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

NV-CDS-407-2025

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 High Commissioner for Human Rights, Special Procedures Branch, and has the honor to refer to its note NV-CDS-391-2025, dated 10 October 2024, regarding the joint communication from Special Procedures (reference: OL PHL 6/2024) concerning the new Rules on the Anti-Terrorism Act of 2020 issued by the Supreme Court of the Philippines.

The Philippine Mission has further the honor to convey the response of the Supreme Court of the Philippines.

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

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Written Response from the Supreme Court of the Philippines

I. On how the ATA Rules are being applied.

The ATA Rules have only been promulgated last December 5, 2023 and this fairly recent procedural issuance has not yet been the subject of any case before the Supreme Court. Although the ATA Rules have been crafted to balance the complementary but occasionally clashing interests of protecting the public from the devastating effects of terrorism and protecting those falsely-accused of or unduly-linked to terrorism, it is still premature on the Court's part to gather sufficient data as to how the ATA Rules have been applied by lower courts. The entire Judiciary has yet to gather enough experience to allow for the development of case laws applying the ATA Rules in relation to the peculiar circumstances presented by every ATA-related proceeding. Only then could the Court assess whether the ATA Rules or its component provisions have been effective in serving both constitutional duties to "protect the people" and to guarantee "full respect for human rights" which are essentially also the aims of various International Law instruments.

II. On how the definition of terrorism in Section 4 of the ATA complies with the strict understanding of "terrorism" as set out by international legal norms and standards, including, but not limited to, United Nations Security Council resolution 1566 (2004) .

It is settled in Philippine jurisprudence that cold neutrality has been repeatedly and consistently demanded of a judge if he or she is to be regarded as impartial for it is an indispensable imperative of due process. Inasmuch as it is a constitutional duty for courts to provide an accused with an impartial trial among others, impartiality is also essential to the proper discharge of the judicial office. To this end, Philippine courts do not render advisory opinions or resolve theoretical issues.

Whether Section 4 of the ATA complies with the "strict understanding" of what "terrorism" is according to international legal norms and standards is a question that has yet to be answered by the Court in an actual case or controversy with facts sufficiently pleaded and proved before lower courts. In the context of upholding human rights, the scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny by a party purporting to represent an entire sector." The same principle would reasonably apply in cases where compliance with international legal norms and standards are in question.

III. On the measures that the Philippine Government intends to adopt to ensure compatibility with Section 9 of the ATA (penalizing "incitement to commit terrorism") in broad terms, with the right to freedom of opinion and expression enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Although the Court is constitutionally restrained from handing out advisory opinions that might impinge on the Judiciary's constitutional mandate of impartiality, it is worth noting that Article 1(2), Chapter I of the United Nations Charter alluding to "respect for the principle of equal rights and self-determination of peoples" do not forbid Member States to pursue measures protective of public order, safety and welfare. Apart from the oft-cited clear and present danger rule which allows the restraint of free speech when there is a substantial danger that the speech will likely lead to an evil the government has a right to prevent, the Court in *Calleja v. Executive Secretary* had already ruled that Section 9 of the ATA on inciting to commit terrorism is not facially unconstitutional. Whether a certain conduct allegedly constituting an act amounting to the incitement to commit terrorism presents a clear and present danger depends on several factors such as the audience's mental stability, availability of materials that may be used to build weapons or explosives, access to information on how to build weapons or explosives through the internet, social media influence, dark web, and other considerations that may very well facilitate the commission of terrorism. These factors influence how courts will ultimately assess the presence of a clear and present danger of an incitement to commit terrorism. Besides, the better adjudicative approach in dealing with penal provisions with a seemingly broad language is to reverse a particular conviction rather than invalidate the law *in toto.* It is also in recognition of the inherent limitation of Congress that it is not omniscient-it cannot reasonably predict every future circumstance or every permutation of human conduct that might constitute a particular offense and incorporate the same in the language of the law.

It is also noteworthy to point out that, aside from seemingly re-litigating the merits in *Calleja* by redirecting the attention of the Court as to whether Section 9 of the ATA is "compatible" with all other International Law instruments instead of the Philippine Constitution, it appears reasonable to conclude that the broad language of Article 19 of the ICCPR is not intended to cripple governments in complying with UNSCR mandates issued to combat terrorism.

IV. On how the Philippine Government intends to ensure compatibility with relevant international standards and human rights law of the provisions allowing for arrests without judicial warrant of persons suspected of having committed offenses under the ATA, and for their detention for up to 14 days under only the approval of an organ of the executive branch, the ATC, and without requiring any judicial authorization in this entire period.

Section 29 of the ATA on detentions without judicial warrant of arrest does not appear to be incompatible with Article 9 (1) of the ICCPR and Article 9 of the Universal Declaration of Human Rights (UDHR) against arbitrary arrests and detentions. This is because Section 30 of the ATA as well as the provisions of Republic Act No. (RA) 7438 provides ample safeguards to the rights of persons arrested and detained under custodial investigation pursuant to Section 29 of the ATA. Moreover, Rule 5 of the ATA Rules sufficiently provides a set of procedures that impose upon law enforcement agents and military personnel procedural duties which they are bound to comply with if they intend to avoid any judicial directive adverse to their cause.

V. On the measures or safeguards adopted to prevent arbitrary arrests and detentions, either through provisions in the ATA or complementary rules.

Calleja is clear that "[s]ince Section 29 applies exclusively to persons validly arrested without a warrant for terrorism and its related crimes under the ATA and written authorization is secured from the [Anti-Terrorism Council (ATC)], the 14-day detention period under it should then be read as supplementing the periods provided under Article 125 of the [Revised Penal Code (RPC)]" which sets periods for when a detention is deemed arbitrary. It should be emphasized that what both the ICCPR and the UDHR prescribe are **arbitrary** - not justified - arrests. In the Philippine jurisdiction, there are several instances where warrantless arrests are considered justified, especially when time is of the essence, such as when the crime or some element thereof is being committed in the presence of a law enforcer.

VI. On the measures foreseen or already in place to ensure compatibility of Section 12 of the ATA with the Philippines' human rights obligations, notably Article 6 of the ICCPR and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

The Philippines has adequate safeguards to ensure that no person shall be arbitrarily deprived of his or her life under Article 6 of the ICCPR. At the forefront are the constitutional guarantees of due process, the presumption of innocence, and prohibition of enacting *ex post facto* laws or bills of attainder. Moreover, the Philippine Congress had also enacted RA 934618 which now prohibits the imposition of death penalty and downgrades the same to either *reclusion perpetua* for crimes defined under the RPC or life imprisonment for offenses defined under special penal laws.

VII. On how the provision of Section 12 of the ATA respects the international human rights standards and rules governing humanitarian work and the provision of humanitarian aid, including the principle of impartiality...

Section 12 of the ATA penalizing persons who provide material support to terrorists merely complies with UNSCR 1373 (2001) which enjoins Member States to: (1) "[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;" (2) "[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;" (3) "[p]revent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;" and (4) "[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, 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."

It is Section 13 of the ATA pertaining to humanitarian exemption which allows humanitarian activities undertaken by the International Committee of the Red Cross (ICRC), the Philippine Red Cross (PRC), and other state-recognized

impartial humanitarian partners or organizations in conformity with the International Humanitarian Law (IHL) to be performed on those persons suspected or held by the courts to be terrorists or belonging to terrorist organizations, associations or groups of persons committing any of the acts punishable under Section 4 of the ATA.

VIII. On how the Philippine Government intends to ensure the provisions on surveillance of suspects and recording communications align with the principles of exceptionality, imperative necessity and proportionality, including being the least restrictive possible on human rights and fundamental freedoms, and being subjected to independent oversight.

The basic philosophy adhered to by the ATA is preventive - as opposed to reactive - in nature. It seeks to prevent terrorism and its effects from inflicting massive casualties and claiming innocent lives. This is consistent with the policy under UNSCR 1373 (2001) which enjoins Member States to: (1) "[t]ake the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information" and to "take action against perpetrators of such acts;" and (2) "[p]revent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens. Whether the surveillance activities of law enforcement agents and military personnel are least restrictive on human rights as well as fundamental freedoms and align with the principles of exceptionality, imperative necessity and proportionality depend on the evaluation of courts in providing reliefs to those who seek them. It is sufficient that judicial oversight is being exercised over the surveillance activities of law enforcement agents and military personnel by way of Rule 4 of the ATA Rules.

IX. On how the provisions of the ATA respect the right to be protected against arbitrary or unlawful interference in one's privacy enshrined in Article 17 of the ICCPR...

Section 4, Rule 4 of the ATA Rules on the grounds for the issuance of a surveillance order requires that the applicants (law enforcement agents or military personnel) shall substantiate their application with evidence enough to establish **probable cause** that: (1) the targets have committed, are committing, or about to commit terrorism; (2) surveillance is essential to the conviction of the person suspected of or charged with terrorism; or (3) surveillance is necessary or is the solution to prevent terrorism. "Probable cause" is the evidentiary standard by which a particular decision to search is tested against the constitutional mandate of reasonableness and is a safeguard against arbitrariness. Requiring law enforcement agents and military personnel to undergo the judicial process of securing a surveillance authorization ensures that any arbitrariness on their part which infringes on privacy rights of those suspected of committing terrorism will be curtailed

X. On how the rights to an effective remedy will be guaranteed in the absence of notification of designation to an affected party and given the restrictive time frame of 20 days for lodging a petition for certiorari under Rule 2 of the ATA Rules.

Persons, groups of persons, organizations or associations engaged in terrorism and/or terrorism-related activities normally operate clandestinely and do not have a known address where courts and administrative agencies may serve

summonses and other processes. Requiring them to be personally notified of any designation orders that authorities may issue is highly impractical, if not impossible. Since procedural due process is met when one is given notice and the opportunity to be heard and explain his or her side, a feasible method of effectively serving notices to potential terrorists operating covertly is through publishing designation orders in newspapers of general circulation as well as in official websites and social media platforms. As such, when designation orders have been duly published, those subjects of these orders will be effectively afforded the opportunity to be heard by way of filing a petition for *certiorari* as provided under Rule 2 of the ATA Rules. The 20-day period to file a petition for certiorari is a balanced approach between preventing terrorism and protecting due process rights, as ill-timed judicial reliefs may sometimes get in the way of legitimate counterterrorism measures. Besides, administrative due process is characterized with fluidity in that it negates any concept of inflexible procedures universally applicable to every imaginable situation.

XI. On how the right to a fair hearing will be guaranteed given the Rule may permit the non-disclosure of essential classified evidence to an affected party.

The treatment of classified information as evidence under Rule 7 of the ATA Rules is in acknowledgement of the sensitive nature of matters involving national security or state secrets. Considering also the sensitive nature of terrorism, classified information may be considered by the courts in adjudicating terrorism-related offenses or proceedings, subject to the constitutional requirement of "expressing...clearly and distinctly the facts and the law on which [the decision or final order] is based. Such constitutional policy is rooted on the principles of due process and fair play.

In terrorism-related proceedings, the use of modified, processed, redacted or summarized versions of classified information adduced in evidence also enjoins trial courts to consider such versions instead of the original ones in resolving these cases. Since judicial proceedings in the Philippines are essentially bench trials - as opposed to jury trials in common law jurisdictions where jurors are not required to give reasons for the verdicts that they hand to the judge - trial courts are required to explain why the modified, processed, redacted or summarized versions of classified information adduced in evidence would support their decisions or final orders. In other words, the decisions or final orders of trial courts are now provided with ample bases. This allows the parties who are aggrieved by the trial court's adverse rulings to challenge both the factual and legal bases thereof provided in the decision or final order.

XII. On the measures adopted to implement the findings, conclusions or recommendations of detailed assessment with regard to the implications for fundamental freedoms and human rights that the provisions of the ATA may have during its parliamentary consideration or afterwards.

Sections 30 and 31 of the ATA which enumerate the rights of persons under custodial detention and provide for penalties in cases of violation as well as the principle of effective judicial protection in ex parte terrorism-related proceedings fleshed out in the ATA Rules are sufficient to address the concerns and recommendations raised by the Special Rapporteurs. So too do the Implementing Rules and Regulations issued and promulgated by the ATC and the Department of Justice governing the conduct of law enforcement agents and military personnel. Any remaining concerns that the Special Rapporteurs

may have on the current state of the Philippine body of laws on anti-terrorism will be addressed by future jurisprudential developments that the Supreme Court will elaborate based on facts and circumstances properly pleaded and substantiated with evidence before lower courts of competent jurisdiction.

In conclusion, the Philippine responses to terrorism, including considerations for the respect of human rights and other fundamental freedoms, have been conscientiously pursued not only in consideration of international norms but also of the 1987 Constitution itself. It is the common goal of all nations in good standing with the United Nations - to protect the lives and safety of the people while respecting human dignity and fundamental rights.