

## **Protection of Human Rights in Situations of Crises: A Defender's Perspective**

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Contemporary threats to security go far beyond wars between states. Today peace can no longer be associated only with the absence of war. Communities are besieged by violence in the name of religion, ethnicity and rejection of diverse identities. Internal armed conflict, terrorist campaigns, insurgencies, food crises, long-term political or economic instability and natural disasters have placed human security of vast populations in peril.

The cumulative impact of these conditions is affecting global peace, and the persistence of strife in any part of the world is no longer only a matter of internal national concern. The consequences of long-drawn conflicts are encompassing a wider sphere of political and economic interests, making it more challenging than in the past to find acceptable solutions.

At the same time we are experiencing a decline in the quality of world leadership and a lack of political vision, will or capacity amongst the leaders to address the causes of conflict. This collective failure to restore hope for peace and well being has given more critical dimensions to the present day crisis. Indeed, responses to conflicts and crises, whether political or economic, instead of restoring security have themselves become part of the problem.

This is apparent from situations that prevail in several parts of the world. In the Asian region, for instance, several countries have emerged or are in the process of transition from authoritarian rule, armed conflict, or struggles for the right of self-determination. Many countries have adopted national constitutions with strong guarantees for the protection of human rights. With a few exceptions, most countries in the region have had periods of political stability during which credible elections were held. Despite these significant advancements, political and economic conditions in many of these countries remain volatile.

Some of these countries show visible signs of reversal of the initial advancements and are trapped in a perpetual state of transition. This is largely due to inadequate attention given to establishing or restoring the rule of law and inculcating a culture of respect for human rights in state institutions as well as in practices of governance. Transition to democracy has remained merely procedural and while increasing their power to control, little has been done by governments to build capacity of the State to protect. These trends are creating conditions in which re-emergence of social, political and economic crises have impeded prospects for sustainable democracy, respect for human rights and the potential for development. Consequently, the prospects for peace and security in the region have diminished.

It has also been observed that there is a direct connection between impediments to democratic progress and the expanding role of the military in many countries of the region. Several of these countries have seen repeated imposition of military rule or a resort to military means and methods as a response to security concerns. Enhanced powers of the military in order to deal with security situations, without a complementing political strategy by a representative civilian authority, have allowed the military mind-set to gain influence and encroach upon political spaces. Even when civilian authority has been established or re-established, military presence still dominates the structures of authority and democratic culture becomes difficult to promote.

In the global context two factors that are clearly identified as having the strongest impact on internal security are political tensions and policies for economic advancement. In both cases governments are disregarding human rights norms and principles to the detriment of the interest of the most marginalized communities. Public reaction to the denial of economic, social and cultural rights is increasingly becoming the reason for public protest. In many countries, stability rather than development has become an imperative to be achieved through the use of State force to repress popular movements and quell the voices of protest against economic and social disempowerment. Such actions have resulted in increased public resentment against authorities and in diminished space for dialogue to reconcile economic policies with people's rights to a safe environment, control over their own resources and labor practices free of exploitation.

National security laws have been imposed in the severest forms in many countries the world over. Sometimes these laws have been imposed following a declaration of martial law or a state of emergency. In some countries such laws are a permanent part of the domestic legal framework, weakening the effects of any guarantees of fundamental rights and adversely affecting the efficacy of the mechanisms for their enforcement. In areas of conflict or political tension emergency or special laws are imposed to suspend fundamental freedoms and to restrict recourse to civilian courts.

The introduction of exceptions to the rule of law, for example through special legislation on security in general or against terrorism in particular, has affected the ability of national judicial systems to protect people from arbitrary actions. Military operations against terrorist activities are being carried out, with particular areas being designated as military zones. Armed forces are given free reign in these regions with little civilian control over their operations and without any overall political strategy to deal with domestic consequences of terrorism or counter terrorism tactics. I emphasize that rendering the armed forces accountable to civilian authority is a necessary condition for the observance of human rights and the rule of law.

The climate created in the wake of countering terrorism has created instability without assuring security. Anti terrorism measures have been adopted in environments charged with political conflicts and, in many cases, under economic depression. Governments have used the current climate to abuse the enhanced powers gained in the campaign against terrorism to target political opposition, movements for self-determination, and those defending human rights.

In this post 9/11 era, there are, on the one hand, States that avoid acknowledging that an internal conflict exists and characterize their response to all kinds of armed opposition as counter-terrorism. On the other hand there are States that have used the "war paradigm" to avoid the regular criminal justice system and have resorted to selective and distorted use of the laws of war to counter the menace of terrorism. This trend of deliberately miscasting the context of the conflict, the emergency or the state of exception created for countering armed opposition or acts of terrorism now poses a serious threat to the rule of law. In the absence of a clear and unambiguous characterization of the conflict any determination of the applicable law is clouded by confusion and allows a wider scope for misuse of law.

These measures have their most severe impact in States where respect for human rights is already restricted. However, such measures are now also being adopted in countries where fundamental human rights are largely guaranteed. These States bear a greater responsibility for undermining human rights on the one hand and, on the other, diminishing the respect for the rule of law by raising the perception that security imperatives justify deviation from recognized standards of due process and fair trial.

It is true that the menace of terrorism poses a serious threat to peace and security. Those striving for the rights of minorities or women, advancing the cause of religious tolerance and accommodation of ethnic or racial diversity, or resisting trends of unilateralism in global affairs have been some of the first victims of terrorism and of different forms of extremism. These are the people who have also been in the front line to combat terrorism in order to preserve the norms of peace and democracy. The struggle of the human rights community against terrorism and extremism precedes the events of 11 September 2001 and has long been a visible human rights activity in parts of the world where the roots of terrorism are strongest. Yet it is these human rights defenders who have become the leading voices in pointing out that many of the measures to counter-terrorism are eroding human rights norms and are insisting that peace and security can only be achieved in compliance with these standards.

Other significant sources of conflict or tension are the politics of identity, greater difficulties in the management of pluralism and diversity, increasing poverty and diminishing role of the state in providing social security. The situation of women in many countries of the world is of particular concern. Their rights are violated in the name of religion and culture and they become particularly vulnerable to prejudice, to exclusion and to public repudiation, not only by State forces but by social actors as well.

Ladies and gentlemen, when societies fail to challenge the misconceived idea of a trade off between security and human rights most often they get neither and minorities and other vulnerable groups pay the price. Such notions have resulted in an assault on rule of law and human rights and are likely to become more and more entrenched if the current trends are not reversed.

Human rights and humanitarian law were not drafted with peace and political stability in mind. Rather, the basic purpose of this legal system is to provide States with the framework that allows them to respond effectively to even the most serious of crises. Therefore, human rights are not, and can never be, a luxury to be cast aside at times of difficulty. International law is the foundation that will help States respond effectively to whatever difficulties arise, including civil strife, armed insurgency and terrorism.

Preservation of peace and security is a core objective in the Charter of the United Nations. The implementation and respect of fundamental human rights is another core objective as initially reflected in the Charter and then laid down more precisely in the Universal Declaration of Human Rights. History has eloquently illustrated how closely linked these two objectives are - human rights violations are almost always the underlying cause, or the consequence, of deterioration in peace and security.

Bringing an end to armed conflict and restoring peace and security typically require progress in addressing ongoing human rights violations and ending impunity for past violations. In his report "In larger freedom" the UN Secretary-General Kofi Anan drew clear parallels between peace and security and human rights, calling for more effective action to protect human rights in the context of threats to peace and security. Resolutions of the Security Council and the Human Rights Council show that concerns regarding peace and security are generally accompanied by recommendations to restore respect for human rights as a first measure to preserve life and stabilize the situation. In the preamble to the Declaration on Human Rights Defenders, the General Assembly recognized the relationship between international peace and security and the enjoyment of human rights.

A number of fundamental principles of the rule of law take on heightened importance in times of crisis and declared states of emergency to prevent the political branches of government from abusing their power in the name of national security. These fundamental tenets of the rule of law are reflected in established principles of both international humanitarian law and international human rights law and include an

independent and impartial judiciary; procedural and judicial guarantees that ensure all elements of due process and fair trial, including the right to be tried by an independent, impartial and competent tribunal; transparent and accountable investigation procedures; protection against illegal and arbitrary detention; access to lawyer and strict protection of confidential communications between lawyer and client; judicial oversight of any declaration of a state of emergency and of all emergency measures adopted under it; and, finally, effective remedies and full reparation for violations. Since the protection of human rights may be precarious in times of crisis, a strong and independent legal profession is essential both for protecting the rights of their clients and for promoting the cause of justice and the defense of human rights.

Human rights law is not blind to the fact that extraordinary measures may be required in certain situations and makes adequate provisions for such eventualities. Under declared and notified states of emergency, certain rights may be subject to temporary derogation. Derogations must, however, be strictly in accordance conditions prescribed in human rights law and must only be invoked to respond to a threat to the life of the nation. In such emergencies derogations may serve to narrow the scope of a right, but must never extinguish or impair the essence of the right. Any derogation, or other measure, restricting or limiting the scope of human rights protection, must be provided by law.

Some rights, however, are non-derogable, even in times of crisis. Extra-judicial killings, torture, enforced disappearances, and hostage taking, for instance, is absolutely prohibited under international law. The principle of legality in the field of criminal law and the right to a fair trial can also never be denied.

It is, however, an undisputable reality that the rule of law and the protection of human rights, which demand ever vigilant safeguarding even in the best of times, become particularly vulnerable to erosion when countries pass through periods of crisis and strife. Periods of conflict and political crisis are marked by serious human rights violations such as killing, rape, torture, death threats, abduction and disappearance of civilians and those seeking information; arbitrary arrest and detention, often incommunicado and in illegal detention facilities; attacks against humanitarian workers and looting of humanitarian goods; brutal and disproportionate force against protestors; and threats and attacks against judges hearing cases of past abuse.

At the same time governments have adopted all sorts of unlawful practices in times of crisis. Independent functioning of the judiciary is severely impeded by laws that expressly exclude judicial scrutiny and discretion to overturn any order made under emergency powers of the executive. One example is the Emergency (Miscellaneous Provisions and Powers) Regulations imposed in Sri Lanka during the time of conflict, that effectively extinguished the role of the courts in reviewing the lawfulness of detention and reducing it to a rubber-stamping exercise. Another example is the Civil Disturbances Act in Nigeria in the 1990's that barred judicial review of any order, sentence or judgment pronounced by the Special Tribunal - composed of one judge and four members of the armed forces. An independent and impartial justice system is based on the principle of separation of powers. Such laws are a clear intrusion of the executive into the domain of the judiciary.

One of the most common measures States have adopted in times of crisis is action to limit or suspend the right to a judicial remedy, such as amparo or habeas corpus, or to render such remedies unworkable in practice, or generally to limit judicial oversight of deprivation of liberty. Under the Internal Security Act in Malaysia, for instance, detainees may file petitions of habeas corpus, but the courts are limited to reviewing procedural irregularities, rather than the substantive grounds for detention.

In the context of internal political crisis or counterterrorism measures, a number of countries currently resort or have resorted in the past to the practice of administrative detention, either pursuant to states of emergency or in the absence of a declaration of emergency. States have also frequently resorted to the practice of incommunicado detention for prolonged periods without access of the detainees to lawyers.

The problem is especially pronounced in respect of persons held in administrative detention, purportedly for preventive or other security-related reasons. The International Commission of Jurists reports that these states include, among others, Algeria, Australia, Bangladesh, Cameroon, Canada, Egypt, Israel and the Occupied Palestinian Territory, Jordan, Malaysia, Nepal, Pakistan, Sri Lanka, Tanzania, Thailand, United Kingdom and Northern Ireland, and the United States of America.

One of the most striking developments is the increasingly central role that intelligence plays in modern counter-terrorist efforts. This centrality is reflected in expanded powers of intelligence agencies, increasing international cooperation, and greater information sharing. The new significance accorded to intelligence has led to a transfer of power to unaccountable bodies that has undermined both the separation of powers and the rule of law. Holding domestic intelligence agencies to account is difficult, and that difficulty is multiplied when seeking remedies for actions carried out by transnational intelligence operations.

At times States have effectively militarized the administration of justice and have adopted measures aimed at limiting the power of ordinary courts of law. States have also occasionally granted judicial police powers to the armed forces in respect of the investigation of matters normally within the jurisdiction of ordinary justice, thereby undermining the integrity of the justice system. The militarization of the courts in Turkey during the 1990s was recognized by the European Court of Human Rights as antithetical to judicial independence and impartiality.

In times of crisis, the use of state secrecy and national security doctrines are frequently expanded, which in practice has resulted in categorical procedural obstacles to gaining access to justice before the courts, especially with respect to exercise of jurisdiction by courts over allegations of human rights violations. Access to information and to places, such as detention facilities or IDP camps, is some times severely restricted. These restrictions are generally imposed to conceal human rights abuse and to deny the right to a fair defense in security related cases.

It is generally in this context that lawyers and particularly those who are active in the defense of human rights become targets of repression by governmental authorities either by direct attacks or through legal obstacles to prevent lawyers from performing their professional duties. There are several known cases of human rights defenders and lawyers representing victims of human rights violations subjected to harassment, death threats and physical harm including killings and enforced disappearances.

By exercising their right to promote and to strive for the protection and realization of human rights, defenders play an important role in the promotion of peace and security. When defenders are silenced and prevented from undertaking their activities, the goals of protecting peace, security and human rights are seriously undermined.

In addition to strengthening the implementation of human rights standards globally, human rights defenders contribute to the core goals of the United Nations by playing an important role in the United Nations efforts to maintain peace and security worldwide and in restoring them where a breach has occurred.

I believe that without the action of human rights defenders neither the Security Council nor the Human Rights Council would be as well informed of emerging peace and security or human rights problems. Further, without the work of defenders, the calls for action by both these bodies in their resolutions would be inadequately addressed, and may be more likely to fail.

I can also state with confidence that without the work of human rights defenders, today, in countries where there is ongoing armed conflict, millions of people would be much more vulnerable to violations of their rights to life, physical integrity, liberty, food, health, adequate housing, education and many others, and the United Nations system would be much less well equipped to address the conflict.

Human rights violations tend to intensify when political, ethnic or social struggles start sliding towards the outbreak of armed conflict. Human rights defenders monitoring and reporting on the situation provide vital information that can alert the international community to a developing threat to peace and provide an opportunity for preventive action. For example, during the early 1990s, before the 1994 genocide in Rwanda, human rights organizations recorded massacres and hundreds of individual killings, disappearances, torture and beatings and thousands of arrests. They also reported on widespread violations of the right of ethnic communities to freedom of movement, the right to education, labor rights and on censorship of the press whenever efforts were made to report on violations or on corruption in Government.

Collectively, these violations were a clear indicator of the massive breakdown in peace and security that would follow. The documentation and reporting by national and international human rights NGOs encouraged the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Rwanda in 1993. In his subsequent report to the Commission he warned that genocide might occur there. The Special Rapporteur's conclusions were prompted partly by the significant information presented to him by human rights defenders. If the reports of defenders and that of the Special Rapporteur had been acted upon, it is arguable that steps could have been taken to prevent the Rwandan genocide and the accompanied movement of roughly 3 million refugees and internally displaced persons which marked the beginning of a dramatic worsening of peace and security in the Great Lakes Region of Africa.

By peacefully advocating for the respect of fundamental rights, human rights defenders search for a peaceful solution to political, ethnic and social tensions. Defenders conduct missions into barely accessible regions of a country in conflict, interview victims and witnesses, conduct investigations, corroborate information, and then document and report on their findings. Many of the countries currently afflicted by civil strife have a history of missed opportunities to find a peaceful solution to long-lasting tensions. Those missed chances regularly include an oppressive reaction by the Government to the grievances voiced by human rights defenders.

Governments challenged by armed independence movements and rebellion, or by terrorist acts tend to label legitimate defenders' activities as anti-State, threatening security and supporting terrorist organizations. Similarly, insurgents tend to perceive human rights defenders who denounce all violations equally as supporters of the Government's cause. As a result, defenders are harassed, intimidated, arrested and detained, tortured and assassinated by all parties. By silencing peace activists and other human rights defenders, however, the parties to a conflict suppress a voice which, because of its positive message and the peaceful means employed to convey it, could play a central role in restoring peace.

The work of human rights defenders in post conflict reconciliation and restructuring is of critical importance to sustainable peace. Implicit in any expectation of a lasting peace is that the causes of the initial conflict need to be addressed, such as discrimination against groups of a population or major social and economic inequality. Human rights defenders in Angola, for instance, have taken on new roles commensurate with the post-conflict and peace-building stage of the country. They examine corruption issues, land rights, housing rights and the rights of linguistic or regional minorities and they support freedom of expression, thereby strengthening transparency and democracy.

In Liberia and Sierra Leone, human rights defenders have been involved in demobilization and reintegration of combatants, including child soldiers. In Rwanda, the countries of the former Yugoslavia and Sierra Leone, defenders have been deeply involved in efforts to address impunity for human rights and humanitarian law violations committed during the conflicts. In Burundi, the former Yugoslav Republic of Macedonia and Kosovo, defenders have provided human rights training for judges, lawyers and police officers. After the armed conflict ended in Cambodia and Angola, defenders conducted campaigns to explain the future elections to the general population, describing democratic rights and how to exercise the right to vote. In Afghanistan, Burundi, Iraq, the Democratic Republic of the Congo, the Sudan and

other countries that are now experiencing or have experienced armed conflict in the past, both national and international humanitarian workers serve every single day as implementing partners for United Nations agencies.

This was not easily done and human rights defenders carried out these activities despite the risk to their own security. Human rights defenders have suffered harm and face grievous threats to their life, liberty, security, independence and credibility. State apparatus, oppressive laws and other tools of repression continue to be used against defenders in attempts to deter them from the valuable work they contribute to the promotion of human rights.

In the Sudan human rights defenders, lawyers, peace activists, community leaders engaged in bringing to an end the armed conflict and the attacks against the civilian population in Darfur were repeatedly arrested, kept in incommunicado detention and subjected to severe ill treatment. In Haiti lawyers and journalists are being targeted for demanding an end to impunity for past crimes. Numerous Congolese NGOs have reported a pattern of harassment, particularly arrest and detention, at the hands of the police and armed forces for raising their voices on behalf of victims of arbitrary arrests, rape and torture. In Nepal large numbers of human rights defenders are reported to have been arrested and subsequently detained after February 2005 under the Public Security Act, on charges of threats to “sovereignty, integrity or public tranquillity”.

The spectrum of attacks against human rights defenders in relation to the Palestinian question is significantly broader. It includes, in particular, instances of administrative detention, arrest and ill treatment of Palestinian defenders reporting on incidents of violations and abuse of Palestinian civilians at the hands of the occupying authorities, as well as the Palestinian authorities in Gaza and the West Bank. In my capacity as the UN Special Representative of the Secretary General, I had expressed in my reports the firm belief that the quest for a durable and peaceful solution to the Palestinian question cannot be successful in the absence of respect for human rights and for the right of individuals and associations to act in defense of human rights.

In spite of their essential role, the protection of human rights defenders and their work globally, is still not adequately emphasized within the United Nations system. As a result, efforts by States and United Nations bodies to protect peace and security have a lesser impact on the prevailing conditions, allowing for a greater risk of conflicts emerging from the conditions I have described or, continuing for longer periods.

Development of national protection systems for the protection of human rights defenders and facilitation of their activities are of foremost importance. It is, nevertheless, an important responsibility of the international community to hold out their hands in support of defenders who face imminent danger to their life or liberty, either individually or collectively, in any country and in all situations.

Over the course of eight years as holder of the UN mandate on human rights defenders, I was informed of the difficulty that human rights defenders have in gaining access to United Nations personnel at the country level, and a disturbing lack of response to human rights concerns that they have many times encountered. I recognize the complexities inherent in coordinating the work of the United Nations machinery and of integrating human rights across the whole of the United Nations system. I am also aware that a good deal of progress has been made in this regard in recent years.

However, when a human rights defender herself at risk or having urgent information about very serious and widespread human rights violations in a country fails to get a response, it surely indicates that a great deal of progress remains to be made. I can only express my deep regret at all such failures, and to reiterate that it is incumbent at least on the United Nations to ensure that this contact is one that is positive for the common interests of human rights.

I will end with a strong recommendation that the UN Security Council and the Human Rights Council seriously consider making reference to the protection of human rights defenders and to the importance and legitimacy of their work in all their resolutions relating to the maintenance of peace and security. None such resolution so far mentions this very critical aspect of the protection and promotion of human rights.

Thank you, ladies and gentlemen.