Defending defenders and the rule of law

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The protection of human rights defenders and respect for the rule of law are inextricably entwined; respect for one demands and requires respect for the other.

By Phil Lynch, Director, International Service for Human Rights

The protection of human rights defenders and respect for the rule of law are inextricably entwined; respect for one demands and requires respect for the other, says ISHR Director Phil Lynch at an event to commemorate the 800th anniversary of the Magna Carta.

Like many, I was dismayed by the decision of the Supreme Court of Saudi Arabia over the weekend upholding the conviction and sentence of human rights defender and blogger Raif Badawi. The Court upheld the decision of lower courts to sentence Badawi to 10 years’ imprisonment and 1000 lashes for insulting Islam through the use of social media.

Just weeks before, a Bahraini appeals court upheld a six month sentence of imprisonment for human rights defender Nabeel Rajab for tweets ‘insulting a public institution’.

And earlier, in March, five women human rights defenders were criminally detained in China on suspicion of ‘picking quarrels and provoking troubles’ in the context of their work to promote women’s rights and combat sexual harassment. While the so-called Feminist Five were released without charge on 13 April, there are reports that criminal investigations into the women’s activities are ongoing and that they will be monitored and subject to travel restrictions.

I cite these examples to make the paramount point that the rule of law must not be equated with rule by law. The rule of law is not merely the enforcement of laws nor the existence of a judiciary. Rather, from the perspective of human rights defenders, the rule of law must exhibit five key features.

First, the law itself must be clear and predictable and not arbitrary or susceptible to capricious interpretation and application, as is the case of provisions in China criminalising the ‘picking of quarrels’ or, indeed, as is the case with counter-terrorism provisions proliferating in jurisdictions such as the UK, Canada or Australia which severely restrict fundamental rights and freedoms by reference to broad notions such as ‘national security’.

Second, the rule of law requires that national law conform with international human rights law and standards. If the rule of law is to have substance, it must require that national legislation is enacted, interpreted and
applied – and that executive powers and discretions are exercised – in harmony with international human rights standards. The UK’s and Australia’s Joint Parliamentary Committees on Human Rights, which are tasked with scrutinising and reporting on the compatibility of bills with international human rights standards, are good practice examples in this regard.

Third, the law should contribute to a safe and enabling environment for human rights defenders and not impose arbitrary or excessive restrictions on their work. I’ve just returned from a consultation in Abidjan with human rights defenders from across West Africa regarding their legal situation and protection needs. Defenders testified that they are frequently subject to judicial harassment, with a range of laws used and manipulated to silence defenders and journalists. By way of example, many participants reported that assembly rights are significantly restricted, with governmental authorisation required for protests and conditions imposed on the timing, place and conduct of demonstrations. By contrast, a small but growing number of jurisdictions, such as Mexico, Cote d'Ivoire, Honduras and Burkina Faso, have enacted or are developing specific national laws on the protection of human rights defenders. These are positive developments and I encourage other States to learn from and build on these models.

Fourth, the rule of law requires that the law is interpreted, and decisions made under cover of law are reviewable, by an independent judiciary. The mere existence of an appeals court, such as upheld the sentences against Raif Badawi or Nabeel Rajab, is not enough. Rather, the judiciary must be truly impartial and independent and the hearings that they conduct must demonstrate all the characteristics of a fair and public hearing. Human rights defenders like Raif and Nabeel must have the capacity to substantively challenge their arbitrary detention and other deprivations.

Fifth and finally, respect for the rule of law should include respect for the rule of international law. I mean this not only in the sense of national law conforming with international human rights standards, but also in terms of explicitly providing for the right of petition to relevant regional and international human rights courts and tribunals, and in terms of States respecting and responding in good faith to the decisions and views of those courts, tribunals and quasi-judicial bodies. I say this as an Australian, a jurisdiction with a track record over the last decade of rejecting more than 90% of treaty body decisions, at an event jointly hosted by the UK, a jurisdiction which is pushing for decisions of the European Court to be considered as advisory rather than binding. ISHR Board member and former US Assistant Secretary of State Mike Posner was correct in his recent Al Jazeera piece in which he wrote that such approaches are ‘carefully noted and cited by authoritarian governments to justify their rejection of international human rights norms’.

I’d like to conclude these remarks by reflecting that, 800 years on from its adoption, the Magna Carta has perhaps never been more relevant nor the work of human rights defenders under such sustained global threat. The protection of human rights defenders and respect for the rule of law are inextricably entwined; respect for one demands and requires respect for the other.

This is an edited extract of a speech delivered by Phil Lynch at the Graduate Institute at a joint event of the UK Mission and ISHR to celebrate the 800th anniversary of the Magna Carta and consider the relationship between human rights defenders and the rule of law. Follow Phil on Twitter at @PhilALynch.