



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS, GENEVA

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The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) and, with reference to joint communication JOL PHL 4/2020 dated 29 June 2020 concerning the Anti-Terror Act of 2020, has the honor to enclose the response from the Philippine Government.

The Philippine Government's response provides assurances that the law complies with obligations under international law and guarantees respect for human rights. It also addresses in detail the presumptive and speculative allegations and concerns about the newly-passed law.

The Philippines underscores that the Anti-Terror Act must be appreciated from a broad and non-selective perspective that takes into account international commitments including under UN Security Council resolutions on counter-terrorism, laws and practices in other national and supranational jurisdictions, and the grave reality of the country's terrorism challenge, with the Philippines having consecutively ranked among the most impacted countries globally for the past two decades.

The Permanent Mission of the Philippines requests the assistance of the OHCHR Special Procedures Branch in publishing this note and its enclosure on to the SPMH communications website.

The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva avails itself of the opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) the assurances of its highest consideration.

Geneva, 27 August 2020

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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" was signed into law on 3 July 2020. R.A. 11479, also known as the Anti-Terrorism Act of 2020 (ATA)¹, upholds the policy of the State to protect life, liberty, and property from terrorism.

Since the enactment of the Human Security Act of 2007, several bills have been filed in Congress aimed at enhancing the law. The Anti-Terror Bill was extensively debated, various rights groups have been invited to participate in its crafting, and the opposition had every opportunity to scrutinize it since it was first introduced.

This Philippine Government response to JOL PHL 4/2020 from the Special Procedures Mandate Holders concerning the Anti-Terror Act outlines in detail the gravity of terrorism as well as the country's international commitments which necessitate the urgency of the bill's passage into law. This document response assures the public that the law complies with obligations under international law and guarantees respect for human rights. It addresses in detail presumptive and speculative allegations and concerns about the newly-passed law.

The status of terrorism in the Philippines

The 2019 Global Terrorism Index ranks the Philippines as the 9th country most negatively impacted by terrorism. While other states across the globe are starting to see a downtrend in the number of deaths due to terrorism, the Philippines is included in the top countries with the largest number of deaths from terrorism. The table below shows the data provided in the 2019 Global Terrorism Index on the Philippines' global ranking by number of deaths from 2002.

2019 Global Terrorism Index data on Philippine ranking since 2002

2002	2003	2004	2005	2006	2007	2008	2009	2010
13 th	8 th	10 th	12 th	14 th	12 th	8 th	9 th	9 th
2011	2012	2013	2014	2015	2016	2017	2018	
10 th	11 th	9 th	11 th	12 th	12 th	10 th	9 th	

Compliance with obligations under international law

The ATA intends to give Philippine authorities a much-needed strong legal backbone to support the criminal justice system in preventing terrorism and prosecuting those who are involved in terror acts. With the evolving terrorist threats and ever-changing tactics, terrorists perpetrate insidious acts. Therefore, a strong legal framework is needed to exact accountability, liability, and responsibility, while maintaining respect for civil liberties. Those who have committed, are attempting to commit, or are supporting those who commit terrorist acts should be prosecuted and penalized, accordingly.

¹ <https://www.officialgazette.gov.ph/2020/07/03/republic-act-no-11479/>

The Philippine Government's Response to JOL PHL 4/2020 dated 29 June 2020 on Comments on the Anti-Terror Act (2020)

United Nations Security Council's Resolution (UNSCR) 1624 calls upon all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to:

- a) Prohibit by law incitement to commit a terrorist act or acts;
- b) Prevent such conduct; and
- c) Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.

The adoption of the ATA conformably with the foregoing security guidelines makes the Philippines compliant with its obligations under international law and complements the security requirements in preventing and prosecuting terrorists in our jurisdiction.

Given the grave situation of terrorism in the Philippines, the exigency exists which required the passage of the bill into law. Further, the country runs the risk of being gray-listed by the Financial Action Task Force for non-compliance with its recommendations by October 2020. To be gray-listed means the country will be considered a high-risk jurisdiction with strategic deficiencies against terrorism. The Philippines will incur high costs on its international financial transactions which will directly affect critical sectors like remittances from our overseas Filipino workers, investors, exporters, among others. This explains why the bill was marked as urgent even amidst the COVID-19 pandemic. While the main bulk of the country's attention should rightly be directed at the pandemic, this should not prevent lawmakers from crafting and passing other laws which also require their attention.

Guarantees for respect for human rights

The Philippines emphasizes that the ATA strikes a balance between the urgent necessity for effective measures to combat terrorism and the country's obligations under the relevant international instruments on human rights, including the Universal Declaration of Human Rights (UDHR) and the International Convention on Civil, Cultural and Political Rights (ICCPR). Due regard has been given to uphold fundamentally guaranteed rights, while at the same time acknowledging the obligation to adopt measures to prohibit the conduct and incitement of terrorist acts, recalling United Nations Security Council (UNSCR) 1624.

As to be discussed in detail below, the ATA is replete with safeguard provisions that guarantee respect for human rights, which the Act itself ensures shall "be absolute and protected at all times". Moreover, the provisions of the Act were not crafted in a vacuum, but rather accounted for lessons learned from the implementation of the Human Security Act of 2007, the relevant UN Security Council Resolutions concerning counter-terrorism, the standards set in other national jurisdictions, as well as by international and supranational organizations, and the international human rights framework.

In addition, the fundamental principle of checks and balances are being followed, particularly through the power of judicial review exclusively vested in the Supreme Court of the Philippines under the 1987 Philippine Constitution.

The Philippine Government's Response to JOL PHL 4/2020 dated 29 June 2020 on Comments on the Anti-Terror Act (2020)

As of 26 August 2020, private individuals and civil society organizations, free and unimpeded, have filed at least 28 petitions challenging the Act, oral arguments for which have already been scheduled. The Supreme Court will be the final arbiter for matters concerning the Act's constitutionality, thus it would be presumptuous to assume that the Anti-Terror Act, on its face, contains provisions that are illegal, arbitrary and violative of human rights norms.

Presumptive and speculative allegations and concerns

There is no justification for claims that "alleged violations of human rights" have been committed or are about to be imminently committed under the newly-enacted legislation, raising the question of prematurity and vagueness of several concerns enumerated in the Joint Communication JOL 4/2020 of 29 June 2020 regarding specific provisions of the law.

As to the specific questions posed by the Joint Communication, the Philippine Government has the honor to provide the following information:

1. The application of Republic Act 10173, otherwise known as the Data Privacy Act of 2012

The Joint Communication alleges that the Act appears to interfere with the privacy, reputation and liberty of individuals in contravention of the UDHR and ICCPR, and is incompatible with provisions of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012.

The requirement of judicial authorization in order for surveillance to be conducted by law enforcement and military authorities ensures that such measures are **not arbitrary, and are exceptional, necessary and subject to rigorous oversight, as the Joint Communication encourages.**

The issuance of a valid judicial authorization under the Act requires an exhaustive process including requirements for filing of application before the Court of Appeals and notice to the National Telecommunications Commission (Section 16), the finding of probable cause by the Court of Appeals prior to the issuance a written order (Section 17), the detailed contents of the judicial order (Section 18), and the time-bound nature of the authorization for surveillance (Section 19).

Any information or data secured in contravention of the requirements specified by the Act are **inadmissible as evidence** (Section 23) following the principle of 'fruit of the poisonous tree' and must be made available to the aggrieved party (Section 24).

In addition, the agent/officer who conducts such illegal/unauthorized surveillance is **criminally liable** for an offense that carries the penalty of ten (10) years imprisonment (Section 24), as well as dismissal from the service (Section 15).

Likewise, nothing in the ATA impairs a person deeming himself/herself illegally surveilled from filing a Writ of Habeas Data, a recognized legal remedy under our jurisdiction.

2. The definition of Terrorism under the ATA in relation to obligations under the UDHR and ICCPR

The Joint Communication alleges that the Act offers an overbroad and ambiguous definition of terrorism which includes imprecise terms such as "to provoke...seriously destabilize or destroy the fundamental political, economic, or social structures of the country... seriously undermine public safety... which cause extensive damage to public property..." It further cited concerns over other prohibitions including "planning, training, preparing and facilitating the commission of terrorism."

Noting that there is no current legally-binding agreement on a universal definition of "terrorism", it is emphasized that the relevant provision **Section 4 of the ATA could not be considered overly broad or vague, given the painstaking efforts to distinguish acts of terrorism from other crimes, to construct the necessary safeguards for the protection of rights enshrined in the UDHR and ICCPR, and to consider existing legislation of a similar nature in other national and supranational jurisdiction offers.**

Acknowledging that UDHR and ICCPR both call for certainty and precision in the definition of criminal offenses, the ATA stands the test for sufficiency.

Under the ATA, terrorism is defined as committed by any person who, within or outside the Philippines, regardless of the stage of executions :

- a) Engages in any acts intended to cause death or serious bodily harm to any person, or engenders a person's life ;
- b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property ;
- c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure ;
- d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons ; and
- e) Release of dangerous substance, or causing fire, floods or explosions

when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code"

Thus, in order to be considered as acts of terrorism, **the intent and purpose taken together must be established.** It is erroneous to say that the mere performance of the acts enumerated constitutes as acts of terrorism. **Performance of these acts without the underlying purpose may be considered as violations under the Revised Penal Code or other Special Laws, and not as acts of terrorism.**

Section 4 of the ATA is clear and precise as to what constitutes these critical elements, and provides a high bar for application. This belies the concern of possible abuse and arbitrariness. All other relevant sections on the commission of terrorist acts – Sections 5,6,7,8,9,10,11 and 12- are to be taken in the context of Section 4, and thus cannot be considered ambiguous or without sufficient basis.

Section 4 clearly provides in an explicit and unequivocal manner that **advocacy, protest, dissent, stoppage of work, industrial or mass action, and other exercises of civil and political rights 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, does not constitute a terrorist act.** It is further highlighted that the safeguard provision is similar to exceptions provided in other national jurisdictions, such as under the laws of Australia and Canada, to cite:

- a) Section 100.1 (3) of the Australian Criminal Code provides that action does not fall within the definition of a terrorist act if it :
 - i. Is advocacy, protest, dissent or industrial action, and
 - ii. Is not intended :
 - To cause serious harm that is physical harm to a person ; or
 - To cause a person's death; or
 - To endanger the life of a person, other than the person taking the action; or
 - To create a serious risk to the health or safety of the public or safety of the public or a section of the public.
- b) 83.01(1)(b)(ii)(E) of the Canadian Criminal Code has a similar exemption for 'advocacy, protest, dissent or stoppage of work' that is not intended to cause death or serious bodily harm by the use of violence, endanger a person's life or cause a serious risk to public health or safety.

On concerns over other prohibitions including *"planning, training, preparing and facilitating the commission of terrorism,"* the Philippines cites comparable provisions in other jurisdictions as well as pertinent UN Security Council Resolution, as follows:

- a) **Threat to commit terrorism (Section 5 of ATA)-** Under the EU Framework Decision of 13 June 2002 on Combating Terrorism, threatening to commit is a terrorist offense.
- b) **Planning, training, preparing and facilitating the commission of terrorism (Section 6 of ATA) and providing material support to terrorist (Section 12 of ATA)-** These were patterned after the Australian Criminal Code Act of 1995, as

mended. UN Security Council Resolution 1624 mandates all Member States to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.

- c) **Inciting to commit terrorism (Section 9 of ATA)**- Incitement to terrorism is a strategy commonly used by terrorist organizations to further support for their cause and call for violent action. The Security Council has identified it as conduct which is contrary to the purposes and principles of the United Nations and called on States to adopt measures to prohibit and prevent it (UNSC Res. 1624). Proscribing incitement to terrorism is integral to the protection of national security and public order, which are both set out as legitimate grounds for limiting freedom of expression in article 19 (3) of the International Covenant on Civil and Political Rights. It is also consistent with its article 20 (2), which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- d) **Recruitment to and membership in a terrorist organization (Section 10 of ATA)**- The inclusion of a specific recruitment offense stems from Security Council Resolution 1373 (para.2-a), which specifically requires States to suppress recruitment of members of terrorist groups.

2.1 On the designation of individuals and groups as terrorist

The Joint Communication alleges that the determination of an organization or individual as terrorist lies with the Executive Branch through the Anti-Terrorism Council (Section 25). It moreover suggests that there is no judicial oversight in the process.

The Joint Communication conveniently fails to distinguish between the proscription and designation of terrorists and terrorist groups. The two concepts are different and are governed by two different sections of ATA. Proscription is governed by Section 26 and is ordered by the authorized division of the Court of Appeals where the application is filed while designation is governed by the provision of Section 25 and is one who is designated as such by the UN Security Council, other jurisdiction, supranational jurisdiction or the ATC upon a finding of probable cause.

Proscription

The power to proscribe and determine with finality that an individual or organization is terrorist under the ATA lies with the Court of Appeals, through the judicial process described in Sections 25, 26 and 27. The burden of presenting evidence beyond reasonable doubt lies with the State, and the individuals or groups involved are required to be given due notice and opportunity to be heard.

The judicial issuance by the Court of Appeals upon the finding of probable cause for proscription is preliminary in nature, and the Court must decide whether to make permanent, modify or set aside such preliminary order within six (6) months (Section 27).

For comparative purposes, please note the following practices in other jurisdictions:

- a) Under the Terrorism Act 2000 of the United Kingdom, the Home Secretary may proscribe an organization if he believes it is concerned in terrorism, and it is proportionate to do.
- b) In Australia, the government can list an organization as a terrorist organization if the Minister for Home Affairs is satisfied that it is engaged in preparing, planning, assisting or fostering the doing of a terrorist act or advocates the doing of a terrorist act.

Designation

Designation, on the other hand, is an executive process that, *inter alia*, adheres to obligations under UN Security Council Resolution (UNSCR) 1373. **The only legal consequence of such designation is inclusion in a list to be submitted by the Anti-Terrorism Council (ATC) to the Anti-Money Laundering Council (AMLC) for further investigation and action (i.e. freezing of assets), as necessary.** Moreover, freeze orders are subject to challenge by the aggrieved party/ies, who are even allowed to withdraw funds for family sustenance, including legal services and medical needs (Section 36).

Designation of a group as terrorist **does not criminalize mere membership or recruitment**, the only exceptions being if such designation stems from the UN Security Council or the group is organized for engaging in terrorism (Section 10).

2.2 On due process and warrantless arrests

The Joint Communication makes issue of ATA's Section 29 on detention without judicial warrant of arrest as violative of the ICCPR.

The Philippines believes that this provision is necessary, if promptness of appearance before a judicial authority and conduct of trial within a reasonable time is to be weighed by the **real necessities of abating terrorism**, including the gathering of evidence and intelligence, protection of the arrested individual from retaliation, and coordination with other jurisdictions.

Sufficient safeguards are present to prevent the arbitrary implementation of Section 29, including the requirement for the arresting agent/officer to secure authorization from the ATC, and the requirement to immediately submit a notice to the nearest judge of the court detailing the time, date and manner of the arrest, as well as the location, physical

and mental state of the arrested person/s, copy furnished the Commission on Human Rights (CHR). **Failure to notify the judge of the nearest court will merit imprisonment of ten (10) years and dismissal from the service for the erring agent/officer.**

Section 30 also provides that the arresting agent/officer inform the arrested person/s of their rights under custodial detention, including **the right to be informed of the nature and cause of arrest, right to remain silent, right to competent and independent counsel of their choice, right to communication with and be visited by family or nearest relatives, and the right to avail of the service of physician/s of their choice.** As with the preceding paragraph, violation of a detainee's rights carries the penalty of ten (10) years imprisonment and dismissal from the service for the erring agent/officer.

Nothing in the ATA impairs a person from pursuing other valid legal remedies such as a Writ of Habeas Corpus and/or a Writ of Amparo.

The fourteen (14) day detention period extendible by ten (10) days under ATA is a relatively conservative measure, compared with the legislated periods of preventive detention in other national jurisdictions, which can range from thirty (30) to seven hundred twenty (720) days.

2.3 On concerns regarding material support and humanitarian action

The Joint Communication claims that Sections 12 and 13 of the ATA create a chilling effect for organizations engaged in the delivery of essential or life-saving interventions.

The Philippines highlights that material support to terrorist individuals and groups under Section 12 can only be considered an offense under ATA **if knowledge of the commission and planning of terrorist acts is present, fulfilling the element of intent and purpose as found in Section 4.**

Moreover, the humanitarian exemption for impartial organizations like the ICRC and PRC are added safeguards that will ensure the unimpeded delivery of necessary humanitarian aid, as these organizations are explicitly exempt from coverage of Section 12.

3. On information sought on the compatibility of the ATA with Philippine obligations under articles 2, 9, 14, 19, 20, 21, and 26 of the ICCPR and Articles 9,11 and 20 of the UDHR

As already extensively discussed, the ATA protects against abuse by the State and its authorities and guarantees the civil liberties and constitutional rights of all citizens. Below is a summary of the safeguards present in the law that ensures conformity with obligations under the UDHR and ICCPR:

- a) Both civil and political rights are clearly protected under Section 2 and 4;

- b) Custodial rights are protected as provided under Section 30;
- c) The Commission on Human Rights (CHR) is also mandated, under Section 47, to give the highest priority to the investigation and prosecution of violations of civil and political rights of persons;
- d) Criminal charges may be filed against the erring agents/officers which could lead to imprisonment of 10 years. On top of the criminal case, administrative charges may also be filed against the erring agents/officers, which may lead to dismissal from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual absolute disqualification from running for any elective office or holding any public office as provided under Section 15;
- e) Legal remedies such as the Petition for Habeas Corpus may be filed. Other remedies provided under the Rules on the Writ of Amparo may also be availed of;
- f) Civil indemnity may also be obtained by the unlawfully arrested person as provided under Section 32 of the Civil Code; and
- g) Express prohibition of torture and other cruel, inhumane and degrading treatment or punishment during investigation and interrogation of suspected terrorists, and the inadmissibility of evidence derived from such methods under Section 33.

4. On information sought on the form of independent review procedures, periodic parliamentary review and sunset clauses requiring renewal of laws or certain provisions that will be applied to the legislation

Section 50 of ATA provides for the creation of the Joint Congressional Oversight Committee to be composed of members from the Senate and the House of Representatives. Under the said provision, the Committee has the authority to summon law enforcement or military officers and the members of the Anti-Terrorism Council to appear before the Committee to:

- Answer questions on the implementation of ATA;
- Submit written reports of the acts they have done in the implementation of ATA; and
- Submit an annual report to both House of Congresses as to its status and implementation. In line with its mandate, the Commission on Human Rights, by its own initiative, may conduct investigations on human rights violations vis-a-vis the implementation of the ATA.

5. On information sought on how the Philippines' counter-terrorism efforts comply with UN Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017) as well as Human Rights Council (HRC) resolution 35/34 and UN General Assembly (UNGA) resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law

The new provisions incorporated in the Anti-Terrorism Act of 2020 aim to ensure the Philippines' compliance with its international obligations on counter-terrorism (CT), to wit :

- The amendments are in keeping with the UNSCR 1373 (2001), which was unanimously adopted following the 9/11 terrorist attacks, whereby the Security Council decided that all States shall ensure that “any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice,” that “such terrorist acts are established as serious criminal offences in domestic laws and regulations,” and that “the punishment duly reflects the seriousness of such terrorist acts.”
- Section 25, which authorizes the Anti-Terrorism Council to “designate” terrorist individual, groups of persons, organizations or associations, seeks to address the country’s inability to operate ex parte and to designate persons pursuant to UNSCR 1373 ;
- The addition of a provision on foreign terrorist fighters (FTFs) is consistent with the Philippines’ obligations under UNSCR 2178 (2014), which requires Member States to take steps to address the FTF threat. Furthermore, the expansion of the extra-territorial application of the law would also address the call of the international community for countries to prevent the movement of terrorists through effective border controls. This is in keeping with UNSCR 2178, which provides that all States must ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.
- Meanwhile, the added provision criminalizing incitement to terrorism seeks to operationalize UNSCR 1624 (2005), which calls upon Member States to adopt measures as may be necessary and appropriate to prohibit by law incitement to commit terrorist act/s. It also bears noting that the law is sufficiently clear that the crime of inciting to commit terrorism is committed by any person who shall “incite others to the execution of any of the acts specified in Section 4...” This means that speech is penalized only if it encourages others to commit acts of terrorism, which are clearly defined under Section 4;
- Furthermore, Section 13 of the Anti-Terrorism Act of 2020 (Humanitarian Exemption) prevents the criminalization of activities of impartial humanitarian organizations like the International Committee of the Red Cross (ICRC) whose BJD-A4E2-FFE4-B7A8 Not valid without authentication code mandate under International Humanitarian Law (IHL) is to protect and assist people affected by armed conflict. This ensures the Philippines’ compliance with its obligations under IHL and other legally binding international instruments, such as UNSCR 2462, obligating Member States to ensure compliance with IHL amid their efforts to counter terrorism. **END.**