

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Eighth Annual International Council Meeting

Terrorism and Human Rights: Discussing Politically Motivated Violence

Lahore, 20-22 May 2005

PROBLEMS CONFRONTING HUMAN RIGHTS DEFENDERS: NEW PRESSURE COMING FROM STATES

Neil Hicks

© 2005, International Council on Human Rights Policy
ICHRP commissioned this document as a Working Paper.
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

INTRODUCTION

1. What we in the West, and perhaps most understandably, those of us in New York, have come to refer to as the post-9/11 world has given rise to very widespread questioning of the legitimacy and utility of the international human rights regime, as it has evolved since 1948. Proceeding in the spirit of the often repeated phrase attributed to U.S. Supreme Court Justice Robert Jackson noting that “the Constitution is not a suicide pact,”¹ many have questioned whether, in the face of real threats and new dangers from terrorism, societies can afford to uphold a commitment to internationally recognized human rights standards.
2. Everywhere human rights activists are confronting a sea-change in what might be called the presumptive norm in international affairs that prior to September 11, 2001, saw adherence (or at least the pretense of adherence) to international human rights standards as generally desirable. The adoption by the United Nations General Assembly of the Declaration on Human Rights Defenders in 1998 was an important indication of this growing international consensus. In hindsight, we might look upon that moment as something of a highpoint for global acceptance of the legitimacy and desirability of the human rights idea. The Declaration codified the right to promote and protect human rights as a normative standard. Through voting for its adoption, states took on obligations to ensure that individuals would have the “effectively guaranteed” right “individually and in association

¹ What Jackson actually said in a dissenting opinion in *Terminiello v. City of Chicago* (1949) was: "There is danger that, if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact." Cited in David Corn "The 'Suicide Pact' Mystery Who Coined the Phrase? Justice Goldberg or Justice Jackson?" *Slate*, Jan. 4, 2002, <http://slate.msn.com/id/2060342/>

with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.’²

3. In contrast, today the primacy of respect for international human rights standards, and the legitimacy of striving for their realization and protection is routinely challenged and questioned in word and deed by governments of all kinds, democratic and undemocratic alike.
4. Weakening the international standards and mechanisms for human rights promotion and protection, or shaking the international consensus on human rights, has no connection to implementing effective policies against terrorism. In this regard it is worth reflecting on the experiences of states that endured internal armed conflict including violence directed against civilians and other acts of terrorism. Years and sometimes decades later, in countries and territories as varied as Peru, Guatemala, Sri Lanka, Turkey and Northern Ireland, governments and societies are struggling to overcome the destabilizing legacy of conflicts that were, in their time, pursued as struggles against a terrorist enemy in which the rule of law and respect for human rights were seen as a dispensable luxury, or even as an obstacle to the imperative defeating terrorism. After long years of death and destruction efforts toward reconstruction and reconciliation are moving forward, in some cases precariously, on the basis of a renewed commitment to justice and equality rooted in respect for human rights principles.
5. Building conditions within states where human rights defenders operate freely, and where they can effectively carry out their function of promoting and protecting human rights, helps to create an environment where terrorism does not prevail. The fact that so many states have so willingly cast aside their previously near unanimous endorsement of human rights principles has created a more challenging environment for human rights activists virtually everywhere. Rather than swimming with the current of prevailing wisdom, human rights activists have found themselves in the somewhat unfamiliar position of espousing an unpopular and even suspect cause.³ Human rights defenders must now justify the idea and discourse for which they stand before they can address the specific human rights problems that are of concern to them.
6. This change in *zeitgeist* continues to prove challenging for the human rights movement in general. If before 9/11 we had a presumptive norm that state compliance with international human rights standards was desirable, this has been shaken. Because people are afraid of terrorists and terrorism, and because some governments have stoked public fear for their own political ends, public attitudes towards human rights have hardened or become more skeptical.
7. While global public opinion, as far as one can speculate about such a thing, remains susceptible to scare tactics and demagoguery from the opponents of human rights, there is a growing democratic consensus that counter-terrorism measures that fall outside the framework of the rule of law and

² U.N. Defenders Declaration, Article 1.

³ I recognize that I am making a broad generalization here and that human rights activists from many countries might legitimately protest that they were never very popular with their governments, and that they had grown accustomed, long before 9/11, to popular misrepresentation and vilification of their activities. Nevertheless, I think that such human rights activists were bolstered by the knowledge that the weight of global consensus was on their side and that their persecutors were self-seeking and probably malicious. Moreover, they probably also entertained the idea that those who attacked them were perhaps also aware that their attacks on human rights were baseless and cynical. Now those who engage in or condone violations of human rights can seek and find global legitimization for their actions, and those who promote rights face, at a minimum, greater scrutiny.

human rights standards effectively roll back well-established norms and lay the foundations for further insecurity.⁴

8. This is obviously much firmer ground for human rights defenders to stand on. It makes clear that human rights are part of the solution to the threat of terrorism, and not part of the problem as some would have us believe. There is still more to be done for the human rights movement to regain the public credibility it enjoyed before 9/11, but it is at least worth discussing whether scrutiny and skepticism of the claims of human rights defenders is worse than passive lip-service to human rights ideas that too often were not carried through to implementation. Now, presumably, if human rights defenders can win the argument that observance of human rights will contribute to preventing terrorism than hard-nosed realist policy makers will take notice. So the stakes for the human rights movement may be said to be higher. We risk marginalization or even demonization if we fail to convince people that human rights are essential tools in the struggle against terrorism, but we stand to gain salience, relevancy and, above all, implementation, if we succeed.

WHICH RIGHTS ARE UNDER ASSAULT

9. Various actions taken by states have harmed human rights defenders and human rights promotion efforts: Steps taken to silence the voices of human rights defenders in a context of heightened concern about the threat of terrorism include broad controls on freedom of expression, association, and movement, and measures to intimidate, demonize, brutalize, imprison, exile, or murder the individuals who stand up for human rights. These measures affect basic freedoms for all but often have a particular impact on human rights defenders — in some cases leading to threats to their lives and liberty and in all cases constraining their ability to protect the rights of others.
10. Many governments have made more widespread and careless use of language branding human rights defenders as terrorists or terrorist sympathizers. This has an impact. Apart from stoking public distrust of human rights, branding and defamation of human rights defenders places them at greater risk. Human rights defenders seeking to report on violations occurring in the context of internal armed conflicts in places like Russia, Indonesia, Colombia and the Philippines — in conflicts which governments have been swift to characterize (however ahistorically) as battlefields within the global war on terrorism — have themselves become victims of state violence, while also remaining susceptible to violence from armed opposition groups.
11. Many governments have responded to heightened global concern about the threat of terrorism by passing new exceptional counterterrorism laws.⁵ Because definitions of terrorism employed by these laws are often both vague and sweeping, their effect is to substantially increase unchecked executive power. Human rights defenders have labored under new limitations on basic rights to freedom of expression, association and freedom of movement, and on access to information that have been part of counterterrorism laws passed in a great many countries. Other governments, like the governments of Malaysia, or Egypt, for example, found new justification for pre-existing repressive laws.

⁴ See: *A More secure world: Our shared responsibility*, Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2004, paras. 147 – 164., and *In larger freedom: towards development, security and human rights for all*, Report of the Secretary General, U.N. doc. A/59/2005, Mar. 21, 2005, paras. 12 – 17.

⁵ The International Commission of Jurists track these developments in the *ICJ E-Bulletin on Counter-Terrorism and Human Rights*. An archive of these newsletters is available at: http://icj.org/article.php?id_article=3513&id_rubrique=37?en

12. In Egypt, in a seven hour interview broadcast on April 28 and 29, 2005 President Mubarak was asked about the Emergency law that has suspended constitutional protections of basic rights and freedoms continuously since 1981. He responded: "You want me to lift the emergency law when the whole world is putting it in place? If it wasn't for this law, Egypt would be in ruins by now." The last time emergency regulation was renewed (in 2004) the government specifically referred to the USA Patriot Act to justify renewal of legislation, noting also that it "used torture when necessary" just like the United States.
13. With respect to Malaysia, in May 2002, prior to a meeting between former Malaysian Prime Minister Mahatir and President Bush, then Malaysian Minister of Justice, Dr. Rais Yatim met with U.S. Attorney General John Ashcroft and discussed national security measures employed by both countries to combat terrorism. The United States government had previously criticized the Malaysian Internal Security Act (ISA), which among other things, permits protracted detention without charge or trial. Minister Yatim remarked:

I believe that after the meeting there will be no more basis to criticize each other's systems, specifically the ISA, because if they do that, then the Patriot Act, which is quite similar in nature to the ISA, could come into a position of jeopardy itself. Ashcroft seemed to understand the existence, need and the future of the ISA in as much as we understand the Patriot Act.⁶
14. Another discernible widespread pattern of state behavior that has adversely affected the work of human rights defenders is the precedence given by many states to military means to resolve political conflicts. The often-longstanding tensions between governments and their opponents, particularly in situations involving violent separatist or nationalist movements, have intensified with new emphasis given to responding militarily to pre-existing challenges repackaged as terrorist threats. Violence has intensified in the Philippines, Russia, Thailand and India, and minority Muslim communities have suffered disproportionately from violence and deprivations of rights that have been justified by governments as a legitimate response to the threat of terrorism.
15. To show how diverse factors have coalesced to influence human rights conditions and the situation of human rights defenders it may be helpful to examine briefly two specific country situations, where state efforts to curtail rights and freedoms in the name of countering terrorism have had a pronounced impact.
16. In Indonesia five factors exacerbated by heightened global concern over terrorism have played a prominent role in shaping human rights conditions. Many of these were already important elements of the Indonesian transition from authoritarianism prior to 9/11, but their impact on human rights conditions has been more severe in the new global security environment.⁷
17. First: those within Indonesia who hanker after a return to the repressive state apparatus of the Suharto era, especially some leaders within the state intelligence agency BIN have pointed to the threat of terrorism, especially after the Bali bombings of 2002, as reason to reimpose powers of preventive detention and other restrictive measures.
18. Second: The decision to stage a massive military incursion into the troubled province of Aceh in 2003 in an attempt to crush the long running insurgency followed the U.S. invasion of Iraq and

⁶ *Sunday Star*, "U.S. Endorses ISA," May 12, 2002.

⁷ This discussion is based on Matthew Easton, *Reformasi and Resistance: Human Rights Defenders and Counterterrorism in Indonesia*, Human Rights First, May 2005.

Indonesia borrowed some of the rhetorical justification for its war from the United States and its allies. Inevitably, civilian casualties, attributable to all parties, have occurred. Moreover, human rights defenders monitoring violations in conflict zones have been targeted and in some instances killed. The incursion was indicative of a resurgence of military influence within the state. A central challenge facing Indonesia is how to establish civilian control over the military without contributing to the unraveling of state authority.

19. Third: Impunity for the involvement of the military and other state agents in gross violations of human rights remained a serious problem, another indication of the power of the military to obstruct the proper functioning of other state institutions, like the judiciary. There has been little accountability for atrocities committed by the military and its agents in East Timor. Other political killings, such as those of two Americans and an Indonesian in Timika, Papua in August 2002 have not been adequately accounted for. The assassination of the prominent human rights defender, Munir on an international flight to Amsterdam in September 2004, with the apparent involvement of BIN agents, has presented another challenge to the Indonesian justice system and its capacity to stand up to security agencies that have a record of violation the law with impunity.
20. Fourth: Indonesia has suffered violent attacks by Muslim extremist groups, notably the Bali bombings. This has heightened tensions between the state and radical Islamic organizations, some of which have no involvement in political violence. Some of those detained in connection with investigations into Muslim organizations have been tortured, denied due process and subjected to persecution on the basis of their religious beliefs.
21. Fifth: The example of U.S. policies in its “Global War on Terrorism” provided the background context in which the authorities felt insulated from international criticism in escalating the military conflict in Aceh, and in stalling progress towards the liberalization promised by the *reformasi* post-Suharto era. The election of President Susilo Bambang Yudhiyono, who took office in October 2004, rekindled hope for further progress, but the obstacles he faces in fulfilling pledges to uphold the rule of law remain considerable, and his task is made more difficult by the competing pressures of a security environment in which counterterrorism trumps rights.
22. These factors have compounded to make the work of human rights defenders in Indonesia more difficult and to endanger the country’s transition away from authoritarianism towards democracy and greater respect for human rights.
23. In Russia, the government of Vladimir Putin has taken advantage of global concern about the threat of terrorism to curtail rights and centralize power in the hands of the presidency. These trends were in motion prior to 9/11; the Second Chechen War started in 1999, but the post 9/11 global environment weakened international criticism of state practices in Chechnya and the North Caucasus, and provided the government with ample rhetorical justification for its practices. The marginalization and increasing vulnerability to persecution of human rights defenders has gathered pace since 1999, abetted by a domestic and international context in which the legitimacy of criticizing state practices in combating terrorism could easily be called into question. As a result, attacks on human rights defenders have escalated alarmingly, especially in Chechnya and the North Caucasus.
24. The levels of violence in the conflict zone, coupled with travel bans imposed by the military, have made it increasingly difficult for human rights defenders to travel there to monitor human rights conditions. Human rights organizations have been prosecuted using laws ostensibly designed to counter extremism. The catch-all language of such laws has enabled the authorities to restrict the freedom of expression of human rights activists. There has been a sustained effort to denigrate and

vilify human rights activists and other non-violent critics of state counterterrorism policies. Such critics have in turn become the targets of attack by nationalist vigilantes and extremists whom state authorities appear reluctant to rein in.

25. Despite pursuing a vigorous counterterrorism campaign, terrorist violence in Russia has not decreased. 2004 was a catastrophic year for lethal attacks on civilians of which the Beslan massacre of September 1 was only the most terrible of a series of such atrocities. In such a climate, public fear is real and can easily be manipulated by government officials seeking to justify further restrictions on rights and democratic freedoms.
26. Russia is a troubling example of disastrously counterproductive state counterterrorism policies apparently contributing to more terrorism, which then provides justification for yet more repressive policies that are unlikely to provide any remedy. This is a nightmare scenario in which state violations appear to feed terrorism, which in turn provokes state reprisal and so on to more and more destruction.

WHAT IS NEW ABOUT THE CURRENT SITUATION

27. Wars on terrorism are not new phenomena. As Geoffrey Robertson remarked at a 2004 conference on terrorism and human rights in the United States, “over in the United Kingdom we have been trying terrorists unfairly for centuries.” States have long been accustomed to characterizing armed opposition to their rule as illegitimate, and to labeling such opponents as “terrorists” and other such derogatory terms. Countering threats to national security from such enemies of the state has naturally been given a high priority by governments and has often resulted in departures from the rule of law and violations of human rights.
28. These localized “wars on terrorism” or counter-insurgency campaigns are not qualitatively different from the “global war on terrorism” declared by the United States, and joined in with, or exploited by, many governments since September 2001. One of the great disappointments of the post 9/11 period is that so many governments, including western democracies, seem disinclined to learn the lessons of the recent past where governments in countries as diverse as Peru, Indonesia and Turkey, and many more, committed serious violations of human rights in the name of combating terrorists and insurgents only to be left with a damaging legacy of official collusion and culpability in murder and destruction. Such a legacy leaves those implicated in past crimes with a powerful interest in obstructing progress towards political reform and reconstruction that may expose them to being held accountable for their past actions. This contributes to the continuation of chronic patterns of human rights violations.
29. If the pattern of an interaction between governments and terrorists that is destructive of human rights and extremely harmful to human rights defenders is not new, why are we talking about a “new global security environment?” The only explanation I can provide is that the sheer weight of influence of U.S. policy in virtually all parts of the globe has created a phenomenon, which in its size has shaken the global human rights regime in a way that the often even more destructive localized counter-terrorist and counterinsurgency campaigns of the past never did. U.S. government policy sets a global tone in a way that Peruvian policy of the 1980s, or Indonesian or Turkish policy of the 1990s simply did not.
30. Not only is it damaging that the most powerful nation in the world should set an example of disregarding human rights and the rule of law in the face of the threat of terrorism — the sins of

commission of the present U.S. policy; there is also the damage inflicted by the undermining of U.S. leadership in the global struggle for human rights — the sins of omission.

31. For many, especially those with fresh memories of U.S. cooperation with tyrannical regimes during the Cold War, it is a strain to associate the United States with positive human rights developments, but the U.S. victory in the Cold War has increasingly come to be seen as a victory for the values of democracy and human rights. There are elements of both truth and bombast in this, but there is no doubt that throughout the nineties, freed from the constraints and demands of competition with the Soviet Union, U.S. policy in many countries became supportive of human rights in theory and in practice. Human rights defenders were often direct beneficiaries in that they received financial support from agencies like USAID and the National Endowment for Democracy and their sub-contractors. They also received invaluable political and moral support from U.S. diplomats and on occasion from senior administration officials.
32. It is a sad paradox for human rights defenders in those parts of the world where U.S. policy is least popular that their association in the public mind with the United States, and with the rhetoric of the Bush administration, has undermined their effectiveness and credibility. The glaring incongruity of U.S. rhetoric about human dignity and liberty with the images from Abu Ghraib and the grim realities of Guantanamo has not only discredited the United States, but also those who stand up for human rights in many countries. This duality and conflict, which many have portrayed as self-serving hypocrisy, within U.S. policy has contributed to the global questioning of human rights standards and of the activities of human rights defenders.
33. Another aspect of the decline in the United States as a force for global human rights progress is the diminishment in its capacity to apply peer pressure on other states to respect human rights. Despite its patchy record on ratification and compliance with international human rights treaties, the United States was a major player in, and by and large a supporter of, multilateral human rights mechanisms at the regional level in Europe and Latin America, and through the United Nations system. In theory it remains so, but now violative governments have an easy time pointing to U.S. violations whenever they stand accused of disregarding their international obligations. Moreover, the U.S. has appeared to apply a double standard in its rhetoric supporting human rights and condemning tyrants. Certain states whose human rights records are extremely poor have emerged as vital allies with the United States in the “global war in terrorism.”
34. Two elements then have combined to contribute to the new environment in which human rights promotion is more difficult. Firstly the pervasiveness of U.S. influence, and secondly the negative weight of the example set by U.S. violations of human rights and the concomitant damage inflicted on the ability of the United States to play a leading role as a promoter of human rights in the world. With less positive impetus from the world’s most powerful state global efforts to promote and protect human rights have faltered.

ARE STATE REPOSSES TO TERRORISM THAT VIOLATE HUMAN RIGHTS EFFECTIVE?

35. An often unspoken assumption underlying much of the loss of esteem suffered by human rights in recent years is that in combating terrorism it really is necessary to curtail rights; that in defeating the scourge of terrorism the ends justify the means. This is not a morally frivolous argument. Human rights defenders have in some cases permitted themselves to be marginalized and discredited by making it appear that they care more about compliance with the procedural rights of suspected terrorist detainees, for example, than they do about the victims of terrorist violence, and even more

damagingly, that the concerns of human rights defenders may be impeding the state as it goes about the important task of protecting the public from terrorist attacks.

36. To some degree, human rights defenders will always be vulnerable to these kinds of criticisms from those who, for various reasons, do not support human rights. Well-founded fear of terrorist violence makes the task of self-serving demagogues, who would undermine human rights for their own ends, that much easier.
37. However, human rights defenders are not powerless to respond to these charges. One way would be through a more robust and consistent condemnation of terrorist violence, that is to say the deliberate targeting of civilians for threat or attack for political ends.⁸ Having an accepted definition of terrorism in international law would enable human rights defenders to take a clear stance against terrorist crimes, and to call for accountability for their perpetrators, just as we do with human rights violations. This would make it harder, but not impossible, for hostile critics to characterize human rights defenders as soft on terrorism.
38. Michael Ignatieff has set off alarm bells in some human rights quarters by his suggestion in his book *The Lesser Evil*⁹ that “Rights are not always trumps,” thus calling into question what we might call the received wisdom or consensus of the human rights movement that our goal should be “the full realization of all human rights,” in the words of the Vienna Declaration, which has become shortened into the slogan, “All human rights for all.”
39. In declaring that in times of emergency some rights may have to yield to necessity, it seems to me that Ignatieff has challenged some complacent thinking among human rights activists who have always been willing to mouth platitudes about the indivisibility of rights while, in practice, making choices and privileging certain rights over others with some frequency. It does the human rights movement no harm to be forced to face up to our own contradictions, tensions and inconsistencies and to make the “morally problematic” choices Ignatieff is suggesting, rather than pretending that they don’t exist.
40. Some of these problematic choices and tensions, like that between the freedom of religious observance and practice and freedom of expression, or the debate over whether economic and social rights are rights, for example, have not been changed in our post 9/11 world, but others certainly have, most especially the question of which rights and freedoms might legitimately be curtailed to safeguard public security against the threat of terrorism.
41. The knee-jerk human rights response to this question is that there is no contradiction and that curtailing rights does nothing to enhance security. This is an understandable and defensible response to the preposterous claims of many governments (that we have seen much of in recent years) that counterterrorism is sufficient reason to curtail rights that they were already violating, or looking for a convenient pretext to violate. But this argument does not take seriously enough the policy dilemmas faced by governments which are conscientious about their legal and moral obligations, and which must deal responsibly with arguments from security professionals or others that certain changes in

⁸ Consistent with the definition of terrorism proposed by Secretary-General Kofi Annan in his *In Greater Freedom* report, providing for an action to be considered “terrorism” if (1) it is intended to cause death or serious bodily harm to civilians or non-combatants; and (2) its purpose is to intimidate the population or force a government to act or abstain from an act.

⁹ Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Princeton University Press, 2004.

interrogation techniques, or detention regulations or powers of surveillance will reduce the threat of terrorism.

42. It is perhaps helpful here to think of terrorism, as defined by Kofi Annan, as a violation of human rights. So in considering some limitation on a particular right for the purposes of preventing terrorism we are not exchanging human rights for some other value. We are seeking the appropriate balance between two competing rights.
43. In *The Lesser Evil* Ignatieff suggests a process for making such choices insisting that proposals to abridge rights should be subjected to the test of adversarial review by the legislature, the courts, and a free media, and that such testing should be administered “with a conservative bias against infringements of established standards of due process, equal protection and basic dignity.” Ignatieff also insists that derogations from rights should be recognized for what they are and cautions governments “never to allow the justifications of necessity — risk, threat, imminent danger — to dissolve the morally problematic character of necessary measures.”
44. It is important to observe that most governments, including that of the United States, responding to the threat of terrorism post 9/11 have done a poor job in applying Ignatieff’s checks on arbitrary executive power. Had they applied them, the deterioration in human rights conditions and violations suffered by victims would have been substantially less.
45. Nevertheless, many human rights activists remain uneasy with the suggestion that governments might be given license to violate rights. This seems to me to be a coherent and principled position for human rights defenders to adhere to. Our job is to monitor human rights conditions, to object when violations occur and to promote better observance. In this context it may be said that it is sufficient for human rights defenders to take note of the fact that certain government policies constitute violations of human rights, and to point out this fact to policy makers who may be giving human rights considerations too little weight in their decision making process. Holding this pure position prevents human rights activists from becoming embroiled in extremely gray moral arguments about torture warrants, as proposed by Alan Dershowitz, or the use of “moderate physical pressure” in interrogations. It shields us from the risk of being sucked into debates on which we can claim no expertise, such as, “what is the best way to extract reliable information from an interrogation subject,” when our participation is only likely to give a human rights veneer to unacceptable practices. Finally, standing above the fray in this manner leaves the tough moral choices in the hands of politicians, who, in a democracy, are accountable to the electorate for the choices they make, and to the courts, should they perpetrate or order criminal violations of human rights.
46. The disadvantage of not engaging in the complex questions of whether it might be justifiable in certain circumstances to curtail a specific right is that it removes human rights defenders from debates about real political choices being considered by policy makers. If part of promoting better observance and better implementation of human rights protections is minimizing the extent and severity of human rights violations, then it is legitimate and even necessary for human rights defenders to agree to the limitation of one right in order to ensure the better protection of a more valuable one. The landscape of this discourse is necessarily pragmatic, expedient, context specific and imprecise, but in an imperfect world, it may result in fewer violations of human rights. So if our task is to bring about better implementation of human rights, rather than to ensure the theoretical purity of human rights principles, then Ignatieff has provided human rights defenders and policy makers with a valuable guide on how to navigate the real world interface between counterterrorism policy and human rights.

47. While recognizing that terrorism represents a serious threat that governments are obliged to take effective measures to protect their people from, it is easier to think of examples where counterterrorism policies that involved violations of human rights have been counterproductive and resulted in the kind of vicious circle escalation of more violations leading to more terrorism and so on, than to give examples of violations of human rights¹⁰ that have contributed to a reduction in terrorism. Part of the reason for this is that it is impossible to measure events that did not occur and that arguably were prevented. On the other hand, it is possible to count casualties of terrorist violence and, to some degree, to monitor human rights conditions comparatively over time.
48. The derogable right that has come most under threat in this and other periods of concern over terrorism is the right to liberty. Administrative and other forms of detention with little or no access to judicial review have proliferated in many countries since 2001. The United States, notoriously, has implemented a unilateral global administrative detention regime whereby individuals in any part of the world deemed to be terrorist threats can be declared “unlawful combatants” and taken to detention centers like that in Guantanamo Bay, where they can be held indefinitely.
49. Again, history is filled with examples where the widespread practice of administrative detention, which necessarily places detainees vulnerable to abuse by their captors who are subject to fewer constraints than exist within the normal penal system, has resulted in widespread violations that have fueled grievances, escalated conflicts, and contributed to the spread of corrosive practices like torture.
50. The example of Egypt between 1984 and 1997 is a very clear one of violating rights in the name of combating terrorism having the opposite effect. Hosni Mubarak came to the presidency in the traumatic aftermath of the assassination of President Sadat in 1981. In the early years of his rule he appeared appropriately mindful that one of the contributory factors in his predecessors assassination and the violent unrest that accompanied it had been Sadat’s increasing intolerance of dissent, including the detention of hundreds of his political opponents in 1979 and 1980. Sadat came to be vilified as a modern day Pharaoh, ruling tyrannically and out of touch with his people.
51. President Mubarak set about running a more inclusive, consultative government, and notably made substantially less use of draconian emergency powers of administrative detention than his predecessor had done. Ahmed Rushdi, a Minister of the Interior appointed in 1984, showed a refreshing commitment to running a national security policy that would uphold the rule of law. In February 1986, the government was shaken by riots within the Central Security Forces, a conscript force widely used to suppress street demonstrations and other protests. The army was deployed to restore order. President Mubarak dismissed his Interior Minister and appointed Zaki Badr, a former provincial governor, who was known for his confrontational approach.
52. Badr’s four years as Minister of the Interior left a legacy of violence and resentment for which Egypt and the world is still paying a price. Badr stepped up the state’s efforts to suppress opposition from radical Islamic groups, some of which were already engaged in violent opposition to the government, and others became so as the conflict escalated. Badr employed such methods as extrajudicial killings, extremely widespread use of powers of administrative detention under the emergency law, frequently going beyond what was permissible even under that extremely lax statute, and torture. Tens of

¹⁰ There are measures that have been taken with respect to enhancing airline security, enhancing border security, preventing money laundering and measures in many other areas that have resulted in restrictions on freedoms, some of them petty, like the freedom to carry a pen knife on an airplane, others less so, which nonetheless fail to reach the level of violations of universally recognized human rights.

thousands of young men, especially from Upper Egypt, were thrown in jail in mass round ups and developed bitter resentment against the government. In the dry language of Amnesty International's annual report dealing with 1989:

Torture and ill-treatment of detainees held under emergency provisions were reportedly widespread. People caught in waves of mass arrests were routinely beaten. Many others were systematically tortured in efforts to extract confessions of illegal activity or to obtain information.¹¹

53. Badr was removed from office in scandal in 1990 after his public comments about the political opposition proved too embarrassing to the government, but the damage was done. In the climate of resentment and humiliation created by Badr's brutal methods virulent extremist groups developed and escalated a campaign of terror against government officials and tourists, an economic mainstay of the Egyptian economy. Repression and political violence continued for several years with devastating results. In 1992, the President imposed a new counterterrorism law and began referring suspected terrorists to trial before military courts. Violence continued to escalate. In 1993 there were over 1,100 casualties of political violence, the majority of whom were civilians.¹² Minister of Interior Hassan el Alfi was shot and wounded in 1993. There was an attempt on the life of Nobel laureate Naguib Mahfouz in 1994, an assassination attempt on President Mubarak in Addis Ababa in 1995, and a continuation of violations of human rights and political violence by extremist groups. In the midst of this violence the government opened up a dialogue with its Islamist political opponents, some of whom maintained contacts with groups known to be engaged in violence.
54. This dialogue, much of which is still cloaked in secrecy, appears to have contributed to a gradual reduction in levels of violence, especially after the 1997 Luxor massacre in which the *Gama'a Islamiyya* group claimed responsibility for the murder of 58 tourists and four Egyptians. After this atrocity public opinion turned decisively against violent religious extremists; the leadership of the main violent groups was either dead, in prison or in exile (some of whom have emerged as leading figures in *Al-Qa'eda*); and the government appeared to have reached an accommodation with the social demands of the Islamists which has resulted in a marked increase in religiosity and public piety that continues to this day, at some cost to basic rights and freedoms through censorship.
55. Tracing the chain of causality in this sequence of historical events in Egypt is a difficult undertaking, and it is impossible for human rights activists to assert conclusively, "violating human rights to combat terrorism does not work, look at Egypt," (or any of a number of country examples we might provide to make the same point.) In any case, skeptics can always observe that country conditions in another context are different. Nevertheless, the weight of historical evidence is on the side of violating rights to combat terrorism creating more problems than it resolves, and that other factors beyond repression, usually changes in political circumstances, such as the opening of a dialogue with the opposition in Egypt, are what eventually lessen the threat of terrorism.

¹¹ Amnesty International Report 1990, p. 85

¹² According to figures compiled by the Ibn Khaldoun Center, in 1993 363 Islamic activists, 301 members of the security forces and 442 civilians were killed in political violence.