

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on the right to privacy and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 40/16, 42/22, 35/15, 34/18, 41/12, 34/5, 34/6, 37/2 and 40/10.

In this connection, we offer the following comments on ‘The Anti-Terrorism Act of 2020’ (the Act), which raises serious concerns regarding the protection and promotion of a number of fundamental human rights and advance our views on this pending legislation, encouraging review and reconsideration of certain key aspects to ensure that any new counter-terrorism legislation is in compliance with the Philippines’ international human rights obligations. In particular, we note that as enacted, the Act raises serious concerns regarding the designation of individuals and civil society and humanitarian organizations as “terrorists” in the context of ongoing discrimination directed at religious and other minorities, human rights defenders and political opponents. Compliance with human rights treaties and standards are complementary and mutually reinforcing goals for effective counter-terrorism measures.¹ We therefore encourage reconsideration of certain key aspects of the Act to ensure that it is in compliance with your Excellency’s Government’s international human rights obligations.

Overview of international human rights law standards applicable

We respectfully call your Excellency’s Government’s attention to the relevant provisions enshrined in the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Philippines on the 23 October 1986, and the Universal Declaration of Human Rights (UDHR). In particular, we consider the international human rights

¹ A/HRC/16/51 para. 8.

standards applicable under Article 9 ICCPR and Article 9 UDHR, which guarantees individuals will not be subjected to arbitrary arrest or detention; Articles 19, 21 and 22 ICCPR and Articles 19 and 20 UDHR, which guarantee the universally-recognized rights to freedom of opinion and expression and freedom of peaceful assembly and association; Article 26 ICCPR which recognizes the right to equality and the prohibition of discrimination, in this case because of the targeting of human rights defenders and persons belonging to certain minorities; and Article 14(2) ICCPR and article 11(1) UDHR, by which any undue delay in pre-trial detention is inconsistent with international legal standards on the presumption of innocence. We also consider Article 2 ICCPR, whereby the State is under a duty to adopt laws that give domestic legal effect to the rights and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant.

We further refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. These resolutions require that States must ensure that any measure taken to combat terrorism and violent extremism comply with all of their obligations under international law.

Concerns Relating to the Compatibility of the Act with International Human Rights Law

On 26 February 2020, the Senate of the Republic of the Philippines approved Senate Bill No. 1083, the Anti-Terrorism Act of 2020, which sought to revise the country's anti-terrorism rules and repeal the Human Security Act of 2007.² On 1 June 2020, President Rodrigo Duterte certified the bill as urgent and requested Congress to immediately enact the legislation. Subsequently, the bill's counterpart in the House of Representatives, House Bill No. 6875, adopted the Senate's version. The bill was approved jointly by the House committees on Public Order and Safety, and National Defense and Security.³ The bill was passed on 3 June 2020 and awaits President Duterte's signature.

In our view, the Act uses a definition of terrorism that is overbroad and vague, making it susceptible to the abuse of numerous rights enumerated in the ICCPR and UDHR. The law empowers a newly-created Anti-Terrorism Council (ATC) consisting of members appointed by the executive, with the authority to permit law enforcement and military to arrest people it designates as "terrorists" without first obtaining a judicial warrant. These suspects may then face lengthy detention in custody without due process, remaining in unwarranted arrest for up to twenty-four days without charge. The Act also may have serious and negative effects on people's access to humanitarian assistance, which is an indispensable mechanism to protect other fundamental rights including but

² Senate Bill No. 1083, <https://senate.gov.ph/lisdata/3163229242!.pdf>.

³ House Bill No. 6875, http://www.congress.gov.ph/legisdocs/first_18/CR00340.pdf.

not limited to the right to life. The Act also raises additional civil liberties concerns regarding expanded surveillance that could curtail freedom of expression and the right to privacy.

Definition of Terrorism

“Terrorism,” “terrorists,” and “terrorist activities” must be limited to the purpose of countering terrorism and must be properly defined.⁴ The range of acts and activities defined in sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act differ from and are substantially broader than the model definition which has been proposed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. These provisions appear to be incompatible with the Philippines’ international human rights obligations. Definition of terrorism and terrorism offenses under domestic law should be confined to acts that are “genuinely” terrorist in nature in accordance to the elements identified by the Security Council in its resolution 1566 (2004) and found across the Sectoral Suppression Conventions on Terrorism.⁵ The definition of terrorism and related offenses must be “accessible, formulated with precision, non-discriminatory and non-retroactive.”⁶ To categorize an offense as a “terrorist act” consistent with good practice in international law, the means used must be deadly; the intent behind the act must be to cause fear among population or to compel a government or international organization to do or refrain from doing something.⁷ In contrast, the Act offers an overbroad and ambiguous definition of “terrorism” which includes imprecise terms such as “to provoke . . . the government,” “seriously destabilize or destroy the fundamental political, economic, or social structures of the country,” “seriously undermine public safety,” and “engage . . . in acts intended to cause extensive interference with . . . critical infrastructure.” Evaluation of whether acts fall under these unclear standards is left to the discretion of the ATC and devolved law enforcement. The Act also defines terrorism as acts, which cause “extensive damage to public property . . . to create an atmosphere or spread a message of fear.” This legal standard potentially encompasses acts that do not fall within the agreed international boundaries of terrorist acts. We bring your Excellency’s Government attention to the “principal of legal certainty” under international law enshrined in article 15(1) ICCPR and article 11 UDHR, which require that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations.⁸

⁴ A/HRC/16/51 paragraph 26.

⁵ E/CN.4/2006/98 para 33

⁶ A/HRC/16/51, paragraph 27 (citing International Covenant on Civil and Political Rights, art. 15, General Assembly resolution 63/185, para. 18, and E/CN.4/2006/98, para. 49).

⁷ Cross reference to mandate model definition

⁸ A/70/371, para. 46(c)); A/73/361, para. 34.

The prohibition on “inciting to commit terrorism” in section 9 carries potentially significant implications and consequences for the right to freedom of opinion and expression. This vague prohibition extends criminalization beyond acts or threats of lethal violence to acts protected under the freedom of expression. The Act prohibits “incit[ing] others” to commit terrorism “by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end” but does not further define inciting terrorism. The requirement of legality in article 19(3) requires any restriction to be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” This applies with particular force when the restriction carries criminal sanctions. Any prohibition pursuant to article 20 ICCPR of advocacy of hatred that constitutes incitement to discrimination, violence and hostility must conform with the requirements of article 19(3).

The Human Rights Committee has particularly highlighted that prohibitions on the “encouragement,” “praising,” “glorification,” or “justification” of terrorism or of extremist activity must adhere to the requirements in article 19(3).⁹ The Act does not define prohibited speech consistent with the limitations required by article 19(3) of the ICCPR, goes beyond the requirements of Security Council resolution 1624 (2005), and is likely to constitute an unlawful interference with the freedom of expression. Specifically, the provisions are likely to restrict journalists, human rights defenders, civil society actors and others from reporting on anti-terrorist operations. The Act’s broad scope creates the space for abuse, including for the silencing of dissent and criticism.

Laws that criminalize freedom of expression or views that appear to praise, glorify, support, defend, apologize for or that seek to justify acts defined as “terrorism” under domestic law implicate both serious concerns of legality and limitations on freedom of thought and expression. The application of such provisions has been targeted at, inter alia, the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.¹⁰ We would like to remind your Excellency’s Government that, in its resolutions, the Human Rights Council noted its grave concern that “in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.”¹¹

Section 6, prohibiting “planning, training, preparing, and facilitating the commission of terrorism” is insufficiently precise and may functionally operate to criminalize pre-criminal acts. The section prohibits “any person [from] participat[ing] in the planning, training, preparation and facilitation in the commission of terrorism, possessing objects connected with the preparation for the commission of terrorism, or

⁹ CCPR/C/GC/34, paras 25, 34, 46, 50, and 51).

¹⁰ A/HRC/37/52, para. 47; See also AL 21/2018 and AL 17/2019

¹¹ [A/HRC/RES/25/18](#), [A/HRC/RES/27/31](#), [A/HRC/RES/32/31](#) and [A/HRC/RES/34/5](#).

collecting or making documents connected with the preparation of terrorism.” Section 6 does not further specify or define the acts that qualify under this provision. Additionally, no level of intent is required for acts under this section. The provisions prohibiting “propos[ing] to commit terrorism” are similarly broad and may implicate freedom of expression protections. Section 8 only provides that “any person who proposes to commit terrorism as defined in Section 4 shall suffer the penalty of imprisonment of twelve (12) years.” The section does not define the scope of what constitutes “proposing” terrorism creating a clear challenge of legality certainty under law.

Expansion of Executive Branch Authority

The Special Rapporteurs view section 25, relating to the recognition of organizations, materials, and individuals as terrorist, as particularly concerning. The determination that an organization or individual is “terrorist” lies with the executive branch through the Anti-Terrorism Council (ATC). Section 25 empowers the ATC to unilaterally “designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under . . . [the] Act.” The provision relies primarily on the judgment of the ATC and does not provide any judicial oversight in the process of designation. The Act allows the arrest of individuals suspected of terrorist acts with the authorization of the ATC, contradicting the constitutional requirement that arrest warrants may only be issued by a competent judicial court. Further, the Act does not specify any appeal process, accountability mechanism, or safeguards against profiling based on religious, racial, or political grounds.

Due Process

Article 9(3) of the ICCPR holds that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” As a party to the ICCPR, all legislation of the Philippines must abide by this, Section 29 of the Act appears to be in direct contravention of Article 9(3) ICCPR.

Under Section 29 of the Act, law enforcement agents and military personnel may take into custody any person suspected of committing terrorist acts—as defined by Sections 4–12 of the Act—per authorization from the ATC, and without a judicial warrant. Apprehended individuals may then be held for a period of fourteen (14) calendar days in law enforcement or military custody, and this detention may be extended for a further period of ten (10) calendar days.

This provision allowing unwarranted arrest and detention for a period of up to twenty-four (24) days appears to contravene the requirements of Article 9 of the ICCPR and may have further implications for non-derogable rights such as those protected under Articles 6 and 7, as well as the presumption of innocence protected by Article 14. The Human Rights Committee (CCPR) elaborated in its General Comment No. 35 that the meaning of “promptly” as used in Article 9 of the ICCPR means that “delays should not exceed a few days from the time of arrest” and that “48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.”¹² Consequently, twenty-four days of arrest without any judicial scrutiny appears to directly violate the first requirement of Article 9(3) of the Covenant. Moreover, such unwarranted arrest may impinge upon the detainee’s right under Article 9(3) of the ICCPR “to trial within a reasonable time or to release.” CCPR General Comment No. 35 further details interpretation of this requirement. In particular, it notes that this requirement “applies specifically to periods of pretrial detention” and that this detention “shall be the exception rather than the rule.”¹³

Finally, Article (4) of the Covenant affirms the right to take proceedings before a court to enable the court to decide, without delay, on the lawfulness of detention. This right should not be diminished by a State party’s decision to derogate from the Covenant, as the Human Rights Committee has articulated that because “certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict,” there is no justification for derogating from this and other guarantees even during emergency situations.¹⁴

Violations of Privacy

The Act appears to interfere with the privacy, reputation and liberty of individuals contravening article 17 ICCPR and article 12 UDHR, which protects against arbitrary or unlawful interference with one’s privacy and home. Interference with an individual’s right to privacy is only permissible if it is neither unlawful nor arbitrary.¹⁵ Section 16 of the Act provides that individuals that are mere suspects may be secretly wiretapped and their private data can be accessed with a written order from the Court of Appeals. The section permits the use of “any mode, form, kind or type of electronic, mechanical or other equipment or device or technology” to surveil members of a designated terrorist organization, “between members of a designated person, or “any person charged with or suspected of committing any of the crimes . . . penalized under the provisions of [the] Act.” Law enforcement is permitted to surveil a wide spectrum of communications including “private communications, conversation, discussion/s, data, information, message in whatever form, kind or nature, spoken or written words.” Section 17 permits the issuance of a written order based on “personal knowledge of facts or circumstances

¹² Human Rights Committee, General Comment No. 35, para. 33.

¹³ *Id.* para. 37–38.

¹⁴ Human Rights Committee, General Comment No. 29, para. 16.

¹⁵ ICCPR art. 17(1); Human Rights Committee, General Comment No. 16, para. 3.

that the crimes defined and penalized under . . . [the] Act ha[ve] been committed, or [are] being committed, or [are] about to be committed.”

Section 18 deems such law enforcement applications and written orders classified information, accessible only to applicants, members of the ATC, and court personnel. Section 19 specifies that written orders permit surveillance on suspects for 60-90 days. Section 35 permits members of the ATC to investigate “any property or funds that are in any way related to financing of terrorism” or “property or funds of any person . . . [for] whom there is probable cause to believe that such person . . . [is] committing or attempting or conspiring to commit, or participating in or facilitating the financing of” terrorist activities as defined in the Act. This section further permits the ATC to enlist the assistance of any “instrumentality of the government,” including government-owned and controlled corporations in “undertaking measures to counter the financing of . . . terrorism.” The section also permits inquiry into banking records without a court order. The broad scope of surveillance powers granted in these provisions does not align with the principle that any restriction upon a human right capable of limitation should be the least intrusive means possible and shall be necessary and proportionate to the benefit attained.¹⁶

Therefore, it is necessary that surveillance programmes or systems be expressly, exhaustively, precisely and clearly established by law; be truly exceptional; be limited to what is strictly necessary for the fulfilment of imperative purposes, and subject to rigorous independent oversight. In this sense, measures to limit the right to privacy must be proportional, in terms of the balance between the imperative and necessary objective, and the impact of the proposed limitation on the individual right. In this regard, we draw your attention to the report (A/HRC/37/62) which provides further guidance on privacy and surveillance.

We understand that the Republic Act 10173, the Data Privacy Act of 2012, by Section 44 applied to the surveillance of suspects and to the interception and recording of communications. The continued application of this requirement is important. While raising further concerns about potential surveillance and monitoring that affects civil liberties, the application of data protection principles and law is indicated as the Act’s provisions necessitate the collection, generation and storage of significant amounts of information and data. Section 32 by way of example, requires the initiation and maintenance of a log book of personal and health information relating to individuals under custodial arrest or detention, as well as the names and addresses of visitors, lawyers, physicians and family/others. This log book is designated a public document to be made available to each of these groups upon request, and presumably to authorities and their representatives

Humanitarian Action

¹⁶ A/HRC/16/51, para. 14, Practice 2(3).

The Experts further express their profound concern that sections 12 and 13 addressing respectively “material support” to terrorism and a purported humanitarian exemption to that “material support” will in practice function to limit the scope of humanitarian action and assistance. Such impartial humanitarian action and assistance is essential to ensure adequate protection for a range of fundamental rights including but not limited to the right to health, food, and medical assistance.¹⁷ While section 13 expressly provides a limited humanitarian exemption by allowing that the International Committee on the Red Cross and the Philippine Red Cross may conduct their activities it proceeds to set out that only “other state-recognized impartial humanitarian partners or organizations in conformity with the International Humanitarian Law (IHL)” will not fall within the scope of section 12. This is particularly concerning as section 12 appears to criminally sanction acts which occurred without intention or unknowingly, with the grave potential to create a chilling effect for organizations engaged in delivering essential or life-saving interventions. This section constitutes a direct interference with the provision of impartial humanitarian assistance by placing state recognition and state arbitration as the basis for the provision of humanitarian services.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the Act, including the application of the Republic Act 10173, the Data Privacy Act.
2. Please provide further information of how the definition of terrorism in this law will be construed so as to guarantee that measures taken pursuant to it do not unduly interfere with the international human rights obligations of the Philippines under the ICCPR, while complying with the principles of legality, necessity, proportionality and non-discrimination.
3. Please explain how the Act is compatible with your Excellency’s Government’s obligations under articles 2, 9, 14, 19, 20, 21, and 26 ICCPR and articles 9, 11, 19 and 20 UDHR and how it may remediate the aforementioned inconsistencies with international human rights standards enshrined in the Act.
4. Please indicate what form of regular independent review procedures, periodic parliamentary review, transparent reporting procedures, and

¹⁷ CCPR/C/GC/36 para1-7.

sunset clauses requiring renewal of laws or certain provisions will be applied to this legislation.

5. Please provide information, in detail, of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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