

Legislating Insecurity through State Terrorism¹

The Honorable Members of the Eminent Jurists Panel, Ladies and gentlemen:

On the eve of my departure for Geneva last 13 October 2006, one of the leading newspapers in my country, the Philippine Daily Inquirer, published an editorial.

It was addressed not only to the public but also to senators such as myself, who have been called upon to deliberate on a proposed anti-terrorism law. It said that any such law *“should be of limited duration and subject to an annual review and reenactment by Congress, just as we would like to see a genuine system for congressional oversight over the Armed Forces and the police to discourage abuses.”*

The moderate appeal of that newspaper reflects the opinions of many millions of concerned Filipinos. In the name of fighting terrorism we have seen human, civil, and political rights set aside in order to confer upon governments unprecedented powers over those they view as their enemies.

The government of my country wants increased powers, too. The government of Mrs. Gloria Macapagal-Arroyo is insisting on the passage of an oppressive anti-terrorism law. The proposed legislation would grant it vast powers over my fellow citizens. To the cautionary charge that such a law might become another instrument of a far bigger terror and worse form of terror – that is, of State

¹ *Presentation and report of the Honorable M.A. Madrigal, Senator of the Republic of the Philippines before the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, International Commission on Jurists, Jakarta, Indonesia, 5 December 2006.*

terrorism, President Arroyo and her cabinet, and her allies in our legislature, insist on denying it might ever be so.

But it will be so, because the terrifying provisions of the law are there for all to see and read.

According to the provisions of the proposed legislation, there is no clear definition of who a terrorist is. A person may be labeled as a terrorist by reason solely of his religious or political belief and his defense thereof. The bill's definition of terrorism is too broad and too sweeping, covering many crimes that are already punishable under existing laws. The proposed law blurs the distinction between real acts of terrorism and ordinary crimes. Worse, it can be interpreted to include all acts in pursuit of legitimate dissent. In a time of intense crisis and undisguised political repression, the law can and will be used to illegalize the legitimate activities of critics and opponents of the current administration. This happened to six (6) progressive parliamentarians and members of the House of Representatives in our country, who were accused of participating in a rebellion against the current regime. A few months thereafter, five (5) Farmers collectively known as the "Tagaytay 5" were arrested and tortured without any warrant. They continue to be detained until now based on trump up charges of rebellion.

The vagueness of defining a terrorist is not limited to the Philippines alone. Since 1995, the United Nations has yet to come up with a clear definition of who a terrorist is.

Furthermore, the proposed legislation creates a new set of crimes. It grants a disturbing freedom of movement and discretion to the Philippine Law Enforcement Officers and the Military.

Under the present draft of the bill, Philippine police or any government law officer, including the military may engage in wire tapping for a period of one hundred twenty (120) days without incurring any criminal liability. This may be done through *an ex parte* written application before our Regional Trial Court to be permitted, and based only on reasonable grounds. The written application and the order of the court is declared as “classified information.”

Mere membership in any organization declared as a terrorist organization will become punishable by law. And any legitimate exercise of one’s right to appeal for the redress of grievances has the potential, under the proposed law, to be considered terrorism, solely by reason of the membership of a suspect in an organization, association or group of persons, labeled a terrorist group by the government.

Any Filipino or foreigner is liable to arrest and detention without judicial warrant of arrest for a period of 5 days. The police, military and government law officer will not incur any criminal liability for abuses or false arrests. This provision as pointed out by the International Commission of Jurists in their letter to the Members of the Philippine Senate dated 03 November 2006 would violate Article 9, paragraph 3 of the United Nations International Covenant on Civil and Political Rights (ICCPR) which requires that a person arrested be brought “*promptly before a judicial authority.*” Under international law, the term

“promptly” does not exceed forty eight (48) hours, even if national security concerns are involved.

Bank deposits, accounts and records may be examined through an ex-parte written application by the police and military officers before the Regional Trial Court. The written application and order of the court allowing such examination is considered classified information. The bank examination may be undertaken for a period of one hundred twenty (120) days.

This panoply of powers, the executive department argues, is a matter of national life and death and therefore, she must enjoy these powers. But as the editorial I mentioned in the beginning pointed out,

“We must bear in mind that the administration trying to panic Congress into passing the law is the same administration that proclaimed the February 2004 bombing of the Superferry 14 as an accident. Indeed, President Gloria Macapagal-Arroyo said it was the work of “pranksters.” She and other officials admitted only that it was what everyone thought it was -- the country’s worst terrorist attack -- in October, after she had claimed victory in the May 2004 elections. Yet four weeks after the bombing, Redondo Cain Delloso, alias Arnulfo Alvarado, had been captured by investigators and confessed he had planted the bomb where it would inflict the greatest number of casualties. The Abu Sayyaf claimed credit, but the government laughed it off -- until after the elections.

Even then, the President claimed six suspects had been caught, though the two masterminds evaded apprehension."

On the **social and political**, my concerns on the proposed anti-terrorism legislation are as follows:

- In the hands of a repressive regime, such as that of Mrs. Gloria Macapagal-Arroyo, the anti-terrorism bill will create a *shadow criminal justice system* that, in turn will be used as an instrument of a greater terror perpetrated by people in power against their critics and political opponents. I am deeply bothered by the incident that occurred in the raiding of a Good Shepherd Convent in the Philippine Provinces of Butuan and the statement made by the Armed Forces of the Philippines in the Province of Bulacan that, churches can be used as sites for conducting anti-insurgency campaigns. Recently, the Armed Forces of the Philippines sent a chilling message to all human rights defenders when it called for the labeling of the reputable Amnesty International as a "persona non grata."
- We are against the use of violence against civilians. But national security should not be used as an excuse to stifle the freedoms and the human rights guaranteed by the Constitution. We agree with the position made by Amnesty International that, *"security and human rights are not alternatives; they go hand in hand. Respect for human rights is the route to security, not an obstacle to it. The*

route to security is through respect for human rights, not their violations. As the UN Secretary-General Kofi Annan has stressed: *"While we certainly need vigilance to prevent acts of terrorism... it will be self-defeating if we sacrifice other key priorities -- such as human rights -- in the process."*

- Worldwide, there is now a growing clamor for either the repeal of or modification of existing terrorism laws. In 2004, India, a country which has faced serious threats from terrorism and other forms of political violence, took a significant step forward for human rights by repealing the Prevention of Terrorism Act of 2002. In Canada, a Federal Judge has struck out as unconstitutional the definition of terrorist based on his political or religious belief. And most recently, according to a news report, United States District Federal Law Judge Audrey Collins in a 21 November 2006 ruling struck down as "unconstitutionally vague," an executive order of President Bush allowing the latter to create a list of specially designated global terrorist groups. The same ruling also enjoined the government of the United States from blocking the assets of two (2) foreign groups – the Tamil Liberation Tigers of Sri Lanka and the Partiya Karkeran Kurdistan of Turkey which were placed on the list. This ruling is significant considering the fact that, the Communist Party of the Philippines and the New People's Army are also unjustly labeled and included in the list of the United States as "foreign terrorist organizations" and Professor Jose Maria Sison as a "terrorist." This ruling only amplifies the argument that

the meaning of terrorism is often determined by context rather than a logical explanation.

- In a report on India's Anti-Terrorism and Security Law prepared by the Association of the Bar of the City of New York for the Committee on International Human Rights, it said that, *"Attentiveness to these human rights concern is not simply a moral and legal imperative, but also a crucial strategic imperative. As the Supreme Court of India has recognized, "terrorism often thrives where human rights are violated, and the lack of hope for justice provides breeding grounds for terrorism."*
- Present anti-terrorism legislations rely on the same institutions used in fighting other crimes – the police or military, the prosecution and the judiciary. More often than not, these same institutions have been tainted with doubts and their competency to protect human rights laws seriously undermined. If these same institutions are used to confront the so-called menace of terrorism, intense pressure will only subject them to commit further abuses.

I am not alone in raising these concerns. In my visit to Europe last month, the International Commission on Jurists, the International Federation of Journalists, Amnesty International and Members of Parliaments have also expressed the same concerns. More recently, the European Union diplomatic corps in the Philippines have also expressed their concerns on the Anti-terrorism Bill, particularly with the version re-imposing the death penalty.

I have studied the issue on terrorism well particularly with respect to human rights. I intend to introduce in the Senate a bill on this proposed legislation that will introduce a paradigm shift on how we view security or “insecurity” by the state.

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To break this cycle of merely legislating offenses without addressing the root problem of why terrorism exists, it is necessary to protect human rights and adopt a paradigm shift on how we view issues on security.

This shift can be done by adopting the principles of Human Security. **Human security** refers to the security of individuals, as opposed to [national security](#), which refers to the security of states. The key elements of my proposed bill are:

- Adopts as a State policy to value the dignity of every human person and guarantee full respect for human rights as the means for ensuring the security of its people. Towards this end, the State shall adopt human security measures to protect the people from pervasive threats to their rights, safety and lives.

- Such measures, shall include conflict management and post-conflict peace-building, to addressing the roots of conflict by building state capacity and promoting equitable economic development. The State shall further advance the protection and promotion of human rights, the rule of law, the culture of peace and the peaceful resolution of conflicts by adopting interventions that is people-centered.

- Includes a separate chapter devoted entirely on Human Rights, such as:
 - recognition and equality before the law;
 - right to life;
 - protection from torture, cruel, inhuman and degrading punishment;
 - protection of the family and children as the basic unit of society;
 - protection of the right to privacy and reputation;
 - freedom of movement;
 - freedom of thought, conscience and belief;
 - peaceful assembly and freedom of expression;
 - right to liberty and security of person;
 - right to humane treatment when deprived of liberty;
 - right to fair trial;
 - compensation for wrongful conviction;
 - right not to be punished more than once;
 - right of ethnic, religious or linguistic groups

- Strengthens the Philippines' constitutional body – the Commission on Human Rights by giving it prosecutorial powers on human rights abuses, and requiring it to adopt human security programs that will address the root causes of conflicts.

Most of us here can recall when Pope Paul VI told the United Nations, *"If you want to be brothers, let the arms fall from your hands."*

And we remember how he made that emphatic, and immortal appeal, *"No more war, war never again! Never one against the other."*

His hope, his entreaty, is our hope and our earnest prayer; but it is nowhere near being accomplished reality either in his time or in ours. But *"Jamais la guerre!"* That is what he prayed; and it is what we must pray –and work to achieve. **Our work begins with speaking forcefully, and in a unified manner, against such draconian laws and their approval. We ask your support and seek your intercession in asking the non-passage of this proposed measure.**

The Honorable Members of the Jurists Panel, Ladies and gentlemen, *Jamais le terrorisme! Never again, the terrorism of the state against its own!*