

National security: Counter-terrorism laws must not criminalise human rights defenders

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(Geneva) - A high-level panel has called on all States to fully implement Human Rights Council resolution 22/6 on protecting human rights defenders as a key aspect of combating extremism and countering-terrorism.

Resolution 22/6, which was led by Norway and adopted by consensus in March 2013 urges States to ensure that 'measures to combat terrorism and preserve national security ... do not hinder the work and safety' of human rights defenders. [ISHR's oral statement to the High Commissioner](#) further stressed that actions to counter-terrorism must not be used to justify repression of civil society or curtailment of the rights to freedom of expression, assembly or association.

This position was reinforced following an ISHR co-sponsored Human Rights Council side-event in Geneva on [Human Rights Defenders and National Security](#) on 10 March which highlighted the deplorable manner in which legitimate activities of human rights defenders across all regions are being restricted under counter terrorisms and national security laws.

Together with Article 19, the International Federation for Human Rights (FIDH), Human Rights House Foundation, the International Commission of Jurists and the World Organisation Against Torture, ISHR held a panel discussion, moderated by ISHR Director Phil Lynch, and addressed by Michel Forst, Special Rapporteur on Human Rights Defenders; Hina Jilani, Pakistani human rights lawyer and former Special Representative on Human Rights Defenders; Jimena Reyes, Director of the Americas Desk at FIDH; Roselyn Hanzi from Zimbabwe Lawyers for Human Rights; Gerald Staberock, Director of the World Organisation against Torture (OMCT); and Tanele Maseko, human rights defender from Swaziland.

Restrictions on human rights defenders

Phil Lynch opened the discussion by referring to unequivocal examples of [restrictions imposed on human rights defenders by the operation of counter-terrorism laws](#), with examples cited including the recent amendments to the Australian Security Intelligence Organisation Act in [Australia](#) which criminalises the disclosure of information about 'special intelligence operations', even where such disclosures expose or relate to serious human rights abuses; draft legislation in [China](#) which vaguely defines 'terrorism' to include

'thought, speech or behavior' that is 'subversive' or seeks to 'influence national policy making', and Law 8/2015, passed recently in [Egypt](#), which allows individuals and associations which 'infringe public order' or 'harm national unity or national security' to be designated as terrorists. Concern was also expressed that renewed US efforts to combat extremism do not contain adequate human rights safeguards and that the imperative to counter-terrorism is being used as a subterfuge by regimes in allied States - such as Bahrain, China, Egypt and Saudi Arabia - to further restrict and repress civil society.

Panellists built on these examples throughout the discussion, referring to significant limitations on, and prosecution of, human rights defenders under the guise of national security in their regions, including the prosecution of indigenous activists campaigning against major development projects in Chile under the Anti-Terrorist Act; human rights defenders being spied on by intelligence authorities in Cuba which consequently contributed to their murder; human rights defenders in Zimbabwe being charged for allegedly participating in a disruptive demonstration, or under the Official Secrets Act which forbids the release of information, even if that information regards human rights violations; and human rights defenders being imprisoned and labelled terrorists for voicing disagreement with the government in Swaziland. Members of the audience provided further examples, including defenders in South Korea being charged under a law that prohibits support for North Korea.

Legislation protecting the rights of defenders

'A schizophrenia currently exists in many countries where authorities laud their own human rights mechanisms in the international sphere and then actively criminalise the activities of human rights defenders at home,' said Hina Jilani. ISHR is committed to addressing the gap between international standards accepted by States and the realities faced by defenders on the ground, including through the development of [model law on the protection of human rights defenders](#) which will assist States to develop laws, policies and institutions at the national level to protect human rights defenders from reprisals and attacks. It is essential that along with a national law for the protection of human rights defenders, counter terrorism laws do not impose restrictions on those protections.

'Counter terrorism laws should be developed in a manner that fights terrorism, while at the same time, respecting the legitimate work of human rights defenders,' said Gerald Staberock of OMCT.

Tanele Maseko of Swaziland proposed that 'a general definition of national security should be agreed on worldwide to restrict the establishment of vague definitions that enable the voices of human rights defenders to be silenced on the basis of national security'.

The panellists also stressed the importance of ensuring the rights of human rights defenders are not constrained under other laws, such as laws prohibiting criticism of the head of state, emir or the army.

Independence of the judiciary and the military

The discussion also highlighted the necessity to ensure the independence of the judiciary. In this regard, Jimene Reyes of FIDH referred to the use of the judicial system in Cuba as an 'instrument of uncritical oppression'. Members of the audience identified the importance that the judiciary, as well as the executive, must be able to recognise and respect the legitimate activities of human rights defenders.

Similarly the importance of the separation between the State and the military was emphasised. Ms Reyes stressed the risk for human rights defenders if they are 'considered by the military to be the enemy'.

Importance of civil society participation

While there is a clear trend of governments using counter-terrorism legislation to conflate the legitimate activities of human rights defenders with actions that threaten national security, the panellist were in clear consensus that human rights defenders and a strong and healthy civil society is essential to the stability of the State and good governance.

'The work of human rights defenders and other civil society actors is crucial to address inequality and to promote good governance, accountability and inclusive development, all of which contribute to national

security,' said Phil Lynch of ISHR. 'However, to ensure this is possible, it is essential to raise national and international awareness of the pitfalls of counter-terrorism legislation and the importance of civil society participation'.

The event concluded with a reflection of the need, to paraphrase Maina Kiai, to counter the 'rhetoric of fear' and firmly establish that 'the rights to peaceful assembly and of association do not encourage extremism, chaos, or violence but are, in fact, the best antidotes we have against all of these ills'.

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