

AT A GLANCE - THE ANTI-TERRORISM BILL

On the heels of mounting protests against the passage of the Anti-Terrorism Bill (ATB), the University of the Philippines Institute of Human Rights is providing this briefer to clarify the ATB and explain its consequences.

The overarching fear is that the ATB leads to the following:

1. Suspicion alone gives rise to a number of consequences, such as surveillance and recording of communications (upon order of the Court of Appeals) and detention without judicial warrant for a period of up to 24 days.
2. Unlike the Human Security Act (“HSA”), the Anti-Terrorism Bill (“ATB”) contains provisions that may directly impair the right to free speech and association. This includes broadly-defined provisions, such Sections 5 (Threat to Commit Terrorism) and 9 (Inciting to Commit Terrorism), which may create a “chilling effect” on otherwise-protected speech.
3. After both chambers of Congress passed the ATB, the President may either approve or veto the bill. Should he not act upon it 30 days after receipt, the ATB shall lapse into law.
4. Unlike the HSA which only allows judicial proscription, the ATB now permits administrative designation (by the Anti-Terrorism Council). Such designation authorizes the Anti-Money Laundering Council to freeze and inquire into the bank deposits of designated individuals and organizations. ATC may also authorize detention without a judicial warrant for at least 14 days, without charge.
5. Compared to the HSA, the ATB features weaker safeguards for potential abuses of law enforcement officers. Besides reducing penalties for violating officers, the ATB also removed Section 50 of the HSA, which entitles any person who was accused of terrorism to damages (PHP500,000 for every day deprived of liberty or arrested without warrant).

WHAT EXACT PROVISIONS ARE PROBLEMATIC AND WHY?

Here are the notable problematic provisions under the Anti-Terrorism Bill, which include the definition of terrorism (Section 4), the concomitant actions that the law penalizes using the flawed definition (Section 5, 6, 7, 8, 9, & 10), the surveillance of suspects and interception and recording of communications (Section 16), the designation power of the Anti-Terrorism Council (Section 25), and detention without a judicial warrant of arrest (Section 29). Several of these provisions are vague and this ambiguity grants authorities wide discretion in determining criminal liability, thereby violating the principle of *nullum crimen sine lege*: “there can be no crime without a law punishing the act at the time of its commission.”

Sec. 4. Terrorism. - Subject to Section 49 of this Act, terrorism is committed by any person, who within or outside the Philippines, regardless of the stage of execution:

- a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers 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 substances, 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”: *Provided, That,* terrorism as defined in this Section shall not include advocacy, protest, dissent, stoppage of work,

industrial or mass action, and other similar exercises of civil and political rights, **WHICH ARE 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.**

COMMENTS:

1) The Anti-Terrorism Bill carries such grave consequences for anyone who commits, or is suspected of having committed, terrorism. It is only fair to demand that the Bill define the crime with sufficient clarity. The due process guarantee requires that a penal statute sufficiently "inform those who are subject to it what conduct on their part will render them liable to its penalties [lest] men of common intelligence must necessarily guess at its meaning and differ as to its application." (*Connally v. General Construction Co.*, 269 U.S. 385 (1926)).

2) The definition contains an express exclusion of activities not covered by the Act including "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights". If properly executed, this exclusion is certainly useful and should preserve the Constitution's protection for freedom of speech, freedom of assembly and labor strikes.

However, while this describes what is *excluded*, the Section 4 prohibition against terrorism does not sufficiently describe what is *included*, such that the threat to the above-cited constitutional freedoms remains.

3) The key element of the definition is the "purpose" for the conduct:

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 of its 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.

Take the *act* of attacking "critical infrastructure" defined in Sec 3.a, which includes an "asset or system affecting... transportation, radio and television, information systems media and telecommunications networks," and combine it with the *purpose* of "creat[ing] an atmosphere or spread[ing] a message of fear"; and the protection for freedom of speech is easily undermined.

4) This Bill fails to align itself with the UN's draft Comprehensive Convention Against International Terror. Based on Article 2, an offense is committed by any person.... “[who] by any means, unlawfully and intentionally, causes: (a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or (c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss; when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”

Unlike Article 2(c) of the UN Draft Convention – where to perpetrate the offense, the purpose should be “to compel a government or international organization to do or to abstain from doing any act” – the Anti-Terrorism Bill instead provides that terrorism is committed, if the purpose of the act is “to provoke or influence by intimidation the government or any international organization.” The Government can then easily claim that it was provoked or influenced – a much lower threshold than having to prove that it was compelled to do or abstain from doing an act.

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Sec. 5. Threat to Commit Terrorism. - Any person who shall **THREATEN TO COMMIT ANY OF THE ACTS** mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

COMMENT:

Law enforcers may loosely interpret the terms under this provision because the term “threat” is not defined. Given the breadth of Sec. 4, it can be construed as any “act engaged in with the intention to” commit the harms enumerated, as interpreted by the law enforcers. The bill does not refer to any objective standard relating to the impact of such threat that would make the threat so egregious and criminalizing it so necessary to contribute to the objective of stopping terrorism. Note that what is being penalized is mere threat by a person, without any need to look into the criminal intent of such person to commit the acts enumerated in Sec. 4. This being the case and in view of the penalty, sufficient standards must be expressed in the law to protect the life and liberty of the individuals.

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Sec. 6. *Planning, Training, Preparing, and Facilitating the Commission of Terrorism.* - It shall be unlawful for any person to **PARTICIPATE IN THE PLANNING, TRAINING, PREPARATION AND FACILITATION IN THE COMMISSION OF TERRORISM, POSSESSING OBJECTS CONNECTED WITH THE PREPARATION FOR THE COMMISSION OF TERRORISM, OR COLLECTING OR MAKING DOCUMENTS CONNECTED WITH THE PREPARATION OF TERRORISM.** Any person found guilty of the provisions of this Act shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

COMMENT:

Under this provision, persons or organizations that post on social media to state their vehement dissatisfaction with the government, or those who participate in education, capacity-building activities and community immersions may possibly be charged. Moreover, since the terms “possessing objects” and “collecting or making documents” are broadly defined, law enforcers who connect it to the preparation for terrorism may already subject the individual to the executive actions under the bill without having to go into the issue of intent in said acts or the objective result of the commission of said acts.

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Sec. 7. *Conspiracy to Commit Terrorism.* - **ANY CONSPIRACY TO COMMIT TERRORISM** as defined and penalized under Section 4 of this Act shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

There is conspiracy when two (2) or more persons come to an agreement concerning the commission of terrorism as defined in Section 4 hereof and decide to commit the same.

COMMENT:

Despite the use of the Revised Penal Code’s definition of conspiracy, there are no clear definitions under the related provisions through which “conspiracy” and “proposal” may be committed. It may then be loosely used to penalize even legitimate speech.

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Sec. 9. *Inciting to Commit Terrorism.* - Any person who, **WITHOUT TAKING ANY DIRECT PART IN THE COMMISSION OF TERRORISM, SHALL INCITE OTHERS TO THE EXECUTION OF ANY OF THE ACTS SPECIFIED IN SECTION 4 HEREOF BY MEANS OF SPEECHES, PROCLAMATIONS,**

WRITINGS, EMBLEMS, BANNERS OR OTHER REPRESENTATIONS TENDING TO THE SAME END, shall suffer the penalty of imprisonment of twelve (12) years.

COMMENT:

There is no qualifier or requirement that danger is created by the act of inciting. Furthermore, the phrase “[t]ending to the same end” is dangerously vague. It fails to put one on notice of a potential crime and may likely be prohibitive of legitimate free speech exercise.

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Sec. 10. Recruitment to and Membership in a Terrorist Organization. - ANY PERSON WHO SHALL recruit another to participate in, join, **COMMIT OR SUPPORT ANY TERRORISM OR A TERRORIST INDIVIDUAL OR ANY TERRORIST ORGANIZATION, ASSOCIATION OR GROUP OF PERSONS PROSCRIBED UNDER SECTION 26 OF THIS ACT**, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:

- a) Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;
- b) **PUBLISHING AN ADVERTISEMENT OR PROPAGANDA** for the purpose of recruiting persons to serve in any capacity in or with such an armed force;
- c) Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or
- d) **PERFORMING ANY OTHER ACT WITH THE INTENTION OF FACILITATING OR PROMOTING THE RECRUITMENT OF PERSONS TO SERVE IN ANY CAPACITY** in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years.

COMMENT:

The Bill does not define with any particularity what are considered publications or what will constitute "publishing." The lack of clear standards may "violate due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle" (Estrada v. Sandiganbayan, G.R. No. 148560, Nov. 19, 2001). In addition, the determination of any other acts and the concomitant intention to facilitate or recruit is undefined and will not put people on notice of the potential illegal act.

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Sec. 16. *Surveillance of Suspects and Interception and Recording of Communications.* - The provisions of Republic Act No. 4200, otherwise known as the "Anti-Wire Tapping Law" to the contrary notwithstanding, law enforcement agent or military personnel may, upon a written order of the Court of Appeals secretly wiretap, overhear and listen to, intercept, screen, read, surveil, record or collect, **WITH THE USE OF ANY MODE, FORM, KIND OR TYPE OF ELECTRONIC, MECHANICAL OR OTHER EQUIPMENT OR DEVICE OR TECHNOLOGY NOW KNOWN OR MAY HEREAFTER BE KNOWN TO SCIENCE OR WITH THE USE OF ANY OTHER SUITABLE WAYS AND MEANS FOR THE ABOVE PURPOSES, ANY PRIVATE COMMUNICATIONS, CONVERSATION, DISCUSSION/S, DATA, INFORMATION, MESSAGES IN WHATEVER FORM, KIND OR NATURE, SPOKEN OR WRITTEN WORDS (A) BETWEEN MEMBERS OF A JUDICIALLY DECLARED AND OUTLAWED TERRORIST ORGANIZATION, AS PROVIDED IN SECTION 26 OF THIS ACT; (B) BETWEEN MEMBERS OF A DESIGNATED PERSON AS DEFINED IN SECTION 3 (E) OF REPUBLIC ACT NO. 10168; OR (C) ANY PERSON CHARGED WITH OR SUSPECTED OF COMMITTING ANY OF THE CRIMES DEFINED AND PENALIZED UNDER THE PROVISIONS OF THIS ACT;** Provided, That, surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

The law enforcement agent or military personnel shall likewise be obligated to (1) file an *ex-parte* application with the Court of Appeals for the issuance of an order, to compel telecommunications service

providers (TSP) and internet service providers (ISP) to produce all customer information and identification records as well as call and text data records, content and other cellular or internet metadata **OF ANY PERSON SUSPECTED OF ANY OF THE CRIMES DEFINED AND PENALIZED UNDER THE PROVISIONS OF THIS ACT**; and (2) furnish the National Telecommunications Commission (NTC) a copy of said application. The NTC shall likewise be notified upon the issuance of the order for the purpose of ensuring immediate compliance.

COMMENT:

There are no clear guidelines as to how one becomes a “suspected” person who can be surveilled. Further, the information to be demanded from the telecommunications service providers (TSP) and internet service providers (ISP) ought to be clearly outlined along with its respective purposes. Finally, the use of an expansive form of electronic, mechanical or other equipment, device or technology for surveillance is dangerously shortsighted, as giving the military and law enforcers blanket authority to use future developments in technology puts in jeopardy our right to privacy.

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Sec. 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. - x x x
THE ATC MAY DESIGNATE AN INDIVIDUAL, GROUPS OF PERSONS, ORGANIZATION, OR ASSOCIATION, WHETHER DOMESTIC OR FOREIGN, UPON A FINDING OF PROBABLE CASE 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 SECTIONS 4, 5, 6, 7, 8, 9, 10, 11 AND 12 OF THIS ACT.

The assets of the designated individual, groups of persons, organization or association above-mentioned **SHALL BE SUBJECT TO THE AUTHORITY OF THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) TO FREEZE** pursuant to Section 11 of Republic Act No. 10168.

The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act.

COMMENT:

The designation of “terrorists” is to be done by a non-judicial body, which circumvents the need for a judicial proscription. It is without any transparent and objectively-set criteria and does not provide the individuals designated any opportunity to refute or challenge the label. It also requires no review by

outside objective third parties nor judicial review and has limited Congressional oversight. Furthermore, the freezing of accounts is in itself a penalty that may already prejudice a person who is entitled to the presumption of innocence

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Sec. 29. Detention Without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, **WITHOUT INCURRING ANY CRIMINAL LIABILITY FOR DELAY IN THE DELIVERY OF DETAINED PERSONS TO THE PROPER JUDICIAL AUTHORITIES, DELIVER SAID SUSPECTED PERSON TO THE PROPER JUDICIAL AUTHORITY WITHIN A PERIOD OF FOURTEEN(14) CALENDAR DAYS COUNTED FROM THE MOMENT THE SAID SUSPECTED PERSON HAS BEEN APPREHENDED OR ARRESTED, DETAINED, AND TAKEN INTO CUSTODY BY THE LAW ENFORCEMENT AGENT OR MILITARY PERSONNEL. THE PERIOD OF DETENTION MAY BE EXTENDED TO A MAXIMUM PERIOD OF TEN (10) CALENDAR DAYS IF IT IS ESTABLISHED THAT (1) FURTHER DETENTION OF THE PERSON/S IS NECESSARY TO PRESERVE EVIDENCE RELATED TO THE TERRORISM OR COMPLETE THE INVESTIGATION; (2) FURTHER DETENTION OF THE PERSON/S IS NECESSARY TO PREVENT THE COMMISSION OF ANOTHER TERRORISM; AND (3) THE INVESTIGATION IS BEING CONDUCTED PROPERLY AND WITHOUT DELAY.**

IMMEDIATELY AFTER taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.

THE HEAD OF THE DETAINING FACILITY shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.

The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph.

COMMENT:

The Constitution provides the following protection against warrantless arrests and for persons being held to answer for a criminal offense.

Article III Sec 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or *warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce*, and particularly describing the place to be searched and the persons or things to be seized.

Article III, Sec.14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

The Anti-Terrorism Bill fails to meet these standards. Section 29 allows *Detention Without Judicial Warrant of Arrest*. Instead of immediately delivering the person to the proper judicial authority, it allows an excessive period of detention, 14 days extendible by another 10 days, before the person is brought before a court. Article 125 of the *Revised Penal Code* provides that a person arrested without a warrant must be charged in court within a fixed period, namely, the lapse of 12, 18 or 36 hours depending on the gravity of the crime. That standard has already been lowered by the *Human Security Act of 2007* (R.A. 9372), which extended the period to 72 hours or 3 days. The Anti-Terrorism Bill will now extend that period several times over.

The legislators are passing the Anti-Terrorism Bill and repealing the *Human Security Act of 2007*. They should explain why the need to repeal it. For instance, if the period of warrantless custodial detention is being increased drastically, they should explain in specific terms why the previous 12, 18, 36, 72-hour limits did not suffice, and why a draconian 14-24 days is required.

Lastly, the duty to inform a person of their rights, including their Miranda Rights, is a duty that any arresting officer must exercise; a duty that is not simply passed on to the head of the detaining facility.

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