G.R. No. 252578 (*Atty. Howard M. Calleja, et al. v. Executive Secretary, et al.*); G.R. No. 252579 (*Rep. Edcel C. Lagman v. Salvador C. Medialdea, et al.*); G.R. No. 252580 (*Melencio S. Sta. Maria, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252585 (*Isagani T. Zarate, et al. v. President Rodrigo Duterte, et al.*); G.R. No. 252613 (*Rudolf Philip B. Jurado v. The Anti-Terrorism Council, et al.*); G.R. No. 252623 (*CTUHR, et al. v. Hon. Rodrigo R. Duterte, et al.*); G.R. No. 252624 (*Christian S. Monsod, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252646 (*SANLAKAS v. Rodrigo R. Duterte, et al.*); G.R. No. 252702 (*Federation of Free Workers, et al. v. Office of the President, et al.*); G.R. No. 252726 (*Jose J. Ferrer, Jr. v. Salvador C. Medialdea, et al.*); G.R. No. 252733 (*Bagong Alyansang Makabayan, et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 252736 (*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252741 (*Ma. Ceres P. Doyo, et al. v. Salvador Medialdea, et al.*); G.R. No. 252747 (*National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252755 (*Kabataang Tagapagtanggol ng Karapatan, et al. v. Executive Secretary*); G.R. No. 252759 (*Algamar A. Latiph, et al. v. Senate, et al.*); G.R. No. 252765 (*Alternative Law Groups, Inc. v. Salvador C. Medialdea*); G.R. No. 252767 (*Bishop Broderick S. Pabillo, et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 252768 (*GABRIELA, et al. v. Rodrigo Duterte, et al.*); UDK 16663 (*Lawrence A. Yerbo v. Senate President, et al.*); G.R. No. 252802 (*Henry Abendan, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252809 (*Concerned Online Citizens, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252903 (*Concerned Lawyers for Civil Liberties, et al. v. Rodrigo Duterte, et al.*); G.R. No. 252904 (*Beverly Longid, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252905 (*Center for International Law, et al. v. Senate of the Philippines, et al.*); G.R. No. 252916 (*Main T. Mohammad v. Salvador C. Medialdea*); G.R. No. 252921 (*Brgy. Maglaking San Carlos City, Pangasinan Sangguniang Kabataan Chairperson Lemuel Gio Fernandez Cayabyab v. Rodrigo R. Duterte*); G.R. No. 252984 (*Association of Major Religious Superiors in the Phils., et al. v. Exec. Secretary Salvador C. Medialdea, et al.*); G.R. No. 253018 (*UP System Faculty Regent Dr. Ramon Guillermo, et al. v. Pres. Rodrigo R. Duterte, et al.*); G.R. No. 253100 (*Philippine Bar Association v. Executive Secretary, et al.*); G.R. No. 253118 (*Balay Rehabilitation Center, Inc., et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 253124 (*Integrated Bar of the Phils., et al. v. Senate of the Philippines, et al.*); G.R. No. 253242 (*Coordinating Council for People's Development and Governance Inc., et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 253252 (*Philippine Misereor Partnership, Inc., et al. v. Salvador C. Medialdea, et al.*); G.R. No. 253254 (*Pagkakaisa ng Kababaihan para sa Kalayaan, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 253420 (*Haroun Alrashid Alonto Lucman, Jr., et al. v. Salvador C. Medialdea, et al.*); and G.R. No. 254191 [Formerly UDK 16714] (*Anak Mindanao Party-List Representative Amihilda Sangcopan, et al. v. Salvador C. Medialdea, et al.*).

Promulgated:

December 7, 2021

x----------x

SEPARATE CONCURRING AND DISSENTING OPINION

LOPEZ, J., *J.*:

> *"Our responses to terrorism, as well as our efforts to thwart and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms, and the rule of law are essential tools in the effort to combat terrorism—not privileges to be sacrificed at the time of tension."* - Kofi Anan, Former United Nations Secretary-General, special meeting of the United Nations Security Council, March 6, 2003.

The Court, as the sworn protector of justice and the rule of law, is once again at a crossroads. As with many cases before it, the crucial questions for consideration shall pave not only the legal and political landscape, but also the societal conditions and the preservation of fundamental freedoms for generations to come.

The determination of whether Republic Act No. 11479, otherwise known as the *"Anti-Terror Act of 2020"* (*R.A. No. 11479*), passes constitutional muster is by no means an easy task in light of several factors — the limited power of this Court to act on certain issues raised in the 37 petitions, national interests that intersect with that of the international community, the urgency to enact innovative counter-terrorist measures in response to the evolving methods employed by terrorists, and more importantly, the protection of human rights and liberties. With due regard to the far-reaching implications of these cases, this Court is all the more vigilant to ensure that despite the compelling need to curtail terrorist attacks, such measures shall always yield to the rights and ideals that our Constitution has sworn to protect.

Given the stakes involved, this Court is not one to shirk from its responsibility to resolve issues on the constitutionality of statutes, ever mindful of proceeding with caution and forbearance. As emphasized in

Estrada v. Sandiganbayan,[1] "if there is reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority."[2]

Considering the foregoing, I concur with the ponencia's disquisitions, particularly, in giving due course to the joint petitions and in declaring the phrase in the proviso of Section 4 that reads: "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety" as **UNCONSTITUTIONAL**. I, however, vote to declare the first and third modes of designation under Section 25 as **CONSTITUTIONAL**.

Upon a circumspect study of the parties' respective pleadings, it is my view that **ALL** of the modes of designation under Section 25 are NOT constitutionally infirm as will be discussed hereunder. More, while I concede with the majority that the Anti-Terrorism Council (*ATC*) Order under Section 29 is not akin to a warrant of arrest as contemplated by the Rules of Court, the provision remains constitutionally offensive with respect to the intended effects of the ATC Order and the extended detention period provided therein.

The Facial Analysis of R.A. No. 11479 must be confined to the four corners of the statute, and should not consider the Implementing Rules and Regulations.

In giving due course to these petitions, the ponencia permitted a limited facial challenge only insofar as particular provisions of R.A. No. 11479 raised chilling effects on free expression and its cognate rights.[3] I agree that a facial challenge of R.A. No. 11479 should indeed be limited to provisions affecting freedom of expression and cognate rights. Yet, in testing the constitutionality of certain provisions, specifically Sections 4,[4] 5,[5] and 8, in relation to 3(g),[6]

---

1 421 Phil. 290 (2001).
2 *Id.* at 342.
3 See ponencia, p. 79.
4 *Id.* at 109.
5 *Id.* at 116-117.
6 *Id.* at 121-122.

and 9,[7] the ponencia also relied on the Implementing Rules and Regulation (*IRR*) to fill certain statutory gaps, eventually sustaining the validity of these provisions.

I respectfully submit that the Court could do away with such analysis. Disregarding the IRR and limiting the analysis to the provisions of R.A. No. 11479 could have altogether led to different conclusions regarding the vagueness or overbreadth, and ultimately the constitutionality of such provisions.

Former Chief Justice Teresita Leonardo-De Castro expressed it best in her concurring opinion in *Imbong v. Ochoa,*[8] asserting that a facial analysis must be limited to the four corners of a statute, *viz.:*

> I wish to add that, in general, a facial challenge is a constitutional challenge asserting that a statute is invalid on its face as written and authoritatively construed, when measured against the applicable constitutional doctrine, rather than against the facts and circumstances of a particular case. **The inquiry uses the lens of relevant constitutional text and principle and focuses on what is within the four corners of the statute, that is, on how its provisions are worded. The constitutional violation is visible on the face of the statute. Thus, a facial challenge is to constitutional law what**

---

7 *Id.* at 122-123.

8 732 Phil. 1, 152-153 (2014). Note that the majority opinion in this case decreed that IRRs cannot "redefine" statutes, although the issue was whether certain IRR insertions were *ultra vires* relative to the statutory text:

> At this juncture, the Court agrees with ALFI that the authors of the RH-IRR gravely abused their office when they redefined the meaning of abortifacient. The RH Law defines "abortifacient" as follows:
>
> x x x x
>
> The above-mentioned section of the RH-IRR allows "contraceptives" and recognizes as "abortifacient" only those that primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb.
>
> This cannot be done.
>
> In this regard, the observations of Justice Brion and Justice Del Castillo are well taken. As they pointed out, with the insertion of the word "primarily," Section 3.01(a) and G) of the RH-IRR must be struck down for being ultra vires.
>
> Evidently, with the addition of the word "primarily," in Section 3.01(a) and G) of the RH-IRR is indeed ultra vires. It contravenes Section 4(a) of the RH Law and should, therefore, be declared invalid. There is danger that the insertion of the qualifier "primarily" will pave the way for the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. With such qualification in the RH-IRR, it appears to insinuate that a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

9

***res ipsa loquitur* is to facts — in a facial challenge, *lex ipsa loquitur*: the law speaks for itself.**[9]

Such should be the case if the Court is to maintain fair play between the litigants, while upholding the efficacy of judicial review. To begin with, a facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[10] Relative to the overbreadth doctrine, a "statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants."[11]

As such, using the IRR to supplement the analysis of R.A. No. 11479 restricts the Court's power of judicial review to an executive circumscription of statutory language. More concretely, what constitutional vices the Court might have otherwise attributed to patently defective statutory language would be ruled out, simply because the Executive made the assurance that the law would operate within constitutional bounds. This would be akin to undertaking an as-applied challenge when what petitioners bring is a facial challenge: "a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[12]

For instance, the ponencia points out that, although not found in Section 5 of R.A. No. 11479, Rule 4.5 of the IRR adopts a "credibility" standard as an added element to threats to commit to terrorism,[13] so that threats made in jest or as a form of satire would be protected.

But therein lies the danger. Considering the expediency with which they may be adopted, amended, or supplemented, IRRs provide no lasting assurance. At least compared to legislative enactments, which, with more careful and participative deliberations, are ascribed more permanence, IRR-

---

9 *Id.* at 221. (Emphasis and underscoring supplied; citations omitted)

10 *Madrilejos v. Gatdula*, G.R. No. 184389, September 24, 2019.

11 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 490 (2010).

12 Separate Opinion of Justice Leonen, *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1165 (2017).

13 Ponencia, p. 117.

defined implementation standards can just as easily change, altering the levels of protection granted to the people, eluding the Court's exercise of judicial review, and reviving issues which should already be put to rest if the Court were to analyze only the statute. This also sets a dangerous precedent for future constitutional litigation wherein pending petitions would be mooted simply because the Executive had superveningly adopted IRRs to save the ambiguous statutes.

From a separation of powers perspective, allowing IRRs to save statutes from overbreadth or vagueness in facial challenges would risk giving the Executive the license to create, modify, supplant, or even enhance substantive rights, when all it should do is faithfully execute the law. R.A. No. 11479 is already a "complete law"[14] and a penal statute at that, enactments of which are exclusively lodged in Congress.[15]

More crucially, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all.[16] Supposing that Sections 4, 5, 8 in relation to 3(g), and 9 were null and void for vagueness or overbreadth on the face only of R.A. No. 11479, then there would be no business reviving dead letters by executive fiat.

Finally, as noted by former Chief Justice Leonardo-De Castro, *lex ipsa loquitor*. Using the IRR to rescue RA 11479 from unconstitutionality, or at least clarify or delimit its application, seems to be a tacit admission as to the vagueness or overbreadth of the subject provisions. Instead, in a limited facial challenge hinged on vagueness or overbreadth, these provisions should stand or fall by their own merit.

The Phrase in the Proviso of Section 4 Must Be Struck Down as Unconstitutional.

Upon a careful review of the law, I find that the portion in the proviso in Section 4 of R.A. No. 11479 was appropriately struck down for being

---

14 *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 144 (2005).
15 *Baylosis v. Chavez, Jr.*, 279 Phil. 448 (1991).
16 *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508, 625 (2012).

impermissibly vague and sweeping into protected freedoms, thereby failing the strict scrutiny test.

Using the principles of statutory construction, the phrasing of the proviso convinces one into interpreting it as an exception clause, as it carves out certain acts from Section 4 by virtue of being constitutionally protected, *i.e.*, advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. Dangerously however, what follows is a qualifying phrase, termed by the ponencia as the *Not Intended Clause,* through which protection is only duly granted when these activities are performed "**without** the intention of causing death or serious physical harm to a person, endangering a person's life, or creating a serious risk to public safety." Conversely, when performed **with** such intentions, the exercise of these freedoms would be penalized under Section 4. In reality, the net effect of the proviso is, instead of extending a protective mantle, to expand the punishable acts under Section 4.

As aptly recognized by the ponencia, and as drawn from the interpellations of the Office of the Solicitor General (*OSG*), the proviso reverses the constitutionally-enshrined presumption of innocence,[17] and forces would-be rallyists, protesters, and advocates to arm themselves to the teeth with legal defenses even before taking to the streets. The reality is that tensions and passions run high in the parliament of the streets, and the assertiveness of legitimate dissent meets law enforcers' maximum tolerance head on. Still, the freedoms of expression and assembly guarantee that people should be able to air out their grievances with neither mental nor emotional reservation, much less fear of apprehension.

It bears stressing that the formulation of the proviso fails to adhere to the standard laid down in *Brandenburg v. Ohio*,[18] in that advocacy is outlawed only when "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[19] Evidently, the proviso lacks the **imminence** and **likelihood** aspects of *Brandenburg*, already penalizing the exercise of constitutional freedoms when done with a certain intent.

---

17 Constitution, Art. III, Sec. 14(2).
18 395 U.S. 444 (1969).
19 *Id.* at 447.

I also hasten to point out that R.A. No. 11479's IRR has unduly expanded the terrorist acts punishable under Section 4. Subparagraph (f) of Rule 4.4, captioned as *Acts Not Considered Terrorism*, includes "creative, artistic, and cultural expressions" in the enumeration. Again, while at first blush, it purports to exempt these expressions from the coverage of Section 4, when conversely conjoined with the *Not Intended Clause*, *i.e.*, done with a particular intent, the IRR actually adds these forms of expression to the list of penalized acts.

Granted, the inclusion of "creative, artistic, and cultural expressions" in Rule 4.4(f) of the IRR appears superfluous considering that, pursuant to the principle of *ejusdem generis*,[20] this item would fall under "other similar exercises of civil and political rights" in Section 4 of R.A. No. 11479. Still, the Executive has no authority to make such insertion. The settled rule is that "regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer[.]"[21] More on point is the following pronouncement from *Valenzuela v. People*[22] on the legislature's exclusive domain to define punishable acts, to wit:

> *The foremost predicate that guides us as we explore the matter is that it lies in the province of the legislature, through statute, to define what constitutes a particular crime in this jurisdiction. It is the legislature, as representatives of the sovereign people, which determines which acts or combination of acts are criminal in nature.* Judicial interpretation of penal laws should be aligned with what was the evident legislative intent, as expressed primarily in the language of the law as it defines the crime. x x x[23]

However, these consolidated petitions only assail R.A. No. 11479 and contain no prayers asking that certain portions of the IRR be struck down as *ultra vires*. To do so would be tantamount to judicial overreach. Still, the Constitution has entrusted to the Court "the power to be the final arbiter of all questions of law and the rule of law demands that as disputes ought to reach an end in the interest of societal peace, submission should follow this Court's

---

20 *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, 690 Phil. 321, 333 (2012): "The basic statutory construction principle of *ejusdem generis states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include — or to be restricted to — things akin to or resembling, or of the same kind or class as, those specifically mentioned.*" (Italics in the original)

21 *Purisima v. Lazatin*, 801 Phil. 395, 425 (2016).

22 552 Phil. 381 (2007)

23 *Id.* at 414. (Italics supplied)

final fiat."[24] Thus, the IRR cannot go against the Court's pronouncement on the provisions of the law, which it seeks to implement.

The Modes of Designation Under Section 25 Must Be Declared Constitutional.

There is no argument that the adoption of both designation and even of proscription under RA 11479 was done pursuant to the State's legitimate exercise of police power. As pointed out by the *ponencia*:

> x x x it cannot be denied that the institution of designation and proscription in the ATA is an exercise of police power. Designation and proscription, as preventive counterterrorism measures, are made necessary because of the pernicious and widespread effects of even one single terrorist act, which can happen anytime, anywhere. As the Court has discussed before in as many words, terrorism is never just an ordinary crime and a terrorist is never just an ordinary criminal — terrorism, very simply, is *sui generis,* and its extraordinary nature demands extraordinary measures.[25]

Characterized as the most essential, insistent, and the least limitable of powers,[26] police power is the inherent and plenary power lodged in the legislature, "enabling it to prohibit all that is hurtful to the comfort, safety, and welfare of society."[27] In the exercise of such power, the State is emboldened to interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare, as long as such interference is both reasonable and not arbitrary.[28] This particular power is a growing and expanding power, as it was developed to be elastic and responsive to various conditions.[29] Further, as civilization develops and intricate issues arise within the society, such power may be extended.

Regardless of this expansive power, this Court is not oblivious to the limits of police power. This power stops short when it tramples upon and

---

24 *Guieb v. Civil Service Commission*, 299 Phil. 829, 838-839 (1994).

25 *Supra* note 3 at 154.

26 *Ichong v. Hernandez*, 101 Phil. 1155, 1163 (1957).

27 *Ermita-Malate Hotel and Motel Operators Association, Inc. v. Mayor of Manila*, 127 Phil. 306, 316 (1967).

28 *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, 722 Phil. 538, 576. (2013).

29 *Philippine Long Distance Telephone Company v. City of Davao*, 122 Phil. 478, 489 (1965).

unduly intrudes in the private lives of the citizens. After all, "the power to prescribe such regulations to promote the health, morals, education, good order or safety, and general welfare of the people flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law."[30] As early as 1924, in *People v. Pomar,*[31] it has been established that police power may not be exercised in contravention to the Constitution as the supreme law of the land; verily, neither public sentiment nor a sincere desire to suppress any societal evil can justify the promulgation of a law that runs in opposition to the fundamental law of the people. Citing the US case of *Mugler v. Kansas,*[32] it expounded, thus:

> Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. **But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law - the constitution.**

Noticeably, the first mode of designation, which is the automatic adoption of the United Nations Security Council Consolidated List, pursuant to the United Nations Security Council (*UNSC*) Resolution No. 1373, was constitutionally upheld by the Court.

To be sure, the act of designation as a method to suppress terrorism is nowhere near novel and has long been constitutionally upheld. In Republic Act No. 10168, (*R.A. No. 10168*), otherwise known as the *Terrorism Financing Prevention and Suppression Act of 2012,* Section 3(e) provides for the definition of who are designated persons and entities, thus:

> Section 3. *Definition of Terms.* — As used in this Act:
>
> x x x x

---

30 *Metro Manila Development Authority v. Viron Transportation Co., Inc.,* 557 Phil. 121, 140 (2007).

31 46 Phil. 440, 445; 455 (1924) (Emphasis supplied).

32 123 U.S. 623 (1887).

> (e) Designated persons refers to:
>
> (1) any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a **terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction**;
>
> (2) any organization, association, or group of persons proscribed pursuant to Section 17 of the Human Security Act of 2007; or
>
> (3) any person, organization, association, or group of persons whose funds or property, based on probable cause are subject to seizure and sequestration under Section 39 of the Human Security Act of 2007.[33]

Readily perceptible, the act of designating terrorist organizations or groups pursuant to the UN Security Council resolutions has long been part of the legal landscape since 2012. As surveyed by the ponencia:

> At the outset, the Court notes that the challenged measures are not entirely novel and even, hardly recent. The designation, proscription, listing, blacklisting, outlawing, banning, exclusion, or sanction of individuals or organizations, and such other equivalent terminologies that broadly refer to the set or series of legal instruments or powers which permit a government agent to prohibit the presence of, or support for, an identified terrorist or terrorist organization within its jurisdiction have already existed before the enactment of the ATA, and have been adopted and operationalized in many other countries.[34]

In upholding the first mode of designation, the ponencia merely recognized what has been systematized all along. As emphasized, this mode "merely confirms a finding already made at the level of the UNSC, and affirms the applicability of sanctions existing in present laws."[35] Unlike the second and third modes of designation, the power of the ATC is not expanded to allow it to exercise any degree of discretion in accepting or denying the listing. The ponencia also adds that neither does the ATC "wield any power nor authority to determine the corresponding rights and obligations of the designee."[36]

---

33 Emphasis supplied.
34 Ponencia, p. 146 (Citations omitted)
35 *Id.* at 161.
36 *Id.*

Of equal significance, the adoption of the UNSC Listing is in compliance to the country's international obligations. Pursuant to the express wording of Section 25, the Philippines, as a UN member-state, is obligated to take part in the collective efforts to deter terrorists from achieving their objectives. Hence, it is enjoined to adhere to UNSC Resolution No. 1373, which in simple terms, embodies a broad mandate on counter-terrorism in recognizing the threat it presents to international peace and security, thereby necessitating international cooperation through the use of all legitimate means. Particularly, the Philippines is one with all UN member-states in its obligations to:

> (a) Prevent and suppress the financing of terrorist acts;
>
> (b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories 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) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from 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, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons x x x.[37]

Under these terms, it must be recalled that one of the primary consequences of designation is that "the assets of such designated individual groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (*AMLC*) to freeze, pursuant to Section 11 of R.A. No. 10168."[38] Unmistakably, this conforms to the State obligations under paragraph 1 of UNSC Resolution No. 1373, specifically (b) thereof, requiring States to freeze, *without delay,* funds

---

37 United Nations Security Council Resolution No. 1373 (2001), par. 1.

38 R.A. No. 11479, Sec. 25.

and other financial assets or economic resources of persons involved or who facilitate any act of terrorism.

Aside from the directives enshrined in UNSC Resolution No. 1373, the ponencia supplies an exhaustive list of sources from which we draw our international obligations against terrorism, such as the General Assembly Resolution No. 2625 (XXV), or the *"Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations,"* UNSC Resolution No. 1189 (1998), and the UN Charter itself, which affirmed the following obligations:

> Article 48
>
> 1. **The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them**, as the Security Council may determine.
>
> 2. Such decisions **shall be carried out by the Members of the United Nations directly** and through their action in the appropriate international agencies of which they are members.[39]

Now, on the second mode of designation.

With due respect, I digress from the majority opinion. The second mode allows the ATC to adopt requests for designations by other jurisdictions or supranational jurisdictions, "upon its determination that the proposed designee meets the criteria for designation under UNSC Resolution No. 1373."

The ponencia posits that, while there are legitimate State interests involved, the means employed to achieve such compelling interests are neither least restrictive nor narrowly tailored as required by law.[40] In effect, the ATC is practically left unchecked to grant such requests for designation based on its sole determination, which shall be based "loosely on the criteria for designation of UNSC Resolution No. 1373." Further finding infirmity, the

---

39 United Nations Charter, Art. 48, Chapter VII.

40 Ponencia, p. 169.

ponencia points out the absence of a remedy or relief for hapless victims in cases of wrongful designation under this mode. Practicably, the ATC is left to go scot-free should an erroneous designation be committed with its own hands.[41]

I disagree.

Similar to the first mode, the concept of designating persons as a terrorist as declared by another jurisdiction or a supranational jurisdiction is not a novel creation of R.A. No. 11479. Under Section 3(e) of RA 10168, designated persons have been referred to as "any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group **under the applicable United Nations Security Council Resolution** or **by another jurisdiction or supranational jurisdiction.**"

Of more significance, there appears to be no indication under Section 25 that the ATC, in adopting requests for designations, shall base such decision "loosely" on the criteria for designation under UNSC Resolution No. 1373. A plain reading of the provision would appear categorical — that the ATC shall only exercise its discretion to adopt such requests "*after* determination that the proposed designee meets the criteria for designation of UNSC Resolution No. 1373."[42] Thus, it is misplaced and without basis to speculate that the ATC would only use such established criteria liberally. If at all, R.A. No. 11479 actually mandates the ATC to use such criteria as its yardstick in exercising such a discretion. Echoing Chief Justice Gesmundo's opinion, the criteria laid down under UNSC Resolution No. 1373 is comprehensive, and internationally recognized. To be specific, the criteria shall apply to those who:

1. Finance terrorist acts;
2. Provide or collect, 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;
3. Commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;
4. Make any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of

41 *Id.*

42 R.A. No. 11479, Sec. 25. (Italics supplied).

persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;
5. Finance, plan, support, facilitate, or commit terrorist acts, or provide safe havens; and
6. Cross borders as FTF [foreign terrorist fighters] or facilitate the movement of said FTFs.[43]

Clearly, these parameters are not arbitrary and have been consistently relied upon by the international community, similar to the Consolidated List, whose automatic adoption has been found constitutional by this Court. Thus, there appears to be nothing unreasonable in allowing the ATC to apply such standards in adopting requests for designations by other jurisdictions or supranational jurisdictions.

On another point, it bears pointing out that a corresponding remedy for the second mode actually exists; in fact, its remedy appears to be more reliant *vis-à-vis* the first method.

As raised by Chief Justice Gesmundo, an examination of UNSC Resolution No. 2368, which finds application to several other resolutions including UNSC Resolution No. 1373, provides for a mechanism of delisting.[44] Simply, anyone, or through an authorized representative, may submit a request for delisting to the Office of the Ombudsperson.[45] In fact, the Ombudsperson, who is entitled to review such delisting, shall conduct its evaluation in an "independent and impartial manner." To maintain such impartiality, it shall "neither seek nor receive instructions from any government." In encouraging collaboration, State participation is not disregarded — the Ombudsperson is mandated to immediately forward the delisting request to the members of the Committee, the designating State, States of residence and nationality or incorporation, relevant UN bodies, and any other state deemed relevant by the Ombudsperson.[46]

Given the definite procedure and systems established under international law, it is highly erroneous to assert the lack of remedy against those who may be designated under the second mode; one may even argue that persons designated under the second mode may have more confidence in

---

43 See Opinion of Chief Justice Alexander G. Gesmundo, p. 168.
44 Adopted by the Security Council at its 8007th meeting on July 20, 2017.
45 UNSC Resolution No. 2368, p. 16.
46 *Id.* at 28.

terms of seeking relief *vis-à-vis* those designated under the first mode. It must be pointed out that delisting does not appear in the provisions of R.A. No. 11479 itself, but in the IRR itself, [47] which, as asserted in this opinion, cannot provide reassurance or mooring, being subject to revisions at any moment.

Lastly, I join the majority in finding that the third mode of designation should not be struck down as unconstitutional.

Straying from the majority opinion, the ponencia hastily concludes that the ATC is conferred with the power to make a "carte blanche" determination in designating persons or organizations as terrorists.[48] As a foreseeable consequence, the ATC can now designate just about anyone that it deems to have met the requirements of designation.[49] As further corroborated by *amicus curiae,* former Chief Justice Reynato S. Puno, this stark absence of guiding principles poses a real danger that the ATC's findings may lack sufficient evidentiary basis.[50] Worse, there appears to be no proper procedural safeguards and remedies for an erroneous designation, thereby creating a "chilling effect on speech and its cognate rights and unduly exposes innocent persons to erroneous designation with all its adverse consequences."[51]

At the outset, this Court cannot close its eyes to the nature of terrorism as an act that is *suis generis.* As astutely reached by the ponencia, terrorism is no ordinary crime which cannot be confined to a particular space and time and is often "shrouded by uncertainty and invisibility."[52] Correspondingly, it is incumbent upon the government, in light of its responsibility to protect its citizens, to come up with more innovative measures to fortify its efforts to outsmart terrorists, whose methods to carry out their deplorable operations have become more sophisticated over time. The ponencia further recognizes that "there has been a noticeable shift in the approach of the government in suppressing terrorism from criminalization to preventive or precautionary."[53]

Unprecedented times call for unprecedented measures. Thus, in response to the demand for more creative and precautionary regulations is the

---

47 See R.A. No. 11479, IRR, Rules 6.9-6.11.
48 Ponencia, p. 174.
49 *Id.*
50 Oral Arguments on the R.A. No. 11479, March 9, 2021, p. 9. (Emphasis in the original)
51 *Id.* at 127.
52 Ponencia, p. 231.
53 *Id.*

third mode of designation, which grants the ATC with the authority to "designate an individual, groups of persons, organization, or association, whether domestic or foreign, *upon a finding of probable cause.*"[54] Consistent with other executive agencies, the ATC owes its inception to the principle enunciated in *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*:[55]

> x x x The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.[56]

It is worth noting that prior to R.A. No. 11479, the ATC has already been granted certain powers consistent with the State's battle against terrorism. Under Sections 10 and 11 of R.A. No. 10168, it may request the AMLC to investigate or issue an *ex parte* order to freeze without delay "(a) any property or funds that are, in any way, related to financing of terrorism or acts of terrorism; and (b) any property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of terrorism or acts of terrorism as defined herein."[57]

Also similar to other executive agencies, its powers only operate within certain bounds.

To recall, the ATC's determination of probable cause triggers the *ex parte* issuance of a surveillance order under Section 16. It, likewise, prompts the AMLC to exercise its power to investigate, inquire, and examine bank deposits of designated persons under Section 35, and the freezing of assets under Section 25, in relation to Section 36 of R.A. No. 11479.

---

54 R.A. No. 11479, Sec. 25.
55 248 Phil. 762 (1988).
56 *Id.* at 773.
57 R.A. No. 10168, Secs. 10 and 11.

Under Section 16, a written order from the Court of Appeals (*CA*) should be acquired prior to the issuance of a surveillance order to capacitate law enforcement or military personnel to "secretly wiretap, overhear, and listen to, intercept, screen, read, surveil, record or collect"[58] any private communications or information. The issuance of such written order from the CA is by no means an empty or ceremonial act. Complementary thereto is Section 17, which thoroughly outlines the procedure and requirements to obtain judicial authorization, to wit:

> (a) Filing of an *ex parte* written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council (ATC); and
>
> (b) After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines:
>
> (1) That there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and
>
> (2) That there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.[59]

The effectivity of such written order is by no means unlimited. Also under judicial determination is the period within which the written order may operate, which shall not exceed a period of 60 days from the date of the receipt of the written order by the applicant law enforcement agent or military personnel. Such period may also be extended or renewed anew by the CA to a period not exceeding 30 days from the expiration of the original period.[60]

Under Section 20, the applicant law enforcement agent or military personnel is enjoined to surrender all communications obtained under judicial authorization to the CA within 48 hours after the expiration of the period fixed in the written order or the extension thereof. Any person who tampers with

---

58 R.A. No. 11479, Sec. 16.
59 R.A. No. 11479, Sec. 17.
60 R.A. No. 11479, Sec. 19.

such items subject of surrender shall suffer the penalty of imprisonment of 10 years. Also suffering the same penalty are law enforcement agents or military personnel who conduct surveillance activities absent a valid judicial authorization, while making all information maliciously procured, available to the aggrieved party.[61]

The power to examine, investigate and inquire into a designated person's bank deposits is similarly not without any safeguards. Section 37 is unequivocal in meting out the penalty of 4 years imprisonment for any person who "maliciously, or without authorization, examines deposits, placements, trust accounts, assets, or records in a bank or financial institution."[62] In terms of the freeze order, the law limits the period of effectivity to one not exceeding 20 days, with a possible extension, only upon obtaining an order from the CA.[63]

While these consequences prove worrisome, the aforementioned limitations indubitably curtail what is to be believed as an undue power granted to the ATC. Primarily, such limitations serve as a check on the propriety of the ATC's determination of probable cause. Thus, it cannot be said that the ATC possesses "carte blanche" authority to designate, with the effects of such authority restricted at every turn, as expressly installed by law.

Section 29 entitled "Detention without Judicial Warrant of Arrest" must be struck down as unconstitutional.

Section 29 of R.A. No. 11479 reads:

> **Section 29.** *Detention Without Judicial Warrant of Arrest.* - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC 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 this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper

---

61 R.A. No. 11479, Sec. 24.
62 Section 37, R.A. No. 11479.
63 R.A. No. 11479, Sec. 36.

judicial authorities, 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 (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.

Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (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 law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.

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.

The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph.

Rules 9.1, 9.2, 9.3, and 9.5 of Rule IX of the IRR in turn, provides:

RULE IX. DETENTION WITHOUT WARRANT OF ARREST

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 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

9

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.

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 period 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.

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 as 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.

Rule 9.3. Immediate notification to the nearest court
Immediately after taking custody of the suspected person, the law enforcement agent or military personnel shall, through personal service, notify in writing the judge of the trial court nearest the place of apprehension or arrest the following facts:

a. The time, date, and manner of arrest;
b. The exact location of the detained suspect; and
c. The physical and mental condition of the detained suspect.

> For purposes of this rule, immediate notification shall mean a period not exceeding forty-eight (48) hours from the time of apprehension or arrest of the suspected person.
>
> x x x x
>
> **Rule 9.5 Notification to the ATC and CHR**
> The law enforcement agent or military personnel shall furnish the ATC and the Commission on Human Rights (CHR) copies of the written notification given to the judge in such manner as shall ensure receipt thereof within forty-eight (48) hours from the time of apprehension or arrest of the suspected person.

In justifying that Section 29 be retained, the ponencia asserts that the ATC does not issue a warrant of arrest, nor does it deviate from the long-standing rule that only judges may issue a warrant of arrest. Instead, what it issues is a written authorization to law enforcement agents that permits the extended detention of a person arrested after a valid warrantless arrest is made under Rule 9.2, echoing Section 5, Rule 113 of the Rules of Court.[64] In practical terms, the ponencia attempts to harmonize Section 29 with existing law by clarifying that "the written authority under Section 29 is not an authority to arrest a person suspected of committing acts in violation of R.A. No. 11479 . Instead, **there must first be a valid warrantless arrest under Section 5, Rule 113 of the Rules of Court.**"[65] Upon the warrantless arrest of the person and there is probable cause to believe that the crime committed was a terrorist act under Sections 4 to 12 of R.A. No. 11479, a written authorization may be issued by the ATC in order to detain the suspect for a period longer than what is allowable under Article 125 of the Revised Penal Code (*RPC*).[66] The ponencia explains that in the event that the ATC does not issue the written authority, the arresting officer shall then abide by the periods specified under Article 125 of the RPC.

I respectfully disagree for the following reasons.

While the written authorization of the ATC is not a warrant of arrest per se,

---

64 Ponencia, p. 203.
65 *Id.* at 201-202. (Emphasis supplied)
66 *Id.* at 205.

it carries with it similar effects absent sufficient safeguards.

While I agree with the ponencia that Section 29 of R.A. No. 11479 does not equate to an authority to issue a warrant of arrest, but rather as an authority to extend the period of detention as allowed by law, the absence of sufficient safeguards to allow this extended period of detention clothes it with the effects accompanying an arrest.

As with the earlier provisions and as reiterated previously, the *ponencia* once again heavily relies on the provisions of the IRR in attempting to differentiate the written authorization by the ATC *vis-à-vis* a warrant of arrest. The conclusion that the written authorization of the ATC is conditioned on the existence of the grounds for a valid warrantless arrest under Section 5, Rule 113 of the Rules of Court is hinged on Rule 9.2 of the IRR. On the other hand, Rule 9.1 serves to purge the impression that the ATC may *motu proprio* issue a written authorization; under the rule, the ATC shall only issue a written authority in favor of an apprehending law enforcement officer or military personnel upon a submission of a sworn statement detailing the identity of the person/s arrested, and other relevant circumstances. Regrettably, it is only under Rule 9.1 that Sections 125 and 29 are somehow reconciled with R.A. No. 11479, stating "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 period specified under Article 125 of the Revised Penal Code."[67] While the *ponencia* lays down several safeguards in favor of the suspected person/s, the same is likewise anchored on the IRR:

> As a further safeguard, **Section 29 provides that the arresting officer is likewise duty-bound under Rule 9.3** to immediately notify in writing, within a period not exceeding 48 hours, the judge of the court nearest the place of apprehension of the details of such arrest. The ATC and CHR must be furnished copies of the written notification given to the judge, which should be received by the said agencies within the same 48-hour period, **as provided in Rule 9.5.** Section 29, **as reflected in Rule 9.1**, allows the extension of the detention period to a maximum period of 10 calendar days if the grounds to allow the extension are established.[68]

---

67 See R.A. No. 11479, IRR, Rule 9.1.

68 Ponencia, p. 203. (Emphasis supplied)

Stripped from its reliance to the IRR, which may be subject to modification at any given instance, Section 29 gravely suffers from several gaping holes subject to abuse that the IRR cannot possibly assuage. As will be discussed below, the construction of the provision failed to supply and fill in certain omissions that prove to be material.

While statutes cannot possibly foresee each and every intricacy, especially in terms of implementation, it cannot be denied that rules and regulations cannot alter, expand, or even engraft additional requirements that were not even contemplated by the law itself. As earlier argued, the IRR cannot enlarge or go beyond the provisions of the statute; it cannot be used as a recourse to save or even cure an already defective provision. As iterated in *People v. Maceren,*[69] "rules that subvert the statute cannot be sanctioned."

Section 29, construed in its own terms, does not mention, nor even allude to, the condition that a valid warrantless arrest must first take place prior to the ATC's determination of whether to issue a written authorization to detain the suspected person/s for a **longer period**. Moreover, neither does the provision instruct the apprehending agent or military personnel to abide by the periods under Section 125 of the RPC, absent a written authority by the ATC. Independent from its IRR, it is plain that Section 29 enables a law enforcement agent or military personnel to take custody of a person/s suspected of terrorism for an unprecedented period of 14 days, extendible to 10 days, only by virtue of a written authorization of the ATC. Assuming the person was arrested without a warrant as explained in the *ponencia,* no justification lies as to why the ATC, a mere executive agency, is empowered to cause a person to be deprived of his/her liberty beyond the periods prescribed by law. Verily, regardless of whatever it may be called, the *imprimatur* of the ATC still results to the custody of a person *sans* the safeguards under existing law, which are interestingly operative in periods shorter than what is allowed under R.A. No. 11479. Thus, this extended period of custody falls squarely within the definition of an arrest under Section 1, Rule 113 of the Rules of Court:

> **Section 1.** *Definition of arrest.* — Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense. (1)

---

69 169 Phil. 437, 448 (1977).

Following the argument of the ponencia, if probable cause is still the standard for apprehending suspected persons following the rule on lawful warrantless arrests, Section 29 makes no mention as to the standard employed by the ATC, or even the quantum of proof required, in order to **extend** the period of detention from what is allowed under Section 125 of the RPC. Glaringly, the IRR is silent with regard to such standards or even the limitations that the ATC must abide by in making such unilateral decision. While Rule 9.1 thereof requires that the law enforcement officer or military personnel submit a sworn statement stating the details of the suspected person and the basis for taking custody, there appears to be no guiding principles to inform the ATC on how to give weight to such sworn statement. It bears to note that while the law enforcement officer or military personnel may proffer a sworn statement, the suspected person has no way to challenge the veracity of such sworn statement. To my mind, it is this lack of opportunity accorded to the suspected person that may serve to open the floodgates of abuse.

More pressing, Section 29 does not seem to provide sufficient safeguards for suspected persons subject of the written authority; had the legislators intended to provide the same, they would have explicitly done so. It must be pointed out that whatever protections in place are belatedly provided, being effective *after* the fact of arrest, *e.g.*, notifying the judge regarding the arrest, furnishing a copy of such written notice to the ATC and the CHR, ensuring that the detained suspect is informed of his/her rights as a detainee, ensuring access to his/her counsel, etc.

To put suspected persons in a more precarious situation, the *amicus* in his position paper,[70] discerned that Section 29 seems to have empowered the ATC to cause the detention of a person absent a judge's independent evaluation of the evidence of the guilt of the respondent.[71] It is observed that periods of detention shorter than the 14 days as prescribed by R.A. No. 11479 would require judicial intervention; in fact, delay in the delivery of detained persons is tantamount to a criminal offense under Article 125 of the RPC. Whereas in the present case, judges are relegated to being merely informed that an arrest has been effected and that the suspected terrorist shall be detained for 14 days, extendible to 10 days. Such was the intention of the legislature, as gleaned from the Senate hearings that led to the enactment of R.A. No. 11479:

---

70 *Supra* note 50.

71 *Id.* at 14.

> **Senator Lacson:** I think what Senator Pangilinan had mentioned is upon arrest, the person, instead of just informing the judge in writing, should be presented before the judge nearest the place of arrest, if I understand it correctly, Mr. President. My response is that **there is no need to present the arrested suspect upon arrest, but only that the judge should be informed in writing. And there are other safeguards aside from informing the judge in writing.**[72]

As earlier stated, the efficacy of such safeguards is questionable, given that they become operative post-arrest. On this score, a concern arises as to whether merely informing the judge or furnishing the ATC and the CHR of a notice of arrest are indeed potent solutions towards the protection of suspected persons. In contrast to the present law, under Section 18 of the repealed Republic Act No. 9372, otherwise known as the "*Human Security Act of 2007*," judges were accorded a more proactive role, as detained persons were required to be presented before them prior to detention. More particularly, Section 18, which was deleted under R.A. No. 11479, provides that prior to detaining a person suspected of the crime of terrorism, he/she shall be presented before any judge, whose duty, among other things, is to "ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why."[73] It is this intervention pre-arrest that seems to serve more of a deterrent against possible abuses.

Given its pernicious effects, the meaning of Section 29 cannot be stretched to the point of infringing rights and causing oppression. Evidently, a provision infected with much infirmity cannot be upheld as valid. While this Court is one with the desire to become more creative in apprehending possible terrorists, this should not come at the expense of derogating the rights of the suspects, who are still considered innocent in the eyes of the law.

---

72 TSN, Senate Deliberations on Senate Bill No. 1083, p. 30. (Emphasis supplied)

73 R.A. No. 9372, Sec. 18. (repealed).

The maximum detention period under Section 29 exceeds the maximum period established by the Constitution.

Lastly, and yet of equal significance, the maximum detention period under Section 29 dangerously exceeds the maximum period set by the Constitution for warrantless arrest and detention without a judicial charge under extraordinary situations.

By design, R.A. No. 11479 approximates the extreme circumstances "of invasion or rebellion, when the public safety requires it" described in Article VII, Section 18 of the 1987 Constitution. During these situations, the Chief Executive is permitted to "suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law." More importantly, "[d]uring the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days[.]"

In fact, in *Lagman v. Medialdea*,[74] the Court recognized that "[t]he factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) - identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG)[.]" Further still, in *Lagman v. Pimentel III*,[75] the Court recognized the overlap between rebellion and terrorism: "Under R.A. No. 9372 or the Human Security Act of 2007, rebellion may be subsumed in the crime of terrorism; it is one of the means by which terrorism can be committed."

More notably, the Court, in *David v. Macapagal-Arroyo*,[76] tackled a preliminary dilemma as the assailed General Order therein was issued in order to stamp out "acts of terrorism and lawless violence." However, at the time, terrorism had yet to be statutorily-defined: "Unlike the term 'lawless violence' which is unarguably extant in our statutes and the Constitution, and which is invariably associated with 'invasion, insurrection or rebellion,' the phrase

---

74 G.R. Nos. 243522, 243677, 243745 & 243797, February 19, 2019, 893 SCRA 242, 332. (Underscoring supplied)

75 825 Phil. 112, 242 (2018).

76 522 Phil. 705, 796 (2006).

'acts of terrorism' is still an amorphous and vague concept. Congress had yet to enact a law defining and punishing acts of terrorism." Hence, the Court declared as void, the General Order to the extent that it would be used to suppress purported acts of terrorism. In other words, had "terrorism" already been defined at the time, then the Court would have found no issue with the invocation of the Commander-in-Chief powers in order to suppress the same.

The foregoing pronouncements lead to the undeniable conclusion that R.A. No. 11479 is to be interpreted *in pari materia* with Article VII, Section 18 of the Constitution, as "they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter."[77] Consequently, a statute *vis-à-vis* other related laws "must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system."[78] Furthermore, constitutional supremacy dictates that "the Constitution is the basic law to which all other laws must conform to."[79]

In accordance with the foregoing, the effect of Section 29 of R.A. No. 11479 is akin to the suspension of the privilege of the writ of *habeas corpus* and even martial law, but without the need to comply with the strict requirements imposed by the Constitution. As admitted by Senate President Vicente Sotto III:

> *Ang sabi sa amin sa mga* hearings, *ang sabi ng* Department of National Defense, *pagkameron ng* [*sic*] anti-terror law *na pwede nilang habulin yung mga* terrorista [*sic*], *at magkaroon sila ng ngipin at hindi na takot yung mga* enforcer *natin na labanan itong mga* terrorista [*sic*] *na ito, hindi na nila hihilingin ang* martial law. *Hindi na kailangan ang* martial law. *Yun ang sinabi ko; bakit, akala ba nila buong Pilipinas?* [80]

The provision for a maximum of 24 days-detention without charges being filed against the suspect arrested without warrant far exceeds the three-day period provided by Article VII, Section 18 of the Constitution even for the suspension of the privilege of the writ of *habeas corpus*.

---

77 *Office of the Solicitor General v. Court of Appeals*, 735 Phil. 622, 628 (2014).

78 *Id.*

79 *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 402 (2011).

80 *Transcript of Interview of Senate President Vicente C. Sotto III with Mike Enriquez of DZBB*, Senate of the Philippines, June 8, 2020, *available at* https://www.senate.gov.ph/press_release/2020/0608_prib1.asp

To glean from the proceedings of the 1986 Constitutional Commission, Commissioner Crispino De Castro originally proposed a five-day period for warrantless detention during the suspension of the writ of *habeas corpus*. He had in mind "the actual operation, actual shooting, actual theater of war, when the authorities may be able to prepare the necessary charge, the necessary affidavits, the necessary evidence so that the court may accept the complaint" — the very same considerations when it comes to the detention of suspected terrorists. Commissioner Rene Sarmiento, however, proposed a three-day period as an acceptable compromise because of the country's experience with martial law, during which "torture and other human rights violations happened immediately after the arrest, on the way to the safehouses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame." Commissioner De Castro posed no objection.[81]

R.A. No. 11479 has obviously created a more potent power than the martial law powers of the President, since even if the latter does not declare a state of martial law, the executive, through the ATC, could take custody of persons based on suspicion of engaging in terrorist activities. This constitutes a circumvention of the limitations imposed by the Constitution on the martial law powers of the President. Yet, there is no showing of a substantive difference to place terrorism in a much higher regard than the most extreme cases of invasion and rebellion — qualified further with the phrase "when public safety requires it" — that the Constitution contemplates. Thus, the oppressiveness and arbitrariness of R.A. No. 11479 does not satisfy the substantive due process requirements.

On another score, the writ of *habeas corpus* serves as a judicial remedy for the courts "to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal."[82] The possible limitations on its invocation has been very carved out in Section 15, Article III of the Constitution which states: "[t]he privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when public safety requires it."

Section 18 of Article VII further clarifies that it is the President that has the power to suspend the privilege of the writ of *habeas corpus* for a period

---

81 Record of the Constitutional Commission No. 44 (July 31, 1986).

82 *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919).

not exceeding 15 days, provided that there is an invasion or rebellion and that the public safety requires it.

The Constitution is also abundantly clear in the same Section that the suspension of the privilege of the writ shall only apply to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion. Furthermore, during the suspension of the privilege of the writ, any person arrested or detained shall be judicially charged within three days, otherwise, he shall be released. Commissioner Ambrosio Padilla, also a framer of the Constitution, elucidates that the purpose for requiring a judicial charge "is to prevent a situation similar to the past regime when innocent persons were arrested, detained, and confined in prison sometimes for one month, one year, or even more, without any criminal charge filed against them who oftentimes did not even understand why they had been arrested or detained."[83] Former Chief Justice Roberto Concepcion, who took part in the 1986 Constitutional Commission, explained that the purpose for the said provision is "to require all those detained to be immediately turned over to the judicial authorities. Therefore, the suspension of the privilege will not apply to them until they are placed in the custody of a judicial officer."[84]

One cannot help but to compare this to Section 29 of R.A. No. 11479, which sanctions the ATC to cause the warrantless arrests and detentions of suspected terrorists for 14 days, extendible to 10 days, if it is established that (i) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (ii) further detention of the person/s is necessary to prevent the commission of another terrorism; and (iii) the investigation is being conducted properly and without delay.

Worse, a person can be arrested for terrorism and detained for a total of 24 days before he must be judicially charged for an offense punishable by life imprisonment or otherwise. While the detainee may file a petition in court for a writ of *habeas corpus*, the custodian may simply present the written authority for arrest or detention issued by the ATC, and pursuant to Rule 102, Section 14 of the Rules of Court, the court would have to dismiss the petition. This is in stark contrast to Section 18, Article VII of the Constitution, which sets a three-day maximum limit for detentions without judicial charge for all kinds of crimes and under all circumstances. If, even in exceptional

---

83 Record of the Constitutional Commission No. 44 (July 31, 1986).

84 *Id.*

circumstances, a three-day limit is set by the Constitution, with more reason should the limit be maintained in cases of terrorism or any other crime under ordinary circumstances. The Constitution could not have intended to grant to a mere statutory creation, a power it has explicitly withheld from one of the great branches of government. The legal system cannot countenance such a legal absurdity.

It is also worth noting that, in enacting Section 19 of the R.A. No. 9372, the predecessor of RA 11479, the earlier Congress maintained the detention without judicial charge to a maximum of three days which adheres to the maximum period for detention under the extreme circumstances provided by Section 18, Article VII of the 1987 Constitution. More tellingly, the deliberations for R.A. No. 9372 reveal that the legislators codified the three-day period precisely in deference to the Constitutional order.

Precursor bills of R.A. No. 9372 initially embodied a 15-day detention period, to which several legislators and resource persons expressed their reservations.[85] On a practical note, amidst the debates regarding safeguards against torture tactics during interrogations, and the counterbalancing need for law enforcers to gather information, the resource person for the National Bureau of Investigation significantly admitted the expediency by which a detainee could be judicially charged:

> CHAIRMAN DATUMANONG. Thank you for the information. Now I will ask the NBI having...have the authority of the...of investigation and even of arresting and possibly of charging the person in the proper court. In the experience of the NBI, how long does it take to charge a suspect in court after his arrest?

---

85 Transcript, Committee on Justice joint with Committee on Foreign Affairs, August 3, 2005, pp. 55-56:

> REP. HONTIVEROS-BARAQUEL. x x x
> x x x x
> You made mention also, Undersecretary Blancaflor, about the revised Penal Code which Atty. Dizon-Reyes spoke at, a bit of length about, maybe that is also an alternative track to take is to update the circa 1930s body of criminal law. If in Britain they detain, they have detained recently suspects without trial for 28 days, then it is a graver abuse of the civil and political rights of the citizens, then what Prof. Dean Agabin already says in our bill extending the period of detention to 15 days as a deprivation of liberty without due process of law just because the U.K. can detain suspects for the recent bombings to 28 days doesn't make it right or something that is exemplary for us.

> MR. REYNALDO WYCOCO (Director, National Bureau of Investigation). Thank you, your Honor, Mr. Chairman, in the NBI we normally charge a person immediately after the arrest.
>
> CHAIRMAN DATUMANONG. Within the 36 hours?
>
> MR. WYCOCO. Within the 36 hours.[86]

But more in line with Section 18, Article VII of the Constitution, the resource person for law enforcement, a representative of the Department of Justice at that, alluded to the three-day detention period as a Constitutional upper limit, thus:

> MS. TERESITA DOMINGO. (Assistant Secretary, Department of Justice) Thank you, Your Honor. There are two apprehensions about...there are two provisions of which I am really apprehensive about the bill. One is the period of detention.
>
> x x x x
>
> **And a longer period of detention, I agree with the Task Force, would be subject to abuse. Second, even in our Constitution, under Martial Law powers, the maximum period that the person can be detained without charge is only three days. And under our Revised Penal Code, even in cases of rebellion which I think is more grievous than terrorism because this is an outdraw of the government, to overthrow the government, does not provide for that period of detention.**
>
> I agree with Congressman Baterina that we have sufficient period provided under the Revised Penal Code and there is really no need to put a time frame on this. Thank you, Your Honor.[87]

Curiously, the justifications for the initially proposed 15-day detention period under earlier iterations of R.A. No. 9372 are the same for the 14 to 24-day detention period under R.A. No. 11479, *e.g.*, the need for intelligence-gathering, securing witnesses, cross-border verification procedures. However, it has been 14 years since the enactment of R.A. No. 9372 and, surely, law enforcement has gotten more advanced and sophisticated, especially with the utilization of information and communications technology.

---

86 Transcript, Committee on Justice joint with Committee on Foreign Affairs, May 11, 2005, p. 66.

87 Transcript, Committee on Justice joint with Committee on Foreign Affairs, May 25, 2005, p. 34. (Emphasis and underscoring supplied)

Withal, as against the three-day maximum period of detention under Section 18, Article VII of the Constitution, and considering the technological advances in law enforcement and streamlining of criminal prosecution, the detention period under Section 29 of R.A. No. 11479 is too lengthy, thereby subverting the Constitutional order and constituting an oppressive deprivation of liberty.

A Final Note.

This Court does not question the wisdom or the competence of the legislature in crafting the provisions of R.A. No. 11479. It is not its province to override legitimate legislative policy. In fact, to junk R.A. No. 11479 wholesale would be to ignore the harsh reality that terrorism is right on our country's doorstep. As cited by the ponencia, "Filipinos are no strangers to acts of terrorism."[88] According to the Global Terrorism Index of 2020, out of the 7,000 reported deaths due to terrorism in the Asia-Pacific Region, it is alarming that over 3,000 deaths have occurred in the country.[89]

Aside from a robust defense sector, the lack of legislation against terrorism would indubitably leave our country vulnerable to attacks. Nevertheless, it would be self-defeating if the very law which aims to protect its citizens become the direct source of harm. It would be the height of legal heresy to completely disregard basic human rights and constitutional freedoms that should dictate, and not obstruct, the formulation of such laws.

To balance these seemingly competing interests, it is the role of the Court to ensure that certain unconstitutional sections that trample on such rights be excluded in order to embody what it was created for at the outset. This is as it should be — that laws that aim to attain public good and national security should never come at the steep price of infringing on constitutional rights.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the petitions. The phrase in the proviso of Section 4 that states: "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety" must be declared

---

88 Ponencia, p. 44.

89 *Id.*

UNCONSTITUTIONAL. Section 25, on the designation of terrorist individual, groups of persons, organizations, or associations, is **CONSTITUTIONAL**, while Section 29, which provides for an extended period of detention that is more than what is allowed by the Constitution and the laws, without a judicial warrant of arrest, should be declared **UNCONSTITUTIONAL.**

JHOSEP Y. LOPEZ
Associate Justice