

OCA CIRCULAR NO. 79-2007, August 17, 2007

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TO:

ALL PRESIDING JUDGES OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES AND MUNICIPAL CIRCUIT TRIAL COURTS

SUBJECT:

RELEVANT PROVISIONS OF THE "HUMAN SECURITY ACT OF 2007"

Republic Act No. 9372, otherwise known as the "Human Security Act of 2007" took effect on July 15, 2007 . The law defines terrorism and conspiracy to commit terrorism, and prescribes the functions of, among others, the law enforcement authorities, the concerned agencies under the Department of Justice and the different courts under the Judiciary.

All judges of the courts mentioned herein are advised to peruse and analyze the provisions of the "Human Security Act of 2007." Particular attention should be given to the following provisions which relate to the functions and responsibilities of the courts under the circumstances described therein:

- "SEC. 17. Proscription of Terrorist Organizations, Association, or Group of Persons. — 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 [the] 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 organization, association, or group of persons by the said Regional Trial Court."
- "SEC. 18. Period of Detention Without Judicial Warrant of Arrest — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the sui-veillance under Section 7 and examination of bank deposits under Section 27 of [the] Act."

"The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime

of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested."

"The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office."

"Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest- Provided, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested. The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to not & any judge as provided in the preceding paragraph."

- "SEC. 19. Period of Detention in the Event of an Actual or Imminent Terrorist Attack. — 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. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned. Provided, however, That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately."

- "SEC. 20. Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days. — The penalty often (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days."

- "SEC. 26. Restriction on Travel. — In cases 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.

- "SEC. 39. Seizure and Sequestration. — 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."

"The accused or a person suspected of may withdraw such sums as may be reasonably needed by the monthly needs of his family including the services of his or her counsel and his or her family's medical needs upon approval of the court. He or she may also use any of his property that is under seizure or sequestration or frozen because of his/her indictment as a terrorist upon permission of the court for any legitimate reason."

"Any person who unjustifiably refuses to follow the order of the proper division of the Court of Appeals to allow the person accused of the crime of terrorism or of the crime of conspiracy to commit terrorism to withdraw such sums from sequestered or frozen deposits, placements, trust accounts, assets and records as may be necessary for the regular sustenance of his/her family or to use any of his/her property that has been seized, sequestered or frozen for legitimate purposes while his/her case is pending shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment."

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"SEC. 40. Nature of Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records. — The seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records belonging to a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism shall be deemed as property held in trust by the bank or financial institution for such person and the government during the pendency of the investigation of the person suspected of or during the pendency of the trial of the person charged with any of the said crimes, as the case may be and their use or disposition while the case is pending shall be subject to the approval of the court before which the case or cases are pending."

- "SEC. 41. Disposition of the Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records. — If the person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism is found, after his investigation, to be innocent by the investigating body, or is acquitted, after his arraignment or his case is dismissed before his arraignment by a competent court, the seizure, sequestration and freezing of his bank deposits, placements, trust accounts, assets and records shall forthwith be deemed lifted by the investigating body or by the competent court, as the case may be, and his bank deposits, placements, trust accounts, assets and records shall be deemed released from such seizure, sequestration and freezing, and shall be restored concerned without any further action on his part. The filing of any appeal on motion for reconsideration shall not state the release of said funds from seizure, sequestration and freezing."

"If the person charged with the crime of terrorism or conspiracy to commit terrorism is convicted by a final judgment of a competent trial court, his seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records shall be automatically forfeited in favor of the government."

"Upon his or her acquittal or the dismissal of the charges against him or her, the amount of Five hundred thousand pesos (P500,000.00) a day for the period in which his properties, assets or funds were seized shall be paid to him on the concept of liquidated damages. The amount shall be taken from the appropriations of the police or law enforcement agency that caused the filing of the enumerated charges against him/her."

- "SEC. 48. Continuous Trial. — In cases of terrorism or conspiracy to commit terrorism, the judge shall set the

case for continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial."

For information and guidance.

August 17, 2007.Untitled Document

CHRISTOPHER O. LOCK

Court Administrator

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