

THE REAL THREATS TO NATIONAL SECURITY AND CONSTITUTIONAL RIGHTS THE PHILIPPINES AFTER SEPTEMBER 11, 2001*

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*"No realm of public policy is more corrupted
by untruthful speech than national security."*

-Alan Geyer

The Idea of Disarmament

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State terror in Asia has long been used to fight what governments have unilaterally declared as "terror." Wars and counterinsurgency have long been pursued as a strategy against "terrorism" in Asia, and the war against "terrorism" has always been made an excuse by states to promote militarist and authoritarian dictatorships supporting Western expansionist, strategic and economic objectives. Today, the Sept. 11, 2001 attacks on the World Trade Center and the Pentagon and the subsequent declaration by the United States of a global war on terrorism has created a pretext for governments to extend and justify the use of draconian national security laws and measures to suppress movements for democracy and human rights.

The common features of such laws and actions – past and present-- include:

- arbitrary detention without charge or trial;
- the criminalization of communities, organizations and individuals by labeling them as terrorist;
- the undermining of due process;
- the reinforcement of repressive practices, including torture, by state authorities;
- restrictions on freedom of movement and return to asylum;
- the intensification of all forms of racism and discrimination--including those based on gender, caste and religion--against migrants, refugees and minorities;
- and

- the invasion of privacy through activities like increased surveillance.

In responding to perceived threats to “national security,” the security of individuals, communities and societies are often neglected by the state. There is no mention of the “terrorism of poverty” which, as Aruna Gnanadason, head of the Justice and Peace Unit of the World Council of Churches, notes, “kills more people than any war.”¹ It is a form of terrorism that is often neglected, especially in the present era where neo-liberal globalization has worsened the conditions of the already marginalized peoples of the world.

Neo-liberal economic policies have resulted in the erosion of Asian peoples’ standards of living and created structural inequality, insecurity, tensions and conflict brought about by the yawning gap between the rich and the poor. Social injustice and inequities, including state policies that exacerbate poverty, unemployment, landless-ness and lack of social services, are the No. 1 recruiters and breeding ground for so-called “terrorists.” Thus, when people face severe threats to livelihood, rights and living standards that have been greatly eroded by neo-liberal globalization (it used to be colonialism and feudal oppression), their protests and demands, particularly when voiced by people’s movements, are treated as security threats by the state. The state increases its reliance on the use of force through police/armies that inflict violence on the people.

The exercise of state violence is even legalized and justified through national security laws that are meant to “establish order.” As more and more people resist and seek alternatives to the dehumanizing world order resulting from the policies and practices of neo-liberal globalization, there is a need to widen the democratic space, not restrict it or shrink it further. In this situation, more democratic space is needed for the expression of grievances. Oftentimes, however, the people’s mass organizations, social movements, labor unions, grassroots citizens’ groups and non-government organizations that articulate people’s demands and alternatives, become the targets of “anti-terrorist” legislation. Militarism and the adoption and use of draconian laws and measures as a reaction to people’s demands have often been resorted to by states under the garb of curbing “terrorism.”

Back to the Past

The Asia-Pacific region is rich with the struggles of Asian peoples fighting colonialism and feudalism being met with this kind of reaction from colonial and post-colonial regimes. Historically, Western powers and sections of the local elites who have been coopted relied on national security laws to suppress the democratic aspirations of the people. Many of the region’s national security laws have their origins in colonial emergency powers but these continue to evolve and have been adopted by local elites to perpetuate their rule. These laws, like those enforced in the Philippines during the American colonial period (1900-1940), included the Brigandage Act and Sedition Law that targeted Filipino freedom fighters and those advocating independence. These pieces of colonial legislation paved the way for the intensified pacification of “insurgents,” resulting in genocide, massacres, extra-judicial killings, disappearances, detention without trial and sham trials. These national security laws were further refined during the post-colonial era where, under the Republic of the Philippines, the Anti-Subversion Law (Republic Act No. 1700) was enacted by the Philippine Congress to deal with subversion and rebellion.²

The Anti-Subversion Law was even expanded during the Marcos martial law era (1972-1985) when presidential decrees were promulgated to suppress political opposition and dissent. Proclamation No. 1081 issued by then President Ferdinand Marcos on Sept. 21, 1972, placed the entire Philippines under a military dictatorship and martial law administration. General Order 2-A of Proclamation 1081 ordered the Secretary of National Defense to arrest and detain persons who committed “crimes and offenses in furtherance or on the occasion of or incident to or in connection with the crimes of insurrection and rebellion.” The persons to be arrested included “those who, in one way or another, committed and will commit crimes against society and the government, such as those involved in kidnapping, robbery, carnapping, smuggling, gun-running, trafficking of prohibited drugs and hijacking, tax evasion, price manipulation, and others guilty of weakening the fabric of society and of undermining the stability of the government.”

Martial law was further institutionalized with presidential decrees (PDs) and Letters of Instruction (LOIs) which included Proclamation No. 2045 granting the president the power to arrest and detain persons; LOI 1125 granting the power to arrest any person by virtue of a Presidential Order of Arrest; and LOI 1125-A expanding the president’s power to arrest through the Presidential Commitment Order (PCO); and LOI 1125-A.³

All in all, at the height of the martial law years between Sept. 21, 1972 and March 3, 1977, Marcos issued more than 1,000 presidential decrees (or about two decrees every three days) including several codes, 500 letters of instruction, 500 presidential proclamations and 60 general orders, aside from scores of executive orders and implementing regulations.

One of the most notorious national security decrees issued during martial law was PD 1836 which allowed the president to issue orders of arrest or commitment or when the privilege of the writ of habeas corpus was suspended. Furthermore, PD 1836 did not provide any guidelines or procedures for the arrest or detention of person. It only stated that such arrests and detentions can be effected solely on the basis of the president’s personal judgment.⁴ According to a report by the Philippine Human Rights Information Center published in 1993, “by the end of Marcos’ rule of terror on February 1986, 160,000 had been killed, 100,000 injured in Armed Forces operations, 11,000 tortured, over 6 million displaced, 2.5 million permanently lost their homes, 70,000 arbitrarily detained for at least one year, and almost 3,000 disappeared. “

In the Philippines today, after Sept. 11, 2001, there are indications that, in the name of a “war on terror,” we are lapsing again into authoritarianism and into a police state. For the government of President Gloria Macapagal-Arroyo is riding on the coattails of the United States which, in its declaration of war against international terrorism, has launched repressive acts at home and abroad against its perceived enemies. The possible consequences are chilling. For principles articulated by international human rights instruments, in particular, the International Covenant on Civil and Political Rights (ICCPR), have the potential of being violated in the name of national security.

USA Patriot Act: A Model?

The government of the United States is rounding up and detaining thousands of immigrants, identified through racial profiling, without due process and detaining them for secret trials. The USA Patriot Act (or, in its complete title, "Uniting and Strengthening America by Promoting Appropriate Tools Required to Intercept and Obstruct Terrorism"), is waging war without limits of time and space and has introduced new police state restrictions threatening the very right of Americans to dissent. The 300-page bill was signed into law on Oct. 26, 2001, perhaps the fastest piece of American legislation ever to be passed into law!

On Nov. 13, 2001, US President Bush issued a "Military Order, Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism" authorizing the indefinite detention and trial of non-US citizens, "whose identities shall be determined by the President from time to time in writing, before secret military tribunals where the principles of law and the rules of evidence generally recognized in the trial of criminal cases in US district courts do not apply."⁵ Back in 1996, the United States had already enacted the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). It later turned out that the perpetrator of the 1996 Oklahoma bombing was a homegrown member of a local racist militia.

The hollow promise of safety and security has stifled the right to question and articulate. The very freedoms and liberties that democratic governments claim to be fighting for are being eroded. Pre-criminals and pre-terrorists in the United States and overseas can now be arrested and imprisoned by President Bush's borderless armed forces on mere suspicion that they are about to commit acts of terrorism (a development foreseen perhaps by the Spielberg film "Minority Report" where persons who have yet to commit a crime are promptly rounded up?). The United States government now refers to its new doctrine after September 11 as the "doctrine of preemption."

In recent years, we have seen peoples' movements across the globe articulate the possibility and desire for human security and genuine development through the common opposition to neo-liberal globalization. In fact, many civil society movements all over the world are now building transnational solidarity alliances. The "war on terrorism" threatens to label any form of dissent as terrorism and is, in part, an attempt to destroy the capacity of peoples' movements to achieve social, economic and political reforms.

On the Coattails of Uncle Sam

The Philippines is one of the countries suffering from similar policies that followed the Sept. 11 events. The New York Times observed that the Philippines recently hosted "the largest single deployment of US military might outside Afghanistan."⁶ The Philippines is being made to violate its own constitution to make way for military exercises that are, in fact, field operations in combat zones. Now, Filipinos are also being deceived with an unconstitutional military-to-military "accounting agreement" called the Mutual Logistics Support Agreement (MLSA). Such an arrangement would allow the setting up of US military facilities and infrastructure to house military supplies, logistical depots and refueling installations, armaments and other weapons of mass destruction. These logistics and supplies are meant for US military operations in the Philippines which would also be used as a staging area against other countries like Iraq, Iran, North

Korea, and other enemies of the US in the predominantly Muslim countries of Southeast Asia like Indonesia and Malaysia.⁷

The “war on terrorism” has intensified the deception of Filipinos through secret “accounting” agreements like the MLSA in consonance with so-called joint military exercises. The MLSA, which is currently being rushed for formal signing, is the Pentagon’s logical follow-up to the 1999 Visiting Forces Agreement or VFA. The MLSA is not just about logistics and other military hardware that the US wants to stockpile in the Philippines for use by American forces. It is about the setting up of facilities, structures and infrastructure to “house” US war materiel needed for frontline operations in Asia and the Middle East.

For the Philippine government, the MLSA is a necessary document to allow the US to re-establish foreign military facilities, though these are banned under the Philippine Constitution. The VFA had already given the go-signal for the entry of “foreign military troops” under the guise of joint military exercises. All these point to the reversal of the Philippines’ decision to dismantle all US military bases from its territory in 1991, and the full restoration of US military presence in the Philippines, but this time using the entire country as one big military base.

Although Philippine-US military exercises have been resumed after the ratification of the VFA, a shift in the orientation and implementation of such exercises has occurred after Sept. 11, 2001. A total of 660 American soldiers under the US Special Operations Forces was deployed for military exercises in the Basilan and Zamboanga war zones from February to July 2002. Live targets in the form of the Abu Sayyaf, a kidnap-for-ransom band supposedly having ties with the Al-Qaeda, were used as pretext for the exercise.

Also, in the course of these operations, Muslims and Arab-looking persons are being picked up and interrogated in warrantless arrests, or even threatened with extra-legal killings. Such killings are part of Davao City Mayor Duterte’s “final solution” to the problem posed by suspected terrorists and criminals. Duterte was recently appointed by President Macapagal-Arroyo as presidential adviser on peace and order.

The day is not far off when critical thought, resistance to injustice and speaking out against the machinery of war and repression could be defined as “terrorism” or “association with terrorism” as it is already happening in many parts of the US, especially against Arab, Muslim and South Asian immigrants. Does the era of wiretapping and e-mail tapping for purposes of political control mean that we are developing into a full-fledged “strong state” or “strong republic” as envisioned by President Macapagal-Arroyo? And for whom is it? The US corporate elite (e.g., oil and gas industries and weapons manufacturers) and its Filipino counterparts in power at times of economic, social and political crises?

Laboratory for Militarization

There are strong indications that the Philippines is now becoming a laboratory for a new type of militarization being directed and advised by a borderless US military. Recent events in southern Luzon, especially in the island of Mindoro, indicate that an Operation-Phoenix-type of activity may be taking place. During the Vietnam War, Operation Phoenix was the covert operation conducted by the US to eliminate unarmed

activists and destroy the political infrastructure of the Vietnamese who were resisting US aggression in that Southeast Asian country. Between 25,000 and 30,000 civilians in South Vietnam, mostly non-combatants, were later acknowledged by the US Central Intelligence Agency to have been liquidated, with the objective to “disrupt and destroy enemy assets.”

In the Philippines, within a span of one year, mostly after Sept. 11, 2001, a total of 20 local coordinators of the political party of the Philippine Left, the Bayan Muna, including its provincial coordinator, were assassinated. The US-trained and armed Philippine military has intensified its counter-insurgency campaign against New People’s Army guerrillas and against the political infrastructure of the National Democratic Front (NDF) which operates in 60 of the country’s 79 provinces.

More and more, the Bush administration is expected to increase its support of military technology to the Armed Forces of the Philippines (AFP), laying the groundwork for the expansion of US-Philippine military cooperation. This is all designed to prepare more US-created Philippine Army counterinsurgency units directed by US SEALs and Ranger advisers and trainers to operate all over the country against homegrown “terrorists.” Thus, more US special forces will likely become directly involved in counterinsurgency missions, including monitoring and intelligence missions, most of them secret. The MLSA would allow the US to set up radar facilities on Philippine soil to detect “terrorist” and “insurgent” activity, both armed and unarmed. Some of these sites may be located on Philippine Army installations, but will be manned by US military personnel and US “civilian technicians” as these are allowed under the Visiting Forces Agreement.⁸

In the US preparations to strike at Iraq, the pro-US stance taken by the Philippine government has given it a very serious dilemma. The Philippines has good diplomatic ties with Iraq as well as with the two other nations – Iran and North Korea – that were demonized by Bush’s reference to the “axis of evil.” If the Philippines allows the active use of its territory by US military forces against Iraq, it cannot possibly expect Iraq not to take this against the Philippines or the Filipino contract workers in that country. Furthermore, US planes striking or bombing targets in Iraq may also cause casualties among Filipino contract workers who contribute to the almost US\$7-billion annual remittance of overseas Filipinos.

The ‘Strong Republic’

In the local scene, the Philippine government is also faced with the prospect of completely scuttling the ongoing peace talks with the National Democratic Front after the US included this organization as well as the Communist Party of the Philippines and the New People’s Army in its list of “Foreign Terrorist Organizations.”

Efforts of President Macapagal-Arroyo to build a “strong republic” as she announced in her July 22, 2002, State of the Nation Address, including the push for measures to pass restrictive anti-terrorism bills, have been interpreted by human rights advocates and civil libertarians as attempts to build the legal infrastructure for a national security state. The grim consequences of these developments to constitutional rights include the lack of regard for the right to be presumed innocent and the right to privacy, to tap phones and the internet, and to look into and freeze assets of suspects.

The Philippine president is asking Congress to enact an anti-terrorism legislation, ostensibly to build "empowered institutions" against terrorism similar to the so-called USA Patriot Act. Human rights groups have rightly raised a howl over the sort of powers contemplated in the proposals pending in the Philippine Congress. In the proposed measure, the police would be allowed to detain a person suspected of terrorism for up to 72 hours without charges being brought against that person. Under existing Philippine laws, detention without charges for 36 hours even for those suspected of heinous crimes is considered arbitrary and illegal.

Section 10 of the proposed bill seeks to authorize law enforcement officers to "tap wire or cable, or secretly overhear, intercept, or record communication through the Internet and electronic mails or spoken word" if there are "reasonable grounds " to intercept or obstruct terrorism. Section 13 authorizes the freezing of "terrorist" assets, and no temporary restraining order or writ of injunction against a freeze order can be issued by the courts.

The harshness of these measures is compounded by the fact that the offense itself, "terrorism," is defined vaguely to encompass almost any act involving force, violence or intimidation which could "create or sow common danger or a state of terror, fear, panic and chaos on the general public," "coerce or intimidate the public or the government" or "undermine the confidence of the public in the government."

Under the USA Patriot Act, "domestic terrorism" is more simply, though just as vaguely, defined. It is described as "any activity within the territorial jurisdiction of the US that violates federal law or the law of any state and that is intended to intimidate or coerce a civilian population, or to influence government policy. " Under these definitions, persons who exercise their right to petition the government for redress of grievances or the right to strike should consider themselves flirting with the charge of terrorism.

Expect that as political and civil dissent increases in the light of an economic crisis, the continuing state of neglect in rural areas, increasing mass poverty and lack of economic infrastructure and opportunity, the Army and police will undertake a more active role in dealing with civil unrest which will be treated as "terrorist-inspired" or "terrorist-infiltrated." The military will be more concerned with defending the state from within than from outside. We will witness changes in our laws. Legislation in the form of anti-terrorist measures and resurrected or rehashed anti-subversion laws will be provided as the legal basis for the "strong republic" or "strong state" that will enforce legalized repression.

Legalizing State Terrorism

Already, a total of seven proposed anti-terrorist bills have been filed in the Philippine Congress: two in the Senate (sponsored by two former police officials, Senators Panfilo Lacson and Robert Barbers) and five in the House of Representatives (including one by a daughter of the deceased dictator, Rep. Imee Marcos). The proposed bills are using as model either the USA Patriot Act or Singapore's Internal Security Act and, as such, are highly objectionable because of their serious effects on fundamental civil and political rights.

The proposed bills pending in the Philippine Congress such as House Bill 3802 and Senate Bills 1980 and 1458 have been consolidated by the Philippine Department of Justice in an inter-agency draft, dated July 9, 2002, under the title, "An Act Defining the Crime of Terrorism, and the Financing, Preparation and Facilitation of Acts of Terrorism, Providing Penalties Therefor and For Other Purposes." It will be known as the Philippine Anti-Terrorism Act of 2002.

The proposed anti-terrorist bill in the Philippines filed after Sept. 11, 2002 has the potential to stifle all forms and manner of political dissent under the pretext of fighting terrorism. Political dissent is an essential part of any society that calls itself democratic. It is a means of assuring individual self-fulfillment, a means of attaining the truth and securing participation by the members of society in social and political decision-making. Dissent is also a means of maintaining the balance between stability and change in society.⁹ Yet, this bill is precisely aimed at suppressing dissent, for the bill allows, nay encourages, the indiscriminate labeling of any activist or organization as "terrorist."

The proposed anti-terrorist bill may even appear to be laying the basis for the destabilization of the country and the imposition of a state of emergency in the future. This is in light of the fact that other countries have used "terrorism" as the reason for the establishment of states of emergency. The United Kingdom, for example, cited "campaigns of organized terrorism related to Northern Irish Affairs" while, similarly, Sri Lanka cited "widespread acts of terrorism" as the basis for imposing states of emergency.¹⁰

In fact, this bill is frighteningly reminiscent of martial law decrees in the Philippines. The newly-created National Action Committee on Anti-Hijacking and Anti-Terrorism (NACAHT) under Executive Order No. 246 dated May 18, 1995, has functions similar to the notorious National Intelligence Security Authority (NISA), an agency known for brutal violations of human rights under martial law. As a whole, the bill fails each and every test for the validity of a democratic law where, to be valid, any "such legislation should remain in force only while it continues to be effective, only if its aims cannot be achieved by use of the general law, if it does not make unacceptable inroads on civil liberties, and if effective safeguards are provided to minimize the possibility of abuse."¹¹

Let me summarize the objections made by Philippine civil libertarians, human rights advocates and constitutionalists to the proposed law for the "campaign against international terrorism":

1. It cannot and does not address terrorism. Terrorism is both state and factional terrorism. The bill is silent on state terrorism.
2. The bill limits its focus on factional terrorism which it cannot even solve because the means chosen are not only futile and inadequate but, even worse, are blatant attacks on constitutional rights and freedoms. For example, it outlaws so-called "terrorist organizations" and penalizes membership therein. Banning organizations has been proven to be ineffective. For instance, the former Philippine Anti-Subversion Law as amended (Republic Act No. 1700) – and now repealed since 1992--sought to stop the spread of communism by outlawing the Communist Party of the Philippines and its allied organizations. The law did not achieve its purpose; it did not even stop the spread of communism in the country. Nor did it inhibit the growth and activities of the proscribed groups. Similarly, the current pending bill will not achieve much by outlawing "terrorist

organizations." Also, the bill authorizes law enforcement officials to secretly intercept private communications and to inquire on bank deposits. By doing so, it widens the scope of police power and may contribute to the rise of state terrorism without in any way stemming factional terrorism.

3. The proposed anti-terrorism bill is unconstitutional. It is a bill of attainder; it violates the rights to privacy, free speech, assembly, association, presumption of innocence, due process and equal protection. It imposes the death penalty.
4. The bill is highly susceptible to abuse and therefore dangerous to civil liberties.
5. The aims of the bill are already adequately addressed by existing general laws.

Bill of Attainder

The 1987 Philippine Constitution categorically prohibits the enactment of a bill of attainder.¹² A bill of attainder is a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative determination of guilt for a judicial one. The constitutional ban against bills of attainder serves to implement the principle of separation of powers by confining legislatures to making laws, thereby forestalling the legislative usurpation of the judicial function. Historically, bills of attainder were employed to suppress unpopular causes and political minorities, and it is against this evil that the constitutional prohibition is directed. The singling out of a definite class, the imposition of a burden on it, and a legislative intent suffice to stigmatize a statute as a bill of attainder."¹³

Even at face value, the proposed anti-terrorist law is a classic bill of attainder in its purest form. It meets the three generally recognized elements of bills of attainder: non-judicial punishment, lack of judicial trial and specific identification of an individual or a group of individuals.

The bill singles out for punishment a particular person or group of persons (i.e. "terrorist" or "terrorist organization"). It pronounces guilt upon persons adjudged to be terrorist or members of terrorist organizations without any of the forms or safeguards of a trial. Thus, it usurps and degrades the role of the judiciary. It even fixes the degree of punishment according to Congress's own notions of the enormity of the offense.

"Because the legislature is more susceptible to public clamor and interest-group pressure than the judiciary, the separation of powers function of a Bill of Attainder is crucial when the group singled out is politically unpopular. The political unpopularity of the group, coupled with congressional desire to enact popular legislation, prevents the legislative body from impartially weighing the evidence, and the procedural safeguards that operate in judicial proceedings are endangered or lost. When groups selected by the legislature for special burdens are relatively small and politically unpopular, it is easier for the legislature to act against them than if a broad spectrum of interest groups is affected. These smaller groups serve as effective scapegoats for the frustrations of a majority, particularly if the groups are marginal and expendable to the economy. Action taken against 'scapegoat' groups permits the level of esteem of congressmen to rise in the eyes of the majority at the expense of a politically powerless minority."¹⁴

By punishing those who wish to exercise their rights of free speech and association, Congress has intruded into the judicial process of determining which persons actually exhibit terrorist behavior.

Restoring the Anti-Subversion Law

The bill also reinstates a Cold War legislation, the Anti-Subversion Law which was repealed in 1992 for being unconstitutional. Section 7 of the proposed anti-terrorist bill is nearly a word-for-word reproduction of a martial law decree, PD 1975, issued on May 2, 1985. This was among the last decrees issued by the dictator Marcos to bolster the Anti-Subversion Law. Section 1 of PD 1975 states:

“Whoever KNOWINGLY, WILFULLY AND BY OVERT ACTS AFFILIATES WITH, BECOMES OR REMAINS A MEMBER OF a subversive association or organization..., WHETHER COMMITTED WITHIN OR OUTSIDE THE TERRITORIAL JURISDICTION OF THE PHILIPPINES, shall be punished by...”

Interestingly, Section 7 of the proposed anti-terrorist bill states:

“Any person in the Philippines...who...KNOWINGLY, WILFULLY AND BY OVERT ACTS AFFILIATES HIMSELF WITH, BECOMES OR REMAINS A MEMBER OF ANY ORGANIZATION WHETHER DOMESTIC OR FOREIGN, whose purposes include the conduct or commission of terrorism, WHETHER IN OR OUT OF THE COUNTRY, is guilty of an offense, and when convicted, shall suffer the penalty of...”

The bill punishes the individual, not specific acts. It specifies that mere membership in a terrorist organization is punishable. It assumes that any member of a “terrorist” organization--which incidentally it admits can conduct legitimate activities--possesses “feared characteristics” which must be punished, without requiring any proof that the person to be punished has actually engaged in any terrorist activity.

Furthermore, there is a reprehensible intrusion into the rights and freedoms protected by the Constitution. The bill not only invades the privacy of communications of individual indefinitely; it is an obnoxious derogation of the privacy of individuals. It is particularly alarming because it arms law enforcement officers not only with the widest license to intrude into the privacy of communications but also to inquire into the bank deposits of persons and entities who are MERELY ASSUMED OR PERCEIVED TO BE TERRORISTS. Anyone could easily be assumed or perceived or suspected of being a terrorist. No one is safe; all are in danger of being abused.

More Encroachments

Other constitutional rights abrogated by this bill are the rights to free speech, assembly and association. These rights should not disappear simply because the organizations with whom individuals wish to associate are politically unpopular. The right of association is intimately bound to free speech; both are essential to a free and democratic society.

Substantive due process prohibits the creation of vague laws that would bestow on the authorities unfettered discretion to determine whether existing laws are being violated. A statute is vague when it lacks “comprehensive standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. Such a law 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 the Government muscle.”¹⁵

Section 11 of the proposed bill amends Article 125 of the Revised Penal Code by increasing the period required to bring the arrested person to court, from the current 36 hours to the proposed 72 hours. In addition, it allows authorities to “extend the period of detention of the person arrested and the time to charge him or her with the corresponding offense” to a maximum of 30 days.

Why are such prolonged periods now needed just to surrender the suspect or detainee to the proper court? If the previous examination or investigation was inadequate, then the arrest should not have been made. Section 11 effectively results in hasty and ill-considered arrests in violation of the constitutional safeguards of individual liberty, the exertion of pressure on a detainee so as to break his/her right to remain silent as guaranteed by the Bill of Rights, and the creation of difficulties for the defense counsel in contacting his/her client and asking for bail and speedy trial, as mandated by the Constitution.

In addition, increasing the number of days of detention to 30 days is tantamount to preventive detention (or detention without trial), much like the Arrest, Search and Seizure Orders (ASSO), Presidential Commitment Orders (PCO) and Preventive Detention Action PDA) that were notoriously enforced during the Marcos martial law regime. This has no place in a society that calls itself democratic. Neither should a Congress that claims to operate under democratic ideals and principles approve a bill that is clearly oppressive and unconstitutional.

The proposed anti-terrorist bill is unconstitutionally vague and broadly encompassing because it can be interpreted by law enforcers to suppress legitimate dissent. Under Section 3, “acts of terrorism” include threats to commit violence, threats to hold hostage, threats to kidnap and threats to assassinate government officials. Such a prohibition is enough to put in trouble an ordinary Filipino who is prone to loudly and vigorously comment on the perceived idiocy of government officials who enforce policies adversely affecting him.

Thus, the proposed Anti-Terrorism Act has a chilling effect on freedom of speech and expression and signifies a return to the dark days when the only ideas allowed were those of the State. By including the broad and vague term “threaten,” the bill leaves to law enforcement officials the interpretation of statements, speeches and other forms of expression, without providing clear guidelines as to what is protected speech. Yet the effect of this anti-terrorist bill is precisely to banish these rights.

Section 7 of this bill outlaws terrorist organizations “REGARDLESS OF ANY LEGITIMATE ACTIVITIES CONDUCTED BY THE ORGANIZATION OR ITS SUB-GROUPS” and penalizes membership therein with imprisonment of six to 12 years.

The bill leaves no protection to citizens in guarding against abuse of state power and the rise of state terrorism. Such abuse is exercised particularly through the elimination of political adversaries by labeling their political offenses as common crimes under the penal code.

Through this proposed legislation, Congress will in fact grant the state the license to kill political undesirables and even the political opposition. It will thus contribute to the legalization of state terrorism, without even addressing factional terrorism, in derogation of its mandate to respect and uphold the most fundamental of all constitutional rights--the right to life.

Guilty at First Glance

By pronouncing all members of "terrorist organizations" guilty of the "crime of terrorism," Congress has deprived these individuals - and the organizations to which they belong - of their right to be presumed innocent. They should be - but are not - presumed innocent of the "crime of terrorism" until the contrary is proved in a court of law, not by the whim of Congress.

In addition, Section 12 of the bill penalizes persons who, "KNOWINGLY OR HAVING REASONABLE CAUSE TO BELIEVE THAT ANOTHER PERSON IS GUILTY OF A TERRORIST ACT," render assistance to the latter with intent to prevent, hinder or interfere with the apprehension, trial or punishment of that person. The belief of guilt of another party is simply that - the belief or assumption of guilt. No person is empowered to judge another as guilty - that power rests solely with the courts. In fact, the underlying principle is - and should be - that ALL PERSONS ARE PRESUMED INNOCENT UNLESS OTHERWISE PROVEN BY A COMPETENT COURT OF LAW. To punish someone for helping a relative, friend or acquaintance, when that relative, friend or acquaintance may not have been convicted or even tried in a court of law, violates the presumption of innocence, encourages witch-hunting, and promotes the so-called "crab" mentality that the Philippine government has blamed for the slow development of the country.

Denial of Due Process

Section 12 of the same bill exempts lawyers from any criminal liability for extending legal aid or professional services on account of counsel and client relationship. That this exemption is even granted reflects the absolute lack of appreciation - much less knowledge of and respect for - the fundamental right to counsel. Was it the intent to deprive all "terrorists and terrorist organizations" their right to counsel? Or was the intent to coerce all lawyers into refusing to render legal assistance to "terrorists and terrorist organizations"?

The bill finds all members of "terrorist organizations" guilty of the "crime of terrorism," thus depriving them of their rights to due process and equal protection of the law. They won't have to be informed of the nature and cause of the accusation against them.

Finally, the definition of terrorism is so broad and unclear it could apply to almost any activity or offense. It does not appear to be much different from sedition, for instance.

It could even be a definition of advertising since advertising does “influence people’s behavior”. It could also refer to state terrorism.

The definition of a terrorist organization is also vague, to wit:

“d. Terrorist Organization—any organization engaged or which has a significant subgroup which engages in terrorisy activity, regardless of any legitimate activities conducted by the organization or its subgroups.”

It is all too easy to label any organization as “terrorist.” When taken together with Section 7, it becomes even more alarming because: (a) the bill is silent on who determines whether or not an organization is a terrorist organization and therefore whether it is banned or not; (b) it gives government too wide a latitude; and (c) it is subject to abuse. There is nothing in the bill to prevent government—or the branch that eventually determines the terrorist nature of an organization—from labeling, for instance, the Rotary Club, the Jaycees, a medical or professional association, sectoral groups, non-government groups, or people’s organizations as terrorist since the label would largely be determined by the perceptions, assumptions and political beliefs of the labeler.

It would certainly be dangerous if Congress could set a net large enough to catch all possible offenders and leave it to the courts to step in and say who could be rightfully retained and who should be set free.

Clearly, the ambiguity makes the bill’s provisions subject to abuse. The power, for instance, to intercept communications and inquire into bank deposits could very well lead to incidents of extortion and blackmail or even become the basis for kidnapping by unscrupulous law enforcement officers or the syndicates they protect.¹⁶ The bill then is an illegitimate exercise of the state’s police power since it fails the test for reasonableness and conformity with the Bill of Rights. This test of consistency with constitutional rights is indispensable and must be strictly complied with:

“...lest their disregard debase the police power into an unwarranted intrusion into individual liberty and property rights or, worse, a bludgeon for oppression. In such a case, the free society will deteriorate into a police state with absolute power over the individual. This corruption of police power will lead to the decay of democracy itself.”¹⁷

In attempting to curb terrorism, Congress has, in fact, merely created a symbolic document that does little, if any, to stop the actual spread of terrorism, and instead threatens the very security of the Filipino people and the life of Philippine society. So broad is the definition of terrorism in the proposed bill that it would virtually legitimize state-instigated terrorism against the people. It could equate critics, activists and protesters with “terrorists.” This equation poses a grave danger even to workers fighting for their rights to decent wages and job security.

The Philippine president has recently vowed to “wage war against criminals, terrorists, drug addicts, kidnappers, smugglers and **THOSE WHO TERRORIZE FACTORIES THAT PROVIDE JOBS.**”¹⁸ (Underscoring mine)

In many developing countries, unions strike terror in the hearts of capitalists, especially those who don't want to share their profits with their workers, or want to drive down the wages and benefits of their workers to reap more profits for themselves. Is this now a declaration of war against workers and their unions, as their militancy might strike fear and drive away foreign investors?

Failed Solutions

Since US assistance will be overwhelmingly military in nature, it will only continue a failed strategy against insurgency and rebellion. US military trainers think that what they offer their Philippine counterparts in the form of war-fighting skills and sophisticated technology can lick the less sophisticated guerrilla army of the poor in the country sides. More than any military solution - whether foreign or local - we must find solutions to mass poverty and social injustice through a healthy and pluralistic political process and an empowered citizenry rather than the use of military force and authoritarianism.

But state barbarism would be answered by the people's concerted and united action. The victory of people's revolutions and uprisings in the Asia-Pacific shows that when that state of tyranny is reached, even the most vicious repression using the most advanced technology cannot protect the repressive state. Soon, all the propaganda about the threat of terrorism will fade as people realize that the wolf that cried "Wolf!" is their true enemy, and what will be left will be an authoritarian instrument, the military and police forces, whose real function is to protect the existing social order for the well-entrenched economic and political elite.

Many of the so-called anti-terrorist and national security measures taken by governments are illegal acts that violate international human rights standards. As long as the war on terrorism continues, it will be used by governments everywhere as a justification for their illegal actions in the name of national security. Governments, too, should be reminded that all acts of violence perpetrated in the name of national security and violate international human rights law are, in fact, themselves terrorist acts. This is state terrorism, pure and simple. We should likewise reject the labeling as terrorists of groups resisting the use of state terrorism against the people asserting the universal right to self-determination, particularly in the face of tyranny and oppression.

The war on terrorism threatens the core of democratic nations. The very foundation of the democratic countries' Bill of Rights, and the United Nations instruments and mechanisms of human rights have already been undermined and are moving towards a collapse. National gains made by way of struggles for democracy which have been enshrined in constitutions, democratic institutions, parliaments and courts, transparency and accountability, and international gains made by the way of the Universal Declaration of Human Rights face a critical challenge.

Ironically, too, the "free market" of globalization will soon see the rise of what the Russian philosopher Nikolai Bukharin predicted for capitalism: "Thus arises the final type of contemporary robber state, an iron organization which envelopes the living body of society in its grasping paws. It is a new Leviathan before which the fantasy of Thomas Hobbes seems child's play."

The threat of a police state is now upon us.

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END NOTES:

¹ Ms. Aruna Gnanadason, Keynote Address, Gathering of Women Peacemakers, Manila, Sept. 27, 2002. Unpublished copy of speech.

² See Republic Act No. 1700 otherwise known as the "Anti-Subversion Act", AN ACT TO OUTLAW THE COMMUNIST PARTY OF THE PHILIPPINES AND SIMILAR ASSOCIATIONS, PENALIZING MEMBERSHIP THEREIN, AND FOR OTHER REASONS, Approved June 20, 1957, GPO, 1962.

³ Carlos P. Medina, "In Custody of the Law", LAWASIA, Human Rights Committee, MetroManila, p. 1.

⁴ Atty. Rene V. Sarmiento, "Laws on National Security in the Philippines - Then and Now", Task Force Detainees Update, June 25, 1989, Manila, p. 4.

⁵ Laura W. Murphy, Director of ACLU Washington National Office, cited in "USA Patriot Act Boosts Government Powers while Cutting Back on Traditional Checks and Balances," An ACLU Legislative Analysis.

⁶ Eric Scmitt, "US-Philippine Command May Signal War's Next Phase," New York Times, 16 January, 2002.

⁷ Roland G. Simbulan, "US Policy in Asia and the State of Philippine-US Security Relations". Paper presented before the Inaugural Assembly of the Asian Peace Alliance, University of the Philippines, Quezon City. August 29-Sept. 1, 2002; "A Personal Account from the Basilan War Zone", FORUM, University of the Philippines, July 28, 2002. Also see fact-finding reports on U.S. military involvement in Mindanao: (1) "Basilan: The Next Afghanistan?" Report of the International Peace Mission to Basilan, Philippines, March 23-27 2002; and (2) "Behind the 'Second Front' " Report of the International Solidarity Mission Against US Armed Intervention in the Philippines, July 24-31, 2002

⁸ Department of Foreign Affairs (Philippines), Visiting Forces Agreement (1999), GPO, 2001.

⁹ Thomas I. Emerson, *Toward a General Theory of the First Amendment*, New York: Vintage Books, 1966, p. 3.

¹⁰ Subrata Roy Chowdhury, *Rule of Law in a State of Emergency*, London, Great Britain: p. 27.

¹¹ The Rt. Honourable Earl Jellicoe, DSO, MC., Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976, presented to Parliament for Home Department, by Command of Her Majesty, Feb. 1983, p. 4.

¹² **Section 22, Article III, Bill of Rights, 1987 Constitution of the Republic of the Philippines.**

¹³ People v. Ferrer, 48 SCRA 382, 395-397 (1972).

¹⁴ Lance A. Harke, The Anti-Terrorism Act of 1987 and American Freedoms: A Critical Review, 43. University of Miami Law Review, 667 (1989), p. 702.

¹⁵ **Section 8, Anti-Terrorism Act of 2002, Inter-Agency draft, Philippines.**

¹⁶ **See The Manila Times, headline story, " 356 Rogue Cops in List", Sept. 22, 2002. The story mentions 356 "rascals in uniform" being investigated for offenses ranging from robbery, kidnapping, extortion, etc. Those on the list includes chief superintendents (or police generals) down to police privates.**

¹⁷ Subrata Chowdhury, p. 29.

¹⁸ **Gloria Macapagal-Arroyo, President, Republic of the Philippines, State of the Nation Address, Congress of the Philippines, July 22, 2002.**