

# The Human Security Act and Journalism

Contributed by Danilo Arana Arao  
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The Human Security Act only came into force over the summer and yet already various national and international groups have denounced the law and called for its repeal. Why so? Why is the law not being given the chance to work? This paper seeks to analyze the weaknesses of the HSA as written and how it directly affects the practice of journalism.

President Gloria Macapagal-Arroyo signed into law Republic Act (RA) No. 9372 or the Human Security Act of 2007 last March 6 and it took effect four months later on July 15.

During the March 6 signing ceremony, President Macapagal-Arroyo said that the HSA was an "institutional landmark of the 13th Congress" and would help the authorities to prosecute the "war on terror."

"Now that we have more legal teeth in this fight, we shall continue to sharpen the intelligence and operational capabilities of the Armed Forces and Police, modernize and further professionalize them, and broaden the domestic and international alliance that will give us the edge to win and prevail," she said.

The 35-page Human Security Act (HSA) and its 62 sections states clearly that "(i)t is declared a policy of the State to protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations" (Section 2, paragraph 1).

A person is said to commit the crime of "terrorism" if he or she engages in piracy in general and mutiny in the high seas or in the Philippine waters; rebellion or insurrection; coup d'etat, including acts committed by private persons; murder; kidnapping and serious illegal detention; and crimes involving destruction.

Section 3 seeks to qualify acts which are to be considered acts of "terrorism". To earn the label "terrorist crime" acts result in "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 HSA explicitly states that journalists and their sources will not be subjected to "surveillance, interception and recording of communications" (Section 3, Paragraph 2) However, Raul Gonzales, Secretary of the Department of Justice, was quoted in July as saying essentially that while existing law forbade the tapping of journalists, the HAS supersedes everything else.

"If you are a journalist, you are free from wiretapping because the law says that journalists and their sources of information cannot be subjected to wiretapping. The fact that your source is a terrorist does not make you a terrorist per se. But if the journalist is now a suspect, then he can be wiretapped. You have first to be a suspect," he said.

The opposition to the HSA mainly rests on the law's broad definition of who is a terrorist. The so-called

&ldquo;condition of widespread and extraordinary fear and panic&rdquo; among the people that may result from the identified crimes is so broad that anything and everything can be interpreted as such.

This prompted Caloocan Bishop Deogracias Yñiguez to brand the law as dangerous. &ldquo;The anti-terror law will lead to greater tumult, especially when used to deal with those who do not agree with government&rsquo;s thinking.&rdquo;

What proves to be questionable is not only the law&rsquo;s broad definition of terrorism, but, more importantly, the proscription of terrorist organizations. The full text of Section 17 reads:

&ldquo;Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and 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 shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organizations, association, or group of persons by the said Regional Trial Court.&rdquo; (Italics mine)

Clearly, even legal organizations can be branded terrorists if, in the conduct of their activities, they create &ldquo;widespread and extraordinary fear and panic&rdquo; among people. The inclusion of the seemingly harmless word &ldquo;or&rdquo; can make Section 17 susceptible to the interpretation that the acts do not necessarily have to be crimes identified in Section 3 (such as possession of explosives or piracy), but other acts that result in fear and panic with the end-view of coercing government to give in to an unlawful demand.

The danger also lies in the fact that under Section. 19, mere suspicion of being involved in acts of terrorism, whether real or imagined, could result in detention. The first sentence of Section. 19 states:

&ldquo;In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest.&rdquo; (Italics mine)

What then are the parameters for determining an imminent terrorist attack and how is this proven? While the three-day maximum detention requires a written approval from the authorities, why are suspects being subjected to it? One should not take consolation from the fact that the Macapagal-Arroyo administration initially proposed a 30-day maximum detention and that it is now reduced to three days. This is not an issue of numbers, but the fundamental principle of people being detained on mere suspicion of involvement in a terrorist attack that is yet to happen, if at all.

Under the HSA, it also becomes possible for a person's right to travel to be restricted. He or she may also be subjected to house arrest and be held incommunicado. The full text of Section 26 states:

In case where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.

He/she may also be placed under house arrest by order of the court at his or her usual place of residence.

While under house arrest, he or she may not use telephones, cell phones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.

The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused. (Italics mine)

Mere suspicion of involvement in acts judged to be "terrorist" in nature may then result in the restriction of one's right to travel or even house arrest if he or she is entitled to bail. If a person is under house arrest, the HSA prevents him or her from communicating with other people outside his or her residence. According to human rights groups like Karapatan, this provision deprives people of their civil and political rights, particularly the right to travel.

In addition, a person "suspected of the crime of terrorism or conspiracy to commit terrorism" could result in the examination of one's bank "deposits, placements, trust accounts, assets, and records." (Section 28) This means that a suspect's enshrined right to privacy can now be violated under the HSA.

Section 39 also makes things worse not only for suspects but also for those associated with organizations that are deemed involved in "terrorist" activities. This particular provision allows the seizure, sequestration and freezing of one's assets. Its first paragraph states:

The deposits and their outstanding balances, placements, trust accounts, assets, and records in any bank or financial institution, moneys, businesses, transportation and communication equipment, supplies and other implements, and property of whatever kind and nature belonging: (1) to any person suspected of or charged before a competent Regional Trial Court for the crime of terrorism or the crime of conspiracy to commit terrorism; (2) to a judicially declared and outlawed organization, association, or group of persons; or (3) to a member of such organization, association, or group of persons shall be seized, sequestered, and frozen in order to prevent their use, transfer, or conveyance for purposes that are inimical to the safety and security of the people or injurious to the interest of the State. (Italics mine)

This provision not only implies guilt on the part of the accused. It also makes people guilty of association because their properties could be seized, sequestered or frozen just for being members of outlawed organizations (the proscription of which is also questionable).

As stated, authorities should undertake preventive measures to ensure peace and order. But detention premised on suspicion of involvement in a future crime is unacceptable in a supposedly democratic society that operates, among others, on the presumption of innocence among those accused. Restricting the suspects' right to travel and depriving them of their right to privacy also do not bode well for a government that is supposed to protect and uphold civil rights of all people, including those charged with crimes. What proves to be worse is people being presumed guilty by association and consequently penalized by seizing, sequestering and freezing their assets.

Analyzing the questionable provisions of the HSA, one therefore does not take solace from the fact that there are "safeguards" in place like the penalty for being wrongly accused of terrorism. The first paragraph of Section 50 states:

Upon acquittal, any person who is accused of terrorism shall be entitled to the payment of damages in the amount of Five hundred thousand pesos (P500,000) for every day that he or she has been detained or deprived of liberty or arrested without a warrant as a result of such an accusation.

That a wrongly accused person detained for a maximum of three days, for example, shall receive P1.5 million in damages does not erase the fact that his or her civil and political rights have been violated. No amount of money can compensate for the deprivation of one's rights.

Perhaps even more importantly however is that Section 50 may not actually provide a safeguard but could conceivably result in an increase in extrajudicial killings. Given the culture of impunity in which the killings of activists and journalists happen, the authorities could be prompted to just summarily execute the wrongly accused so that they do not have to pay the P500,000 penalty for every day of detention.

HSA amid the culture of impunity

The HSA was enacted at a time when extrajudicial killings and other forms of human rights violations are said to be

rampant. The recent report of Philip Alston, the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions, on his mission to the Philippines from February 12 to 21, 2007 maintained the Philippine military was involved in the killings. "The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated," Alston said.

In the context of the culture of impunity and the media situation, he said, "Journalists are killed with increasing frequency as a result of the prevailing impunity as well as the structure of the media industry."

While the killings of both activists and journalists are happening in increasing frequency under the Macapagal-Arroyo administration, Alston stressed that these appear to have different causes. In the case of the journalists, most of the killings are said to have had "local roots," Alston said:

Some killings had been perpetrated to prevent journalists from exposing information related to the crimes and corruption of powerful individuals. Other killings resulted from local disputes in which the journalists had participated by publicly promoting one side or the other. This problem is exacerbated by the structure of the media industry. Many broadcasters are "block-timers" who purchase airtime and then pay for this airtime and seek a profit by selling advertising. Sometimes they also earn money through so-called "AC/DC" journalism — "attack, collect; defend, collect". Approximately three quarters of journalists killed are broadcasters, and nearly half of these are block-timers. Needless to say, however questionable the practices of some journalists may be, these do not justify murder. There is a lamentable degree of impunity for murders of journalists.

The culture of impunity prevailing in Philippine society is manifested not only by the increasing number of activists and journalists killed. Even if the numbers are very significant, the manner in which the killings have happened also needs to be considered.

Unlike in the past where human rights violations are done clandestinely, the killings and other forms of human rights violations often happen in broad daylight, in full view of acquaintances and bystanders. Slain journalists like Edgar Damalerio and Marlene Esperat, for example, were killed in full view of their relatives and other witnesses.

The killings apparently happen with impunity because those responsible wield considerable power and influence. The perpetrators apparently intend to make examples of those killed so that no one else will follow in their footsteps. While there are varying levels of professional competence and adherence to ethical standards of those killed — in the same way that there are varied reasons for their killings — one cannot deny the complicity of those in power. The evidence can be seen by analyzing the character of identified suspects, statements of witnesses and, more importantly, the manner in which the killings have been carried out.

While nobody in the government would state that the undermining of human rights is government policy, there are clearly provisions which inherently violate civil and political rights. The Machiavellian attitude towards solving the problem that is "terrorism" — the definition of which is already flawed — cannot be an excuse to violate the rights of the innocent to achieve a goal, no matter how well-meaning one may think about it.

Given their line of work, journalists can be “fair game” in the government’s anti-terrorist drive. It is inherent in their daily job, after all, to talk to different kinds of people, even those branded as terrorists or belonging to the so-called outlawed organizations.

### HSA and the chilling effect

Just like the killings, the HSA has a chilling effect on journalists since it could discourage them from pursuing the “hard news,” particularly issues and concerns that would require them to get the side of those opposed to the government.

Despite the provision that states that communication between journalists and their sources will not be wiretapped, it remains possible for journalists to be subjected to wiretapping, arrest and detention even on suspicion of “terrorist” activities. Even if they become entitled to bail, their right to travel could be restricted and they could even face house arrest and be held incommunicado in the process. Even their assets could be seized, sequestered and frozen.

Such restrictions resulting from “mere suspicion” of a “terrorist act” that is so broadly defined can deprive journalists of going about their job of providing information that the people need in the shaping of public opinion. A crucial component of news reporting is data gathering, of which communication is absolutely necessary to acquire primary sources of information.

It would be impossible for journalists to go about their jobs if their right to travel were restricted and prevented from communicating with people outside their residence in the event of house arrest.

The broad definition of terrorism makes it hard for journalists to fulfill their responsibility to their audiences as they need to be periodically in touch with their sources having varied political and economic backgrounds.

There could also be discouragement among journalists in writing about issues and concerns that could result in widespread fear and panic among the people. In order to adhere to the HSA, the journalists’ coverage of demands of cause-oriented groups would most likely be done in a way that gives it little attention. A worst-case scenario would be the journalists’ decision to do away with the side of those deemed to be terrorists altogether.

### Reaffirming objectivity in journalism

With the HSA, the government has redefined, even if unintentionally, the tenet of objectivity in journalism. The powers-that-be have created a condition in the mass media that discourages an exhaustive research on issues and concerns by limiting the sources of information to those who are not in the terrorist list.

Journalists who are worth their salt should not be affected by the enactment of the HSA and should continue the

advocacy to promote and uphold freedom of expression. Such an advocacy makes it imperative not to call for amendments to the HSA, but to demand its repeal.

Just like other social sectors, journalists' civil and political rights are violated in the government's so-called anti-terrorism campaign. But unlike other professions, journalism is directly affected given the inherent and absolute need to maintain contacts with people from all walks of life, including those involved in the underground.

In the context of the practice of journalism, government apparently has a skewed sense of the workings of the press and sees the journalists' interview with rebels as either a sign of sympathy or worse, conspiracy to commit terrorism.

In the past, the government considered some segments of the mass media as "enemies" that must be dealt with. The military's slide presentation in PowerPoint format titled "Knowing the Enemy" listed, for example, the NUJP as among the front organizations of the Communist Party of the Philippines (CPP). In the AFP Northern Luzon Command's manual titled Trinity of War, Bulatlat Online Magazine's series of articles on the agricultural workers' strike at Hacienda Luisita was considered part of the propaganda campaign of the New People's Army (NPA) against the government. These are just a few instances where the government, particularly the military, considers selected media organizations as the enemy, which can be therefore fair game.

#### Exposing the HSA's wordplay

The HSA is clearly packaged by the powers-that-be to hide its inherent character of violating civil and political rights. "Human security" is now being used to make what used to be described as "anti-terrorism" law more acceptable to the people.

Yes, there are also safeguards put in place to supposedly guard against abuses by the authorities in implementing the HSA. In the context of the culture of impunity, however, these safeguards become instruments of perpetuating human rights violations, particularly extrajudicial killings.

The practice of journalism also becomes severely affected as objectivity becomes redefined to include only the sources considered by government to be "harmless." While journalists are not prevented from interviewing those deemed terrorists, they could run the risk of being suspected of links with them, making them fair game to the authorities and subjected to various forms of human rights violations. The provision in the HSA which explicitly states that communications between journalists and sources will not be wiretapped is therefore practically useless.

The violent playground that Filipinos are living in right now is indeed replete with bullies who impose their rules. But what makes these particular bullies different is that they have the audacity to package their rules in a way that appears acceptable, attracting those who are easily hoodwinked to obey and even promote.

Journalists, by the nature of their jobs, must not become mere spectators on the issue of the HSA as they are directly affected by its implementation. In their never-ending fight for press freedom, they should work hand-in-hand with other concerned groups and individuals in calling for the repeal of this repressive law euphemistically called the Human Security Act.

(The author is an assistant professor at the Department of Journalism of the University of the Philippines College of Mass Communication (UP CMC) in Diliman, Quezon City where he is the concurrent director of the Office of Research and Publication (ORP). He is also a member of the Board of Editors of Bulatlat Online Magazine and a regular columnist of Pinoy Weekly. He earned a Bachelor of Arts in Communication, major in Journalism (cum laude) from UP Diliman and a Master of Arts in Philippine Studies (with High Distinction) from De La Salle University (DLSU). For more information about him, please go to <http://www.dannyrao.com>.)