



Summary of the Forum on Anti-Terror Legislation

On 24 November 2020, the Philippines Commission on Human Rights and the Asia Pacific Refugee Rights Network convened a forum on anti-terror legislation in Asia, with a focus on India, the Republic of Korea, the Philippines, and Malaysia. This was the second of a two-part series on anti-terror legislation, the first of which focused on the effect of anti-terror legislation on civil society and refugees and asylum seekers in the Philippines.

General Observations

- National security laws share several features:
 - Providing the executive with expansive powers with ambiguous limits, granting wide discretion to the government
 - Enhancing powers to investigate, detain, prosecute, and use force, e.g., extended pre-charge detention and shoot-to-kill powers
 - Limits on judicial scrutiny
- National security laws come into tension with the rights enshrined by the International Covenant on Civil and Political Rights (ICCPR), including Articles 14, 15 (fair trial rights); Article 19 (freedom of expression); Article 21 (freedom of assembly); Article 22 (freedom of association). The [Siracusa Principles](#) on the Limitation and Derogation Provisions in the ICCPR are of particular relevance.
- Civil society can use a range of forums to push back against the abuse of the legislation, including filing constitutional complaints, petitioning the national Human Rights Commission, and appealing to UN human rights mechanisms to repeal the legislation, including treaty bodies, the UN Special Rapporteur on the right to privacy, and filing individual complaints.
- COVID has introduced a new set of challenges, in which public health laws can also be used to detain journalists and human rights defenders. There is a concern that these states of emergency can become permanent and can enable abuses.
- As domestic forums become compromised, we need to use regional networks and solidarity, and to strategize about international advocacy.

India

- India's legislation relating to anti-terror can be categorised as follows:
 - preventative detention – being put on trial not because one is charged with criminal offence, but with suspicion that one could be a national security danger;
 - Criminalizing membership in organisations;
 - Anti-terror laws (mid-1980s);
 - domestic deployment of the military in regions in which they've been tasked with keeping law and order, e.g., in Kashmir. The government does not label this civil war. Rather, the military is policing the region in collaboration with the civilian police. However, the military has greater powers, including seizing property.



- These laws have been in place for decades in India. Given external and internal tensions, India has long experienced terrorist attacks, particularly since 1980s. Some have been spectacular (e.g., 2010 in Mumbai) but there have also been numerous smaller-scale attacks that get less attention.
- The National Human Rights Institute has taken a “bandage approach” to national security laws: it grants compensation to victims of human rights abuse but does not systematically challenge the national security law.
- One needs to be careful about the expansion of national security legislation, with several trends:
 - Gradual expansion of substantive powers and procedural departures from due process
 - Deeper entrenchment with successive pieces of legislation (e.g., a decline in the use of sunset clauses on national security legislation, thus making the exception the norm)
 - Over time, national security law affects how ‘ordinary’ criminal law operates and also seeps into state laws.
- The different national laws interact with each other, which interact with state security laws, creating a daunting web of laws that people can get caught in. For example, in Kashmir, one could get stopped at checkpoint by military, beaten, tortured, detained, released, put on trial, and then, if nothing is proven, one can be detained preventatively.
- As the current ruling party is majoritarian, human rights defenders face risks and detention using national security laws.
- In recent months, COVID-19 restrictions have layered over national security laws and have been used to charge people who challenge the government’s actions.

Republic of Korea

- The two relevant pieces of legislation are the National Security Act and the Act on Anti-Terrorism for the Protection of Citizens and Public Security.
- Speakers described the former as repressive and security-based legislation that does not provide specific information on the kind of terror that is addressed. “Growing threats of terrorism” were referred to in 2017, yet no one knows exactly which ones.
- Speakers described the latter Act as using vague wording on who should be suspected of terrorism. As a consequence, any foreigner, any NGO can be deemed a ‘terrorist suspect’ under the law. Besides, it provides intelligence agencies with greater powers, especially on information collection capacity (financial transactions, personal info etc.), opening ways to potential abuse of powers. This impacts negatively on human rights, especially on freedom of opinion and on the right to privacy (see e.g., Art. 17 of the Act on Anti-Terrorism).
- Recently, it was reported that the Act on Anti-Terrorism was used against a person living in South Korean with a humanitarian status visa. The news reported that the person was arrested for allegedly being a foreigner supportive of ISIS and reported that the police had found home-made explosive at the person’s home. Further, the fact that the man was using Telegram as a chatting application, and the fact that he relayed some videos of ISIS in the past was automatically considered a proof of his membership to the organisation. In fact, the person was working in a car-repair business and the substance that was found was to be used in the context of his work.



The case suffered from a poor legal investigation (lack of intercultural sensitivity, insufficient translation services) as well as the prosecutor's deceptive presentation of the facts to the judge, which resulted in the person being sentenced to three years' imprisonment in the first instance ruling. In addition to the impact on the victim and his family, the reporting of the case seemed to contribute to mounting hate speech and discrimination against other humanitarian status holders for allegedly colluding with terrorism.

- Korean civil society has used UN Mechanisms since the 1990s to push back against overbroad uses of national security laws. They archived problematic cases as a network of civil society actors to be able to show that the application of the law violates international human rights law.

The Philippines

- In July 2020, President Duterte signed the [Anti-Terrorism Act of 2020](#).
- Although the Act's constitutionality is being challenged in the Supreme Court, it is currently in effect as the Supreme Court did not issue a temporary restraining order.
- Participants highlighting Sections 4, 25, 29, and 46 as combining to create a low threshold of proof and vague and broad grounds, which provide considerable room for abuse and arbitrariness and capriciousness.
- In July 2019, 34 persons, including the vice president, a sitting senator, former senator, and ordinary citizens, were charged with multiple crimes based on suspicion.
- On the basis of a determination by the anti-terrorism council, the government can take into custody any person who committed a terrorist act as defined by law.
- There are concerns about its use to chill speech: apparently police have warned professors about providing their students with rebellious ideas. Further, two of the bodies supporting the anti-terrorism law are the Department of Education and the Chair of the Department of Education.
- Previously, the only entity that could order the arrest was the court, but now a new body can do so, based on suspicion. Further, the other party is not given the opportunity to defend themselves against the charge of terrorism. It's a unilateral determination.

Malaysia

- The Malaysian government's use of laws and the lack of laws have eroded the protection space for refugees.
- Malaysia is not signatory of the 1951 Convention and lacks a legal framework on international protection. Yet, it has received refugees on a humanitarian basis for decades.
- Rohingyas stand as the most tolerated amongst the refugee community. For the most part, Malaysia has historically been sympathetic to their plight – the Malaysian government has even accused Myanmar of perpetrating a "genocide" and supports international efforts aiming to bring the country to account before international courts for this.
- 2020 marked a shift, not so much the application of a particular anti-terror law against refugees per se, but rather an increase in the abuse of the lack of protection that refugees require and their lack of documentation.



- The government has tolerated hate speech against refugees and has used particular laws to intimidate defenders of refugees and undocumented workers.
- There has been a hardening of the national security framework and an emphasis on border security. This move resulted in blaming migrants for COVID-19 and not pushing back against an explosion of hate speech against the Rohingya community on social media. The hate speech seemed orchestrated and deliberate, with certain key message reproduced, some information fabricated regarding what some Rohingya leaders were alleged to have said, in addition to an endless number of petitions mushrooming one after the other. All of this contributed to building a very anti-Rohingya sentiment in the public sphere.
- This situation showed that Malaysia is missing laws protecting against hate speech: a fundamental gap, especially given the unwillingness from the government to openly criticise and address the situation. There has been a complete lack of accountability.
- Moreover, there has been a resurgence of (dormant) legislation dating back from the colonial period, in particular the 1948 Sedition Act mobilised to investigate human rights defenders. Al Jazeera was, for instance, investigated following its documentation and reporting on measures targeting undocumented workers: although no charges were pressed because of the lack of evidence, Al Jazeera was still investigated under the Sedition Act.
- Hate speech has decreased lately but there remains a live and dynamic landscape where any little incident may become viral. Rohingyas and other undocumented migrants live in fear. The Immigration Act is also used against any type of dissent coming from undocumented workers: one person who shared a testimony in the Al Jazeera documentary was deported to Bangladesh on that basis.
- Rhetoric on public health has become securitised and is being used against refugee and migrant communities. This is a shift from the attitude prevailing at the outset of the pandemic, where the authorities had an inclusive and “equal right to health” approach irrespective of the communities and their administrative status.

Discussion

- The UN Security Council previously issued a resolution demanding that member states pass anti-terror legislation, which contributed to the proliferation of such legislation worldwide. This makes it difficult for some to justify to donors why it is important for them to push back against anti-terror legislation. While terrorism does pose a threat to societies, the boundaries need to be defined to avoid abuses of human rights and the degradation of rule of law.
- Though it varies by country, many governments want to avoid embarrassment internationally. Soft laws and recommendations thus give civil society actors tools to push back against the legislation through the use of UN special mechanisms and periodic reviews. In countries with governments that relish flouting international norms, behind-the-scenes engagement can be more effective than naming-and-shaming.
- Extraterritorial jurisdiction poses an additional challenge to human rights defenders, as claimed in Hong Kong and potentially other countries going forward. For example, the national security law introduced in Hong Kong specifically criminalises “inviting or encouraging foreign forces or



foreign entities to engage in actions that might be damaging to HK or to the PRC.”. This goes to the CSO’s engagement with regional and international networks, including fundraising. This could lead to self-censoring but could also undermine the strength of networks as organisations are unsure about the effects on them when another member of a network does not self-censor.

- Some states have (ab)used Interpol to go after opposition. However, Interpol’s constitution is based on four principles: national sovereignty, respect for international human rights, neutrality, and constant and active cooperation. This could be a venue for advocacy.