



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 45
Wednesday, January 22, 2020

**EIGHTEENTH CONGRESS
FIRST REGULAR SESSION**

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CALL TO ORDER

At 3:00 p.m., the Senate President, Hon. Vicente C. Sotto III, called the session to order.

PRAYER

Sen. Cynthia A. Villar led the Body in reciting the prayer of Cardinal Luis Antonio Tagle which they offered to the victims of the Taal Volcano eruption, to wit:

"Diyos na makapangyarihan, muli kaming humaharap sa pagsubok dulot ng pagsabog ng Bulkang Taal. Napakalit namin upang harapin ang lakas ng bulkan. Subalit naniniwala kaming mapapahupa ng Iyong kamay ang bangis nito. Iligtas Mo po kami sa kapahamakan, lalo na ang mga mahihirap, may karamdaman, mga bata at nakakatatanda at nag-iisa.

Paigtingin Mo rin sa amin ang pagdadaman, pagmamasakit at panganganлага sa kapwa at kalikasan. Hinihiling namin ito sa Ngalan ni Hesukristo kasama ng Espiritu Santo."

Amen.

ROLL CALL

Upon direction of the Senate President, the Secretary of the Senate, Atty. Myra Marie D. Villarica, called the roll, to which the following senators responded:

Binay, M. L. N. S.	Pacquiao, E. M. D.
Cayetano, P. S.	Pangilinan, F. N.
Dela Rosa, R. B. M.	Revilla Jr., R. B.
Drilon, F. M.	Sotto III, V. C.
Go, C. L. T.	Tolentino, F. T. N.
Gordon, R. J.	Villanueva, J.
Hontiveros, R.	Villar, C. A.
Lacson, P. M.	Zubiri, J. M. F.
Lapid, M. L. M.	

With 17 senators present, the Chair declared the presence of a quorum.

Senators Angara, Gatchalian, Marcos, Pimentel, Poe and Recto arrived after the roll call.

Senator De Lima was unable to attend the session as she was under detention.

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APPROVAL OF THE JOURNAL

Upon motion of Senator Zubiri, there being no objection, the Body dispensed with the reading of the Journal of Session No. 44 (January 21, 2020) and considered it approved.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Zubiri acknowledged the presence in the gallery of the following guests:

- Board Member Nestor "Bobot" Fongwan of Benguet;
- ASEZ (Save the Earth from A to Z);
- World Mission Society Church of God; and
- University Student Volunteers Group from South Korea.

Senate President Sotto welcomed the guests to the Senate.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILL ON FIRST READING

Senate Bill No. 1286, entitled

AN ACT APPROPRIATING THE SUM OF THIRTY BILLION PESOS (P30,000,000,000) AS SUPPLEMENTAL APPROPRIATIONS FOR FY 2020, AND FOR OTHER PURPOSES

Introduced by Senator Recto

To the Committee on Rules

COMMUNICATIONS

Letters from the Office of the President of the Philippines, transmitting to the Senate two (2) original copies of the following Republic Acts which were signed by President Rodrigo Roa Duterte:

Republic Act No. 11462, entitled

AN ACT POSTPONING THE MAY 2020 BARANGAY AND SANGGUNIANG

KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO 10632, REPUBLIC ACT NO. 10656, REPUBLIC ACT NO. 10923 AND REPUBLIC ACT NO. 10952, AND FOR OTHER PURPOSES;

Republic Act No. 11463, entitled

AN ACT ESTABLISHING MALASAKIT CENTERS IN ALL DEPARTMENT OF HEALTH (DOH) HOSPITALS IN THE COUNTRY AND IN THE PHILIPPINE GENERAL HOSPITAL (PGH), PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES;

Republic Act No. 11464, entitled

AN ACT EXTENDING THE AVAILABILITY OF THE 2019 APPROPRIATIONS TO DECEMBER 31, 2020, AMENDING FOR THE PURPOSE SECTION 65 OF THE GENERAL PROVISIONS OF REPUBLIC ACT NO. 11260, THE GENERAL APPROPRIATIONS ACT OF FISCAL YEAR 2019;

and Republic Act No. 11466, entitled

AN ACT MODIFYING THE SALARY SCHEDULE FOR CIVILIAN GOVERNMENT PERSONNEL AND AUTHORIZING THE GRANT OF ADDITIONAL BENEFITS, AND FOR OTHER PURPOSES.

To the Archives

Letters from the Bangko Sentral ng Pilipinas, transmitting to the Senate copies of the following certified and authenticated BSP issuances, in compliance with Section 15(a) of Republic Act No. 7653 (The New Central Bank Act):

Circular Letter Nos. CL-2019-084, 085, 086, 087, 088 and CL-2020-001 dated 21, 22 November 2019; 2, 19, 23 December 2019 and 2 January 2020;

Circular Nos. 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069 and 1070 dated

25, 26 November 2019; 3, 4, 13, 26 and 27 December 2019;

and Memorandum Nos. M-2019-027, 028, 029 and 030 dated 15, 26 November 2019; 12 and 18 December 2019.

To the Committee on Banks, Financial Institutions and Currencies

Letter from the Union of Local Authorities of the Philippines, Inc., furnishing the Senate with a copy of the ULAP National Executive Board Resolution No. 2019-21, entitled

A RESOLUTION CONSTITUTING THE UNION OF LOCAL AUTHORITIES OF THE PHILIPPINES (ULAP) INTERIM NATIONAL EXECUTIVE BOARD (NEB) AND ITS INTERIM OFFICERS TO PERFORM THEIR DUTIES AND FUNCTIONS UNTIL SUCH TIME THAT THE REGULAR NEB HAS BEEN DULY CONSTITUTED AND ITS REGULAR OFFICERS ELECTED AND SWORN INTO OFFICE.

To the Committee on Local Government

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Zubiri acknowledged the presence in the gallery of Mayor Bernard Dy of Cauayan, Isabela, and the Immaculate Conception Academy students.

Senate President Sotto welcomed the guests to the Senate.

COMMITTEE REPORT NO. 9 ON SENATE BILL NO. 1083

(Continuation)

Upon motion of Senator Zubiri, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1083 (Committee Report No. 9), entitled

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 9372, OTHERWISE KNOWN AS AN

ACT TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM.

Senator Zubiri stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Lacson, sponsor of the measure, and Senator Hontiveros for her interpellation.

INTERPELLATION OF SENATOR HONTIVEROS

At the outset, Senator Hontiveros expressed her support in finding durable solutions to the scourge of terrorism which remains a serious global threat. She noted that the global terrorism database puts the annual death toll caused by terrorism at about 21,000 people worldwide mostly in the Middle East, Africa, and South Asia. Thus, she clarified that she would not be questioning the fundamental rationale of bearing down strongly against terrorism because the people need to be protected from acts of terrorism. However, she pointed out that it is equally important that the measure does not unintentionally provide tools that can be abused to stifle legitimate political dissent and criticism, remove safeguards enshrined in the Bill of Rights, and inadvertently create uncertainty and imprecision in the laws.

Asked why the third and fourth paragraphs of Section 2 (*Declaration of Policy*) were deleted, considering that the third paragraph spoke of a comprehensive approach in the fight against terrorism including post-conflict peace-building and promoting equitable economic development, while the fourth paragraph guaranteed that human rights remained absolute and protected, Senator Lacson explained that the second paragraph was deleted to emphasize that the goal of the proposed legislation was to focus on the empowerment of the government to address terrorism as a crime, clearly differentiating between anti-terrorism and human security. He nevertheless gave the assurance that all human rights safeguards are retained in the measure as these are embedded in the relevant provisions.

But Senator Hontiveros pointed out that it would be more reassuring to place importance on what is explicitly stated in the law than what is implied or embedded. She hoped that the Committee was not sending the wrong message that it was looking at less

comprehensive solutions to terrorism by featuring law enforcement and not explicitly mentioning human rights and peace, or that it was willing to compromise fundamental freedoms in the interest of more effectively implementing law enforcement approaches. Senator Lacson explained that his Committee did not include in any of the provisions the right of citizens to peaceably assemble or the right to exercise freedom of speech or expression since they are not punishable under the bill.

On Section 4 (*Definition of Terrorist Acts*), Senator Hontiveros asked if the phrase "regardless of its stage of execution" would mean that an attempted act of terrorism would be punished the same as a consummated act of terrorism as she noted that under the Revised Penal Code, the penalty for consummated offense differs from the penalty for a frustrated or an attempted offense. Senator Lacson replied that he already expressed his willingness to take out the word "attempted" and instead retain the word "conspiracy" to commit terrorist acts as discussed during the interpellation of Senator Drilon. He added that the phrase "at any stage either in preparation, planning, training..." would also be retained. Senator Hontiveros expressed her intention to propose an amendment to address her concern about the implications of the phrase "regardless of its stage of execution."

On the same section, Senator Hontiveros noted that "attacks that result in major economic loss and destroy the fundamental political, economic, or social structure of the country" in Section 4(B) and threat to commit the same in Section 4(E) are both considered terrorism. She recalled the advice of Senator Drilon that they should not pass a law which has a provision that could be interpreted or implemented to the point of absurdity. She mentioned a hypothetical scenario where a labor group which threatens to strike or to conduct work stoppage might be considered as terrorists as carrying out such an act might be argued by some to result in major economic loss or even destroy the economic structure of the country, Senator Lacson referred Senator Hontiveros to a proviso in Section 4 which reads:

"PROVIDED THAT, TERRORIST ACTS AS DEFINED UNDER THIS SECTION SHALL NOT COVER LEGITIMATE EXERCISES OF THE FREEDOM OF EXPRESSION AND TO PEACEABLY ASSEMBLE INCLUDING BUT

NOT LIMITED TO ENGAGING IN ADVOCACY, PROTEST, DISSENT, OR MASS ACTION WHERE A PERSON WHO DOES NOT HAVE THE INTENTION TO USE OR URGE THE USE OF FORCE OR VIOLENCE, OR CAUSE HARM TO OTHERS."

Senator Hontiveros pointed out that labor groups would always claim that their rallies or work-stoppage activities are legitimate and considered as an exercise of their freedom of expression and association. Adding to the hypothetical situation, she asked if the DOLE could claim that the workers are terrorists if their rally or work-stoppage activity would entail serious or major economic loss or destroy the economic structure of the country. Senator Lacson pointed out that in determining whether the act is considered a terrorist act, they must consider the intent, motive or purpose of the action; thus, if no violence occurred, they cannot be held liable under the proposed measure. Similarly, he stated that if violence occurred during the course of the strike or work-stoppage but had not been instigated by the workers, such acts are not covered under the bill because the laborers' intent of protesting stems from their freedom of expression, for example, to express dissent on unfair or bad labor practices.

Senator Hontiveros adverted to Section 5 of the bill which makes it unlawful for a person to possess objects in the commission of a terrorist act, or collecting, or making documents likely to facilitate the commission of a terrorist act. On whether the mere act of possession of documents likely to facilitate a terrorist act is punishable or would be punishable under the act by life imprisonment, or be considered *mala prohibita*, Senator Lacson replied in the affirmative. He said that if it is clearly established that the person in possession of explosives, bombs, or similar materials and manuals or instructional materials on bomb-making and on how to operate weapons of mass destruction or poisonous substances has the intent to sow terror, he may be liable under the bill.

Senator Hontiveros also asked whether a person who collects handbooks on military matters or even textbooks on basic chemical procedures or who reads for pleasure Marxists literature or materials that call for revolution would also be liable, as she feared that such provision could be used to harass student activists in universities, academicians and intellectuals or even fans of progressive bands like U2.

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Senator Lacson replied that as a matter of defense, the person can claim that the materials are merely for reading purposes or that he simply wanted to learn counter-terrorism. He emphasized that the intent of the person is important.

Adverting to Section 8, Senator Hontiveros questioned how it would be possible to determine that the message available to the public has intent to incite another by any means, directly or indirectly, to commit a terrorist act.

Senator Lacson explained that the term "inciting" is directed against the general public and refers to messages which would lead a person to commit terrorist acts but if there is no call to commit violence or terrorist acts, then it would not be covered by the bill.

Senator Hontiveros said that examples of messages directly inciting to commit a terrorist act may be more difficult because it would be subject to interpretation. However, she said that under the most despotic of implementors, the term "indirectly" is likely to be more problematic. She said that at the proper time, she would propose to remove the word "indirectly" because it may create situations where Section 8 may be interpreted or applied excessively. Senator Lacson said that existing jurisprudence on the matter, such as *Chaves v. Gonzales* should serve as guide or reference at the proper time.

Asked by Senator Hontiveros how it would be possible to measure danger and to determine when an indirect conduct actually causes a danger of such acts being committed, Senator Lacson said that it would redound to the violence that would be created together with the intent and purpose of the actor in relation to inciting to commit terrorist acts.

On the issue of proscription, Senator Hontiveros noted that Section 21 which amends Section 24 of the Human Security Act, provides: "Any group of persons, organization, or association, which commits any of the acts defined and penalized under the provisions of this Act, or exists for the purpose of engaging in terrorist acts shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the group of organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Regional Trial Court." Furthermore, she said that under Section 22, the court is required, within

72 hours from the filing of the application, to issue a preliminary order of proscription and that the respondent has the right to be heard and to show why the order of proscription should be set aside and the court is required to schedule a hearing within a six-month period from the filing of the verified application to determine whether the order of prosecution should be made permanent, set aside, modified or lifted. She noted that while the RTC must act on the urgent prayer within 72 hours, it is however given the leisurely period of six months within which to schedule a hearing to give the proscribed group or organization its day in court. She expressed her concern that the six-month period would give the State and its agents a free hand to wiretap, conduct surveillance, arrest, and detain any of its members without a warrant, examine bank records and accounts, freeze and seize properties, even before the organization or any of its members are given the chance to be heard. She asked whether this was the intent of the proposed amendment.

Senator Lacson clarified that the order of proscription was intended to be time-bound because of the experience in the case of the Abu Sayyaf where it took 11 or 12 years before the court rendered a decision to proscribe Abu Sayyaf as a terrorist organization. He said that in the years that no proscription was made, many kidnappings were committed in Basilan, Tawi-Tawi and Sulu.

But Senator Hontiveros believed that not all groups that may possibly be temporarily or preliminarily proscribed are in the same category as the Abu Sayyaf. She feared of the possibility of being wrongly proscribed as terrorist or outlawed organizations, but would have to wait for six months before they could be given a day in court.

Senator Lacson gave the assurance that when a petition for proscription is filed, the court would not necessarily issue a temporary order of proscription. He explained that the temporary order of proscription is not arbitrary and the RTC must establish a probable cause in the same manner when a suspect is brought before a prosecutor for inquest proceedings, and unless the preliminary investigation is waived, the prosecutor is mandated to establish probable cause or to outright dismiss the case or release the respondent in the meantime that further investigation is being conducted by law enforcement.

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Senator Hontiveros said that while due process should be exercised in the implementation of any law, it may be possible that it could be dispensed with under the leadership of a despotic implementor.

Senator Lacson said that questioning the wisdom of the court is tantamount to questioning the integrity of the Judiciary. He stressed that the RTC judges must be assumed to be competent enough to determine if there is probable cause before they issue a temporary order of proscription.

Senator Hontiveros clarified that what she was questioning was the six-month period being given to the court which, to her, was disproportionately long when it could hear and determine a petition of proscription within a shorter period. She reiterated that the period may be a problem under a despotic leader as she stressed that she was not referring to the Judiciary.

Using an analogy, Senator Lacson explained that in a criminal case, an accused is arrested and the law enforcement is mandated to deliver the person before a prosecutor within a reglementary period, in the case of capital offenses, within 36 hours; the fiscal, upon determination of probable cause, would file the information, but it may take a while before the court could determine guilt or acquittal of the suspect. He said that similarly, as contemplated under the bill, before a court could issue a temporary order of proscription, within 72 hours, it must be established clearly that there is probable cause and the court or judge has six months to issue a final proscription order. He said that if there was no sufficient evidence to sustain or to support a final proscription order, it must be dismissed by the court. However, he said that within 72 hours or three days, the court may issue a temporary order of proscription, upon establishing and determining the existence of a probable cause. He stressed that a judicial determination of probable cause is higher than the ordinary probable cause established by a prosecutor.

Senator Hontiveros argued that unlike an ordinary criminal case, proscription, in cases of terrorism, applies to entire groups. She expressed concern that the long period would allow the state a free hand to conduct surveillance or wiretap conversations of all members of a group or organization. She said that at the proper time, she would be proposing amendments for the consideration of Senator Lacson, with emphasis

on the six-month period which is so much longer than the 72-hour period.

Still on Section 22, Senator Hontiveros asked whether any member of a proscribed group of persons may be subject of warrantless arrests and detention, seizure and forfeiture of property even without committing the specific acts that caused death or destruction or other circumstances defining an act of terror. Senator Lacson explained that a person could be made a subject of warrantless arrest and detention, seizure and forfeiture of property if it is clearly established that he is a member of a proscribed terrorist organization. As regards conjugal and family assets, as well as assets of the terrorist organization, he said that if it is established that a spouse is a member of a proscribed terrorist group, the property is subject to forfeiture.

Asked if groups such as the Reform the Armed Forces Movement (RAM) and the Magdalo Group are considered permanent terrorist organizations, despite being inactive in their advocacy, Senator Lacson clarified that the intent of the RAM was to overthrow the government which is a criminal act called coup d'etat; on the other hand, the Magdalo Group was not classified as terrorist group as indicated in the Supreme Court decision in *Lagman v. Medialdea*.

Asked what standard of evidence would be used to prove membership supposing the organization does not maintain a roster of its members, Senator Lacson gave assurance that the court would always be guided by the rule of evidence. He said that if a person's membership to a proscribed organization has not been clearly established, he would not be arrested.

Senator Hontiveros questioned why the responsibility to act on the application for proscription was not assigned to the Supreme Court or the Court of Appeals considering that the latter has jurisdiction to authorize wiretapping and surveillance activities.

Senator Lacson replied that among reasons are accessibility and that under the RA 9732, the RTC is the competent court assigned to act on the petition for proscription.

Asked if at the proper time the Committee would consider giving the responsibility of proscribing to a higher court other than the RTC, Senator Lacson

expressed concern that the act of granting the petition could take longer, unlike the judicial authorization to wiretap. He said that the Committee is amenable to the suggestion of Senator Drilon to elevate the responsibility to the level of the Court of Appeals.

As to why the proposed law did not specify the venue for application of proscription, Senator Lacson replied that the Supreme Court would designate special courts for such purpose.

Asked on the rationale for increasing the detention period from three days to 14 days, Senator Lacson recalled that in his sponsorship speech, Senator Dela Rosa narrated his first-hand experience in Davao, showing that the 36-hour reglementary period was not enough to build a case against a suspected terrorist, resulting in more damage because there was not enough time to file or make the inquest proceedings on the arrested suspects. At this point, he requested Senator Dela Rosa to again share his experience.

Senator Dela Rosa stated that indeed based on his personal experience, the 36-hour period was simply not enough, and he suggested that in order to secure the state and protect the people from terrorism and give the law enforcement bodies more teeth in its anti-terrorism campaign, the reglementary period should be extended to 14 days. He recounted that when he arrested ISIS terrorist Mohammad Reza in Davao City, he was forced to release Reza because there was not enough evidence to hold him beyond 36 hours even if he was truly convinced that Reza was a terrorist. He disclosed that even the intelligence community pleaded with him not to release the suspect as he was very dangerous, but he had to because he did not want to violate the law. He said that months after the arrest, the intelligence community showed him a video on YouTube of Mohammad Reza holding the head of a European victim, and he learned that from being a black flag terrorist in the Philippines, Reza travelled to Al-Raqqa, Iraq and eventually became an ISIS member. He said that if the law allowed him to hold Reza beyond 36 hours, many lives would have been saved.

Senator Hontiveros stated that the current Human Security Act provides for 72 hours or three days. She clarified that she was questioning the necessity of increasing the amount of time from three to 14 days in building a case, and that while persons like Mohammad Reza should be arrested, she maintained

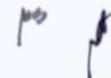
that a case build-up should be done first before arresting a suspect.

Asked if the intelligence community provided him with substantial evidence before arresting Reza, Senator Dela Rosa explained that intelligence reports are different from investigative reports in the sense that intelligence reports, even as they are classified as A-1 or coming from the direct source and first-hand information, do not have evidentiary value and legally would not stand in court; thus, law enforcers are more inclined to use the 36-hour rule provided by ordinary laws rather than the 3-day rule under RA 9772 which they find it very anti-police because instead of giving more teeth to the police some provisions of the law instill more fear.

Senator Lacson stated that a fine of P500,000 per day is imposed on the police if a suspected terrorist is acquitted. He recalled that during the hearing, members of law enforcement agencies were one in saying that three days were not enough and so the Committee incorporated in the bill a reglementary period of 14 days. Moreover, he said that the proposed 14-day non-extendible reglementary period would be at par with other ASEAN countries such as Sri Lanka, 14 days; Australia, 14 days; Bangladesh, 15 days; Indonesia, 21 days; Pakistan, 30 days; Malaysia, 59 days; and Singapore, 730 days. He added that in other jurisdictions, their reglementary periods could be extended, such as Thailand, additional 30 days; Indonesia, additional 120 days; Malaysia, additional two years; Maldives and Singapore, indefinite period. He said that the proposal was more considerate because it sets a cap on the period.

Senator Hontiveros stated that she would rather be the odd woman out keeping the long track record of the country in struggling to uphold human rights and civil liberties even under very challenging circumstances. She said that she was surprised to learn from Senator Dela Rosa that investigative reports have more evidentiary value than intelligence reports when she knew for a fact that police and military intelligence units work hard to gather A-1 intelligence information to enable law enforcement officers to arrest suspected terrorists like Mohammad Reza. She said that she was under the impression that the arrest was backed up by solid evidence that could stand in court.

Senator Lacson said that had an extended reglementary time been accorded to then Colonel



Dela Rosa, Reza's victim could have been saved. He then assured the Body that there are safeguards in the bill that would prevent abuses; for instance, the law enforcer who is taking custody shall notify in writing the judge nearest the place of arrest of the following facts – time, date, manner of arrest, location and physical and mental condition of the detained suspects. He said that the additional safeguards were specifically included in the bill to prevent or remove possible abuses by law enforcement agents. He assured that law enforcement agents would be made answerable and would likewise be mandated to furnish the Anti-Terrorism Council with a written notice of the arrest.

Senator Hontiveros believed that the rationale behind the Human Security Act is to prevent or frustrate imminent attacks. She said that if an attack has already been carried out, the security forces could already arrest the perpetrators *in flagrante delicto* as well as use deadly force to preserve public order and safety.

Senator Lacson opined that government should not wait for the destruction or killing to happen before conducting an arrest. He stressed that the law should be proactive because if the country is left behind in terms of laws to combat terrorism and the fact that other jurisdictions have tougher laws, it is opening itself up as a haven for terrorists. He added that Section 20 provides penalties for the failure of arresting officers to deliver a suspect to the proper judicial authority, such as the possibility of imprisonment.

To Senator Hontiveros' contention that there is no evidence to support that a longer period of detention contributes meaningfully to the fight against terrorism, Senator Lacson said that other countries have strong anti-terrorism laws and are adequately equipped to fight terrorism as compared to the Philippines, and he believed that their existing laws which provide for longer reglementary period could be contributory to their lesser terroristic acts in their jurisdiction, unlike the Philippines which has become the laboratory and training ground for terrorists like Marwan and the others in Marawi because of its weak laws on terrorism.

Senator Hontiveros believed that it could also be argued that those countries with longer reglementary period, especially the highly-developed countries, have lesser terroristic acts because they have been

addressing the root causes of terrorism in a balance way by effective law enforcement and effective laws. She said that at the proper time, she would propose amendments to achieve such objective as part of the community of nations to address the threat of terrorism while unequivocally upholding the country's commitments to human rights and civil liberties.

Senator Hontiveros asked whether the country's security forces, who are still in the process of investigating a terrorist conspiracy, could build a case against the conspirators using the mechanisms available in the following: the Terrorism Financing Prevention and Suppression Act; the surveillance order provision in the current Human Security Act; or the search warrant under the Rules of Court.

In reply, Senator Lacson maintained that it is time to improve or enhance the Human Security Act by way of amending it. He lamented that only one conviction was obtained 13 years after the Human Security Act of 2007 was enacted. He said that one of the handicaps of the law, which the Committee deemed necessary to delete, was the predicate crimes before government could proceed to prosecute the terrorist for violating the Human Security Act.

To Senator Hontiveros' concern that the process of gaining useful information from a suspect for 14 days may end up as a fishing expedition, Senator Lacson replied that in the committee hearings, the law enforcement agencies present cited their common experience that three days are not enough; and that they even requested 90 days which he did not allow. Senator Hontiveros said that she would consider such information when she would propose her amendments.

As regards the term "*mala prohibita*", Senator Hontiveros then asked on the offenses under the proposed law that would not require the element of intent to prosecute them, like possession of documents. Senator Lacson replied that intent is an indispensable element and should be established that there is really an "intent to commit a terrorist act." However, Senator Hontiveros recalled Senator Lacson earlier saying that possession of document that is likely to facilitate a terrorist act is a *mala prohibita* which does not require intent. Senator Lacson replied that there was the element of intent to commit terrorist activities.

Senator Hontiveros said that she would take up some points that she did not agree with Senator Lacson during the period of amendments in order to clarify some provisions of a very important measure which, if interpreted and implemented excessively or because of lack of clarity, could actually do more harm than good. She added that she would try to clarify the acts under *mala prohibita* which do not require intent. Senator Lacson replied that he was with Senator Hontiveros in strengthening the measure, especially the safeguards to protect human rights but not to the point of sacrificing the safety of majority of the Filipino people.

Senator Hontiveros said that with the help of Senator Lacson, she would search for the difficult balance between protecting human rights and ensuring public safety.

She said that in crafting laws, they assume the possible worst in future implementors; that democracy demands a healthy distrust of power and the need for check-and-balance among the branches of government. She suggested that they continue to deliberate on the proposed measure, keeping in mind the tenets that they should make laws as clear as possible and remove all possible ambiguity.

INTERPELLATION OF SENATOR REVILLA

Preliminarily, Senator Revilla said that the Global Terrorism Index 2019 (GTI) ranked the Philippines ninth among the 163 countries in the world, the only Southeast Asian country to be included in the top ten list of countries most impacted by terrorism, even if the country's terror-related deaths and incidents have declined. He said that the report was alarming; thus, the proposed measure to amend the Human Security Act of 2007 (HSA) was timely and that he supports it.

He stated that under the HSA of 2007, the commission of acts of terrorism is anchored on the commission of certain predicate crimes like piracy, kidnapping, rebellion, among others. But he noted that in Section 4 of the proposed measure, the predicate crimes were deleted. Thus, he feared that making the definition of terrorism or terrorist act overbroad would make the prosecution of the crime difficult. He then asked whether the Committee wanted to hasten prosecution because of the new definition. Senator Lacson replied that based on experience, after the HSA was enacted in 2007,

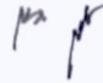
there was only one conviction and that one of the handicaps was the presence of predicate crimes, and so the Committee deemed it wise to remove the predicate crimes because the prosecution would have to prove their existence first before proceeding to prosecute under the HSA. He said that even Judge Felix Reyes of RTC Taguig said that he himself found it hard to prosecute the suspects under the HSA because he had to prove first that the predicate crime was committed.

On whether there has been a conviction for violation of HSA, Senator Lacson replied that there was only one and only one proscribed terrorist organization, the Abu Sayyaf Group. He said that the present law is really weak, and law enforcement agencies of the country are afraid of filing HSA violation because if the suspect is acquitted, the government would be fined P500,000 per day of detention. For fear of making a mistake and to avoid paying the hefty fine, he said that the law enforcers would file a case of multiple murder or other violations under the Revised Penal Code even if they are certain that the suspects are terrorists.

On whether Sections 21 and 22 of the proposed measure on proscription of terrorist organizations, associations or group of persons were also found in the HSA of 2007, Senator Lacson replied in the affirmative.

Asked on the purpose of a new provision in Section 22 which requires the issuance of a preliminary order on proscription, Senator Lacson explained that as mentioned earlier, it took the RTC 12 years to issue the order of proscription against the Abu Sayyaf Group, undeniably a band of terrorists, and in the meantime that there was no order, the group continued with their terrorist acts; thus, the Committee decided that aside from making the order of proscription time-bound on the part of RTC, which is six months within which to issue or not to issue a final order of proscription, the court was also given the power to issue preliminary order of proscription within 72 hours.

On whether law enforcement or military personnel could conduct surveillance on the proscribed terrorist organization, associations or group of persons once the preliminary order of proscription has been issued, Senator Lacson replied that the authorities could freeze the assets or accounts of the terrorist organizations and once a preliminary order of



proscription is issued, the members of the proscribed organization could be arrested. But he also raised the possibility that the preliminary order could be lifted if a permanent order is not issued in six months.

Asked if the law enforcement or military personnel who carried out surveillance, arrests and examination of bank accounts and assets would face charges from the alleged terrorist organizations once the court lifted the preliminary order of proscription, Senator Lacson replied that the law enforcement personnel could not be charged if they have valid grounds to arrest and freeze the accounts or assets of those people.

As regards the information gathered by the law enforcement agencies, Senator Lacson said that as provided for in the proposed measure it would be kept confidential, and its access is limited.

Noting that the order of proscription issued by the RTC is valid for three years only and then subject for review, Senator Revilla asked if the court can *motu proprio* review it or whether the law enforcement agencies or military personnel have to file a petition. Senator Lacson replied that the lifting of the order would go through the normal course of due process.

Senator Revilla said that the GTI report tagged the New People's Army (NPA) as the deadliest terror group responsible for over 36% of terror-related deaths and 39% of terror-related incidents recorded, followed by the Bangsamoro Islamic Freedom Movement (BIFM). He then asked if an order of proscription has been issued against the NPA or BIFM. Senator Lacson replied that there are pending petitions but the RTC has not decided yet since the CPP-NPA in the country has not yet been declared as a terrorist organization.

Senator Revilla asked if the Anti-Terrorism Commission referred in Section 26 of the Anti-Terrorism Act of 2019 is the same entity as the Anti-Terrorism Council under Section 41 of the proposed measure.

Senator Lacson explained that under Section 41, there would be the additional members of the Anti-Terrorism Council, namely, the secretaries of the DICT, DOST, DOTR, DOLE, and DSWD, the Presidential Adviser for Peace, Reunification, and Unity, and the chief minister of BARMM. Relative

thereto, Senator Revilla recommended the inclusion of the executive director of AMLC as member of the Anti-Terrorism Council considering the important role that the agency plays relative to counter-terrorism financing. Senator Lacson said that the executive director of the AMLC could represent the Secretary of Finance who is also a member of the Anti-Terrorism Council.

Asked by Senator Revilla on the possibility of stating so in the bill for clarity, Senator Lacson replied that he would consider the proposed amendment at the proper time.

Senator Revilla thanked Senator Lacson and expressed his support for the measure.

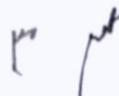
INTERPELLATION OF SENATOR GORDON

Preliminarily, Senator Gordon stated that there are bound to be good Samaritans in the form of doctors or volunteers who would provide first aid in an encounter involving terrorists. He then asked if the help they would provide could be considered as material support. Senator Lacson stressed that humanitarian aid under the auspices of the United Nations, the Philippine Red Cross or the International Red Cross, are exempted and could give aid even during war. He affirmed that those who work for the Philippine Red Cross provide humanitarian aid which should not be classified as material support. Senator Gordon said that he felt constrained to make sure that it is clarified especially for those emaciated who might need such support.

Asked by Senator Gordon if he would be willing to accept an amendment to reflect that intent, at the proper time, Senator Lacson replied in the affirmative.

Senator Gordon said that it has to be clarified in the law so that when the courts encounter such a case in the country, they could go back to the records and see what the measure's clear intentions are.

On the matter of proscription, Senator Gordon stated that the term "proscription" refers to the application to be able to identify all the terrorist organizations, and that the process begins with applying for proscription which is either granted or not granted by the court within 72 hours. If identified, he said that the members of the proscribed group could be detained for a certain number of hours.



Senator Lacson clarified that the process described by Senator Gordon refers to the preliminary order of proscription and that the issuance of the final order would actually take six months or 60 days with hearing to give the court enough time to decide whether or not to grant the petition for proscription.

As regards the terms "principal," "accomplice," and "accessory," Senator Gordon asked how they could be determined as far as giving material support to terrorists is concerned. He said that while it would be quite easy to identify the principal being the one indispensable to the terroristic act as it would not take place without his support, it is quite hard to tell if one is an accomplice or an accessory.

Senator Lacson clarified that one is considered a principal either by direct participation or by inducement, adding that even a co-conspirator, being a part of the conspiracy, is considered a principal. As to when one could become an accomplice, he said that one could be an accomplice at any stage of the execution of the act.

Asked if a person carrying or wearing a bomb for terrorist organizations could be considered as an accessory, Senator Lacson replied in the affirmative. Likewise, he said that a person who lent a vehicle or gave a lift to terrorists with or without knowledge of their intention could be considered as an accomplice, but if there was intimidation involved like being pointed at by a gun, the person accused could reason as his defense that he was under duress.

Senator Gordon stated that it is basic in the Revised Penal Code that the principal is the person indispensable to a crime, and that what he would like to be clear is on how to determine an accomplice, especially since an act, such as a conspiracy, is a continuing process.

Senator Lacson said that it would all depend on the appreciation of the prosecutor and the judge and on how the prosecution and the defense would present their arguments.

Senator Gordon said that he was glad the P500,000 per day penalty was removed, but on the other hand, he stressed the need to include in the definition of proscription how long one could be detained.

Asked if the 14-day detention is non-extendable, Senator Lacson replied in the affirmative, saying that

if a case has not been filed after 14 days, the person has to be released without penalty or sanction.

Senator Gordon said that with that clarification the military or police would not have to worry that they could be fined.

Asked how the citizens would be protected from abusive enforcers who might find ways to hide a prisoner, Senator Lacson said that it would be difficult for the enforcers to do so because the bill provides that the judge nearest to the place of arrest would be informed and, at the same time, they would have to write the Anti-Terrorism Council the details of the arrest. He said that such written notice to the ATC would also be the enforcers' defense.

As to when the written notice to the ATC should come in, Senator Lacson said that it should come on the first day of the arrest. He reiterated that the judge in the nearest location where the arrest was conducted must be informed; otherwise, the enforcers would be penalized.

On the part of the law enforcers who were authorized to arrest, Senator Gordon said that they would also be faced with the dilemma of how to avoid being accused of arbitrariness and caprice as the opportunity is always present. For instance, he said that the arresting personality would have to explain to the court that he did everything possible to make sure that what he did was in the performance of duty.

In reply, Senator Lacson gave assurance that the provisions on citizen's arrest were not changed and what was expanded was only the period. For instance, he said that in an ordinary crime, it would not be possible to arrest a person if the act is only in the planning stage and the crime has not been committed yet. Since dealing with terrorism is a new phenomenon that is global in nature, he stressed the need to be proactive so that such phenomenon does not become the new normal. Furthermore, he said that what the Committee wanted to do was to strengthen the law enforcement agencies to truly implement the law on terrorism.

Senator Gordon admitted that it is a fact that there is currently an infestation of possible terrorists who are bound to do ill will with impunity. However, he believed that the penalty of life imprisonment or death might be too heavy as to open the avenue for

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bribery. Hence, he opined that the commanding officer, the superintendent or whoever is in charge should make sure that he is not doing it to intimidate others for purposes of bribery, the penalty for which is actually bigger. Senator Lacson agreed, saying that indeed a thorough discussion on the matter is important as it would become part of the record that would serve as references in the future when the intent of the law is sought.

Senator Gordon agreed that the penalty should be heavy in order to discourage terrorists and make them feel intimidated by something that a government would be forced to do.

As regards the reglementary period, Senator Lacson clarified that it is not whimsical or arbitrary because the following grounds should be established first before a person could be detained for 14 days: (1) that the further detention of the person/s is necessary to preserve evidence related to the terrorist act or to complete the investigation; (2) that the further detention of the person/s is necessary to prevent the commission of another terrorist act; and (3) that the investigation is being conducted properly.

Relative to terrorism, Senator Gordon asked if torture and other similar acts were taken into consideration during the hearings. Senator Lacson said that torture is already covered by the provisions in the Revised Penal Code, as well as by other anti-torture measures that have been passed.

As to how torture could be proven to have taken place in the absence of witnesses and marks, Senator Lacson replied that if there are no visible signs to prove, the police or the arresting person could be very good at covering it up.

Senator Gordon said that he was just trying to figure out a way wherein arresting personalities would not be easily accused of any offense.

Senator Lacson stated that law enforcement agents who violate Section 29 (*Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person*) would be imprisoned from 12 years and one day to 20 years. Although the imposition of higher penalties could preempt terrorist acts, Senator Gordon remarked that it would prevent the law enforcement

agents to be true to their Code of Conduct and not do things over and above the penalties assigned to them.

To safeguard the rights of detained suspects, Senator Lacson stated that the concurrent jurisdiction of the Commission on Human Rights (CHR) as proposed by Senator Hontiveros was also included in Section 40 of the bill.

Senator Gordon said that an amendment to inform the detained suspects and the CHR should be included in the bill so that there could be a level playing field between the State and the offender. Senator Lacson said that cruel, inhuman, and degrading treatment against the offender would render the evidence inadmissible, being a fruit of the poisonous tree.

At this point, Senator Gordon suspended his interpellation on the measure.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 4:43 p.m.

RESUMPTION OF SESSION

At 5:32 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1083

Upon motion of Senator Zubiri, there being no objection, the Body suspended consideration of the bill.

COMMITTEE REPORT NO. 25 ON SENATE BILL NO. 1211 *(Continuation)*

Upon motion of Senator Zubiri, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1211 (Committee Report No. 25) entitled

AN ACT AMENDING REPUBLIC ACT
NO. 7160, OTHERWISE KNOWN AS
THE "LOCAL GOVERNMENT CODE
OF 1991," BY EXPANDING THE

[Handwritten signatures]

SCOPE OF LOCAL GOVERNMENT UNITS' POWERS OVER LOCAL PUBLIC TRANSPORTATION SYSTEMS AND FOR OTHER PURPOSES,

Senator Zubiri stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Tolentino, sponsor of the measure, and Senator Drilon for his interpellation.

INTERPELLATION OF SENATOR DRILON

Preliminarily, Senator Drilon alluded to the old adage that says "necessity is the mother of all inventions." He said that the Angkas issue has been at the forefront of the news due to the necessity of providing a solution to the horrendous traffic problem in Metro Manila. He said that the effort to provide convenient transportation to the riding public, even if it is fraught with some danger, is being pushed because of the necessity of looking for a solution. He added that it was also because of the same adage that there is an effort to provide emergency powers to the Secretary of the Department of Transportation, and now, the same reason Senator Tolentino was proposing to amend Section 17 of the Local Government Code of 1991, or Republic Act No. 7160.

Senator Drilon then asked what the LGUs could do under the proposed amendment that they could not do under the current law. For instance, he asked if the LGUs are prohibited by the Local Government Code of 1991 from engaging in the activity that was outlined in the proposed measure.

Senator Tolentino said that under the Local Government Code, while LGUs are basically empowered to have their own measures to alleviate the traffic conditions, they are more or less shackled either by existing regulations or by the nonexistence of a legal mandate that would empower them to have their own traffic solutions. He said that he was principally referring to highly urbanized cities that are striving to have their own rail-based transport systems within their jurisdiction. He cited the situation of Makati City that wants to have its own subway system but could not proceed because of restrictions under Republic Act No. 7718, or the DOT Law, which

limits the LGUs' capacity to enter into such projects without going through the rigorous and burdensome processes required by the National Economic and Development Authority (NEDA) and the NEDA-Investment Coordination Committee (ICC), a process that would take years, from conceptualization to operation, before a project is approved. He noted that it was only the Municipality of Kalibo, Aklan that was able to successfully have its own project, a slaughterhouse rehabilitation, since the time the Built-Operate-Transfer (BOT) Law and the Public-Private Partnership (PPP) regulations were enacted.

Senator Drilon then asked if the purpose of the bill was to unshackle the local government units from restrictive provisions, to revise the present regulatory framework for transportation projects, or to just encourage them to get into such projects and still be subjected to the regulatory framework under the current law since the proposed measure used the phrase "shall endeavor." He said that he wanted to know what the Sponsor meant when he said, "It is the view of the Committee that it is now crucial to turbocharge the functions and capabilities of the LGUs in addressing road congestion and creating a balanced transport system."

In reply, Senator Tolentino said "shall endeavor" was consistent with "turbocharging" as mentioned in his speech, which meant that it would unleash the creative and innovative spirit of highly urbanized LGUs especially in addressing current and even future transportation requirements by allowing them to enter into agreements with private and mass transportation companies. He said that based on experience, in the province of Cebu, for instance, if the LGU would want to have its own monorail system, even if there is a back-to-back city council resolutions coming from city councils, no foreign investor or partner would attempt to enter because there seems to be a legal obstacle. He said the LGUs are precisely in a twilight legal zone because while they have autonomy, in reality they do not have because projects worth more than P200 million would have to go through the NEDA-ICC.

Asked by Senator Drilon if the measure seeks to dispense with the approval of NEDA in projects designed to address road congestion and create a balanced transport system, Senator Tolentino replied in the affirmative.



Senator Drilon said that the clarification should be specified, saying that he did not read it in the present amendment. He also took note of Senator Tolentino's confirmation that the purpose of the bill was to empower the LGUs to undertake transport system projects without regard to the present regulatory framework. Senator Tolentino affirmed that it was also the reason for the inclusion of the phrase "whether domestic or national without any sovereign guarantee" in the amendment. Senator Drilon said that the sovereign guarantee is completely separate and that currently if the project is over P200 million, it would have to go through the NEDA. Senator Tolentino agreed, adding that an LGU project exceeding P20 million would have to be submitted to the Local Sanggunian, and P50 million to the Provincial Sanggunian, for authorization. He also affirmed that if enacted into law, projects worth P1 billion, for example, would not have to get NEDA approval, but he clarified that the law could proceed with the project but still in consultation with relevant national government and transportation planning agencies such as NEDA for planning, and DOTr for intermodal and connectivity purposes.

Senator Drilon stated that currently, projects worth P2.5 billion and above would require approval of the NEDA-ICC and then the NEDA Board. He emphasized the need to specify in the measure that NEDA approval was no longer necessary so that local government units could use Section 17 with confidence when seeking foreign financing without national government guarantees. He added that if he were the counsel for the funder, he would not be comfortable with the way Section 17 (K) was currently written as it does not imply that NEDA approval is not necessary. He said that the measure must be clear as to its intent.

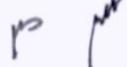
Asked if the Committee sought the opinion of the NEDA, Senator Tolentino said that he would seek clarifications, in light of a possible amendment to Section 17 (K) to reflect the concern of Senator Drilon. He nevertheless disclosed that during the budget hearing of NEDA, he conferred with Secretary Pernia who said that NEDA was amenable and has no objection to the bill because it would catalyze a local Build, Build, Build and spur regional economic growth anchored on the transportation system. Senator Drilon surmised that NEDA was probably amenable to the way it was worded now because they may have the same interpretation as he had that this does not require a change in the regulatory framework,

meaning, NEDA can be disregarded as long as there is no national fund involved. He suggested the need to clarify the intention and policy of Congress so that NEDA could react properly. He warned that the bill could be vetoed by the President if NEDA would object to the revision of the regulatory framework.

Asked if the transport system to be put up would still require a Certificate of Public Convenience and Necessity (CPCN), Senator Tolentino replied that a concurrence coming from the DOTr through the LTFRB would still be needed. He stated that the bill highlights the consultation process with the national government agencies concerned. He said that a CPCN is being offered to the general public as a privilege granted, but if it is the government itself giving the imprimatur by virtue of the bill to the LGUs, he supposed that it could be considered as the general certificate of public convenience—the authority given to the local government units to operate by itself.

Senator Drilon stated that under the present system, a private sector can be authorized on a PPP setup to operate the transport facility. If a private sector operates and the regulatory framework would be set aside, he asked if the operator of an LGU project in a joint venture or in a build-operate-transfer system would be required to secure a CPCN. Senator Tolentino reiterated that the bill does not set aside the regulatory powers of the relevant national government transportation agency; instead, it espouses NGA-LGU cooperation through a system of consultation. He noted, however, that it is different with the usual franchise given, for instance, to a bus company because it pertains to an LGU exercising its functions. Also, with the huge investments involved, he said that it cannot be compared with the usual public hearings conducted by LTFRB or another regulatory agency. He said that it is a hybrid empowerment of the LGUs borne out of necessity and to turbocharge their concerns.

Senator Drilon then asked if the proposed measure seeks to repeal the powers of the national agencies insofar as the present transportation system is concerned, like the need for NEDA approval when the project goes beyond a certain amount, the LTFRB for the franchising, the DOTr which has the mandate under that law, the MMDA, and the LTO. He reiterated the need to clarify the roles of those national agencies vis-à-vis the powers that will be exercised by the LGU in relation to the proposed



amendment. To hasten the approval of the bill, he proposed the recasting of Section 17 in order to be precise of its intent. He said that he was willing to terminate his interpellation as long as he would be able to propound questions when the amendments are proposed.

Senator Tolentino stated that whatever projects the LGUs may propose or implement must be in sync with the national transport system. He said that the bill could still be amended to include safety standards and the matter of providing the consent of the national government, specifically as to the relevant franchise or authority to be secured first from the appropriate government agency.

Senator Drilon requested that he be given a copy of the amendments to be proposed, and he reiterated his earlier statement that he would still be permitted to ask clarificatory questions.

Asked if the bill would also require the local government unit to earmark local funds for this project, Senator Tolentino answered it is currently part of the autonomous powers of the local government unit but subject to existing fiscal restraints.

Senator Drilon asked if Memorandum Circular No. 2016-120, or the Guidelines for the Implementation of the Public-Private Partnership for People Initiative for Local Governments (LGU P4), which expands the modalities for public/private partnerships beyond those provided in the BOT Law, would still apply once the bill becomes a law. Senator Tolentino replied that it would be superseded insofar as the transportation aspect was concerned, but the provisions with regard to slaughterhouses, municipal libraries, city hospitals and clinics would still be applicable. He emphasized that the bill is anchored on the transportation problem. He stated that there is a threshold for urban congestion and population, and growing regional urban centers and cities in the country would always be confronting the problem of traffic congestion. He maintained that preparation is necessary, and Congress should provide the appropriate legislative measures.

At this point, Senator Drilon terminated his interpellations on the measure with the understanding that he would be given an advance copy of the amendments so that he could raise clarificatory questions.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

There being no further interpellation, upon motion of Senator Zubiri, there being no objection, the Body closed the period of interpellations without prejudice to asking clarificatory questions during the period of amendments.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1211

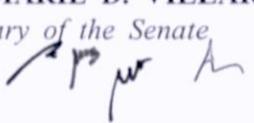
Upon motion of Senator Zubiri, there being no objection, the Body suspended consideration of the bill.

ADJOURNMENT OF SESSION

Upon motion of Senator Zubiri, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, January 27, 2020.

It was 6:08 p.m.

I hereby certify to the correctness of the foregoing.


ATTY. MYRA MARIE D. VILLARICA
Secretary of the Senate


Approved on January 27, 2020