



# **RA 11479: IMPACTS ON IP RIGHTS**

A BRIEFER

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# RA 11479: IMPACTS ON INDIGENOUS PEOPLES' RIGHTS

On 30 May 2020, the House of Representatives Committee on Public Order and Safety and the Committee on National Defense and Security submitted its recommendation of the Anti-Terror Bill (House Bill 6875) for approval without amendment. On 1 June 2020, President Rodrigo Duterte certified the Bill as urgent. By 3 June 2020, despite opposition from various groups, the House of Representatives approved on third and final reading House Bill No 6875. It passed as the Anti-Terrorism Act.

The vagueness and overbreadth of the law, far from being a protective legislation, seeks to operationally bury dissent under the operational pretext of terrorism. It stands to become a tool to undermine constitutionally protected rights.

This brief offers a presentation of the salient provisions of the law, and its implications.

## **A. The crime of terrorism is vaguely defined under Sections 4 and 55**

Section 4(a)(b)(c)3 fails to clearly set the limits of the punishable conduct. What is clear from the textually ambiguous terms of the provisions themselves is that any act that could be feebly linked to the intention to commit bodily harm, destruction or extensive interference, is sufficient to make it punishable under this provision. Section 4(d) also suffers from the same fatal ambiguity inasmuch as it fails to specify what a weapon is. It is not clear under Section 4(d) whether pointed and sharp household items, such as knives, and bolos, which are also considered farming and livelihood implements insofar as indigenous cultural communities (ICC's) are concerned, and which are essential to their way of living, can be considered a weapon in this particular context. Effectively, RA 11479 merely becomes an overpowering arsenal to conduct arrests, while leaving people to guess about the meaning and implications of its terms.

The fatal ambiguity becomes more apparent, when interpreted in the context of acts intended to cause extensive interference, and the constitutionally protected conduct that, by its nature, is inflammatory and can cause extensive interference. Although Section 4 of RA 11479 expressly excludes from its application the exercise of civil and political rights, its determination remains solely with law enforcement officials, which is based solely on the assessment of the arresting officer. Although this provision exempts from its coverage advocacy, protest, dissent, stoppage of work, industrial 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 the create a serious risk to public safety, that is insufficient to cure the law's defect. Translated into its practical effects insofar as ICC's are concerned, RA 11479 will only lend credence to red-tagging already being conducted by the government in the guise of promoting national security and allow state security forces wider latitude in the determination of which acts fall under the definition of terrorism and who are terrorists, with no apparent standards to guide them.

Notably, Section 55 suffers from the same folly because of its dependence on Section 4 to qualify the supposed threat to be committed. Specifically, although the word threaten means "an expression of intention to harm," this provision does not contain any objective threshold that would guide officers in conducting arrests. Under its present wording, does a threat to conduct a mass mobilization during a State of the Nation Address to bring into public attention issues concerning indigenous peoples?

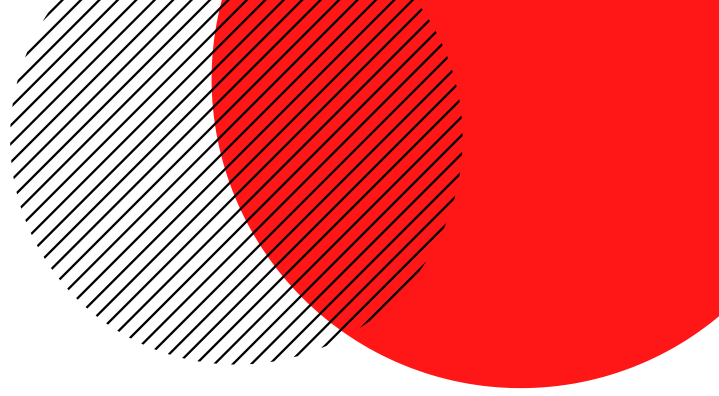
### **B. Section 6 penalizes the mere possession of an object, which has the slightest allusion to terrorism, or the helping of a terrorist individual.**

Section 6 seeks to punish the following conduct: (1) possessing objects, (2) collecting documents, or (3) making documents, if this conduct is connected with the preparation for the commission of terrorism.

The danger lies in the provision's indisputable reliance on the phrase connected with the preparation of the commission of terrorism making the punishable conduct undefined and dangerously uncertain. How is an ordinary citizen supposed to ascertain if a particular object is connected with the preparation of the commission of terrorism? Could the possession of, for instance, urea fertilizer, which is also used for the preparation of explosives, make one liable under this provision? How about a liter of flammable kerosene used as fuel for the ubiquitous Petromax lamps? How about the possession of bows and arrows, bolos, or machetes, which are farming implements, but could be used to injure another person? Or the pervasive inflammatory placard during the proper exercise of civil and political rights?

The standards as defined under this provision again leave the law enforcement agencies the unfettered latitude to conduct arbitrary arrest, inasmuch as the wording relies on the stretched allusion to a conduct that has not even been committed.





### **C. Section 12's vague and overbroad terms punishes humanitarian activities which ICC's need.**

Section 12 penalizes the mere conduct of "providing 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 group is committing or planning to commit the acts punished under Section 4. The principal defect, however, lies in the wide net cast by the words property, tangible or intangible, or service, x x x communications equipment, and transportation.

Accordingly, the innocuous conduct of a person who gives food to a random individual, or allows him to hitch a ride, and that individual later turns out to have been previously "branded" as a terrorist—not even convicted of terrorism under a court of law—can be prosecuted for providing material support. Worse, even normal conduct, such as everyday commercial transactions, such as providing them electricity service, food deliveries, or selling them electronic equipment, would make the service providers culpable under this provision.

Worse, the vague definitions, covers actions and advocacies, which are vulnerable to being classified as acts of terrorism under the definition provided in RA 11479. Humanitarian activities and efforts in indigenous communities would suffer greatly from the implementation of RA 11479 which enables and encourages red-tagging. Such ambiguous definitions would have far reaching impacts insofar as the ICC's and other indigenous peoples groups are concerned. As many ICC's are geographically isolated, without adequate access to basic social services, they must rely heavily on civil society support. The RA11479's overbroad and vague

terms pathologizes this humanitarian conduct and curtails local civil society, including church groups, from tending to the needs of the communities for fear of being, as they have been, portrayed as NPA (or insurgent) affiliates.

Worse, Section 13 creates a regulatory mechanism for humanitarian organizations; the phrase "state-recognized impartial" may as well mean those groups that have the government's stamp of approval would be the only ones permitted to engage in humanitarian work. Besides the equal protection clause implications, this devious mechanism fails to demarcate the conduct of permissible humanitarian work from impermissible humanitarian work, apart from the rubber stamp of state approval, thereby effectively granting law-enforcement offices unfettered discretion to conduct arrests.

### **D. Section 9 infringes on the freedom of expression.**

Section 9 mentions of incitement to commit terrorism, that is, "to encourage or stir up (violent or unlawful behavior)," through conduct, which by their nature are covered by the freedom of expression clause. These are speeches, proclamations, writings, emblems, banners or other representations tending to the same end. The textual provision, however, fails to require that the conduct would likely produce the imminent lawless action. Without this vital narrowing terms, Section 9 becomes a weapon of stifling dissent inasmuch as it would practically cover all inflammatory conduct, no matter how far divorced the speech is from actually inciting imminent harm.

The overbreadth implications become more acute in the context of the phrase “to seriously destabilize or destroy the fundamental political, economic, or social structures of the country” inasmuch as not all destabilizations are necessarily a means for evil or harm altogether. We live in an imperfect world where one person’s notion of fundamental social structure may very well be another’s harbinger of injustice. Any movement for social justice necessarily involves the uprooting of oppressive status quo social structures. In the United States alone, slavery, segregation, the absence of female suffrage were all once part of its fundamental political, economic, and social structures, before radical movements for social justice flipped the status quo – sometimes even resulting in amendments to the United States’ Constitution. In the Philippines, dictatorship was a fundamental political, economic, and social structure for decades until a movement changed our country’s history forever, resulting in an entirely new Constitution altogether. Had these movements occurred under the crushing grip of RA 11479, the individuals and groups that fought for the greater good would have been easily labeled as terrorists and imprisoned by those in power. Perhaps these movements never would have even started precisely because of the crushing and silencing fear that speaking out against the status quo would be rewarded with being labeled as terrorists and thereafter sent to prison. Even the persistent talks of establishing a “revolutionary government” we often hear from no less than the President himself and from many of his supporters would be classified as an incitement of terrorist act under RA 11479, as it is a threat to seriously destabilize or destroy the fundamental political structure of the country.

The law’s provisions has the potential to transform the Philippines into a policing state

where terrorism would be ascribed to mass gatherings where the people usually voice their dissent to governmental action and cry for substantial changes in governance; it would render it easy, and even convenient to simply say that such movements have been instigated with the terrorist intentions as stated in RA 11479, or that these actions intimidate the general public. If these were easily declared as crimes under RA 11479, the people would be precluded from expressing their criticism of the government, which they have all the right to do. Repressing free speech in the guise of counter-terrorism measures should not be allowed.

This has pernicious significance insofar as the ICC’s are concerned who are often forgotten insofar as protection of the law. Development aggression often leaves the ICC’s no other choice but to join mass gatherings, and rallies because the government often overlooks to protect their needs. The broad definitions of the crimes in RA 11479 inevitably render these constitutionally protected and promoted acts as terrorist acts. At no instance should the standards of penal conduct be left to the whims of executive discretion.

The Anti-Terrorism Act takes off from the dominant and prevailing global counter-terrorism agenda post 9/11. As such, it fails to take account of the complexity of the current conflicts in the Philippines, which is rooted in the historical, social, economic and political realities of peoples. These should nuance and inform the terrorism and legal discourse in the Philippines and elsewhere.

With the Anti-Terrorism Act, indigenous peoples whose participation in democratic processes ought to be secure when they defend their land and rights or manifest their dissent to policies that further marginalize them, are further placed in conditions of precarity. The labels “terrorist” and “insurgents” have become the catch-all pretext to legitimize attacks on them. Far from a law that protects, the Anti-Terror Law stands to legitimize structural violence already perpetuated against them.

The State must embrace a people-centered human security development framework in crafting and implementing its various policies, and assure that the resources of the State are channeled towards securing peoples' welfare and development.

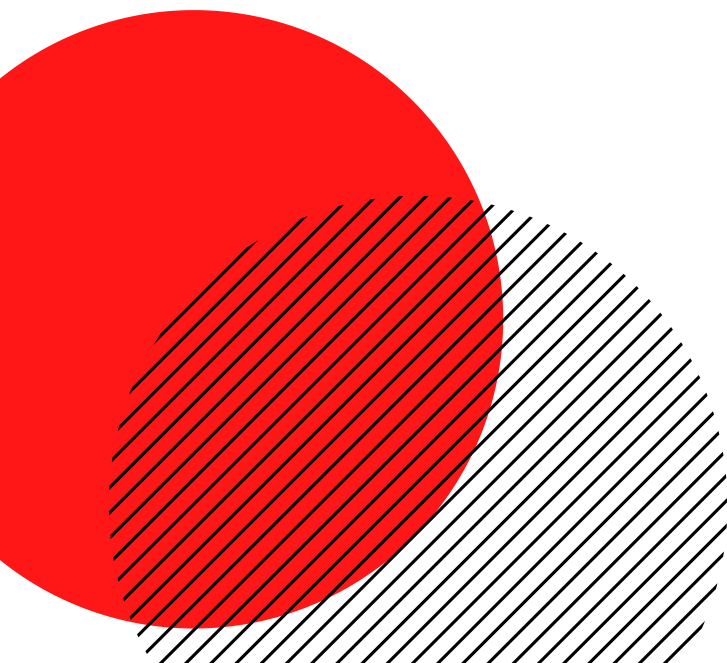
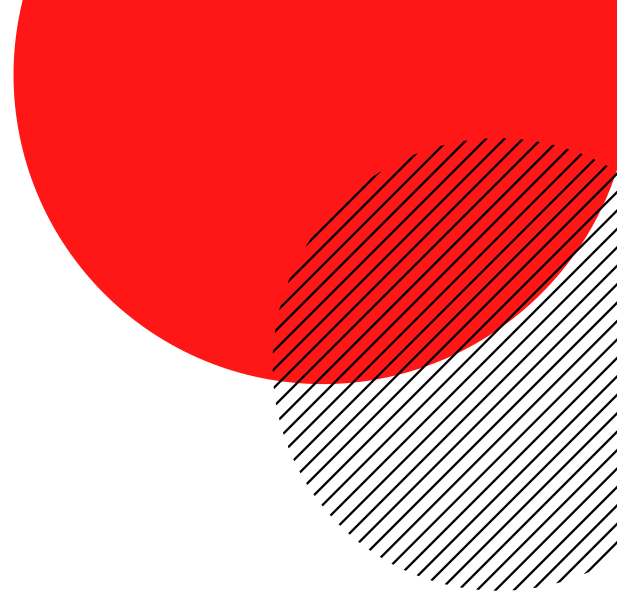




Photo by Aurora Malaya