REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

EN BANC

Bagong Alyansang Makabayan (BAYAN) Secretary General **RENATO M. REYES, JR.**, *et al.*,
Petitioners,

- versus - **G.R. No. 252733**

RODRIGO R. DUTERTE, *et al.*,
Respondents.
x----------x

Brgy. Maglaking, San Carlos City, Pangasinan Sangguniang Kabataan (SK) Chairperson **LEMUEL GIO FERNANDEZ CAYABYAB**, *et al.,*
Petitioners,

- versus - **G.R. No. 252921**

RODRIGO R. DUTERTE, *et al.*,
Respondents.
x----------x

JOINT OPPOSITION
To the Urgent Motion dated August 24, 2020
-with-
JOINT URGENT MOTION
To Resolve Application for Injunctive Relief

PETITIONERS, through counsel, submit this *Joint Opposition to the Urgent Motion dated August 24, 2020 with Joint Urgent Motion to Resolve Application for Injunctive Relief* and respectfully state:

JOINT OPPOSITION TO RESPONDENTS' AUGUST 24, 2020 URGENT MOTION

1. Petitioners in *BAYAN Secretary-General Renato Reyes et al. v. Rodrigo R. Duterte et al.* ("BAYAN Petition") and *Brgy. Maglaking SK Chairperson Lemuel Gio Cayabyab v. Rodrigo R. Duterte et al.* ("SK Petition") vehemently oppose the respondents' Urgent Motion dated August 24, 2020, which the said petitioners received by registered mail on September 7, 2020 .

The instant Petitions satisfy the requisites of judicial review by the Honorable Court, and, hence, cannot be dismissed outright.

2. At the outset, Petitioners in the Bayan Petition would like to manifest that there is no truth to Respondents' claim in their *Supplemental Comment* that the "BAYAN and NUJP Petitions lack the mandatory verification and certification of non-forum shopping."[1]

3. All 44 Petitioners in the Bayan Petition executed their individual Verification and Certification of Non-Forum Shopping, the form and content of which are in accordance with Sections 4 and 5, Rule 7 of A.M. No. 19-10-20-SC or the Amended Rules of Civil Procedure. These sworn documents were appended to the BAYAN Petition.

4. Respondents are moving for the cancellation of the oral arguments on the ground that the Petitioners failed to satisfy the requisites of judicial review and are raising factual allegations that the Honorable Court cannot take cognizance of. Respondents argue that a determination of these procedural considerations must "precede anything else," including the conduct of oral arguments, lest the Honorable Court will be validating petitions that "militate against basic constitutional, procedural and jurisprudential tenets."

5. This tangential and indirect attempt at dismissing the instant Petitions while trying to cancel the oral arguments is untenable.

6. In the first place, there is nothing in A.M. No. 10-4-20-SC or the Internal Rules of the Supreme Court requiring the Honorable Court to first determine whether a petition filed before it has fulfilled all requisites of constitutional litigation prior to conducting oral arguments.

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[1] *Supplemental Comment*, 72.

7. Petitioners nonetheless take exception to respondents' claim that the instant Petitions are not anchored on justiciable controversy, but on the "strawman of hypothetical abuse."

8. The issues raised in the instant Petitions became ripe for judicial review the moment Respondents passed and signed a penal law that infringes upon rights and freedoms and disregards safeguards for the balancing and separation of powers in our republican democracy. When Republic Act 11479 or the "Anti-Terrorism Act of 2020" was legislated, it became an affront to the 1987 Philippine Constitution.

9. This grave abuse of discretion by Congress and the Chief Executive is obvious from a hypothetical admission of Petitioners' allegations. Needless to say, this is a proper subject of adjudication by the Honorable Court in the exercise of its expanded judicial power under the Constitution. In the case of *Imbong v. Ochoa*,[2] the Honorable Court said that "(e)ven a singular violation of the Constitution and/or the law is enough to awaken judicial duty." Thus:

> In *The Province of North Cotabato v. The Government of the Republic of the Philippines*, where the constitutionality of an unimplemented Memorandum of Agreement on the Ancestral Domain (MOA-AD) was put in question, it was argued that the Court has no authority to pass upon the issues raised as there was yet no concrete act performed that could possibly violate the petitioners' and the intervenors' rights**.** Citing precedents, the Court ruled that the fact of the law or act in question being not yet effective does not negate ripeness. **Concrete acts under a law are not necessary to render the controversy ripe. Even a singular violation of the Constitution and/or the law is enough to awaken judicial duty**.
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> In this case, the Court is of the view that an actual case or controversy exists and that the same is ripe for judicial determination. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable

[2] G.R. No. 204819, April 8, 2014.

> controversy. **As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute**.
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> Moreover, the petitioners have shown that the case is so because medical practitioners or medical providers are in danger of being criminally prosecuted under the RH Law for vague violations thereof, particularly public health officers who are threatened to be dismissed from the service with forfeiture of retirement and other benefits. They must, at least, be heard on the matter NOW.[3] (Citations omitted; emphasis supplied.)

10. It also bears noting that petitioners are mounting a facial challenge against R.A. 11479. Petitioners are assailing the very definition of "terrorism" under Section 4 because the term lacks comprehensible standards that people of common intelligence must necessarily guess at its meaning and differ as to its application. The term is so vague and overbroad, it encroaches even upon constitutionally protected freedoms.

11. Thus, Petitioners need not have sustained direct injury from the application of the law before seeking the invalidation of the assailed law. A facial challenge is an exception to the rule prohibiting third-party standing, which enables any citizen to counter the proverbial "chilling effect" of overbroad and vague penal laws on protected speech.[4]

12. Notably, in *Imbong*, the Honorable Court held that the Court has "expanded the scope" of a facial challenge "to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights."[5] This exercise of "expanded jurisdiction" conforms to our constitutional framers' vision of a "proactive" — as opposed to a "reactive branch of government" — for the Supreme Court. Thus:

> In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not

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[3] *Id.*
[4] *Spouses Romualdez v. Comelec et al.,* G.R. No. 167011, April 30, 2008, J. Carpio (Dissenting Opinion).
[5] *Supra* note 2.

only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statues, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, **under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution**.

Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. **To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of**

> **government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people**.[6] (Citations omitted; emphasis and underscoring supplied.)

13. Moreover, not only is there "a reasonable certainty for the occurrence of a perceived threat to any constitutional interest"[7]; likewise present are *sufficient facts* that will enable the Honorable Court to "intelligently adjudicate the issues."[8]

14. Petitioners in the BAYAN Petition are facing credible threats of prosecution and other punitive actions under R.A. 11479. They continue to be terrorist-labeled, particularly by officers of the omnipresent National Task Force to End Local Communist Armed Conflict (NTF-ELCAC).

15. To be branded a "communist terrorist" is not an empty threat, in light of Respondent Duterte's identification and designation of the Communist Party of the Philippines (CPP) and the New Peoples' Army (NPA) as "terrorist organizations" under R.A. 10168 or the "The Terrorism Financing Prevention and Suppression Act of 2012." Accordingly, on February 21, 2018, the Department of Justice initiated before the Regional Trial Court of Manila the proscription of the CPP-NPA[9] and 649 individuals, who included aboveground personalities, deceased persons and *desaparecidos*, and hundreds of aliases.

16. Members of mass organizations affiliated with BAYAN have been subjected to surveillance and have received death threats in the form of anonymous phone calls, text messages, or red-tagging publications, which were circulated in public places and official social media platforms of the NTF-ELCAC and various units of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Recently, suspected military elements murdered Randall Echanis, a peace consultant and peasant activist,[10] and Zara Alvarez,

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[6] *Id.*

[7] *Southern Hemisphere Engagement Network, Inc. et al. v. Anti-Terrorism Council, et al.*, G.R. No. 178552, October 5, 2010; *Kilusang Mayo Uno, et al. v. Ermita, et al.*, G.R. No. 178554; *BAYAN, et al. v. Macapagal-Arroyo, et al.*, G.R. No. 178581; *KARAPATAN, et al. v. Macapagal-Arroyo et al.*, G.R. No. 178890; *Integrated Bar of the Philippines, et al. v. Ermita et al.*, G.R. No. 179157, and; *BAYAN-Southern Tagalog et al. v. Macapagal-Arroyo et al.*, G.R. No. 179461, *citing* De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010.*

[8] *Id.*

[9] Benjamin Pulta, *DOJ pursuing efforts for tagging of CPP-NPA as terror group,* Philippine News Agency, January 4, 2019, https://www.pna.gov.ph/articles/1057998 (last accessed on September 7, 2020).

[10] Cathrine Gonzales, *NDFP's Echanis tortured to death, says CHR,* Philipine Daily Inquirer, August 21, 2020, https://newsinfo.inquirer.net/1325148/ndfps-echanis-tortured-to-death-says-chr (last accessed on September 8, 2020).

a community health worker and human rights defender, in cold blood.[11] Echanis and Alvarez were both named "terrorists" in the DOJ's petition for proscription.[12]

17. Clearly, there is nothing "hypothetical" about the "abuse" that petitioners will be facing, not as a matter of supposition, but of certainty, having been classified as "terrorists" and dealt with, as such, in the foulest ways possible. In this regard, Petitioners in the BAYAN Petition stated:

> 34. It is significant to note these pernicious official acts occurred while the proscription proceeding against the CPP and NPA is already underway before a trial court. Under Section 27 of the assailed law, a preliminary order of proscription may be issued ex parte against respondents like the CPP and NPA to provisionally outlaw them even before the case is decided on the merits. Any individual thus implicated with them, whether as an officer, cadre, financier, or material supporter, is already facing a "credible threat of prosecution."
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> 35. Worse, under Section 26, the unrelenting red-tagging and terrorist-labeling of petitioners are sufficient to constitute probable cause for the ATC to unilaterally "designate" them as individuals who are committing, attempting to commit or conspiring to commit terrorism and other prohibited acts under the law. This will lead to the freezing of their assets by the Anti-Money Laundering Council (AMLC) under Section 11 of RA 10168.[13]

18. These incidents of red-tagging and terrorist-labeling are official acts and pronouncements of Respondent Duterte and his alter egos and agents, of which the Honorable Court may take judicial notice. The social media accounts and websites of the Presidential Communications Operations Office (PCOO), the government's "lead communications arm" and its attached agencies, as well as of the NTF-

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[11] Lian Buan, *Remember Zara Alvarez? Group urges SC to review protection order for rights activists,* Rappler.com, September 1, 2020, https://rappler.com/nation/karapatan-manifestation-supreme-court-writ-amparo (last accessed on September 8, 2020).

[12] *See* Erwin Colcol, *No verification of names in DOJ petition tagging CPP-NPA 'terrorist'—Guevarra,* GMA News Online, August 6, 2018, https://www.gmanetwork.com/news/news/nation/663111/no-verification-of-names-in-doj-petition-tagging-cpp-npa-terrorist-guevarra/story/ (last accessed on September 8, 2020).

[13] BAYAN Petition, 15.

ELCAC, are the official repositories of the government's incitements of hatred and violence toward petitioners.

19. Most of the Petitioners in the SK Petition, on the other hand, are invoking not only their standing to sue as citizens, but as duly elected representatives of the youth in the Sangguniang Kabataaan. As elected public officers, their cooperation to the Anti-Terrorism Council can be compelled by operation of Section 46(m) of the assailed law, which reads:

> SEC. 46. *Functions of the Council.*— In pursuit of its mandate in the previous Section, the ATC shall have the following functions with due regard for the rights of the people as mandated by the Constitution and pertinent laws:
>
> x x x
>
> **m) <u>Require</u> other government agencies, offices and entities and officers and employees and non-government organizations, private entities and individuals to render assistance to the ATC in the performance of its mandate;** xxx (Emphasis and underscoring supplied.)

20. In view of the foregoing, Petitioners Cayabyab et al. stated in the SK Petition:

> 79. R.A. 11479 essentially authorizes the ATC to **compel** the cooperation of other government officials and employees – including the petitioners – in the enforcement of the said law, all notwithstanding the fact that it violates multiple provisions of the 1987 Constitution.
>
> 80. Petitioners cannot, in good conscience, render such assistance to the ATC where the mandate of said council is premised on an invalid law. Thus, this petition seeking a judicial pronouncement on the matter.[14]

21. There is thus no doubt that Petitioners possess the requisite *locus standi*.

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[14] SK Petition, 21.

22. Assuming, for the sake of argument, that Petitioners have alleged facts which need to be proved by evidence, the rule that the Supreme Court is not a trier of facts is *not* absolute. Section 2, Rule 3 of the Internal Rules of the Supreme Court states:

> Section 2. *The Court not a trier of facts.* – The Court is not a trier of facts; its role is to decide cases based on the findings of fact before it. **Where the Constitution, the law or <u>the Court itself, in the exercise of its discretion, decides to receive evidence</u>, the reception of evidence may be delegated to a member of the Court, to either the Clerk of Court or one of the Division Clerks of Court, or to one of the appellate courts or its justices** who shall submit to the Court a report and recommendation on the basis of the evidence presented. (Emphasis and underscoring supplied.)

23. The instant Petitions cannot be dismissed just because of Respondents' claim that they present questions of fact. Under its own rules, the Honorable Court has the discretion to receive evidence on factual matters.

24. Moreover, as the crux of the instant Petitions is the constitutionality of the assailed law, the inquiry being submitted before the Honorable Court is a *legal question*. The *lis mota* herein does not pertain to factual issues that the Honorable Court is being asked to rule upon. There are also no disputed findings of fact from lower courts which are being elevated and reviewed by the Honorable Court.

25. For these reasons, Respondents fail in their attempt to raise the bar for judicial review on flimsy grounds and insulate the Honorable Court from "the pleas of the truly prejudiced, truly injured, truly violated."[15] As will be further discussed herein, the Honorable Court will not conduct an unmitigated and unwarranted judicial review if it proceeds, as planned, to hear the parties during oral arguments.

Canceling the oral arguments will be a disservice to the overwhelming public interest in these cases.

[15] *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004, J. Tinga (Separate Opinion).

26. Respondents argue that the Honorable Court, in several cases, has either cancelled the conduct of oral arguments "for practical and fitting reasons" or decided some constitutional issues without conducting oral arguments.

27. While this is true, none of the cases cited by Respondents was so vigorously opposed by a numerous, broad and diverse array of groups and individuals from different but intersecting perspectives.

28. The unprecedented number of petitions filed to invalidate RA 11479 — at least 32 as of this writing — only indicates the transcendental importance of these cases.

29. Petitioners and their co-petitioners have amply argued that the assailed law is a comprehensive and draconian law that abridges the people's basic freedoms and upsets the balance of powers in our republican and democratic system of government. It may well be the most lethal of all weapons in the government's growing legal arsenal against advocacy, criticism, dissent and the free exercise of other civil and political liberties.

30. No one, save its proponents, is safe from the assailed law. Thus, the issues surrounding its validity are matters of public concern of which the public have the right to be informed.

31. The public have the right to examine and discuss how respondents, assisted by the Office of the Solicitor General (OSG), will defend the odious law. The public will be denied of the opportunity to participate in this democratic discourse if the parties will merely be required to submit their memoranda, written answers to clarificatory questions and written opening statements to the Honorable Court.

32. The oral arguments are vital not only for hearing the parties on their respective positions, but also for the Honorable Court to fully ascertain the issues at hand. This is possibly the very reason why the Honorable Court decided to conduct oral arguments in these cases. To dispense with the same would deprive the Honorable Court of the immense value and benefit of the dynamic, interactive and spontaneous process of publicly probing the assailed law.

The Honorable Court is capable of conducting oral arguments in these cases under such modalities as will not endanger the health of everyone concerned.

33. Petitioners furthermore note that the *Urgent Motion* is premature to begin with. The Honorable Court has not even determined and announced the mode and manner by which it will conduct the oral arguments. The Honorable Court did not say that it will be gathering the parties and their counsels at the *En Banc* session hall or requiring all 16 lawyers of the OSG to appear together at the same time.

34. Amid the continuing rise in the number of COVID-19 infections in the country, the Honorable Court has *adjusted* to the situation by putting in place a system that allowed the work of the Judiciary to continue unhampered, even as it had to restrict the movement of court users, persons deprived of liberty (PDLs), justices, judges, and court personnel. This can be gathered from the issuances of the Supreme Court and the Office of the Court Administrator during the effectivity of the community quarantine in varying degrees.

35. In Administrative Circular No. 40-2020 dated May 15, 2020, the Supreme Court ordered courts to function only with a skeleton-staff by rotation and to continue receiving all petitions and pleadings filed by any party. It further directed the following:

> 6. All the courts in the GCQ areas shall continue to resolve and decide all the cases pending before them. The hearings, either in-court or through videoconferencing, of all the matters pending before them, in both criminal and civil cases, whether newly-filed or pending, and regardless of the stage of the trial, are now herein authorized. The justices and judges shall see to it that the counsels and parties are duly notified of the in-court hearings to ensure their attendance.
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> 7. In all the in-court hearings in the GCQ areas, the health hygiene protocols and other public medical standards, e.g., wearing of face masks and face shields, subjecting everyone to a no-contact thermal scanning, and observance of social distancing, shall be strictly observed.
>
> 8. In all the videoconferencing hearings in the GCQ areas, the justices or judges shall preside from the courtrooms or chambers at all times, unless in exceptional circumstances where the justice or judge may preside from home. The videoconferencing hearings in both

> criminal and civil cases shall be upon joint motion of the parties, or upon orders of the court, which shall schedule the said videoconferencing hearings.

36. In Administrative Circular No. 41-2020 dated May 29, 2020, the system of hearings put in place under Administrative Circular No. 40-2020 was maintained, *viz:*

> 6. All the courts shall resolve and decide all the cases pending before them. The hearing of cases, regardless of the stage of the trial, shall all be in-court, except in cases involving Persons Deprived of Liberty (PDLs) who shall continue to appear remotely from the detention facility, and in cases with extraordinary circumstances as may be determined by the justices and judges, which shall be heard through videoconferencing.
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> 7. The courts shall adopt a system of hearings to enable them to implement continuous trial in criminal cases and comply with other existing guidelines and rules. Pre-trials shall already be set. An accused who has been granted bail need not appear in court, unless the court has special reasons to require his or her in-court presence.
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> 8. In all the in-court hearings, the health hygiene protocols and other public medical standards, *e.g.* wearing of face masks and face shields, subjecting everyone to a no-contact thermal scanning, and observance of social distancing, shall be strictly observed.
>
> 9. In all the videoconferencing hearings, the justices or judges shall preside from the courtrooms or chambers at all times, unless in exceptional circumstances where the justice or judge may preside from home, with prior permission from the Office of the Court Administrator in the case of first and second level court judges.

37. On May 31, 2020, the SC Public Information Office announced that videoconferencing hearings will continue in GCQ areas, in view of "the success of videoconferencing hearings in

authorized courts nationwide where more than 7,000 videoconferencing hearings were done in a month, and the more than 22,000 PDLs were released during the lockdown. Court Administrator Jose Midas P. Marquez said:

> Videoconferencing hearings will continue during GCQ. This is authorized by both AC 40-2020 and AC 41-2020 which were issued by Chief Justice Diosdado M. Peralta. Hence, for example if a party wishes his/her case to be heard via videoconferencing, the proper motion just needs to be filed, and the court, using its sound discretion, can either grant or deny the motion. This remedy is available in both civil and criminal cases.

38. The Court Administrator would thereafter authorize the pilot-testing of hearings through videoconferencing in additional 78 court stations in 12 regions on June 3, 2020[16] and an additional 882 single-sala courts, which have not yet been so authorized, on August 14, 2020.[17]

39. Notably, on June 30, 2020, the Honorable Court ordered courts exposed to subjects who tested positive using the rapid antibody test *not* to close or lock down at once. Instead, it directed the conduct of initial contact tracing while the subjects were undergoing RT-PCR swab testing and awaiting their results, with symptomatic individuals undergoing self-quarantine. Only when the confirmatory RT-PCR test yielded a positive result was the concerned court allowed to close for 14 days and immediately disinfected.[18] All judges and court personnel were also mandated to continue observing safety protocols, while court users and visitors were required to register and provide their contact information upon entry in the hall of justice for purposes of contact tracing.

40. When the National Capital Region was placed under Modified Enhance Community Quarantine from August 3-14, 2020, courts in the said judicial region were physically closed. However, the Supreme Court *en banc* and the Court's three Divisions held their sessions through videoconferencing. The essential offices and services of the Court continued to operate with a skeleton-staff. Meanwhile, authorized trial courts conducted hearings through videoconferencing in both criminal and civil cases upon joint motion of the parties or upon orders of the court, without need of prior permission

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[16] OCA Circular No. 100-2020.
[17] OCA Circular No. 130-2020.
[18] OCA Circular No. 101-2020.

from the Office of the Court Administrator. In-court hearings were also allowed.[19]

41. Respondents, therefore, cannot now undermine the ability of the Honorable Court to conduct oral arguments in a way that balances the overriding public interest in these cases and the safety of the parties, their counsels, and the Court's members and staff.

42. If the COVID-19 pandemic did not stop courts from holding hearings in regular cases, some of them even *in-court*, with more reason should the Honorable Court strive to conduct said oral arguments herein due to their transcendental importance, without risking the health and lives of those concerned.

43. The Honorable Court may, for instance, host videoconferencing sessions from the Supreme Court, with the parties and their counsels remotely participating in small groups, while strictly observing safety protocols like the wearing of face masks and face shields, non-contact temperature scanning, physical distancing, frequent handwashing, and accomplishment of contact tracing forms.

44. Concerns about the disruption of the proceedings due to low speed internet connections can be obviated by providing the necessary infrastructure and competent technical support ahead of the scheduled sessions. If courts in remote areas have been successful in conducting hearings online, there is no reason why the same cannot be done in Manila.

45. Respondents traverse Petitioners' arguments in their hundreds of pages-long responsive pleadings by asserting, among others, that Petitioners' fears about the assailed law are more imagined than real. In their *Supplemental Comment*, they even said that R.A. 11479 is being "unfairly stigmatized as a legal ruse to quell oppositions against the current administration."

46. Interestingly, for the proponents of a law that has been so "unfairly stigmatized," Respondents are averse to throwing light on the same through the oral arguments. It seems that by refusing to be subjected under public scrutiny, *Respondents intend to obscure the law, which operates in the shadows.*

JOINT URGENT MOTION FOR ISSUANCE OF INJUNCTIVE RELIEF

[19] Administrative Circular No. 43-2020, August 2, 2020.

47. Lastly, petitioners humbly move that the Honorable Court urgently resolve and grant their prayer for the issuance of a Status Quo Ante Order or a Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining Respondents from implementing the provisions of the assailed law during the pendency of this case. They are seeking that the following acts, among others, be enjoined:

- The formation and convening of the Anti-Terrorism Council under Section 45;

- The exercise of the functions of the Anti-Terrorism Council under Section 46;

- The drafting and issuance of any implementing rules and regulations therefor under Section 54; and

- The constitution of the Joint Oversight Committee under Section 50.

48. Due to the absolute vagueness of the core provision of R.A. 11479, Respondents cannot be granted the foregoing powers and responsibilities, the parameters or limits of which cannot be determined. In particular, the drafting and issuance of implementing rules and regulations will be a repugnant and unlawful exercise. As stated by Petitioners in the SK Petition:

> 175. **Implementing rules and regulations cannot remedy this defect** because the core provision of R.A. 11479 is, in and of itself, impossibly and irremediably vague.
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> 176. Agencies of government tasked to implement a law do not have the authority or the license to expand, extend, or add anything to the statute itself. The IRRs cannot override, supplant, or modify the law.[20]
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> 177. In fact, trying to "correct" the glaring and inherent defect in the assailed law through its implementing rules must be avoided because of the dangers accompanying such a proposition, not the least of which is the **unwarranted discretion being given to the law-enforcer** when he is asked to set the rules for the implementation of a vague law.

[20] *Lokin v. COMELEC*, G.R. Nos. 179431-32, June 22, 2010.

> 178. IRRs can be changed by the various departments of the executive branch **anytime and at their will** – a fact that makes the vagueness of R.A. 11479 all the more dangerous.[21]

49. Injunction must be issued at the instance of Petitioners, who have shown that they possess overwhelming interest in the protection of their constitutional rights and freedoms. Their respective Petitions copiously aver the existence of such rights, as well as violations thereof by the assailed law.

50. These averments constitute a *prima facie* showing of Petitioners' right to the final relief sought — the invalidation of R.A. 11479 in its entirety) — and, hence, are a sufficient basis for the issuance of injunctive relief. As the Honorable Court ruled in *Saulog v. Court of Appeals*[22]:

> x x x for the court to act, there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon **need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits**. This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.
>
> Thus, to be entitled to the writ of preliminary injunction, the private respondent **needs only to show that it has the <u>ostensible right</u> to the final relief prayed for** in its complaint x x x. (Emphasis and underscoring supplied.)

51. That there is an urgent and paramount necessity for the injunctive reliefs to prevent serious and irreversible damage to Petitioners cannot be overstated. The constitutional rights and

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[21] *Id.*
[22] G.R. No. 11969, September 18, 1996, 262 SCRA 51, 60.

freedoms[23] for which they seek protection are inherent in Petitioners and not merely contingent or expected to arise upon the happening of a certain condition. Likewise, these rights and freedoms are enforceable as a matter of law, such that violations thereof is also prohibited by law. In fact, no less than the Constitution grants and guarantees the same.

52. There is also no merit to Respondents' claim that "it is the public, not the petitioners, who will actually suffer grave and irreparable injury if the injunctive relief prayed for is issued,"[24] *as if, without RA 11479, the State is powerless and paralyzed to suppress terrorism*. This is not true.

53. Our criminal laws already penalize terrorism. The commission of the predicate crimes under R.A. 9372 or the Human Security Act is punishable under various provisions of Act No. 3815 or the Revised Penal Code and various special penal laws. For instance, R.A. 10168 punishes principals, accomplices[25] and accessories[26] to the crimes of terrorist financing,[27] attempt or conspiracy to commit terrorist financing,[28] and dealing with property or funds of designated persons.[29]

54. The truth is that Respondents are blaming purported gaps in the repealed anti-terror law for the State's own failure to suppress alleged acts of terrorism in the country. This hollow fault-finding exposes, rather than covers up, the State's inept use of the vast intelligence resources and enormous confidential funds that it has been granted to combat terrorism. Certainly, this cannot be allowed at the expense of the people's rights and liberties.

55. Moreover, the implementation of the assailed law must urgently be enjoined in light of continuing moves on the part of respondent Duterte's agents to lay the political justification for the designation and/or proscription of Petitioners and their organizations under Sections 25 and 27 of R.A. 11749.

56. Rabid officials of the NTF-ELCAC led by Lt. Gen. Antonio Parlade Jr. and PCOO Undersecretary Lorraine Badoy have not relented in viciously red-tagging and terrorist-labeling many of the herein Petitioners and even undersigned counsel themselves. For

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[23] Namely, their right to life, liberty and security; freedom of speech, expression and association; privacy and freedom of movement; ownership of property; freedom of thought and conscience; prohibition against arbitrary arrests, detention without charges, torture and cruel or degrading treatment.
[24] *Consolidated Comment*, July 17, 2020, 220.
[25] Section 6.
[26] Section 7.
[27] Section 4.
[28] Section 5.
[29] Section 8.

instance, Parlade said during a media forum last August 30, 2020[30] that some of the organizations in the BAYAN Petition, together with the undersigned counsel, are "creations" and "cadres" of the CPP who are "involved" in "terrorism". He said:

> xxx Si Jose Maria Sison, siya ang nag-identify sa mga organisasyon na ito na kasama n'ya sa Communist Party of the Philippines. Siya ang nagsabi na marami silang alyado at **ito'y crineate, dinesign talaga ito para palakihin yung kanilang, uh, alliances, progressive alliances. Uh you know, napakalawak ng kanilang organizations, including members of the legal profession, kaya nga 'yung NUPL na 'yan ano 'yan eh, creation 'yan ng CPP**. Let's admit it. xxx So why is it important that I raise this issue of being a cadre of the Communist Party? Because it says there in their Constitution that they embrace, they embrace armed rebellion, 'yung paggamit ng armas. In fact, pagka sila ay nag-take oath nag-ta-take oath sila, may bala d'yan, Constitution ng CPP at may bala dyan. Ang ibig sabihin n'yan, bala ng M16, ang ibig sabihin n'yan ineembrace nila 'yung violence. So ito 'yun, ito 'yung pinagkaiba ng mga organisasyon na crineate ng, uh, ng CPP as a front organization na gumagawa ng legal, mala-legal and then illegal, ok? **So hindi natin pwedeng pabayaan 'yung ginagawa nilang illegal kasi dito sila nai-involve sa terrorism**. (Emphasis supplied.)

57. Meanwhile, key officials of the AFP and the PNP have proposed the regulation and monitoring of social media for counter-terrorism[31] and apprehend so-called quarantine violators.[32] The Movie and Television Review and Classification Board (MTRCB) also

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[30] Tapatan sa Aristocrat on "Terrorism, Terrorists and International Humanitarian Law" hosted by Melo Acuna. A video of the said media forum has been uploaded in Youtube and is available at https://www.youtube.com/watch?v=PAyO-Bqenlc (last accessed on September 13, 2020).

[31] Rambo Talambong, *Social media use should be regulated by anti-terror law – AFP,* Rappler.com, August 3, 2020, https://rappler.com/nation/afp-chief-gapay-says-social-media-use-should-be-regulated-by-anti-terror-law (last accessed on September 7, 2020).

[32] Nestor Corrales, *PNP will scan social media for quarantine violators, Shield chief warns,* Philippine Daily Inquirer, September 6, 2020, https://newsinfo.inquirer.net/1331798/pnp-to-scan-social-media-for-quarantine-violators#ixzz6XKHETEha (last accessed on September 7, 2020).

announced its plan to regulate content of popular online movie streaming platform Netflix.[33]

58. RA 11479 places a shroud of fear over the entire nation as it deters the full and free exercise of fundamental rights and disturbs the balance of powers in government. *It is not a measure to counter terrorism; it is in itself a source of terror.*

59. Hence, the immediate issuance of injunctive reliefs will not only preserve individual and collective rights and insulate the Constitution from being cannibalized, but will also help derail the entrenchment of tyranny further into the country.

PRAYER

WHEREFORE, premises considered, Petitioners respectfully pray of this Honorable Court that:

1. The instant *Joint Opposition and Joint Urgent Motion* be duly NOTED;

2. Respondents' Urgent Motion be DENIED;

3. The oral arguments be HELD;

4. THEIR PRAYER FOR A STATUS QUO ANTE ORDER or a TEMPORARY RESTRAINING ORDER and/or a WRIT OF PRELIMINARY INJUNCTION be RESOLVED AND GRANTED.

Other just and equitable reliefs are likewise prayed for.

Quezon City for Manila, September 14, 2020.

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[33] Edu Punay, *MTRCB hit over plan to regulate Netflix,* Philippine Star, September 5, 2020, https://www.philstar.com/headlines/2020/09/05/2040193/mtrcb-hit-over-plan-regulate-netflix (last accessed on September 7, 2020).

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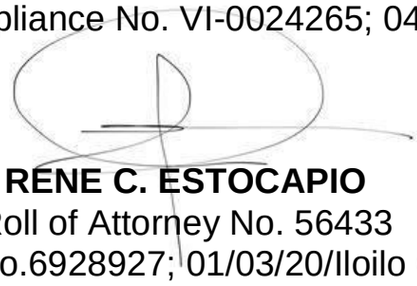

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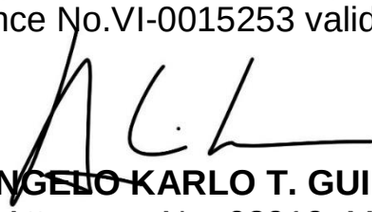

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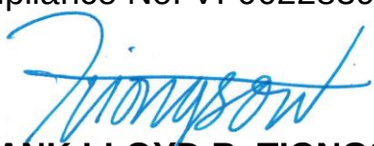

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NOTICE OF SUBMISSION

The Clerk of Court *En Banc*
Supreme Court
Manila

Greetings! Please submit the foregoing *Joint Opposition to the Urgent Motion dated August 24, 2020 with Joint Urgent Motion to Resolve Application for Injunctive Relief* for the consideration of the Honorable Court immediately upon receipt hereof.

EPHRAIM B. CORTEZ

Copy furnished:

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EXPLANATION OF SERVICE AND FILING

Copies of this *Joint Opposition to the Urgent Motion dated August 24, 2020 with Joint Urgent Motion to Resolve Application for Injunctive Relief* were served upon respondents and filed with the Honorable Court by electronic mail due to the quarantine limitations of the COVID-19 pandemic, time constraints and lack of personnel.

EPHRAIM B. CORTEZ