

■ By RAMIL AÑOSA ANDAG

TWO YEARS after the legislative mill on enacting an anti-terrorism law was first initiated, President Gloria Macapagal-Arroyo signed into law Republic Act 9372 or the Human Security Act on March 6, 2007.

The passage of this particular legislation was deemed a landmark for the 13th Congress by PGMA, who did not hide her urgency during the period before the enactment of the human security act. In fact, under pressure from the United States as a member of the Coalition of the Willing which was formed as a part of US-led Global War on Terror (GWOT), President Arroyo certified the passage of an anti-terrorism law

Legislating the Undefined: **THE HUMAN SECURITY ACT OF 2007**

as urgent. She went as far as ordering a special session for the Senate and House of Representatives last February 19 to ensure that the bill would be passed before everybody gets busy with the May 2007 elections.

Debates on Intentions

After the 9/11 attacks on the Twin Towers and the Pentagon which underlined the vulnerability of the remaining superpower, the United States, President George W. Bush declared a global war on

terrorism which resulted in the polarization of countries along the “with us or against us” lines.

Not surprisingly, Arroyo readily aligned her government with the US war on terror and became a member of the ‘Coalition of the Willing.’ The Philippines is one of the three ASEAN countries, along with Indonesia and Malaysia, which signed a tri-lateral counter-terrorism agreement in 2002.

The legislative actions towards coming up with a



Quezon City policemen at the gates of Camp Karingal, at the height of the February 26, 2006 crisis.

Tracy Pabico

counter terrorism law started in 2005 when Rep. Imee Marcos filed House Bill 4839 titled "The Anti-Terrorism Act of 2005." At the Senate, SB 2137 was filed, for the same objective. These bills were certified as urgent by President Arroyo a day after they were filed.

The first anti-terrorism bills were intended to define terrorism. However, given the fact that even in the highest community of nations, the UN, there is no consensus on how terrorism should be defined and that there is an ongoing debate on this, the Human Security Act passed by Congress skirted the definition of terrorism. The Human Security Act instead defined the crimes which constitute terrorism without clearly defining terrorism.

Under Republic Act 9372, terrorism involves crimes committed in violation of already existing laws and special issuances (e.g., Revised Penal Code, etc.) coupled with the "intention of creating a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand" (Sec 3).

This operational definition used in the Human Security Act of 2007 was and is still subject to debates. The Act has been called redundant, because it aims to criminalize acts which are already covered and penalized by the penal code, laws, and special issuances. Another loophole in the definition used for this legislation is that the requirements to determine unlawful demands are not always present.

The danger in crafting a law using a vague definition can never be overemphasized. A clear definition would set the operational parameters and limits as to the scope of the applicability of the law. Thus, the Human Security Act in its present form is highly prone to subjectivity in its implementation which can result in violations of human rights.

The questions on the



A phalanx of anti-riot police during an anti-Arroyo mobilization.

Pepito Frias

absence - or at least the vagueness - of the definition was compounded by fears by some sectors, particularly the human rights community, on the chilling effects it will have in relation to the enjoyment of civil and political rights of the people.

One of the contentions prior to the passing of the Act was that it can be used to muzzle legitimate dissent against the present administration. Specifically, the original bill contained provisions which clearly violate the people's rights to freedom of association, speech, and peaceful assembly.

One of the hotly contested provisions of the Act is the extension period of detention for warrantless arrests from the original 1 and a half days to 3 days with possibility of indefinite extension in cases of actual or imminent terrorist attack. This provision was largely viewed as a transgression of a person's right to due process. It might also result in torture while a person is in detention.

The Political Context of the Human Security Act

The Human Security Act is also suspect given the political

context and developments under which it was legislated.

Even without the benefit of a law, President Gloria Macapagal Arroyo has been using the word terrorism and has been implementing measures supposedly to curb terrorism and acts which put at stake state security.

On the 20th anniversary of the People Power 1, PGMA issued Presidential Proclamation 1017 which declared a "state of national emergency," citing conspiracy between the Left, the extreme right and some adventurous members of the military to topple her government. Subsequently, she released General Order No. 5 which ordered the "Chief of Staff of the AFP and the Chief of the Philippine National Police, as well as the officers and men of the AFP and PNP, to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence."

Under these proclamations, various warrantless arrests were made by members of the Philippine National Police in the rallies which marked the commemoration of EDSA 1. Media outlets, most notable of which was the Daily Tribune,

were put under military guard.

Invoking the "fight against terrorism" dictum, she also implemented the Calibrated Pre-emptive Response (CPR), under which rallies and mobilizations were dispersed in violation of the previously followed maximum tolerance rule.

Accusing the Senate of pursuing investigations supposedly to destabilize her administration, she issued Executive Order 464, a gag order on all members of the Executive Department and the military, which prohibited them from attending Senate hearings.

As it was around this period when she certified the Anti-Terror Bill as urgent, critics observed that she did so in order to solidify her otherwise precarious hold on power.

The Supreme Court Says

The Supreme Court echoes the sentiments of various sectors in questioning the intentions and motivations of the anti-terrorism bill.

Proclamation 1017 and General Order No. 5 which put the nation under a State of Emergency were later declared by the Supreme Court as unconstitutional as it was

violative of the basic rights to freedoms of speech, the press and peaceful assembly.

This particular Supreme Court decision also effectively outlined the basic weakness and flaw of the anti-terrorism bills filed at both Houses. It cited that the use of the term terrorism and acts of terrorism as used in Proclamation 1017 and General Order No. 5, in the absence of a concrete definition of terrorism at the international level, was vague and thus unconstitutional.

The SC also broadsided the “absolute judgment, without restrictions” which G.O. No 5 gave to President Arroyo in determining what falls under the category of acts of terrorism. The SC concretized the fear of various sectors when it concluded that “*there can be indiscriminate arrests without warrants, breaking into offices and residences, taking over media enterprises, prohibition and dispersal of assemblies unfriendly to the administration.*”

The SC also highlighted another major problematic area in the then-proposed anti-terror bill, calling attention to the lack of categorical distinction between ‘acts of terrorism’ and ‘acts of self-defense’ and ‘acts in relation to the right to self-determination.’ Citing the oft-quoted “one country’s terrorist can be another country’s freedom fighter,” the SC raised the possibility that legitimate acts of political dissent can be quelled by lumping them with acts of terrorism. According to the high court, giving the courts power to classify terrorist groups in the absence of a clear definition is violative of due process.

From Anti-Terror Bill to Human Security Act

Debates and deliberations in the Senate on the proposed anti-terror law reflected the public debate on the issue of terrorism.

Some legislators opposed the bill in its form precisely because of the vague definition of the issue being legislated and the presence of provisions which could result in gross

human rights violations.

According to Senator Aquilino Pimentel, who was one of those who openly opposed the bill, any law can be open to abuse. He likewise emphasized that there was no need for a new law which would penalize terrorism since the acts being penalized by the new law are already covered by the Revised Penal Code and other special acts. He also expressed his fear that this law can be used against those who oppose the administration, and result in violations of the people’s basic rights and freedoms.

Sen. Jamby Madrigal observed that the law’s intention was not to curb terrorism because it can be done by stricter implementation of the existing laws of the land. According to her, the law’s real intention was to legitimize the muzzling of the sectors and individuals who were questioning the legitimacy of the Arroyo presidency.

To accommodate the issues being raised and to allay the fears, the principal sponsor of the bill, Senator Juan Ponce Enrile, agreed to 98 amendments. This was done, according to him, to end the long debate and finally pass the bill.

The 98 amendments which resulted in what others call “watered down anti-terror law” includes, among others:

- Establishing probable cause before anyone is tagged as a terrorist;
- Requiring for an approval by the Court of Appeals before the police could surveil or tap communications (e-mails, telephones, etc.);
- Requiring the police to bring an arrested person to a judicial authority;
- Exempting journalists and their sources from compulsorily disclosing their sources to the police;
- Compensating victims of wrongful or illegal arrests under this law P500,000.00 for every day of wrongful detention.

These amendments paved the way for the eventual passage of Republic Act 9372, now known as the Human Security Act of 2007. According to Senator Pimentel, even as this law is far from perfect, these amendments made it a little more “humane.”

What Could Have Been Done

The crux of the debate on the enactment of a Human Security Act is best encapsulated by the words of the late Jose W. Diokno: “*When we speak of national security, what we refer or should refer to is the security of the people, not the governors.*”

Indeed, the threat of terrorism might be real and already felt in the country. The government is therefore duty-bound to enact laws which would ensure the protection of the Filipino people.

However, protection of the people should not and never be equated to protection of the powers that be and their tenure and positions. A State is threatened when the population is gripped with fear and not when the legitimacy of the president is under question.

The political backdrop and play of interests which surround the passing of the human security act put into question Malacañang’s real intention in pushing for the bill and certifying it as urgent.

Even in its present form, supposedly with safeguards against violations of fundamental rights and freedoms, the law still sends a chilling message to the population, particularly those who are not in the same political spectrum as the administration. A law which was built around a vague issue whose definition was skirted leaves its implementation open to abuse.

In a country where law enforcers are among the recorded prevalent violators of rights, particularly the right to due process, this legislation might be interpreted as a blanket permission to continue this practice.

Prof. Harry Roque of the

University of the Philippines College of Law, an expert on international humanitarian law, noted that what could have been done was to pass domestic legislations reflective of the country’s commitment to international instruments to which it is a signatory, including the Convention on Torture and other similar human rights instruments.

He added that the constitutionality of the Human Security Act can be tested in courts. However, it has to be implemented first and an individual or organization should be penalized under this act before such court “test” can happen. According to him, given the gaping loopholes, weaknesses and flaws of the Human Security Act, it could easily be declared unconstitutional by a competent court.

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