

Anti-Terrorism Act signed into law

On July 3, 2020, President Rodrigo R. Duterte signed into law Republic Act No. 11479 or The Anti-Terrorism Act of 2020¹ ("**Anti-Terrorism Act**"). The Anti-Terrorism Act repealed the Human Security Act of 2007 ("**Human Security Act**"),² which was previously the governing law on acts of terrorism in the Philippines. The Anti-Terrorism Act took effect on July 22, 2020, fifteen (15) days after its complete publication in the Manila Bulletin on July 6, 2020.

As of August 6, 2020, twenty-five (25) petitions seeking to declare the Anti-Terrorism Act unconstitutional, either partially or in its entirety, have been filed with the Supreme Court of the Philippines.

We summarize below the salient provisions of the Anti-Terrorism Act:

1. Acts of terror defined

Under the Anti-Terrorism Act, terrorism is committed by any person who, within or outside of the Philippines, and 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.

¹ Republic Act No. 11479, An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, otherwise known as the "Human Security Act of 2007" ("**Anti-Terrorism Act**")

² Republic Act No. 9372, An Act to Secure the State and Protect our People from Terrorism ("**Human Security Act**").

Terrorism, as defined above, 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.³

Compared to the acts of terrorism under Human Security Act, the acts under the Anti-Terrorism Act need not be done "in order to coerce the government to give in to an unlawful demand."⁴

2. Specific stages of terrorism punished

While the Human Security Act defined and penalized the crime of terrorism and conspiracy to commit of terrorism,⁵ the Anti-Terrorism Act added the following acts which are now penalized under the Anti-Terrorism Act:

- (a) Threat to commit terrorism;⁶
- (b) Planning, Training, Preparing, and Facilitating the commission of terrorism;⁷
- (c) Conspiracy to commit terrorism;⁸
- (d) Proposal to commit terrorism;⁹
- (e) Inciting to commit terrorism;¹⁰
- (f) Recruitment to and Membership in a terrorist group;¹¹ and
- (g) Providing Material Support to Terrorists.¹²

3. Longer period and extended coverage of surveillance

Previously, the Human Security Act provided that the Court of Appeals ("**CA**"), through its authorizing division, may issue a written order to "track down tap, listen to, intercept, and record communications, messages, conversations, discussions, or spoken or written words of any person suspected of the crime of terrorism or the crime of conspiracy to commit terrorism" for a period of thirty (30) days, extendible by the CA for another non-extendible thirty (30) days.¹³

Under the Anti-Terrorism Act, the initial period of surveillance which may be ordered by the CA, upon a finding that any of the specified acts of terrorism has been or is being committed, is sixty (60) days, which may be renewed or extended for another non-extendible thirty (30) days.¹⁴

³ Anti-Terrorism Act, Section 4.

⁴ Human Security Act, Section 3.

⁵ Human Security Act, Sections 3 and 4.

⁶ Anti-Terrorism Act, Section 5.

⁷ Anti-Terrorism Act, Section 6.

⁸ Anti-Terrorism Act, Section 7.

⁹ Anti-Terrorism Act, Section 8.

¹⁰ Anti-Terrorism Act, Section 9.

¹¹ Anti-Terrorism Act, Section 10.

¹² Anti-Terrorism Act, Section 12.

¹³ Human Security Act, Sections 8 and 10.

¹⁴ Anti-Terrorism Act, Sections 17 and 19.

The Anti-Terrorism Act also requires the law enforcement agent or military personnel concerned to file an *ex-parte* application with the CA for the issuance of an order to compel telecommunications or internet service providers to produce all customer information and identification records, including 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 law.¹⁵

The Human Security Act previously granted the person placed under surveillance or whose communications, letters, papers, etc. have been monitored the right to be informed of the acts done by law enforcement authorities in the premises, or to challenge the legality of the interference before the CA. The Anti-Terrorism Act does not contain a similar provision, which suggests that the person placed under surveillance no longer has the right to be informed of the acts done by the law enforcement authorities in the premises and to challenge the legality of the interference.¹⁶

4. Designation and freezing of assets of designated terrorist individual, groups of persons, organizations, or associations

Under the Anti-Terrorism Act, the Anti-Terrorism Council (“**ATC**”), may “designate” as a terrorist an individual, group of persons, organizations, or associations, upon its own finding of probable cause that such person/s commit, attempt to commit, or conspire in the commission of the specified acts of terrorism.¹⁷ The assets of any designated individual, group, organization, or association shall be subject to the Anti-Money Laundering Council’s authority to freeze assets.¹⁸ The freeze order shall be effective for a period not exceeding twenty (20) days and may be extended up to a period of not exceeding six (6) months upon the order of the CA.¹⁹

5. Detention without Judicial Warrant of Arrest

Under the Human Security Act, any police or law enforcement officer authorized by the ATC, and who, without a warrant, has taken custody of a person charged with or suspected of terrorism, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authority, deliver the charged or suspected person to the proper judicial authority within a period of three (3) days from the moment of apprehension, arrest, and detention.²⁰ The police or law enforcement personnel are required to present the person charged with or suspected of terrorism before any judge prior to the detention.²¹

Under the Anti-Terrorism Act, the police or law enforcement officer who has taken custody of the person suspected of terrorism may detain such person for a period of fourteen (14) days from apprehension or

¹⁵ Anti-Terrorism Act, Section 16.

¹⁶ Human Security Act, Section 9 vis-a-vis Anti-Terrorism Act, Section 18.

¹⁷ Anti-Terrorism Act, Section 25.

¹⁸ Anti-Terrorism Act, Section 25.

¹⁹ Anti-Terrorism Act, Section 36.

²⁰ Human Security Act, Section 18.

²¹ Human Security Act, Section 18.

arrest, and the period of detention may be extended by a maximum period of ten (10) days.²² The Anti-Terrorism Act does not require the presentation of the person charged with or suspected of terrorism before a judge prior to detention, but requires only that the apprehending law enforcement agent or officer notify the judge of the court nearest the place of apprehension of the time, date, and manner of arrest, the location of the detained suspect, and the physical and mental condition of the suspect.²³

6. Restriction on the Right to Travel

Under the Anti-Terrorism Act, the investigating prosecutor may, prior to the filing of an information for any violation of the law, apply for the issuance of a precautionary hold departure order with the Regional Trial Court (“*RTC*”).²⁴

Upon the filing of the information, the prosecutor shall apply for a hold departure order against the accused.²⁵ In cases where evidence of guilt is not strong, and the person charged is entitled to and granted bail, the prosecutor may apply with the court to limit the right to travel of the accused within his/her city or municipality of residence, or where the case is pending.²⁶

The accused may also be placed under house arrest during which the accused may not use telephones, cellphones, e-mails, computers, the internet, or other means of communications with people outside the residence until otherwise ordered by the court.²⁷

7. Deletion of award of damages to persons acquitted of charges of terrorism

Under the Human Security Act, if a person suspected or charged with any defined act of terrorism is found to be innocent after investigation, or is acquitted after his arraignment, or if the case against him is dismissed before arraignment, any order of seizure, sequestration, and freezing shall be deemed lifted.²⁸ Furthermore, in the case of acquittal or dismissal of the charges against him or her, the amount of PhP 500,000.00 per day for the period during which his properties, assets, or funds, were seized, shall be paid to him in the concept of liquidated damages.²⁹

Similarly, any person who is accused of terrorism shall, upon his acquittal, be entitled to the payment of damages in the amount of PhP 500,000.00 for every day that he was detained or deprived of liberty or arrested without a warrant as a result of the accusation.³⁰

These provisions were not been reproduced in the Anti-Terrorism Act.

²² Human Security Act, Section 29.

²³ Anti-Terrorism Act, Section 29.

²⁴ Anti-Terrorism Act, Section 34.

²⁵ Anti-Terrorism Act, Section 34.

²⁶ Anti-Terrorism Act, Section 34.

²⁷ Anti-Terrorism Act, Section 34.

²⁸ Human Security Act, Section 41.

²⁹ Human Security Act, Section 41.

³⁰ Human Security Act, Section 51.

8. Change in penalties for the misconduct of public officers

The Anti-Terrorism Act reduced or changed the penalties for some of the acts which were similarly provided for under the Human Security Act.

For example, the penalty for any person who knowingly furnishes false testimony, forged documents or spurious evidence in any investigation or hearing has been reduced from imprisonment from twelve (12) years and one (1) day to twenty (20) years³¹ to imprisonment of six (6) years.³²

On the other hand, the penalty for the destruction by any person, law enforcement agent or military personnel of tapes, discs, and other storage devices has been changed from a penalty of six (6) years and one (1) day to twelve (12) years of imprisonment to a straight penalty of imprisonment of ten (10) years.³³

9. Role of the Commission of Human Rights

The Anti-Terrorism Act mandates the Commission on Human Rights (“**CHR**”) to give the highest priority to the investigation and prosecution of violations of civil and political rights in relation to the implementation of the law.³⁴ However, the Anti-Terrorism Act removed the concurrent jurisdiction of the CHR to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or charged with, the crime of terrorism, which jurisdiction was expressly provided for in the Human Security Act.³⁵

10. Designation of Anti-Terror Courts

The Anti-Terrorism Act provides that persons charged with violations of any defined acts shall be tried in special courts designated by the Supreme Court and whose jurisdiction is limited exclusively to violations under this law.³⁶

³¹ Human Security Act, Section 47.

³² Anti-Terrorism Act, Section 43.

See also Human Security Act, Section 12 vis-à-vis Anti-Terrorism Act, Section 21; Human Security Act, Section 13 vis-à-vis Anti-Terrorism Act, Section 22; Human Security Act, Section 16 vis-à-vis Anti-Terrorism Act, Section 24; Human Security Act, Section 18 vis-à-vis Anti-Terrorism Act, Section 29, etc.

³³ Human Security Act, Section 11 vis-à-vis Anti-Terrorism Act, Section 20.

See also Human Security Act, Section 12 vis-à-vis Anti-Terrorism Act, Section 21; Human Security Act, Section 13 vis-à-vis Anti-Terrorism Act, Section 22; Human Security Act, Section 16 vis-à-vis Anti-Terrorism Act, Section 24; Human Security Act, Section 18 vis-à-vis Anti-Terrorism Act, Section 29, etc.

³⁴ Anti-Terrorism Act, Section 47.

³⁵ Human Security Act, Section 55 vis-a-vis Anti-Terrorism Act, Section 47.

³⁶ Anti-Terrorism Act, Section 53.

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