Activism is not a crime

DIRK VOORHOOF AND SERGE GUTWIRTH

Non-governmental organisations and their activists play an active and essential role in representative democracies.

Like journalists and other watchdogs of society, they are part of the vanguard against tyranny and their service to the political system, while often inconvenient to politicians, should not be underestimated.

However, there is an increasing and disturbing trend to answer civil disobedience and peaceful protest with criminal prosecution, and using harsh, disproportionate punishments as a means of stifling dissent, and restricting freedom of expression.

Just looking at Greenpeace, an organisation that strictly adheres to its core values of non-violent direct action, there are several prominent examples of activists attracting harsh treatment from authorities over the last few years alone. During the Climate conference in Copenhagen in December 2009 for example, four Greenpeace activists were held for 20 days in preventive...
detention for gate-crashing a banquet held by the Danish Queen and unfurling banners. This reaction by the Danish justice system to the "Red Carpet Four" was a particularly brutal and intimidating act considering the peaceful nature of the activity.

More than a year earlier on the other side of the globe, Junichi Sato and Toru Suzuki, two anti-whaling activists were subject to a similar case of arbitrary detention. The two intercepted a box of whale meat, embezzled from the taxpayer-funded whaling programme, and handed it in to the public prosecutor as proof of the illegal trade. Remarkably, it was them and not the whale meat traffickers who were arrested. They were held for 26 days - 23 of which were without charge - before being charged with trespass and theft, and put on trial by a justice system that refuses to investigate the whale meat embezzlement.

In both cases, there is no justification for such extended periods of detention, especially since Greenpeace and the activists involved cooperated honestly and willingly with the investigations at all times. In the case of the Tokyo Two, as Sato and Suzuki are known, the fact that after two years they are still defending themselves in court is particularly unjustifiable.

The United Nations Working Group on Arbitrary Detention agrees, having recently adopted an opinion that the Tokyo Two were arbitrarily detained by the authorities, and that the Japanese authorities have failed to respect their human rights, including freedom of opinion and expression.

What is of particular concern in these cases is that both Denmark and Japan are first world democracies, which have signed and ratified the United Nations' International Covenant on Civil and Political Rights (ICCPR). Based on the Universal Declaration of Human Rights, the ICCPR is a significant means of ensuring that basic human rights are respected and ensured by all parties. Long, arbitrary detention of activists not only constitutes a violation of the ICCPR, but it also creates what the European Court of Human Rights describes as a 'chilling effect', in that the fear of repercussions from authorities works to discourage further peaceful dissent that is essential to a free and open society.

The Red Carpet Four and the Tokyo Two are all facing jail sentences, highlighting the growing tendency of authorities to resort to criminal law in a quick and disproportionate manner. This is deeply concerning, as it is a sign of justice systems being used as tools to rein in freedom of expression and the political liberty of citizens.

It may have been 30 years since Japan ratified the ICCPR, but the UN Human Rights Committee has repeatedly called on it, most recently in 2008, to improve the situation in relation to human rights across 26 different categories, including freedom of expression.

The Tokyo Two case provides a clear sign that the Japanese authorities are not living up to Japan's obligations under the ICCPR, but what is equally concerning is that neither are their fellow signatories. All governments that have ratified the ICCPR must ensure that its principles are upheld, not only in their own country, but universally. It is an international treaty and the defence of human rights is an international obligation. It is unacceptable to simply say 'not my country, not my problem'.

The severe reactions by police and legal systems against the Red Carpet Four
and the Tokyo Two are flagrant violations of freedom of expression and the right to peaceful protest, rights guaranteed by the European and International Conventions on Human Rights. These cases stand as a warning to everyone of what the future may hold if governments are allowed to simply ignore their obligations and disrespect the fundamental rights of citizens and NGOs whose intentions are to contribute to a better world for all.

Dirk Voorhoof is a Professor of Media Law and Freedom of Expression at Ghent University, Belgium and Copenhagen University, Denmark. Serge Gutwirth is a Professor of Human Rights at the University of Brussels, Belgium.

23 COMMENTS

Add your comment

Henry :
30 May 2010 9:00:47pm

I'm sure we won't have any trouble teaching the asylum seekers how to be activists, maybe they may even activate in favour of indigenous people.

granny :
29 May 2010 1:46:56pm

Let us wish those 650 people on board the flotilla of boats, success in bringing the much needed medicines, building materials and necessities of life to the people of Gaza.

Anon :
30 May 2010 6:07:38pm

And let us hope that the flotilla of boats are not used to ship arms.

And let us also hope that if they do ship aid, it is not grabbed by Hamas to use for military purposes.

And let us hope that if either of these things do happen, the people on board didn't intend to be terrorist supporters.

http://www.abc.net.au/unleashed/stories/s2911068.htm

31/05/2010
Harquebus:
29 May 2010 1:20:49pm

Those with the gold make the rules.

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Bob Lansdowne:
29 May 2010 6:20:40am

The lying, draft dodging Howard also had a valued policy of non-violent direct action...he sent other people's kids into bogus battle zones to reinforce his custom and spent millions of taxpayer funds to erect monkey cages all over Sydney simply to protect his analogous primates.

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Jon Jenkins:
29 May 2010 6:15:57am

I don't mind Greenpeace or any other organisation from protesting responsibly in public areas and in the old vernacular will fight to the death to protect their right to do so. But when they "crash my party" so to speak then treat them as you would any other criminal.

As to activism, speaking as one who has seen the results of the complete abuse of balance of power by groups such as the Greens (and others) from a first hand Parliamentary perspective: they are a major factor in the demise of democracy, but after all that is part of the socialist agenda!

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Jeremy:
29 May 2010 7:44:05pm

Jon, the Greens have never held the balance of power in Australia. It's coming though - save your socialist paranoia for next year.

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Jon Jenkins:
30 May 2010 6:31:26am

Sorry Jeremy, but in NSW the Greens held the balance of power for several sessions of Parliament.

I watched in dismay the sleazy back room deals cut for legislative, executive jobs for apparatchiks, funding arrangements for "friendly" organisations and preferences and legislative support. It was an accepted part of politics but to me it is a harbinger of the
demise of the democratic process when those who represent so few can influence so many in hidden way. But so far they are winning mainly because the press is so crap: commercial media is only interested in scandal and sleaze and the ABC only gives breath to the left wing side of politics i.e. ALP and Greens.

As for when the law is wrong: that's what democracy and the right to protest is all about: get enough people interested and the politicians will follow or we vote them out. But don't object when criminal action receives criminal sanction.

The problem with socialists is that they are narcissistic dictators at heart and only accept the majority when it coincides with their beliefs, when they don't they use violent protest and anarchy: the ends justifies the means.

If my experience is any guide then even as a non religious person all I can say is God help us if this "activism" leads to real power at Federal level!

DannyS:

31 May 2010 7:59:49pm

It seems to me Jon that most of what you said applies to any party when it comes to looking after mates and pork barrelling are concerned.

And narcissistic dictators can be found across all political spectra around the world, socialists have no claim of exclusivity in this regard nor should they be singularly labelled as such.

How soon we forget the inroads into Democracy by Gair, McManus, Askin, Petersen and their ilk. Harradine will go down in history as one of the most effective manipulators of the system.

I never had much time for Keating, but I did applaud his assertion that the Senate was unrepresentative swill. The need for a Senate has long passed since Federation. Compulsory voting is an anachronism that should be done away with. Then maybe the voices of those who really wish to be heard will be heard.

Jon Jenkins:

29 May 2010 6:06:41am

http://www.abc.net.au/unleashed/stories/s2911068.htm 31/05/2010
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jeremy:
28 May 2010 11:23:27pm

what if the law is wrong? Or its penalties excessive? What if the wrong that is being revealed by the activism is far greater than the crime being committed? Designating something illegal does not make behaviour wrong. If you accept that climate change is the most serious problem that Australia faces, then what are the limits of activism? Does the severity of the crisis actually demand willingness to challenge laws that allow such madness to continue and grow worse? Recently, Victoria imposed new and incredibly severe penalties for interference with energy production - a desperate bid to protect the completely unjustifiable brown coal industry. Citizens should not accept such laws - which are not about the public good but protecting corporate cronies.

Sydney girl:
28 May 2010 9:47:40pm

Peaceful protest, often involving breaking the law has been an integral contribution to much social change, often things that we now very much take for granted.

Clamping down on peaceful protest such as in Japan and Copenhagen won't stop it (I hope), but does reflect, in my view, and increasing determination of governments and corporations to hang on to what we all know is an unworkable system. The thing that encourages me about the stiffer penalties is that it suggests we're having an impact, and have an impact we must!

Anon:
28 May 2010 8:57:09pm

Yawn. Yet another attempt to sugarcoat the personal responsibility of others.

Let's make something straight. Activism is not a crime. Activism should not be a crime. And most people would agree with that.

But when a person, in their attempts to be an activist, decides to commit a crime? Well that is a very different kettle of fish.
If activists want to be activists, then they should be allowed to.

If they then commit crimes in the name of activism, then they should be punished for those crimes. And that too is fine. Because it is the crime that is punished, not the activism itself.

Most activists would not care. Many activists are willing to commit crimes in the name of their cause, even with the knowledge that they will be punished.

So not punishing them for those crimes would turn the whole thing into a farce. Both for the public and for the activists.

Deckard:

30 May 2010 6:41:53pm

What Dirk and Serge are talking about is not giving activists a green light to break the law, but not treating them like common criminals immediately. If an activists is peaceful and proportionate, then there is no reason why they should be dragged through criminal court proceedings. Fines are quite common when activists break the law, but the examples given show a disproportionate response from the authorities.

DocMercury:

28 May 2010 8:02:22pm

Depends.

People tend to look with much disapproval upon producing milk from cows fed chemically psycho-active rusty grain, almost more than they do being delayed traveling between workplace and playground by marching slogan shouting placard wavers blocking two lanes of traffic.

Depends.

On whether you're a comedian pretending to be Osama bin Laden, or someone who takes something Osama bin Laden is said to have said to its bloody conclusion.

Depends upon whether or not you might approve of fisticuffs and missile throwing in Australian parliament, and whether you think throwing green hydrogen sulfide eggs would ultimately make any difference.

Finding a cause is easy enough. There is an extensive list.

Lleyton Homosexual:

29 May 2010 11:37:15am
Depends are an incontinence aid

Lucky:

28 May 2010 7:58:29pm

Great, let's excuse protesters from interrupting something they don't like to show their commitment to a cause. No doubt with the press being notified beforehand to make sure it gets on the nightly news bulletin for extra impact.

Too bad if a heterosexual couple have their wedding reception invaded by persons protesting against laws discriminating the rights of same sex couples to marry 'officially'. Or vice versa for that matter. Commitment is everything and excuses all?

I applaud the Danish authorities for going hard.

I also deplore the Japanese authorities for their stance.

Not because it involves the harvesting and selling of whale meat, but because the authorities have ignored the corruption aspects of the case and have prosecuted the embarrassing whistleblowers. But that is Japanese politics and the biggest buck wins every time.

The two cases are worlds apart.

Mind you, we here are not exactly squeaky clean when it comes to harvesting animals; kangaroos for example. A chest or belly shot will bring a roo down eventually and the coup de grace can be delivered later by the support crew with a bit of lead pipe or a machete. The lazier simply use a .22 hollow point round through the throat.

Guess why abattoirs don't have Open Days for the general public. It's nasty, very nasty in there. It's alleged that the turnover of employees on the line in an abattoir is 5 to 6 months on average.

jim:

28 May 2010 2:02:21pm

It's a giant bandwagon of jackboots from govt spending and contracts, big oil and corp weight throwing, from the institutions elitism, bullying and frauds on the people and public purses, to just plain marauding business thuggery. The greed club and all laws and authorities primed for powermad self indulging in the excess and greed club.

Pleb:

28 May 2010 12:54:07pm
Dirk and Serge, you are very disingenuously wrapping 'peaceful protest' and 'protest involving illegal activities' into one neat bundle.

I wholeheartedly agree that we are indeed on a very slippery slope when we start to stifle dissent. However, we are on an equally slippery slope when we start to justify illegal activity, or interference in the legal activities or rights of others, by journalists, NGOs, or individuals, because THEY believe their "intentions are to contribute to a better world for all".

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Deckard :

30 May 2010 6:30:27pm

Given the examples they use, I don't think the Professors are saying that activists should get a get out of jail free card for having good intentions, I think they are getting at the idea of proportionality in how the authorities deal with peaceful protest. It's not good enough to simply say "they knowingly broke the law, they deserve to be treated no different to normal criminals" as a later commenter puts it. That kind of rationale does not make for a free and pluralistic society where the people can challenge authorities without fear of retribution.

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the yank :

28 May 2010 12:08:20pm

This is not an easy topic to discuss without taking sides. Obviously activism can be criminal. It depends on what actions we are talking about. I suspect most of us think our actions are pure and justified but there is always another side that thinks the same. I am glad that the Federal government has finally taken Japan to court over whaling. They may well lose but at least they are testing the legal system.

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Jan :

28 May 2010 12:02:45pm

Is this growth of governments going for tough penalties, against activists, an extension of the 'get tough' with all law breakers? As society goes into economic stress it would appear that an over- reaction to law and order issues becomes equally strong.

As more and more people feel helpless to control what is going on around them, they choose to accentuate the things they can do.
seajae:

28 May 2010 11:28:13am

I agree, these laws are harsh but we also must remember that these people also broke the law. Whether or not it was for a peaceful demonstration or not, they still knowingly defied the laws of that country so they were aware they would be arrested. Crying that it was for a good reason is useless even if it was, people need to take responsibility for their actions and be prepared to be jailed. Trying to get away with it because you do not threaten, kill, or destroy people or property is no good reason, if you want to protest then you have to be prepared to be tried by the laws pertaining to that country or simply do it a legal way.
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