Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: OL PHL 6/2024
(Please use this reference in your reply)

26 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/9 and 49/10.

In this connection, we offer comments and suggestions on the new "rules on the Anti-Terrorism Act of 2020 and related laws" ("**the rules"**) published by the Philippine Supreme Court in December 2023. The enactment of these rules is framed in the constitutionally attributed power of the Supreme Court to "promulgate rules concerning the protection and enforcement of constitutional rights" and they are bound to apply to "all petitions and applications regarding detentions without judicial warrants of arrest, surveillance orders, freeze orders, restrictions on travel, designations, proscriptions, and other issuances" promulgated in implementation of the "Anti-Terrorism Act of 2020" ("**the ATA**") and other laws related to terrorism.

The counter-terrorism legislation in the Philippines was addressed by Special Procedures in the communication OL PHL 4/2020, which provided comments on the Anti-Terrorism Act of 2020 (ATA) and expressed concerns about its compatibility with articles 2, 9, 14, 19, 20, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR). We sincerely appreciate and take into consideration the response provided by your Excellency's Government to the communication mentioned above on 27 August 2020.

Context

The Anti-Terrorism Act of 2020 (ATA), also named Republic Act 11479, was signed into law on 3 July 2020, replacing the Human Security Act of 2007 and seeking to "prevent, prohibit and penalise" terrorism.

On 5 December 2023, the Supreme Court of the Philippines published the "Rules on the Anti-Terrorism Act of 2020 and related laws" with the purpose of establishing certain clarifications, procedural rules and judicial safeguards for the application of this legislation.

Applicable international human rights law standards

We respectfully draw the attention of your Excellency's Government to the relevant provisions of international human rights law enshrined in customary and treaty law, under the Universal Declaration of Human Rights and the ICCPR, acceded to by the Philippines on 23 October 1986.

In particular, we consider the international human rights standards applicable under article 9 ICCPR and article 9 UDHR, which assert that individuals shall not be subjected to arbitrary arrest or detention, and be granted the right to be promptly brought before a judge after being arrested or detained on a criminal charge and face trial within a reasonable time; article 14(2) ICCPR and article 11(1) UDHR, which recognize the right to a be tried without undue delay, in a fair hearing and by a competent, independent and impartial tribunal; article 17 ICCPR and article 12 UDHR, which enshrine the right to privacy and to be protected against arbitrary or unlawful interference with one's privacy and home; articles 19, 21 and 22 ICCPR and articles 19 and 20 UDHR, which guarantee the rights to freedom of opinion and expression, peaceful assembly and association; and article 26 ICCPR and article 7 UDHR, which recognize the right to equality before the law and the prohibition of discrimination. These provisions should be read together with article 2 ICCPR, whereby the State has the duty to adopt laws as necessary to give domestic legal effect to the rights, provide effective remedies for violations of these rights and ensure that the domestic legal system is compatible with the Covenant.

The right to freedom of opinion, enshrined in article 19(1) ICCPR is absolute, permitting no restriction. The right to freedom of expression in article 19(2) ICCPR is broad, being only subjected to the restrictions provided in article 19(3), and it includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline and protects the freedom of the press as one of its core elements. Any restriction on the right to freedom of expression must be provided by law and conform to the strict test of necessity and proportionality. States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (Human Rights Committee, general comment No. 34, para. 11).

The rights to freedom of peaceful assembly (article 21 ICCPR) and to freedom of association (article 22 ICCPR) are also broad. In its resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including for individuals espousing minority or dissenting views or beliefs and human rights defenders (A/HRC/26/29, para. 22.). The associations' ability to access financial resources constitutes a vital part of the right to freedom of association (A/HRC/23/39). Any restrictions on the rights to peaceful assembly and association need to fulfil the requirements of legitimacy, legality, necessity and proportionality.

We recall that the obligations under the ICCPR apply to the State Party. According to the Human Rights Committee in its general comment No. 31, this includes "all branches of government (executive, legislative and judicial) and other public or governmental authorities, whatever their level: national, regional or local".

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 provide that States ensure that any measure taken to combat terrorism and violent extremism complies with all their obligations under international law, thus including human rights obligations.

We recall that the protection of human rights must be at the heart of any effective counter-terrorism strategy. As the General Assembly noted in the UN Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing (A/RES/60/288, pp. 9-10).

We wish to underscore that although there is no internationally agreed and accepted definition of terrorism, States have an obligation to ensure that national definitions of terrorism and terrorism offences must be restricted to acts that are 'genuinely' terrorist in nature in accordance with the elements identified by the international counter-terrorism instruments,[1] Security Council in its resolution 1566 (2004), and the model definition of the Special Rapporteur on the promotion and protection of human rights while countering terrorism (E/CN.4/2006/98, para. 37).

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has consistently pointed out that vague and over-broad national definitions of terrorism are open to arbitrary application and abuse, including to target members of civil society on political or other unjustified grounds,[2] and are incompatible with international treaty obligations, including human rights treaties. The principle of legal certainty under article 15(1) of the ICCPR requires criminal laws to be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. Definitions must further be strictly guided by the principles of necessity, proportionality and non-discrimination.

Clarifications and positive contributions of the rules in terms of the compliance of the Anti-Terrorism Act with International Law

The new rules set by the Supreme Court include several guidelines that constitute particularly remarkable efforts oriented to guarantee that the fundamental constitutional rights of any person or group arrested, charged or designated as terrorist under the Anti-Terrorism Act are not violated.

(a) Petition for de-listing

Firstly, rule 2 allows individuals or groups designated as terrorists by the Anti-Terrorism Council (ATC) or the Anti-Money Laundering Council (AMLC) to petition the Court of Appeals for judicial relief (*certiorari*). This provides the possibility of being delisted through a remedy that was not explicitly provided

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1 See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.
2 A/70/371, para. 46(b).

under the ATA and its Implementing Rules and Regulations.

Thereby, an individual, organisation, association, or group of persons may file with the Court of Appeals a verified petition for certiorari within twenty (20) calendar days from the designation's publication date to remove their name or identity from the list of designated terrorists. The Court of Appeals shall then order the ATC and/or AMLC to provide their Verified Comment within 5 days showing that there is no grave abuse of discretion in designating the petitioner/s and freezing their assets and properties. The burden of proof shifts at this stage to the ACT and/or AMLC to demonstrate that there was probable cause to designate the applicants as a terrorist group and/or to freeze their assets and property. The Court may call the parties to participate in hearings and shall finally render a decision on the appropriateness of the designation. The rule provides that if the applicant separately proceeds with a non-judicial remedy, namely an application for delisting filed with the ACT, then court proceedings can only commence following the lapse of thirty (30) calendar days if the application is unresolved or from the receipt of the denial of the request for delisting. This procedure is a positive development which, in our view, offers an important channel for judicial remedy of these designations, potentially amending arbitrary, erroneous or malicious designations.

(b) Judicial proscription

Secondly, regarding judicial proscriptions, the petitioner must provide clear and convincing evidence for the Supreme Court to issue of a Permanent Order of Proscription under rule 3(12), as compared to the lower standard of probable cause for a Preliminary Order of Proscription under rule 3(6).

The petition of the Secretary of the Department of Justice (DOJ) to the Court of Appeals to issue an Order of Proscription declaring as "outlawed terrorist" any group of persons, organisation, or association requires (see rule 3(2)-(3)): i) the judicial affidavits of witnesses and all inculpatory evidence to prove the allegations; ii) a detailed discussion of the factual and legal bases relied upon to justify the issuance of an Order of Proscription, whether preliminary or permanent; iii) the authorization of the ATC and the recommendation of the National Intelligence Coordinating Agency (NICA) to file the petition; and iv) a commitment of the petitioner to have the Permanent Order of Proscription reviewed within six months prior to its expiration. The Court must dismiss outright the petition if it finds that the petition is not sufficient in form or substance according to the aforementioned criteria (see rule 3(4)). We support the opportunity given to the respondent to file a verified comment on the petition where it is sufficient in form and substance under rule 3(5).

Further, rule 3(13) establishes that a Permanent Order of Proscription shall automatically lapse upon the expiration of the three-year period unless there is another order extending or continuing the proscription. Additionally, if a petition for proscription is dismissed, another petition against the same person, group or organisation can only be filed six months after the dismissal of the prior petition unless there is new evidence that the petitioner could not have presented in the previous request. We support the requirement for the list to be regularly updated and recognise that the expiration period avoids an indefinite listing on the basis of administrative error. Moreover, the limit to petitions will

prevent the undue harassment of people targeted by the ATC and/or AMLC. Additionally, we support the availability of judicial review under rule 3(15) to modify or lift the order due to change of circumstances throughout the three-year period.

(c) Judicial authorization of surveillance

Thirdly, regarding the judicial authorization to conduct surveillance, rule 4(1) clearly asserts that no law enforcement agent or military personnel can secretly wiretap, intercept or listen to any private communications unless they have obtained a written order from the Court of Appeals. Rule 4(4) further clarifies that this authorization will be given providing that probable cause is proven. It is necessary for the applicant to adduce proof of probable cause in the summary hearings and for the Court of Appeals to "proactively examine the applicants and their witnesses with probing and searching questions to ensure that the right of the subject to effective judicial protection is not violated and their constitutional rights are not unduly derogated". The establishment of such duties constitutes an increase in the guarantees for the rights of the targets of surveillance requests.

Rule 4(2) restricts the subjects or targets of surveillance orders to: (a) members of a judicially proscribed terrorist organisation; (b) members of a designated person; and (c) any person charged with or suspected of committing any of the offences under the ATA. Communications between doctors and patients, lawyers and clients, journalists and their sources, and confidential business correspondence are exempted from this rule. Although we support the exemptions and the limited scope of rule 4, which ostensibly excludes the family members and associates of the relevant target, we raise concerns below regarding the breadth of grounds of surveillance.

(d) Arrest without warrant

Fourthly, in cases of arrests conducted without a warrant, rule 5(4) clarifies the vague formulation "immediately after" in section 29 of the ATA, by establishing a maximum period of 24 hours after the arrest for the State security forces' agents to inform the Regional Trial Court (RTC), the ATC, and the Commission of Human Rights, as well as to add as "addressees" of this notification the detainee's counsel and an immediate family member. Further, the rules state that rather than a mere notification of the arrest, including the circumstances of the arrest and the location and conditions of the detainee, the State agents shall file a "written verified report" to the said authorities and addressees, including the said information and several other details seeking to confirm that the detainees' rights have effectively been respected.

Additionally, rule 5(2) clarifies that "no detention without judicial warrant can be undertaken beyond the period provided in article 125 of the Revised Penal Code". namely 36 hours, and without written authorisation from the ATC. The ATC may authorize detention for up to 14 days, with the possibility of extension for a further 10 days (ATA section 29 and rule 5(3)). Rule 5(3) positively clarifies that the 10 days extension must be judicial approved by the RTC. The ATC is only entitled to authorise the initial detention where it

determines that there is probable cause that the person arrested and detained is suspected of or is committing any of the offences under sections 4, 5, 6, 7, 8 ,9, 10, 11, and 12 of the ATA. The agents' request will need to be accompanied by a sworn statement including the details of the individual detained and the basis for their arrest. This is a useful procedural clarification beyond the text of the ATA, which merely stated that any law enforcement agent who, "having been duly authorised in writing by the ATC", had arrested without warrant and taken custody of a person suspected to have committed offences under the ATA, shall "deliver said suspected person to the proper judicial authority within a period of fourteen calendar days".

Regarding the possibility of extending the period of detention for 10 more days, the rules state that the specific details of the grounds required by section 29 of the ATA "shall be established by the ATC, through the Secretary of the DOJ, with substantial evidence in a summary hearing" and, if the sufficient evidence is not discharged, the detainee shall be released.

Rule 5(6) also provides that the judge of the designated RTC shall exercise proactive control and supervision over cases of detention without judicial warrant of arrest to ensure that the detainee's rights are respected. For this purpose, the judge of the designated RTC can initiate an order to ensure that the detainee is not subjected to torture and other cruel, inhumane, and degrading treatment or punishment. These actions include the power to require an independent medical examination of the detainee, the transfer between detention facilities, and the authorisation of audio and video recordings of the interrogation. Moreover, any evidence obtained from treatment that is contrary to sections 4 and 5 of the Republic Act No. 9745 (the 'Anti-Torture Act (2009)') is inadmissible in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding or hearing. The establishment of these judicial powers is a positive opening to guarantee the rights of persons in custody or detention, and to strengthen the fairness of criminal trials.

Rule 5(7) further clarifies the proceedings for cases where the rights of the detainee have been violated, stating that complaints for such violations shall be brought before and summarily investigated by the designated court. In the cases that the court finds any *prima facie* violation, a cease-and-desist order and an order to transfer detention facility when warranted shall be issued, referring the case immediately to the DOJ for criminal prosecution. We support the requirement for an official custodial logbook to be maintained by the custodial unit under rule 4(8), as a measure to keep records of the detainee's condition, health, and interaction with the authority.

(e) Restriction of travel

Fifthly, rule 6(3) indicates that in order to establish a restriction on the suspect's right to travel, it will be necessary that the applicant proves that: (i) there is probable cause to believe that the person is suspected of violating the ATA; (ii) there is a high probability that the person will depart from the Philippines to evade arrest and prosecution; and (iii) the Order is required in the interest of national security or public safety. The designated court shall proactively examine under oath or affirmation the applicant and the witnesses. The Supreme Court also recognises a remedy for the respondent against this

order, whereby the respondent may file a verified motion to lift the Precautionary Hold Departure Order on the grounds that no probable cause exists based on the evidence submitted.

(f) Safeguards for vulnerable groups

Sixthly, rule 8 provides vulnerable groups with additional safeguards to protect their rights, including detention in a separate facility that is more appropriate to his/her condition, informing the spouse, parents, or legal guardian of the arrestee of his/her detention, and the appointment of a guardian *ad litem* to protect their legal rights and safeguard their interest if the person is unable to do so by herself. The Supreme Court thus clarifies the term "due regard for the welfare" used in the ATA and its Implementing Rules and Regulations and expands the level of protection that shall be provided specifically to members of these groups.

Remaining concerns regarding the compatibility of the Anti-Terrorism Act with International Law

Despite the progress in terms of respect for the rights of individuals arrested, detained, prosecuted or accused under the ATA that these new rules entail, various matters of concern in the ATA remain untouched and are susceptible to allowing for violations of international and human rights law standards in the implementation of the law. Most of these matters were addressed in the communication OL PHL 4/2020. Certain aspects of the rules are also unsatisfactory.

(a) Over-breadth of terrorism definition and offences

First, the overly broad and vague definition of "terrorism" in section 4 of the ATA remains unchanged. Section 4 encompasses a wide range of actions, from the transport of weapons and engaging in acts "intended" to cause extensive "interference" with critical infrastructure, which seem to go beyond the international standards highlighted above, including by not requiring death or personal injury. Further, sections 5, 6 and 7 establish the same penalty, life imprisonment, for a wide range of preparatory activities, vaguely defined, and regardless of the stage of execution, including stages where the intention of the persons responsible can be notably uncertain. The speech-related offence of "threat" to commit terrorism does not require that the threat is credible or that there is an objective likelihood or risk that a terrorist act will occur. The overly broad and vague character of the activities defined as "terrorism" in section 4 also means that the further preparatory offences in sections 8, 9, 10, 11 and 12 will lead to criminalization and punishment for vaguely defined offenses.

In this regard, we wish to renew our call to your Excellency's Government to review this definition in order to ensure it is in line with the international human rights standards and obligations of the Philippines under the ICCPR, as well as with the principles of legality, necessity, proportionality and non-discrimination. For this purpose, we respectfully draw your Excellency's Government's attention to the model definition proposed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as well as to the elements

identified in the Security Council resolution 1566 (2004) and the international counter-terrorism conventions and protocols, highlighted above.

We refer to OL PHL 4/2020 for further detail regarding the concerns about the definition of terrorism and the wide range of activities penalised, stressing the risk of a significant adverse impact that section 9, dealing with the prohibition of "inciting to commit terrorism", may have on the enjoyment of the right to freedom of opinion and expression, enshrined in article 19 of the ICCPR.

We also emphasize that despite the rules improving procedural fairness in the executive listing and judicial proscription of terrorist individuals or groups, these decisions remain based on the flawed, vague and over-broad definition of terrorism, potentially resulting in designations of persons/groups that are not genuinely "terrorist".

(b) Judicial review of arrest and detention

Secondly, the procedure to arrest terrorist suspects without warrant under section 29 of the ATA does not comply with the requirement under article 9(3) of the ICCPR that a detainee be personally brought "promptly" before a court, meaning ordinarily within 48 hours (general comment. No 35, paras. 33-34). State security forces are allowed to arrest and detain individuals that they suspect have committed an offence under the ATA or are members of an organisation proscribed under section 26 of the ATA, for up to 1 days without obtaining a judicial warrant. Instead, the Anti-Terrorism Council (ATC), an organ formed of members appointed by the executive, is the authority entrusted to authorize detention. While the new rules introduce a maximum period of 24 hours to inform the judicial and other relevant authorities of the detention, the detainee still only needs be delivered to the court within the 14 days (ATA section 29). This does not meet the requirement of article 9 of the ICCPR that a detainee ordinarily must be personally brought before a court within 48 hours. The ATC, as an executive body, does not qualify as an "independent, objective and impartial" authority for the purpose of judicial review of detention under international human rights law (general comment No. 35, para. 32). As such, the scheme of ATC remains susceptible to enabling arbitrary arrests and detentions. It is further problematic that there is no statutory penalty imposed on police or law enforcement officials who fail to deliver a person to the court within 14 days,[3] in contrast to the 10 years' imprisonment penalty for failure to inform the court of the detention under section 29.

While the Supreme Court has asserted as a general rule that no detention without a judicial warrant can last beyond the period provided in article 125 of the Revised Penal Code, i.e. a maximum of 36 hours, the ATC remains competent to authorise such detentions without a warrant to extend past 36 hours, up to a total of 14 days, without judicial authorization of detention.

[3] ATA Section 29 ("without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities").

(c) Impacts on NGOs

Third, the rules do not address and resolve how sections 12 and 13 of the ATA hinder the work of NGOs and other organisations providing humanitarian assistance in the country, addressed in OL PHL 4/2020. Considering the broad nature of the penalization of "providing material support to terrorists" in section 12, as well as the limited application of section 13 on humanitarian exemption to "State-recognized" organisations only, workers of humanitarian organisations are at risk of facing criminal charges of the utmost seriousness for fulfilling their job's duties. In addition, the provision and delivery of humanitarian assistance to groups and communities in need may be at further risk of being seriously hindered by the chilling effect of this legislation.

(d) Interferences with the right to privacy

Fourth, some provisions of the ATA appear to contravene article 17 of the ICCPR, which protects against arbitrary or unlawful interference with one's privacy and home, as addressed in communication OL PHL 4/2020. We wish to recall that surveillance programs or systems must be expressly, exhaustively, precisely and clearly established by law; be truly exceptional; be limited to what is strictly necessary for the fulfillment of imperative purposes; and be subject to rigorous independent oversight. Further, any measures to restrict the right to privacy must be proportional, considering the balance between the necessary objective and the impact of the proposed limitation on the targeted person's rights. These parameters and criteria should guide the regulation and implementation of the provisions related to surveillance.

Under section 16, those suspected of engaging in terrorist offences under the ATA, or who are members of a terrorist organization, can be subjected to surveillance of a wide spectrum of their private communications. Even if the required ex-ante judicial authorization is an important guarantee of a targeted individual's rights, the statutory grounds for authorizing surveillance should be explicitly limited according to the stricter criteria cited above, including to guarantee that surveillance is confined to imperative cases where no less intrusive means exist to obtain the result sought. This is all the more necessary as the definition of terrorism and the scope of offences under the ATA are subject to the human rights concerns noted above and in OL PHL 4/2020.

Further, section 35 authorises the AMLC to investigate, upon a preliminary order of proscription issued by the Court of Appeals of or in case of designation, a broadly defined range of persons, organisations, property or funds.[4]. Section 35 also permits the AMLC to inquire into deposits and investments in banking or financial institutions without a court order. These extensive powers may not align with the requirement of article 17 of the ICCPR that any restriction of the right to privacy and protection from arbitrary interference be necessary, proportionate and the least intrusive possible.

[4] Namely, "any property or funds that are in any way related to financing of terrorism", or "property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit or participating in or facilitating the financing" of acts proscribed by the ATA.

We reiterate our concerns that, under the current regulation, State authorities and State security agents have access to the personal and health information of individuals under custodial arrest or detention, as well as the names and addresses of visitors, lawyers, physicians and family collected in the logbook provided by section 32 of the ATA.

(e) Right to an effective remedy

In addition, we express concern the judicial relief from designation by the ATC and the AMLC, as provided for in rule 2, does not provide for an effective remedy. The rules do not notify the affected party of their designation and rule 2(1) limits the time frame for lodging a petition to 20 days after the designation is published. This could have a disproportionate and unfair impact on those organisations or individuals who do not become aware of their listing, or who do not have sufficient technological means to review the notice or to obtain legal assistance. Therefore, we recommend that the statute of limitations begins to run from the date the petitioner becomes aware of the designation to ensure that the petitioner has sufficient time and opportunity to file the petition.

We are also concerned about aspects of rule 7, which regulates the treatment by the courts of classified information or evidence relied upon by the ATC, AMLC, DOJ or any law enforcement agency or military personnel in enforcing the ATA. It is positive that rule 7(2) requires these authorities to disclose to the court all classified information used to establish "probable cause" under the ATA and to justify the necessity of not disclosing it to the person/group concerned or the public; and further requires the court to consider whether a redacted version could be provided to the affected person/group to allow them to effectively prepare their defence without endangering security. Where such disclosure is not possible, the court by itself must "proactively determine its value and weight in establishing probable cause" (rule 7(2)(e)). In applying these rules, the court must only limit rights where it is necessary and proportionate and accords with effective judicial protection (rule 7(2)(f)).

Despite these safeguards, we are concerned that, in principle, the rules could permit judicial decisions to be made on matters affecting fundamental rights, including liberty and privacy, without disclosing to the affected person/group essential evidence and sources upon which the allegations against them are based. Without access to essential evidence, a person cannot effectively know the scope of the allegations against them and thus effectively prepare their defence, challenge the veracity or reliability of the evidence, or enjoy equality of arms in the proceeding. As such, they cannot be guaranteed a fair hearing as required under international human rights law, including under articles 9 and 14 of the ICCPR. Even a "proactive" court considering secret information on its own cannot sufficiently ensure fairness to an affected person, which requires that the person themself is able to see at least a summary of essential evidence. Further, the rules do not provide for a security-cleared "special advocate" procedure, whereby an independent third party can view the classified evidence and make representations as to whether the evidence can be safely disclosed or redacted, and if not, to challenge the reliability of the evidence and make submissions to the court on the weight that should be

properly accorded to it.

(f) Restrictions connected with travel bans

In connection with the issue of overseas travel bans ("hold departure orders"), section 34 of the ATA requires the RTC to limit the right of travel of the accused to within the municipality or city where she/he resides or where the case is pending, in the interest of national security and public safety. The court "may" also order house arrest at the person's usual place of residence and prohibit means of external communication. These powers constitute restrictions freedom of movement and, in the latter case, depending on the daily duration of house arrest, the right to liberty, as well as consequential restrictions on rights such as the right to a private and family life, the right to work and to an education. Yet, neither section 34 nor rule 6 specifies that these restrictions may only be ordered where they are necessary and proportionate in pursuit of a legitimate security aim, as is required by the ICCPR.

As mentioned above, rule 6(3) clarifies that a travel ban: (i) may be issued where there is probable cause to believe that the person is suspected of violating the ATA; (ii) there is a high probability that the person will depart from the Philippines to evade arrest and prosecution; and (iii) the Order is required in the interest of national security or public safety. It does not automatically follow that the purpose of preventing a suspect from absconding from the Philippines and protecting security, as rule 6(3) indicates is the legitimate purpose of article 34, also requires restriction of the person's movement *within* the Philippines by confining them to a particular location or their usual residence. Less intrusive means may be available for preventing overseas travel, including the travel ban itself and passport cancellation as provided for under article 36.

The ATA or the rules should instead ensure that restrictions on movement, residence of communications may only be ordered by the court where they are strictly necessary and proportionate in the individual case to prevent the suspect absconding overseas and where it is required in the interest of national security or public safety. Such restrictions must always conform with the principles of legality and foreseeability, which affords a measure of protection against arbitrariness, legitimacy, necessity, proportionality, and non-discrimination. Further, section 34 does not impose any limitations on the daily duration of house arrest, such that it could be imposed for even 24 hours per day, with particularly draconian impacts on a range of human rights. It also does not impose any ultimate time limits on the length of house arrest, such that a person could be subject to protracted pre-trial administrative home detention.

Conclusion

We wish to highlight that prevention, prohibition and penalization of terrorism and compliance with human rights treaties and standards are complementary and mutually reinforcing goals for an effective counter-terrorism action. We welcome the clarifications and positive contributions made by the Supreme Court of the Philippines with the release of these rules, and we urge the relevant authorities to address certain key aspects of the law to ensure its full

implementation in accordance with international law, including international human rights and humanitarian law.

We would like to remind your Excellency's Government that States have the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms by taking the necessary measures to create the social, economic, political and other conditions and legal guarantees necessary to enable all persons under their jurisdiction, individually or collectively and to enjoy all these rights and freedoms in practice.

In this regard, the Special Rapporteurs remain at your disposal to provide further technical assistance in relation to the issues addressed in this communication, if deemed necessary and requested by the State of the Philippines.

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 comments regarding the above observations.

2. Please provide information on how the "rules on the Anti-Terrorism Act of 2020 and Related Laws" are being applied. If they are not being applied, please provide the reason for it as well as the procedures foreseen for their application.

3. Please indicate how the definition of terrorism in section 4 of the ATA complies with a 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), so as not to unduly interfere with the legitimate exercise of freedom of expression.

4. Please provide information about the measures your Excellency's Government intends to adopt to ensure compatibility of section 9, penalising "incitement to commit terrorism" in broad terms, with the right to freedom of opinion and expression enshrined in article 19 of the ICCPR.

5. Please indicate how your Excellency's Government intends to ensure the compatibility with relevant international standards and human rights law of the provisions allowing for arrests without judicial warrant of persons suspected of having committed offences 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. Please further provide information on any measures or safeguards adopted to prevent arbitrary arrests and detentions, either through provisions in the ATA or complementary rules.

6. Please indicate 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. Please further indicate how the provision of section 12 respects the international human rights standards and rules governing humanitarian work and the provision of humanitarian aid, including the principle of impartiality.

7. Please provide information on how your Excellency's Government intends to ensure the provisions on surveillance of suspects and recording of 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. In particular, please indicate how these provisions respect the right to be protected against arbitrary or unlawful interference in one's privacy enshrined in article 17 of the ICCPR.

8. Please explain how the right 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 review under rule 2. Please also indicate how the right to a fair hearing will be guaranteed, given that rule 7 may permit the non-disclosure of essential classified evidence to an affected party.

9. Please indicate whether a detailed assessment has been made 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. If so, please provide information about any measures adopted to implement the findings, conclusions or recommendations of such assessments.

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 after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ben Saul
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