

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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24 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 49/10, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **article 6 of chapter 11 of the State of Georgia's Criminal Code outlawing "domestic terrorism," which entered into force in July 2017, amending title 16 of the Georgia Code (GA C).**

We respectfully address several serious human rights challenges raised by this amendment, including the definition of domestic terrorism, which, in our view, is overly broad and may not as such be consistent with your Excellency's Government obligations under international human rights law. We particularly highlight the negative and disproportionate impacts that the legislation may have on the exercise of freedom of opinion and expression, as well as freedom of peaceful assembly and association. We respectfully encourage your Excellency's Government to review and reconsider certain key aspects of the law to ensure that it complies fully with the United States' international human rights law obligations.

Applicable International and Human Rights Law Standards

We refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which the United States acceded to on 8 June 1992, and the Universal Declaration of Human Rights (UDHR). In particular, we would like to draw your Excellency's Government's attention to articles 19, 21, and 22 of the Covenant, which guarantee, respectively, the right to freedom of opinion and expression, the right to freedom of peaceful assembly, and the right to freedom of association.

We would specifically like to underline that the "principle of legal certainty" under international law, enshrined in article 9(1) ICCPR and article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse (A/73/361, para. 34). Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

We also call your Excellency's Government attention to article 22(1) of the ICCPR which states that "everyone shall have the right to freedom of association with others." Pursuant to article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the Covenant, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenant and to ensure that the domestic legal system is compatible with it. Article 22(2) of the ICCPR provides that any restrictions on the exercise of the right to freedom of association must be "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

We also respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all their other obligations under international law. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.¹ We would like to emphasize that any restriction on freedom of expression or information that a government seeks to justify on grounds of national security or counter-terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest (general comment no. 34, CCPR/C/GC/34). Similarly, articles 21 and 22 of the ICCPR state that any to achieving a legitimate public purpose as recognised by international standards, within a democratic society, with a strong and objective justification.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. We would like to emphasize that any restriction on freedom of expression that a government seeks to justify on grounds of national security or counter-terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest (general comment No. 34, CCPR/C/GC/34).

In addition, we refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the United Nations Declaration on Human Rights Defenders. In particular, the Declaration reaffirms each State's responsibility and duty to protect, promote and implement all human rights and

fundamental freedoms, including every person’s right, individually and in association with others, “at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups” and “to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”¹

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counterterrorism and national security legislation, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target civil society actors on political or other unjustified grounds, and to restrict a range of activities protected by the freedoms of opinion, expression, association, and political participation. We recall the Human Rights Committee General Comment No. 27 (CCPR/C/GC/27), indicating that restrictive measures must “be appropriate to achieve their protective function” and “be the least intrusive instrument amongst those which might achieve the desired result” (para. 4), while “the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law” (para. 15).

Background

House Bill 452, Georgia’s domestic terrorism statute, was passed into law on 1 July 2017 in what appears to be an effort to bolster the state’s counter-terrorism legislation and include domestic terrorism more comprehensively within its scope, notably in the wake of violent incidents, such as the 2015 Charleston massacre at a historic African American church in neighboring South Carolina.²

The 2017 amendment to the Georgia statute expanded the scope of the law’s definition of domestic terrorism. While the previous definition criminalized acts intended to or reasonably likely to kill or injure at least 10 people, the current definition includes certain property crimes committed with the intent to “alter, change, or coerce the policy of the government” by “intimidation or coercion.”³

Definition of terrorism

We respectfully remind your Excellency’s Government, that although there is no agreement on a multilateral treaty on terrorism which inter alia defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality.

¹ A/RES/53/144, art. 5.

² Sarah Taitz & Shaiba Rather, *How Officials in Georgia are Suppressing Political Protest as ‘Domestic Terrorism’*, ACLU (Mar. 24, 2023), <https://www.aclu.org/news/national-security/how-officials-in-georgia-are-suppressing-political-protest-as-domestic-terrorism>; <https://time.com/6276994/georgia-domestic-terrorism-law-cop-city/>; *Letter Calling for Dropping of Domestic Terrorism Charges Against Defend the Atlantic Forest Activists*, Human Rights Watch (Mar. 3, 2023), https://www.hrw.org/news/2023/03/03/letter-calling-dropping-domestic-terrorism-charges-against-defend-atlanta-forest#_ftn8.

³ *Id.*

We note that GA Code section 16-11-220 defines domestic terrorism in the following manner:

“any felony violation of, or attempt to commit a felony violation of the laws of this state which, as part of a single unlawful act or a series of unlawful acts which are interrelated by distinguishing characteristics, is intended to cause serious bodily harm, kill any individual or group of individuals, or disable or destroy critical infrastructure, a state or government facility, or a public transportation system when such disability or destruction results in major economic loss, and is intended to:

- A. Intimidate the civilian population of this state or any of its political subdivisions;
- B. Alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; or
- C. Affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.”⁴

We note that the law’s vague definition of “critical infrastructure” appear not to comport with article 9(1) of the ICCPR and article 11 of the UDHR because it is not sufficiently precise to allow individuals to understand what type of conduct constitutes a criminal offense.⁵

In this connection, we would like to underscore that the overly broad nature of this provision may leave the law open to arbitrary application and abuse, including arbitrary detentions of individuals exercising their right to freedom of expression and association. political dissidents.⁶

Furthermore, we note that the definition of domestic terrorism provided by Georgia does not restrict criminalization to violent acts. In particular, the prohibition of a felony violation intended to “disable or destroy critical infrastructure, a state or government facility, or a public transportation system” in the law’s definition erroneously escalates low-level civil disobedience (such as property damage) to the status of terrorism. We further recall that crimes that do not have the status of terrorism, however serious, should not be addressed through counterterrorism legislation. We remind your Excellency's Government that, wherever possible and appropriate, ordinary law should be used to regulate political or social challengers in the country concerned. States—including local governments operating within federal states—should ensure that measures taken do not have an adverse impact on minorities and vulnerable groups, and do not selectively or discriminatorily affect identified religious, ethnic or social groups (A/HRC/37/52, para. 28).

⁴ GA Code § 16-11-220. Available online at:

<https://law.justia.com/codes/georgia/2022/title-16/chapter-11/article-6/section-16-11-220/>.

⁵ ICCPR art. 9 (stating that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

⁶ Sarah Taitz & Shaiba Rather, *How Officials in Georgia are Suppressing Political Protest as ‘Domestic Terrorism’*, ACLU (Mar. 24, 2023), <https://www.aclu.org/news/national-security/how-officials-in-georgia-are-suppressing-political-protest-as-domestic-terrorism>; <https://time.com/6276994/georgia-domestic-terrorism-law-cop-city/>.

We recall that any criminalization of conduct in support of terrorist offences should be restricted to conduct in support of offences having all the elements characterising the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98 para. 50). The model definition includes acts that have the following cumulative characteristics: a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, acts also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism (E/CN.4/2006/98, para. 37). We stress that in the prohibition of terrorist conduct, it is important for States to ensure that prescriptions to that effect are accessible, formulated with precision, applicable to counterterrorism alone, non-discriminatory, and non-retroactive (E/CN.4/2006/98, para. 50).

If convicted of domestic terrorism, GA Code section 16-11-221 imposes a mandatory minimum sentence of five years in imprisonment, and a maximum sentence of 35 years in prison. This lengthy penalty—which equally applies to those found guilty of “disabling or destroying critical infrastructure”—compounded with the broad and vague definition of domestic terrorism under the law may increase the risk of politically motivated or otherwise arbitrary prosecutions aimed at chilling various forms of expression, including political speech. In this regard, we note that the statute does not employ restrictions which are necessary or legitimate to achieving counterterrorism aims.

We underscore that incorporating elements of the model definition into offences provided for under domestic counter-terrorism legislation is an important facet of upholding the principle of legality, which is enshrined in article 15 of the ICCPR and prohibits any state party to the Covenant from holding anyone guilty of “any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.” To ensure compliance with article 15 of the ICCPR, we also stress the importance of ensuring no one is arrested or charged on the basis of offences not present within the criminal statute at issue.

Freedom of Opinion and Expression

Any restriction on the right to freedom of expression must comply with article 19(3) of the ICCPR, which establishes a three-part test for legitimate restrictions on the freedom of expression. First, restrictions must be “provided by law.” It is not enough that a law is sanctioned by the government. Second, restrictions on expression must be necessary to protect legitimate aims. Restrictions must be the “least intrusive instrument among those which might achieve the desired result” (CCPR/C/GC/27). In order for a restriction on expression to be legitimate, a state “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the

threat” (CCPR/C/GC/34). Necessity also implies an assessment of the proportionality of the restriction, with the aim of ensuring restrictions “target a specific objective and do not unduly intrude upon the rights of targeted persons” (A/HRC/29/32). Restrictions cannot be overbroad; the ensuing interference with third parties’ rights must also be limited and justified in comparison to the interest supported by the intrusion.

Third, restrictions must only be imposed to protect legitimate aims, which are limited to those specified under article 19(3)(a) or 19(3)(b). The term “rights or reputations of others” includes “human rights as recognized in the Covenant and more generally in international human rights law” (CCPR/C/GC/34). Legitimate restrictions on the freedom of expression may also include those “for the protection of national security or of public order (ordre public), or of public health or morals.”

Furthermore, we recall that the Human Rights Committee has reiterated that article 19(2), relating to freedom of opinion, protects the right “to hold opinions without interference” and that there is no exception or restriction on this right. Moreover, “harassment, intimidation, or stigmatization of a person, including arrest, trial, detention, or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1” (CCPR/C/GC/34).

We also wish to emphasize that GA Code section 16-11-220 appears to inherently target political expression by explicitly criminalizing efforts to “alter, change, or coerce the policy of the government of this state or of any of its political subdivisions...” Freedom of expression, as enshrined in international law, not only protects the right to freely express ideas consistent with a Government’s policies but also broadly protects the right to freely express “ideas of all kinds.” The Human Rights Committee has emphasized in that article 19 is especially protective of political speech, stating specifically that article 19(2) “includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11). The Committee has stated that article 19(2) extends even to expression that may be “deeply offensive,” (CCPR/C/GC/34, para. 11) and therefore, we note that any political expression at odds with the policies or principles of the Government of Georgia must not be restricted unless the three above-mentioned conditions of legality, necessity, and legitimacy are met.

We therefore consider that any decision to charge the civil society actors including environmentalists with domestic terrorism under the GA Code must be particularly carefully weighted to avoid the appearance or practice of being politically motivated, and thus, illegitimately and disproportionately restricted activists’ freedom of opinion and expression under article 19 of the ICCPR.⁷

Freedom of Peaceful Assembly and Association

We recall that article 21 of the ICCPR protects the fundamental human right of peaceful assembly, which enables individuals to express themselves collectively and to participate in shaping their societies. Article 22 of the ICCPR protects the right to freedom of association with others. Everyone has the right to freely associate with

⁷ *Letter Calling for Dropping of Domestic Terrorism Charges Against Defend the Atlantic Forest Activists*, Human Rights Watch (Mar. 3, 2023), https://www.hrw.org/news/2023/03/03/letter-calling-dropping-domestic-terrorism-charges-against-defend-atlanta-forest#_ftn8.

others to pursue common interests. This right includes the right of individuals to form and join associations and the collective right of an existing association to pursue its lawful activities, without unlawful interference. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and the restrictions must be a necessary and proportionate means of achieving that purpose within a democratic society, with a strong and objective justification.

Under article 2 of the ICCPR, States have the responsibility to take deliberate, concrete, and targeted steps towards the implementation of the obligations set out in the ICCPR, including by adopting such laws and legislative measures as may be necessary to give domestic legal effect to the rights provided for in the Covenants and to ensure that the domestic legal order is compatible with the treaties. In this sense, noting that the amendment fails to provide the requisite narrow and legally precise definition of domestic terrorism, any restriction on the rights to freedom of peaceful assembly or association under the aforementioned provisions risk being contrary to the principles of necessity, proportionality, legality and non-discrimination, as required under international human rights law.

We recall your Excellency's Government that in the absence of legitimate concerns regarding the threat to public safety, public order, or reasons necessitating restrictions in the interest of public health, morals, or protecting the rights or freedoms of others, States should refrain from arresting individuals on the basis of their purported association with a social or political movement and subsequently charging them with domestic terrorism under GA Code section 16-11-220 as this may constitute a disproportionate restriction of the right to association enshrined in article 22 of the ICCPR.

Similarly, we recall that arresting protestors and charging them with domestic terrorism under Georgia's domestic terrorism statute may disproportionately restrict their right to peaceful assembly under article 21 of the ICCPR, particularly given the statute's broad and vague nature, and therefore it can potentially lead to its arbitrary and abusive misuse.

Proliferation of Counterterrorism Legislation

In light of the above analysis of Georgia's domestic terrorism statute, we note that recent politically-motivated events in the United States, such as the 6 January insurrection, have led to the development of increased attention on violent political protest, and acts potentially amounting to domestic terrorism.⁸ While the origins of Georgia's domestic terrorism law are rooted in lawmakers' desire to curtail hate speech and violent uprisings, we note the challenges that may follow from overly broad counterterrorism statutes leading to a proliferation of local and national counterterrorism legislation in the United States, and that this could negatively impact human rights, including the rights to freedom of expression, opinion, assembly and

⁸ Nick Robinson, *How DHS is Fueling Georgia's "Terrorism" Crackdown on Cop City Protests*, JUST SECURITY (June 15, 2023), <https://www.justsecurity.org/86944/how-dhs-is-fueling-georgias-terrorism-crackdown-on-cop-city-protests/>; Sarah Taitz & Shaiba Rather, *How Officials in Georgia are Suppressing Political Protest as 'Domestic Terrorism'*, ACLU (Mar. 24, 2023), <https://www.aclu.org/news/national-security/how-officials-in-georgia-are-suppressing-political-protest-as-domestic-terrorism>; <https://time.com/6276994/georgia-domestic-terrorism-law-cop-city/>.

association.

We observe that Georgia, New York, and Vermont are the only US states officially criminalizing domestic terrorism or acts of domestic terrorism. However, several states currently criminalize acts intended to “influence the policy of the government” by “intimidation or coercion.”⁹ As mentioned above, Georgia’s prohibition of “[acts intended] to alter, change, or coerce the policy of the government of this state or of any of its political subdivisions” (*see* GA Code § 16-11-220) stigmatizes political expression by criminalizing attempts to change the policies of one’s government.

We note that international best practice encourages States to regularly and independently review counter-terrorism legislation to ensure that it remains necessary and consistent with international law. In this context, we would be pleased to offer technical assistance on any of the issues raised in this communication.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide information and details regarding how the counter-terrorism efforts of the State of Georgia’s Government comply with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174, in particular with international human rights law.
3. Please provide further information of how the definition of domestic terrorism of the State of Georgia is narrowly construed so as to guarantee that measures taken pursuant to it do not unduly interfere with human rights and civil society while complying with the principle of legality, proportionality, necessity and non-discrimination.
4. Please explain the manner in which the State of Georgia ensures that the criminalization of certain conduct under section 16-11-220 of the GA Code does not disproportionately and discriminatorily restrict the enjoyment of the right to freedom of expression, as well as the rights to freedom of peaceful assembly and association, guaranteed by articles 19, 21 and 22 of the ICCPR.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be

⁹ Odette Yousef, *Domestic terrorism charges in Georgia are prompting concern over political repression*, NPR (June 29, 2023), <https://www.npr.org/2023/06/28/1184782128/cop-city-atlanta-domestic-terrorism>.

presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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