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G.R. No. 252578 (Atty. Howard M. Calleja, et al. vs. The Executive Secretary, et al.); **G.R. No. 252579** (Representative Edcel C. Lagman vs. Executive Secretary Salvador Medialdea, et al.); **G.R. No. 252580** (Melencio S. Sta. Maria, et al. vs. Executive Secretary Salvador Medialdea, et al.); **G.R. No. 252585** (Bayan Muna Party-List Representative Carlos Isagani T. Zarate, et al. vs. President Rodrigo Duterte, et al.); **G.R. No. 252613** (Rudolf Philip B. Jurado vs. Anti-Terrorism Council et al.); **G.R. No. 252623** (Center for Trade Union and Human Rights [CTUHR], et al. vs. Hon. Rodrigo Duterte, in His Capacity as President and Commander-in-Chief of the Republic of the Philippines, et al.); **G.R. No. 252624** (Christian S. Monsod, et al. vs. Executive Secretary Salvador Medialdea, et al.); **G.R. No. 252646** (SANLAKAS, Represented by Marie Marguerite M. Lopez, et. al. vs Rodrigo R. Duterte, as President and Commander-in-Chief of All Armed Forces, et al.); **G.R. No. 252702** (Federation of Free Workers [FFW-NAGKAISA], Herein Represented by Its National President, Atty. Jose Sonny Matula, et al. vs. Office of the President of the Republic of the Philippines, et al.); **G.R. No. 252726** (Jose J. Ferrer, Jr. vs. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 252733** (Bagong Alyansang Makabayan [BAYAN] Secretary-General Renato Reyes, Jr., et al. vs. Rodrigo R. Duterte); **G.R. No. 252736** (Antonio T. Carpio, et al. vs. Anti-Terrorism Council, et al.); **G.R. No. 252741** (Ma. Ceres P. Doyo, et al. vs. Salvador C. Medialdea, in His capacity as Executive Secretary, et al.); **G.R. No. 252747** (National Union of Journalists of the Philippines, et al. vs. Anti-Terrorism Council, et al.); **G.R. No. 252755** (Kabataang Tagapagtanggol ng Karapatan, Represented by Its National Convenor, Bryan Ezra C. Gonzales, et al. vs. Executive Secretary Salvador Medialdea, et al.); **G.R. No. 252759** (Algamar A. Latiph, et al. vs. Senate, et al.) **G.R. No. 252765** (The Alternative Law Groups, Inc. vs. Executive Secretary Salvador C. Medialdea, et. al.); **G.R. No. 252767** (Bishop Broderick S. Pabillo, et al. vs. President Rodrigo R. Duterte, et al.) **G.R. No. 252768** (General Assembly of Women for Reforms, Integrity, Equality, Leadership and Action [GABRIELA], Inc., et al. vs. President Rodrigo Roa Duterte, et al.); **G.R. No. 252802** (Henry Abendan of Center for Youth Participation and Development Initiatives, et al. vs. Hon. Salvador C. Medialdea, in His Capacity as Executive Secretary and Chairperson of the Anti-Terrorism Council, et al.); **G.R. No. 252809** (Concerned Online Citizens, Represented and Joined by Mark L. Averilla, et al. vs. Executive Secretary Salvador Medialdea, et al.) **G.R. No. 252903** (Concerned Lawyers for Civil Liberties [CLCL] Members Rene A.V. Saguisag, et al. vs. President Rodrigo Duterte, et al.); **G.R. No. 252904** (Beverly Longid, et al. vs. Anti-Terrorism Council, et al.); **G.R. No. 252905** (Center for International Law [CENTERLAW], Inc., Represented by Its President, Joel R. Butuyan, Who is Also Suing in His Own Behalf, et al. vs. Senate of the Philippines, et al.); **G.R. No. 252916** (Main T. Mohammad, et al. vs. Executive Secretary Salvador C. Medialdea, et al.) **G.R. No. 252921** (*Barangay* Maglaking, San Carlos City, Pangasinan *Sangguniang Kabataan* [SK] Chairperson Lemuel Gio Fernandez Cayabyab, et al. vs. Rodrigo

R. Duterte, President of the Republic of the Philippines, et al.) **G.R. No. 252984** (Association of Major Religious Superiors, Represented by Its Co-Chairpersons, Fr. Cielito R. Almazan OFM and Sr. Marilyn A. Java RC, et al. vs. Executive Secretary Salvador C. Medialdea, et al.) **G.R. No. 253018** (University of the Philippines [UP]-System Faculty Regent Dr. Ramon Guillermo, et al. vs. Rodrigo Roa Duterte, et al.); **G.R. No. 253100** (Philippine Bar Association, Inc. vs. The Executive Secretary, et al.) **G.R. No. 253118** (Balay Rehabilitation Center, Inc., et al. vs. Rodrigo Roa Duterte, in His Capacity as President of the Republic of the Philippines, and Salvador C. Medialdea, in His Capacity as Executive Secretary and Chairperson of the Anti-Terrorism Council); **G.R. No. 253124** (Integrated Bar of the Philippines, et al. vs. Senate of the Philippines, et al.); **G.R. No. 253242** (Coordinating Council for People's Development and Governance, Inc. [CPDG], Represented by Vice-President Rochelle M. Porras, et al. vs. Rodrigo R. Duterte, President and Chief Executive, and Commander-in-Chief of the Armed Forces of the Philippines, et al.); **G.R. No. 253252** (Philippine Miseror Partnership, Inc., Represented by Yolanda R. Esguerra, et al. vs. Executive Secretary Salvador C. Medialdea, et al.); **G.R. No. 253254** (Pagkakaisa ng Kababaihan para sa Kalayaan [Kaisa Ka], et al. vs. Anti-Terrorism Council, et al.) **G.R. No. 253420** (Haroun Alrashid Alonto Lucman, Jr., et al. vs. Salvador C. Medialdea, in His Capacity as Executive Secretary, et al.); **G.R. No. 254191** [Formerly UDK 16714] (Anak Mindanao [AMIN] Party-List Representative Amihilda Sangcopan, et al. vs. The Executive Secretary, et al.); and **UDK 16663** (Lawrence A. Yerbo vs. Office of the Honorable Senate President, et al.)

Promulgated:

December 7, 2021

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CONCURRING AND DISSENTING OPINION

LOPEZ, M. J.:

I submit this Separate Opinion on the issues besetting Republic Act (RA) No. 11479 or The Anti-Terrorism Act of 2020. The discussions will focus on the requirements of judicial review, the compelling state interest; and the anatomy of RA No. 11479's penal provisions, which include thoughts on the *"non-intendment clause"* in Section 4, the phrase *"organized for the purpose of engaging in terrorism"* in Section 10, the designation of terrorist individual, groups of persons, organizations or associations in Section 25, the proscription of terrorist organization, association, or group of persons in Sections 26, 27 and 28, and detention without judicial warrant of arrest under Section 29 of the law.

I. Requisites of Judicial Review

When the issue of unconstitutionality of a legislative act is raised, it is the established doctrine that the Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy exists; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very *lis mota* of the case.[1] Here, 33 out of the 37 petitions assailing the constitutionality of RA No. 11479 must be dismissed outright absent actual controversy and legal standing.[2]

An actual case or controversy refers to a *"conflict of legal right, an opposite legal claim susceptible of judicial resolution."* There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant. This requirement goes into the nature of the judiciary as a co-equal branch of government. The Court is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation. In determining whether there is an actual case or controversy, *"the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not merely theoretical question or issue."* In the absence of an actual case or controversy, the petitions are akin to pleas for declaratory relief, over which the Court has no original jurisdiction. The case or controversy must likewise be ripe for judicial determination and not merely theoretical. Otherwise, the Court's pronouncement will be advisory in character with no binding effect.[3]

Corollary to actual case or controversy is legal standing, which refers to a personal and substantial interest in the case such that the petitioners have sustained, or will sustain, direct injury as a result of its enforcement.[4] The parties' interest must also be material as distinguished from mere interest in the question involved, or a mere incidental interest. The interest must be personal and not based on a desire to vindicate the constitutional right of some third and unrelated party.[5] However, the Court has taken an increasingly liberal approach to the rule on legal

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1 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010). See also *Philippine Constitution Association v. Enriquez*, 305 Phil. 506 (1994); *Luz Farms v. Secretary of the Department of Agrarian Reform*, 270 Phil. 151 (1990); *Dumlao v. COMELEC*, 180 Phil. 369 (1980).

2 G.R. No. 252578, G.R. No. 252279, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No. 252264, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK No. 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921, G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No. 253352, G.R. No. 253254, G.R. No. 253420, and UDK No. 16714.

3 *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019.

4 Cruz, Philippine Political Law, 2002 Ed., p. 259. See also *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *Board of Optometry v. Colet*, 328 Phil. 1187 (1996); *Macasiano v. National Housing Authority*, 296 Phil. 56 (1993); *Santos III v. Northwestern Airlines*, 285 Phil. 734 (1992); and *National Economic Protectionism Association v. Ongpin*, 253 Phil. 643 (1989).

5 *Aguinaldo v. Aquino III*, 806 Phil. 187 (2016).

standing, evolving from the stringent requirements of *"personal injury"* to the broader *"transcendental importance"* doctrine.[6] The other exceptions are cases involving facial challenges of a law, which is void on its face.

On this score, I echo Chief Justice Gesmundo's observation that in cases of transcendental importance, the Court should *"merely relax but not do away with or supplant the actual case or controversy requirement."* To successfully invoke transcendental importance, the petitioners must: (1) comply with the actual case or controversy of the Constitution; (2) identify the issue raised; (3) claim its transcendental importance; and (4) explain to the satisfaction of the Court why the issue is sufficiently important for the court to relax the constitutional actual case or controversy requirement.[7] Notably, the 33 petitions mentioned earlier failed to show a justiciable controversy because none of them are prosecuted for violation of RA No. 11479 or at least facing a credible threat of prosecution. At most, these petitions are anticipatory in nature. The pronouncement that there is justiciable controversy *"by the mere enactment of the questioned law or the approval of the challenged action"*[8] in relation to the Court's exercise of judicial review must be qualified. The petitioners should also explain why the requisite legal standing should be relaxed in cases when they will not be directly injured by showing how they will be affected. This qualification should also be true to facial challenges. Otherwise, the purpose why an actual case or controversy and legal standing are required in the first place would be for naught. Moreover, the petitioners failed to sufficiently show that they are engaged in any conduct or intended to pursue an activity, which may be covered under provisions of RA No. 11479. Rather, the petitions amount to pleas for declaratory relief based on speculative fear, which is not proper for judicial review.[9] More importantly, there must be sufficient facts to enable the Court to intelligently adjudicate the issues. The possibility of abuse in the implementation of a law cannot be considered as a justiciable controversy.[10] The alleged abuse must be anchored on real events before courts may step in to settle actual controversies involving rights, which are legally demandable and enforceable.[11] Anent the four surviving petitions,[12] the discussion should be limited to the specific issues raised with justiciable controversy. Any ruling on the merits of the unchallenged provisions of the law must be reserved to future cases.

II. Compelling State Interest

In the Philippines, national security is a *"condition wherein the people's welfare, well-being, ways of life, government and its institutions, territorial integrity, sovereignty, and core values are enhanced and protected."* The most

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6 *Pimentel v. Legal Education Board*, G.R. Nos. 230642, 242954, September 10, 2019 citing *Private Hospitals, Association of the Philippines, Inc. v. Medialdea*, G.R. No. 234448, November 6, 2018. See also *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000); *Kilosbayan v. Morato*, 316 Phil. 652 (1995); and *Public Interest Center, Inc. v. Roxas*, 542 Phil. 443 (2007).

7 CJ Gesmundo's Separate Opinion, Page 15.

8 CJ Gesmundo's Separate Opinion p. 9 citing *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

9 *Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281 (2005).

10 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010).

11 *Parcon-Song v. Parcon*, G.R. No. 199582, July 07, 2020.

12 G.R. No. 253452, G.R. No.252585, G.R. No.252767, and G.R. No. 252768.

fundamental duties of the State are to ensure public safety, maintain law and order, and dispense social justice. The government is accountable to the people and must ensure that a just, stable, and peaceful society is achieved by protecting the general public from any harm that could endanger their lives, properties, and ways of life.[13] Terrorism is anathema to these core principles as well as to the values of democracy, rule-of-law and human rights. There should be no avenue for those who plan, support or commit terrorist acts to find safe haven, avoid prosecution, or carry out further attacks.[14]

Thus, the Congress enacted RA No. 11479 to confront terrorism and all allied activities. The legislature found merit in coming up with this legal tool to strengthen the ability of the State to protect society and prevent death, injury, extensive damage or destruction, fear, and chaos. In contrast, the petitions assailing the validity of RA No. 11479 alleged a tension between national security and free speech. Hence, the Court is tasked to examine whether the government can restrict freedom of speech and its cognate rights to further the compelling interest of national security, and to find the delicate balance between individual liberty, on one hand, and public security, on the other. As such, I support the use of *"balancing of interests"* test espoused in American jurisprudence. This method suggests that *"[w]hen a particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demand the greater protection under the particular circumstances presented ... We must, therefore, undertake the delicate and difficult task ... to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights."*[15] If on balance it appears that the public interest served by restrictive legislation is of such a character that it outweighs the abridgement of freedom, then the Court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that the constitutional freedoms are not absolute, and that they may be abridged to some extent to serve appropriate and important public interests.[16] The question is not the existence of a constitutional right, which the State already recognizes, but whether the State has a sufficient compelling interest to justify restriction of the fundamental right.

There is no dispute that the state has a compelling interest to prevent terrorism as it involves issues of national security[17] and the survival of the State

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13 National Security Policy 2017-2022.

14 Report of the High Commissioner submitted pursuant to the United Nations General Assembly Resolution 48/141, February 27, 2002.

15 *American Communications Association v. Daud*, 339 U.S. 382 (1950) quoted in Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 p. 243.

16 Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 p. 243 quoting Kauper, Civil Liberties and the Constitution 113 (1966) cited in 27 SCRA at 899. See also Dissenting Opinion of Justice Kapunan, *Social Weather Station, Incorporated v. Commission on Elections*, 409 Phil. 571 (2001).

17 Sec. 2. Declaration of Policy. – It is declared a policy of the State to protect life, liberty and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the

may be at stake. The threat of terrorism is not fictional, but can be seen in recent events. Thus, in employing the balancing of interest test, the compelling state interest of preventing terrorism as a matter of national security must be given great weight. Moreover, given the profound impact of terrorism, there is a need to evaluate the new counter-terrorism legal framework with a whole-of-society approach. There should be focus on the rights of actual and potential victims of terrorism and not only on the rights of the accused. The constitutionality of RA No. 11479 should not be examined exclusively from the juridical optic of the criminal law and due process model but should be seen as part of the State's protection of the people's right to life and its very existence. Too, every individual owes a duty of justice to others. Individual liberty is ultimately shaped by the horizontal duty one owes another or the community at large, *i.e.*, a duty to refrain from engaging in intentional conduct that would cause others harm. Thus, one fails to fulfill his duty of justice to refrain from harming others if in the exercise of his freedom of speech or expressive conduct, he *intended* to rouse others to commit acts of terrorism.

Inarguably, freedom of speech is both a *"liberty"* and a *"claim right"* – liberty refers to the absence of any competing duty to do or refrain from doing,[18] while a claim right corresponds to another's duty to do or refrain from doing something. In other words, freedom of speech obligates others to abstain from interfering with the speech in question. The value of the freedom of speech should not be limited without meeting a substantial burden of justification. Also, when there is a conduct that relates to the freedom of speech, the onus of limitation justification falls on those who wish to restrict the conduct. An individual is entitled to enjoy freedom of speech and engage in the conduct associated with it, unless a restriction is carefully and convincingly justified.[19]

Relatively, aside from the balance-of-interests theory, I suggest that the Court adopts the *"proportionality test"* to justify a limitation on the freedom of speech. Proportionality is characterized as a universal criterion of constitutionality[20] and a foundational element of global constitutionalism.[21] The United Nations Human Rights Committee and most jurisdictions in Europe apply the proportionality test when evaluating the permissibility of limitations. Proportionality is not the distribution of the scope of rights but the justification for its limitation. The test contains four elements: (1) the State must pursue an aim that serves a compelling or legitimate interest when limiting the right; (2) there must be nexus between the measure used to limit the right and the legitimate

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welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the Law of Nations. x x x

18 Isaiah Berlin's conception of "negative liberty" which he describes as the area within which a person is or should be left to do or be what he is able to do or be without interference (1969).

19 G. Gunatilleke, "Justifying Limitations on the Freedom of Expression", Hum Rights Rev 22, 91–108 (2021).

20 David M. Beatty, "The Ultimate Rule of Law" (2004).

21 Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism", 47 Colum. J. Transnat'l L. 72, 160 (2008).

interest; (3) the measure must be necessary to advance or prevent setbacks to the legitimate interest; and (4) the measure must involve a net gain or beneficial effect when the reduction in the enjoyment of the right is weighed against the level to which the interest is advanced.[22] Limitations that pass the proportionality test do not infringe the Constitution even if nothing is left of an individual right after the balancing test has been carried out.

The first and fourth elements of this approach need elucidation. The first one requires a compelling interest or legitimate aim. Right as constitutional values can only be overruled by other constitutional values. Constitutional rights trump any consideration except factors that also enjoy constitutional status.[23] An aspect of national security is ensuring the State's security, sovereignty, territorial integrity and institutions which are provided in the Constitution. For instance, Article II, Section 5 of the Constitution mentioned the maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare. These constitutional values are allowed to play out in the balancing stage. The fourth element refers to balancing whereby it is determined whether the importance of the aim pursued justifies the seriousness of the infringement of a right. It is possible to ascribe a higher weight to a certain right than other considerations. However, rights with higher weight do not automatically trump a colliding consideration with lower weight. To illustrate, although freedom of speech enjoys a higher value in our constitutional hierarchy, it is not absolute that it cannot yield to the State's interest. Otherwise, we convert the Bill of Rights into a suicide pact.[24]

To reiterate, not all human rights principles enjoy the same level of protection. They have different legal characteristics as absolute or non-absolute or having inherent limitations. Fundamental human rights like prohibitions on torture, on slavery, and on retroactive criminal laws are absolute, *i.e.*, it is not permitted to restrict these rights by balancing their enjoyment against the pursuit of a legitimate aim. On the other hand, most rights are not absolute in character, which means that the State can limit the exercise of those rights for valid reasons, including the need to counter terrorism. Examples of non-absolute rights are freedom of expression, freedom of association, freedom of assembly, and freedom of movement. These rights are accompanied by various conditions such as national

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22 K. Möller K, "Constructing the Proportionality Test: An Emerging Global Conversation" in L. Lazarus, C. McCrudden and N. Bowles (eds.), "Reasoning Rights: Comparative Judicial Engagement", Hart Publishing, London (2014).

23 Robert Alexy, "A Theory of Constitutional Rights" (2002).

24 *Terminiello v. Chicago*, 337 U.S. 1, 37 (1949), Jackson, J., dissenting, "The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."

security or public order.[25] Thus, the preferred position of the freedom of speech is just one of the various variables in the phase of balancing.

III. Anatomy of RA No. 11479's penal provisions

The definition of crime has come to be regarded as one of the thorny intellectual problems of the law.[26] It is settled that a statute criminalizing an act must describe the violation with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited. Otherwise, the legislation is utterly vague when it lacks comprehensible standards that common men must necessarily guess at its meaning and differ in its application. Yet, jurisprudence instructed us that a law couched in imprecise language is valid if it can be clarified through proper judicial construction.[27] A simpler test even exists, which provides that there is nothing vague about a penal law that adequately answers the basic query *"What is the violation?"* Anything beyond -- *the hows and the whys* -- are evidentiary matters that the law itself cannot possibly disclose, in view of the uniqueness of every case.[28] Thus, I offer this opinion analyzing Republic Act No. 11479 or The Anti-Terrorism Act of 2020 under the lens of criminal law principles.

To begin, the study of Criminal Law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule is that in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is whether the law was violated.[29] The Court explained that the better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*.[30] Applying this approach, the crime of *"terrorism"* as defined in Section 4 of RA No. 11479 is inherently depraved and immoral, because no amount of reason can justify the commission of violent and despicable acts of such gravity and magnitude against the populace. Hence, proof of the accused's criminal intent is required. On this note, I suggest to adopt a framework in better understanding RA No. 11479's penal provisions through comprehensive examination of the anatomy of its *corpus delicti*.

Foremost, proof of *corpus delicti* is indispensable in the prosecution of crimes.[31] The term *corpus delicti* refers to the body or substance of the crime, or

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25 UNODC, "Limitations Permitted by Human Rights Law", available at unodc.org (last accessed: December 2, 2021).

26 The Definition of Crime, Glanville Williams, M.A., LL.D., *Current Legal Problems*, Volume 8, Issue 1, 1955, Pages 107130, https://doi.org/10.1093/clp/8.1.107 Published: December 1, 1955.

27 *Romualdez v. Sandiganbayan*, 479 Phil. 265 (2004).

28 *Dans v. People*, 349 Phil. 434 (1998).

29 An example is Technical Malversation.

30 *Dungo v. People*, 762 Phil. 630 (2015).

31 *People v. Oliva* 395 Phil. 265 (2000).

the fact of its commission.[32] It consists of the criminal act and the defendant's agency in the commission of the act. In homicide, for instance, the prosecution must prove: (a) the death of the victim; (b) that the death was produced by the criminal act of person/s other than the deceased and was not the result of accident, natural cause or suicide; and (c) that accused committed the criminal act or was in some way criminally responsible for the act which produced the death.[33] In arson, the *corpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused.[34] In other words, *corpus delicti* primarily describes the act (objective) and the agent (subjective) in relation to the *actus reus* (AR) and the *mens rea* (MR) of a crime. *Actus reus* pertains to the external or overt acts or omissions included in a crime's definition while *mens rea* refers to the accused's guilty state of mind or criminal intent accompanying the *actus reus*. Hence, the formula is ***"Corpus Delicti = Actus Reus + Mens Rea."***

Actus reus may have a varied formulation depending on the definition of the crime. Foremost, the crime may or may not consist of a single *actus reus*. An example is a complex crime when a single act constitutes two or more grave or less grave felonies (compound crime), or when an offense is a necessary means for committing the other (complex crime proper).[35] In the eyes of the law and in the conscience of the offender they constitute only one (1) crime, thus, only one (1) penalty is imposed.[36] Also, in special complex crimes like robbery with rape, there is only one specific crime but the prosecution must prove the commission of external criminal acts of robbery and rape. In offenses which require predicate crimes like a violation of the Anti-Money Laundering Act, the component crimes must be identified to prove the more serious crime of money laundering.

Moreover, the component circumstances may be considered in ascertaining the *actus reus*. To prove treason under Article 114 of the Revised Penal Code (RPC), for instance, the prosecution must prove that the accused is either a Filipino citizen or a resident alien. On the other hand, to prove murder under Article 248 of the RPC, the qualifying circumstance of treachery, abuse of superior strength, etc., must be established. When it comes to special laws, we need to look for the specific circumstances intended by the legislators for the application of the law. In RA 7610 or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, the law takes into account the age of the victim who must be below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves.[37] In RA 9475 or the *Anti-Torture Act of 2009*,[38] the physical or mental torture must be inflicted by a person in authority or agent of a person in authority. In RA 7877 or the *Anti-Sexual Harassment Act of*

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32 *Rimorin, Sr. v. People*, 450 Phil. 465 (2003).
33 *Quinto v. Andres*, 493 Phil. 643 (2005).
34 *People v. Murcia*, 628 Phil. 648 (2010). See also *People v. Bravo*, 695 Phil. 711 (2012).
35 Article 48 of the Revised Penal Code
36 *People v. Nelmida*, 694 Phil. 529, 581 (2012).
37 Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, June 17, 1992
38 Anti-Torture Act of 2009, Republic Act No. 9745, November 10, 2009

1995,[39] the offender must be a person who has authority, influence or moral ascendancy over another in an education, training, or work environment.

Lastly, the *actus reus* may include the result or the consequences of the crime. In other jurisdictions, criminal offenses are classified as *"conduct crimes"* or *"resulting crimes."* In conduct crimes, only the proof of the commission of the prohibited conduct is required. On the other hand, resulting crimes necessitate proof that the harmful act leads to a specified consequence.[40] In Philippine Criminal Law, physical injuries under Articles 263, 265 and 266 of the RPC is considered a resulting crime. The determination of whether "physical injuries" is serious, less serious, or slight depends upon the extent of the resulting injuries arising from the infliction of harm to the victim. In Article 263, for example, the crime is always serious physical injuries when it resulted in the insanity, imbecility, impotency, or blindness of the victim. Taken together, the comprehensive anatomy of *actus reus* can be summarized as: ***"Actus Reus = act/omission + circumstances + results/consequences."***[41]

Anent the *"mens rea"* of a crime, a distinction must be made between general intent and specific intent. General criminal intent pertains to the *dolo* required under Article 4[42] of the RPC. It means the accused purpose to do an act prohibited by law regardless of the result. On the other hand, specific criminal intent refers to the particular intent comprising the definition of the crime, as for instance, the specific criminal intent to kill or *animus interficendi* in homicide or murder.[43] In robbery, the specific intent is *"gain"*, in illegal detention the *"deprivation of liberty"*, in mutilation the deprivation of *"essential organ of reproduction"* is involved.

Corollarily, the *actus reus* of RA No. 11479's penal provisions may be analyzed using this framework as follows:

ACTUS REUS of Section 4 of RA 11479 =

Acts	+	Circumstances	+	Results/Consequences
Section 4 of RA 11479		Section 49 of RA 11479 Section 15 of RA 11479		Section 4 last paragraph

Section 4 of RA No. 11479 reads:

> SECTION 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:

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39 Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995

40 https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases

41 Criminal Law (Fifth Edition), Janet Loveless, p. 38.

42 RPC, Article 4 provides that "[c]riminal liability shall be incurred: (1) by any person committing a felony (delito) although the wrongful act done be different from that which he intended; and (2) by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means."

43 *People v. Malinao y Nobe*, 467 Phil 432 (2004).

> (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.

Here, **Section 4 of RA No. 11479** enumerates the **specific acts of terrorism**, to wit: (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; (d) developing, manufacturing, possessing, acquiring, transporting, supplying or using weapons, explosives or of biological, nuclear, radiological or chemical weapons; and (e) releasing of dangerous substances, or causing fire, floods or explosions. On the other hand, **Sections 15 and 49 of RA No. 11479** refer to **circumstances** of citizenship, place of commission, and public office, that will make the offender criminally and administratively liable.

Also, I suggest that the phrase *"when the purpose of such act, by its nature and context"* in **last paragraph of Section 4 of RA No. 11479** must be construed in a manner that the commission of specific acts of terrorism must have the effect of (a) intimidating the general public or a segment thereof; (b) creating an atmosphere or spreading a message of fear; (c) provoking or influencing by

intimidation the government or any international organization; (d) seriously destabilizing or destroying the fundamental political, economic, or social structures of the country; (e) or creating a public emergency or seriously undermining public safety. **This interpretation makes Section 4 of RA No. 11479 a resulting crime.** Otherwise, it would be paradoxical to consider a specific act as terrorism absent one of these effects. For instance, a person who engages in acts intended to cause death to any person but does not cause intimidation to the general public or create an atmosphere of fear could hardly be liable for terrorism. At most, the crime may be attempted, frustrated or consummated homicide or murder. Similarly, a person who releases a dangerous substance without creating a public emergency or seriously undermining public safety may be held civilly liable for torts or violation of sanitary ordinances. As a resulting crime, the prosecution must establish a factual link between the specific act of the accused and the result it allegedly caused. In other words, the result would not have occurred but for the action of the accused. If factual causation cannot be established the prosecution for violation of Section 4 of RA No. 11479 will fail.[44]

Anent the *"mens rea"*, the specific intentions in Section 4 paragraphs (a), (b) and (c) of RA No. 11479 are expressly mentioned. Thus, the specific acts of terrorism in these paragraphs must be intended: (a) to cause death or serious bodily injury to any person, or endangers a person's life; (b) to cause extensive damage or destruction to a government or public facility, public place or private property; (c) to cause extensive interference with, damage or destruction to critical infrastructure. Whereas, the *mens rea* in Section 4 paragraphs (d) and (e) of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479. To reiterate, a violation of Section 4 of RA No. 11479 requires a causal connection between the *actus reus* and the *mens rea*. Otherwise, no crime of terrorism under this provision is committed.

ACTUS REUS of Section 5 of RA 11479 =

Acts	+	Circumstances	+	Results/Consequences
Section 5 of RA 11479		Section 49 of RA 11479 Section 15 of RA 11479		Section 4 last paragraph

Section 5 of RA No. 11479 reads:

> SECTION 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.

Likewise, **Section 5 of RA No. 11479** is a resulting crime, which enumerates the **specific act** of threatening to commit terrorism, subject to circumstances in Sections 15 and 49 of RA No. 11479, and must give rise to the consequences in **last paragraph of Section 4 of RA No. 11479**. A contrary interpretation may lead to absurdity. For instance, a person who threatens to kill another is not automatically a terrorist absent intimidation to the general public or

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[44] https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases.

an atmosphere of fear. At most, the crime is only grave threats. Anent the *"mens rea"*, the specific intent of the crime under Section 5 of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479.

ACTUS REUS of Sections 6, 7, 8, 9, 10, 11, 12 and 14 of RA 11479 =

Acts	+	Circumstances
Section 6 of RA 11479		Section 49 of RA 11479
Section 7 of RA 11479		Section 15 of RA 11479
Section 8 of RA 11479		
Section 9 of RA 11479		
Section 10 of RA 11479		
Section 11 of RA 11479		
Section 12 of RA 11479		
Section 14 of RA 11479		

On the other hand, **Sections 6 7, 8, 9, 10, 11, 12 and 14 of RA No. 11479 are conduct crimes.** The commission of the prohibited acts constitute the very *actus reus*. The prosecution needs only to prove the forbidden conduct. These provisions penalized the specific acts of: (a) *planning, training, preparing, and facilitating the commission of terrorism* [Section 6]; (b) *conspiracy to commit terrorism* [Section 7]; (c) *proposal to commit terrorism* [Section 8]; (d) *inciting to commit terrorism* [Section 9]; (e) *recruitment to and membership in a terrorist organization* [Section 10]; (f) *foreign terrorist* [Section 11]; (g) *providing material support to terrorist* [Section 12]; and (h) *accessory* [Section 14]. Anent the *"mens rea"*, the specific intent of the crimes under Sections 6, 7, 8, 9, 10, 11, 12 and 14 of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479.

In our jurisdiction, crimes may also be classified based on the stage of the act done: inchoate crimes and executory crimes. Inchoate crimes are those committed by doing an overt act towards the commission of a target crime.[45] In other words, inchoate crimes concern itself with preparatory acts for the commission of a crime. Basic examples of inchoate crimes are attempt, proposal and conspiracy to commit a crime. Under the RPC, an attempt to commit a felony is punishable.[46] There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[47] Here, the offender never passes the subjective phase[48] in the commission of the crime. The offender does not arrive at the point

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45 See Inchoate Offense, https://www.law.cornell.edu/wex/inchoate_offense, Legal Information Institute, accessed on December 2, 2021.

46 RPC, Article 6, 1st paragraph.

47 RPC, Art. 6, 3rd paragraph.

48 The subjective phase in the commission of a crime is that portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which,

of performing *all* of the acts of execution which should produce the crime. Attempted crimes are subject to penalty of two (2) degrees lower than that prescribed for the consummated felony.[49]

Proposal and conspiracy are generally not punishable; except only when a law specifically provides a penalty for it.[50] There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.[51] Prior to RA No. 11479, there are only three (3) punishable acts of proposal: proposal to commit treason;[52] proposal to commit rebellion or insurrection;[53] and, proposal to commit *coup d'état.*[54] On the other hand, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[55] Under the RPC, there are five (5) punishable acts of conspiracy: conspiracy to commit treason;[56] conspiracy to commit rebellion or insurrection;[57] conspiracy to commit *coup d'état*;[58] conspiracy to commit sedition;[59] and conspiracy in restraint of trade.[60] Special penal laws also define and punish several acts of conspiracy.[61] Notably, the conspiracy is treated as a crime, not as a mode of committing crime. Yet, the crime agreed by the conspirators must not be actually committed, otherwise, the offenders are liable for the crime actually committed and not for the crime of conspiring to commit it.[62]

Conversely, executory crimes are in the consummated stage, where all the preparatory acts have been committed through overt acts producing the effects as intended by the offender. The RPC declares that a felony is consummated when all the elements necessary for its execution and accomplishment are present.[63] In relation to inchoate crimes, executory crimes are produced when the overt acts done in an inchoate crime produces the effects intended by the offender. In addition, majority of the crime in the RPC are executory crimes.

Applying these precepts, the Court can determine which among the penal provisions of RA No. 11479 contemplate inchoate or executory crimes. To start, Section 4, which defines and penalizes the crime of terrorism is an executory crime. Noteworthy is that Section 4 punishes terrorism *"regardless of the stage of*

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with prior acts, should result in the consummated crime. Thereafter, the phase is objective. [*Epifanio v. People*, 552 Phil. 620 (2007)]

49 *Epifanio v. People*, 552 Phil. 620 (2007).

50 RPC, Article 8, 1st paragraph.

51 RPC, Article 8, 3rd paragraph.

52 Art. 115, RPC.

53 2nd par., Art. 136, RPC.

54 1st par., Art. 136, RPC, as amended by R.A. No. 6968 or the Coup d'État Law.

55 2nd par., Art. 8, RPC.

56 Art. 115, RPC.

57 2nd par., Art. 136, RPC.

58 1st par., Art. 136, RPC, as amended by R.A. No. 6968 or the Coup d'État Law.

59 Art. 141, RPC.

60 Art. 186(1), RPC, as amended by R.A. No. 1956

61 See Sec. 5, C.A. No. 616; Sec. 16, R.A. No. 4188; Sec. 12, R.A. No. 6260; Sec. 261(b), B.P. Blg. 881; Sec. 11, R.A. No. 8484; Sec. 26, R.A. No. 9165; Sec. 4, R.A. No. 9372; Sec. 15(h), R.A. No. 9775; and, 2nd par., Sec. 5, R.A. No. 10168,

62 Reyes, L., Revised Penal Code Book 1, (2021).

63 2nd par., Art. 6, RPC.

execution." Whether the overt act falls within the attempted or frustrated stage of execution, the offender will still be prosecuted for the consummated crime of terrorism. In other words, there is no attempted or frustrated crime of terrorism. Similarly, Section 5 which defines and penalizes threat to commit terrorism is an executory crime. This offense involves an offender who has not decided to commit terrorism but threatens or declares his intention to commit it whether for coercion, intimidation or otherwise. The offense may not be considered as a preparatory act to the crime of terrorism because the offender had not yet decided to commit terrorism. Also, Section 9 which defines and penalizes inciting to commit terrorism is an executory crime. The act of inciting itself is punishable. The offender has not decided to commit the crime of terrorism. Instead, the offender intends for other persons to commit the crime. Lastly, Section 14 which defines and penalizes an accessory to terrorism is an executory crime. The overt acts described are done after commission of the target crime of terrorism. Further, the overt acts listed are not in preparation for committing terrorism or any other crime. In contrast, Sections 6, 7, 8, 10, 11, and 12 of RA No. 11479 are all inchoate crimes. As discussed earlier, conspiracy and proposal to commit terrorism are examples of inchoate crimes. As for planning, training, preparing and facilitating the commission of terrorism, recruitment to and membership in a terrorist organization, unlawful acts for foreign terrorists, and providing material support to terrorists, all perceptibly comprise preparatory acts to the commission of the target crime of terrorism.

IV. The "Non-intendment Clause"

With respect to the **"non-intendment clause"** in Section 4 of RA No. 11479, I submit that this provision should not be invalidated. The clause is not distinct from the main provision so as to create another definition of terrorism, but merely serves to clarify the exclusion of the protected civil and political rights. The clause should not be read in isolation from the main provision to make it appear that the freedom of speech and expression are unduly burdened with the vices of vagueness and over broadness. To stress, the common and usual function of a *proviso* is to limit or restrict the general language or operation of the statute, not to enlarge it.[64] In this case, the "not intendment clause" acts as a safeguard for allowable conduct as borne by the legislative deliberations.[65] To be sure, the RPC and special laws contain parallel provisions. For instance, arbitrary detention under Article 124, last paragraph of the RPC provides that *"[t]he commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person."* Also, qualified trespass to dwelling under Article 280 of the RPC provides that *"[t]he provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering*

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64 Ruben Agpalo, Statutory Construction p. 341 citing *Chartered Bank of India v. Imperial*, 48 Phil. 931 (1921).
65 Ponencia, pp. 104-106.

some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inn and other public houses, while the same are open."

In Section 8(c) of RA No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, "*a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose."* In Section 5 of RA 3019 or the Anti-Graft and Corrupt Practice Acts, the *"section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession."* In Section 3(a) of RA 9745 or the Anti-Torture Act, torture *"does not include pain or Buffering arising only from, inherent in or incidental to lawful sanctions."*

V. The phrase "*organized for the purpose of engaging in terrorism*"

As regards Section 10 of RA No. 11479, the phrase ***"organized for the purpose of engaging in terrorism"*** is not vague. The provision punishes voluntary and knowing membership in an organization that is (1) proscribed under Section 26 of the RA No. 11479, (2) designated by the UNSC as a terrorist organization; or (3) organized for the purpose of engaging in terrorism. Using a facial lens analysis, the *ponencia* ruled that the first two (2) modes of membership are neither overbroad nor vague. Yet, the *ponencia* struck down the third instance of membership because of the vagueness of the phrase "organized for the purpose of terrorism." According to the *ponencia*, the third instance of membership, without any sufficient parameters, would necessarily fail to accord the people fair notice of what conduct they should avoid, and would give law enforcers unrestrained discretion in ascertaining that an organization, association, or group was organized for the purpose of engaging in terrorism.

Contrary to the *ponencia*, I submit that Section 10 of RA No. 11479 is not susceptible of facial invalidation. As intimated earlier and consistent with Chief Justice Gesmundo's stand, *"a challenge against a regulation of freedom of association does not qualify as a facial challenge merely on the basis of an allegation of incidental interference with protected speech."* However, considering that some of the petitioners are members of organizations tagged as terrorist groups, the Court may treat those petitions as an as-applied challenge and, therefore, examine Section 10's constitutionality. With this approach, the validity of the phrase *"organized for the purpose of engaging in terrorism"* depends on three (3) questions: (1) Is "organized for the purpose of engaging in terrorism" so

vague that ordinary citizens must necessarily guess as to its meaning and differ as to its application?;[66] (2) Is the phrase so vague that it prescribes no ascertainable standard of guilt to guide courts in judging those charged of its violation?;[67] and (3) Is the subject phrase so vague that police officers and prosecutors can arbitrarily or selectively enforce it?[68] The answers are in the negative.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[69] Applying this principle, the Court only need to refer to the definition of terrorism in Section 4 of RA No. 11479 to determine if a group is formed for the purpose of terrorism. In other words, the phrase *"organized for the purpose of engaging in terrorism"* contemplates membership in an organization with knowledge that the group intends to engage in any of the acts of terrorism. Thus, groups established to commit offenses, which are not defined as terrorism under Section 4, regardless of how serious they are, are excluded from the phrase. Likewise, an association set up for the goal of achieving, through peaceful means, ends that may be contrary to the interest of the government is not sufficient to characterize it as terrorist simply because death, serious bodily injury, extensive damage or destruction is an element of terrorism. Moreover, to consider the phrase as vague or without any sufficient parameters misconceives the function of the "voluntarily and knowingly" requirement.[70] In *People vs. Ferrer*,[71] the Court has already noted that *"[m]embership in an organization renders aid and encouragement to the organization; and when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged."*

Therefore, for an effective counter-terrorism regime, it is vital that our law targets not only voluntarily and knowingly joining a proscribed or designated group but also *any* group organized for the purpose of engaging in terrorism. Penalizing the first and second instances of membership under Section 10 is a reactive response, while forbidding the third instance of membership addresses the potential for terrorist activity. Notably, terrorist groups do not stand still; they grow or fade depending on the changes in their political, social, economic, and security

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66 *Connally v. General Constr. Co.*, 269 U.S. 385 (1926), cited in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 128 Phil. 473 (1967).

67 *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

68 Id.

69 *Philippine International Trading Corporation v. COA*, 635 Phil. 447 (2010).

70 *People v. Ferrer*, 150-C Phil. 551 (1972).

71 Supra.

environments.[72] A case in point is the Abu Sayyaf Group (ASG) established by Abdurajak Janjalani (Janjalani) in 1991 as a breakaway faction of the Moro National Liberation Front (MNLF).[73] The ASG has maintained a membership of approximately 500 members at the height of its strength in the late 1990s. In the first years of the ASG's campaign, the group mostly kidnapped local residents, bombed churches in the area, or killed local Christian residents before they targeted foreign nationals. Many of its members were drawn from the pools of disgruntled former MNLF or Moro Islamic Liberation Front (MILF) fighters and cadre who fought in Afghanistan against the Soviets during the 1980s.[74] The ASG increased its capabilities in the mid-1990s with external support from Osama bin Laden and his jihad network. The ASG was then able to access money and weapons from networks in Pakistan, Malaysia, and Vietnam. The group then split into several factions, each with a separate leadership.[75]

Clearly, the State faces a terrorist threat that is beyond terrorist groups in existence today since the composition of a terrorist threat can change any time. The government is confronted with the need to protect its citizens from different militant organizations with varying degrees of hostility and ability to attack the Philippines' interest through any act of terrorism. As a result of this fluidity, the government should not be made to wait for designation or proscription before it can act. To my mind, the phrase "*organized for the purpose of engaging in terrorism*" in Section 10 is a useful policy prescription from the legislature as part of the State's right, nay, duty to decide an effective counter-terrorism measure.

VI. Designation of terrorist individual, groups of persons, organizations or associations

Likewise, Section 25 of RA No. 11479 is not unconstitutional. All modes of designation have been imbued with sufficient parameters. The *ponencia* held that the provision on designation is susceptible of facial challenge because the looming threat of a potential designation may effectively chill the exercise of free speech, expression, and their cognate rights under the Constitution. The *ponencia* then determined the validity of Section 25 under a facial lens analysis using the tools of overbreadth and strict scrutiny. I respectfully disagree. Again, a facial invalidation of Section 25 is not necessary because some of the petitioners (especially in G.R. No. 252767) have already been designated as terrorists pursuant to the Anti-Terrorism Council's (ATC) Resolutions. As such, the Court

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72 Kim Cragin and Sara A. Daly, The Dynamic Terrorist Threat An Assessment of Group Motivations and Capabilities in a Changing World, Prepared for the United States Air Force (2004).

73 Kim Cragin and Peter Chalk, Terrorism & Development: Using Social and Economic Development to Inhibit a Resurgence of Terrorism, Santa Monica, Calif: RAND Corpo-ration, MR-1630-RC, 2003, pp. 15–22. See also "Abu Sayyaf," Jane's Terrorism Intelligence, March 4, 2003, and Robert Reid, "The Philippines' Abu Sayyaf: Bandits or International Terrorists?" Associated Press, April 6, 1995.

74 See John McBeth, "The Danger Within," Far Eastern Economic Review, September 27, 2001, and Lira Dalangin, "Bin Laden Kin Denies Hand in RP Terror Cells," INQ7.net, May 15, 2002.

75 "Abu Sayyaf Will Take over a Year to Regroup" (1998); "Who Are the Abu Sayyaf?" BBC News [online], June 1, 2001.

may very well resolve the validity of Section 25 as applied to the affected petitioners.

Also, I submit that Section 25 does not primarily deal with speech and cognate rights. As discussed in the *ponencia*, designation has the following effects: (a) designation triggers the examination of the designee's records with banks and other financial institutions and the *ex parte* freezing of their assets by the AMLC on its own initiative or at the request of the ATC; (b) an application for surveillance between members of designated person may already be filed with the CA under Section 16; and (c) criminal liability may arise under Section 10 for those who recruit others to participate in, join, or support, or for those who become members of, organizations, associations, or groups proscribed under Section 26 or those designated by the UNSC. Taken together, it is clear that Section 25 does not pose any immediate threat on the curtailment of speech or other cognate rights which would warrant a facial invalidation. The effects of Section 25 to speech and cognate rights, if any, are merely incidental, as with any penal statute. It should not be forgotten that all penal laws have a general *in terrorem* effect, which always pose an impending threat on the fundamental rights – especially the life and liberty - of individuals, but this reason alone is insufficient to facially invalidate a penal statute.

Corollarily, the strict scrutiny test cannot be utilized considering that Section 25 does not affect speech and cognate rights. On this score, the intermediate test should be applied in analyzing the provision.[76] Inarguably, the purpose of preventing terrorism is an important governmental interest; and to my mind, the government, through the executive and legislative branches, has extensively examined this interest and has considered the availability of less restrictive measures in crafting and approving the different modes of designation under Section 25 as can be gleaned from the Congressional deliberations. Moreover, I find that all modes of designation under Section 25 have sufficient parameters giving the ATC no room for "unbridled discretion" in implementing it. To recall, Section 25 provides for three (3) modes of designation of a terrorist individual, group of persons, organizations, or associations, to wit: (1) Designation pursuant to the ATC's automatic adoption of the United Nations Security Council List of designated individuals; (2) Designation pursuant to request for designations by other jurisdictions after the ATC's determination that proposed designee meets the criteria under UNSCR No. 1373; and (3) Designation by the ATC based on probable cause that the designee committed, or attempted to commit, any of the acts under Sections 4-12 of RA No. 11479.

The *ponencia* declared the first mode as constitutional because UNSCR No. 1373 provides sufficient framework in the execution and implementation of the designation process. The *ponencia* also ruled that since this mode of designation is provided by the UNSC itself, the country is merely fulfilling its standing obligation under international law to enforce anti-terrorism and related measures. However, the *ponencia* declared the second and third modes as unconstitutional

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[76] See *White Light Corp. v. City of Manila*, 596 Phil. 444 (2009).

because *"unbridled discretion is given to the ATC in granting requests for designation based on its own determination"* and that *"there appears to be no sufficient standard that should be observed in granting or denying such requests."* I respectfully differ.

The second mode, *designation pursuant to request from foreign jurisdictions*, is similar to the first in that it also adopts UNSCR No. 1373 as its standards. A crucial difference between the two modes is that instead of automatic adoption of the UN Consolidate List of Designate List of individuals in the first mode, it is the ATC which determines whether the proposed designee meets the criteria laid down in UNSCR No. 1373 under the second mode. In my view, the ATC is already sufficiently guided by the factors laid down in UNSCR No. 1373. As Chief Justice Gesmundo summarized, these factors include: (a) financing of terrorists acts; (b) providing or collecting, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts; (c) commission, or attempt to commit, terrorist acts or participation the commission of terrorist acts; (d) making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts; (e) financing, planning, supporting, facilitating or committing terrorist acts, or provide safe havens; and (f) Cross borders as FTF or facilitate the movement of said FTFs. Moreover, Rule 6.2 of the IRR of RA No. 11479 specifically provides criteria for designation, to wit:

> RULE 6.2. **Designation Pursuant to Requests from Foreign Jurisdictions and Supranational Jurisdictions.** —
>
> The ATC may, **upon a finding of probable cause** that **the proposed designee meets the criteria for designation** under UNSC Resolution No. 1373, adopt a request for designation by other foreign jurisdictions or supranational jurisdictions.
>
> **Among the criteria for designation under this Rule shall be:**
>
> a. that an individual, group of persons, organizations or associations, whether domestic or foreign, commits or attempts to commit, or conspire in the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act;
>
> b. that an entity is owned or controlled directly or indirectly by such person/s; or
>
> c. that a person or entity is acting on behalf of, or at the direction of, the individual, group of persons, organization, or association described in paragraph (a) above. (Emphases supplied)

Verily, UNSCR No. 1373 and Rule 6.2 of the IRR of RA No. 11479 provide sufficient guide for the ATC whether to grant requests from foreign jurisdictions. Finally, UNSCR No. 1373 specifically calls upon the states to *"cooperate,*

particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks," viz.:

> 3. Calls upon all States to:
>
> (a) Find ways of **intensifying and accelerating the exchange of operational information**, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
>
> (b) Exchange information in accordance with international and domestic law and **cooperate on administrative and judicial matters to prevent the commission of terrorist acts**;
>
> (c) **Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks** and take action against perpetrators of such acts;[77] (Emphases supplied)

Hence, the second mode of designation amounts to nothing more than our country's deference to the call for international cooperation, between and among states, in preventing and combatting terrorism. In fact, the second mode of designation even prevents our country from blindly acquiescing to any State's request absent the ATC's prior determination that the proposed designee has indeed met the criteria laid down in UNSCR No. 1373.

Likewise, RA No. 11479 and its IRR fixed sufficient standards for the third mode of designation with reference to the penal provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the law, thus: *"The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of* ***probable cause*** *that the individual, group 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.***" Section 25 makes it clear that before the ATC makes a decision on whether to designate a person, organizations, or groups as terrorist, it must first examine the elements of these penal provisions and their applicability to the prospective designee. The elements of the various penal provisions guide the ATC in exercising the third mode of designation. Differently stated, the probable cause requirement and the integration of penal provisions, along with Rule 6.3 of the IRR, constitute sufficient standards to guide the ATC in exercising its power to designate under third mode. At any rate, Rule 6.3 of the IRR clearly enumerates the criteria for designation under this mode, to wit:

> RULE 6.3. Domestic Designation by the ATC through a Determination of Probable Cause. —
>
> Upon a finding of **probable cause**, the ATC may designate:

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[77] UNSCR No. 1373, September 28, 2001

> a. an **individual, group of persons, entity, organization, or association**, whether **domestic or foreign,** who commit, or attempt to commit, or conspire or who participate in or facilitate the commission of any of the acts defined and penalized **under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act;**
>
> b. an **entity owned or controlled directly or indirectly** by such individual, group of persons, entity, organization, or association under paragraph (a) of this Rule; and
>
> c. a person or entity **acting on behalf of, or at the direction of**, the individual, group of persons, entity, organization, or association under paragraph (a) of this Rule. (Emphases supplied)

VII. Proscription of Terrorist Organization, Association, or Group of Persons

The Court is unanimous that an order of proscription declaring as a terrorist or outlaw an organization, association, or group of persons is not unconstitutional. RA No. 11479 explicitly authorizes the Court of Appeals to issue an order of proscription, whether preliminary or permanent, only *"with due notice and opportunity to be heard"* given to the respondent and on the basis of *"probable cause"*. Moreover, the IRR placed the burden of proof to the DOJ to establish that the *"the respondent is a terrorist and an outlawed organization or association"*[78] for having committed any of the acts penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of RA No. 11479, or that it was organized for the purpose of engaging in terrorism. Lastly, the IRR provides the requirements that must be submitted along with the application for proscription, to wit:

> RULE 7.2. Requirements. —
>
> A group of persons, organization, or association shall be proscribed or declared as terrorist and outlawed by the authorizing division of the Court of Appeals, upon satisfaction of the following requirements:
>
> **a. recommendation from the NICA that said group of persons, organization, or association be proscribed or declared as terrorist and outlawed;**
>
> **b. authority from the ATC to cause the filing of an application for proscription or declaration of said group of persons, organization, or association as terrorist and outlawed;**
>
> **c. verified application of the DOJ to proscribe or declare a group of persons, organization, or association as terrorist and outlawed, with an urgent prayer for the issuance of a preliminary order of proscription**; and

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[78] Section 7.4, Rule VII, IRR of R.A. No 11479 (2020).

> d. due notice and opportunity to be heard given to the group of persons, organization or association to be declared as terrorist and outlawed. (Emphases supplied.)

Contrary to the petitioners' claim, the ATC cannot subject any organization or group to proscription. Suffice it to say that the conditions and circumstances for the issuance of an order of proscription must be judicially determined upon observance of due process.

VIII. Detention without Judicial Warrant of Arrest

Also, I join the majority in affirming the validity of Section 29 of RA No. 11479 on detention without judicial warrant of arrest. The assailed provision and its IRR does not empower the ATC to issue warrants of arrest, which remains a judicial function as prescribed in Article III, Section 2 of the Constitution.[79] Rather, the ATC's *"written authority"* in favor of law enforcement agents or military personnel is limited only to sustaining the detention of the suspected terrorist for the extended periods under the law. Absent any written authority, the law enforcement agents must follow the periods set in Article 125 of the RPC, thus:

> RULE 9.1. Authority from ATC in Relation to Article 125 of the Revised Penal Code. —
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, 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 the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, 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 (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.

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[79] Section 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. (Emphasis supplied)

> **If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.** (Emphasis supplied)

Also, the questioned provision and its IRR enumerated instances when a warrantless arrest may be made similar to Section 5, Rule 113 of the Rules of Court,[80] to wit:

> RULE 9.2. Detention of a Suspected Person without Warrant of Arrest. —
>
> A law enforcement officer or military personnel may, without a warrant, arrest:
>
> a. a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> b. a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> c. a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

Lastly, the determination of the extended detention periods is legislative in nature. The judiciary cannot step in to give a suggestion or other alternatives[81] as to what periods of temporary incarceration are sufficient to effectively prevent or counter terroristic attacks. In any case, the 14-calendar day detention period is not prohibited by the Constitution or any other statute. On the other hand, the 3-day limitation provided for under Section 18, Article VII of the Constitution pertains to situations where the privilege of the writ of *habeas corpus* is suspended.[82] No

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80 Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. In cases falling under paragraph (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

81 *Tañada v. Cuenco*, 103 Phil. 1051 (1957).

82 During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

other similar prohibition exists with respect to terrorism. Furthermore, clear safeguards were put in place to protect the right of the detainee. The assailed provision mandates that the law enforcement agents give an immediate written notification to the CHR, ATC, and the judge of the court nearest the place of apprehension or arrest as regards (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 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.

To conclude, I reiterate that criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed solely because fundamental rights are restricted, the State may well be prevented from enacting laws against socially harmful conduct, more so those aimed to preserve the security of the State which protect our fundamental rights. Also, applying the proposed framework and the use of proper judicial construction, the penal provisions of RA No. 11479 are cleared from any supposed vagueness and ambiguity. The statute can hardly be repugnant to the Constitution for it gives fair notice of what conduct to avoid and does not leave law enforcers unbridled discretion in carrying out its provisions.

FOR THESE REASONS, I vote to **DENY** the petitions.

MARIO V. LOPEZ
Associate Justice