



International Fair Trial Day Conference

International Bar Association Human Rights Institute and
the University of the Philippines College of Law, Manila, 14 June 2024

Session 2: Targeting Lawyers, Journalists, Activists, Civil Society Organizations
and Other Human Rights Defenders in the Context of Counter-terrorism

**Keynote Address of the Special Rapporteur on the Promotion and Protection
of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Saul**

Excellencies, Distinguished Guests

It is an honour for me to participate in this Conference marking International Fair Trial Day. My thanks to organizers for inviting me to speak, and for drawing much needed attention to these globally significant issues.

As Special Rapporteur every week I encounter cases, in many parts of the world, where excessive laws to counter terrorism and violent extremism are misused against civil society, including political opponents and dissidents, journalists, minorities, indigenous peoples, environmental activists, students.

Even lawyers and judges have been imprisoned exercising their professional functions, including those involved in defending or adjudicating in terrorism cases. In one recent extreme case, almost 50 judges were arbitrarily dismissed by an authoritarian regime and a new batch of politically-compliant judges installed. Counter-terrorism laws and policies have contributed to silencing dissenting voices and weakening a free media, democracy, and civic space.

There are a number of common techniques in the misuse of counter-terrorism laws. First, in the absence of an agreed international definition of terrorism, sweeping national definitions have violated the principle of legality, by being vague, uncertain and overbroad, and thus enabling their arbitrary application to conduct that is not genuinely terrorist violence. In recent years, there has also been a creeping criminalizing of the even more vague concept of 'violent extremism', or even just 'extremism' even when it not violent.

Secondly, the establishment of vaguely defined preparatory offences, and offences related to terrorist organizations, have criminalized legitimate conduct and free expression, without having any proximate causal connection to terrorist violence. These include speech related offences such as glorification, apology or justification of terrorism, which restrict legitimate discussion of public affairs – the suppression of speech in many countries in relation to the war in Gaza is one recent example.

Thirdly, organizations and individuals have been abusively listed or designated as terrorist without due process or judicial safeguards, severely curtailing their rights and often their rights of their families. These have included NGOs, media organizations and social movements.

Fourthly, excessive counter-terrorism sanctions and financing laws, including offences and burdensome registration requirements, have undermined legitimate non-governmental organizations, freedoms of association, assembly and expression, and humanitarian activities protected under international humanitarian law.

Fifthly, in the investigation and prosecution of the above offences, the criminal process has often been marred by excessive state surveillance powers, including bulk surveillance and spyware, violating privacy rights; arbitrary or protracted pre-trial detention, and forced confessions. There is also often denial of access to legal representation, unjustified restrictions on freedom to choose a lawyer (including excessive security clearances), and unwarranted limitations on lawyer-client confidentiality.

At trial, fairness of proceedings may be undermined by the use of special or military courts that are not sufficiently independent of the executive or impartial. Secret or classified evidence and other infringements on the equality of arms and may further undermine fair trial. Children have sometimes been tried in adult courts. There has often been inadequate participation by victims of terrorism in legal proceedings and a lack of remedies for them.

Upon conviction, disproportionate penalties may be imposed, including the death penalty for crimes that are not “most serious” are required by international law.

At worst, criminal process is circumvented entirely by enforced disappearances and summary executions. Just last week, in one African country I heard testimony about one victim whose eyes were gouged out, genitals burned, and body thrown into a national park to be eaten by lions and vultures.

The abuse of counter-terrorism measures to target human rights defenders and civil society does not just violate international human rights law and weaken the international rule of law, but counter-productively undermines national security. As Pillar I of the United Nations Global Counter-terrorism Strategy emphasizes, state violations of human rights can themselves be conditions conducive to the spread of terrorism. Respecting human rights makes us safer.

The Situation in The Philippines

The Philippines has attracted the attention of United Nations Special Procedures mandate holders in relation to counter-terrorism measures. I have had productive discussions with the Ambassador of the Philippines in Geneva and my colleague, the Special Rapporteur on Freedom of Expression, recently visited the country.

Concerns have been raised about the Anti-Terrorism Act of 2020, the broad definition of terrorism, the expansion of executive branch authority and the absence of judicial oversight, apparent lack of due process, violations of privacy, and limitations to the scope of humanitarian activity. Notwithstanding the Supreme Court striking down parts of the legislation as unconstitutional in 2021, concerns remain about detention without warrant, expansive surveillance powers, and the designation powers of the Anti-Terrorism Council. In this respect, I recall the importance of ensuring the necessary safeguards for due process and fair trial under international human rights law.

I am particularly alarmed by allegations of killings, arbitrary arrests, enforced disappearances, judicial harassment and targeted financial sanctions against religious groups, human rights defenders, indigenous activists, journalists and lawyers in terrorist-related cases.¹

I am also concerned at the alleged use of “red-tagging” or “terror-tagging,” branding of individuals or groups as being affiliated with, or being supporters of, the Communist Party of the Philippines and the New People’s Army without foundation or justification, causing reputational harm to these individuals and organisations. The chilling effect on civil society restricts freedom of expression, peaceful assembly and association and the right to privacy of the concerned individuals and sows fear that peaceful political activities will be met with oppressive retaliation. At its very worst, “red-tagging” contributes to the normalization of extrajudicial killing of human rights defenders and creates an environment in which extrajudicial killings can occur with relative impunity.

Last year, the Government of the Philippines acknowledged the concerns around “red-tagging” indicated that it does not endorse this practice. I welcome the recent decision of the Supreme Court of the Philippines declaring that “red-tagging”, vilification, labelling and guilt by association threaten the right to life, liberty and security. I also acknowledge the critical efforts of the Philippines’ national Commission on Human Rights to propose legislation to combat “red-tagging”.

I welcome the openness of President Marcos Jr’s administration to engage with the United Nations, and the Special Procedures of the Human Rights Council through the United Nations Joint Program for Human Rights, which has operated in the Philippines for the past three years, including in relation to counter-terrorism laws.

State support for the essential and legitimate contribution that human rights defenders, civil society organisations, journalists and activists make to civic life is crucial if these actors are to undertake their work safely and effectively.

Conclusion

In conclusion, my mandate’s role is to engage constructively with States to improve respect for human rights, including by providing advice and assistance, and to work with civil society to raise their voices to governments and the international community. I stand ready to cooperate with state and civil society actors in our common mission to ensure respect for human rights when countering-terrorism, and accountability for violations wherever they occur.

Thank you.

¹ See e.g. PHL 4/2023, PHL 2/2023, PHL 1/2022, PHL 6/2021 and PHL 1/2021.