

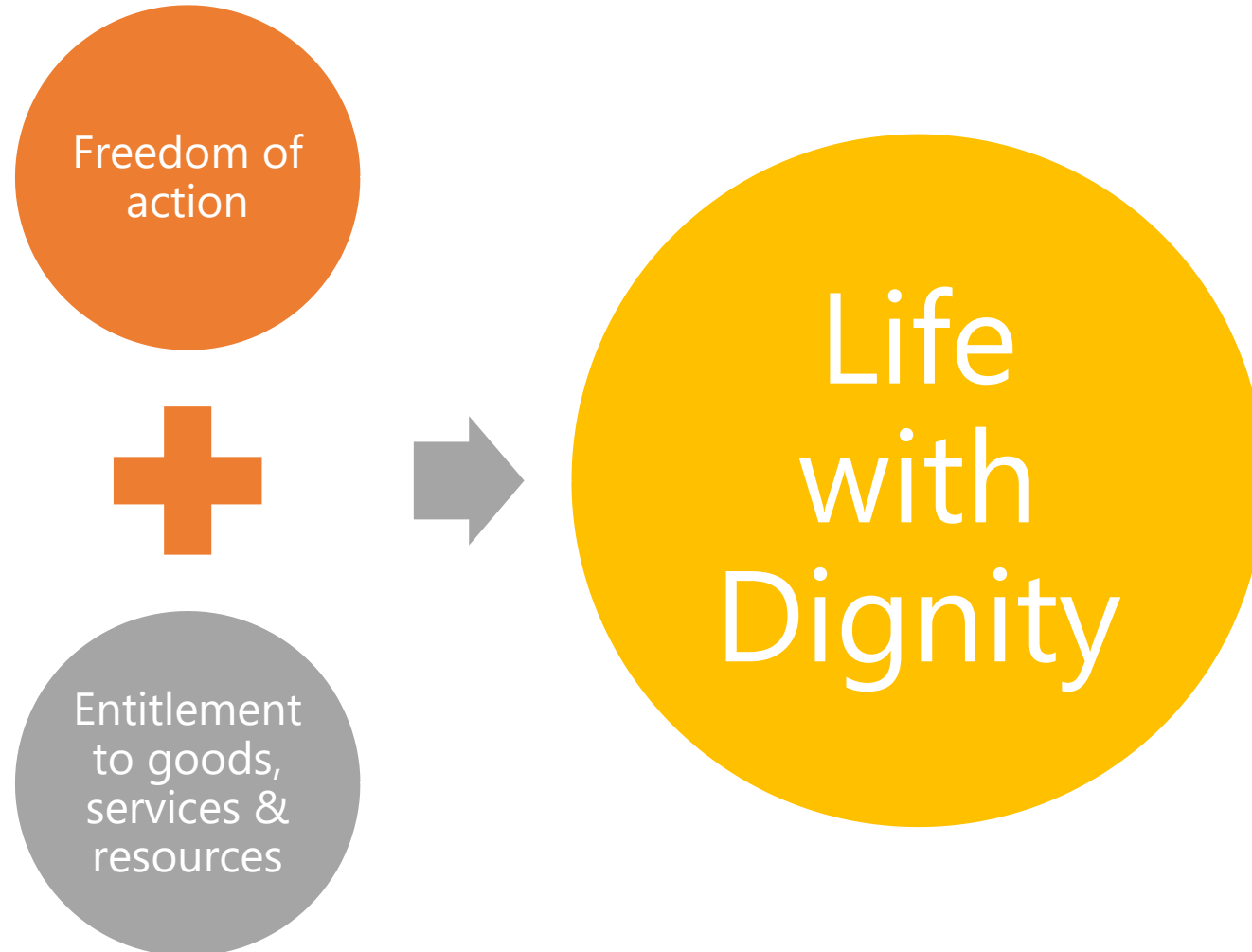
# Salient Features of Republic Act No. 11479, The Anti-Terrorism Act of 2020 and its Implementing Rules and Regulation (Part 1)

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CODE-NGO

12 December 2020

# Nature of human rights



(Diokno:2011)

# HR Principles





## Human Rights Obligations

### Duty-bearer's obligation to

**Respect**

refrain from interfering with the enjoyment of the right

**Protect**

prevent others from interfering with the enjoyment of a right

**Fulfill**

*adopt appropriate measures towards full realization of the right*

# HR and State Counter-Terrorism Measures

States should ensure that counter-terrorism measures are compliant with human rights standards

Rule of law

Permissible enjoyment of HR as part of the counter-terrorism measures

## Prescription by law

- adequately accessible so that individuals law must be formulated with sufficient precision so that individuals can regulate their conduct
- Non-retroactivity of laws

## In the pursuance of a legitimate purpose

- national security, public safety, public order, health, morals, and the human rights and freedoms of others

## Necessity and proportionality

- necessary in the pursuit of a pressing objective, and its impact on rights and freedoms strictly proportional to the nature of that objective.
- a rational link must exist between the limiting measure and the pursuit of the particular objective



# Rights at risk

Right to life

Right against torture

Transfer of individuals suspected of terrorist activity

Liberty and security of a person

Profiling and principle of non- discrimination

Freedom of expression

Legality of definition of terrorism

Right to privacy

Freedom of Expression

Freedom of association

Economic, social and cultural rights

## Police Power

Promotion of public welfare by restraining and regulating the use of liberty and property

- Lawful subject -Affects the interest of the public
- Lawful means – reasonably necessary for the attainment of the objectives, not oppressive

# Art. III Bill of Rights of the 1987 Constitution

Protection of citizens from possible abuse by the State in the exercise of its inherent powers such as police power



**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

WHAT ARE HUMAN RIGHTS? 

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## Philippines: UN report details widespread human rights violations and persistent impunity

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BANGKOK/GENEVA (4 June 2020) – A heavy-handed focus on countering national security threats and illegal drugs has resulted in serious human rights violations in the Philippines, including killings and arbitrary detentions, as well as the vilification of dissent, a new report by the UN Human Rights Office said Thursday. Persistent impunity and formidable barriers to accessing justice need to be urgently addressed, the report said.

The report, which was mandated by a UN Human Rights Council resolution, noted that many of the human rights concerns it has documented are long-standing, but have become more acute in recent

# Salient Features of ATL and its Implementing Rules and Regulations

*"the spring cannot  
rise higher than its  
source"*

*“to address the urgent need to strengthen the law on anti-terrorism in order to adequately and effectively contain the menace of terrorist acts for the preservation of national security and the promotion of general welfare.”*

Pres. Rodrigo Duterte

<https://www.pna.gov.ph/articles/1104838>

# Declaration of Policy

(Sec. 2)(Rule 2.1)

- a. to protect life, liberty, and property from terrorism;
- b. to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people; and
- c. to make any form of terrorism a crime against the Filipino people, against humanity, and against the Law of Nations.



# Anti-Terrorism Council

(Sec.45 )(Rule III)

## **Rule 3.1. Creation and mandate of the ATC**

The ATC created under the Act shall assume the responsibility for the proper and effective implementation of the policies of the State against terrorism.

The ATC shall formulate and adopt comprehensive, adequate, efficient, and effective plans, programs, or measures in order to prevent, counter, suppress, and/or eradicate the commission of terrorism in the country and to protect the people from such acts.

# Anti-Terrorism Council

(Rule 3.2)

- ⦿ the Executive Secretary, as Chairperson;
- ⦿ the National Security Adviser, as Vice Chairperson; and
- ⦿ the Secretary of Foreign Affairs;
- ⦿ the Secretary of National Defense;
- ⦿ the Secretary of the Interior and Local Government;
- ⦿ the Secretary of Finance;
- ⦿ the Secretary of Justice;
- ⦿ the Secretary of Information and Communications Technology; and
- ⦿ the Executive Director of the Anti-Money Laundering Council or AMLC Secretariat

# Anti-Terrorism Council

(Rule 3.3)

## **Rule 3.3. Support agencies**

The following shall serve as the support agencies for the ATC:

- a. Department of Science and Technology;
- b. Department of Transportation;
- c. Department of Labor and Employment;
- d. Department of Education;
- e. Department of Social Welfare and Development;
- f. Presidential Adviser for Peace, Reunification and Unity;
- g. Bangsamoro Autonomous Region in Muslim Mindanao;
- h. National Bureau of Investigation;
- i. Bureau of Immigration;
- j. Office of Civil Defense;
- k. Intelligence Service of the Armed Forces of the Philippines;
- l. Philippine Center on Transnational Crimes;
- m. Philippine National Police intelligence and investigative elements;
- n. Commission on Higher Education; and
- o. National Commission on Muslim Filipinos.

# Anti-Terrorism Council

- a. formulate and adopt plans, programs, and preventive and counter-measures against terrorists and terrorism in the country;
- b. coordinate all national efforts to suppress and eradicate terrorism in the country and mobilize the entire nation against terrorism;
- c. direct the speedy investigation and prosecution of all persons detained or accused for any crime defined and penalized under the Act;

# Anti-Terrorism Council

- d. monitor the progress of the investigation and prosecution of all persons accused and/or detained for any crime defined and penalized under the Act;
- e. establish and maintain comprehensive database information systems on terrorism, terrorist activities, and counterterrorism operations;
- f. enlist the assistance of, and file the appropriate action with, the AMLC to freeze and forfeit the funds, bank deposits, placements, trust accounts, assets and property of whatever kind and nature belonging to (i) a person suspected of or charged with alleged violation of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act, (ii) members of a judicially declared and outlawed terrorist organization or association as provided in Section 26 of the Act, (iii) designated persons defined under Section 3(e) of Republic Act No. 10168, (iv) an individual member of such designated persons, or (v) any individual, organization, association, or group of persons proscribed under Section 26 of the Act;
- g. grant monetary rewards and other incentives to informers who give vital information leading to the apprehension, arrest, detention, prosecution, and conviction of person or persons found guilty for violation of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act; provided that monetary reward shall only be granted to informants after the accused's demurrer to evidence has been denied or the prosecution has rested its case and no such demurrer has been filed;

# Anti-Terrorism Council

- h. establish and maintain coordination with and the cooperation and assistance of other states, jurisdictions, international entities, and organizations in preventing and combating international terrorism;
- i. take action on relevant resolutions issued by the UNSC acting under Chapter VII of the UN Charter, and, consistent with the national interest, take action on foreign requests to designate terrorist individuals, associations, organizations, or group of persons;
- j. take measures to prevent the acquisition and proliferation by terrorists of weapons of mass destruction;
- k. lead in the formulation and implementation of a national strategic plan to prevent and combat terrorism;
- l. request the Supreme Court to designate specific divisions of the Court of Appeals or Regional Trial Courts to handle all cases involving the crimes defined and penalized under the Act;
- m. require other government agencies, offices, entities, and all officers and employees and non-government organizations, private entities, and individuals to render assistance to the ATC in the performance of its mandate; and
- n. investigate *motu proprio* or upon complaint any report of abuse, malicious application, or improper implementation by any person of the provisions of the Act.

## **Rule 3.10. Purely executive functions of the ATC**

Nothing in the Act shall be interpreted to empower the ATC to exercise any judicial or quasi-judicial authority.

# Extra-territorial Application

(Sec. 49)(Rule 4.1)

- ⦿ Within Philippine territory
- ⦿ Outside of Philippine territory
  - Filipino citizen or national who commits any of the proscribed acts outside the territorial jurisdiction of the Philippines;
  - Individual persons who, although physically outside the territorial limits of the Philippines, commit any of the proscribed acts
    - inside the territorial limits of the Philippines;
    - on board Philippine ship or Philippine airship;
    - within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity;
    - against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and
    - commit the proscribed acts directly against the Philippine government.



## What is Terrorism

(sec. 4, ATA)(Rule 4.3)

### Elements

Any of the following intentional acts committed by any person who, **within or outside of the Philippines**, regardless of the stage of execution:

- a. cause death or serious bodily injury to any person, or endangers a person's life;
- b. cause extensive damage or destruction to a government or public facility, public place or private property;
- c. 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 explosion

### Purpose

- i. intimidate the general public or a segment thereof;
- ii. create an atmosphere or spread a message of fear;
- iii. provoke or influence by intimidation the government or any international organization;
- iv. seriously destabilize or destroy the fundamental political, economic, or social structures of the country; or
- v. create a public emergency or seriously undermine public safety.

# When an act is not terrorism (Sec. )(Rule 4.4)

- a. advocacy;
- b. protest;
- c. dissent;
- d. stoppage of work;
- e. industrial or mass action;
- f. creative, artistic, and cultural expressions; or
- g. 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.

# Threat to commit terrorism

(Sec.5)(Rule 4.5)

It shall be unlawful for any person to threaten to commit the crime of terrorism as defined in Section 4 of the Act.

There is threat to commit terrorism when an intent to commit terrorism as defined in Section 4 of the Act is communicated by any means to another person or entity under circumstances which indicate the credibility of the threat.

Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

# Planning, training, preparing, and facilitating the commission of terrorism (Sec. 6)(Rule 4.6)

It shall be unlawful for any person to:

- a. participate in the planning, training, preparation, and facilitation in the commission of terrorism;
- b. possess objects with knowledge or intent that these are to be used in the preparation for the commission of terrorism; or
- c. collect or make documents with knowledge or intent that these are to be used in the preparation for the commission of terrorism.

“Training” shall refer to the giving of instruction or teaching designed to impart a specific skill in relation to terrorism, as defined Section 4 of the Act, as opposed to general knowledge.

Any such person found guilty therefor shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

# Conspiracy to commit terrorism (Sec. 7)(Rule 4.7)

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

Prosecution for this crime shall not be a bar to prosecution for acts of terrorism defined and penalized under Section 4 of the Act.

Any such person found guilty therefor shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

# Conspiracy to commit terrorism (Sec. 8)(Rule 4.8)

There is proposal to commit terrorism when a person who has decided to commit terrorism as defined Section 4 of the Act proposes its execution to some other person or persons.

Prosecution for this crime shall not be a bar to prosecution for acts of terrorism defined and penalized under Section 4 of the Act.

Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

# Inciting to commit terrorism (Sec. 9)(Rule 4.9)

- **without taking any direct part in the commission of terrorism, he/she incites others to the execution of any of the above-enumerated acts of terrorism by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.**
- **imposable penalty is imprisonment of 12 years**
- ***And the incitement is done under the circumstances that show reasonable probability of success in inciting the commission of terrorism.***
- ***Reasonable probability of success is determined by the following:***
  - ***Context***
  - ***Speaker/actor***
  - ***Intent***
  - ***Content and form***
  - ***Extent of the speech or act***
  - ***Causation***

# Recruitment to and membership in a terrorist organization (Sec. 10)(Rule 4.10)

**any person who shall recruit another to participate in, join, commit or support:**

- **(i) any terrorism; or**
- **(ii) a terrorist individual; or**
- **(iii) any terrorist organization, association or group of persons,**
  - a. proscribed under Section 26 of the Act;**
  - b. designated by the UNSC as a terrorist organization; or**
  - c. organized for the purpose of engaging in terrorism.**
- **shall suffer the penalty of life imprisonment without the benefit of parole (RA 10592)**



# Foreign Terrorist (Sec. 11)

The following acts are unlawful and shall be punished with the penalty of life imprisonment without the benefit of parole:

For any person to travel or attempt to travel to a state other than his/her state of residence or nationality, for the purpose of perpetrating, planning, or preparing for, or participating in terrorism, or providing or receiving terrorist training;

For any person to organize or facilitate the travel of individuals who travel to a state other than their states of residence or nationality knowing that such travel is for the purpose of perpetrating, planning, training, or preparing for, or participating in terrorism or providing or receiving terrorist training; or

For any person residing abroad who comes to the Philippines to participate in perpetrating, planning, training, or preparing for, or participating in terrorism or provide support for or facilitate or receive terrorist training here or abroad. (sec.11)

# Foreign Terrorist

**Rule. 4.11. Organizing or facilitating travel for purposes related to the commission of terrorism**

It shall be unlawful for any person to organize or facilitate the travel of individuals to a state other than their state of residence or nationality knowing that such travel is for the purpose of:

- a. recruitment to a terrorist organization;
- b. perpetrating, planning, training, preparing for, or participating in terrorism; or
- c. providing or receiving terrorist training.

The act of facilitating travel for purposes of this Rule includes the act of financing such travel.

Any such person found guilty thereof shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The act of organizing or facilitating travel for the purposes stated in this Rule may be

# Foreign Terrorist

The act of organizing or facilitating travel for the purposes stated in this Rule may be committed through any of the following means:

- a. recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;
- b. publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;
- c. publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or
- d. performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

# Membership in Terrorist Organization

## **Rule 4.12. Membership in a terrorist organization**

It shall be unlawful for any person to voluntarily and knowingly join any organization, association, or group of persons knowing that such organization, association, or group of persons is:

- a. proscribed under Section 26 of the Act;
- b. designated by the UNSC as a terrorist organization; or
- c. organized for the purpose of engaging in terrorism as defined in Section 4 of the Act.

Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

# Providing Material Support to Terrorists and Humanitarian Exemptions<sub>(Sec.13)(Rule4.14)</sub>

- **“SEC. 13. Humanitarian Exemption. - Humanitarian activities undertaken by the International Committee of the Red Cross (ICRC), the Philippine Red Cross (PRC), and other state-recognized impartial humanitarian partners or organizations in conformity with the International Humanitarian Law (IHL), do not fall within the scope of Section 12 of this Act**

The ATC may adopt a mechanism involving relevant government agencies and/or private entities for the purpose of assisting the ATC and submitting recommendations on whether or not an organization is a state-recognized impartial humanitarian partner or organization, as referred to in this Rule.

Any such person found guilty therefor shall be liable as a principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto.

# Providing Material Support to Terrorists and Humanitarian Exemption (Sec.12)(Rule4.14)

- **“SEC. 12. Providing Material Support to Terrorists.** - Any person who provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts, shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto.”
- **“Material Support” is defined in Section 3, par. (e)** of the ATA such that the term:- shall refer to any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation.”

## **Rule 4.14. Providing material support to terrorists**

It shall be unlawful for any person to provide material support to any terrorist individual or terrorist organization, association, or group of persons committing terrorism as defined under Section 4 of the Act, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts.

“Material support” shall refer to any property, whether tangible or intangible, or service, including:

- a. currency or monetary instruments or financial securities;
- b. financial services;
- c. lodging;
- d. training;
- e. expert advice or assistance, including information related to movement and activities of government forces or to the situation in the surrounding areas that are possible targets and basis for terroristic attack;
- f. safe houses;
- g. false documentation or identification;
- h. communications equipment;
- i. facilities;
- j. weapons;
- k. lethal substances;
- l. explosives;
- m. personnel (one or more individuals who may be or include oneself); and
- n. transportation.

Humanitarian activities undertaken by the International Committee of the Red Cross, the Philippine Red Cross, and other state-recognized impartial humanitarian partners or organizations in conformity with International Humanitarian Law, as determined by the ATC, do not fall within the scope of the crime of providing material support to terrorists penalized under Section 12 of the Act.

# Liability as Accessory (Sec. 14)(Rule4.15)

- Sec. 14. Any person who, having knowledge of the commission of any of the crimes defined and penalized under Section 4 of this Act, without having participated therein, takes part subsequent to its commission in any of the following manner:
  - (a) by profiting himself or assisting the offender to profit by the effects of the crime;
  - (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; or
  - (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall be liable as an accessory and shall suffer the penalty of imprisonment of twelve (12) years. No person, regardless of relationship or affinity, shall be exempt from liability under this section.

# Permissible Surveillance of suspected persons, interception, and recording of communications ( Sec. 16; Rule 5)

## **LEA/MP ex parte application before CA**

- Permission to wiretap-intercept, record or collect, private communications, data, and information
- Order to compel TSPs and ISPs (Rule 5.4)
- Exception: Lawyer-client privilege; Doctor-patient; journalist and their source; private business correspondence



## **Determination of Probable Cause by the CA- ex parte hearing and examination of witnesses under oath**

- Act/s of terrorism
- Evidence to be obtained will convict or prevent the commission of the crime
- Probable cause based on personal knowledge of facts and evidence



## **Issuance of Order by CA**

- Content- identity of suspect, medium or system intercepted and location; identify of the LEA/MP; offense sought to be prevented; duration
- Max of 60 days
- May be extended to non-extendible period of 30 days



## **File Complaint with the Prosecutor**

- Within 30 days from the expiration of the Court Authorization
- Otherwise:
  - LEA/MP should Inform the court of the case filed
  - If no case filed, mandatory notice and reason for non-filing by LEA/MP



# Proscription of Terrorist Groups

Court of Appeals – hear and decide application for proscription to declare any group of persons, organization or association as a terrorist and outlawed group of persons, organization or association.



The **verified application is filed by the Department of Justice (DOJ)**, with authorization from the ATC and recommendation from the National Intelligence Coordinating Agency (NICA).



**Preliminary order of proscription** is issued, within 72 hours from the filing of the application, when the CA **makes a finding of probable cause**, that the issuance of an order of proscription is necessary to prevent the commission of terrorism.

# Proscription of Terrorist Groups

CA to conduct hearing within 6 months from the time the application is filed to determine whether:

- The preliminary order of proscription should be made permanent;
- A permanent order of proscription should be issued in case no preliminary order was issued; or
- A preliminary order of proscription should be lifted.

# Proscription of Terrorist Groups

The **applicant has the burden of proving that the respondent is a terrorist** and an outlawed organization or association before the CA issues an order of proscription, whether preliminary or permanent.

The permanent order of proscription, if granted, **shall be posted in a newspaper of general circulation.**

It shall be **valid for a period of 3 years** after which, a review of such order shall be made and if circumstances warrant, the same shall be lifted.

# Detention without judicial warrant of arrest

The ATC is empowered to authorize any law enforcement agent or military personnel to arrest any person **SUSPECTED** of committing any of the proscribed acts. The person arrested may be detained, without any warrant, for a period of **14 calendar days**, subject to a **10-day extension** if it is established that:

- (a) further detention of the person/s is necessary to preserve evidence related to the terrorism or complete the investigation;
- (b) further detention of the person/s is necessary to prevent the commission of another terrorism; and
- (c) the investigation is being conducted properly and without delay.

Maraming  
salamat



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