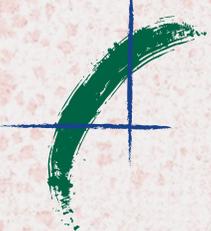




CSO Guide on the **Anti-Terrorism Act** of 2020 (RA 11479)



December 2020



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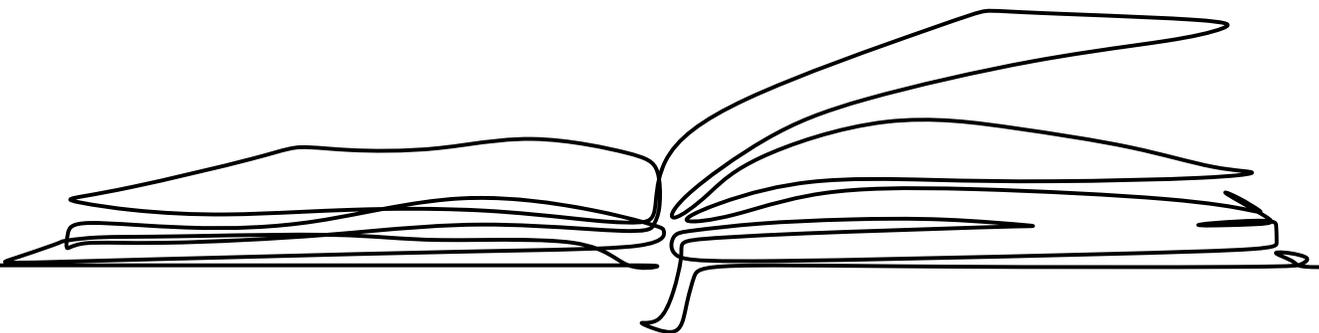
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Introduction

This guide is written for individuals and civil society organizations (CSOs) including but not limited to non-government organizations, foundations and people's organizations, with the aim of clarifying the Anti-Terrorism Act of 2020 and its relation to the rights of Filipinos.

The Anti-Terrorism Act (ATA) was passed into law at the time of COVID-19 restrictions in the Philippines. It has been questioned and opposed before it was passed. Today, 37 petitions to the Supreme Court demands the highest court in the Philippines to temporarily stop the law's implementation and to declare ATA unconstitutional. This guide will examine the main features of ATA and its implementing rules and regulations (IRR), the reasons behind such opposition by the legal community, humanitarian organizations and networks of CSOs, and the risk mitigation measures CSOs may employ.

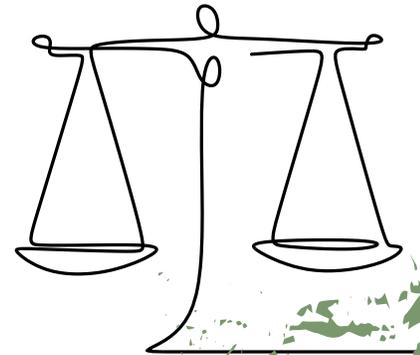
Bill of Rights – Our Safeguard from Abuse

The Free Legal Assistance Group (FLAG) has outlined our rights under the Constitution and international standards.

In any situation, you do not lose your basic rights, such as:

- The right to life;
- The right not to be tortured, nor subjected to cruel, Inhuman or degrading treatment or punishment;
- The right not to be subjected to forced labor;
- The right not to be imprisoned for non-payment of debt;
- The right not to be punished for an act which was not yet a crime at the time of its commission;
- The right to be recognized and treated as a person; and
- The right to freedom of thought, conscience and religion.

These rights are absolute. Under no condition can their fulfillment or enjoyment be suspended. This is true even when martial law or any other state of public emergency has been declared. These are non-derogable rights under the International Covenant on Civil and Political Rights to which the Philippine Government is a party.



These rights are absolute. Under no condition can their fulfillment or enjoyment be suspended. This is true even when martial law or any other state of public emergency has been declared.

There are other rights that are considered inalienable and inviolable, such as:

- The right not to have your house searched without a search warrant issued by a Judge, and not to have anything seized which is not specified in the search warrant. However, if you are legally arrested, your person and immediate surroundings may be searched for dangerous weapons, and any evidence found on your person or Immediate vicinity (only on your person and immediate vicinity) which may have been used to commit the crime for which you are being arrested may be seized.
- The right to liberty and security of person. You can be deprived of liberty only on grounds and procedures established by the Constitution and existing law.
- The right not to be arrested except on evidence that a crime has been committed and that you probably committed it. You may be arrested only on the strength of a warrant of arrest issued by a Judge, except:
 - a. When you have committed, are actually committing, or are attempting to commit an offense in the presence of the arresting officer;
 - b. When an offense has just been committed and the arresting officer has probable cause to believe, based on personal knowledge of facts and circumstances, that you committed the offense;
 - c. When you have escaped from prison or detention or while being transferred from one confinement to another.
- The legality of your arrest must be determined in an inquest proceeding conducted by a civilian prosecutor. The prosecutor, in a summary proceeding, can:
 - a. Order your release (this may or may not be subject to a full-blown preliminary investigation);
 - b. Affirm the legality of your arrest and prepare the corresponding complaint or information with the trial court.
 - c. Often the inquest prosecutor will ask the person arrested if s/he desires a preliminary investigation; in which case s/he will be asked to sign a waiver. Do not sign the waiver without being duly informed of the nature and consequences of signing it. Signing the waiver may—and often does—mean that you are going to remain in detention, pending a preliminary investigation. It may also mean that you are waiving your right to file cases against those who arrested you.
- While under arrest or detention, if you are questioned or investigated by the police or military, you have the following rights:
 - a. To be informed of your right to remain silent and other constitutional rights;
 - b. To have competent and independent counsel preferably of your own choice; and
 - c. To be provided with counsel if you cannot afford one.
- In all criminal prosecutions, you have the following rights:
 - a. Not to be compelled to testify against yourself;
 - b. To remain silent and to counsel;
 - c. To be informed of the nature and cause of the accusation against you;

- d. To have a speedy, public and impartial trial;
- e. To appeal any conviction;
- f. To be presumed innocent until the contrary is proven;
- g. To be present and heard by yourself and counsel;
- h. To avail of court processes to secure the compulsory attendance of witnesses and the presentation of evidence in your defense; and
- i. To meet the witnesses face-to-face and to cross-examine them.
- j. The right to a preliminary investigation.
- k. The right against double jeopardy.
- l. Before conviction, the right to bail except for capital offenses when evidence of guilt is strong.
- m. The right to be treated with humanity and with respect for your personal dignity.
- n. The right to liberty of abode and the right to travel.

The above explanation composed by FLAG exhausts the rights accorded to Filipinos at all times. It serves as a reminder for all that these are enshrined in the 1987 Constitution, mostly under Article 3 – Bill of Rights and is in accordance with international standards of civil and political rights.

The Anti-Terrorism Act of 2020 and its Implementing Rules and Regulations

Republic Act 11479, or the ATA, was signed into law in July, 2020, and its IRR authorized in October 2020. Below are provisions from both the Republic Act and the IRR that highlights the basic features of the law:

Declaration of Policy (Sec. 2) (Rule 2.1)

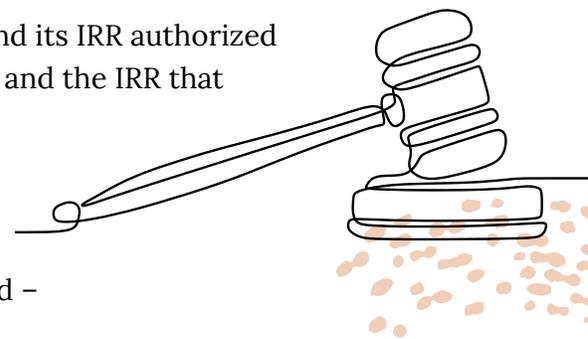
The policy declares that the law is made with the following in mind –

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

These are ideals that all Filipinos should adhere to. We do not espouse terrorism of any kind.

Definition of Terrorism (Sec. 4) (Rule 4.3)

Terrorism as defined in the law are intentional acts committed by any person that will cause death or serious bodily injury, endangers a person's life, or cause damage to properties. The purpose for doing these acts are also defined – to create an atmosphere or spread a message of fear, influence



by intimidation the government or any organization, an seriously destabilize or destroy fundamental political, economic or social structures of the country.

What is **not terrorism** is defined in the IRR Rule 4.4, such as **advocacy, protest, dissent, mass action or other similar exercises of civil and political rights which are not intended to cause death or serious physical harm.**

Violations under the ATA

There are provisions in the law and the IRR (Sections 5 to 10, Section 12, and under Rule 4) that defines what is “unlawful” in addition to the abovementioned acts. These include:

- a. Threat to commit terrorism – when an intent to commit terrorism is communicated
- b. Planning, training, preparing, and facilitating commission of terrorism
- c. Conspiracy to commit terrorism – when two or more persons come to an agreement concerning the commission of terrorism
- d. Inciting to commit terrorism – Without taking any direct part, the person incites others to the execution of terrorism by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.
- e. Recruitment to and membership in a terrorist organization
- f. Providing Material Support to Terrorists

Explanation on “Inciting to commit terrorism”

As in most provisions, this act has an imposable penalty of imprisonment of 12 years. The provision further explains that the incitement is done “under the circumstances that show reasonable probability of success in inciting the commission of terrorism.” Reasonable probability of success is determined by the following:

- a. Context
- b. Speaker/actor
- c. Intent
- d. Content and form
- e. Extent of speech or act
- f. Causation

Explanation on Providing Material Support to Terrorists

Any person providing material support to terrorists groups or individuals is penalized. Material support is defined as any property or service including money, lodging, expert advice, safehouses, etc.

What is not terrorism is defined in the IRR Rule 4.4, such as advocacy, protest, dissent, mass action or other similar exercises of civil and political rights which are not intended to cause death or serious physical harm.

Humanitarian Exemption

Humanitarian activities undertaken by the International Committee of the Red Cross or Philippine Red Cross, and other state-recognized impartial humanitarian partners or organizations as determined by the Anti-Terrorism Council is exempted from penalties.

Surveillance

Under Section 16 and Rule 5, authorities are permitted to conduct surveillance activities of suspected persons. These include interception and recording of communications, wiretapping or collecting private communications, data, and information. Some exceptions are doctor-patient privileges, lawyer-client privilege, journalist and their source, and private business correspondence.

Creation of an Anti-Terrorism Council (ATC) (Sec. 45) (Rule 3)

The ATC shall be the main body that will oversee the implementation of the ATA. It is composed of the following members:

- a. Executive Secretary (Chairperson)
- b. National Security Adviser (Vice Chairperson)
- c. Secretary of Foreign Affairs
- d. Secretary of National Defense
- e. Secretary of the Interior and Local Government
- f. Secretary of Finance
- g. Secretary of Justice
- h. Secretary of Information and Communications Technology; and
- i. Executive Director of the Anti-Money Laundering Council Secretariat

Support agencies who are also involved:

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

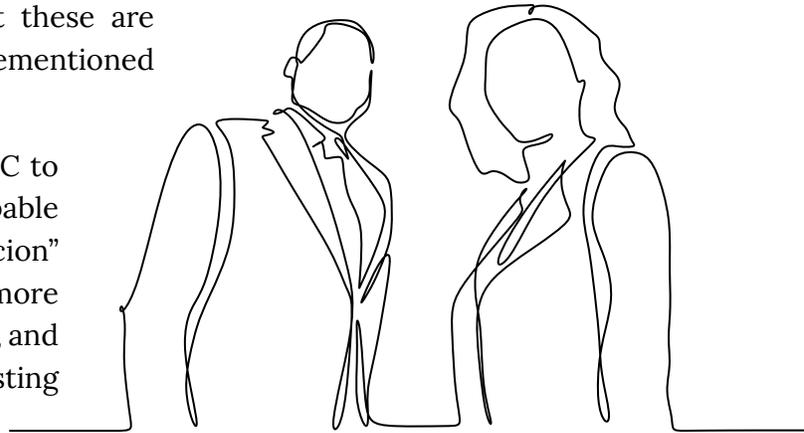


What the ATC may do under the law (Sec. 25, 45, 46) (Rule 3, 6, 8)

The ATC shall be on top of the national implementation to eradicate terrorism in the country.

Under Section 25, the ATC may designate as terrorists foreign or domestic (Filipino) persons or organizations upon finding probable cause that these are committing or attempting to commit the abovementioned unlawful acts.

Under Rule 6 in the IRR, the provision for the ATC to designate terrorists is more lenient, where probable cause now refers to “reasonable ground of suspicion” supported by the circumstances of caution. It is more lenient because “probable cause” is clearly defined, and the provision in the IRR is not defined in any existing law.



“Although these functions usually fall under the judicial branch of government, and a provision in the IRR provides that nothing in the act shall be interpreted to empower the ATC to exercise any judicial authority, the power to designate terrorists remains with the ATC, even under the suspicion of being one and without committing an act of terrorism directly.”

“Inciting to commit terrorism may infringe the freedom of speech and free press if the ATC designates an organization to be a terrorist organization. Any act of that organization that entails writing or making speeches will be “unlawful” and penalized.”

Under the law and the IRR, the ATC is empowered to enlist the assistance of the Anti-Money Laundering Council (AMLC) to freeze bank accounts and other assets of persons or organizations suspected of violating the law or who are designated as terrorists.

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

- a. Further detention of the person/s is necessary to preserve evidence related to the terrorism or complete the investigation
- b. Further detention is necessary to prevent another act of terror or
- c. The investigation is being conducted properly and without delay

This adds to the exceptions of warrantless arrests that are mentioned in the section above.

Risk Mitigation

The rights of Filipino individuals and CSOs are at risk because of the ATA's provisions and IRR:

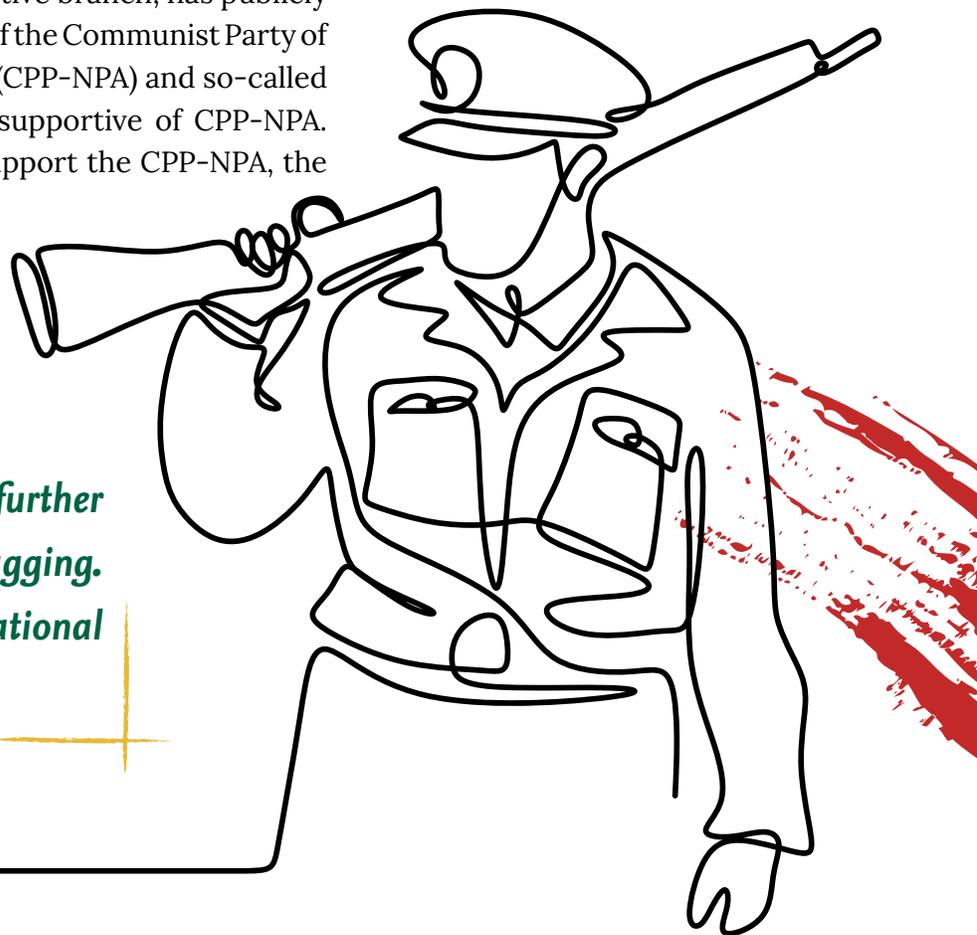
- ✓ The right to life
- ✓ The right to liberty and security of a person
- ✓ Freedom of expression
- ✓ Right to privacy
- ✓ Freedom of association
- ✓ Economic, social and cultural rights

These are some of the rights that are at risk because of the various provisions explained.

“Red-tagging” in the Philippines

Before the passage of the ATA the practice of red-tagging is prevalent especially to organizations perceived to support Communism in the Philippines. Authorities, mostly from the military and police but also from officials from the executive branch, has publicly branded individuals to be supportive of the Communist Party of the Philippines – New People’s Army (CPP-NPA) and so-called “leftist” groups that are seen to be supportive of CPP-NPA. Even if some organizations do not support the CPP-NPA, the effect has been a stifling of dissent – instead of decrying inefficiencies of government the advocates remain silent in fear of being “red-tagged” or vilified.

The passage of the ATA may further intensify the practice of red-tagging. This poses risks to organizational reputation for CSOs.



What to do in case of red-tagging:

In the event that a group or individual tags you or your organization, you may opt to do the following:

- ✔ Publicly release statements denying or showing proof that you or your organization is not supporting terrorist groups.
- ✔ You may publicize in social media or other channels partnerships with government agencies, local officials or international NGOs highlighting the good practices, achievements or impact of your organization.
- ✔ Inform authorities of your plans to engage local / national government or community partners you serve.

What to do in case of arrest and detention:

- ✔ Know more about the rights of detainees, including the Anti-Torture Act of 2009. Legal remedies such as the writ of habeas corpus and writ of amparo are available to you.
- ✔ Writ of habeas corpus – the court may issue the officers who are detaining you for you to appear in court and explain the reasons why you are detained.
- ✔ Writ of amparo – guarantee that right to life, liberty and security is secured. The writ covers extralegal killings and enforced disappearances or threats thereof.

What to do in case of being designated as a terrorist organization:

- ✔ Know your civil and political rights. If there is no proof of committing a terrorist act the law itself will provide safeguards.
- ✔ Know and update yourself and your staff on the legal remedies available to Filipinos.
- ✔ Activate a support mechanism where you may rely on your networks for support.

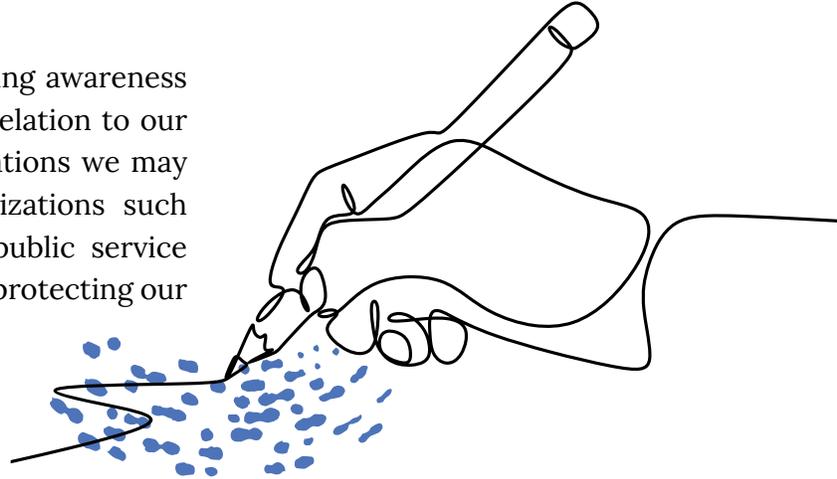
What to do in case of surveillance

- ✔ If it is found that you or organization is under surveillance, a legal remedy called writ of habeas data is available to you.
- ✔ Writ of habeas data – remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by unlawful act of a public official or employee engaged in gathering, collecting or storing of data or information regarding the person, family, home, and correspondence.
- ✔ Be informed of digital security measures and the provisions of the Data Privacy Act of 2012.



Summary

This guide is clear with its intention of providing awareness to individuals and CSOs on the ATA 2020, its relation to our fundamental human rights, and the risk mitigations we may employ against the law. Development organizations such CSOs shall continue with its advocacy and public service delivery towards sustainable Philippines, while protecting our civic spaces and our right to live with dignity.



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