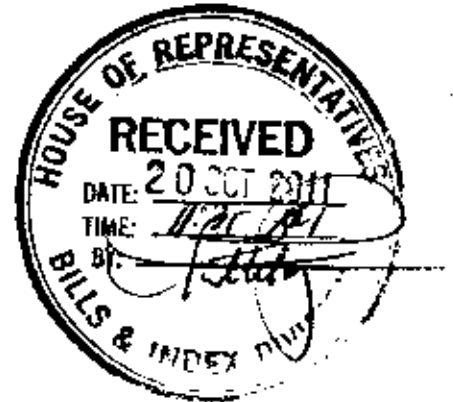


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5444



**INTRODUCED BY ANAKPAWIS PARTY-LIST REPRESENTATIVE
RAFAEL V. MARIANO**

EXPLANATORY NOTE

The civil, political and human rights situation of the Philippines has been at a worse state. The situation has been so dismal even before the actual declaration of martial law and the dictatorship of Ferdinand Marcos. It even continued under the "questionable presidency" of Gloria Macapagal-Arroyo. With the present administration, it was just a continuation of state terror, political repression and economic exploitation and plunder. According to human rights group, KARAPATAN, a year after President Benigno Simeon C. Aquino III's presidency, there are already 48 victims of extrajudicial killings, 5 victims of enforced disappearance, 29 victims of torture, 151 illegal arrests and 3,010 victims of forcible evacuation from rural villages.

It is very obvious that civil, political and human rights have been under constant attack, especially with the unending series of laws, rules and regulations and executive orders that undermine Constitutional rights such as freedom of assembly, speech and freedom of the press. The Arroyo government even crafted and began the implementation of a comprehensive law that would directly violate fundamental Constitutional provisions that ensure freedom from arbitrary detention, freedom of association and movement.

On February 8, 2007, the Senate approved the Human Security Act (HSA), more commonly known as the Anti-Terrorism Law. The following day, the Congressional Bicameral Committee adopted the Senate version. Immediately, in a two-day special session, both the Senate and the House of Representatives ratified the bicameral report. On March 6, 2007, the Anti-Terrorism Bill was signed into law by President Gloria Macapagal-Arroyo.

Advocates of the HSA are mostly from the Armed Forces of the Philippines (AFP), the National Security Council (NSC) and the Department

of National Defense (DND). They said that the law is needed to effectively fight terrorism. However, it is impossible not to see the insidious motives behind this Act amidst the intensified attacks of the government against members of the political opposition including the legal and democratic mass organizations and progressive party-lists. The HSA was enacted at a time when extrajudicial killings and other forms of human rights violations became more rampant. Prior to its implementation, KARAPATAN has documented 866 cases of extrajudicial killings and 200 enforced disappearances. As of June 2011, there are 1,254 cases of extrajudicial killings, and 211 victims of enforced disappearances.

For the previous administration, the finalization and passage of an anti-terrorism law was a commitment to the United State government, which has been pressuring the Philippines to implement an anti-terror law to show sincerity in its fight against global terrorism, especially in the aftermath of September 11, 2001 attacks. In fact, the HSA patterned after the US Patriot Act of 2001, the Australian Anti-Terror Law of 2005, the 2006 Terrorism Act in Britain, and similar measures crafted before in Denmark, France, Spain and other nations which often follow the US line when it comes to international issue of diplomacy and security.

The Human Security Act of 2007 poses serious violations to civil and political liberties as it authorizes preventive detention, expands the power of warrantless arrest and violates other basic constitutional rights. The law may completely tramples on the entire Bill of Rights and may be used as a tool by the government for the political persecution of legitimate dissenters and political opponents.

To begin with, HSA's definition of what constitutes a terrorist act is so broad and vague. Section 3 of this law defines "terrorism" as an act of *"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."* Because of the vagueness and broadness of the definition, nationwide protests such as general strikes may be deemed terroristic acts if they forwarded an unlawful demand [ex: the President to step down] and the nationwide protest caused "extraordinary fear and panic" [among the members and allies of the first family for example]. Democratic protest against oil price hikes, new taxes and increase in utility rates can be reclassified as *"acts intended to threaten peace and order with the inevitable destabilizing effect of the government."*

Section 26 of the HSA tramples the right to bail, the presumption of innocence, individual right to travel, due process and the right against *incommunicado* detention. The provision states that an accused, even the evidence of guilt is not strong, may be restricted from traveling outside the municipality or city where he resides and worse, may even be detained under house arrest despite posting bail and may be prohibited to use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside his residence.

Section 19 of HSA allows the detention of a "mere suspect" for more than three (3) days without charges in violation of Article VII, Section 18 of the 1987 Constitution which declares that *"during the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released."*

The HSA also violates the right to association and assembly through its provision on Proscription under Section 17. It allows the "banning" of a terrorist organization if that organization *"although not organized for [the purpose of engaging in terrorism] actually uses acts to sow and create a condition of widespread panic and extraordinary fear among the populace in order to coerce the government to give in to an unlawful demand"*. Such a dangerously over broad provision would certainly render all organizations in opposition to government policies liable for proscription. Furthermore, mere membership in the proscribed organization renders any member vulnerable to arrest for being an accessory or a conspirator to the crime of terrorism. It is also a ground for the examination of bank accounts and the freezing of assets. The HSA also threatens Filipinos' individual right to privacy. Section 7 of the HSA states the legality of surveillance against terror suspects, while Section 27 of the same law allows the examination of bank accounts and records of suspected terrorists.

These combinations of sweeping and arbitrary powers, legal scrutiny and judicial review are ripe for abuse. The HSA is a deadly weapon for those who oppose the worsening attacks of the government against economic welfare and political rights of the Filipinos.

In fact, the United Nations (UN) envoy has called for the review of Republic Act No. 9372 or the Human Security Act of 2007 saying its implementation "could have a negative impact on human rights in the country." Martin Scheinin, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms said that while countering terrorism, the law has an "overly broad definition" of terrorist acts. The definition is "incompatible" with certain provisions of the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a signatory. In September 2005, the Special Rapporteur wrote to the government and addressed several concerns regarding the draft version of HSA which was under consideration by Congress at that time. He also communicated his concerns regarding the most recent version of the bill just before it was due to become law. Scheinin also added that Section 19 of HSA *"appears to lack the procedural guarantees provided by Article 9 of the ICCPR."* There is a need for the Philippine government to prevent and counter terrorism, but the rights and freedom of the people should not be compromised.

Moreover, according to Arthur Chaskalson, International Commission Jurist (ICJ) President from South Africa who was involved with the Rivonia trial of Nelson Mandela and other African National Congress (ANC) members – an organization that was struggling against apartheid, and one that the HSA or its international counterparts could easily categorize as a terrorist organization – *“There is presently no part of the world that is immune from terrorism. The threats are real and call for a firm response from states. The response should, however, be proportional to the danger involved and carefully tailored to address it, bearing in mind that the danger includes not only the harm done by terrorism, but also the harm done to the fabric of our societies by disproportionate responses that undermine democracy itself.”*

Virtually, the implementation of the HSA is a martial rule. The law violates pertinent provisions of Article III, on Bill of Rights of the Constitution and its implementation threatens the right of the people.

Human rights violators among the state security forces may carry out more abuses using the Anti-Terror Law. There have been both deliberate acts of repression and the sheer incompetence of many state security forces.

HSA is a serious threat to basic human rights. Even if the government tries to justify it as a law protecting the greater good, it is dangerous to believe that it would not be deliberately abuse. The enormous potential for civil, political and human rights abuses far outweighs any possible protection this law supposedly provides. The bitter irony is that such a sweeping attack on democratic rights has been perpetrated in the name of a war to defend Philippine “freedom” and “democracy” against terrorism.

In view of the foregoing, the discussion and approval of the essence and intent of this measure is earnestly sought.



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RAFAEL V. MARIANO**

**AN ACT
PROVIDING FOR THE REPEAL OF REPUBLIC ACT NO. 9372
OTHERWISE KNOWN AS "AN ACT TO SECURE THE STATE
AND PROTECT OUR PEOPLE FROM TERRORISM"**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Any provision of law to the contrary notwithstanding, Republic Act No. 9372 otherwise known as "An Act to Secure the State and Protect our People from Terrorism" is hereby repealed.

Section 2. This Act shall be deemed effective fifteen (15) days after the completion of its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved.