



**Position Paper on the Proposed Amendments to the Human Security Act of 2007
(Draft Substitute Bill to House Bills 7141 and 5507)
Cristina Palabay, Karapatan Secretary General
*June 18, 2018***

Human rights defenders of Karapatan, a national alliance of human rights desks, organizations and individual human rights advocates in the Philippines, emphatically reject the Draft Substitute Bill by Representatives Amado Espino Jr., Gary C. Alejano, and Leopoldo Bataoil to the 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 Therefor").

Karapatan stands by its position opposing the Human Security Act of 2007, as evidenced by the petition we filed at the Supreme Court on August 6, 2007¹ and our advocacy regarding laws such as the HSA² that infringe on the people's exercise of basic rights and fundamental freedoms, and considers any amendments worsening the provisions of this monstrous piece of legislation as furtherance of legal repressive measures that are in sync with the brand of state repression that the current administration employs.

This draft substitute bill amending the already questionable HSA will enable the wholesale disregard of human and people's rights enshrined in the 1987 Constitution and is severely inconsistent with international human rights standards including the right to due process, against unlimited detention of suspects, rights to free speech and expression, right to peaceably assemble and petition the government for redress of grievances, right to freedom of association, the right of human rights defenders to promote and protect human rights and fundamental freedoms, right to mobility and against unjust and cruel punishments. These view is placed in the context of the equally disturbing preponderance of giving too much power to the law enforcers in the Philippine National Police and the Armed Forces of the Philippines.

Karapatan also expresses our criticism on the undue haste in which the two bills are being deliberated in the House of Representatives. We have no doubt that these amendments are products of the Inter Agency Committee on Legal Action (IACLA), in line with the counterinsurgency program of previous regimes and the current one which have impacted heavily on people's lives and have created a deeper and more intense climate of insecurity and impunity in the country, and are therefore under the direct orders of the President who cannot wait to use these anti-terrorism legislations against human rights defenders, civil libertarians, advocates of freedom of expression, and legitimate dissenters.

In particular, Karapatan raises the following concerns on, and thereby opposes, the following specific provisions of the Draft Substitute Bill:

1. The removal of all provisions and language in Section 2 (Declaration of Policy) that pertains to the duty of the State under international law to protect people from terrorist acts in a manner that is

¹ <http://sc.judiciary.gov.ph/jurisprudence/2010/october2010/178552.htm>

²

<http://www.karapatan.org/Anti-terror+law+legitimizes+repression%2C+violation+of+civil+and+political+rights+%E2%80%93+Karapatan>

consistent to and that respects and promotes human rights. These obligations are stated in the International Covenant on Civil and Political Rights³, as well as in UN Security Council Resolution 1456⁴.

The removal of this provision also completely disregards measures by which terrorism is tackled through a comprehensive framework taking into account the root causes of terrorism.

2. The iteration and expansion of the already vague and overly broad definitions of terrorism as defined in Sections 3, 4 and 5 that threaten the rights of individuals and the exercise of the rights of human rights defenders and the people's rights to freedom of expression, assembly, and association, to seek redress of grievances and to be involved or to take part in public affairs.

In defining acts of terrorism, the draft substitute bill qualifies ordinary crimes as terrorist crimes through a) the inclusion of the phrases "or any other act (I) intended to cause death or serious bodily injury to any person," and (III) intended to seriously interfere with, disrupt or destroy critical infrastructure"; b) restatement of the acts punishable under the Revised Penal Code as acts of terrorism, notwithstanding the comments of UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin on the HSA's overly broad definition of terrorism stating that its "reference to entire statutes without specifying the actual criminal offense leading to an over-inclusive definition of terrorist crimes"⁵; and c) expanding on the predicate crimes that will fall under the crime of terrorism thereby bolstering the already over-inclusive definition. Sections 3, 4 and 5 thus can be spuriously used against any individual, who may just be committing ordinary crimes, and may be used by persons in authority who want to float the specter of terrorism to justify any repressive law, policy or action.

Also under Section 3 and 5, the provision of material support to alleged terrorists or terrorist organizations, even without full knowledge of the person/s that s/he is providing such support to alleged terrorists, can lead to a penalty of life imprisonment.

The very dangerous provision in Section 3 (F) that defines "probable cause" as "a reasonable ground of suspicion" implies that anyone can be arbitrarily proscribed and considered as a "terrorist." This definition broadly violates the people's right to due process, as it is not necessary any more for State to show any evidence or proof ascertaining their personal knowledge on the alleged terrorist crimes of persons or groups suspected of terrorism.

As it is, the current laws and provisions of the Revised Penal Code are used against activists and political dissenters, in an attempt to deter them from advocating for reforms or social change. Instead of facing charges of rebellion, as the complaints or charges against them allege that they are committing crimes in furtherance of their political beliefs, they are charged with fabricated criminal offenses such as illegal possession of firearms and explosives, murder, arson, etc to hide the political nature of their arrest and the charges against them. Karapatan documented nearly 1,000 activists and political dissenters charged with common crimes, and 503 of them are unjustly in prison.

As it is, the context during which this measure is being pursued is already dangerous and deadly for human rights defenders. Karapatan documented at least 141 extrajudicial killings and 242 frustrated killings of civilians and human rights defenders, majority of them are peasant leaders, indigenous activists, church and human rights workers, and environmental defenders accused as members of rebel groups.⁶

³ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴ http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1456%20%282003%29

⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/144/91/PDF/G0714491.pdf?OpenElement>

⁶ <http://www.karapatan.org/Karapatan-monitor-Jan-Mar-2018>

Thus, we view the all-encompassing or expanded definition of terrorism through the current HSA and the proposed amended version as among the repressive tools meant to criminalize and infringe on the legitimate exercise of the rights of human rights defenders and the people's rights to freedom of expression, assembly, and association, to seek redress of grievances and to be involved or to take part in public affairs.

Even under the current HSA, the tagging of individuals as members of the New People's Army or officials and members of the Communist Party of the Philippines and NPA has led to dire impacts on the above-mentioned rights and freedoms.

Aeta peasant Edgar Candule was arrested by elements of the Philippine National Police without a warrant or authorization from the Anti-Terrorism Council (ATC) on March 21, 2008 in Botolan, Zambales for allegedly possessing so-called "subversive documents and a firearm and for being suspected of membership in the NPA." He 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 member⁷. The PNP charged him with terrorism under Section 3 of the HSA based on allegations of his possession of a firearm and subversive documents and that with these he was "engaged in sowing and creating a contention of widespread fear and peace among the populace."

During Candule's trial, one of his arresting officers said he only attended one seminar on the HSA and that he was not familiar with the provisions of the law. PO3 Rex Sahagun testified that he was part of the team that conducted the warrantless arrest of Candule and that they did it, without authorization from the ATC, based on their understanding that the possession of a firearm and subversive documents constitutes the crime of terrorism.

On October 20, 2010, Candule's lawyers from the National Union of Peoples' Lawyers (NUPL) filed a motion to dismiss at the Zambales Regional Trial Court Branch 69, with a prayer that he be compensated under Section 50 of the HSA⁸. Presiding Judge Josefina Farrales granted the motion to dismiss, stating that the prosecution failed to prove the existence of the crime of terrorism. The court however was silent on the prayer for compensation. NUPL filed an appeal with the Court of Appeals, but there is no decision yet, as of this writing. For his nearly three years in captivity alone, notwithstanding the torture he endured, Candule deserves a monetary compensation of at least PhP470 million. This provision though of the HSA on damages for unproven charge of terrorism did not deter the police in illegally arresting, torturing and detaining Candule.

On February 21, 2018, the Department of Justice filed a petition before a Manila court proscribing the CPP and NPA as terrorist organizations under the HSA. In the said petition, at least 657 individuals were 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 includes the names of United Nations Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz, former UN experts Joan Carling and Atty. Jose Molintas, and an officer of Karapatan, Elisa Tita Lubi. These individuals vehemently deny any knowledge or participation in the alleged incidents cited in the petition. The list also contains 189 aliases and an unspecified numbers of John and Jane Does, making it susceptible for inclusion of additional names.⁹

This absurd, baseless, and arbitrary listing is a take-off from the creation and enforcement of Order of Battle (OB) lists during the Gloria Arroyo and Noynoy Aquino regimes. Persons listed in the OB often ended up arrested based on false charges, incarcerated and even tortured, missing or

⁷ <http://news.abs-cbn.com/-depth/12/13/10/aeta-charged-terrorism-wants-p480m-cops>

⁸ https://www.lawphil.net/statutes/repacts/ra2007/ra_9372_2007.html

⁹

<http://www.karapatan.org/Urgent+Appeal+for+Activists%2C+Human+Rights+Defenders+and+Political+Dissenters+in+the+Philippines+Tagged+in+Duterte%27s+Terror+List>

killed. Not only do such lists incite and lead to human rights violations, such as warrantless arrests or surveillance, they also legitimize and make "normal" to the public the government's abuse of power in suppressing dissent of the supposed "enemies of the state." The inclusion of Tauli Corpuz's name is also a clear case of reprisal from the Duterte government for Corpuz's expressed concern over possible cases of human rights violations against indigenous communities affected by the imposition of martial law in Mindanao. She and another UN SR released a statement in response to a letter of allegation submitted by Karapatan to her office.

This situation will definitely worsen with Section 17 of the Draft Substitute Bill, where with only a mere ex parte application (provision on giving due notice and opportunity to be heard to respondents was deleted) of the DOJ proscribing alleged individual terrorist, terrorist organizations, association or group of persons. 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, 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.

Also under Section 3, a strike of jeepney drivers and operators or a workers' strike, which are legitimate acts of redress of grievances, can fall under this definition of terrorism. Note that even at their planning stage, transport strikes or workers' strikes can be construed as acts of terrorism, with the phrase "regardless of the stage of its execution," under Section 5.

Provisions in Section 4, citing Republic Act 10175 or the Cybercrime Prevention Act of 2012, and Section 5 (B) (C) (F), with their vague and overbroad definitions make individuals highly vulnerable to arbitrary tagging or suspicion as terrorists, especially those who express opinions on or dissent to government policies, even as they are legal activists, journalists, or peace advocates.

Likewise in Section 4, provisions citing Republic Act 9165 or the Comprehensive Dangerous Drugs Act of 2002 will make the already bloody drug war even more brutal and detrimental to people's rights.

3. Disproportionate, cruel and unjust punishment of life imprisonment and prison terms for individuals alleged to have committed terrorist crimes stated in the vague and overly broad provisions of Sections 4, 5 (A) (B) (C) (D) (E) (F) (G), 6, 7.

The new amendments do not and distinguish between the principal acts of terrorism and adjuncts to it. All will be punished with life sentences to a minimum of ten years, notwithstanding "judicial discretion of taking into consideration the individual's personal guilt and other significant circumstances when rendering the verdict."¹⁰

4. Gross implications on the right to due process and the right to privacy on provisions regarding surveillance of suspected terrorists in Section 8, 9, 10, 11, 12, 13, and 14.

Sections 8 and 9 implies that even upon mere suspicion, any individual may be subject to electronic or physical surveillance and to scrutiny of personal communications by law enforcement and worse, military personnel who have time and again conducted surveillance activities against activists that resulted to extrajudicial killings, torture and other rights violations. Section 11 even lengthens the authorized period of surveillance from 30 days to 90 days.

Authorization, and thus oversight and command responsibility, of the Anti-Terrorism Council for classification of information was removed in Section 10. The individual's right to know that s/he is being surveilled was also removed in Section 10 and 11, which does not only violate due process rights, but may also result to a witch-hunt of government critics and activists on mere communications on legitimate criticisms and expressions of grievances against government policies.

¹⁰ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/144/91/PDF/G0714491.pdf?OpenElement>

Provisions on the non-authorization of surveillance, interception and recording of privileged communications such as that of lawyers and clients, doctors and patients, journalists and their sources, and confidential business correspondence was also stricken out.

5. Gross violations on the right against illegal and arbitrary detention, torture and to cruel and degrading treatment in proposed Section 18 and 19, and the removal of provisions in Section 20, 21, 22, 23, 24, and 25 on the rights of detained persons and against torture.

These proposals indicate that:

a) The lengthening of arbitrary detention, without charges, of person/s before they are delivered to proper judicial authority is patently in contrast, violative and deeply incoherent with Republic Act 9745 or the Anti-Torture Law¹¹, with Republic Act 7438 or the law on the rights of persons arrested, detained or under custodial investigation¹², with the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory; and

b) The explicit approval and promotion of torture and other cruel, inhuman or degrading treatment during the arbitrary or illegal detention of an accused individual.

6. Gross violations on the right to freedom of movement and right to due process in provisions of proposed Section 19 and 20 on suspension/cancellation of passports, issuance of hold departure order, and on limiting the right to travel of individuals, even just on mere suspicion of terrorism.

7. Removal of provisions providing penalties and lowering of penalties for State authorities who violate basic civil and political rights of persons.

a) Section 11 - Draft substitute bill proposes the removal of this provision: The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the applicant police or law enforcement official who fails to notify the person subject of surveillance, monitoring, interception and recording as specified above.

b) Section 13 - Draft substitute bill proposes the removal of these provisions: It shall be unlawful for any person, police or law enforcement official to omit or exclude from the joint affidavit any item or portion thereof mentioned in this Section.

Any person, police or law enforcement officer who violates any of the acts prescribed in the preceding paragraph shall suffer the penalty of not less than ten (10) years and one day to twelve years of imprisonment.

c) Section 14 - Draft substitute bill proposes the removal of this provision: Any person, law enforcement official or judicial authority who violates his duty to notify in writing the persons subject of the surveillance as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

d) Section 15 - Draft substitute bill proposes the removal of this provision: Any person, law enforcement official or judicial authority who violates his duty to notify as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

e) Section 18 - Draft substitute bill proposes the removal of this provision: The penalty of ten days and one day to twelve years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as provided in the preceding paragraph.

f) Removal of provisions in Section 20, 21, 22, 23, 24, and 25 on the rights of detained persons and against torture.

¹¹ https://www.lawphil.net/statutes/repacts/ra2009/ra_9745_2009.html

¹² <http://www.chanrobles.com/republicactno7438.htm#.Wya1dqczY2w>

- g) Section 24 - Penalty for unauthorized revelation of classified materials was lowered from ten years and one day to twelve years to “six months and one day to six years of imprisonment.”
- h) Section 50 - Damages for Unproven Charge of Terrorism is proposed to be repealed.

Removing or lowering these penalties give State authorities a free pass, if not outright approval and endorsement, for violations on human rights and civil liberties that will be committed in furtherance of this proposed measure. These provisions are supposedly there to ensure that authorities will remain mindful and respectful of the rights of the accused or suspected persons. However, if these provisions will make it to the amended law, we say this is legalized and institutionalized impunity at its worst.

Karapatan also emphatically states that the HSA and the current measures amending it to worsen its impact on people’s rights completely disregards international humanitarian law, as these do not distinguish national liberation movements or movements for self-determination from terrorist groups. These has dire implications on the peace processes with the NDFP as well as those with Bangsa Moro movements, notably violating the GRP agreements with the NDFP such as the Joint Agreement on Safety and Immunity Guarantees and the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL), and most especially on civilians, as the government blurs the distinction between combatants and non-combatants. Karapatan believes that terrorism can be addressed, not through the defective militarist approach that our State forces employ, but through the pursuit of a just and lasting peace, tackling the roots of the problems of social injustice and inequality, and through genuine respect for people’s rights.

Karapatan reiterates its position rejecting the Draft Substitute Bill and calling for the repeal of the Human Security Act of 2007. Lest this roll-out of repressive legislation and the dismal human rights situation are reversed, the view that the State is the primary purveyor of terrorism will remain in the eyes of the victims of rights violations.