



## **Human Security Act of 2007 and Proposed Amendments, Dangerous and Draconian**

### **I. Legitimate Political Dissent Under Attack**

“There is a disturbing trend in the use of national security arguments and counter-terrorism strategies by States as justification for blocking access by communities and civil society organizations to the United Nations. In the last year, a number of Non-Government Organizations (NGOs) and human rights defenders, activists and experts have been labeled as “terrorists” by their Governments. Reported cases include individuals or organizations being officially charged with terrorism, blamed for cooperation with foreign entities, or accused of damaging the reputation or security of the State.”

Cooperation with the United Nations, its representatives  
and mechanisms in the field of human rights\*  
Report of the Secretary-General António Guterres  
September 2018

The Human Security Act of 2007 (HSA) also known as “An Act To Secure The State And Protect Our People From Terrorism” was enacted purportedly to protect life, liberty, and property of Filipinos from acts of terrorism with the colatilla that in its implementation, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.

It appears, however, that instead of protecting Filipinos from acts of terrorism, it has been utilized to criminalize dissent and used to justify the perpetration of human rights violations against all Filipino citizens.

The Human Security Act of 2007 was passed by the 13<sup>th</sup> Philippine Congress and signed into law by former President Gloria Macapagal-Arroyo more than a decade ago. This was a response to the United States of America’s enactment of its PATRIOT ACT<sup>1</sup> and call for allied governments within the “Coalition of the Willing”<sup>2</sup> to do the same. The context of the war on Iraq unfolded to be a war for oil and the PATRIOT ACT was used against those the perceived enemies of the US government. The HSA was a precondition for the Philippine government to access military funding from the United States of America for the modernization of the Armed Forces of the Philippines (AFP) and the implementation of its then national

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<sup>1</sup> PATRIOT ACT - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism passed in 2001

<sup>2</sup> Coalition of the Willing - refers to countries who supported, militarily or politically, the [2003 invasion of Iraq](#) and subsequent military presence in [post-invasion Iraq](#). The original list released in March 2003 included 46 members.<sup>[3]</sup> In April 2003, the list was updated to include 49 countries, though it was reduced to 48 after Costa Rica objected<sup>[4]</sup> to its inclusion. Of the 48 countries on the list, three contributed troops to the invasion force (the [United Kingdom](#), [Australia](#) and [Poland](#)). An additional 37 countries provided some number of troops to support military operations after the invasion was complete.

internal security policy Oplan Bantay Laya (Operation Plan Freedomwatch), which was responsible for the extrajudicial killings of more than a thousand activists.

The constitutionality of the HSA has been questioned and challenged in the Supreme Court on the same year it was passed.

Among the grounds raised to challenge the law's constitutionality are its vagueness and overbreadth. As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." and it is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of government muscle.<sup>3</sup>

In its present formulation, the HSA defines "terrorism" with a list of crimes defined by the Revised Penal Code and adds the qualifying clause, " that sow or create 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." The "vague and overbroadly defined provisions in criminal law violates the principle of legality of offences and is inconsistent with Article 15 of the International Covenant on Civil and Political Rights (ICCPR)."<sup>4</sup>

The definition of terrorism is nebulous because it fails to give fair notice to citizens as to what is considered a terrorist act. Worse, it is so ambiguous that law enforcers are given extensive and arbitrary discretion in its enforcement. The arbitrary flexing of government muscle is evident in the manner the law has been enforced so far.

The HSA has been used very selectively since 2008. In three out of less than ten cases it was applied, the law has been used against indigenous peoples.

HSA was first used in 2008 against Aeta peasant Edgar Candule<sup>5</sup>. He was illegally arrested by elements of the Philippine National Police without a warrant or authorization from the Anti-Terrorism Council (ATC) in Botolan, Zambales, a mining town. He was detained at Camp Conrado Yap for three days and the Philippine National Police (PNP) later charged him with terrorism under Section 3 of the HSA based on allegations of his possession of a firearm and subversive documents.

During Candule's trial, one of his arresting officers PO3 Rex Sahagun admitted to only attending one seminar on the HSA and that he was not familiar with the provisions of the law. He and his team conducted the warrantless arrest of Candule without authorization from the ATC based on their understanding that the possession of a firearm and subversive documents constitutes the crime of terrorism. This demonstrates how the little knowledge possessed by the arresting officers has led to the capricious application of the HSA to Candule.

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<sup>3</sup> People of the Philippines vs. Nazario G.R. No. L-44143; August 31, 1988

<sup>4</sup>Submission Of The International Commission Of Jurists (ICJ) On The Proposed Amendments To The Human Security Act 2007 (HSA) to the Joint Technical Working Group Committees on Public Order and Safety & National Defense and Security 17th Congress House of Representatives; 25 June 2018

<sup>5</sup> Position Paper on the Proposed Amendments to the Human Security Act of 2007(Draft Substitute Bill to House Bills 7141 and 5507) Karapatan National Alliance for Human Rights; June 18, 2018

The ongoing proscription case was the second time indigenous peoples were involved in the application of the anti-terror law.

In February 2018, the Department of Justice (DOJ) invoked the Human Security Act of 2007 (HSA) when it filed a petition to proscribe the Communist Party of the Philippines (CPP) and the New People's Army (NPA) as terrorists at the Regional Trial Court Branch 19 in Manila. The petition includes a list of at least 657 individuals named as supposed leaders and members of the two organizations, including 61 human rights defenders, 38 personalities involved in the peace process of the National Democratic Front of the Philippines with the Government of the Republic of the Philippines, 16 political prisoners, eight deceased persons, and two disappeared activists. The list has been recently narrowed down to eight persons in an amended DOJ petition filed on January 3 and upheld by Judge Marlo Magdoza-Malagar this February 1, 2019. That the Department of Justice amended the petition on its own motion is an indication that it had no clear criteria for including individuals in the proscription list and merely cobbled names from unverified sources.

It, however, also demonstrates how the law can be used to target indigenous peoples who have been critical of the Philippine government.

The list included former and present officers of the Cordillera Peoples Alliance (CPA). CPA views this as an attack against the organization that has been consistently fighting for the rights to ancestral land and self-determination of the Cordillera indigenous peoples. Among the former CPA chairpersons in the proscription list are UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli Corpuz; Joan Carling, past secretary general of the Asian Indigenous Peoples' Pact and former member of the UN Permanent Forum on Indigenous Issues; lawyer Jose Molintas, former member of the UN Expert Mechanism on the Rights of Indigenous Peoples; Beverly Longid, global coordinator of the International Indigenous Peoples' Movement for Self-Determination and Liberation. Current advisory council and Sandugo co-chairperson Joanna Cariño, Cordillera People's Alliance Chair Windel Bolinget and Tongtongan ti Umili – CPA Baguio Chapter, former chair Jeanette Ribaya-Cawiding are also listed.

At least 10 Lumad datus in Northern and Southern Mindanao in opposition to mining, energy, logging and agribusiness projects, militarization and Martial Law are named in the list among the 364 individuals from Mindanao.

The inclusion of Tauli Corpuz's name is also a clear case of reprisal from the Duterte government for the UN Special Rapporteur's expressed concern over possible cases of human rights violations against indigenous communities affected by the imposition of martial law in Mindanao.

Despite the exclusion of all but eight individuals, the danger to the security and safety of the others listed prior to the amendment remains the same. Just recently, Randy Felix Malayao - a peace consultant for the National Democratic Front of the Philippines who was on the same proscription list was extrajudicially killed on January 28, 2019 as he was on his way home.

The third instance the present HSA was used was in the case filed against Kalumbay Regional Lumad Organization of Northern Mindanao Chairperson Datu Jumorito Guaynon.

Goaynon is a Higaonon leader who holds the vice chairpersonship of Kalumaran, the alliance of indigenous peoples in Mindanao. He was arrested on January 28 together with peasant leader Ireneo Udarbe while inside a passenger jeepney at a checkpoint mounted by the 4th Infantry Division just outside the Army headquarters.

The arrest was staged as both Goaynon and Udarbe were abducted by combined elements of the Army and the Criminal Investigation and Detection Group of the Philippine National Police. The "arrest" was played

out before the public along the highway a few hours later, this time with planted evidence of explosives and firearms inside their bags.

Both were on their way to a meeting to prepare for a scheduled dialogue with the Commission on Human Rights concerning abuses committed by the Army's 65th Infantry Battalion.

Trumped-up charges of illegal possession of firearms and explosives, rebellion, and violations under the Human Security Act (HSA) were filed against Goaynon and peasant organizer Ireneo Udarbe.

Currently, solidarity and support in various forms from the international community is being curtailed using the HSA and a subsequent law, Republic Act 10168 or the "Terrorism Financing and Prevention and Suppression Act of 2012". Legitimate and legal people's organizations and institutions are being politically vilified while the government tightens bank and accreditation requirements against them.

## II. The Human Security Act of 2007, Proposed Amendments and its Impact on Indigenous Peoples

In 2016, the US State Department Country Report on Counterterrorism cited the need to amend the law because it has rarely been used. In 2018, Representatives Amado Espino Jr., Gary C. Alejano, and Leopoldo Bataoil proposed two House Bills namely House Bill 7141 ("An Act Amending Republic Act No. 9362 entitled "An Act to Secure the State and Protect our People from Terrorism," otherwise known as the "Human Security Act of 2007") and House Bill 5507 ("An Act Declaring as Unlawful the Membership in any Philippine Court-Proscribed or United Nations Security Council-Designated Terrorist Organization and Providing Penalties Therefore") to amend the law.

Local and international legal experts, including the UN Special Rapporteur on Human Rights and Counterterrorism in 2007 and the International Commission of Jurists (ICJ) found the law and the recent proposed amendments inconsistent with international human rights laws and standards.

Under HB 7141, the definition of terrorism has been expanded to include:

- Any other act intended to cause death or serious bodily injury to any person
- Or intended to cause risk to health, safety or security of the public,
- Or Intended to seriously interfere with, disrupt or destroy critical infrastructure
- Or using weapons of mass destruction

When the purpose is to intimidate a population or to compel a government, an international organization or any person or entity to do or abstain from doing any act.

Furthermore, critical infrastructure has been defined as an asset or system which is essential for the maintenance of vital societal functions such as communications, emergency services, gas, energy, dams, finance, food, public services, industry, health, transport, radio and television, information technology, commercial facilities, chemical and nuclear sectors and water.<sup>6</sup>

Under this amendment, there is a very real danger that peaceful protest against a government projects such as dams and mining maybe interpreted as interference or disruption of critical infrastructure. Defense of ancestral domain and the assertion of the right to self-determination might even be considered as "terrorism".

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<sup>6</sup>House Bill 7141 ("An Act Amending Republic Act No. 9362 entitled "An Act to Secure the State and Protect our People from Terrorism," otherwise known as the "Human Security Act of 2007")

It is worthwhile to look at how other countries have enacted laws in the guise of anti-terrorism to criminalize dissent.

In Chile, for example, the controversial Law No. 19.027 was first enacted in 1984 during the military dictatorship of General August Pinochet as an "anti-terrorism" measure and it treats illegal land occupations and attacks on the equipment or personnel of multinational companies as acts of terrorism and subjects those charged to both civilian and military trials.<sup>7</sup>

On Jan. 4, 2013, Francisca Linconao, a Mapuche elder and spiritual leader, was arrested for her alleged role in a confrontation between Mapuche protesters and landowners in Chile and Linconao was jailed for indefinite pre-trial detention, because police and prosecutors deemed her a potential terrorist and threat to society.<sup>8</sup>

In the United States, meanwhile, months-long protest against the Dakota Access Pipeline in North Dakota and Iowa prompted the Iowa Senate to advance a bill which critics say could lead to the criminalization of pipeline protests, which are being cast as "terrorist activities" This bill, carrying a criminal punishment of up to 25 years in prison and \$100,000 in fines, resembles the Critical Infrastructure Protection Act, a "model" bill recently passed by the American Legislative Exchange Council (ALEC) which penalizes citizens if their actions "willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility."<sup>9</sup> One of the leading opponents of the bill, Bold Iowa, through its director Ed Fallon, said, "This is legislative extremism at its worst. The bill's backers want you to believe this is about cracking down on arson and vandalism. But the hundreds of pipeline protesters who were peaceful, nonviolent and didn't engage in property destruction could be accused of interrupting service under this bill and subject to insane consequences."<sup>10</sup>

In Ecuador, Sápara leaders were charged with terrorist acts for opposing oil exploitation, and Shuar leaders have been charged with terrorism for resistance to mining and oil industries while in Peru, indigenous community leaders defending their lands from mining projects have been accused of terrorism.<sup>11</sup>

A common denominator in all of these cases is the strong opposition of indigenous peoples against government projects that have intruded into their ancestral lands and domains, opposition which has been characterized as acts of terrorism.

HB 7141 also penalizes 'inciting to terrorism' and 'glorification of terrorism'. Without clear parameters, these provisions may interfere with the right to freedom of expression. The proposed amendments penalize any person who incites another by any means or anyone who shall advertise through any medium to glorify or promote terrorist acts. Considering the expanded definition of terrorism under this bill, press releases or written materials covering protests against government projects might even be construed as glorification of terrorism. Gathering communities for discussion on the implementation of

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<sup>7</sup> <https://minorityrights.org/2010/10/19/chile-must-repeal-anti-terror-laws-affecting-mapuche-indians/>

<sup>8</sup> [https://www.researchgate.net/publication/322309328\\_From\\_Wallmapu\\_to\\_Nunatsiavut\\_The\\_Criminalization\\_of\\_Indigenous\\_Resistance](https://www.researchgate.net/publication/322309328_From_Wallmapu_to_Nunatsiavut_The_Criminalization_of_Indigenous_Resistance)

<sup>9</sup> <https://www.ecowatch.com/iowa-bill-criminalize-pipeline-protests-2530519502.html>

<sup>10</sup> <https://www.ecowatch.com/iowa-bill-criminalize-pipeline-protests-2530519502.html>

<sup>11</sup> <https://truthout.org/articles/anti-terrorism-laws-increasingly-used-to-target-indigenous-activists/>

government projects might even be interpreted as inciting to terrorism.

The process of proscribing terrorist organizations becomes more whimsical with the proposed amendments. Section 17 of the Draft Substitute Bill provides for a mere ex parte (on the request of one party) application of the DOJ proscribing alleged individual terrorist, terrorist organizations, association or group of persons. The provision allows the DOJ to apply for proscription in the absence of and without representation or notification of affected parties. This amendment denies an individual's right to due notice and to an opportunity to be heard. Moreover, this provision will enable courts to issue a preliminary order of proscription in at least 24 hours, along with a preliminary asset preservation order. This means that, "a suspect, not yet convicted of a crime, loses his freedom and his material wealth, if any, as soon as one is proscribed as a terrorist."<sup>12</sup>

The proposed bill gives the military authority for countering terrorism. It gives them sanction to apply also ex parte for judicial warrant to surveil individuals or organizations suspected of committing any of the offenses under the HSA. The military personnel can eavesdrop on all communications, conversations and discussions without the need of informing the surveilled party. The bill also grants the military the authority to arrest and detain persons suspected such offenses, an authority only previously granted to law enforcers. The bill likewise extends the period of detention without judicial warrant of arrest to 30 days. We have seen have unbridled power accorded to the military has led to atrocities in the past. With this bill, we expect the perpetration of graver human rights violations. Candule for instance was held at Camp Conrado Yap for three days, where he was tied to a monobloc chair, interrogated without legal counsel, repeatedly punched, electrocuted in his hands, feet and chest, forced to admit that he owned a firearm and threatened with death every time he denied that he was a NPA member.<sup>13</sup> Imagine what law enforcement or the military could do to an individual in 30 days?

Section 26 proposes that "The Department of Education (DepEd), Commission on Higher Education (CHED), and Technical Education and Skills Development Authority (TESDA) shall promulgate rules and regulations on the operation of schools or learning centers that will ensure the latter are not being used to promote violent extremism ideology". Educational institutions that will "violate" this provision will face administrative sanctions. For Lumad schools that have long been redtagged as "NPA schools" by the AFP and have long been under attack, this may mean a legal ban.

With the full implementation of the HSA and the proposed amendments, there is no need for the Philippine government to declare Martial Law to arrest and imprison all those who express against its policies, programs and governance. Almost all the crimes listed under the law metes out 40 years or reclusion perpetua as punishment.

### III. When Laws and the Justice System Become Weapons of Injustice, the People Need to Rise

"Large-scale development projects are major drivers fuelling the escalation of attacks and the criminalization of indigenous peoples. The frequent undertaking of such projects without genuine consultation or measures to seek the free, prior and informed consent of the indigenous peoples concerned must cease. Indigenous peoples are not against development, but they reject "development"

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<sup>12</sup> Position Paper on the Proposed Amendments to the Human Security Act of 2007(Draft Substitute Bill to House Bills 7141 and 5507) Karapatan National Alliance for Human Rights; June 18, 2018

<sup>13</sup> <http://news.abs-cbn.com/-depth/12/13/10/aeta-charged-terrorism-wants-p480m-cops>

models which have been imposed on them without their participation and undermine their rights to self-determination and their right to set their own priorities for the development of their lands, territories and resources.”

Report of the Special Rapporteur on the Rights of Indigenous Peoples  
Victoria Tauli-Corpuz  
39<sup>th</sup> Session of the UN Human Rights Council

These are challenging times. There is a growing trend worldwide of criminalizing social protest. It can run the gamut of directly filing criminal proceedings to opening criminal investigations unlikely to reach the trial stage which can nevertheless be used to disarticulate, demoralize and discourage social protest.<sup>14</sup> The “terrorist” and “extremist” labels can be used to justify brutality and a militarized operation.<sup>15</sup> Worse, as in the case of Randy Malayao, the “terrorist label” has led to his extra-judicial killing.

Significant effort must be placed on community education – to widen awareness and understanding of the HSA and the proposed amendments and its implications on rights assertion and local struggles. Ultimately, this should lead to lobbying for the outright scrapping of laws like the Human Security Act and all other moves to further amend it or for any move to draft a similar law.

Human rights violations against indigenous peoples as a result of the implementation of the present HSA must be investigated and raised in government bodies and international bodies and perpetrators must be made accountable and must be penalized under existing laws.

The Philippine government should stop criminalizing dissent and stop labelling indigenous peoples as terrorists as they assert their right to self-determination. Legitimate political dissent should not be criminalized. The rule of law and the justice system should not be weaponized against the people.#

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<sup>14</sup> file:///E:/human%20security/SSRN-id2384374.pdf

<sup>15</sup> <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>