

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on

Counterterrorism and Human Rights: Striking the Right Balance

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I. Introduction

I thank you for the opportunity to address the Tom Lantos Human Rights Commission and discuss protecting human rights while countering terrorism. Before I begin, let me state that my testimony today reflects my personal views and should not be construed as representing American Bar Association policy.

The American Bar Association (ABA) promotes the rule of law at home and around the world. Through its Center for Human Rights, it provides pro-bono legal assistance to at-risk human rights advocates, journalists, trade unionists, LGBTQI+ rights defenders, and women rights activists, who face criminalization and intimidation for their legitimate human rights advocacy. In the last 10 years, the staff of the ABA Center for Human Rights has documented cases of human rights defenders facing terrorism charges for exercising their right to freedom of expression, association, and peaceful assembly. Based on this experience, I will examine the problem of the misuse of counterterrorism measures, and the impact of such practices on achieving peace and security goals. I will conclude with a set of my personal recommendations.

II. The Problem

Over the last twenty years, governments have enacted a raft of laws and adopted measures to protect all individuals in their territories from terrorism. There is no doubt that terrorism has negative impacts on the enjoyment of human rights. But it is also evident that the adverse impact of repressive counterterrorism practices is also profound and has exacerbated the threat of terrorism. The tendency to misuse counterterrorism tools, laws, and policies for political motives is not limited to a specific country nor a particular region as has just been noted and will be noted by my colleagues. It is widespread. Allow me to give you few examples from the Middle East and North Africa region, a region that I have lived in and worked on extensively.

In the [Kingdom of Saudi Arabia](#), ABA Center for Human Rights staff documented how the Specialized Criminal Court (SCC)—a court established to adjudicate terrorism cases—and Saudi

Arabia's Counterterrorism and Counter Terror Financing Law were used to target human rights defenders. Loujain Al-Hathloul, a woman human rights defender, was charged with terrorism for her human rights advocacy work. The former President of the ABA expressed her [concern](#) over Ms. Al-Hathloul's standing a trial before the Specialized Criminal Court. Waleed Abu al-Khair, a human rights attorney and a recipient of the 2019 ABA International Human Rights Award, was [sentenced](#) by the same court to 15 years for defending human rights activists in Saudi Arabia. Abdul Rahman Al-Sadhan, a Saudi Red Crescent Society staff, was sentenced to 20 years imprisonment followed by a 20-year travel ban. He was convicted of engaging in acts of terrorism for allegedly criticizing the Saudi government's policies on Twitter.

The Specialized Criminal Court has been repeatedly [criticized](#) for lack of judicial independence by the United Nations Working Group on Arbitrary Detention (UNWGAD). Based on this long-standing pattern of misuse of counterterrorism authorities in the Kingdom, the ABA has [called](#) on Saudi Arabia to stop prosecuting activists as terrorists.

It is important to note that the misuse of counterterrorism authorities by the Kingdom is not an inadvertent or unavoidable consequence of sincere efforts to combat the serious threat of terrorism in the region. To the contrary, a review of prosecutions in the counterterror court by the Financial Action Task Force found evidence that resources may have been diverted from serious trials to frivolous trials against activists. Moreover, the Task Force found that the Kingdom had "[not yet tackled](#)" the issue of third-party financing of terrorism. In short, in the Kingdom, it appears that the focus on prosecuting activists has undermined efforts to address the threat of terror financing in Saudi Arabia.

Despite these well-publicized concerns, the State Department's Counterterrorism Bureau originally lauded the work of the Saudi counterterror court, while the Human Rights Bureau was publishing reports about the abuses occurring there. Meanwhile, the Kingdom was admitted as a member to the Task Force notwithstanding its failure to address the concerns raised about lack of progress on combatting terror financing. This sent a mixed message that undermined the United States' efforts to encourage reform in the Kingdom.

The misuse of counterterrorism to close civic space is a problem in every country in the region, including those defined as democracies. Other strategic allies and partners of the United States in the region, including Algeria, Bahrain, Egypt, Tunisia, and the United Arab Emirates, have wielded broadly crafted and vague anti-terror laws to silence journalists, bloggers, and human rights advocates. Given the general lack of meaningful and independent judicial oversight in these countries, the instrumentalization or weaponization of these measures against human rights defenders and other civil society actors becomes a common and dangerous practice.

Evidence-based research has shown that counterterrorism measures are one of the main drivers of closing civic space. In my former capacity as senior fellow at the Center for Strategic and International Studies, my colleagues and I conducted [evidence-based research](#) on five countries: Australia, Bahrain, Burkina Faso, Hungary, and India on the impact of counterterrorism laws and practices on the space for civil society. We [concluded](#) that "countries have passed and implemented numerous laws that inadvertently or intentionally diminished the space for civil society. States

conflate terrorism with broader issues of national security, which is then used as a convenient justification to stifle dissent, including civil society actors that aim to hold governments accountable.”

III. The Impact

Empirical research has demonstrated that human rights abuses and deficits in the rule of law are [one](#) of the main pull factors for radicalization. Recruiters exploit political, social, economic, and human rights grievances, often perpetrated or exacerbated by governments, to gain new members in terrorist organizations. Repressive counterterrorism measures [do not minimize terrorism threats](#), but rather fuel violence and strengthen violent extremism roots in many communities. A [study](#) by USAID found that “harsh and brutal” rule and restrictions on civil and political rights is the number one driver of violent extremism.

This trend is evident throughout the region. According to [Human Rights First](#), torture and inhumane treatment in Egypt’s prisons “is fueling ISIS’s growth, as the group recruits supporters in Egypt’s prisons at an accelerating rate.” The [Iraqi Security Forces](#) have been allegedly linked to human rights violations, including target killings, enforced disappearance, and torture. These human rights abuses bred mistrust between the Iraqi government and its own people. Feelings of injustice, unaddressed grievances have strengthened the ability of ISIS to gain ground and weakened prospects for long-term political stability in the country. The recent [experience](#) in the Sahel has also shown that a militarized response to counterterrorism by repressive governments not centered on human rights and the rule of law has fueled violence in the region. [State violence](#) undermines collective efforts to prevent violent extremism. Leaving human rights grievances unaddressed diminishes the legitimacy of the state, creating mistrust between governments and their own citizens.

Partnering with these countries presents both threats and opportunities for the United States. Close partnerships with repressive regimes put the United States security interests at risk as it associates the United States—fairly or unfairly—with those abuses. At the same time, these partnerships can be leveraged to secure reforms that will help address the underlying drivers of extremism.

IV. Conclusions and Recommendations

In the aftermath of the terrorist attacks of 9/11, leaders with authoritarian tendencies were emboldened to commit human rights abuses under the guise of countering terrorism. It is time to reassess how the United States can best encourage reform in repressive regimes that misuse their counterterrorism authorities. I repeat once again that these recommendations reflect my personal views; they have not been reviewed or approved by the American Bar Association House of Delegates or Board of Governors.

The Administration and Congress should:

- Consistently commit to advance human rights and the rule of law in all U.S. bilateral and multilateral counterterrorism dialogues. Though this requires challenging political and diplomatic actions, it will result in safer communities and resilience to violence.

- Forgo unconditional support to partner governments that suppress their own people and increase congressional scrutiny and oversight. Existing laws restricting security assistance to countries engaged in a consistent pattern of human rights abuses should be fully enforced.
- Create space for meaningful engagement and participation of civil society actors in counterterrorism dialogues and policy creation and implementation. Civil society actors play a vital role in mitigating the risks of terrorism and preventing violent extremism.

Countering terrorism and protecting human rights are not conflicting imperatives, but rather mutually reinforcing. It is in the interest of the United States to strengthen democratic institutions in partner countries to uphold the rule of law and protect human rights. There are several opportunities to build on the mutually reinforcing nature of security and human rights. There is a need for a concerted interagency response that embraces the notion that human rights protection while countering terrorism is a national security imperative and it puts the advancement of human rights at the cornerstone of U.S. counterterrorism efforts.

Thank you once again for convening this important hearing and for giving me the opportunity to testify.