

Norwegian Helsinki Committee speech by Secretary General Bjørn Engesland,

To the 39th Congress of the International Federation for Human Rights (FIDH),
Johannesburg 24 August 2016

Ladies and gentleman,

I am honoured to speak here today.

I am also very pleased that my organization is about to join the important FIDH family of human rights organizations. I think we will benefit a lot from being part of this network. And we will do our best to contribute as well as we can as a FIDH member.

My organization mainly does three things:

- 1) We document human rights abuses and perform fact-based advocacy;
- 2) We support financially and in other ways human rights defenders and organizations in Eastern Europe and Central Asia;
- 3) We contribute to and perform human rights education.

Based on experience from these activities, we realise very strongly that there is need for more tools in order for the international community, in particular its democratic members, to increase protection and support to human rights defenders and organisations that work in increasingly difficult circumstances.

Several of our colleagues in Russia, Belarus, Azerbaijan, Turkey, and in Central Asia have over time experienced imprisonment, torture, and even killings. They are on a regular basis portrayed as “foreign agents”, traitors, and extremists by governments or by private actors.

It is of course important that the UN and other international organizations adopt resolutions supporting human rights defenders. It is likewise important that treaty bodies find states guilty of violating their rights. Democratic states should continue to raise their cases in bilateral and multilateral settings.

We think, however, that this is not enough.

Too often, resolutions remain with little effect only on papers in New York and Geneva. Even if a state is found guilty of violating human rights of human rights defenders, those officials who committed the violations remains unpunished and above the law.

I will therefore argue that democratic countries should establish additional tools. My organization has for some time argued that Norway’s government, as well as governments in other democratic countries should establish targeted sanctions that prohibit entry and freeze assets of persons who *unpunished* commit gross violations of human rights against human rights defenders or whistle-blowers.

These kinds of sanctions are often referred to as *Magnitsky* sanctions.

So far the US is the only country that has adopted such measures. The US Magnitsky Act is, however, limited to Russian citizens only. We advocate for *globally* directed sanctions, which the US Congress is indeed currently debating. They could potentially target abusers in any country.

In 2015, Norway's government issued a White Paper entitled *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation*. It states that the Norwegian government is "concerned by the fact that human rights are coming under increasing pressure worldwide. Human rights are the foundation of freedom, justice and peace in the world." (Page 7).

The White Paper points out that among the main challenges is that many states violates rule of law principles, the right to life and the prohibition against torture. It also points to the often-difficult situation of human rights defenders.

Along with widespread corruption and tax crimes, these are issues central to the so-called Magnitsky case. This case has become a symbol of how corruption and abuse of power leads to violations of human rights.

Magnitsky was a renowned tax law expert, who uncovered the largest tax fraud in Russian history. A network of public officials, police and criminals defrauded the state of \$ 230 million using companies they had stolen from Hermitage Capital Management, an international investment fund led by businessperson Bill Browder. They succeeded in getting Magnitsky arrested on 24 November 2008.

After almost a year in various detention centres, he died on 16 November 2009 because of torture and lack of treatment for serious illnesses.

Russian authorities have completely failed to bring any of those responsible for the tax fraud Magnitsky uncovered or those who tortured and killed him to justice. The *Justice for Sergei Magnitsky Campaign*, led by Mr Browder, has therefore focused on promoting prosecutions and sanctions in Western countries against those involved.

The campaign succeeded in December 2012 in getting US authorities to introduce legislation, which prohibits entry and freezes assets of persons who were responsible for the tax fraud and human rights abuses against Magnitsky.¹

The legislation also target officials who were not involved in the Magnitsky case, but committed gross violations of human rights against other whistle-blowers or human rights defenders.

The Magnitsky case is unique in that it has gained widespread international attention. However, we find the problems it encompasses in a large number of similar cases; both in Russia and in other countries where corruption, embezzlement and abuse of power takes place extensively.

The existing system of international protection essentially makes *states* accountable; not persons. The European Court of Human Rights is considered to be the most far-reaching example of such international protection since its decisions are legally binding. However, the Court can only find *states*, which are parties to the European Convention on Human Rights, guilty of violations.

Effective implementation of judgments, preventing similar violations to occur, may imply that the states themselves conduct criminal investigations or other types of reactions against the persons who committed crimes resulting in human rights violations. Unfortunately, currently a large number of states neglect their obligations to do so.

Bilaterally, dialogue and cooperation on projects with various governments to strengthen national human rights protection measures or with civil society organizations are among the most important instruments of democratic state's human rights policies.

There are also in place requirements of progress in good governance, democracy and respect for human rights in order to receive development aid.

Norway and a few other countries exercises *universal jurisdiction* in selected cases where the perpetrator has ties to Norway. This applies for cases of core international crimes, i.e. war crimes, crimes against humanity or genocide. So far, Norwegian courts have heard cases of such crimes committed in Bosnia and Herzegovina and Rwanda, while Norwegian prosecutors have investigated a large number of cases from a range of other countries.

We have also experienced rapid developments of international tribunals prosecuting international crimes, such as the UN tribunals for the former Yugoslavia and Rwanda and the International Criminal Court (ICC).

However, a large impunity gap remains in many situations for attacks on those who advocate for respect for human rights. As the Norwegian government acknowledges in its White Paper, international criticism of human rights violations by authoritarian regimes often have little or no impact. Despite States having committed themselves to respect human rights and protect human rights defenders, developments point in the wrong direction.

- There is therefore need for measures that make individual officials accountable and increases the costs of wrongdoing. Although officials know that they face no consequences at home when brutally bringing people to silence, visible and “costly” reactions from other states could have a preventive effect.

Abuses often take place because officials are being exposed as corrupt or complicit in other forms of economic crime. In many cases, relevant authorities fail to investigate corruption and impunity prevails for the perpetrators. The whistle-blower however fall victim to harsh sanctions or extrajudicial attacks.

In a globalized world, such abuses have great significance for other states. Money from fraud or embezzlement may be invested in Western countries, a Western company may be the employer of the whistle-blower, and the human rights defender may work closely with international human rights organizations.

- To conclude that the abuses do not concern democratic states or touch upon their interests is clearly not an option.

Although attacks on human rights defenders represent serious human rights violations, they will often not get over the threshold of core international crimes. Criminal investigation outside the country where the crimes have taken place (exercise of universal jurisdiction) may therefore be impossible. At the same time, only very few such cases can be prioritized for criminal investigation due to limited resources and other considerations.

- There is therefore need for less costly, but visible and effective measures to combat impunity and confront serious abuse.

Global Magnitsky sanctions include such measures by denying visa and freezing assets. It is well documented that a large proportion of the money derived from corruption and fraud in authoritarian countries are placed in banks or in property and businesses in Western countries. The rich and corrupt ruling class in authoritarian countries send their children to high quality schools in the West.

- Denial of visa and freezing of assets is therefore a precise and targeted measure.

If a large number of countries were introducing similar schemes, it would mean increased protection of human rights defenders and whistle-blowers. A global Magnitsky mechanism represents an important tool for States that want to take their responsibility to promote and protect human rights seriously.

Such sanctions by democratic states will put considerable pressure on the States concerned to clean up the cases by prosecuting corrupt officials who commit human rights abuses in order to conceal their crimes.

I thank you for your attention. I look forward to take part in further discussions on this and other topics.

For those who want to know more about our reasoning and advocacy for Magnitsky sanctions, I recommend to visit our web page.

On 26 September we will arrange an international hearing in Oslo on the Magnitsky case. It will both discuss the Magnitsky case in itself and discuss Magnitsky sanctions as a way to increase protection of human rights defenders. You are of course more than welcome to attend.

¹ The website of the Magnitsky Campaign presents comprehensive information on the Magnitsky case, Russian authorities efforts to “blur” the case and the initiatives to target those who were responsible for the abuses: <http://russian-untouchables.com/eng/>