

FACING TERROR: THE PARADOX OF THE ANTI-TERRORISM BILL*

On 01 June 2020, civil society, activists, and several other community groups were roused by news that President Rodrigo Roa Duterte certified the Anti-Terrorism Bill (“ATB”) as an urgent measure. The ATB had been pending in the House of Representatives (“HOR”), while the Senate version had already been passed on 26 February 2020. The certification effectively expedited the process that the ATB had to go through and limited the opportunity for citizens to scrutinize it further.

The HOR passed the ATB on 03 June 2020. As protests mounted, some members of the House of Representatives withdrew their affirmative votes. Nevertheless, Speaker Alan Peter Cayetano transmitted the ATB to the President. On the same day, Senate President Vicente Sotto sent the Senate Bill to the Office of the President. The ATB is now awaiting the signature of the President to become a law.

The ATB, at its core, amends Republic Act No. 9372,¹ more popularly known as the Human Security Act (“HSA”), which was enacted by Congress in 2007. As the country's first statute directly addressing the crime of "terrorism," the HSA provides mechanisms to identify, investigate, and proscribe "terrorist" individuals and organizations. Five years later, and despite the controversy surrounding the HSA,² Congress passed the Terrorism Financing Prevention and Suppression Act,³ which allows the Anti-Money Laundering Council to investigate funds that are “in any way related” to terrorism.

Despite the enactment of these two laws, as well as other existing remedies found in the Revised Penal Code and special penal laws,⁴ some lawmakers still believe that our current legal framework remains inadequate in addressing the “worrying escalation of militancy”⁵ in the country today. Current events, such as the recent streak of suicide bombings in Mindanao and the 2017 Marawi Siege, highlight the alleged “ineptness and inadequacy of the current law.”⁶ In the words of Senator Panfilo “Ping” Lacson, one of the ATB’s principal authors,

*Written by Institute of Human Rights Director Professor Elizabeth Aguilin-Pangalangan, and IHR senior lawyers Glenda Litong, Raymond Baguilat, and Michael Tiu, Jr., with the research assistance of Amer Madcasim, Jr., Micah Taguibao, and Ian Villafuerte.

¹ Rep. Act No. 9372 (2007).

² In fact, a complaint was filed before the Supreme Court, assailing the law’s constitutionality. See Southern Hemisphere Engagement Network, G.R. Nos. 178552, 178554, 178581, 178890, and 179157, 179461, 05 October 2010.

³ Rep. Act No. 10168 (2012).

⁴ This includes the Cybercrime Prevention Act or Rep. Act No. 10175 (2012).

⁵ H. No. 2847, 18th Cong., 1st Sess. (2019), explanatory note.

⁶ *Sponsorship Speech for the Anti-Terrorism Act of 2019 (18th Congress)*, PANFILO ‘PING’ LACSON OFFICIAL SITE, 02 October 2019, available at <https://pinglacson.net/2019/10/02/sponsorship-speech-for-the-anti-terrorism-act-of-2019-18th-congress/>

“[d]espite the real and present threat presented by terrorist organizations, groups, and individuals to the Filipino people, we have had only one conviction for violation of the law. Imagine that, time and again, and seemingly more and more often, we hear of terrorist attacks happening, with a mounting number of those killed and injured.”⁷

In response to the “inadequacy” of existing laws, some members of Congress filed their respective versions of an Anti-Terrorism legislation. The ATB broadens the definition of “terrorism” and expands the list of prohibited acts to add “teeth to the current anti-terrorism law.”⁸ Among the bill’s most salient features are:

- Expanding the definition of “terrorism” (Sec. 4) and including new prohibited acts, such as threat to commit terrorism (Sec. 5), inciting to commit terrorism (Sec. 9), and recruitment to and membership in a terrorist organization (Sec. 10);⁹
- Allowing the administrative designation of “terrorist” individuals and organizations (Sec. 25), in addition to judicial proscription (Sec. 26);¹⁰ and
- Permitting law enforcement agents and military personnel to detain persons suspected of committing acts of terrorism without a judicial warrant for up to 24 calendar days (Sec. 29).¹¹

While its principal authors claim that the ATB represents a balance between national security and human rights, it essentially features weaker safeguards in preventing potential abuses in the course of enforcing the law. In fact, aside from reducing the penalties for erring officers, the ATB also removes Section 50 of the HSA,¹² which entitles persons accused of terrorism to a claim of damages upon their acquittal.

In this light, the University of the Philippines Institute of Human Rights releases this primer (Q and A) to introduce the salient features of the ATB and address its most contentious issues.

I. What is The Anti-Terrorism Act of 2020?

House Bill No. 6875, which adopted the provisions in Senate Bill No. 1083, also known as The Anti-Terrorism Act of 2020, is a proposed public welfare Act that defines "terrorism" and criminalizes it, along with other related acts. It also

⁷ *Id.*; See M Abad, Fast: Facts: Terrorism in the Philippines, <https://www.rappler.com/newsbreak/iq/239816-things-to-know-about-terrorism-philippines?fbclid=IwAR2EGmz3E4H8ZFFvm4HBIZsEU4clWsMUizgJbeW3vonrfkkOWBGs_GFYqTI>

⁸ H. No. 2847, 18th Cong., 1st Sess. (2019), explanatory note.

⁹ H. No. 6875, 18th Cong., 1st Sess. (2020), §§ 4, 5, 9 & 10.

¹⁰ *Id.* §§ 25-26.

¹¹ *Id.* § 29.

¹² Rep. Act No. 9372 (2007), § 50.

provides for counterterrorism measures primarily expanding executive authority to undertake and direct actions against an individual or group that has been suspected to be, designated as, or proscribed for being a terrorist or terrorist group. This proposed Act repeals the Human Security Act of 2007.

II. International Human Rights Standards on Counter-Terrorism Measures

A. Are there international standards on the framing and undertaking of counterterrorism measures?

Yes, the United Nations' Global Counter-Terrorism Strategy provides certain fundamental elements that should be integrated into every strategy to stop terrorism. These include fair & rights-compliant justice and law enforcement systems, upholding freedom of expression & privacy rights, and the protection of vulnerable and marginalized groups.

B. Is ATB compliant with international standards?

No, the ATB fails to align with the UN's draft Comprehensive Convention Against International Terrorism. Based on Article 2 of the draft Convention, 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 ATB 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.

C. The ATB states that the exercise of executive powers shall not prejudice respect for human rights, which shall be absolute and protected at all times. Does this statement of policy guarantee the protection of human rights under the ATB?

No, the provisions reiterating the protection of human rights are riddled with qualifiers that have negative implications. For example, the clause in Sec. 4 (definition of terrorism) on the protection of freedom of expression and assembly is qualified by the absence of the intention “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.”

Understanding the implications on human rights is important since any counterterrorism measure may grant the State unusual powers that have grave consequences on human rights, not only of "terrorists" but also of innocent individuals. Fundamental human rights may not be arbitrarily derogated. Even for human rights that may be subject to permissible limitations, the limitations must be prescribed by law, in pursuit of one or more specific legitimate purposes and “necessary in a democratic society.”

D. What human rights may not be derogated under any circumstance?

The right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude, freedom from imprisonment for failure to fulfill a contract, freedom from retrospective penalties, the right to be recognized as a person before the law, and freedom of thought, conscience and religion may not be derogated [Article 4 (2) of the International Covenant on Civil and Political Rights].

III. Definitions

A. How is terrorism defined under the ATB? (Sec. 4)

1. **Offender:** By any person who, within or outside the Philippines, regardless of the stage of execution;
2. **Prohibited Acts:**
 - a. Engaging in acts intended to cause death or serious bodily injury to any person, or endangers a person’s life.
 - b. Engaging in acts intended to cause extensive damage or destruction to a government or public facility, public place, or private property.
 - c. Engaging in acts intended to cause extensive interference with, damage or destruction to critical infrastructure or those assets or systems affecting telecommunications, water and energy supply, emergency services, food security, fuel supply, banking and finance, transportation, radio and television, information systems and technology, chemical and nuclear sectors.

- d. Developing, manufacturing, possessing, acquiring, transporting, supplying, or using weapons, explosives, or of biological, nuclear, radiological, or chemical weapons.
- e. Releasing dangerous substances, or causing fire, floods, or explosions.

3. Purpose: when the purpose of the act, by its nature and context, is to:

- (a) Intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear;
- (b) Provoke or influence, by intimidation, the government or any international organization;
- (iii) Seriously destabilize or destroy the fundamental political, economic, or social structures of the country; or
- (iv) Create a public emergency or seriously undermine public safety.

B. Why is this definition problematic?

The definition is vague, overly broad, and permissive. In *Estrada v Sandiganbayan* (G.R. No. 148560, November 19, 2001), the Court explained: "The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (Mendoza, J., Concurring Opinion)

The definition of terrorism covers acts that do not have the quality of terrorism, as that term is generally understood based on previous experiences. This uncertainty violates the principle of legality under Art. 15 of the ICCPR. The ATB does not distinguish "terrorist" acts from acts already considered as offenses under the Revised Penal Code and other special penal laws because the purpose of the acts, which should be the point of distinction, is vague in itself.

It is a basic principle of criminal law that no one shall be held criminally responsible for an act, which is not a crime at the time of its commission. In imposing criminal liability, the definition of prohibited acts must be clear and precise. Anyone who reads it should know exactly what is being penalized and distinguish between what is prohibited from what is allowable conduct. It must not be subject to many interpretations, which could grant too much discretion on the part of the enforcer that might result in arbitrariness in deciding which acts may fall under the definition.

i. **What words or phrases suffer from vagueness or overbreadth?**

The legal infirmity lies in the use of ambiguous phrases like “*engages in acts intended to cause*,” which do not provide for an objective criterion to determine which acts are covered. Also, there are no standards qualifying the purposive elements of “message of fear,” “destabilize,” or “fundamental political, economic, or social structures.” 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. Note that the key element of the crimes under the ATB is the “purpose” for the conduct.

Since this is a criminal legislation, the law must specifically provide the criteria for these elements as this cannot be delegated to the executive department or the courts. The ATB, instead, allows the Anti-Terrorism Council, composed of executive officials, including the military, to designate, label, or tag any person as a terrorist or any group as a terrorist group, without any legally imposed criteria. They may further cause the conduct of extreme executive action, which could result in people being denied several constitutional rights and freedoms for committing non-terrorist acts.

ii. **What acts do not constitute terrorism under the ATB?**

It 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.

The ambiguity of the qualifier can work against constitutionally guaranteed rights for while the definition describes what is excluded, the Sec. 4 prohibition against terrorism does not sufficiently describe what is included. Consequently, the threat to the above-cited constitutional freedoms remain.

C. What other acts are penalized under the ATB?

The ambiguity and overbreadth of the definition of terrorism under Sec. 4 will also affect the determination of the law enforcement officer or military personnel or Anti-Terrorism Council whether the following acts were committed or being committed or about to be committed:

Sec. 5. Threat to Commit Terrorism

- Sec. 6. Planning, Training, Preparing, and Facilitating the Commission of Terrorism
- Sec. 7. Conspiracy to Commit Terrorism
- Sec. 8. Proposal to Commit Terrorism
- Sec. 9. Inciting to Commit Terrorism
- Sec. 10. Recruitment to and Membership in a Terrorist Organization
- Sec. 11. Foreign Terrorist
- Sec. 12. Providing Material Support to Terrorists

IV. What are some common activities that may be regarded as “terrorism” under the proposed Act?

A. Rallying, expression of ideologies and other forms of activism

Rallies and demonstrations often include chants that call for reforms and changes, some of which call for the administration's ouster or certain officials to resign or step down. The vagueness of the standards provided by the penal provisions under the ATB may cause individuals to be charged with threatening to commit terrorism under Sec. 5, planning, training, preparing, and facilitating the commission of terrorism under Sec. 6, proposal to commit terrorism under Sec. 8, inciting to commit terrorism under Sec. 9 of the Act, or recruitment to a terrorist organization under Sec. 10 (especially if one joins coalitions deemed by the State to be "terrorist" groups or organizations).

B. Social media posts

Under the ATB, a person or organization who posts on social media to state their dissatisfaction with the government may be interpreted as committing acts that constitute threats to commit terrorism under Sec. 5, planning, training, preparing, and facilitating the commission of terrorism under Sec. 6, proposal to commit terrorism under Sec. 8; inciting to commit terrorism under Sec. 9, or recruitment to a terrorist organization under Sec. 10, depending on the contents of the post. An implication is that he/she may be designated by the ATC as a terrorist, and thus may be subjected to surveillance and/or have their assets frozen under the provisions of Secs. 25, 35, and 36.

Social media posts are protected under Section 4, Article III of the 1987 Constitution, which provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances." The lack of clear standards under these provisions 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). This is otherwise known as the void-for-vagueness doctrine.

C. Political satire

Political satire may also be flagged as constituting threats to commit terrorism under Sections 5, 6, and 9 of the ATB, depending upon the message or its content. An implication is that he/she may be designated by the ATC as a terrorist and subjected to surveillance and/or have their assets frozen under the provisions of Secs. 25, 35, and 36.

Political satire is protected under Section 4, Article III of the 1987 Constitution. In the same way, as in social media posts, the lack of clear standards under these provisions may violate due process (*Estrada v. Sandiganbayan*, G.R. No. 148560, Nov. 19, 2001) under the void-for-vagueness doctrine.

D. Education and capacity-building activities and community immersions

Individuals who participate in education and capacity-building activities may be charged with planning, training, preparing, and facilitating the commission of terrorism under Sec. 6. There is no definition of what constitutes “planning, preparing, and facilitating of terrorism.” 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 ATB without having to determine the intentions to cause the prohibited acts or the objective result of the commission of said acts under Sec. 4.

The leaders or facilitators of the activities may be charged with inciting to commit terrorism under Sec. 9, or recruitment to a terrorist organization under Sec. 10. The threat of prosecution under these penal provisions would discourage organizations from holding otherwise legitimate and legal activities.

E. Advertisements and other published materials

The ATB does not define with any particularity what are considered publications or what will constitute “publishing” under Section 10. 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.

V. What are the means when an individual or an organization may be tagged as a "terrorist"? How are they different from each other?

	Suspicion	Designation (Sec. 25)	Judicial proscription (Sec. 26)
What gives rise to the executive action and how is it done?	The Act does not give a specific definition of what may constitute "suspicion" or when one is "suspected" when these are used in reference to acts punishable under the Act that can subject an individual to counterterrorism actions.	(1) Upon designation of the UN Security Council, (2) Upon finding "probable cause" of committing, attempting to commit, or conspiring to commit the acts punished under the ATB, and (3) Upon adopting the request of other jurisdictions and supranational jurisdictions (Sec. 25)	Upon application of the DOJ before the CA with due notice and opportunity to be heard (Sec. 26; for request of other jurisdictions, <i>see</i> Sec. 28). A preliminary order of proscription is issued upon the court's determination of probable cause that the issuance thereof is necessary to prevent the commission of terrorism. After that, the court shall commence hearing, where the DOJ shall bear the burden of proof (Sec. 27).
Who determines this?	Security forces, <i>i.e.</i> law enforcement agencies, and military personnel	Anti-Terrorism Council (ATC)	Court of Appeals upon the application of the DOJ. Compare this with HSA (RTC).
What does this entail?	<ul style="list-style-type: none"> (1) Surveillance and recording of communications upon order of the CA. (2) Telecommunication and internet service providers may be compelled to provide information, identification records, call, text and internet data (Sec. 16). (3) Detention and/or arrest without judicial warrant upon authority of the ATC for a period of 14 days, renewable for another 10 days (Sec. 29). (4) Travel restrictions even before filing of the information upon order of RTC for suspicion; CA for designation and proscription (Sec. 34); (5) Ex parte Order by AMLC to freeze and forfeit funds and properties upon instance of ATC (Sec. 46(f)). 		

	Detention without a judicial warrant upon ATC authority (Sec. 29)	Authorize detention or arrest of designated person (Sec. 29)	Detention without judicial warrant of members of the proscribed organization (Sec. 29);
		Ex-parte order by AMLC or upon ATC's request for a period of 20 days to 6 months by order of the CA (sec. 36; 46(f));	

A. What is problematic about the process of designation?

The designation process by the Anti-Terrorism Council (“ATC”) is **solely** an executive exercise of determining who is a terrorist by coming up with a list of terrorists, upon a finding of probable cause that the individual or group committed, or attempted to commit, or conspired in the commission of the prohibited acts defined under the several provisions of the ATB.

This designation by a non-judicial body, without any transparent and objectively set criteria, is done without notice or any opportunity to be heard on the part of the individual or group to refute or challenge the label. It also requires no review by outside objective third parties, nor judicial review, and has limited Congressional oversight. All these can render the designation process arbitrary. On the other hand, the effects are immediate and highly restrictive on the part of the suspect impacting not only civil and political rights but also economic, social, and cultural rights, with very limited access to legal services and judicial and procedural guarantees provided under the 1987 Constitution. The freezing of accounts is in itself a penalty that already prejudices a person who is entitled to the presumption of innocence.

VI. Implications on the Bill of Rights

A. Freedom of Association

	Planning, Training, Preparing, and Facilitating the Commission of Terrorism (Sec. 6)	Recruitment to and Membership in a Terrorist Organization (Sec. 10)
What are the elements of the crime?	<ol style="list-style-type: none"> 1. Any person 2. Such person participates in any of the following acts: <ul style="list-style-type: none"> ○ Planning, training, 	<ol style="list-style-type: none"> 1. Any person 2. Such person recruits another to: <ul style="list-style-type: none"> ○ Participate in; ○ Join;

	<p>preparation and facilitation in the commission of terrorism;</p> <ul style="list-style-type: none"> ○ Possessing objects connected with the preparation for the commission of terrorism; or ○ Collecting or making documents connected with the preparation of terrorism 	<ul style="list-style-type: none"> ○ Commit; ○ Support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of the Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism
Exceptions	None.	
What are the penalties?	Life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592	

i. How is the constitutionally guaranteed freedom of association affected?

The ambiguous and overbroad definition of terrorism, against which the activities of the group or organization will be measured, may lead to the criminalization of groups or organizations whose aims are to peacefully protect the rights of marginalized groups like advocates for peace and environmental protection, human rights defenders, and even lawyers. The definition of a “recruit” is also vague and may be prone to abuse. Criminalizing possession without safeguards may perpetuate the practice of planting evidence that is abhorred under our criminal legal system.

ii. Isn't there a “safeguard” provision protecting associations whose purposes are not contrary to law?

While the provisions protect associations “for purposes not contrary to law,” the ATB appears to expedite the process of designation and proscribing “terrorist” individuals and organizations. For instance, in addition to judicial proscription, Sec. 25 now allows the ATC to designate organizations as terrorists upon finding probable cause that they committed, attempted to commit, or conspired to commit the acts punishable under the law. Moreover, despite the use of the Revised Penal Code's definition of conspiracy, there are no clear definitions under the related provisions of "conspiracy" that may be committed under Section 7. It may then be loosely used to penalize even indistinct associations.

Without any clear and precise standards to guide the actions of the ATC, this can violate the constitutionally guaranteed freedom of association under Sec. 8, Article III of the Constitution.

B. Freedom of Speech

	Threat to Commit Terrorism (Sec. 5)	Inciting to Commit Terrorism (Sec. 9)
What are the elements of the crime?	<ol style="list-style-type: none"> 1. Any person 2. Threatens to commit any of the acts mentioned in Section 4. 	<ol style="list-style-type: none"> 1. Any person 2. Such person incites others to the execution of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end 3. Such person does not take any direct part in the commission of terrorism.
Exceptions, if any?	None.	
What are the penalties?	Imprisonment of 12 years.	

i. Are there objective standards as to what kind of speech violates this Act?

There are no clear and precise standards in defining the acts prohibited under the ATB. For instance, Sec. 5 does not provide for an operational definition of “threaten” as distinguished from existing crimes like threats. 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 a threat that would make the threat so egregious that it makes criminalizing the same 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 to commit the acts enumerated in Sec. 4.

In Sec. 9, 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 be prohibitive of legitimate free speech exercise.

ii. What happens to freedom of speech if there are no objective standards?

Despite the exception provided under Section 4, overbreadth can be used against speech & expression and result to the prohibition of otherwise protected speech – like political dissent, commentary, and satire. The broad regulation discounts the credibility of the threat (*i.e.* whether a person may actually carry out terrorism) and makes it immaterial. Ultimately, overbreadth results to a chilling effect or a situation where persons are deterred from exercising their right to speak freely. These are the harms prevented by the application of the overbreadth doctrine.

C. Right to Due Process

i. How is due process affected by the lack of standards?

The void-for-vagueness doctrine provides that statutes without clear standards may violate due process. (*Estrada v. Sandiganbayan*, G.R. No. 148560, Nov. 19, 2001). The doctrine may be invoked as a ground for assailing speech regulations, including the ATB (if enacted into law). The harm prevented is the creation of a chilling effect that deters an individual or group from exercising their freedom of expression. This means that persons and organizations would restrain themselves from exercising their right to free speech for fear of prosecution (see *Disini v. Secretary of Justice*, G.R. No. 203335, Feb. 11, 2014). Since the proviso found in Sec. 4 is absent in these provisions, it is unclear whether “exercises of civil and political rights” remain exempted in these speech-related provisions.

D. Freedom of Liberty and Right to Security

i. How is arrest conducted, and on what grounds?

Under Sec. 29, arrest and detention without a judicial warrant of arrest can be undertaken as authorized by the ATC on mere suspicion or upon designation for at least 14 days without charge. Under this provision, the arresting law enforcement officer or **military personnel** will not incur criminal liability for not complying with Art. 125 of the Revised Penal Code.

ii. How does this violate the right against arbitrary deprivation of liberty?

This violates the Constitution, which mandates the finding of probable cause to be determined personally by the judge after (1) examination under

oath or affirmation of the complainant and the witnesses he may produce, and (2) particularly describing the place to be searched and the persons or things to be seized. Any order coming from the ATC authorizing the arrest pursuant to a suspicion or designation is thus an arbitrary deprivation of liberty and is therefore invalid and unconstitutional.

iii. How long can one be detained?

Sec. 29 increases the period within which a person in custody may be delivered to the judicial authorities to fourteen (14) calendar days, in contrast to the period of three (3) days under Sec. 18 of the Human Security Act of 2007. This period is extendible by another 10 days.

iv. Are there other restrictions on one's liberty?

Sec. 34 restricts the right to travel even before filing a complaint against the individual. This restriction is done through procuring a precautionary hold departure order upon a preliminary determination of probable cause. The relevant constitutional provision, Art. III, Sec. 6, provides that "the right to travel [cannot] be impaired except in the interest of national security, public safety, or public health, as may be provided by law."

E. Rights of the Accused

Sections 26, 27, and 29 affect the rights of persons detained, designated as terrorists and those suspected of committing acts of terrorism.

i. Is the ATC a judicial agency or body?

No, the ATC is not a judicial agency or body. It is an administrative body that is granted by the ATB power to authorize law enforcement agents and military personnel to take custody of or arrest persons suspected of committing acts defined and penalized under the bill.

ii. Are the arrests, as described in the ATB, valid and proper?

No, the ATB fails to meet the law's standards for the procedure to be followed in a valid warrantless arrest. 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 ATB

will now extend that period several times over. Curiously, while the ATB lowers the standard even further, there wasn't any rational link between the grant of this over-extended detention without charge and how it accomplishes the objectives of the legislation.

Lastly, the duty to inform a person of their rights (including their Miranda rights) is a duty that any arresting officer must perform. It may not simply be passed on to the head of the detention facility.

iii. What about the constitutional right to be presumed innocent?

Detention without charge because of the ATC order of arrest for **at least** 14 days is an outright denial of substantive and procedural due process. It violates a suspect's constitutional presumption of innocence under Art III, Sec. 14 (1) of the Constitution.

Sections 26 and 27 discuss the proscription of persons and organizations considered to be terrorists. Under these sections, a person or a group can be declared as a terrorist within 72 hours upon finding by the CA of probable cause based on a verified application sufficient in form and substance. The problem with these sections is that the determination of guilt (as to who is a "terrorist") precedes the hearings which "should be completed within 6 months from the time the application has been filed to determine whether the preliminary order of proscription should be made permanent or if it should be lifted."

v. What judicial recourse does a person arrested or a detainee have?

There is no corresponding duty or mandate on the part of the judge receiving the notice of arrest to look into the ATC's actions. The bill also does not guarantee access of the suspect to judicial protections relating to a petition for a writ of *habeas corpus*, *amparo* or *habeas data*. While judicial review is guaranteed by the Constitution, this grant of power to the ATC without judicial intervention for at least 14 days can gravely endanger an individual's life and security, including his or her physical integrity.

F. Data Protection and the Right to Privacy

i. How are these rights impaired?

Section 16 of the ATB, weakens Art. III, Sec. 3 of the Constitution, which provides that "privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law." The ATB throws an expansive and indiscriminate net in the absence of any clear guidelines as to how one becomes a "suspected" person who can be surveilled. Furthermore, there are also no

limitations and requirements to state the purpose of the information that may be demanded from the telecommunications service providers (TSP) and internet service providers (ISP). The provision grants too much leeway for law enforcement agents and military personnel because mere suspicion is already a ground for authorizing surveillance. The use of an expansive form of electronic, mechanical, or other equipment, device, or technology for surveillance is also dangerously shortsighted. The ATB already gives the military and law enforcers blanket authority to use future technology without weighing its implications.

iii. Who else, aside from the "suspects" can be put under surveillance?

Other persons in contact with a suspected person or group of persons can be placed under surveillance upon the CA's order, once designated by the ATC or by mere suspicion of committing the terrorist acts, for a period not exceeding 60 days and renewable for another 30 days. This situation violates the right to privacy under the Constitution [Sec. 2 and 3, Art. III]. Surveillance can continue even after the person suspected has been released from custody.

G. Right to Property

i. How are one's property rights infringed?

In Sec. 25 of the ATB, it is provided that the individual, groups of persons, organization, or association designated by the ATC as terrorists would have their assets subjected to the authority of the Anti-Money Laundering Council. Designation alone allows for the freezing of assets without an opportunity for the individual, groups of persons, organization, or association to be heard. Under this provision, the ATC is given a great amount of discretion.

Art. III, Sec. 1 of the 1987 Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." Due process necessitates both procedural and substantive due process (Joaquin G. Bernas, S.J., *The 1987 Philippine Constitution: A Comprehensive Reviewer* (2011 ed.)).

H. Economic, Social, and Cultural Rights

Immediate freezing and forfeiture of properties and funds by the executive department can be undertaken without due process and without resort to the judicial processes, in violation of the Constitution [Sec. 1, Art. III]. These executive actions can have immediate injury or damage to one's life, cause extreme economic hardship on an individual, deny access to basic life needs & access legal services to defend rights.

VII. Other Concerns

A. Is the ATB the only solution to address terrorism?

No, it is a limited measure, similar to its progenitor – the HSA – as it focuses solely on neutralizing terrorists (immediate crime prevention) and not on the social conditions that give birth to radicalization. Structural risk factors that cause radicalization, such as poverty, discrimination, and lack of representation, are completely absent from the law. There is a lowered threshold for accountability, which heightens the prospect of abuse and adds to the radicalization of vulnerable individuals. The law's alternative to the crime prevention focus would have been to use a 'human rights first' approach to counterterrorism and focus primarily on the social conditions that lead to terrorism.

B. Is there cause for worry for Muslim Filipinos and Indigenous Peoples?

Yes, there is heightened concern for Muslim Filipinos and Indigenous Peoples because they have traditionally been subjected to systemic discrimination manifested in undue stereotypes related to terrorism. Muslim Filipinos have been unjustifiably associated with the Abu Sayyaf and prior insurgencies in the Bangsamoro. Indigenous Peoples, on the other hand, have been unduly linked to the New Peoples Army because of the latter's Marxist-Leninist-Maoist Approach. These unwarranted associations resulted in the targeting and disruptive law enforcement operations that lead to further victimization of Muslim Filipinos and Indigenous Peoples.

Despite the proviso mentioning that “[t]here shall be due regard for the welfare of any suspects who are elderly, pregnant, persons with disability, women, and children while they are under investigation, interrogation or detention,” there is no specific inclusion of Muslim Filipinos and Indigenous Peoples. Hence, it offers no heightened protection.

The fears are not unfounded because there were already several examples of abuse committed against these vulnerable and marginalized groups even before the introduction of the ATB. These include the tagging of Muslim Filipino Students in Metro Manila, the illegal arrest of Aeta Farmer Edgar Candule for alleged membership in the New People's Army, and the inclusion in the terrorist proscription petition of former Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz.

As the ATB diminishes the accountability measures under the HSA even further, the bill raises the specter of abuse and fuels the already pervasive insecurity of Muslim Filipinos and Indigenous Peoples.