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THE ANTI-TERRORISM ACT IN THE PHILIPPINES

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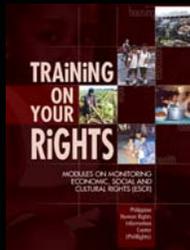
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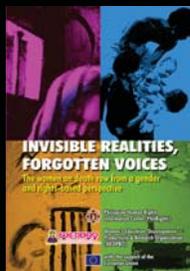
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A HUMAN RIGHTS CRITIQUE

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The Anti-Terrorism Act
in the Philippines:
**A HUMAN RIGHTS
CRITIQUE**

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The Anti-Terrorism Act in the Philippines: **A HUMAN RIGHTS CRITIQUE**

“While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms.”

Mary Robinson, Former United Nations
Commissioner for Human Rights

Introduction

TO SAY that the issue of terrorism and the efforts to combat it are highly controversial is an understatement.

The efforts of various nations, including the Philippines, to pass anti-terrorism laws have been met with a lot of debates, criticisms and objections from various sectors. The bases of these objections range from the absence of a universally accepted definition of what constitutes terrorism, to questions on the real intention of the proposed legislation and its effects on the fundamental rights and freedoms of the people.

In the Philippines, one of the major criticisms to the proposed anti-terrorism bill is that it is being strongly pushed as a response to the call of the United States to its allied nations – the “Coalition of the Willing” – to enact anti-terror measures in the wake of the 9/11 attacks in 2001. And in an effort to be in good stead with the remaining superpower, willingly espousing the simplistic “among us or against us” rhetoric of the US, the present administration is fast tracking this law.

What should be of foremost consideration in this entire exercise is on protecting human lives and providing the citizens security in their daily lives, without compromising and reducing the enjoyment of their rights. Human security could be ensured without giving unlimited power to the state, which can result in tyranny and grave violations of human rights.

This paper culls the various debates and issues arising from the pending anti-terrorism bill in the Philippines and attempts to analyze the human rights implications of such a legislative measure.

As a take off point, this paper examines the international context of the campaign against terrorism so as to properly situate the anti-terrorism efforts in the Philippines. The discussion on the international sphere deals with the persistent debate on the various concepts and definitions of terrorism, and proceeds to illustrate the historical evolution of terrorism and terrorist acts. Ensuing international actions against terrorism and terrorist acts are also discussed.

Particular focus is given to the US foreign policy on terrorism as a significant driving force behind many anti-terrorism efforts of various

states that are generally aligned with the US-led "Global War on Terror" (GWOT).

The paper posits that the framework in viewing terrorism and the ensuing actions designed to combat it should not only focus on protection of the state and its existing structures. What should be of foremost consideration in this entire exercise is on protecting human lives and providing the citizens security in their daily lives, without compromising and reducing the enjoyment of their rights. Human security could be ensured without giving unlimited power to the state, which can result in tyranny and grave violations of human rights.

The Debate on the Definition of Terrorism

Most discussions on the issue of terrorism as well as examinations of anti-terrorism measures are inevitably confronted by the problem of defining terrorism. While the term is frequently used and its practice generally opposed, there is no commonly agreed upon definition of "terrorism".

The absence of a common, universal definition of terrorism has spawned various and often-times divergent conceptual and operative definitions of terrorism. The term has been described variously as both a tactic and a strategy; a crime and a holy duty; a justified reaction to oppression

and an inexcusable abomination,¹ each of which obviously depends on the point of view of the ones defining it. This has given way to a rather muddled international policy environment regarding terrorism resulting in the lack of a consistent and effective multilateral action against terrorism.

The search for a common definition of terrorism is evidently more difficult at the international level, particularly within the United Nations system. Although there have been several attempts to fill in this gap, efforts have been consistently halted by the conflicting interests of and power struggles among member states.

The first attempt to arrive at an internationally accepted definition of terrorism was made under the League of Nations in the draft *Convention for the Prevention and Punishment of Terrorism of 1937*.

The draft convention defined terrorism as, “all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public”.²

However, the said convention failed to acquire legal status under international law due to ratification failure and the eventual dissolution of the League of Nations in 1946.

Subsequently, the United Nations took on the task and has since been working in vain to reach an international consensus on the basic definition of terrorism. For the past decades, the UN General Assembly has established several Ad-Hoc Committees³ primarily tasked to produce an operative definition and elaborate on a comprehensive convention on international terrorism. Unfortunately, these committees have consistently been unsuccessful primarily due to the lack of consensus among member states on the generally acceptable definition of terrorism.

By far, one of the significant contributions of the UN system in the fight against terrorism is the establishment of international norms against acts of terrorism and the development of a broad legal framework for the criminalization of and extradition for specific acts of terrorism.⁴

However, the complex task of defining terrorism remains incomplete.

Most recently, UN Secretary-General, Kofi Annan endorsed a new

definition of terrorism. Annan urged member states to unite behind this definition and to conclude a comprehensive convention on terrorism before the end of the sixtieth session of the General Assembly.⁵

In his Millennium Development Goals progress report, "In Larger Freedom: Towards Development, Security and Human Rights For All", presented at the General Assembly in March 2005, UN Secretary General Kafi Annan endorsed the definition of terrorism as any actions, "*intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act.*"

Over the years, in the absence of a single definition of terrorism and pending any conclusions from various deliberations, the UN has adopted an "academic consensus definition," written in 1988 by terrorism expert A.P. Schmid and widely used by social scientists.

The Schmid definition of terrorism states that:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby — in contrast to assassination — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience[s]), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

In 1992, A.P. Schmid proposed to the UN Office for Drug Control and Crime Prevention a short legal definition of an act of terrorism as *“the peacetime equivalent of a war crime.”*

If a generally acceptable definition seems to be really difficult to pin down at the international level, regional organizations and conventions appear to be more audacious in their attempts to define terrorism.

The North Atlantic Treaty Organization’s (NATO) Military Concept for Defense Against Terrorism, which was approved by the North Atlantic Council at the Prague Summit in November 2002, promotes another definition of terrorism.

NATO’s Military Concept for Defense Against Terrorism defines terrorism as, *“the unlawful use or threatened use of force or violence against individuals or property in an attempt to coerce or intimidate governments or societies to achieve political, religious or ideological objective.”*

The European Union (EU) employs a definition of terrorism for legal/official purposes which is set out in Art. 1 of the *Framework Decision on Combating Terrorism* (2002).

The EU definition provides that terrorist offenses are certain criminal acts set out in a list comprised largely of serious offenses against persons and property which, *“given their nature or context, may seriously damage a country or an international organization when committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.”*

While many used and proposed definitions on terrorism imply governments/states as primary targets and therefore exclude their possible involvement in any terrorist acts, the Organization of Islamic Conference (OIC) is more explicit in their definition of terrorism and classification of terrorist act. The OIC gives particular emphasis on the critical distinction

between terrorism and people's struggle for self-determination, and is more adamant in opposing the non-exclusion of states as possible perpetrators.

The OIC's Convention on Combating International Terrorism (1999), in its preamble, states that *"terrorism cannot be justified in any way, and that it should therefore be unambiguously condemned in all its forms and manifestations, and all its actions, means and practices, whatever its origin, causes or purposes, including direct or indirect actions of States."*

The same OIC Convention defined terrorism as, *"any act of violence or threat thereof, notwithstanding its motives or intentions, perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States."*

Furthermore, in its classification of "terrorist crimes", it clearly states that *"Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime."*

Seemingly, almost every serious attempt to define the term has been sponsored by governments which instinctively try to exclude entities like themselves from the definition. State laws and proposed laws against terrorism vary considerably in the range of acts that they proscribe and in the clarity with which such acts are defined.

Even the two countries recognized as the leaders of the "coalition of the willing," the US and Great Britain, do not have a common definition of terrorism.

The United States, in its newly enacted USA Patriot Act of 2001, defined terrorism as

activities that (a) involve acts dangerous to human life that are a violation of the criminal laws of the US or of any state, that (b) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and (c) occur primarily within the territorial jurisdiction of the US.

In the British Terrorism Act of 2000, terrorism is defined to include not only violent offenses against persons and physical damage to property, but also acts “designed seriously to interfere with or seriously to disrupt an electronic system.” This latter consideration would include shutting down a website whose views one dislikes. However, this and any of the other acts covered by the definition would also need to be (a) designed to influence the government or to intimidate the public or a section of the public, AND (b) be done for the purpose of advancing a political, religious or ideological cause. *(The latter three terms, i.e. political, religious and ideological, are however not defined in this particular Act.)*

The lack of a unified definition of terrorism at the international level is reflected in the local versions of the proposed legislative measures to combat terrorism. While the Lower House version takes into account political motive as a critical element in the definition of terrorism, the Senate version simply enumerates terrorist acts.

In the Philippines, House Bill 4839 or the proposed Anti-Terrorism Act of 2005 defines terrorism as “the premeditated, threatened, actual use of violence or force or any other means that deliberately cause harm to persons, or of force and other destructive

means against property or the environment, with the intention of creating or sowing a state of danger, panic, fear, or chaos to the general public or segment thereof, or of coercing or intimidating the government to do or refrain from doing an act.” (Sec.3)

The parallel Senate proposition defines terrorism as “committed by any person or groups of persons, whether natural or judicial, through premeditated, threatened or actual use of violence, force, coercion, intimidation, or any other means of destruction perpetrated against person/s, property/ies, environment, or the government, with the intention of creating or sowing a state of danger, panic, fear or chaos to the general public or a segment thereof.”

The imprecise use of the term “terrorism” generally prompts debates on the implications and subsequent confusions these definitions generate on the legal categorization of terrorist acts or terrorism by state, non-state groups, or by individuals.

The dilemma can be summarized by the facile and oft-repeated statement, “one person’s terrorist is another person’s freedom fighter.” Those who are tagged as terrorists might have been at some other times referred to as “liberation” and/or “freedom fighters”, largely depending on the motive and the perspective of those who are using the term. In fact, leaders of national liberation movements such as Nelson Mandela in South Africa, Habib Bourguiba in Tunisia, or Ahmed Ben Bella in Algeria, to mention only a few, were originally labeled as “terrorist” by those who controlled the territory at the time, but were later hailed as respected statesmen.⁶

This terrorist/freedom fighter dichotomy is nowhere more blurred than in the labeling of organizations and movements such as the Palestine Liberation Organization (PLO) – a terrorist group for Israel but a liberation movement for Arabs and Muslims; the Kashmiri resistance group – terrorists for India but liberation fighters for Pakistan; the earlier Contras in Nicaragua – freedom fighters for the US, terrorists for the Socialist camp; or most dramatically, the Afghani Mujahedeen (later to become the Taliban movement) – during the Cold War they were freedom fighters for the West and nurtured by the US, but terrorists for the Soviet Union.⁷

divergent and oftentimes conflicting interests of sovereign states that determine in every instance how a particular armed group is labeled with regard to the terrorist/freedom fighter dichotomy.

The danger behind these shifts in tags and labels is the tendency to lump genuine liberation movements with terrorists, thus nullifying valid issues and reforms these groups are fighting for. Even in the wake of the September 11 attack, the international community under the United Nations is still caught between power struggles among member states over the issue of definition of terrorism and eventual application of such term. A “policy of double standards” on the issue of international terrorism has been an inevitable consequence.

The central and most crucial question is: who has the power to define and the capability to rally international support under such definition and standards?

This striking inconsistency in the use of the term, as well as the politics of labeling that result from it, largely limits the range and capacity of any state or international organization to address the complex problem of terrorism. Likewise, it all the more underlies the necessity and importance of a commonly acceptable definition of “terrorism” if the problem of terrorism is indeed complex and requires comprehensive, decisive and multilateral solutions/actions.

For as long as any existing or proposed definition of terrorism does not reconcile the conflicting interests of member states, international action under the UN would continue to face major constraints in adopting and implementing an effective multilateral approach in the struggle against terrorism.

The central and most crucial question is: who has the power to define and the capability to rally international support under such definition and standards?

The Changing Face of Terrorism

If the definition of terrorism is fiercely debated, tracing its history and identifying its evolving characteristics is also subject to a myriad of issues.

While the meaning of the word “terror” itself seems to be easily understood by ordinary people, when it is applied to acts or perpetrators in the real world it becomes confusing. This is largely due to the fact that terrorism as a potential tool for achieving certain goals has been readily exploited by various actors within the different sides of the political

spectrum and among a wide range of religious doctrines.

Terrorism has been employed as a tactic and strategy for maintaining and extending power/control and establishing a dominant socio-political-economic order on one hand, and for dissenting to and destabilizing existing ones on the other hand. As such, what is and is not act/s of terrorism as well as who is and is not terrorist/s is a highly subjective and – more importantly – a political question. How certain definitions, characterizations and associations of terrorism gain acceptance depends on who has the power to impose and rally international support around their own constructions and standards on terrorism.

A cursory look at the history of terrorism will reflect how the definition and classification of terrorism have been greatly shaped by the values and motives of the dominant actors in a power struggle at a particular period of history. Western hegemonic societies/states have been often

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accused of monopolizing the legitimacy on defining the boundaries of the concept of terrorism and imposing their own criteria as to whom to include and whom to exclude from that category.

Their definition of terrorism has become the dominant reference of the discourse on political violence – as to how particular acts of violence are classified as legitimate or constituting terrorist qualities. Dissenting/deviating actors and groups have criticized the “double standard” application of Western definition of terrorism which is likely to categorize them as terrorists, while exempting its proponents.

If the history of terrorism is complex, one thing remains indisputable: terrorism is not a new phenomenon. The use, threat and dangers of terrorism have a history longer than that of the modern nation states.

The concept of terrorism, from the French word *terrorisme*, was first

used by the French revolutionary leader Maximilien Robespierre to refer to the *regime de la terreur* or “Reign of Terror” in France from 1793-1794.

Terrorism was thus initially viewed as an instrument of the State.

Robespierre viewed the use of “terror” as a vital instrument in consolidating the power of the newly-installed revolutionary government, to protect it from elements considered “subversive”.⁸ He later justified the use of terror by proclaiming in 1794 that: “Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue; it is not so much a special principle as it is a consequence of the general principle of democracy applied to our country’s most urgent need.”⁹

The *regime de la terreur* in France enforced a system or rule of “terror” to impose the revolutionary government’s radical new order among the reluctant citizenry. Over the course of the Reign of Terror, more than 40,000 people were executed using the guillotine.

The beginning of modern terrorism has its roots in the 19th century. The Italian revolutionary Carlo Pisacane, in the “Propaganda of the Deed”, recognized the utility of terrorism to deliver a message to an audience other than the target and to draw attention and support to a cause.¹⁰

The theory was said to have been eventually espoused by non-state groups/movements associated with nationalist/revolutionary, anarchist, Marxist and in some cases religious causes. Strategies behind terrorist actions during this period consisted of targeted killings or assassinations of political leaders and heads of states tagged as “leaders of oppression”.

Examples of early modern terrorism include the assassination of Alexander II on March 1, 1881 by the Russian populist group Narodnaya Volya (NV); and the assassination of Archduke Franz Ferdinand in Sarajevo on June 28, 1914 by the Young Bosnians, which led to the outbreak of World War I.¹¹

During the interregnum between the two World Wars, terrorism was associated with the oppressive measures of various totalitarian regimes, most notably in Nazi Germany, Fascist Italy and Stalinist Russia. More

recently, other governments, such as the military dictatorships which ruled some South American countries in recent years, or the current regime in Zimbabwe, have also been accused of using terrorist methods.¹²

By the end of World War II terrorism was preponderant among non-state groups particularly those associated with nationalist and anti-colonial cause. The focus of terrorist activities mainly shifted from Europe to the continent's various colonies across Middle East, Asia and Africa.¹³ The end of the Second World War has severely damaged the legitimacy of Western colonial governments and the international order, awakening a strong sense of nationalist passion and hope among subjects of various colonies. Nationalist and anti-colonial groups waged guerilla warfare, distinctly different from terrorist operations, as it is an open warfare against military targets in a defined geographical area in which they hold influence. Such was the case in China and Indochina, where such groups conducted insurgencies against the Kuomintang regime and the French colonial government, respectively. However, some struggles that were fought by nationalist groups were thought to have employed terrorist tactics such as in Kenya, Malaysia, Cyprus, Algeria and the Palestine.¹⁴

After the Second World War, terrorism emerged as a possible alternative to a direct and open war.

The Cold War Period (1947–1991) saw two superpowers competing for global hegemony. It was highlighted by divisions and realignments of governments in terms of geopolitical, economic and ideological praxis between capitalism and communism advanced by the two superpowers, the former Soviet Union and the USA.

To avoid the enormous risks involved in waging a direct and open warfare, the Soviet Union and the US took their "war" to the peripheries and in different arenas. They competed in the form of arms race, networks of military alliances, economic warfare and trade embargos, propaganda and espionage, and proxy wars in other countries that involved support from these superpowers. Both factions accused each other of employing terrorism or terrorist tactics to strike at their opponents and advance their lead.

The former Soviet Union has been accused of supporting revolutionary struggles everywhere and exporting revolution to non-communist countries, which provided the "extremists" the means to employ violence and terror to realize their political

and military objectives.

The US claimed that the Soviet Union maintained close relationships with a number of governments and organizations that were direct supporters of terrorist groups.

It criticized the Soviet Union for selling large quantities of arms to Libya and Syria and maintaining a close alliance with the Palestine Liberation Organization (PLO), providing the latter with arms, monetary assistance, and paramilitary training. The Soviet Union's close ally, Cuba, was said to have played a central role in Latin American terrorism by providing groups with training, arms, and sanctuary, with the Soviet Union's East European satellite states serving as middlemen or subcontractors for channeling aid to terrorist groups.

On the other hand, the US has been rebuked for its own acts of terrorism. The US has been accused of overtly or covertly supporting strings of terrorist activities by several reactionary groups within several countries to overthrow legitimately elected governments and install terror and dictator regimes, all under the overarching rationale of needing to stop the spread of "communism".

The US supported movements to overthrow governments in Guatemala, Angola, Nicaragua, Mozambique, El Salvador, Brazil, Uruguay, Indonesia/East Timor, Cuba, Iraq and South Africa. It significantly had its hands on the installation of several military dictatorial regimes such as that of Marcos in the Philippines, Suharto in Indonesia, Mabutu in Zaire, Diem in Vietnam, Duvalier in Haiti, Trujillo in the Dominican Republic, Somoza in Nicaragua and a string of murderous military regimes in Latin America.

These acts of supporting the overthrow of elected governments and setting up of authoritarian regimes alongside its direct wars in North Korea and Vietnam

during the Cold War resulted in the death of multitudes of civilians. These actions were justified by US as necessary wars to defend “freedom and democracy” but Eastern/communist blocs and various political scholars equated these activities to terrorism.

Although state-sponsored terrorism is said to have been long known, it was only during the mid-1980s that the use of such concept gained prominence, particularly within legal international institutions such as the United Nations. State-sponsored terrorism is generally denounced by the international community and is usually meted with corresponding sanctions and embargos.

A major challenge facing every nation as well as the international community is how to overcome the inconsistency of state interests and come up with strategies and policy actions that put human security at the core and effectively address the root causes of terrorism.

However, the listing of states that sponsor terrorism is criticized for being single-handedly endorsed often by the prevailing superpower that wields enough power to influence and gain international backing. Countries such as Iran, Iraq, Libya, Syria, North Korea and Cuba – all considered Western and US adversaries – have been listed as sponsors of terrorism by the US and sanctioned under the United Nations.

The end of the Cold War Period and the emergence of US as the sole global superpower saw terrorism evolving dramatically along with globalization and developments in the international order.

In the various reports of the US State and Defense Departments during the last decade of the twentieth century, the US identified major trends of terrorism which eventually became the center of its current anti-terrorism policy and global campaign on the “War on Terrorism”. According to the US, the modern trend in terrorism is moving towards loosely organized, self-financed, international networks of terrorists.¹⁵

If causes espoused by terrorists in the past largely encompassed a wide range of political motives, this new trend is said to manifest an intensification of terrorism motivated by religious or ideological beliefs. This is largely associated with radical Islamic fundamentalist groups or groups using religion as a pretext, which pose threats of various kinds to the interests of the US and its allies. In terms of capacity, it is claimed

that terrorism has taken advantage of the developments in technology as well as the vulnerabilities of the present globalized world.

Another trend is the apparent growth of cross-national links among different terrorist organizations, which involves combinations of military training, funding, technology transfer, or political advice.¹⁶

For the US, events such as the Munich Massacre of Israeli Olympic athletes in 1972; the destruction of Pan Am Flight over Lockerbie, Scotland on December 21, 1988; the Oklahoma City bombing on April 19, 1995; the Centennial Olympic Park bombing in 1996; the September 11, 2001 attacks on the World Trade Center in New York and the Pentagon; the Bali bombing in October 2002; the March 11, 2004 attacks in Madrid; the July 7, 2005 bombings in London; and the second Bali bombing on October 12, 2005, signaled the coming of age of the new face of terrorism. This new kind of terrorism is increasingly associated with radical Islamic fundamentalism and has expanded in capacity and scope of threat and the damage it can potentially inflict on international security.

In the face of these debates and divergent viewpoints on its definition, characterization and association, terrorism has become a global threat, capable of inflicting serious damage not only to every nation or government but to almost every human being. Civilians unfortunately are victims in both acts of terrorism and the ensuing measures which are supposedly designed to counter or deter terrorism. The existence of different interpretations on and even exploitation of terrorism by actors within the different sides of the political spectrum or religious doctrines underlines the complex nature of terrorism.

Thus, a major challenge facing every nation as well as the international community is how to overcome the inconsistency of state interests and come up with strategies and policy actions that put human security at the core and effectively address the root causes of terrorism. It is also equally important to ensure that these anti-terrorism policies and measures do not in any way contribute to greater security problems and compromise the fundamental human rights guaranteed by international law.

US Policies, Terrorism and Anti-Terrorism Campaigns

The history of terrorism and corresponding efforts to address it also reveals its close relationship with the dominant and selective foreign policies of the remaining superpower, the United States of America.

The September 11, 2001 terrorist attacks brought about a major re-intensification of US counter-terrorism policy, and changed the conduct of foreign policies among individual states and international and regional alignments on the issue of international terrorism.

For the period between the late 1970s to the 1990s, US counter-terrorism policy framework largely focused on deterring and punishing those identified as state sponsors of terrorism. US measures, ranging from diplomacy, international cooperation and constructive engagement to economic sanctions, covert actions, protective security measures and use of military force have been traditionally directed towards the suppression of state-sponsored terrorism.¹⁷

Since 1993, the US Department of State has designated seven (7) countries as sponsors of terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. For almost three decades, these countries have been the subject of various US sanctions, which involved both economic and military pressures.

US government sanctions involved four main categories: 1) ban on arms-related exports and sales; 2) requirement for notification of Congress of any license issued for export that could make a significant contribution to the state sponsors' military potential or could enhance their ability to support acts of international terrorism; 3) prohibitions on foreign assistance; and 4) miscellaneous financial and other restrictions which include among others US opposition to loans by the World Bank and other financial institutions.¹⁸

The designation of state sponsors of terrorism and the subsequent imposition of sanctions was previously considered as one of the most frequently used anti-terrorism policy of the US. Such policy is intended to isolate nations that use terrorism as a means of political expression and compel them to renounce the use of terrorism, end support to terrorists, and bring perpetrators to justice for past crimes.

Even before the September 11, 2001 attacks, the US had already started to gradually shift policy focus towards what seems to be an emerging trend in terrorism: from politically motivated, well-organized, localized

groups supported by state sponsors to religiously or ideologically motivated, loosely organized, and international networks of terrorists.¹⁹ In addition to identifying state sponsors of terrorism and corresponding imposition of sanctions, the US pinpointed Foreign Terrorist Organizations (FTO) as an additional tool in preventing and suppressing international terrorism.

The Foreign Terrorist Organizations is a list of foreign organizations designated by the Department of State to be either engaged in or retaining the capability and intent to engage in terrorist activities. The designation makes members and representatives of such groups ineligible for US visas and subject to exclusion/deportation from the United States. Likewise, US financial institutions are required to block the funds of these groups and their agents.²⁰

Since 1999, the US Department of State has designated 28 organizations as FTOs. The list continued to increase in subsequent years, and has reached a total of 42 organizations by 2005 (See p.19 for a complete listing).

The September 11 attacks yielded a swift, and wide ranging response from the US government. It employed all tools at its disposal – including diplomacy, international cooperation and constructive engagement, as well as economic sanctions, covert actions, security and intelligence gathering enhancement and military force – to punish what it identified as the perpetrators: Osama Bin Laden and Al Qaeda organization.

However, the response of the US government extended beyond going after the perpetrators. On September 20, 2001, in an address at a joint session of the US Congress, President George W. Bush enunciated his administration's position and long-term policy action on terrorism: "Our war on terror begins with Al Qaeda but it does not end there. It will not end until every terrorist groups of global reach has been found, stopped and defeated." He inaugurated the "Global War on Terrorism," a US-led full-scale campaign "to rid the world of terrorist groups and end state sponsorship of terrorism."

The Global War on Terrorism (GWOT) became a central part of the Bush administration's foreign and security policy priorities. A main element of this policy involved the strategy of rallying international support for various US-led initiatives which have been portrayed as a crucial part of the GWOT, such as the military invasion of Afghanistan in 2002 and the preemptive attack on Iraq in 2003.

US military operation against the Taliban regime – which has harbored Al Qaeda since 1996 – and against Al Qaeda strongholds in Afghanistan was launched in early October 2001. A total of 138 countries offered a range of military assistance to the US, including overflight and landing rights and accommodations for US forces. As a result, the Taliban was removed from power, all known Al Qaeda training sites were destroyed, and nearly half of the Al Qaeda leadership has been captured or killed. But top Al Qaeda leader Osama Bin Laden remained at large.

In 2003 the US launched a military attack against Iraq as part of its global war on terrorism, emphasizing the threat posed to international security by Saddam Hussein, who was believed to have weapons of mass destruction. The US also accused Hussein of aiding and protecting the Al Qaeda organization.

But the attack and invasion of Iraq did not garner international support comparable to the scale gained during the invasion of Afghanistan. On the contrary, many countries withdrew their support and even blocked US attempts to pass a UN resolution explicitly backing military action against Iraq. It even provoked the largest ever worldwide protest, and various opinion polls showed that the population of many countries opposed the war even while their governments supported it.

Despite opposition from many countries and even among its citizens, the Bush administration made clear its determination to invade and continue military operations in Iraq. Even at present it unceasingly continues to press the war on terrorism as the most important task of the 21st century that every country should prioritize in their domestic and foreign policies.

The increasingly diversifying attitude and evasiveness of political consensus within the international community on the war on terrorism prompted the US to use its political and economic power to establish its own alliance, the “Coalition of the Willing.” This alliance is composed of 48 countries supporting US actions in relation to its bigger goal of winning the Global War on Terrorism. Among the staunch allies that continue to unconditionally support US-led military actions are the United Kingdom, Italy, Spain, Poland and Australia.

The US with its “Coalition of the Willing” continues to launch law enforcement and intelligence gathering activities, military trainings and operations as well as political engagements in many parts of the world. The war on terrorism is being pursued in the following theaters of operations: Southwest Asia (Afghanistan and Pakistan), Middle East, Former Soviet Republics (Chechnya, Georgia and Uzbekistan), and Southeast Asia (Philippines, Thailand and Indonesia).

THE U.S.LIST OF FOREIGN TERRORIST ORGANIZATIONS

Country Reports on Terrorism 2005

Released by the US Department of State -Office of the Coordinator for Counterterrorism

April 28, 2006

Abu Nidal Organization (ANO)
Abu Sayyaf Group (ASG)
Al-Aqsa Martyrs Brigade
Ansar al-Sunna (AS)
Armed Islamic Group (GIA)
Asbat al-Ansar
Aum Shinrikyo (Aum)
Basque Fatherland and Liberty (ETA)
Communist Party of Philippines/New People's Army (CPP/NPA)
Continuity Irish Republican Army (CIRA)
Gama'a al-Islamiyya (IG)
HAMAS
Harakat ul-Mujahedin (HUM)
Hizballah
Islamic Jihad Group (IJU)
Islamic Movement of Uzbekistan (IMU)
Jaish-e-Mohammed (JEM)
Jemaah Islamiya Organization (JI)
Al-Jihad (AJ)
Kahane Chai (Kach)
Kongra-Gel (PKK)
Lashkar e-Tayyiba (LT)
Lashkar i Jhangvi (LJ)
Liberation Tigers of Tamil Eelam (LTTE)
Libyan Islamic Fighting Group (LIFG)
Moroccan Islamic Combatant Group (GICM)
Mujahedin-e Khalq Organization (MEK)
National Liberation Army (ELN)
Palestine Liberation Front (PLF)
Palestinian Islamic Jihad (PIJ)
Popular Front for the Liberation of Palestine (PFLP)
Popular Front for the Liberation of Palestine-General Command (PFLP-GC)
Al-Qaida (AQ)
Al-Qaida in Iraq (AQI)
Real IRA (RIRA)
Revolutionary Armed Forces of Colombia (FARC)
Revolutionary Nuclei (RN)
Revolutionary Organization 17 November
Revolutionary People's Liberation Party/Front (DHKP/C)
Salafist Group for Preaching and Combat (GSPC)
Shining Path (SL)
United Self-Defense Forces of Colombia (AUC)

Foreign Terrorist Organization (FTO) aliases cited are consistent with and drawn from the Specially Designated Nationals list maintained by the Department of Treasury. The full list can be found at : <http://www.treasury.gov/offices/enforcement/ofac/sdn/sdnlist.txt>

The response and continued efforts by the US under the banner of its “Global War on Terrorism” altogether signaled a major change of US policy on terrorism. One result has been the unprecedented policy shift from deterrence to preemption, generally referred to as the “Bush Doctrine”. This refers to the set of foreign policies adopted by US President George W. Bush in the whole context of GWOT, which permits “preventive war” against potential aggressors before they become capable of mounting attacks against the US.

The “Bush Doctrine” is considered a marked departure from the long standing policy of deterrence that generally characterized American foreign policy during the Cold War and the brief period between the collapse of the Soviet Union and the 9/11 attacks.

The salient elements of this doctrine includes:

1. preemption;
2. unilateralism;
3. strength beyond challenge; and
4. extending democracy, liberty, and security to all regions.

1. PREEMPTION – the policy of “preventive war” that the US resolves to employ in situations where it or its allies are confronted with threats by terrorists or by “rogue states” that are engaged in the production of weapons of mass destruction. The right to self-defense is invoked in order to authorize preemptive attacks against potential aggressors, cutting them off before they are able to launch strikes against the US.

This policy has been used to its full extent in the 2003 US military attack and subsequent occupation of Iraq. Without any accurate and palpable evidence of Iraq’s involvement in terrorist acts and possession of weapons of mass destruction, the US readily proclaimed Iraq’s potential threat to international security. Military control over Iraq became one crucial undertaking under the banner of GWOT.

2. UNILATERALISM – refers to the self-proclaimed duty of the US to pursue unilateral military action when acceptable multilateral solutions cannot be found.

This unilateralist tendency of the US to act beyond international norms and multilateral structures given its political, financial and economic power was demonstrated in its military invasion of Iraq in 2003, which the US did despite strong international opposition and absence of UN support. By flexing its multi-dimensional clout, it was able to establish its own "Coalition of the Willing" and pursue various efforts in relation to its bigger "Global War on Terrorism."

3. STRENGTH BEYOND CHALLENGE – is the policy best captured by the Bush statement that the US "has, and intends to keep military strength beyond challenge," indicating its intention to take actions necessary to keep itself as the world's sole military superpower.

US policy towards international terrorism has a significant military component. It displayed its military might in several events such as: 1) the 1993 bombing of Iraq's military intelligence headquarters by US forces in response to Iraqi efforts to assassinate former US President George Bush, Sr. during a visit to Kuwait; 2) the August 1998 missile attacks against bases in Afghanistan and an alleged chemical production facility in Al-Shifa, Sudan; 3) the removal of the Taliban Regime in Afghanistan in 2001-2002; 4) on-going US operations in Afghanistan; and 5) the Iraq war launched on March 19, 2003. Moreover, US military components are currently involved in a variety of anti-terrorism related missions, exercises, and deployments in areas such as Colombia, the Horn of Africa, Djibouti, the former Soviet Republic of Georgia, Yemen and the Philippines.

Likewise, the US State Department expanded its Anti-Terrorism Program (ATA), which provides military trainings, funding and equipment to foreign countries to help them improve counterterrorism capabilities. Since its inception in 1983, more than 35,000 individuals from 152 countries have received trainings in crisis management, VIP protection, airport security management, bomb detection and deactivation, law

enforcement and intelligence gathering.

4. EXTENDING DEMOCRACY, LIBERTY, AND SECURITY TO ALL REGIONS – the policy of actively promoting democracy and freedom in all regions of the world. US President George W. Bush declared at West Point in June 1, 2002 that “America has no empire to extend or utopia to establish. We wish for others only what we wish for ourselves – safety from violence, the rewards of liberty, and the hope for a better life.”

The provisions of the fourth policy have primarily been the causes why the US has continually flagged in many of its foreign policies. Moreover, these very principles and values have served as fronts and justifications for a lot of US activities and efforts in relation to its goal on the “Global War on Terrorism.”

What is alarming with these policy change and priorities being pursued by the US is the increasing political pressure it creates among many countries, specifically those that depend greatly on US assistance.

After 9/11, the US has explicitly demanded other countries to adopt anti-terror legislations and other similar measures. US allied countries, such as the UK, Australia and NATO member countries have promptly responded by legislating anti-terrorism bills almost completely patterned after the US Anti-Terrorism Bill. Likewise, other countries have either revised existing laws (European Union, Canada and many others), expanded their internal security laws (Malaysia) or adopted their own set of measures (Indonesia and Thailand).

Most of these anti-terror measures contain common provisions such as the legalization of warrantless arrests and indefinite detention; loosening of rules governing wiretapping; surveillance and monitoring of personal communication and transactions; and freezing of assets of “suspected” terrorists. Some of these measures sanction secret searches, arrests and trials, as well as the use of secret evidence.²¹

Most particularly in the countries of Southeast Asia, anti-terrorism legislations and measures are drawn up almost instantaneously as these governments make political commitments to fight terrorism and also in view of the recent terrorist activities in the region. However, many non-governmental groups in these countries are concerned over how these measures can be used to expand state powers and serve other political

agendas and inevitably undermine the people's fundamental civil liberties and human rights.

In Malaysia, the primary piece of anti-terrorism legislation enforced is the Internal Security Act (ISA). Enacted in 1960, it has served as the state's primary tool in its intensive war against communist guerillas. The ISA introduced preventive detention law in Malaysia. Under Section 73 (1) of the ISA, police may detain any person up to 60 days, without warrant or trial and without access to legal counsel, on suspicion that "he(/she) has acted or is about to act or is likely to act in a manner prejudicial to the security of Malaysia or any part thereof or to maintenance of essential services therein or to the economic life thereof." Under Section 8, after 60 days, the Minister of Home affairs can then extend the period of detention without trial for up to two years, without submitting any evidence for review by the court, by issuing a detention order, which is renewable indefinitely. Furthermore, the ISA also allows for restriction on the freedom of assembly, association and expression, and freedom of movement, residence and employment. It allows for the closing of schools and educational institutions if they are used as a meeting place of an unlawful organization or for other reasons deemed detrimental to the interest of Malaysia or the public.²²

Many non-governmental and human rights groups in the country are particularly concerned that the current "war on terror" has given the Malaysian government new justifications to continue to enforce the ISA for other political agenda. Prior to and since September 11, the Malaysian government has been frequently accused of using the ISA law to silence political opposition and control public life and civil society. The ISA is consistently used to detain religious leaders and activists as well as key leaders of the pro-reform movement and opposition political parties²³. Some individuals have been arrested and detained on grounds that do not meet the criteria of being prejudicial to the national security of the

country, and the detentions as such were contrary to the purpose of the ISA.

Singapore has its own Internal Security Act that also gives excessive power/authority to the Home Minister. Under the said act, the Home Minister can: suspend a detention order subject to all or any of a number of restrictive conditions including arrangement of residence and employment; prohibit someone from being out of doors during certain hours; and require citizens to notify the police of their movements and to obtain permission before traveling. Under the said act, the Singaporean government arrested 21 suspected militants in September 2002 on suspicion of having links to international terrorism, and more than a dozen more in December on similar charges. All arrested were Muslims.²⁴

In Thailand, despite constant government claims in the past that there was no need to pass an anti-terrorism law as it was deemed that the country's existing provisions on the penal code and anti-money laundering law were sufficient to deal with terrorist groups, two Executive Decrees designed to impose anti-terrorist measures were passed in August 2003. Under the decrees, any person who threatens to commit a terrorist act or shows behavior convincing enough to believe the person will do as said or influences people into such act, will be charged as a terrorist. Individuals who commit acts of terror, including spreading fear and harming the public and damaging public or private property, can face the death penalty, life imprisonment, a jail sentence or fines.²⁵

In Indonesia, President Megawati Sukarnoputri issued Government Regulation in Lieu of Law or *Perpu* No. 1/2002 on the Eradication of Criminal Acts of Terrorism, and No. 2/2002 on the Eradication of Criminal Acts of Terrorism in Relation to the Bomb Explosion Incident in Bali, 12 October 2002. There were many critical provisions identified in the said decrees. *Perpu* No 1/2002 defines 'terrorism', as "any

violent act that could create terror or insecurity among the public, violate the public's freedom, cause the death of other people or cause the destruction of vital or strategic objects of the living environment or public facilities or international facilities" (Articles 6 and 7).

This broad definition is said to encompass ordinary crimes such as criminal damage or common assault, committed during legitimate political action/activities such as demonstrations near areas/places defined as "public or international facilities". Further, under the decree, individuals suspected of posing a threat to the state may be arrested for seven days and detained for six months for questioning and prosecution (Chapter IV). The powers of investigators are also extended: they may now examine personal mail and tap telephone conversations and other communication for a period of up to one year (Article 31).

Significantly, intelligence reports may also be used now as legal evidence against a suspected terrorist (Article 26). On the other hand, Perpu No. 2/2002 allows Perpu No. 1/2002 to be applied retrospectively to the Bali bombers (Article 1). This conflicts directly with Article 28I (1) of Chapter XA of the amended Constitution, which expressly prohibits prosecution under retrospective laws because it is a breach of human rights.²⁶

These provisions on the said decree were further reflected and intensified in the new Anti-Terrorism Law No. 16/2003 passed by the Indonesian Parliament in March 2003. The legislation allows for the detention without charge for up to 6 months of suspected terrorists, the use of intelligence report as evidence in court, and the interception of mail and tapping of telephones by investigators. Civil society and human rights groups, on the other hand, are deeply concerned over this renewed emphasis on internal security as it is deemed that this will reinforce the political power of security forces, thus undermining more pressing issues such as military and judicial reforms.²⁷

Inasmuch as these efforts have been commended in the light of the recent terrorist acts and calls for global action against terrorism, it has likewise generated international concern on the implications of these efforts on human rights and civil liberties.

Measures and legislations passed and enforced in various parts of the world in consonance with the US-led war against terrorism have been met with widespread protests from ethnic groups, political oppositions and various sectors of communities.

These counter-terrorism efforts are criticized as they endanger people's enjoyment of civil and political liberties enshrined in various treaties. Anti-terrorism efforts pose a major threat to democracy and human rights.

Legitimate opposition, individuals and organizations voicing out dissent against governments and administrations are being targeted on a large scale basis. The democratic space for expression of dissent and opposition is effectively being eroded by these so-called anti-terrorism initiatives.

Anti-Terrorism Efforts in the Philippines

After the 9/11 attacks, President Gloria Macapagal-Arroyo stood behind the US and assured President Bush that the Philippines will support efforts to eradicate terrorism. Since then, her administration has initiated efforts aligned with the GWOT at the global, regional and domestic levels.

According to Palace statements, this support for the GWOT was due to the fact that "terrorism has rapidly transformed into a new dimension with no borders, merging domestic, regional and international terrorist groups into a vast, clandestine network."

This was justified as organizations like Jemaah Islamiyah (JI) and Al Qaeda are reportedly operating in the Philippines and are linked to the Abu Sayyaf Group (ASG). This connection was shown by the arrest of Fathur Roman Al-Ghozi, Muklis Yunos and Abubakar Banafa Faiz for the December 30, 2000 "Rizal Day Bombing" of the Light Rail Transit car in Manila. Al-Ghozi and Faiz are believed to be high ranking officers of JI. Muklis Yunos has been subsequently convicted for illegal possession of explosives.

Moreover, the ASG claimed responsibility for the series of bombings in Davao City, General Santos City and Makati on February 14, 2005. The bombings resulted in the death of at least 12 people and wounded

151 more. The Abu Sayyaf is believed to be receiving funding from Al-Qaeda leader, Osama Bin Laden.

On the international level, the Philippines took specific steps to support U.N. Security Council Resolution No. 1373 to combat terrorism. These include:

- **Joining the international counter terrorist coalition and to work with the United Nations;**
- **Working closely with the United States on intelligence and security matters concerning terrorism;**
- **Making available our air space and facilities when required as transit or staging points;**
- **Contributing logistical support in the form of food supply, medicines and medical personnel;**
- **Providing, with Congressional consent, combat troops if there is an international call for such troops and;**
- **Stepping up offensives against terrorist groups and preventing the flow of funds to terrorist groups in the Philippines by more aggressive military action and passing and implementing legislation against money laundering.**

On the regional level, the Philippines initiated an effort to create a tri-nation anti-terrorist coalition between the Philippines, Malaysia and Indonesia. The objective of this formation is to share intelligence on terrorist activities, tighten border patrols and, when necessary, partake in joint peacekeeping operations.

Likewise, on the domestic level, the Philippines replicated the post-September 11 legislative environment in the West by initiating legislations aimed at combating terrorism. According to President Gloria Macapagal-Arroyo, there is a need to match the resolve of other nations in passing an anti-terrorism legislation as terrorists “take advantage of the loopholes in the legal system that allow them mobility and anonymity.”

Members of the House of Representatives, majority of whom are aligned with the administration, heeded this call and filed various bills aimed at curbing the terrorist threat in the country.

In April 2006, House Bill 4839 known as "The Anti Terrorism Act of 2005", which consolidated 12 bills filed at the House of Representatives, was passed on third reading. Prior to this development, this bill was certified as urgent by President Arroyo on October 12, 2005.

The version of the bill which was passed by a vote of 116 in favor and 28 against at the Congress, deleted death as a penalty which was in the earlier versions of the bill.

Furthermore, Executive Order 420 was signed by President Arroyo on April 13, 2005. EO 420 makes it mandatory for all government agencies and state-owned corporations to use a singular ID system for their transactions. However, Palace officials later admitted that this scheme will cover private individuals in the future. This move was seen as a revival of a similar order of former president Fidel Ramos which was junked by the Supreme Court in 1998 for being unconstitutional.

Executive Order 420 was seen by critics as a threat to people's civil and political rights, particularly to privacy, as it may be the basis for building a dossier on people and their activities. They also expressed that the national ID system will not be an effective safeguard against terrorism.

Malacañang later backed down on the issue and admitted that a unified ID system will need the approval of both houses of Congress.

Criticisms and Objections to the Philippine Anti-Terrorism Bill

The Anti-Terror Bill gives the broadest leeway and authority to the government and its branches, particularly the police and the military which have been recorded as the worst violators of human rights, to further abuse its power and violate the human rights of the Filipino people.

The ATB is being used as an instrument to fight legitimate political opposition and dissent. And against the backdrop of rampant summary killings of progressive leaders because of their politics and advocacies, the passage of this legislation will only reinforce this culture of impunity.

Given the porousness of the Philippine criminal justice system, widespread human rights violations can be committed and legitimized by using particular provisions of this bill.

and Political Rights (ICCPR) which upholds the civil and political rights of the people, the majority of the provisions in the Anti-Terrorism Bill contradicts the norms and standards spelled out in the ICCPR.

(Please see Annex 1 for a checklist of de facto violations to the provisions of ICCPR versus the Anti Terror bill.)

Vague and Loose Definition of Terrorism

House Bill 4839 or the Anti-Terrorism Act of 2005 defines terrorism as *“the premeditated, threatened, actual use of violence or force or any other means that deliberately cause harm to persons, or of force and other destructive means against property or the environment, with the intention of creating or sowing a state of danger, panic, fear, or chaos to the general public or segment thereof, or of coercing or intimidating the government to do or refrain from doing an act.” (Sec.3)*

This definition has been met with objections by various sectors, notably the academe and the human rights community, for being blatantly vague, general, and all-too-encompassing.

Primarily, it is being questioned due to the absence of clear standards that will define and determine “intention.” Thus, the definition of what constitutes terrorism is open to various and multiple interpretations. This vacuum poses danger and is open to abuse as it will give law enforcers “unbridled discretion in interpreting the provisions of the bill,” according to the Ateneo Human Rights Center.

Violation of the Bill of Rights

The Anti-Terror Bill is also under fire for being violative of the Bill of Rights.

Sec. 6 of the proposed Anti-Terrorism Act makes it unlawful for *“any person or group of persons, natural or judicial, to incite others to the execution of any of the acts specified in Sec. 4 of this Act by means of speeches, proclamations, writings, emblems, banners or other representations tending to incite others to terrorism.”*

This section threatens the individual’s freedom of expression because political calls to action can always be misconstrued as inciting to terrorism. Subsequently, people’s participation, one of the most concrete expression of democracy, is in very real danger of being curtailed by this particular section of HB 4839. Further, legitimate forms and expression of political

opposition and dissent like street protests, are also criminalized as it “may tend to incite others to terrorism.”

Mere membership to a formation labeled by the government as a terrorist organization is unlawful under Sec. 9 of this Act.

It is also violative of people’s right to due process. Section 14 of this proposed Act extends the detention period of persons arrested without warrant from the present 36 hours (maximum) to three days, which can be extended if the person arrested demands a preliminary investigation. This extended period can be abused by authorities to force confessions and worse, torture detainees.

Common Crimes Can be Charged with Terrorism

The crimes and penalties proscribed under HB 4839 are already covered and punishable under existing laws such as the Revised Penal Code or by Special Penal Laws. Thus, the Anti-Terrorism Bill only aggravates the penalties for common crimes and is therefore unnecessary. *(Please see Annex II, Matrix of Crimes in the Anti-Terror Bill and the Revised Penal Code)*

The passage therefore of the Anti-Terror Bill is nothing more than a duplication of existing laws and it even poses the danger of people suspected of committing common crimes being tagged as terrorists and consequently meted with harsher punishments.

Discrimination Based on Ethnicity and Religion

As some terrorist activities are associated with a group or sector of society, specifically the Muslims or Arabs, there is the danger that the government’s profiling of terrorist will always be based on and biased against ethnic or religious formation particularly Islam.

In the Philippines, members of the Muslim community are usually profiled and associated with terrorist activities as it is commonly believed that terrorist cells operating in the country are connected with Muslim groups like the Abu Sayyaf and Rajah Sulayman Group. The effects of this profiling have been exemplified by the “Bicutan siege” in March 2004 and numerous raids in Muslim communities and arrest of Muslim Filipinos in the country.

This discrimination can only result to arbitrary arrests and violations of

the rights of members of the Muslim community, fuel existing political and religious tensions, and exacerbate the internal war in the country.

Human Rights and Human Security Framework

The Universal Declaration of Human Rights (UDHR) was initiated by the international community primarily as a response to widespread and grave abuses of governments against their own citizens. It spelled out how the governments should treat each other and their respective people. To date, the UDHR together with the ICCPR and the International Convention on Economic, Cultural and Social Rights (ICESCR) remain to be the frameworks which outline fundamental human rights norms and standards. These standards set the minimums necessary for the protection and safety of individuals from state abuse of powers. These standards make states liable for the promotion, protection and fulfillment of people's rights.

Meanwhile, human security is a framework first introduced by the United Nations Development Program (UNDP) in its 1994 Human Development Report. Hailed for being people-centered, it declared that "people should have freedom from hunger and freedom from want." The framework covers the economic, food, health, environmental, personal and community and the political dimensions that constitute human security.

Putting citizen's security at the center of the discussion means that the security of people and citizens should come ahead of other concerns, namely state and political security.

Thus, respect for human rights is at the core of protecting human security. While the human security framework provides for identification of the rights and obligations which might be affected in a particularly insecure situation, a human rights framework provides an approach as to how these rights and obligations can be protected.

CONCLUSIONS

The nature of conflict and war has been transformed from its usual form, from being fought with clear distinctions between nations to protect people and boundaries, and between ideologies, to a more complex web with blurred battle lines.

The new face of terrorism has caught the global population in general and the Filipino people in particular in a situation which highlights human insecurity.

Terrorism operates on an international level and is capable of shaking the remaining economic and political superpower, the United States, as illustrated by the Al-Qaeda attacks in New York. Terrorism has reached the Philippine shores as shown by the Rizal Day and Valentine's Day bombings, and the close links between international terrorist organizations with some local formations.

What should be at the center of the debate and strategies in combating terrorism is the security of the Filipino people.

Ensuring human security should be anchored on the fact that it comes ahead of other security concerns, namely state security and security of economic and political agendas.

Strategies and policy actions aimed towards protecting the people and ensuring human security means "protecting the vital core of all human lives in ways that enhance human freedoms and human fulfillment" (Commission on Human Security).

Human protection policies and legislations should create an environment where human rights norms and freedoms are not curtailed.

In the anti-terrorism discourse, a human rights and human security framework should be utilized to strike the delicate balance between the need to combat terrorism and the state's primary duty to respect, protect and fulfill human rights, thus ensuring the security and dignity of its population.

The Anti-Terrorism Bill being considered in the Congress as pushed by President Gloria Macapagal-Arroyo for enactment violates the basic freedoms and civil liberties of the very people which it is supposed to protect and secure. Furthermore, it alienates and might result in the discrimination of some sectors of the Filipino society on the basis of ethnicity and faith.

It has been proven time and again that under the guise of fighting the threat of terrorism, human rights have been grossly violated. Terrorism as a term has oftentimes been abused and in the implementation of anti-terrorism legislations and actions, legitimate political and armed opposition groups and freedom fighters have been targeted to settle grudges.

The question at the center of the terrorism debate is making the general population or a segment thereof feel secure, thus providing for human security and respecting human rights should be ensured. Only then can

people be “free from fear.” But these anti-terrorism initiatives which are no more than repressive and coercive military solutions are diametrically opposed to human security and enjoyment of basic human rights.

After all, any legislation which seeks to protect and secure the people should not terrorize the people it purportedly protects. It should empower people into making informed choices.

**Checklist of Possible and De Facto Rights Violations
As Provided For in the Anti-Terrorism Bills
(PhilRights)**

THE ANTI-TERRORISM Bills in the Philippines have been found to be violative of fundamental rights and freedoms of the people. To solidify this stand, provisions and sections of House Bill 4839 (“Anti-Terrorism Act of 2005”) and Senate Bill 2137 (“An Act to Deter and Punish Acts of Terrorism and for Other Purposes”) were carefully examined and checked against the provisions of the International Covenant on Civil and Political Rights (ICCPR 1966) which details the basic civil and political rights of individuals.

HB 4839 and SB 2137	POSSIBLE/DE FACTO VIOLATIONS	RIGHT/S VIOLATED
<p><i>Definition of Terrorism</i> HB 4839 Sec 3(8).</p> <p>HB 4839 Sec 3 (7) SB 2137 Sec 3</p>	<ul style="list-style-type: none"> - Vague and leaves a lot of room for interpretation; this provision can be used to repress lawful formations, rallies, mobilizations. - “Threatened” and “intention” cannot be quantified and are thus prone to abuse as interpreted by law enforcers 	<ul style="list-style-type: none"> - Right to peaceful assembly (article 21, ICCPR), Freedom of expression (article 19, ICCPR) - Right to seek redress - Participation right - Discrimination - Right to equal treatment
<p><i>On How Committed</i> HB 4839 Sec 4(6) SB 2137 Sec 3(3)</p> <p>HB Sec 4(16-17) SB Sec 3(15-16)</p> <p>SB Sec 3(6) HB Sec 4 (2-4)</p>	<ul style="list-style-type: none"> - “Threatening” covers an extremely wide range of acts - Duplication of existing laws 	<ul style="list-style-type: none"> - Right to legitimate/lawful assembly - Right to freedom of expression
<p><i>On How Committed</i> HB Sec 3</p>	<ul style="list-style-type: none"> - Provides for death as a penalty for acts of terrorism 	<ul style="list-style-type: none"> - Right to life - Freedom from inhumane treatment and punishment
<p><i>Inciting to Terrorism</i> HB Sec 6</p>	<ul style="list-style-type: none"> - Due to the broad definition, this can be used against legitimate dissent and protest 	<ul style="list-style-type: none"> - Freedom of expression

HB 4839 and SB 2137	POSSIBLE/DE FACTO VIOLATIONS	RIGHT/S VIOLATED
<i>Acts that Facilitate Contribute or Promote Terrorism</i> HB Sec 7	<ul style="list-style-type: none"> - Dangerous to media practitioners who refuse to divulge identities of information sources, especially if a source is labelled as a terrorist 	<ul style="list-style-type: none"> - Freedom of expression
HB Sec 7 (3&4)	<ul style="list-style-type: none"> - Dangerous if an organization or an individual has been unduly labelled as terrorist 	<ul style="list-style-type: none"> - Right to enjoy culture, religion and language
<i>On Proscription of Organizations</i> HB Sec 8 SB Sec 8(3)	<ul style="list-style-type: none"> - Gives too much leeway to the Secretary of Justice, the Anti-Terrorism Council and the UNSC on what organizations are terrorists; is thus prone to abuse - The civil society has no participation in the ATC 	<ul style="list-style-type: none"> - Freedom of association - Freedom from discrimination/non-discrimination clause - Right to participation
<i>Membership in a Terrorist Organization</i> HB, Sec 9SB Sec 9	<ul style="list-style-type: none"> - Gives too much leeway to the Secretary of Justice, the Anti-Terrorism Council and the UNSC on what organizations are terrorists; is thus prone to abuse - The civil society has no participation in the ATC 	<ul style="list-style-type: none"> - Freedom of association - Freedom of thought, conscience and religion - Right to participation
<i>Failure to Disclose Acts of Terrorism</i> HB Sec 11	<ul style="list-style-type: none"> - This clause is coercive as it necessitates a person to disclose personal knowledge against his/her will. 	<ul style="list-style-type: none"> - Freedom from arbitrary/unlawful interference with one's privacy - Freedom of expression
<i>Arrest and Detention</i> HB, Sec 14SB, Sec 10	<ul style="list-style-type: none"> - Extends detention period from the prescribed 72 hours to beyond 3 days and in effect extends possible period for torture and extraction of admission 	<ul style="list-style-type: none"> - Right of equal protection under the law - Right to security and liberty

HB 4839 and SB 2137	POSSIBLE/DE FACTO VIOLATIONS	RIGHT/S VIOLATED
<i>Applicability of RA 9160 or the Anti-Money Laundering Act</i> HB Sec 18SB Sec 15	<ul style="list-style-type: none"> - Due to the broad definition of terrorism under these bills, any group can be targets of this provision. 	<ul style="list-style-type: none"> - Freedom from arbitrary/unlawful interference with one's privacy
<i>Communications Assistance For Law Enforcement</i> HB Sec 19SB Sec 16	<ul style="list-style-type: none"> - This provision runs en contra to the anti-wiretapping act and is highly intrusive of the privacy of individuals and organizations who will be profiled as terrorists. Information gathered this way can be used for purposes other than the determination of culpability to terrorism 	<ul style="list-style-type: none"> - Right to security and liberty
<i>Non-Applicability of Probation and Plea Bargaining</i> HB Sec 22SB Sec 19	<ul style="list-style-type: none"> - Derogates a basic right of the accused 	<ul style="list-style-type: none"> - Right to equal protection under the law - Right to equality before the courts and tribunals
<i>Anti-Terrorism Council</i> HB Sec 24SB Sec 20	<ul style="list-style-type: none"> - The Anti-Terrorism Council under this Act excludes from membership civil society members and the Commission on Human Rights. 	<ul style="list-style-type: none"> - Right to participation

ANNEX II

*Matrix of Crimes in the Anti-Terror Bill and the Revised Penal Code

Portion of the bill	Existing laws penalizing the acts of terrorism
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	Crimes Against Persons (RPC, Title Eight); Grave threats (RPC, Art. 282); Grave coercion (RPC, Art. 286)
Threatening or causing substantial damage or wanton destruction or resorting to arson on critical infrastructure, or property, public or private; causing interference with or serious disruption of an essential service, facility or system, other than a result of lawful advocacy, protest, dissent or stoppage of work.	PD 1744 – Arson; RPC Art 134-A – coup d’etat; Crimes against national security and the law of nations (RPC, Arts. 114-121); Crimes against public order (RPC, Arts. 134-142, 146-147, 148-152, 153-156)
Hijacking or threatening to hijack any kind of aircraft, electric or railroad train, locomotive, passenger bus or other means of mass transportation, or public conveyance or piracy of ship or sea vessel	Anti-Hijacking Law (R.A. 6235); Piracy and mutiny on the high seas or in Philippine waters (RPC, Art. 122); Qualified Piracy (RPC, Art. 123); Anti-Piracy and Anti-Highway Robbery (P.D. 532); Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley (RPC, Sec. 295)
Taking or threatening to kidnap, or deprive any person of his liberty	Kidnapping and Serious Illegal Detention (RPC, Art. 267); Slight Illegal Detention (RPC, Art. 268); Kidnapping and Failure to Return a Minor (RPC, Art. 270)
Killing of, or violently attacking an internationally protected person or depriving 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	Crimes Against Persons (RPC, Title Eight), RA 75 Protection of accredited foreign diplomats and consular agents of the Philippines
Attacking or threatening to attack the cyberspace by destroying the actual machinery of the information and communication and infrastructure, disrupting the information technology underlying the internet, government or private network or system or committing any unlawful act against networks, servers, computers or other information and communication systems.	R.A. 8792- E-Commerce Act; R.A. 9292- Electronic Engineering Law of 2004

Portion of the bill	Existing laws penalizing the acts of terrorism
<p>Willfully destroying the natural resources inland, water and air, such as forest or marine and mineral resources or intentionally causing oil or toxic spillages or other similar acts of destruction against the environment that threaten ecological security.</p>	<p>Malicious Mischief (RPC, Arts. 327-331); Arson (P.D. 1613 & 1744); Philippine Clean Air Act of 1999 (R.A. 8749); The Philippine Fisheries Code of 1988 (R.A. 8550); The Philippine Mining Act of 1995 (R.A. 7942); National Integrated Protected Areas System Act of 1992 (R.A. 7586)</p>
<p>Unlawfully manufacturing, processing, selling, acquiring, possessing, using, diverting, supplying, or transporting, chemical, biological, radiological, or nuclear agents or equipment and instruments used in their production, distribution, releases or spread that would endanger directly or indirectly the safety of one or more individuals, or to cause mass destruction or create damage to property in furtherance of terrorism;</p>	<p>PD 1866 As amended by R.A. 8294 (Illegal Possession of Firearms and Ammunition); R.A. 7183 (An Act Regulating the Sale, Manufacture, Distribution and Use of Firecrackers and other Pyrotechnic Devices)</p>

*from the Position Paper on the Consolidated Anti-Terrorism Bills of the House of Representatives prepared by the Ateneo Human Rights Center

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FOOTNOTES

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- ⁴ Between the periods of 1963-1999, the UN has elaborated on a series of 12 major international conventions and protocols related to the prevention and suppression of terrorism. For a complete list and brief details of UN conventions and protocols related to terrorism, visit United Nations Office on Drugs and Crimes (UNODC) website at <http://www.unodc.org/unodc/en/terrorism.html>
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