](#) that defined red-baiting as: “the act of labelling, branding, naming and accusing individuals and/ or organizations of being left-leaning, subversives, communists or terrorists (used as) a strategy...by State agents, particularly law enforcement agencies and the military, against those perceived to be ‘threats’ or ‘enemies of the State’.” See also: Philippine Human Rights Commission, “Report on the situation of Human Rights Defenders in the Philippines,” July 2020, p. 23-24, available at <https://chr.gov.ph/wp-content/uploads/2020/07/CHRP-2020-Report-on-the-Situation-of-Human-Rights-Defenders.pdf> (“CHR July 2020 Report”).

⁴⁴ CHR July 2020 Report, p. 32.

⁴⁵ Fact finding missions conducted by independent lawyers and judges in 2006 and 2008, already identified ‘red-tagging’ within the broader context of a continuing counter-insurgency program as one of the main root causes of a pattern of targeted harassment and extrajudicial killings of lawyers and ‘other enemies’ taking place in the State party during the Arroyo administration, mission reports available at <https://lawyersforlawyers.org/factfinding-missies/>. See also: <https://lawyersforlawyers.org/en/philippines-lawyers-organizations-worldwide-call-on-aquino-government-to-address-attacks-against-filipino-lawyers/>.

⁴⁶ See for instance: UN Human Rights Council, “Philippines: Drop murder charge against indigenous rights defender, UN experts urge”, January 28, 2021, <https://www.ohchr.org/EN/HRC/Pages/NewsDetail.aspx?NewsID=26696&LangID=E>.

⁴⁷ <https://www.hrw.org/news/2022/06/14/new-philippine-security-adviser-urges-end-red-tagging>. However, see also: <https://www.rappler.com/nation/sara-duterte-goes-taunting-red-tagging-makabayan-bloc-august-2022/>.

⁴⁸ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, June 4, 2020, A/HRC/44/22 (“OHCHR Report”).

⁴⁹ CHR July 2020 Report.

unprecedented. Likewise, the human rights violations as a result thereof have grown exponentially as well.⁵⁰

19. In its June 2020 report⁵¹ about the human rights situation in the State party, the OHCHR found that law and policies to counter national security threats have been crafted and implemented in ways that severely and systematically impact human rights and civil society, including lawyers and judicial actors. These policies, in addition to policies to counter illegal drugs, have resulted in thousands of killings, arbitrary detentions, persistent impunity, and the vilification of dissent. The phenomenon of “red-tagging” in the State party “has been a persistent and powerful threat to civil society and freedom of expression” that “has proved extremely dangerous.”⁵²
20. According to the CHR, there is a “repeated pattern of weaponization of the law to silence government critics”. The criminal justice system is used to prosecute perceived opponents of government officials, often based on “trumped-up charges”, while “overly-broad security issuances and legislations” are applied to “justify attacks” against human rights defenders and “criminalize legitimate human rights work and activities”.⁵³
21. Such laws and policies include the Human Security Act, Executive Order No. 70, Series of 2018 (‘EO 70’), creating a national taskforce to end local communist armed conflict (NTF-ELCAC),⁵⁴ and the Guidelines for the Protection of SEC registered Non-Profit organizations from Money Laundering and Terrorist Financing Abuse.⁵⁵ High-ranking government officials of the NTF-ELCAC, of whom several members are also responsible for the implementation of the ATA, have publicly defended the red-tagging of progressive organizations or used the practice themselves to “justify threats and intimidation of individuals and organizations working for the improvement of human rights and welfare of various marginalized, disadvantaged and vulnerable sectors of society”.⁵⁶

Salient provisions of the ATA - Definition of terrorism

22. The definition of terrorism in the ATA is inconsistent with international human rights law and standards. It is overly broad and vague, making it open to arbitrary application and the abuse of numerous rights enumerated in the Covenant.⁵⁷
23. In its Replies, the State party merely stated, without substantiation, that “to be considered as acts of terrorism, the intent and purpose taken together must be established”, that Section 4 is “clear and precise” as to what “constitutes these elements”,⁵⁸ and that this “belies the concern

⁵⁰ Ibidem. See also OHCHR Report.

⁵¹ OHCHR report, paragraphs 12, 40-48, 49-75.

⁵² Ibidem, paragraph 42. This was illustrated by the case of four human rights defenders, including Attys Benjamin Ramos Jr. and Anthony Trinidad, who were murdered after they appeared on posters and hit lists claiming to depict members of alleged terrorist organizations. See also paragraphs 76-80.

⁵³ CHR July 2020 Report, p. 40.

⁵⁴ Executive Order No. 70, available at <https://www.officialgazette.gov.ph/downloads/2018/12dec/20181204-70-RRD.pdf>

⁵⁵ CHR July 2020 Report, p.48-52.

⁵⁶ Jhesset O. Enano, “CHR wants EO that justifies attacks on activists revoked, Philippine Daily Inquirer, February 10, 2020, available at: <https://newsinfo.inquirer.net/1226413/chr-wants-eo-that-justifies-attacks-on-activists-revoked>. The CHR also stated that some government officials have tried to connect human rights defenders with communist groups and terrorist organizations to pursue a “politically motivated defamation campaign” against them. In addition, the OHCHR report found that in practice the implementation of EO 70 comes down to “mobilizing the administration from national to local levels against suspected communist sympathizers”, and “labelling organizations and individuals advocating for economic and social rights as “anti-government and thus pro-insurgency” in a way that resemble those that characterize the anti-illegal drugs campaign, “notably a presumption of guilt and lack of due process or of effective oversight – this time against those suspected of supporting the Communist Party of the Philippines-NPA”, OHCHR report, paragraphs 40, 41, 46 and 47.

⁵⁷ Joint Communication, OL PHL 4/2020, p. 3. See also International Commission of Jurists, “Danger in Dissent: Counterterrorism and Human Rights in the Philippines, January 2022, http://www.icj.org/wp-content/uploads/2022/01/ICJ_PhilippinesRedTagging_270122.pdf (‘ICJ Report’), p. 19-20.

⁵⁸ Section 4 of the ATA expands the definition of terrorism to include acts intended to cause “death or serious bodily injury to any person”, “extensive damage or destruction”, to a government facility, private property, or critical infrastructure, when the purpose of those acts is to

of possible abuse and arbitrariness". It added that all other relevant sections⁵⁹ on the commission of terrorist acts "are to be taken in the context of section 4" and "thus cannot be considered ambiguous or without sufficient basis".⁶⁰

24. The State party did not address legitimate arguments that the range of terrorist acts and activities defined in the ATA differ from and are substantially broader than the model definition of terrorism proposed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁶¹ While there is at present no universally agreed upon definition of terrorism, the proposed model definition consists of elements that have been agreed upon at UN level and a definition of terrorism that goes beyond this model definition is seen as problematic from a human rights perspective.⁶²
25. The State party also ignored arguments that the definitions of terrorist acts in Section 4 and other relevant sections of the ATA, including elements of purpose and intent, use imprecise terms, violate the principle of legality under international law enshrined in Article 15(1) of the Covenant, and do not adhere to the requirements in article 19(3) of the Covenant.⁶³
26. In addition, the State party did not substantiate its claim regarding the concern expressed by all petitioners, the CHR and international organizations that the ATA's broad scope creates the space for abuse, including for the silencing of dissent and criticism.⁶⁴ This is seen as a key issue, especially considering that the ATA also allows for the designation of individuals and groups as terrorists without due process, as explained in paragraphs below.⁶⁵
27. Finally, the State party ignored that many petitioners expressed concerns about the last paragraph of Section 4 of the ATA, which reads as follows: "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 Supreme Court did not share the State party's interpretation of this phrase as laid out in paragraph 18 of its Replies. Instead, the last phrase of Section 4 of the ATA was declared unconstitutional by the Supreme Court in its December 2021 ruling because the qualifying conditions were "overbroad and violative of freedom of expression."⁶⁶

"intimidate the general public", "create an atmosphere or spread a message of fear" or "seriously destabilize or destroy the fundamental political, economic, or social structures of the country."

⁵⁹ Sections 5, 6, 7, 8, 9, 10, 11 and 12 of the ATA, criminalizing the threat to commit terrorism, the planning, training, preparing, and facilitating the commission of terrorism, as well as the conspiracy, proposal, and inciting to commit terrorism, the latter by means of speeches, proclamations, writings, banners, and emblems, the recruitment to and membership in a terrorist organization, and the material support to terrorists. Section 11 deals with foreign terrorist.

⁶⁰ State Party's Replies, paragraphs 16 and 17.

⁶¹ Joint Communication, OL PHL 4/2020, p. 3. See also ICJ report, p. 8 and p. 18.

⁶² A/HRC/16/51, paragraph 26, 27, and 28.

⁶³ Joint Communication nine UN experts, p. 3, 4 and 5.

⁶⁴ The CHR highlighted 'the vague and overbroad definition of 'terrorism' [which] 'carries the potential for unintended (and intended) human rights abuses', and could be misused 'to target dissenter, critics of the government, civil society organisations, human rights defenders, journalists, minority groups, labour activists, indigenous peoples, and members of the political opposition' and 'result to an unwarranted limitation and suppression on the right to organization, free speech, and right to privacy amongst others.' It also warned about the practice of red-tagging and labelling in this context, noting that 'even before the proposed Anti-Terrorism Act came into the picture, red-tagging, labelling, and branding of individuals and organizations as leftist, communist, and terrorist' had been 'a norm' used by the Duterte administration 'to silence those who dissent and are critical of the government' and that 'this practice alone already constituted a grave threat to the life, liberty, and security of these individuals and their families' and through the said bill, 'the government' would be given 'an unhampered authority to silence dissent'. CHR Statement ATA Bill, of June 5, see footnote 19.

⁶⁵ Ibidem.

⁶⁶ Sebastian Strangio, "Philippine Supreme Court upholds majority of controversial anti-terror law", December 10, 2021 available at: <https://thediplomat.com/2021/12/philippine-supreme-court-upholds-majority-of-controversial-anti-terror-law/>.

Expansion of Executive Branch Authority – Designation of terrorists

28. The ATA creates a government-appointed Anti-Terrorism Council (ATC)⁶⁷ that is given vast powers, including the power to unilaterally designate individuals and groups as terrorists without any judicial oversight or other due process safeguards.⁶⁸
29. Once the ATC has used its power to designate a person or group as a terrorist, it will include the individuals and groups it has designated as terrorists in a list to be submitted to the Anti-Money Laundering Council (AMLC)⁶⁹ for further investigation or freezing assets as necessary.⁷⁰
30. The ATC is also required to publish the names of designated individuals and groups on its website and in national newspapers without notice and before giving them the chance to clear their names.⁷¹ Petitioners have argued that this requirement effectively legalizes the practice of 'red-tagging',⁷² while the members of the ATC,⁷³ composed of Cabinet members, including former military officials, already have a history of red tagging.⁷⁴ Most members of the ATC are also part of the NTF-ECLAC created under EO 70.⁷⁵
31. At the same time, there is no de-listing procedure specified under the ATA. The Implementation Rules and Regulations ('IRR') of the ATA sought to fill this gap. However, the IRR will not cure the supposed unconstitutional provisions of the ATA, since it is a settled principle under Philippine law that rules and regulations cannot amend, extent or rise above the law that it seeks to implement.⁷⁶ Furthermore, there are also shortcomings with the de-listing procedure under the IRR. Rule 6.9 of the IRR stipulates that a designated party or its assigns or successors-in-interest may file a verified request for delisting before the ATC within 15 days from publication of the designation, but only on limited grounds and no request for delisting may be filed within six months from the time of denial of a prior request.⁷⁷
32. Designation is without prejudice to the proscription of terrorist organizations, associations, or groups of persons under the ATA. Proscription is the declaration of any group of persons, organization, or association as a terrorist and outlawed group when such group commits the punishable acts under the ATA or are 'organized for the purpose of engaging in terrorism'.⁷⁸ Proscription is upon application of the Department of Justice before the authorizing division of the Court of Appeals with the authority of the ATC upon recommendation of National

⁶⁷ Section 45 of the ATA.

⁶⁸ Section 25 of the ATA.

⁶⁹ The AMLC Executive Director is also a member of the ATC.

⁷⁰ Section 25 and Sections 35 and 36 of the ATA.

⁷¹ Rule 6.5 of the 2020 Implementing Rules and Regulations of Republic Act No. 11479, otherwise known as the The Anti-Terrorism Act of 2020, ('IRR') available at <https://www.doj.gov.ph/files/2020/news%20articles/IRR%20ATA%202020%20-%20CTC.PDF>

⁷² "The IRR requirement that your designation as terrorist be published in newspapers and online is the mother of all red-tagging" in: Kristine Joy Patag, "Mother of Red-tagging: No process yet to remove names from terror list, October 20, 2020, <https://www.philstar.com/headlines/2020/10/20/20550978/mother-red-tagging-no-process-yet-remove-names-terror-list>. See also OHCHR report, paragraph 81, p. 16.

⁷³ According to Section 45 of the ATA, the ACT consists of the following nine members: the Executive Secretary (Chair), the National Security Adviser (Vice-Chair), the Secretary of Foreign Affairs, the Secretary of National Defense, the Secretary of the Interior and Local Government, the Secretary of Finance, the Secretary of Justice, the Secretary of Information and Communications Technology, and the Executive Director of the Anti-Money Laundering Council. Five of them are also members of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) that was established under the Executive Order 70. The National Intelligence Coordinating Agency (NICA) is the secretariat of the ACT. NICA's Director General is also a member of the NTF-ELCAC. The ATC is supported by various governmental departments, bureaus, and offices, including the National Bureau of Investigation (NBI) and the Intelligence services of the State party's Armed Forces and National Police.

⁷⁴ The members of the Anti-Terrorism Council and their track record, April 2, 2021, available at <https://www.bulatlat.com/2021/04/02/the-members-of-the-anti-terrorism-council-and-their-track-record/>.

⁷⁵ Section 3 of EO 70. The NTF-ECLAC is chaired by the President. Members of the task force also being a member of the ATC include the National Security Adviser (chair of the ATC, vice-chair of the NTF-ECLAC), the Secretary of the Departments of the Interior and Local Government, Justice, National Defense, and Finance, and the Director General of NICA, that also acts as the Secretariat of the ATC.

⁷⁶ *Ople v. Torres*, G.R. No. 127685 (23 July 1998); *Commissioner of Internal Revenue v. Transfield Philippines, Inc.*, G.R. No. 211449 (16 Jan. 2019). See also ICJ report, p. 11, 12.

⁷⁷ ICJ report, p. 21.

⁷⁸ Section 26 of the ATA.

Intelligence Coordinating Agency (NICA)⁷⁹ and with due notice and opportunity to be heard given to the concerned group.

33. The Court can also declare and prohibit a person or group as terrorist by way of provisional measure within 72 hours, while the lawsuit can go on for up to six months before a final court decision follows. The ATA allows this so-called 'preliminary order of proscription' without notice and hearing.⁸⁰
34. However, whether there are different implications or consequences between designated terrorist organizations and proscribed terrorist organizations is a grey area.⁸¹ During the oral hearings before the Supreme Court, the State party asserted that designation would only trigger the power of the AMLC to freeze assets of suspected terrorists and not result in any punishments, including arrests. However, Associate Justice Jhosep Lopez from the Philippine Supreme Court pointed out that designation by itself is a penalty because the person concerned may – in the eyes of family, friends, relatives, neighbours, and the entire country - already be considered as a terrorist. Chief Justice Alexander Gesmundo noted that designation “affects the reputation both of person and property of designate”. And Associate Justice Edgardo Delos Santos stated that those who have been designated suffer consequences such as freezing of assets and detention which means deprivation of liberty.⁸²

Period of detention without a warrant – Paragraphs 19 – 23 of the State party's Replies

35. Under the ATA, law enforcement agents and military personnel authorized by the ATC can arrest and detain individuals for up to 24 calendar days without warrants or charges upon mere suspicion that they are committing offenses punished under the ATA.⁸³ This provision does not comply with the State party's international human rights obligations under article 9(3) of the Covenant. In addition, there is no justification to derogate from Article 4 of the Covenant.⁸⁴
36. Without prejudice of the assessment in the previous paragraph, sufficient safeguards are lacking under the ATA. For instance, the ATA has removed a section under the HSA which was meant to safeguard against the wrongful accusation and detention of suspects. The HSA provided that any person acquitted from charges of terrorism would be compensated for wrongful detention. Under the ATA, however, a person erroneously detained without a warrant will not be entitled to any form of compensation from the government. Several other safeguards provided for in the HSA were also removed under the ATA.⁸⁵
37. The State party also referred to the Writ of Habeas Corpus and the Writ of Amparo as examples of other legal remedies. However, the Supreme Court will review the procedures for these remedies, upon serious concerns about their effectivity. Lawyers indicated that the remedies, which have not been reviewed and amended since they were first issued in 2007,

⁷⁹ See footnotes 71 and 73. NICA acts as the secretariat of the ATC, and its Director General is also a member of the NTF-ELCAC. The Secretary of the Department of Justice is both a member of the ATC and NTF-ELCAC.

⁸⁰ Section 27 of the ATA.

⁸¹ See Kristine Joy Patag, “Cheat sheet: Key issues raised at SC oral arguments on anti-terrorism law”, PhilStar, May 19, 2021, <https://www.philstar.com/headlines/2021/05/19/2099121/cheat-sheet-key-issues-raised-sc-oral-arguments-anti-terrorism-law>.

⁸² Ibidem. Neri Colmenares on behalf of several petitioners stated in its opening statement at the Supreme Court: The ATA “inflicts a deprivation of rights on a class of “suspected persons” without judicial trial, as it grants the power to investigate and freeze the assets of mere suspects or cause the detention of suspects for more than three days without need for judicial imprimatur,” adding that “[T]he provisions granting judicial intervention under the law is a mirage. The prejudicial effects of designation and judicial proscription are basically the same, so the ATC does not need to file a proscription case in court, Opening Statement by Neri Javier Colmenares on behalf of the NUPL and others, on Cluster 4 Issues, During Oral Arguments on the Anti-Terrorism Act of 2020, February 2, 2021, available at <https://www.facebook.com/187571093682/posts/1015816946933683/?d=n>.

⁸³ Section 29 of the ATA.

⁸⁴ See also Joint Communication, p. and ICJ Report, p. 20.

⁸⁵ See for instance “20 Questions on the Anti-Terrorism Act of 2020 (R.A. No. 11479), created by the Philippine Center for Investigative Journalism and Free Legal Assistance Group (FLAG), p. 5-11, available at https://drive.google.com/file/d/1SIHxM_40PtW2iFqfzyTAi87cvRz-lxY/view.

suffer from “practical insufficiencies” and need to be updated to realign them with their primary purpose, i.e., being protective writs, in the current context.⁸⁶

38. Recently, also lawmakers have expressed concerns that the protective purpose of the writs is defeated, citing the case of a human rights advocate who – because she was labelled as communist and terrorist by government officials – sought but was denied protection under the Writ of Amparo and subsequently murdered.⁸⁷ Atty. Angelo Karlo Guillen, lawyer in a petition of various multi-sectoral groups led by the National Union People’s Lawyers (NUPL), and a member of NUPL, survived a murder attempt.⁸⁸ Prior to this incident the NUPL and individual members were denied protection under the writs.⁸⁹

Right to life (Arts. 6 and 24)

Paragraph 10 of the List of Issues – Paragraphs 58, 59, 61-66 of the State Party’s Replies

39. In paragraph 10 of the List of Issues, the Committee asked for additional information about the prevalence of extrajudicial killings in the State party, considering both the Committee’s previous recommendation (CCPR/C/PHL/CO/4, para.14) and reports of an exponential growth in such violations since 2016.
40. In its previous recommendation referred to above, the Committee recommended – amongst others – that the State party “should take necessary measures to prevent extrajudicial killings and enforced disappearances and ensure that alleged perpetrators of these crimes are effectively investigated, prosecuted and, if convicted, punished with appropriate sanctions.” Furthermore, the State party should ensure that “the victims’ families are adequately compensated.” The State party should also “provide information in its next periodic report on the specific measures taken to implement these recommendations.”
41. In its report of 13 January 2020⁹⁰, submitted prior to the List of Issues, Lawyers for Lawyers had noted already that the extrajudicial killings of lawyers continued unabated and that the number of lawyers killed had increased significantly since former President Duterte took office on 30 June 2016. At least 46 jurists were extrajudicially killed between 1 July 2016 and 5 September 2019. Among them at least 41 lawyers and prosecutors, including 24 practicing lawyers.
42. Recent studies show that the situation has further deteriorated. In March 2021, lawyers’ organizations in the State party reported that more lawyers had been killed in the five years since former President Duterte took office than under any other government in Philippine history.⁹¹ In the period between 5 September 2019 and 31 December 2021 the number of deaths of lawyers has risen to 66, of whom at least 38 were practicing lawyers.⁹²

⁸⁶ <https://www.rappler.com/nation/pr.essured-supreme-court-reviews-protective-writs-after-decade-2021/>.

⁸⁷ Ibidem. See also: <https://www.philstar.com/headlines/2020/09/10/2041469/sc-review-2007-rules-writ-amparo>.
<https://www.rappler.com/nation/244390-duterte-wars-vs-criminality-are-protective-legal-remedies-weaker/>.

⁸⁸ Lawyers for Lawyers, “Red-tagged Philippine human rights lawyer stabbed in the head with screwdriver”, March 16, 2021, <https://lawyersforlawyers.org/red-tagged-philippine-human-rights-lawyer-stabbed-in-the-head-with-screwdriver/>

⁸⁹ <https://www.rappler.com/nation/pr.essured-supreme-court-reviews-protective-writs-after-decade-2021/>. See also: <https://www.rappler.com/nation/lawyer-anti-terror-law-petition-stabbed-iloilo/>.

⁹⁰ Consideration of the 5th Periodic Report of the Philippines - Submission on the list of issues by the Lawyers for Lawyers Foundation, 13 January 2020, available at <https://lawyersforlawyers.org/submission-to-un-human-rights-committee-philippines/>, par. 15-16.

⁹¹ “The Philippines: attacks against lawyers further escalating”, Joint Statement of Lawyers for Lawyers and 30 other lawyers’ organizations, bar associations and human rights organizations of June 23, 2021, available at <https://lawyersforlawyers.org/the-philippines-attacks-against-lawyers-further-escalating/>; Carlos H. Conde, ‘Record High Killing of Philippine Lawyers’, March 15, 2021, available at <https://hwr.org/news/2021/03/15/record-high-killing-philippine-lawyers>; Lian Buan, “Lawyers killed: 61 under Duterte, 49 from Marcos to Aquino, March 15, 2021, available at <https://rappler.com/nation/lawyers-killed-duterte-marcos-aquino-administations-data-studies/>

⁹² Lawyers for Lawyers, “Killings of Philippine lawyers escalate”, 2 February 2022, available at <https://lawyersforlawyers.org/en/killings-of-philippine-lawyers-escalate/>.

43. Most lawyer killing seem to be work-related and take place in the context of the State party's continued counterinsurgency program and the so-called 'war on drugs' that officially began on 1 July 2016. Especially at risk are lawyers representing clients accused of being involved in drugs or rebellion cases or handling cases with respect to human rights violations or land, labour, and mining disputes, including cases related to the environment and the rights of minority groups. This is illustrated by the following examples of lawyers who were killed since 5 September 2019:

i. Murder of Atty. Raymond Moncada

On January 3, 2020, Atty. Raymond Moncada was shot by a riding-in-tandem gunmen when he was leaving his house in Dumaguete City.⁹³ Atty. Moncada initially survived the attack but died ten days later in the hospital.⁹⁴ According to the police, he had received death threats prior to the shooting incident. Atty. Moncada handled cases regarding land disputes.⁹⁵

ii. Murder of Atty. Anselmo Carlos

On January 28, 2020, Atty. Anselmo Carlos and his driver were killed by 3 motorcycle-riding men in front of the San Vicente Parish Church in Sta Rita, Pampanga.⁹⁶ Just as Raymond Moncada, Carlos was a lawyer known for working on land dispute cases.⁹⁷

iii. Murder of Atty. Juan Macababab

On September 15, 2021, Atty. Juan Macababab was shot outside his home in Surallah town, South Cotabato by unidentified gunmen on motorcycles. He died while he was being taken to the hospital.⁹⁸ Atty. Macababab was known for his defense of human rights and the poor. The cases he dealt with ranged from civil to criminal, including environmental cases. He was also a member of the National Union of Peoples' Lawyers (NUPL) and the chairman of the Socskargen chapter of the Union of People's Lawyers in Mindanao (UPLM). According to the UPLM, Atty Macababab had been receiving death threats before his murder.⁹⁹

44. Lawyers for Lawyers welcomes the convictions in the so-called Ampatuan massacre in Maguidanao in 2009, although the convictions only followed ten years after the atrocities took place. Among the victims was Atty. Concepcion Brizuela, who also faced death threats and harassment for carrying out her professional duties.¹⁰⁰ Unfortunately, however, the conviction of perpetrators of extrajudicial killings and other attacks against lawyers and other victims in the State party remains the exception rather than the rule.

45. The State party asserted that since the creation of a task force under Administrative Order 35 ('A.O. 35') on November 22, 2012,¹⁰¹ it had taken "appropriate measures to protect the rights of human rights defenders and political dissidents through continuing evaluation and monitoring of their cases/incidents falling under the A.O. 35 operational guidelines, including the re-

⁹³ "Riding-in-tandem gunmen attack lawyer in Dumaguete," Rappler, accessed August 30, 2022, <https://www.rappler.com/nation/lawyer-attacked-by-gunmen-dumaguete-city-january-3-2020>.

⁹⁴ "Lawyer, who survived January 3 shooting attack in Dumaguete, dies in hospital," Cebu Daily News, accessed August 30, 2022, <https://cebudailynews.inquirer.net/281215/lawyer-who-survived-january-3-shooting-attack-in-dumaguete-dies-in-hospital>.

⁹⁵ Ibid 6.

⁹⁶ "Lawyer killed in front of Pampanga church," Rappler, accessed August 30, 2022, <https://www.rappler.com/nation/lawyer-killed-in-front-church-pampanga-january-28-2020>.

⁹⁷ "Lawyer, aide killed in Pampanga ambush," Philippine News Agency, accessed August 30, 2022, <https://www.pna.gov.ph/articles/1092199>.

⁹⁸ "Lawyer gunned down in S. Cotabato home," Inquirer, accessed August 31, 2022, <https://newsinfo.inquirer.net/1488942/lawyer-gunned-down-in-s-cotabato-home>.

⁹⁹ "Lawyer in South Cotabato shot death outside house, 65th killed under Duterte," Rappler, accessed August 31, 2022, <https://www.rappler.com/nation/lawyer-juan-macababab-south-cotabato-shot-dead-september-2021/>.

¹⁰⁰ <https://lawyersforlawyers.org/en/the-philippines-also-lawyers-among-vitims-of-maguindanao-massacre/>

¹⁰¹ <https://www.officialgazette.gov.ph/2012/11/22/administrative-order-no-35-s-2012/>.

investigation of those previously unsolved.”¹⁰² The AO 35 task force is a special unit of the Department of Justice that investigates politically motivated killings or extrajudicial killings of members of civil society groups, political movements, and non-government organizations, among others, provided that the killings have been related to an advocacy or profession. However, the task force has only dealt with a limited number of cases. Very few have been convicted, and most perpetrators have reportedly been cleared. Neither has it made progress to spot patterns needed to prevent violations from happening.¹⁰³

46. Also, according to our own information, there is still no indication that the State party has conducted prompt, full and thorough investigations in response to the attacks and killings of lawyers that have taken place since September 19, 2020, upon which we based our previous report prior to the List of Issues. There are still only a few perpetrators identified and prosecuted. To date, to our knowledge, none of these perpetrators has been convicted.

47. The OHCHR also concluded that ‘persistent impunity for human rights violations is stark’ and ‘practical obstacles to accessing justice are almost insurmountable’.¹⁰⁴ Furthermore, International Criminal Court (ICC) Prosecutor Karim Khan has filed a request with the pre-trial chamber to authorize the resumption of the Court’s investigation in the State party, which indicates that there have been no genuine investigations by the State party’s authorities.¹⁰⁵

III Conclusion and Recommendations and Concrete Actions to be undertaken by the State party

48. The State party continues failing to respect and to fully respect and ensure the guarantees for the functioning of lawyers under Article 14 of the Covenant. Lawyers are still murdered for carrying out their professional duties and subject to attacks, threats, harassment, public vilification, and trumped-up charges. These violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to effective remedy (article 2), life (article 6), security of person (article 9), privacy and unlawful attacks on a person’s honour and reputation (article 17), and freedom of expression (article 19). The State party has not made progress in conducting investigations and prosecutions to address these violations and effective legal remedies for the victims are lacking. The practice of ‘red-tagging’ continues unabated and the newly enacted ATA, which is not in conformity with the Covenant, will only further extend this practice.

49. To stop the extrajudicial killings, threats, and harassment of lawyers we would like to highlight the following recommendations and concrete actions to be undertaken by the State Party:

- The State party should immediately refrain from publicly attacking lawyers and instead publicly condemn all attacks against lawyers at all levels consistently and in strong terms.
- The State party should immediately put an end to the practice of red-tagging and end public disclosure of “drug lists”, ‘hit lists’, or ‘lists of suspected terrorists’.
- The State party should immediately repeal the most salient provisions of the Anti-Terrorism Act of 2020, including Sections 25 and 29, and significantly amend this Act to ensure that it is in conformity with international human rights law and standards pursuant to the State party’s obligations under the Covenant.

¹⁰² Human rights Committee, “Fifth periodic report submitted by the Philippines under article 40 of the Covenant, due in 2016,” 3 October 2019, CCPR/C/PHL/5, paragraph 45, p. 9.

¹⁰³ <https://www.rappler.com/newsbreak/in-depth/ao-35-doj-task-force-extrajudicial-killings-data/>

¹⁰⁴ OHCHR Report, paragraph 83 and 85, p. 16-17. See also paragraphs 26-30, p. 6-7.

¹⁰⁵ <https://www.rappler.com/nation/international-criminal-court-prosecutor-wants-resume-probe-duterte-drug-war/>

- The State party should take all reasonable measures to guarantee the safety and physical integrity of lawyers, including the provision of adequate protection measures, in consultation with the persons concerned.
- The State party should take necessary measures to prevent extrajudicial killings, enforced disappearances and other attacks against lawyers and ensure that alleged perpetrators of these crimes are effectively investigated, prosecuted and, if convicted, punished with appropriate sanctions and that victims' families are adequately compensated.
- The State party should create and fully support an independent investigation, carried out by an independent and impartial body, i.e. not under the control or the influence of the government, with appropriate powers and sufficient resources to investigate - under international supervisory mandate - all reports and complaints against government officials with respect to extrajudicial killings, threats and other forms of harassment; the recommendations of this investigative body should be immediately followed by the State party.
- The State party should fully comply with and create awareness about the core values underlying the legal profession, amongst others by bringing the UN Basic Principles on the Role of Lawyers to the attention of relevant stakeholders, especially members of the executive, police, and the military.