



Legal Rights and Natural  
Resources Center, Inc.  
Kasama sa Kalikasan  
(LRC-KSK/Friends of  
the Earth-Philippines)

Issue Paper 2005-01

**Looking Behind  
Counter -Terrorism  
Measures,  
Are they for the  
Protection or for  
the Persecution of  
the People?**



## LRC-KsK Issue Paper 2005-01

All publications of LRC-KsK are dedicated to the countless committed individuals and communities who struggle everyday for a more dignified existence. They are the primary source of our insights and inspiration.

The opinions and views that this paper carries do not necessarily reflect the official stance of the Center.

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### *About the Cover*

Strong Police presence during the People's Alternative State of the Nation Address at Commonwealth Avenue, Quezon City last July 2005.

Photograph by Yuri Onodera/Friends of the Earth-Japan

## **Introduction**

Following the dramatic international events that characterize this first decade of the century as the age of terrorism - the September 11 attacks on the World Trade Center and the Pentagon, the Madrid train bombings, the Bali bombings - counter-terrorism measures have been carried out by international organizations and different countries in their respective territories, and beyond.

The Philippines has had its fair share of events characterized as terrorist attacks as well - the Super Ferry, LRT and the Davao airport bombings. To address these dangers, the government has implemented similar measures to fight terrorism. In both the Senate and House of Representatives, several anti-terrorism bills were filed. The most pervasive problem which can be seen from such efforts is the shared framework that curtailment of constitutionally protected rights is inevitable in the pursuit of security measures. This situation is made dangerous by the heightened anti-terrorism drive of the government. With this stance, it is not farfetched that any person, whether engaged in a lawful activity or not may be labeled as a terrorist and punished as such under the filed Anti-Terrorism Bills.

This paper takes into consideration the Anti-Terrorism Bills passed in both Houses of Congress, Senate Bill No. 2540 and House Bill No. 5923.

## Combating Terrorism or Restraining Liberties?

In several countries, laws have been passed similar to the Anti-Terrorism Bills pending in the Philippine Congress. Such measures are being opposed by various civil society groups for being overly broad in expanding the powers of the state. In India, the Prevention of Terrorism Act (POTA) has been used against political opponents, religious minorities, tribals and even children. The minority groups decry that the POTA has become an instrument to brand them as members of extreme leftist groups. Even a thirteen-year old boy was arrested because his father was suspected of involvement with an insurgent group.<sup>1</sup>

In Egypt, Law No. 97 defines terrorism as "any use of force or violence or any threat or intimidation to which the perpetrator resorts in order to carry out an individual or collective criminal plan aimed at disturbing the peace or jeopardizing the safety and security of society and which is of such nature as to create harm or create fear in persons or imperil their lives, freedom or security; harm the environment; damage or take possession of communications; prevent or impede the public authorities in the performance of their work, or thwart the application of the Constitution or of laws or regulations." Since September 11, 2001, numerous arrests have been made. Arrested persons varied from protesters to academicians, professors to doctors. Charges included illegally collecting funds, plotting to assassinate government officials and even the mere possession of "suspicious" literature. The UN Human Rights Committee has already questioned this broad and general definition of terrorism.<sup>2</sup>

In Cambodia, anti-terrorism measures have increased ten-fold after the World Trade Center attack. Its neighbor, Indonesia, is now considering anti-terrorism bills. An anti-terrorism legislation is now being considered by the Indonesian Parliament. The legislation is opposed for its broad definitions of terrorism, the longer period of detention, lesser quantum of proof for detention, increased power in intelligence-gathering such as going through personal mail and tapping telephone conversations. More disturbing, it has been used to target political opponents, singling out organizations and groups, labeling them as terrorists.<sup>3</sup>

<sup>1</sup> In the Name of Counter-Terrorism: Human Rights Abuses Worldwide, A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights (March 25, 2003) <<http://www.hrw/un/chr59/counter-terrorism-bck4.htm>>

<sup>2</sup> *id*

<sup>3</sup> *id*

The United States government, after the World Trade Center attacks, enacted the USA PATRIOT Act which supplemented a previous law on terrorism, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Numerous objections were raised by its citizens and various human rights advocates. One of the greatest objections is it undermines the protection of their Bill of Rights. The specific objections to the USA PATRIOT Act include the overly broad definition of the crime of domestic terrorism which literally makes all citizens a suspect of terrorism. The Act likewise increases the surveillance, search and arrest powers of the law enforcement officers even without judicial determination of probable cause. Even student records can be accessed without the individual knowing that he or she is a suspected terrorist. Non-citizens are in danger of being deported at any time by mere suspicion of associating with a suspected organization. There have been numerous instances when aliens have been arrested, questioned without counsel and detained for an indefinite period. Also, citizens will be deported or stripped of their citizenship if found guilty under the Act. A mere expression of dissent can be considered an act of terrorism.<sup>4</sup>

The courts of the US had occasions to pass upon the constitutionality of some provisions in the AEDPA and the USA PATRIOT Act. In the case of Humanitarian Law Project vs. Reno<sup>5</sup>, the U.S. Court of Appeals for the Ninth Circuit affirmed the decision of the District Court of California holding as unconstitutionally vague the provisions of AEDPA which penalize the providing of "training" and "personnel" to foreign terrorists. The AEDPA makes it a crime if a person provides "material support or resources" which include "training" and "personnel" to designated foreign terrorist organizations.

In the Humanitarian Law Project case, the plaintiffs had planned several activities which include engaging in political advocacy before the U.N. Commission on Human Rights and US Congress on behalf of these designated terrorist organizations, provide them with training on how to engage in political advocacy and how to use international law to seek redress

<sup>4</sup> B. Anderson and W. Rossiter. 'Backward March! The USA Patriot Act and the Bill Of Rights' <<http://www.acumontana.org>>; 'How the USA-Patriot Act Allows for Detention and Deportation of People Engaging in Innocent Associational Activity' <<http://archive.aclu.org>>; L.R. Katz. 'Anti-Terrorism Laws: Too Much of a Good Thing' <<http://jurist.law.pitt.edu/forum/forumnew39>>

<sup>5</sup> CV-98-1971-ABC, 2001



for human right violations, assist in peace conferences and meetings, give advice on how to improve delivery of health care, and develop the school curricula and teach language, literature, cultural heritage and the arts. But these activities they could not do because of the fear of prosecution and imprisonment. The US Courts agreed with the plaintiffs' position holding that:

"It is easy to see how someone could be unsure about what AEDPA prohibits with the use of the term "personnel" as it blurs the line between protected expression and unprotected conduct. Someone who advocates the cause of the PKK<sup>6</sup> could be seen as supplying them with personnel; it even fits under the government's rubric of freeing up resources, since having an independent advocate frees up members to engage in terrorist activities instead of advocacy. But advocacy is pure speech protected by the First Amendment.

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The term "training" fares little better. Again, it is easy to imagine protected expression that falls within the bounds of this term. For example, a plaintiff who wishes to instruct members of a designated group on how to petition the United Nations to give aid to their group could plausibly decide that such protected expression falls within the scope of the term "training". The government insists that the term is best understood to forbid the imparting of skills to foreign terrorist organizations through training. Yet, presumably, this definition would encompass teaching international law to members of designated organizations. . . ." (Citations omitted)

This was affirmed in a later decision of the same court.<sup>7</sup> On 2003, the same plaintiffs in the previously discussed case filed another action to assail the constitutionality of a provision in the USA PATRIOT Act which prohibits the provision of material support, including "expert advice or assistance" to designated foreign terrorist organizations. The District Court of the Central District of California, through District Judge Audrey Collins, upheld the position of the plaintiffs and declared these provisions unconstitutional for vagueness, saying that:

<sup>6</sup> Kurdistan Workers' Party was designated as a foreign terrorist organization by the Secretary of State on 1997 in Designation of Foreign Terrorist Organizations (62 Fed. Reg. 52,650, 52,650-51)

<sup>7</sup> Humanitarian Law. Project vs. USDOJ, CV-98-1971-ABC, 2003

“... the Court concludes that the term ‘expert advice or assistance’, like the terms ‘training’ and ‘personnel’, is not sufficiently clear so as to allow persons of ‘ordinary intelligence a reasonable opportunity to know what is prohibited.’ ”

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“Furthermore, Defendants’ contradictory arguments on the scope of the prohibition underscore the vagueness of the prohibition. The ‘expert advice or assistance’ Plaintiffs seek to offer includes advocacy and associational activities protected by the First Amendment, which Defendant concede are not prohibited under the USA PATRIOT Act. Despite this, the USA PATRIOT Act places no limitation on the type of expert advice and assistance which is prohibited, and instead bans the provision of all expert advice and assistance regardless of its nature. Thus, like the terms ‘personnel’ and ‘training’, ‘expert advice or assistance’ ‘could be construed to include the unequivocally pure speech and advocacy protected by the First Amendment’ or to ‘encompass First Amendment protected activities’.”<sup>8</sup> (Citations omitted)

The Anti-Terrorism Bills pending in the two Houses of the Twelfth Congress also contain words which are as vague as “personnel”, “training” and “expert assistance”. “Establishing or maintaining contact or link”, “providing training” and “arranging or assisting in the conduct of a meeting” could be construed as participation in a terrorist activity. The same state of affairs could happen to advocacy groups in the country who instead of educating the people on human rights violations, or assisting in peace negotiations or providing training for medical services, will be hindered, and worse, punished for helping out the people in need of assistance.

After the September 11 attack and the US campaign against terrorism, the Philippine government has intensified its efforts to combat terrorism. Even at this time when there is no law defining terrorism, the government has waged war against the “terrorists” in Mindanao and in the process displaced large numbers of civilians. Muslim communities have complained of being used as “sacrificial lambs” by the government following a series of arrests of Muslims tagged by government as terrorists.<sup>9</sup> With this current

<sup>8</sup> Humanitarian Law Project, et al. vs. Ashcroft, et al., CV 3-6107-ABC (MCx), 2004

<sup>9</sup> ‘More Abu suspects fall in anti-terror crackdown’ (April 03, 2004) <[http://www.inq7.net/nat/2004/apr/03/nat\\_1-1.htm](http://www.inq7.net/nat/2004/apr/03/nat_1-1.htm)>

stance of the government, the passage of a law which punishes legal and legitimate acts under the definition of terrorism may result in increased random arrests, hasty labeling and wiretappings.

Civilians in areas purportedly inhabited by perceived terrorists have experienced and are still experiencing human rights violations, directly and indirectly. In Cagayan, farmers have experienced harassment, destruction of property and even an ambush incident for allegedly having links with the New People's Army.<sup>10</sup> In Agusan del Norte, the Banwaon indigenous tribe was forced to flee their homes because of military operations. A religious leader assisting the indigenous peoples in their struggles was tied with a rope taken from a flagpole and forced to sing songs which the soldiers would command him to sing. A leader of the same Banwaon tribe was picked up by alleged CAFGU members and was found dead the next day.<sup>11</sup>

In Calapan, several members of the Mangyan indigenous tribe have been abducted and some have been found dead with signs of torture.<sup>12</sup> There have been 64 cases of human rights violations committed against Bayan Muna coordinators, members and supporters between Feb. 21, 2001 and April 8, 2002 which involved killings, harassment, unjustified arrests and illegal detention and searches of Bayan Muna members and coordinators in Southern Tagalog, Eastern Visayas, Central Luzon, Central Visayas and the Bicol region as documented by the Ecumenical Movement for Justice and Peace.<sup>13</sup> The International Peace Mission documented numerous incidents of illegal arrests and harassment in Basilan.<sup>14</sup> At the present rate of these violations, an expanded definition of terrorism is indeed very dangerous.

The foregoing circumstances all the more provide reasons to be cautious of the enactment in this country of an anti-terrorism law with an overly broad definition. "When I see it, I'll know it!" What a frightening phrase especially when uttered by the police or military. Who will forget the practices of the military when the Anti-Subversion Law was still good law? Numerous people have been invited for questioning or arrested because of the government's haste in labeling them as communists. This

<sup>10</sup> Shared by Isabelo Abiento of Cagimungan (Cagayan Group Alliance) during a Forum on Anti Terrorism Bill at the UP Balay Kalinaw, (July 17, 2003)

<sup>11</sup> Shared by Ruel Badbaran of the Banwaon Tribe in Agusan del Sur, *ibid*

<sup>12</sup> Shared by Unaw Bugnot of the Kapulungan Para sa Lupaing Ninuno in Calapan, Mindoro, *ibid*

<sup>13</sup> 'Bayan Muna Protests Repression' (April 19, 2002) <[http://www.inq7.net/nat/2002/apr/19/text/nat\\_10-1-p.htm](http://www.inq7.net/nat/2002/apr/19/text/nat_10-1-p.htm)>

<sup>14</sup> International Peace Mission Report, Basilan: Another Afghanistan? :<http://www.focusweb.org>



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law has already been repealed. Now here comes the anti-terrorism law with an overly broad definition of terrorist acts.

Even the Human Rights Committee (HRC) of the United Nations expresses concern on the anti-terrorism bills pending in both Houses of Congress. The UN HRC said that the bills include a “broad and vague definition of acts of terrorism which could have a negative impact on the rights guaranteed by the Covenant (International Covenant on Civil and Political Rights)”<sup>15</sup> It proceeded further by stating that the Philippine Legislature “should ensure that legislation adopted and measures taken to combat terrorism are consistent with the provisions of the Covenant.”

<sup>15</sup> Advanced Unedited Version of the Concluding Observations of the Human Rights Committee on the Reports Submitted by the Philippine Government

## The Philippine Counter-Terrorism Efforts

For a long time, the Philippines had been dealing with local armed groups in the Mindanao region which the government brands as "terrorist" – the Abu Sayyaf and the MILF, the latter group now undergoing peace talks with the government. The Abu Sayyaf has assumed responsibility of several bombing incidents in Jolo and Zamboanga and of the Super Ferry, to name a few. The military deployed soldiers in Mindanao since the 1990's to engage these groups and have tried to negotiate, and even succeeded with some of them like the MNLF and the MILF. In 1995, Presidential issuances were issued to address the problem, Executive Order No. 246 creating the National Action Committee on Anti-Hijacking and Anti-Terrorism and Executive Order No. 281 creating the Presidential Task Force on Intelligence and Counter-Intelligence. Several proposed Anti-Terror Bills were likewise proposed in Congress.

After the September 11, 2001 World Trade Center attacks, President Arroyo strengthened the country's alliance with the United States, showing full support to the latter's "all out war" on terrorism, holding a series of Balikatan exercises with US troops to equip local military with skills to better hunt down the Abu Sayyaf. The government became more aggressive in its efforts to fight and bring to an end the activities of the Abu Sayyaf, resulting to increased killings and detentions of civilian Muslims as reported by the International Peace Mission.<sup>16</sup> The US government, in return, has provided the country with more than \$400 million in military assistance, including provision of thousands of assault rifles, gunboats, helicopters and hi-tech combat equipment, such as night vision goggles and live-time satellite-imagery analysis.<sup>17</sup> The US also worked on several engineering projects and free health clinics in Basilan.<sup>18</sup>

Prior to the military aid given by the US after the 9/11 attacks, the Philippine government has had little success in defeating the Abu Sayyaf forces. The kidnapping of foreigners and Filipinos persisted. Bombing incidents continued. With the support of the US, financially and technically, the government reported that it stopped the terrorist activities of and substantially crippled the Abu Sayyaf, cutting their numbers from

<sup>16</sup> International Peace Mission Report, Basilan: Another Afghanistan? <<http://www.focusweb.org>>

<sup>17</sup> 'Philippine Progress' Washington Times Editorial, March 29, 2004

<sup>18</sup> 'The U.S. Deployment in the Philippines: Expand the Mission' <<http://www.cdi.org/terrorism/philippines-expansion-1.r.cfm>>

2,000 in 2002 to approximately 100. President Macapagal-Arroyo herself has repeatedly stressed that the US assistance largely contributed to this success.<sup>19</sup> Also, when the US troops arrived in Basilan during the Balikatan exercises in 2002, there have been no kidnappings or beheadings by Abu Sayyaf and some locals forced to flee by the Abu Sayyaf activities have returned home.<sup>20</sup> Several local civilians in Basilan were actually happy and felt safer when the US troops were there.<sup>21</sup> Even after the Balikatan exercises, the Philippine government has repeatedly sought the assistance of the US and in one instance the FBI, specifically its intelligence and sophisticated equipment, in its manhunt for operatives of the Jemaah Islamiyah, a regional “terrorist” organization.<sup>22</sup>

Several months ago, however, the Super Ferry catastrophe was allegedly caused by the Abu Sayyaf. Two Malaysians and one Indonesian were kidnapped. Abu Sayyaf members under detention broke out of prison together with other ordinary criminals. The manhunt is still ongoing, with a few escapees already rearrested by the military. To date, the Abu Sayyaf, despite the official reports of the reduction of members, is still a force to contend with. The circumstances show that the military and police forces of the Philippines are either ill-equipped or unwilling to deal with so-called domestic “terrorists”. In fact, it was reportedly published in the New York Times that the US, United Kingdom and Australia had given the Philippine government a diplomatic reproach, a warning for not being able to crack down the local “terrorist” groups.<sup>23</sup> Threatened with the possible issuance of travel advisories or loss of military aid in the case of the US, the government has been forced to increase its anti-terror efforts, the peace officers constantly on the alert for terrorist attacks, intensifying military activities in the Mindanao area. It has also been pressured by Washington to enact a stronger anti-terrorism law, perhaps even similar to the USA PATRIOT Act, to strengthen the counter-terrorism measures of the government.<sup>24</sup>

<sup>19</sup> ‘Philippine Progress’ Washington Times Editorial, March 29, 2004

<sup>20</sup> ‘The U.S. Deployment in the Philippines: Expand the Mission’ <<http://www.cdi.org/terrorism/philippines-expansion-pr.cfm>>

<sup>21</sup> ‘Welcome Back, GI Joe’ <[http://www.worldpress.org/article\\_model.cfm?article\\_id=501&dont=yes](http://www.worldpress.org/article_model.cfm?article_id=501&dont=yes)>

<sup>22</sup> ‘Government Asks FBI for Help vs. Terror’ (October 28, 2003) Philippine Daily Inquirer

<sup>23</sup> ‘US Behind Anti-Terror Drive, says NY Times’ (April 12, 2004), Philippine Daily Inquirer

<sup>24</sup> ‘War on Terror Breeds Conflict, Misery’ (March 16, 2004) <[www.today.net.ph](http://www.today.net.ph)>

## The Anti-Terrorism Bills

In line with the all-out war on terrorism triggered by 9/11 and the alliance with the US, President Macapagal-Arroyo has certified the proposed anti-terrorism law as a priority bill. Conflicting views have been espoused on the matter of enacting a law penalizing terrorism. Several members of Congress, the executive, particularly, the military and police, and several academicians have pushed for the enactment of such a law. It is believed to put in place more effective legal mechanisms to protect the people and to strengthen the government's capability to combat terrorism by giving it more powers. It will likewise undermine the capabilities of the terrorist groups by allowing the government to look into their bank deposits and freeze them.<sup>25</sup>

Certain individuals and groups have, in varying degrees, opposed the law. The main objection is that the definition of the crime of terrorism is too broad and that it has anti-human rights provisions. In the House, Rep. Teddy Locsin had been the most outspoken in opposing the bill for being too overbroad and for its anti-human rights provisions and even proposed that it be reviewed by the Institute of Human Rights at the UP Law Center. The Bagong Alyansang Makabayan has called the law as the "Anti-sneezing Act of 2003". The difficulty of giving a specific definition for the crime has also been previously discussed and pondered. Some, on the other hand, do not see the necessity of the bills since there are existing laws which already penalize the acts characterized as terrorism.<sup>26</sup>

The bills pending in Congress are Senate Bill No. 2540 submitted jointly by the Committee on Public Order and Illegal Drugs; Justice and Human Rights; and Finance sponsored by Senators Barbers, Pangilinan, Villar Jr., Lacson, Magsaysay, Jr., Osmeña III and De Castro, and House Bill No. 5923 submitted by the Committee on Justice sponsored by Representatives Libanan, Marcos, Durano, Syjuco, Barbers and Biazon.

Both bills are vague in their definitions of crucial terms such as "terrorism," and "act/s of terrorism":

<sup>25</sup> Committee on Justice Fact Sheet HB No. 5923

<sup>26</sup> The World Bulletin Vol. 14 Nos.3-4 (May-August 1998) 'Legal and Policy Considerations in the Fight against Terrorism' pp 55-90

**Senate Bill No. 2540**

“Sec. 3 Terrorism.- How Committed. – Terrorism is committed by the use or threatened use of serious violence, force, or means of destruction perpetrated against civilians or non-combatants, or against properties with the intention of instilling a state of common danger, panic or fear, or of coercing or intimidating the public or government.

Acts of terrorism may be committed through any of the following means:

1) Hijacking or threatening to hijack any kind of aircraft, ship, vessel, electric or railroad train, locomotive, passenger bus or other means of mass transportation, or public conveyance;

2) Taking or threatening to kidnap or take hostage any person, in order to compel, coerce, or force another person, whether natural or juridical, including the government or any of its agencies or instrumentalities, to give something of value or a sum of money as ransom, or in order force another person to do or abstain from doing any act or decision as a condition for the release or non-taking of the hostages;

3) Causing or threatening to cause death or serious bodily harm to a person or persons, or to cause a serious risk to the health or safety of the public or any segment thereof;

4) Killing of, or violent attack upon, an internationally protected person or upon the liberty of such person in violation of the Convention on the Protection and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, and other international agreements;

5) Causing serious interference with, or serious disruption of an essential service, vital facility, critical infrastructure, other than as a result of advocacy, grievance, protest, dissent, strike, or an armed conflict, provided the same is in accordance with international humanitarian law;



6) Causing serious damage to property, the environment and the national patrimony;

7) Causing or threatening to cause mass destruction through the use of biological or chemical agents, noxious, poisonous or radioactive substances or materials, nuclear devices, explosives, firearms, or any other kind of lethal weapon, material, or substance, or resorting to arson;

8) Manufacture, possession, acquisition, transport, diversion, supply, use or sale of explosives, biological agent, nuclear weapon, materials or equipment and instruments in furtherance of terrorism.

Any person who, directly or indirectly, commits any act of terrorism shall suffer the penalty of life imprisonment to death. If the penalty imposed is life imprisonment, a fine of ten million pesos (Php 10,000,000.00) shall be imposed.”

#### **House Bill No. 5923**

“Sec. 3. Terrorism, How committed. – Terrorism is committed when any person or group of persons uses, or threatens to use violence principally directed against civilians or non-combatant persons, or causes damage or destruction against properties with the intent of creating a common danger, terror, panic or chaos to the public or a segment thereof.

Acts of terrorism may be committed through any of the following means:

1) Threatening or causing death or serious bodily harm to a person or persons, or deprivation of liberty, or to cause a serious risk to the health or safety of the public or any segment thereof;

2) Threatening to cause substantial damage or actually causing damage to infrastructure or property, public or private;

3) Threatening to cause serious interference with, or actually

causing disruption of a public transport or utility or an essential service facility or system, whether public or private, except in the furtherance of a legitimate protest, grievance or advocacy;

4) Manufacture, possession, acquisition, transport, supply, use or sale of explosives, biological agent, chemical agent, nuclear weapon, materials, or equipment and instruments;

5) Attacking or threatening to attack, or committing any other unlawful acts against networks, servers, computers and other information and communication systems;

6) Willful destruction of natural resources, such as forest and marine resources, oil spillage, and other similar acts of destruction of the environment that threatens ecological security;

7) Killing of, or violent attack upon an internationally protected person or upon the liberty of such person in violation of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on February, 1974 and other international agreements.”

Although Congress, under its police power, has the power to define and punish crimes,<sup>27</sup> there are limitations on such power. The Constitution, especially the Bill of Rights, limits such power. As elucidated by the Supreme Court,

“Someone has said that powers of the legislative departments of the Governments, like the boundaries of the ocean, are unlimited. In constitutional governments, however as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the Constitution or the Charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.”<sup>28</sup>

<sup>27</sup> *People vs. Santiago*, 43 Phil. 120, 124 (1922)

<sup>28</sup> *Government vs. Springer*, 50 Phil 259, 309 (1927)

In another case, the importance of the Bill of Rights was discussed. In that case, the Supreme Court held

“that the Bill of Rights is designed to preserve the ideals of liberty, equality and security ‘against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles.’

“In the pithy language of Mr. Justice Robert Jackson, the purpose of the Bill of Rights is to withdraw ‘certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s rights to life, liberty and property, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.’ Laski proclaimed that ‘the happiness of the individual, not the well-being of the State, was the criterion by which its behaviour was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise.’ ”<sup>29</sup>

The Bill of Rights imposes the following limitations, among others:

Article III, Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

Article III, Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

Due process refers to “the embodiment of the sporting idea of fair play.”<sup>30</sup> It is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the

<sup>29</sup> *Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195, June 5, 1973

<sup>30</sup> *Ermita-Malate Hotel and Motel Owner's Association vs. City Mayor of Manila*, 20 SCRA 849 (1967)

<sup>31</sup> *Secretary of Justice vs. Hon. Ralph Lantion*, G.R. No. 139465, January 18, 2000; Cruz, *Constitutional Law*, 1993 Ed., pp. 102-106

guarantee of being heard by an impartial and competent tribunal.<sup>31</sup>

Substantive due process is a guarantee against the State's exercise of arbitrary power. To justify the State in interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon the individuals.<sup>32</sup>

The second article guarantees that the accused in a criminal charge be informed as to why he is proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law.<sup>33</sup>

The Anti-Terrorism Bills ignore these constitutional limitations. The definitions of terrorism and acts of terrorism are vague that the citizens would not be notified of what acts or omissions are punishable. Indeed, due process requires that a criminal law must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute.<sup>34</sup> This is known as the void-for-vagueness doctrine.

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that "men of common intelligence must necessarily guess at its meaning and differ as to its application".<sup>35</sup> It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves the law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.<sup>36</sup>

To avoid being unduly vague and therefore unconstitutional, a statute must be definite, certain, and give fair warning regarding (1) the class of persons who fall within its scope, (2) the conduct that is forbidden,

<sup>32</sup> U.S. vs. *Toribio*, 15 Phil 85 (1905)

<sup>33</sup> *Nuñez vs. Sandiganbayan*, 111 SCRA 433, 452 (1982)

<sup>34</sup> *Estrada vs. Sandiganbayan*, 369 SCRA 394, 439 (2001)

<sup>35</sup> *Connally vs. General Construction Co.*, 269 U.S. 385, 391 (1926)

<sup>36</sup> *People vs. Nazario*, 165 SCRA 188 (1988) cited in *People vs. dela Piedra*, 350 SCRA 163 (2001); *Estrada vs. Sandiganbayan*, supra

and (3) the authorized punishment. The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice.<sup>37</sup> Due process requires that all be informed as to what the State commands or forbids.<sup>38</sup>

More importantly, the void-for-vagueness doctrine requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.<sup>39</sup> This aspect of the doctrine does not refer to actual notice but to the requirement that a legislature establish minimal guidelines to govern law enforcement.<sup>40</sup>

Thus, in *Grayned vs. City of Rockford*<sup>41</sup>:

“Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.”

In fact, these standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime “must be defined with appropriate definiteness.” There must be ascertainable standards of guilt.<sup>42</sup>

The aforementioned provisions of these bills fail to meet these standards. They do not effectively distinguish/delineate between acts they aim to characterize as “acts of terrorism” and other acts already characterized otherwise. For example, rebellion<sup>43</sup> is indistinguishable from the acts

<sup>37</sup> *State vs. Hill*, 189 Kan 403, 369 P2d 365, 91 ALR 2d 750 cited in *Estrada vs. Sandiganbayan*, supra.

<sup>38</sup> *Smith vs. Goguen*, 415 U.S. 566 (1974)

<sup>39</sup> *Grayned vs. City of Rockford*, 408 U.S. 104 (1972); *Kolender vs. Lawson*, 461 U.S. 352 (1983)

<sup>40</sup> *Kolender vs. Lawson*, supra, citing *Smith vs. Goguen*, supra

<sup>41</sup> 408 U.S. 104 (1972)

<sup>42</sup> *Winters vs. New York*, 333 U.S. 507 (1948) citing *Pierce v. United States*, 314 U.S. 306 (1941) and *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940), 128 A.L.R. 1352

<sup>43</sup> Under Art. 134 of the Revised Penal Code as amended by Republic Act No. 6968, “The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.”



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described in these bills and yet there exists a distinction between rebellion and terrorism. Indeed, how one is to distinguish between rebellion in pursuit of a firmly held political belief and terrorism is problematic. This distinction is important since the penalties for terrorism are graver than that for rebellion. Terrorism is punished with life imprisonment to death whereas rebellion is punished with reclusion perpetua. Other politically motivated crimes such as coup d'etat and sedition have different penalties as well; reclusion perpetua and prison mayor, respectively. Another example is a situation where a demonstrator, in the heat of the moment, starts using a steel pipe to break car windows. Although this is not to be condoned, it undoubtedly cannot be characterized as terrorism. The serious violence and destruction which would characterize terrorism is undeniably absent.

Further, the Anti-Terrorism Bills do not add anything to existing penal laws. The enumerated acts of terrorism are already provided for and penalized in the Revised Penal Code (RPC) and other special laws.

CRIME	SENATE BILL NO. 2540	HOUSE BILL NO. 5923
Acts Inimical to Civil Aviation (RA 6235); Special Cases of Malicious Mischief, Art. 328 (RPC)	Sec. 3 (1)	Sec. 3 (3)
Art. 286 Grave Coercions (RPC), Art. 267 Kidnapping	Sec. 3 (2)	
Arts. 263-266 Physical Injuries, Art. 248 Murder, Art. 249 Homicide (RPC)	Sec. 3 (3)	Sec. 3 (1)
Special Cases of Malicious Mischief, Art. 328 (RPC)	Sec. 3 (5)	Sec. 3 (3)
Malicious Mischief, Art. 327(RPC); Forestry Code (PD 705); Illegal Fishing Act (RA 8550)	Sec. 3 (6)	Sec. 3 (2&6)
Illegal Manufacture of Firearm (PD 1866); Arson, Art. 320 (RPC) & Amending the Law on Arson (PD 1613)	Sec. 3 (7&8)	Sec. 3 (4)
Damage and Obstruction to Means of Communication, Art. 330 (RPC)		Sec. 3 (5)
Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (PD 1829)	Sec. 7	
Declaring as Unlawful the Malicious Dissemination of False Information or the Willful Aiking of any Threat Concerning Bombs, Explosives or Any Similar Device or Means of Destruction (PD 1727)	Sec. 8	

The distinguishing element between terrorism defined in both bills and the aforementioned crimes defined in the RPC and special laws is the intention of creating a common danger, terror, panic or chaos to the public or a segment thereof.<sup>44</sup> The Senate version added the intention of coercing or intimidating the public or government.<sup>45</sup> Such an all encompassing definition would lead to a chilling effect over the legitimate exercise of one's rights, especially the right to expression and free speech. A legitimate strike or expression of dissent against the government could be construed as coercing or intimidating the government.

This is made all the more crucial by the fact that our Constitution places a preferred status on the freedom of speech and of expression.<sup>46</sup> In fact, any prior restraint on such primordial rights is vitiated by a weighty presumption of unconstitutionality and it is the government which has the burden of proving the validity of the restriction.<sup>47</sup> The same rationale applies when overbroad statutes leading to a chilling effect over protected rights may be declared unconstitutional "on its face".

The overbreadth doctrine prohibits government from achieving its purpose by "means that sweep unnecessarily broadly, reaching constitutionally protected as well as unprotected activity". Its essence is that government has gone too far: its legitimate interest can be satisfied without reaching so broadly into the area of protected freedom.<sup>48</sup>

Even when the government has a legitimate and substantial purpose, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties where the end can be narrowly achieved.<sup>49</sup>

<sup>44</sup> Sec. 3, HB 5923 Terrorism, How committed. - Terrorism is committed when any person or group of persons uses, or threatens to use violence principally directed against civilians or non-combatant persons, or causes damage or destruction against properties with the intent or creating a common danger, terror, panic or chaos to the public of a segment thereof. (Italics supplied)

<sup>45</sup> Sec. 3, SENATE BILL NO. 2540 Terrorism.- How Committed. - Terrorism is committed by the use or threatened use of serious violence, force, or means of destruction perpetrated against civilians of non-combatants, or against properties with the intention of instilling a state of common danger, panic or fear, or of coercing or intimidating the public or government. (Italics supplied)

<sup>46</sup> Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc., G.R. No. L-31195, June 5, 1973; Ayer Productions Pty. Ltd. vs. Capulong, 160 SCRA 861 (1988), Social Weather Stations, Inc. vs. Commission on Elections, 357 SCRA 496 (2001), Reyes vs. Bagatsing, 125 SCRA 533 (1983)

<sup>47</sup> Social Weather Stations, Inc. vs. Commission on Elections, supra; Iglesia ni Kristo vs. CA, 259 SCRA 529 (1996)

<sup>48</sup> J. Puno, Concurring Opinion in Social Weather Stations, Inc. vs. Commission on Elections, supra

<sup>49</sup> Blo Umpa. Adiong v. Comelec, 207 SCRA 712 (1992)

A statute may be said to be overbroad where it operates to inhibit the exercise of individual freedoms affirmatively guaranteed by the Constitution, such as the freedom of speech or religion. A generally worded statute, when construed to punish conduct which cannot be constitutionally punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.<sup>50</sup>

Going back to the previous example where a demonstrator starts breaking a car window, he or she could be held liable for terrorism under Sec 3(6) of Senate Bill No. 2540 "causing serious damage to property" when coupled with the so called intent to create terror or panic to the public. It should be noted however, that the act of breaking the car is one of violence which is punishable under our existing laws. Intent is difficult to prove and once an act causes actual panic and chaos to the public, it could be easily inferred. In the demonstrator's situation, he could then be punished for committing an act of terrorism thereby punishing him with an afflictive penalty.

One wonders then, will all acts of violence such as physical injuries or damage to property during a strike which would undoubtedly cause panic when committed in public be punished as terrorism? How about a peaceful assembly, this right recognized by no less than the Constitution, which would suddenly get out of control and cause pandemonium? Or invoking the possibility of another EDSA revolution? The list goes on and on.

Also important to note is the fact that the crime as defined covers not just the actual act but the threat to act as well. Coupled with the "intent" to create panic to the public or to coerce the government, this could provide room for abuse and the prosecution of an otherwise legal act such as strongly criticizing government officials because one disagrees with their policies.

In *U.S. vs. O'Brien*<sup>51</sup>, the test for the constitutional validity of a statute was given:

<sup>50</sup> *Wright vs. Georgia*, 373 US 284, 10 L Ed 2d 349, 83 S Ct 1240 (1963) cited in *People vs. dela Piedra*, 350 SCRA 163 (2001)

<sup>51</sup> 391 U.S. 367 (1968)

“A government regulation is sufficiently justified

1. if it is within the constitutional power of the Government;
2. if it furthers an important or substantial governmental interest;
3. if the governmental interest is unrelated to the suppression of free expression; and
4. if the incidental restriction on alleged First Amendment freedoms of speech, expression and press is no greater than is essential to the furtherance of that interest.” (Emphasis supplied)

This test has been used twice by the Philippine Supreme Court in *Adiong vs. Comelec*<sup>52</sup>, *Osmeña vs. Comelec*<sup>53</sup> and *Social Weather Stations, Inc. vs. Commission on Elections*<sup>54</sup>.

Although this test has been used for statutes which seek to regulate an act as to the time, manner and place, using this test stresses the fact that the Anti-Terrorism Bills in question are repugnant to the Constitution particularly the Bill of Rights. The restriction on the freedoms of speech, expression and of the press is indeed greater than is essential to the interest of the State. In fact, even with the present set of laws, the interest of the State to address terrorism can be achieved.

Looking at the international level, there is difficulty in arriving at a consensus as to the definition of acts which could be classified as terrorism. In fact, the UN has yet to come up with a convention which would deal specifically with this crime. At present, there are 12 major multilateral conventions and protocols related to states' responsibilities for combating terrorism.<sup>55</sup>

These are the Convention on Offences and Certain Other Acts Committed On Board Aircraft, Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, International Convention Against the Taking of Hostages, Convention on the Physical Protection of Nuclear Material, Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil

<sup>52</sup> 207 SCRA 712 (1992)

<sup>53</sup> 288 SCRA 447 (1998)

<sup>54</sup> 357 SCRA 496 (2001)

<sup>55</sup> <[http://www.unodc.org/unodc/en/terrorism\\_conventions.html](http://www.unodc.org/unodc/en/terrorism_conventions.html)>

Aviation supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Convention on the Marking of Plastic Explosives for the Purpose of Detection, International Convention for the Suppression of Terrorist Bombing, and International Convention for the Suppression of the Financing of Terrorism.

In addition to these treaties, other instruments may be relevant to particular circumstances, such as bilateral extradition treaties, the 1961 Vienna Convention on Diplomatic Relations, and the 1963 Vienna Convention on Consular Relations. Moreover, there are now a number of important UN Security Council and General Assembly Resolutions on international terrorism such as Resolution 1373 adopted by the Security Council in 2001 which calls for suppressing financing of terrorism and improving international cooperation.

Of the conventions mentioned above, five of them were adopted by the Philippine Senate last October 14, 2003: Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Convention on the Marking of Plastic Explosives for the Purpose of Detection, International Convention for the Suppression of Terrorist Bombings, International Convention for the Suppression of the Financing of Terrorism.

These conventions and protocols do not give a specific definition of terrorism. They only declare certain acts as unlawful. For example, the International Convention for the Suppression of Terrorist Bombings states:

**“Art. 2.**

1. Any person commits an offense within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:



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- a. with the intent to cause death or serious bodily injury; or
  - b. with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.”

The same article states that a person who participates as an accomplice, organizes or in any other way contributes to the commission of the offenses enumerated above also commits an offense within the meaning of the Convention.

This provision makes unlawful the specific act of delivering, placing, discharging or detonating an explosive in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility. In other words, the actual use of the explosive, as evidenced by the enumerated acts, is what it seeks to punish. This means that the act of using the bomb with the intent to cause death or extensive destruction which is likely to result in major economic loss has already been done. That is, the bomb was actually placed or detonated in the public place. The penalizing of acts of accomplices, contributors or organizers, indicates that an overt act has been done. This is very far from the Anti-Terrorism Bills under discussion which punishes the mere threat to act.

Even the Convention for the Suppression of the Financing of Terrorism is precise in stating what acts are to be considered as terrorism. It makes unlawful the direct or indirect act of providing or collecting of funds which constitute an offense as defined in several treaties<sup>56</sup> dealing with specific offences as well as “any other act intended to cause death or bodily injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature and context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.”

These international counter-terrorism measures notwithstanding, the United Nations has fervently warned that the human rights embodied in

<sup>56</sup> Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, International Convention against the Taking of Hostages, Convention on the Physical Protection of Nuclear Material, Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, and International Convention for the Suppression of Terrorist Bombings

various international instruments should limit States' efforts to combat terrorism and such rights should not be violated. Thus, the Philippines also has to recognize these limits being a member of the UN.

By virtue of Art. II, Sec. 2<sup>57</sup> (incorporation clause) and Art. VII, Sec. 21<sup>58</sup> (the treaty clause) of the 1987 Constitution, the Philippines has adopted the international instruments on human rights, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights as part of the law of the land. The Philippines has in fact ratified the Optional Protocol to the International Covenant on Civil and Political Rights. These instruments, together with the Bill of Rights, circumscribe whatever efforts the government would pursue to combat terrorism.

It is clear, however, that the bills in question violate the rights recognized in these instruments such as the right to freedom of thought, conscience and religion, the right to be recognized everywhere as a person, the right to be free from torture and from cruel, degrading and inhuman treatment, the right not to be deprived of life arbitrarily, and the right to freedom of expression, freedom of assembly and freedom of association,<sup>59</sup> to name a few.

We have seen in the Martial Law era how authoritarianism was used to silence the people. Outspoken detractors of the late dictator Ferdinand Marcos like Ninoy Aquino, Satur Ocampo, Voltaire Garcia and Joker Arroyo were imprisoned or forced to flee the country. As mentioned earlier, vague and overbroad definitions of the crime of terrorism have been used in Egypt, Cambodia and the US to silence political rivals, activists, and even those involved in charitable, humanitarian and educational activities. In Israel, the government has justified its numerous arrests and killings of civilians under the guise of countering terrorism.

<sup>57</sup> Sec. 2, Art. II, 1987 Constitution. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations. (emphasis supplied)

<sup>58</sup> Sec. 21, Art. VII, 1987 Constitution. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

<sup>59</sup> J.M. I: Diokno, Human Rights Law and Terrorism, Institute of Human Rights copy, Law Center, UP Diliman

In the same vein, the overbroad and vague definitions of the bills could also lead to a chilling effect over otherwise protected acts of the people. The fear of being punished or even labeled as a terrorist under the said bills would effectively silence the people in expressing their opposition to the policies or acts of the government. The freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances will be abridged. Protesters and advocate groups would perpetually be in danger. Communities opposing projects of the government will be deprived of their right to confrontation. Scholars, professors and students alike would be unable to engage in academic discourses. The media would be divested of their freedom to criticize acts of the state. All of these because of the possibility of arrest and detention for creating fear, chaos or intimidating the government.

Interestingly, both bills provide that an act of terrorism may be committed through causing serious interference with, or serious disruption of an essential service, vital facility, public transport or utility EXCEPT in the furtherance of a legitimate protest, grievance, advocacy, or strike.<sup>60</sup> This provision in effect shifts the burden of proof on the people exercising the act of protest or strike to show that the acts are legitimate when in fact, it should be the other way around. These acts, in the exercise of the right to expression, or speech, or petitioning the government for redress of grievances, are primordial rights that a regulation with a prior restraint over these rights are burdened with a presumption of invalidity.<sup>61</sup> Shifting the burden of proof on the people will unduly hamper the exercise of these acts.

Even acts which are not geared towards opposing the government could be construed as terrorism. The breaking of one's front door which would create fear in the minds of the public is a terrorist act. Setting on fire one's house, naturally causing chaos in the public, is a terrorist act. Even the act of sneezing, coupled with the effect of creating panic in the public is a terrorist act. The very basic exercise of the freedom of speech and expression of each individual can be punished.

It is important likewise to read these provisions in the context of the penalties imposed by the bills. Considering that they impose afflictive

<sup>60</sup> Sec. 3 (5), SENATE BILL NO. 2540 and Sec. 3 (3) HB 5923

<sup>61</sup> Social Weather Station, Inc. vs. Commission on Elections, 357 SCRA 496 (2001); Iglesia ni Kristo vs. CA, 259 S. RA 529 (1996)

penalties and stiff fines, it is all the more necessary to be circumspect in defining the acts that constitute the crime.

Besides, almost all the other provisions in the bills are dependent on these definitions. Hence, the vagueness or ambiguity of key provisions and concepts certainly has serious implications. For example, the bills provide for the crimes of "conspiracy or proposal to commit terrorism" and "financing of terrorist activities."

**Senate Bill No. 2540**

"Sec. 4. Conspiracy to Commit Acts of Terrorism. – There is a conspiracy to commit terrorism when two or more persons come to an agreement to commit any act of terrorism as defined in Section 3 of this Act.

"Sec. 5. Participation in any Act of Terrorism. – Any person who, directly or indirectly, participates in any activity intended to facilitate or carry out acts of terrorism thru any of the following:

- 1) establishing or maintaining, or serving as, contact or link with any person or persons that are known to have pursued or are pursuing terrorist activities;
- 2) procuring weapons, bombs, explosives, devices spare parts, and other accessories thereof;
- 3) providing training to any person or persons to carry out terrorist activities; or
- 4) arranging or assisting in the conduct of a meeting of two (2) or more persons, knowing that the meeting is to support or further the terrorist activities;

"Sec. 6. Financing or Materially Supporting Any Act of Terrorism.

– (a) It shall be unlawful for any person, group, organization or entity to knowingly provide properties or finances, or possess them for the commission of terrorism as herein defined or facilitate in any way the provision or possession of such properties or finances, and it shall carry with it the penalty of life imprisonment and a fine or ten million persons (Php 10,000,000.00).

(b) It shall be unlawful for any person to knowingly solicit or invite financial contribution or other support for the commission of terrorism as defined herein and shall carry with it the penalty of imprisonment for ten (10) years and one (1) day to fifteen (15) years and a fine of five million pesos (Php 5,000,000.00).

“Sec. 7. Harboring or Concealing. – Any person who harbors or conceals any person whom he/she know, or has probable cause to believe to be a person who has carried out or is likely to carry out a terrorist activity shall suffer the penalty of imprisonment of ten (10) years and one (1) day to fifteen (15) years and a fine of five million pesos (Php 5,000,000.00).”

#### **House Bill No. 5923**

“Sec. 4. Conspiracy or Proposal to Commit Terrorism. – There is a conspiracy to commit terrorism when two or more persons come to an agreement to commit any act of terrorism as defined herein and decide to commit it.

There is a proposal to commit terrorism when a person who has decided to commit any act of terrorism as defined herein, proposes its execution to some other person or persons.

“Sec. 5. Materially Supporting or Financing of Terrorism. –

a) It shall be unlawful for any person, group, organization or entity to freely and knowingly provide properties or finances, or possess them for the commission of terrorism as herein defined or facilitates in any way the provision or possession of such properties or finances.

5) It shall be unlawful for any person to freely and knowingly solicit or invite financial contribution or other support for the commission of terrorism as defined herein.”

Take Sec. 5 of Senate Bill No. 2540 for example. It punishes any person who establishes or maintains or serves as a contact or link with any person or persons that are “known to have pursued or are pursuing terrorist



activities". Does it refer to persons found guilty of terrorism or merely those suspected of the crime? Who or what agency will determine who these people will be? If as mentioned, the act of a demonstrator breaking a car window can be considered an act of terrorism, it follows then that all persons participating in the strike are guilty of terrorism as well. How about the organizations that have assisted in arranging the strike? Having indirectly participated in the strike, they are hence guilty as well.

Sec. 7 of Senate Bill No. 2540 punishes a person who harbors a person whom he or she knows or has probable cause to believe to be a person who has carried out or is likely to carry out terrorist activity. It allows a person to be penalized by mere association with a suspected terrorist. This provision is absurd in that it literally requires everyone to be able to read another person's thoughts. How would one believe with probable cause that a person is likely to carry out a terrorist activity or even know if a person carried out a terrorist activity?

In sum, the key provisions which define the acts and omissions to be punished are vague and ambiguous that the people as well as the government authorities who would execute these provisions would have to guess its meaning and decide on their own what acts are punishable. This indeed makes the bills void for vagueness.

The Bills, if enacted to law, will unduly expand the powers of peace officers under the Anti-Wire Tapping Law. Both bills have provided that the acts of terrorism shall be likewise included under the provisions of Republic Act No. 4200 (Anti-Wire Tapping Law). This law allows any peace officer to tap any wire or cable and record private communications when authorized by a written order of the Court in certain crimes after there has been a finding that there are reasonable grounds to believe that any of the crimes enumerated has been committed or is being committed or is about to be committed.<sup>62</sup> However, in cases involving rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition have actually been or are being committed.

Will the crime of terrorism then fall in the first group or in the second group of crimes? The bills do not provide the answer. If it falls under

<sup>62</sup> Section 3, RA 4200 (1965)

the first group, any invasion of one's privacy can be easily justified under the Anti-Wire Tapping Law. Even if terrorism does fall under the exception that an act has actually been committed or is being committed, an authorization from the court can be easily obtained since a mere threat to act is already a consummated act of terrorism.

The applicability of the Anti-Money Laundering Act will give rise to potential abuses.

Sec. 14 of Senate Bill No. 2540 and Sec. 6 of House Bill No. 5923 provide that deposits or investments with any banking institution or non-bank institution may be inquired into or examined without prior court order pursuant to Republic Act No. 9160, as amended by Republic Act No. 9194, the Anti-Money Laundering Act. The overly broad definitions of terrorism and acts of terrorism taken with the provisions which criminalize participation, materially supporting or financing said acts, opens almost all deposits and investments to be examined without prior court order which would be an undue expansion of the authority of government.

Sec. 5 of Senate Bill No. 2540 punishes any person who, directly or indirectly participates in any activity intended to facilitate or carry out acts of terrorism thru establishing or serving as contact or link with any person or persons that are "known to have pursued or are pursuing terrorist activities". Will the deposits of all persons and organizations then dealing with such a "suspected" terrorist be subject to examination without prior court order? Moreover, once mistakenly labeled as a terrorist, a person's savings account will be continuously subject to scrutiny. Probable cause then can be easily established and it would be easy for the authorities to apply for a freeze order.

The provisions on the rule-making authority of the Anti-Terrorism Council may constitute an undue delegation of powers considering that there appears to be no standards to guide the Council. The statute making the delegation must be (a) complete in itself – it must set forth therein the policy to be carried out or implemented by the delegate and (b) fix a standard – the limits of which are sufficiently determinate or determinable – to which the delegate must conform.<sup>63</sup>

<sup>63</sup> Pelaez vs. Auditor General, 15 SCRA 569, 576 (1965)

To be valid, the delegation itself must be circumscribed by legislative restrictions, not a “roving commission” that will give the delegate unlimited legislative authority. It must not be a delegation “running riot” and “not canalized within banks that keep it from overflowing.” Otherwise, the delegation is in legal effect an abdication of legislative authority, a total surrender by the legislature of its prerogatives in favor of the delegate.<sup>64</sup>

Senate Bill No. 2540 and House Bill No. 5923 grant to the Council the power to promulgate Rules and Regulations for the implementation of the Act. In addition, Senate Bill No. 2540 grants the power to formulate and come up with a comprehensive and effective anti-terrorism plan and program to deter and prevent acts of terrorism.<sup>65</sup> The same bill authorizes the Council to direct the conduct of anti-terrorism and counter-terrorism measures and post-conflict actions to address the effects of terrorism.

Aside from the declared policy of the State to protect the lives of the people from any type of terrorism,<sup>66</sup> unfortunately, the two bills lack the standards necessary to circumscribe the delegated power of legislation. The Senate version of the bill provides that the countermeasures shall be adopted with due regard to and respect for the rights and freedoms of the people guaranteed under the Constitution. Although this provision is to be commended, the standards as a whole are still insufficient considering that the key provisions and framework, the Act sought to be implemented is problematic in itself.

The Anti-Terrorism Council, without the necessary standards to limit its exercise of power, can very well include in its rules and regulations greater powers with the justification that it is necessary to implement the law. Will the Philippine police soon have the power to conduct secret searches and arrests and detention without judicial determination of probable cause? Will they be authorized to listen to and record private conversations? Will all pertinent records now be subject to inspection without the suspect ever knowing he or she was under surveillance? Will their link or relationship with a “suspected terrorist” or a “suspected organization” earn them the penalty of imprisonment?

<sup>64</sup> PAL vs. Civil Aeronautics Board, 270 SCRA 538, 553 (1997) citing Cruz, Philippine Political Law, 1996, p. 97

<sup>65</sup> Sec. 19, SENATE BILL NO. 2540

<sup>66</sup> Sec. 2, SENATE BILL NO. 2540 and Sec. 2, HB 5923

The provision on warrantless arrests in Senate Bill No. 2540 needs to be highlighted.

Sec. 9 of Senate Bill No. 2540 provides that in cases of warrantless arrests, the person arrested may be detained for an inquest period of not more than 15 working days following his/her arrest. This provision in effect, extends the maximum number of hours a suspect can be held without a warrant and without a case being filed against him. Art. 215 of the Revised Penal Code already provides that the maximum period for grave offenses or crimes with afflictive penalties is 36 hours.<sup>67</sup>

Rule 113 Sec. 7 further provides that in cases when the accused is lawfully arrested without a warrant, the information or complaint may be filed without a preliminary investigation provided an inquest has been conducted informally and summarily. The information or complaint must still be filed within the period specified in Art. 125 of the Revised Penal Code.<sup>68</sup> Before filing of the information, the accused may ask for a preliminary investigation by signing a waiver of the provisions of said Art. 125 in the presence of counsel.<sup>69</sup> This is the only situation allowed by law wherein the maximum number of hours can be extended. The Rules of Court mandate that a signed waiver in the presence of the counsel of the accused is necessary before the accused may be held beyond the maximum period required by the Revised Penal Code. This requires that the waiver must be made freely, knowingly and voluntarily by the accused. Allowing the extension of said period to 15 days, without the consent of the accused, amounts to a clear derogation of the rights of an accused to due process and speedy trial.

This situation is made worse because the period of detention may be extended beyond 15 days under Section 9 of Senate Bill No. 2540 if the person arrested without a warrant demands for a preliminary investigation. This then doubles the maximum period for detention of a person lawfully arrested without a warrant allowed under the present Rules of Court.

There is absolutely no reason for extending the number of hours of detention in such cases just because the person under custody is suspected of terrorism. Indeed, there should be no cause for worry in building a

<sup>67</sup> 12 hours for light offenses, 18 hours for less grave offenses

<sup>68</sup> DOJ Circular No. 61 (1993) The New Rules on Inquest, Sec. 3

<sup>69</sup> *id.*, Sec. 10

case considering the situations where warrantless arrests are allowed.<sup>70</sup> This provision definitely could be subject to abuse and unduly expands an exception to the rule when such exception should be strictly construed and are in fact subject to scrutiny.

Sec. 12 of Senate Bill No. 2540 would be prejudicial to the person accused of terrorism.

Sec. 12. Prosecution, Judgment and/or Conviction – Any person may be charged with or convicted of acts of terrorism without prejudice to the prosecution of any other act or acts penalized under the Revised Penal Code which are not absorbed in the offense of terrorism.

XXX XXX XXX

Since the crime of terrorism would be penalized under a special law, prosecution under this law would not be a bar to a prosecution of the same act penalized under the Revised Penal Code which is not included in the crime of terrorism. This provision is allowed since the accused will not be in double jeopardy. In fact, the Supreme Court has held that a provision such as this does not violate the Constitution, specifically the double jeopardy clause.

Although not illegal or void, this provision could still be used merely as an instrument of harassment against the accused. Multiple cases under several laws could be filed at the same time. This provision, in addition to the following: (1) a vague and overbroad definition which includes even protected acts, (2) penalizing the mere association with “suspected” terrorists, and (3) expanded powers of the government of wire-tapping, money laundering and warrantless arrests, would only provide for an opportunity for abuse. Considering the present situation of numerous human rights violations performed by public officials and private individuals alike, the bills would only lead to more incursions into the rights of the people, especially the poor and the marginalized.

<sup>70</sup> Rule 112, Sec. 5. Arrest without warrant, when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. xxx

## **Necessity and Enforceability of an Anti-Terrorism Law**

Would the current bills really be able to effectively contribute to the efforts to address terrorism? Do they grant powers which ensure greater safety from terrorism? Are we willing to provide even more opportunities for abuse and the infringement of rights considering the reality of law enforcement in our country? Is a separate law for terrorism necessary considering the fact that a crucial aspect, the definition of the crime itself, is a problematic matter?

As discussed, the acts defined are already penalized under existing laws. There are governmental bodies dealing specifically with the issues of terrorism such as the National Action Committee on Anti-Hijacking and Anti-Terrorism. Recently, the President has instructed the Cabinet Oversight Committee on Internal Security, which is headed by Secretary Romulo, to put together an Anti-Terrorism Task Force composed but not limited to elements of the military, police, National Bureau of Investigation, National Intelligence Coordinating Agency and an eminent retired general.<sup>71</sup> There are international instruments and covenants entered into by the Philippines to combat terrorism. The Philippines has alliances with neighbor countries to fight regional terrorism. The Balikatan exercises have improved the military's abilities, technology and facilities and the US has promised funds of "hundreds of millions" of dollars, technical assistance, advice and facilities<sup>72</sup> specifically for strengthening the anti-terrorism forces of the government.

For the past years with the help of the US, accounts of how the military has successfully countered the threats of "terrorists" like the Jemaah Islamiyah and Abu Sayaff have been heard. The government has increased its vigilance and has reportedly arrested Abu Sayyaf members and stopped several bombing attempts in Metro Manila. Even the US government has commended the government for its success in keeping the "terrorists" at bay despite the reports of diplomatic reproach. It has even promised to give \$30 million in development projects in Mindanao, in addition to the \$30 million already given, once the peace agreement with MILF is finalized.<sup>73</sup> There are some people though, who are unconvinced of the

<sup>71</sup> PGMA's Speech during the 107th Anniversary of the Philippine Army, March 22, 2004, <<http://www.op.gov.ph>>

<sup>72</sup> 'The Mercury: Bush's Help for Philippines Terrorism' (October 19, 2003), <<http://www.themercury.news.com.au>>

<sup>73</sup> 'Philippine Progress' (March 29, 2004) Washington Times



success against terrorism despite the fact that peace talks with the MILF is under way and only the Abu Sayyaf is engaged in armed conflict with the government. The MILF is believed to be just a "group of bandits" and that once a peace agreement is signed, the Abu Sayyaf and even the Jemaah Islamiyah groups will take this chance to scoop up and recruit the former's members.<sup>74</sup>

Perhaps then it is not a question of additional powers but of improvement, or the more effective use of existing powers and procedures. Even with the present laws, the efforts to dispel the threats of terrorism can be met. Yet these anti-terrorism bills, notwithstanding statements to the contrary, do not appear to seek to address with a great deal of particularity specific gaps in our existing criminal laws and procedures but rather have a tendency to sweep more broadly.

Assuming that these bills are enacted into law, will they be enforced properly and within the framework of human rights?

History has taught us that giving more power and authority to the military and peace officers will result in abuse and more infringements on civil liberties. The Martial Law regime speaks for itself. The International Peace Mission who visited the Basilan province during the Balikatan exercises documented violence against innocent civilians committed not only by the alleged "terrorists" but also by the military. Despite these reports, the government has been consistent in denying such atrocities and even refuses to recognize them.<sup>75</sup> To date, there have been no appropriate measures to investigate and to prosecute or punish any of the alleged acts of violence committed by the state security forces and agents against innocent civilians, in particular, against human rights defenders, journalists and leaders of indigenous peoples.<sup>76</sup>

Lastly, does the government have the financial capability to be able to enforce and to sustain a new anti-terrorism law? The Philippine military is admittedly one of the most antiquated forces in the world. At present, the US has given millions and millions of dollars and has promised to

<sup>74</sup> 'The Philippines: Al Qaeda and the Separatists', *The Economist* February 28-March 5, 2004

<sup>75</sup> 'Government Prejudging Probe Says International Peace Mission' (March 26, 2002) *Philippine Daily Inquirer*.

<sup>76</sup> *Advanced Unedited Version of the Concluding Observations of the Human Rights Committee on the Reports submitted by the Philippine Government*.

continue to do so in the next three to five years. Such aid could benefit the Philippine military in the short-term but it would not be sufficient to fully strengthen, equip and refurbish all of its facilities. The government cannot possibly depend on the assistance of the US or any other country for that matter for an indefinite period.

Perhaps then it is not a question of additional powers but of improvement, or the more effective use of existing powers and procedures. Even with the present laws, the efforts to dispel the threats of terrorism can be met. Yet these anti-terrorism bills, notwithstanding statements to the contrary, do not appear to seek to address with a great deal of particularity specific gaps in the existing criminal laws and procedures that rather have a tendency to sweep more broadly.

Assuming that these bills are enacted into law, will they be enforced properly and within the framework of human rights?

History has taught us that giving more power and authority to the military and police officers will result in abuse and more infringements on civil liberties. The Mutual Law regime speaks for itself. The international Force Mission who visited the Basilan province during the Basilan exercise documented violence against innocent civilians committed not only by the alleged "terrorists" but also by the military. Despite these reports, the government has been consistent in denying such atrocities and even refuses to recognize them.<sup>10</sup> To date, there have been no appropriate measures to investigate and to prosecute or punish any of the alleged acts of violence committed by the "new" security forces and agents against innocent civilians, in particular against human rights defenders, journalists and leaders of indigenous peoples.<sup>11</sup>

Finally, does the government have the financial capability to do this? To enforce and to sustain a new anti-terrorism law? The Philippine military is admittedly one of the most mal-equipped forces in the world. At present, the US has given millions and millions of dollars and has promised to

<sup>10</sup> The Philippine Human Rights and Democracy Foundation, "The Economic Recovery Strategy: A Report on the Philippine Human Rights Situation," (March 20, 2002), Philippine Daily Inquirer.  
<sup>11</sup> Ask Justice: Human Rights of the Cordillera Commission of the Human Rights Commission on the Record, submitted to the Philippine Commission.

**Conclusion**

As is usually the case, government has adopted a problematic framework in its approach to the perceived crisis. The bills share the framework that in cases which involve issues of security, civil liberties have to be sacrificed. Public officials frequently curtail civil liberties without ever actually analyzing whether such liberties in fact pose an impediment to security. Hence, the efforts in these bills to secure additional powers to the detriment of constitutionally protected rights.

Sacrificing civil liberties in the name of real or perceived developments in national security should not be the proposed solution when there are several options available to improve security and which do not infringe on constitutionally protected rights. While we recognize the need to address the problem of terrorism actively, we believe that this can be effectively done within the framework of respect for human rights.

No less than the United Nations has highlighted that States, in combating terrorism, must be aware of the responsibilities placed upon them by the instruments on human rights and not derogate from their provisions. Quoting the United Nations Secretary General: "While we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities — such as human rights — in the process."

Solving the terror problem is not as simplistic as criminalizing the behavior and curtailing constitutional rights. Analyzing and understanding the root cause of the problem is important in order to address the issue. Responding to the underlying reasons for terrorism is the bottom line for any effective measure to address the issue.

## **Addendum: Proscription of organizations as “terrorists”**

The Anti-Terrorism Bills include a provision (Section 8) on proscription of organizations as “terrorist organizations”. In accordance with Section 8, a list of organizations so proscribed shall be published in the government gazette and major newspapers. Under Section 9, once an organization is so proscribed, it shall be unlawful for any person to affiliate himself with such an organization. These are features of a “blacklisting” statute similar to the draconian US legislation, reproduced also in several Western countries, which empowers government officials to unilaterally declare virtually any group as a terrorist organization without strictly adhering to judicial standards of due process.

Under the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996 and other US laws, the United States Secretary of State designates an assorted bunch of entities as “foreign terrorist organizations” (FTOs) and several individuals as “specially designated global terrorists” (SDGTs). Some 300 individuals, organizations and entities are so designated, including Philippine organizations Abu Sayyaf and the New People’s Army. Certain serious legal consequences arise from such designation, e.g., material support to designated entities and individuals is criminally punishable, assets and financial transactions pertaining to designated entities and individuals are “blocked”. All of these consequences are intended to isolate the designated entities and individuals financially, i.e., to combat terrorist financing.

Despite the gravity of the legal consequences of designation upon such persons and entities and their supporters, the exercise of the power to designate has been unrestrained and virtually unaccountable. There is no mechanism in place to evaluate the effectiveness of measures undertaken to combat terrorist financing. In contrast, anecdotal evidence exist that show that many of those who suffer the effects of such measures are probably innocent victims. Unfortunately, in the United States, there is no effective remedy of judicial review against wrongful designation. (See, e.g., the decision of the US Court of Appeals for the District of Columbia in *People’s Mojahedin Organization of Iran vs. Albright and Liberation Tigers of Tamil Eelam vs. Department of State* jointly decided on June 25, 1999.)

Following the 9/11 attacks upon the United States and the adoption by the United Nations Security Council of Resolution 1373 providing for

broadly worded obligations upon all states-members of the UN, including the duty to combat terrorist financing, various Western governments adopted anti-terrorism legislations and/or asset-freezing regulations which include provisions giving their executive or diplomatic officials the power to label. By means of these new laws, Western governments have asserted the power to place in a blacklist (with the attendant serious legal restrictions and liabilities) foreign entities and individuals considered as "international terrorists" or engaged in or support "international terrorism" without need of strictly adhering to judicial standards of due process much like in the United States.

It is to be noted that the US was motivated by antipathy towards international law when it legislated the AEDPA. The AEDPA in fact sought to supplant existing international institutions and process in the area of "counter-terrorism" with domestic ones. It also appears that the labeling laws of the EU, Canada, and Australia came shortly after the adoption of UN Security Council Res. 1373. Res. 1373 was an "instant" international law, embodying many new and broadly worded "norms" that were not thoroughly, if ever, discussed by the international community of states, but which the US insisted upon in the wake of the September 11, 2001 attacks.

In reaction, affected individuals and entities have brought suits, when legally possible, in various domestic courts as well as in the Court of First Instance of the European Union, alleging wrongful designation or placement in such terrorist blacklists, and principally invoking their rights to due process, essentially the right to be heard by an impartial tribunal before being blacklisted and made to suffer the consequences thereof. Several affected individuals are political refugees or seeking political asylum in Western countries. In some suits, demands for damages are put forth on the basis of claims to an injured reputation.

Various human rights questions which arise in connection with these "terrorist" blacklisting legislations also confront the Anti-Terrorism Bills.

The first of these questions has to do with due process. Despite the inclusion in Section 8 of the expression "observing due process", it appears that there is still a lack of any similarity between the judicial process and the process that leads to proscription of organizations as "terrorist". The process is purely political. The authority that determines which

organization to declare as a "terrorist organization" is not an impartial judge who decides on the basis of law and evidence only, but a political official, the Secretary of Justice, an alter ego of the President, acting on the recommendation of the Anti-Terrorism Council. The Anti-Terrorism Council itself, which makes recommendations to the Secretary of Justice, is a political body which consists purely of executive officials who execute the political and economic agenda of the President.

Proscription of an organization is a punishment in itself and for this reason, no proscription should be allowed without at least prior notice and hearing being accorded the affected organization and individual members. This is so because being publicly identified in the government gazette and national newspapers as a "terrorist" organization results unavoidably in the "defamation" of the affected entities and the individual associated with these entities. Once stigmatized, the affected organization and individuals already experience damage even if later on they are allowed to de-proscribe themselves or to successfully appeal the decision of the Secretary of Justice.

Despite this, the requirements of prior notice and hearing are not spelled out in Section 8, which omission may create leeway for the Secretary of Justice and the Anti-Terrorism Council to interpret what "due process" requires in the exercise of their powers under the Bills.

All in all, the inclusion of the expression "observing due process" in Section 8 appears to offer very little protection or consolation for affected organizations and individuals.

Secondly, "terrorist" blacklisting is simply not compatible with the human right to a reputation embodied in Article 17 of the ICCPR. Article 17 of the International Covenant on Civil and Political Rights provides for a human right against "unlawful attacks on (a person's) honor and reputation" and a "right to the protection of the law against such xxx attacks".

"Terrorist" blacklisting amount to an "attack" which authors<sup>77</sup> have equated with "intentional impairment". The "defamatory" effect of

<sup>77</sup> F.Volio, *Legal Personality, Privacy and the Family*, p. 199 in Henkin, *The Rights of Men Today*, 1978, p. 43 as cited in M. Nowak, *UN Covenant on Civil and Political Rights: ICCPR Commentary* (Engel, Kehl, Strasbourg, and Arlington, 1993), p. 306. Joseph, Schulz, Castan, *The International Covenant on Civil and Political Rights*: Oxford University Press (2000), p. 356.



“terrorist” blacklisting cannot be said to be unintentional or merely incidental. Blacklisted entities sometimes, as in the case of non-profit or volunteer organizations, do not have assets or financial transactions which the labeling states could subject to seizure, thus, there is no terrorist financing to be stopped. Nevertheless, such states persist in listing them for its inherent propaganda value.

The case law of the UN Human Rights Committee indicates that the term “unlawful” in Article 17 does not automatically exclude measures taken by state officials on the basis of some domestic law or regulation. The term “unlawful” in other provisions of the ICCPR, e.g., Article 9(4) (opportunity to challenge “lawfulness” of one’s detention) has also been interpreted to relate not only to domestic law norms but to international human rights law. A member of the Committee in a concurring opinion<sup>78</sup> justified the rejection of a restrictive interpretation of “lawfulness” (as meaning in accordance with domestic law) by saying that such a restrictive interpretation “will make it possible for states to pass a domestic law virtually negating the right”.

Finally, the provision on proscription of organizations violates the principle of individual responsibility in criminal law and regresses back to the concept of collective responsibility. Under the proposed Section 8 (2), an organization may be proscribed as a terrorist organization if “any member or members thereof have committed an act or acts of terrorism as defined and described in Sections 4, 5, 6 and 7 of this Act”. Thus, the entire organization is held to account for the acts of its individual member/s without need of any positive evidence that the organization promoted, encouraged, consented or even knew about the acts committed by its individual members. This is clearly an unreasonable provision.

In conclusion, Sections 8 and 9 of the Anti-Terrorism Bills will only serve the propaganda purposes of a government that is posturing to be tough on terrorists. The provision on proscription of terrorist organizations will not further any real security needs. In the first place, no proper study has been done on the effectiveness of “terrorist” blacklisting by Western states that have adopted “terrorist blacklisting” laws in curbing terrorism and “terrorist” financing. It is not a proven fact, and the Bills’ sponsors should not simply assume that proscription will work in the Philippines.

<sup>78</sup> Mr. Bhagwati in *A. v. Australia* (560/93)

Neither did the Bills' sponsors sufficiently take into account the severity of the human rights consequences.

Legitimate organizations, especially those critical of President Gloria Macapagal-Arroyo's economic policies, are not terrorist groups for this reason alone, and should not be subjected to restrictive measures for assisting communities through legal services in opposing destruction of their communities and environmental degradation. Unfortunately, in its present wording, the Anti-Terrorism Bill gives cause even for these organizations to worry that they could be targeted for proscription because the process is purely political and the criteria for determining which organizations are terrorist organizations so unreasonable.

In her drive to promote extractive industries like large-scale mining and commercial tree plantations, President Arroyo has already caused the shortcutting of free and prior informed consent requirements and environmental impact assessment procedures intended to protect both the environment and the rights of communities adversely affected by so-called development projects. The Anti-Terrorism Bills propose now to give her means to crush community opposition to such environmentally disastrous projects. The bill gives cause for people's organizations (POs) and non-governmental organizations (NGOs) opposed to mining, for example, to worry that they can become targets of proscription as terrorist organizations because this has happened before. The Department of National Defense has publicly called NGOs and POs perceived as anti-mining as "economic saboteurs" and as "linked to terrorist organizations" simply for doing community work in areas affected by large-scale mining.

If enacted to law, the Anti-Terrorism Bills, particularly the provision on proscription of organizations, will have a chilling effect on public criticism of government policies. The consequences for public participation in governmental decision-making are indeed tragic.

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The Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK/Friends of the Earth-Philippines) is a policy and legal research and advocacy institution. It is organized as a non-stock, non-profit, non-partisan, cultural, scientific and research foundation duly registered with the Securities and Exchange Commission. It started its actual operations in February 1989.

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The goal of the CENTER is to empower the marginalized and the disenfranchised peoples directly dependent on our natural resources so as to be able to effect ecologically sustainable, culturally appropriate, economically viable, gender sensitive, equitable uses, management, conservation and development of our natural resources.

The CENTER's main advocacy has been that recognition and protection of the rights of the indigenous peoples, rural communities and other long-term occupants of forests and uplands should be the main, if not the primary components of any program on sustainable development.

Empowerment is essential but is not the only requirement to achieve meaningful reforms. The people's aspirations must eventually be adopted, articulated, and implemented by the State.

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