

REPUBLIC ACT No. 9372 HUMAN SECURITY ACT (HSA) 2007

Brief Introduction:

The Philippines Human Security Act (HAS) 2007 is a landmark anti-terrorism law that brings the Philippines in line with its Southeast Asian neighbours battling Islamist militants. In the final form, the law is the first for the Philippines to specifically address terrorist offences, defining terrorism as a criminal act that “causes widespread and extraordinary fear and panic among the populace.”

(1) The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.¹

Analysis:

The Philippines government has realized that a strictly military approach will not be adequate in combating terrorists groups in the Philippines such as the Abu Sayyaf and MNLF. A broad multi-faceted approach that also aims to address the root causes of the conflict are just as important. It is in light of this that the Philippines government decided to adopt a broader approach to combating terrorism on their soil. This is a significant development as a strictly military approach will only aggravate the conflict. By adopting a more comprehensive approach, the Philippines government will be able to address some of the grievances of the militants with the eventual aim of reaching a peaceful solution.

(2) Terrorism. –

Terrorism is the premeditated or threatened 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.²

Analysis:

¹ Republic of the Philippines House of Representatives Bill on Human Security

² Republic of the Philippines House of Representatives Bill on Human Security Section 3

The law provides for a clearer definition of terrorism allowing police and security services a better understanding of the crimes at stake. More importantly, the definition of terrorism has been broadened to encompass areas including; causing chaos, intention to create panic and causing of wanton destruction, areas which were previously excluded from the definition of terrorism. What this means is that potential terrorists/terrorists can be arrested and detained if their acts are deemed disruptive to law and order of the Philippines society. This is a potential deterrent to future terrorists as they will realize that it is no longer possible to plan and carry out an attack and escape without being charged. Those presently detained under Philippines Law Enforcement Agencies can be speedily brought to task and prosecuted for offences committed. If the new law is in the suspects favour, the suspects case will immediately be covered by the new laws. If the new laws are not in the suspects favour however, the suspect will then be covered by the old laws.

- (3) *Any person who commits an act punishable under any of the following provisions of the Revised Penal Code: Piracy in General and Mutiny in the High Seas or in the Philippine Waters, Rebellion or Insurrection, Coup d'Etat, Murder, Kidnapping and Serious Illegal Detention, Crimes Involving Destruction, The Law on Arson, Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990, Atomic Energy Regulatory and Liability Act, Anti-Hijacking, Anti-piracy and Anti-highway Robbery Law of 1974); and Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives) thereby sowing and 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 shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act.*³

Analysis:

The definition of what constitutes terrorism has been broadened to include even aspects such as piracy and arson. Human rights groups have strongly opposed the new legislation stating that the new legislation forms the building blocks of martial law with the impending widespread political killings and the militarization of Metro Manila to follow.⁴ Other civil rights groups have argued that the government would use the law to stop and suppress all forms of legitimate crusades by the people.⁵ Although, Philippines President Gloria Arroyo has assured that law-abiding Filipinos have nothing to fear in the law, it is both important and necessary for Philippines law enforcement and security agencies to

³ Republic of the Philippines House of Representatives Bill on Human Security Section 4

⁴ The Asian Journal (7 March 2007), "Anti-terror law: For bombers only". [Online] Available at: <http://www.asianjournal.com/?c=186&a=18613> (Accessed on 8 March 2007)

⁵ Ibid.

realize that they must not abuse the law otherwise measures to deal with the terrorist threat will be counter-productive.

- (4) *Arrest and Detention. Any peace officer or a private person may, without warrant, arrest a person: (a) when, in his presence, the person to be arrested has committed, is actually committing, or attempting to commit any of the offense under this Act; or (b) when any of said offense has in fact been committed and he has reasonable ground to believe that the person to be arrested has committed the same. Any person arrested under this Section may be detained for a period of not more than three (3) days following his arrest for custodial investigation.*

Analysis:

The Bill gives a clear mandate to Philippines Law Enforcement Agencies to press ahead and arrest suspected terrorists/terrorists. Law Enforcement Agencies have been vested with the authority to detain terrorist suspects for 3 days initially. After the suspects are charged with acts of terrorism however, they can be held indefinitely by Law Enforcement Agencies. Previously, there were numerous loopholes that prevented terrorists suspects from being detained. For example, if an individual was caught with firearms or explosives, the offence would be treated as an illegal possession of firearms (an offence which is bailable) and not an act of terrorism. Case in point being Ahmad Santos and Angelo Trinidad, responsible for the 27 February 2004 Super Ferry 14 bombing incident. They were arrested initially for illegal possession of firearms but subsequently managed to obtain bail and were released.

The possession of firearms or explosives is no longer classified as a bailable offence as these acts are now included into the Anti-Terror Bill. Henceforth, it is no longer possible for terrorists suspects to apply for bail upon their arrest. This will prevent potentially lethal terrorists from escaping without being charged or offences.

There are still provisions under the new Anti-Terror Bill 2007 that need further fine-tuning. One example of this is when a law enforcement agent arrests and detains an individual suspected of perpetrating an act of terrorism and he or she is subsequently proven to be innocent for example, the Philippines government is required to pay the individual who was falsely arrested USD\$10,000 for each day in which he was imprisoned wrongly. A caveat to note is that this provision will only take effect after the 3 days arrest period and so the suspected cannot and will not be compensated for the 3 days under arrest. The benefit of such a provision is that it substantially reduces the likelihood of abuses as law enforcement agents are required to be certain that an individual has been suspected of perpetrating an attack before arresting him. However, this provision might make the law enforcement agents become risk averse and not make arrests even when they have adequate grounds.

In the case of a radioactive, biological attack for example, it is impossible to determine immediately if a certain individual perpetrated a particular attack (this would mean that the individual would be released within 3 days). In another example, in the case of an explosion or bombing where forensic investigations need to be carried out, it would take weeks, if not months before the results of the forensic investigations are revealed. Hence, in such instances, law enforcement agents are likely to release their suspects in order to not have to be liable to pay huge sums of money in the event that the suspects are proven innocent. This is a fundamental flaw in the provision that needs to be amended as it would mean numerous terrorists being freed before being prosecuted in a court of law.

Anti-Terrorism Council. – An Anti-Terrorism Council, hereinafter referred to, for brevity, as the “Council,” is hereby created. The members of the Council are: (1) the Executive Secretary, who shall be its chairperson; (2) the Secretary of Justice, who shall be its Vice Chairperson; and (3) the Secretary of Foreign Affairs; (4) the Secretary of National Defense; (5) the Secretary of the Interior and Local Government; (6) the Secretary of Finance; and (7) the National Security Advisor, as its other members. The Council shall implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country. The Council shall keep records of its proceedings and decisions. All records of the Council shall be subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of the people, the security of the Republic, and the welfare of the nation.⁶

Analysis:

Some provisions of the Anti-money Laundering Laws have also been amended under the new Philippines Anti-Terror Bill. The Anti Money Laundering Council (AMLC) has been vested with the authority to freeze the assets of suspected terrorist financiers. This is a significant step in the right direction as it is critical to target and disrupt the money trail of a terrorist group or individual. When the finances required to carry out an attack are disrupted and seized, it will be almost impossible for terrorist groups to carry out large-scale attacks successfully.

The Law also makes provision for an Anti-Terrorism Council to provide institutional mechanisms necessary to deter and prevent acts of terrorism. The Anti-Terrorism Council will serve as the central policy-making, coordinating, supervising and monitoring body of the government. The Council will not only address the Penal and Law Enforcement aspects but also assist in address the social, political and cultural dimensions mentioned above.

⁶ Republic of the Philippines House of Representatives Bill on Human Security Section 56

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16 March 2007