

## **Why Criminalise Dialogue with Terrorists?**

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**UK Parliamentarians, the US Congress and the European Parliament need to take a closer look at the aspects of counter-terrorism legislation that have an adverse impact on mediation**

The US Supreme Court decision in 'Holder v Humanitarian Law Project' last month confirms that it is illegal for US citizens, or organizations receiving US funding to support negotiated peace settlements by training or advising a conflict party that is on the US State Department's terrorist list.

At the same time, the US and British governments have been calling for inclusive, political solutions to the conflicts in Iraq, Afghanistan and Somalia (not to mention supporting peace processes in Nepal, the Philippines and Sudan). To achieve this, someone has to talk to 'terrorists' and armed groups will need to join the political process.

The unintended consequences of the Supreme Court's decision are to make mediation and successful peace process that much harder. And the human costs of these missed opportunities are simply not being counted: civilians' lives lost, relationships antagonized, and violent conflict prolonged.

For the armed groups themselves, like the Free Aceh Movement (GAM) in Indonesia or the Sudan People's Liberation Movement (SPLM/A) in Sudan,

we have seen that opportunities for dialogue and learning about human rights and humanitarian standards are transformative and can act as incentives for engaging in politics. Closing off such options can have the reverse and perverse effect of inciting extremism and belligerence.

In its recent ruling, the US Supreme Court upheld the anti-terrorism law first adopted in 1996 and amended in the 2001 Patriot Act, that prohibits the provision of “material support or resources” to foreign organizations designated as terrorist. In rejecting the argument that the Act violated the constitutional rights of free speech, the Court ruled that any service, training, expert advice or assistance to ‘terrorist’ organizations carries a penalty of up to 15 years in prison – even if these activities are aimed at steering those groups towards peaceful and legal activities.

Though it is important to note that the ruling was very narrow and does not address all forms of peaceful speech and advocacy, the Court’s rationale suggests that it would uphold criminalization of most actions intended to engage armed groups in peace processes. For example, the Court considered training that imparted a “specific skill” to these groups “frees-up” other resources that a group could then put to “violent ends”. The Court emphasized that such actions require “coordination”. They also considered that engagement provides these groups with “legitimacy” and would put a strain on US foreign policy.

In the UK, the Terrorism Act 2000 makes it illegal to arrange, manage or assist in managing a meeting to support, further the activities or be addressed by a proscribed organization. The only caveat to this is that you are allowed to organize “genuinely benign meetings”. Similarly, the UK Charity Commission’s counter-terrorism strategy scrutinizes “links”

between a charity and terrorist activity and encourages public whistle-blowing. “Links include, but are not limited to, provision of facilities and formal or informal links to proscribed organizations.”

While potentially leaving room for interpretation with vague terminology, like “informal links” and “genuinely benign meetings”, the British approach has the same net effect – it discourages peacebuilding charities from seeking to hold dialogue meetings with members of proscribed groups.

The European Union (EU) also has lists of individuals and organizations it categorizes as terrorists. While EU anti-terrorism policy does not legally prohibit direct engagement with proscribed actors, Oliver Wils and Véronique Dudouet have pointed out that it does lead to serious restrictions such as difficulties for representatives of groups wishing to take part in mediation or preparatory activities (for example in terms of visa and travel restrictions).

These not-so-smart sanctions ultimately undermine what are already politically delicate and dangerous efforts to offer mediation and mediation support to help end violent conflicts.

The larger impact of this US Supreme Court decision is not on peacemakers but on civilians targeted in today’s armed conflicts. While no one is actually keeping a record of the full human costs of today’s wars they can be seen in the occasional back-page story about a massacre of civilians. We know that the victims of wars are mostly civilians, and that most wars today are not between states but within states. In 2009 the number of people displaced by conflict within their

country grew to 26 million according to UNHCR.

Through our work Conciliation Resources has found that criminalizing engagement in dialogue and political processes through blunt instruments like blacklisting are simply not calibrated to be flexible enough to accommodate changing political environments. The peace process in Nepal is a good example of this. The country's Maoist insurgency was added to the U.S. lists as part of the Global War on Terror. It is difficult to see how this benefitted U.S. national security, but it did place strict legal sanctions on US groups and individuals, inside and outside government working to support a vulnerable peace process. Despite these challenges a peace accord was signed in 2006, and shortly after the Maoists won a majority of seats in Nepal's first post-accord election. According to Joshua Gross, at Fletcher School of Law “In proscribing the Maoists, the U.S. lost a crucial early opportunity to identify and strengthen the pragmatists within the Maoist leadership and isolate the elements that opposed negotiations.”

Ultimately, wielding the stick alone can be counterproductive for peacemaking. Recent peace processes in Indonesia, Northern Ireland or South Africa, have shown that peaceful forms of engagement tend to strengthen the pro-dialogue elements within a group, while their absence tends to reinforce hardliners by removing viable alternatives to violence.

As Diana Francis rightly points out in her article, to make dialogue happen amidst deep-seated tension requires “courage, patience, careful communication and delicate judgment”. We should not overlook the fact that any peace process is preconditioned on trust and good faith between parties. If exemptions or conditions for de-listing are not clearly spelt

out, proscription deepens the level of mistrust and the intractability of conflict.

The majority of conflicts in the world are asymmetric in nature; this means that often, before a peace negotiation can start, some form of training and building of a group's capacities to engage politically are required. Anyone who has been involved in such work such as the Carter Centre, the Centre for Humanitarian Dialogue, Sant'Egidio or ourselves, will know that armed groups ask to be more informed on how the international political systems work with regards negotiating peace, and how to develop their own negotiation skills and abilities to devise peaceful strategies.

In many of the world's protracted armed conflicts quick and decisive military victory is a costly mirage. Encouraging and engaging armed groups to embrace political means, abide by the rule of law and to move away from violence offers a more effective alternative to exclusive military strategies.

As Paul Rogers writes, the US and its allies in Afghanistan have shown since the beginning of the year "a very clear willingness to negotiate with the insurgents". This US Supreme Court ruling comes at an odd moment, when governments are increasingly acknowledging the importance of a political settlement in Afghanistan and Somalia.

We need to learn from the hard lessons of peacemaking and compromise from Northern Ireland, South Africa, Nepal and Iraq. In Northern Ireland, without the work done by those who worked behind the scenes, such as the Quakers, the Catholic Church or local dialogue groups like

Corrymeela, to bring armed groups from both sides to the negotiating table, we would never have had the Good Friday Agreement.

UK Parliamentarians, the US Congress and the European Parliament need to take a closer look at the aspects of counter-terrorism legislation that have an impact on mediation. Policy-makers need to ensure that engagement, mediation and provision of principled advice and support to armed groups on human rights, humanitarian law and peacemaking is legal and clearly exempt from prosecution.

We need to consider these laws from the peacebuilding perspective and to find ways of making them 'smarter' and more sophisticated. This means more transparency on why a group or individual is listed in the first place, mechanisms to accommodate those who constructively engage in peace and negotiations processes, and clarity on what standards would need to be met to lift bans.

It is time to untie our hands and allow former enemies the opportunities to find ways to live in peace.