

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Independent Expert on human rights and international solidarity

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(Please use this reference in your reply)

10 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 52/4, 52/9, 50/17 and 53/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the re-introduction in the Parliament of Georgia of the so-called 'Foreign Agents Law', the draft law 'On transparency of foreign influence'**, and the suppression of the protests against the draft law.

According to the information received:

1. Reintroduction of the draft law 'On transparency of foreign influence'

On 3 April 2024, the Georgian Dream party introduced the draft law "On transparency of foreign influence" (N 07-3/433/10), hereinafter: 'draft law'. This legislative initiative appears to be similar to the draft law which was on the Parliament's agenda in February last year (N 07-3/293/10) and was then withdrawn from consideration several weeks after it was introduced, following weeks of protest in Georgia.

On 15 April 2024, Georgian Parliament's Legal Committee endorsed the draft law in its first reading.

The new draft law appears to be to be largely identical to the 2023 proposal, except the new draft uses the term "an organization advocating the interests of a foreign power" rather than "an agent of foreign influence" in its definitions. The draft law is stated to 'provide transparency of foreign influence in order to regulate the subjects of the foreign power and provide their registration as an organization carrying out the interests of a foreign power' (article 1).

Under the provisions of the draft law, non-commercial organizations and media outlets receiving over 20% of their budget from a 'foreign power' is required to register as an "organization advocating the interests of a foreign power" with the Public Registry Agency of the Ministry of Justice and annually submit financial declarations that disclose information about the source, amount, and purpose of any funds and other material benefits received and spent.

According to the draft law, ‘foreign power’ is defined as entities that are part of the government system of a foreign state, natural persons who are not citizens of Georgia, legal entities that are not established based on Georgian law, and entities established under the law of a foreign state and/or international law (article 3 of the draft law).

“Organization advocating the interests of a foreign power” is any entity that during a year receives more than 20% of their income from a “foreign power” (article 2(1) of the draft law).

If adopted, this would set a separate legal regime for CSOs and media outlets falling under the scope of the draft law, subjecting them to additional and cumbersome reporting requirements, giving vaguely defined and broad inspection and monitoring powers to the authorities to identify such entities, and introducing heavy administrative fines (amounting to up to 25000 GEL, approximately 8700 EUR) in case of non-compliance. CSOs and media outlets falling under the scope of the law would be subject to inspection every 6 months by the Ministry of Justice, which could include forcing them to disclose internal communications and confidential sources.

During her country visit to Georgia, the Special Rapporteur on the situation of human rights defenders was informed about the impact of the previous draft law, which was raised repeatedly by human rights defenders. They described the increased insecurity they have felt since its attempted introduction, the damage it has done to their working relationships with municipal authorities and their standing in society, and the fear that the legislative project will be revived in one form or another. Its introduction provided encouragement to far-right groups, whose own narrative of ‘foreign agents’ and ‘internal enemies’ was legitimised by the strong backing of the legislation by the government, ruling party and parliamentarians¹.

During her visit, the Special Rapporteur was told by the government that the foreign agent law would not be revived².

a. Freedom to seek, receive and use funding

International human rights law and standards amply recognize the freedom to access resources as part of the right to freedom of association. Article 22 of the ICCPR protects all activities of an association, including activities directed at accessing resources or funding, subject to restrictions consistent with ICCPR article 22(2). This includes the freedom to seek, receive and use resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities. Consequently, undue limitations on associations’ freedom to access funding violate states’ obligations under article 22 of the ICCPR³.

¹ A/HRC/55/50/Add.2 para 19

² Ibid para 20

³ General principles and guidelines on ensuring the right of civil society organizations to have access to resources - A/HCR/53/38/Add.4, para 11

In resolution 22/6, the Human Rights Council has called on States to ensure that reporting requirements placed on individuals, groups and organs of society should not inhibit the functional autonomy [...] and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding.

The Human Rights Committee has consistently expressed concern over foreign funding restrictions as an impediment to fully realizing the right to freedom of association. For example, after reviewing Egyptian legislation which required non-governmental organizations (NGOs) receiving foreign funding to register with the government, the Committee stated that: ‘The State Party should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments, which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls, and administrative dissolution’⁴.

Other international human rights instruments also recognize associations’ right to access resources. For instance, 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 (the Declaration on Human Rights Defenders) has recognized in article 13 that everyone has a right, individually and in association with others, to solicit, receive and utilize resources for promoting and protecting human rights through peaceful means⁵.

Regional monitoring bodies have also amply recognized that freedom of association protects the right of associations to seek, receive and use financial resources. In the European context, the Committee of Ministers of the Council of Europe has repeatedly affirmed that “NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own State but also from institutional or individual donors, another State or multilateral agencies”⁶.

States must ensure that any restriction on civil society organizations’ right to access funding and resources complies with international human rights requirements of legality, legitimate aim, necessity and proportionality in a democratic society, as set out in article 22(2) of the International Covenant on Civil and Political Rights.

b. *Legality*

Restrictions must be “provided by law”. A restriction does not meet this requirement simply because it is formally enacted as a national law. The legality requirement also refers to the quality of the law. The laws in question must be accessible and sufficiently precise to allow members of the society to

⁴ U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee: Egypt, at para. 21, U.N. Doc. CCPR/CO/76/EGY (November 28 2002),

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument)

⁵ Ibid para 12

⁶ Council of Europe Committee of Ministers recommendation CM/Rec(2007)14, and see also recommendation CM/Rec(2018)11; OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission), Joint Guidelines on Freedom of Association, principle 7.

decide how to regulate their conduct (foreseeability) and may not confer unfettered or sweeping discretion on those who enforce them.

Laws that restrict foreign funding, including “foreign agent laws”, generally fail to establish with sufficient degree of foreseeability what funding and what sources of funding would qualify as “foreign funding” for the purposes of registration as a “foreign agent” and allow for and overbroad and unpredictable interpretation of the law in practice.

c. Legitimacy

To be lawful any restriction must protect only those interests enumerated in article 22(2): 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. Restrictions to foreign funding based on the protection of State sovereignty, which is not listed as a legitimate ground for restrictions under the Covenant, as a result fail to meet this requirement⁷.

d. Necessity and proportionality

To meet the condition of necessity, authorities must demonstrate that the restriction can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective. The State must also prove that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation, such as national security or public order⁸.

e. Non-discrimination

States have the responsibility under international human rights law to respect, protect and facilitate the right to freedom to access resources by civil society organizations. States’ obligations must be implemented in a non-discriminatory manner, with particular attention to the rights and needs of individuals from groups or populations at higher risk of facing discrimination and marginalization. Setting up two different registration and reporting regimes for CSOs based on their sources of funding would appear to contravene the principle of non-discrimination.

2. Suppression of protests against the draft law

On 15 April 2024, widespread peaceful protests erupted in Tbilisi with demonstrators waving Georgian and EU flags. The police used force to disperse the protesters, resulting in 14 detentions for alleged public order offences and a reported police injury.

On 16 April, riot police dispersed demonstrators and cleared them from around part of the parliament as lawmakers debated the bill. According to reports, around 10,000 protesters gathered outside parliament, to denounce the draft law. Officers ordered protesters to disperse and used pepper spray while clashes between police and some demonstrators erupted.

⁷ A/HRC/23/39, paras 30-34

⁸ A/HRC/23/39, para 23

Additionally, the Speaker of the Parliament Shalva Papuashvili issued a statement barring online media outlets from entering parliament to cover the committee hearings. Subsequently, representatives of civil society have also reportedly been excluded from the consultations on the draft law.

Violent crackdown by security forces and riot police on protesters against the proposed draft law continued and further escalated on 29 and 30 April 2024. Riot police used water cannons, teargas and stun grenades to disperse protesters. Police reportedly detained 63 protesters in Tbilisi, and six officers were injured.

According to reports, several human rights defenders monitoring the protests have been assaulted while others received threatening phone messages.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concerns about the re-introduction of the draft law on foreign influence. Labelling journalists, media outlets, activists, human rights defenders and associations as “foreign agents”, or “an organization advocating the interests of a foreign power” under vague and overbroad concepts such as “foreign influence”, could further obstruct and stigmatize the legitimate work of human rights defenders, activists and civil society organizations, with a serious damaging effect on the right to freedom of association in Georgia. The broad scope of the label of “foreign agent” could suggest that certain activists or associations are under foreign control, disregarding and undermining the efforts for the promotion and protection of human rights, the rule of law, and human development for the benefit of Georgian society and democratic institutions, resulting in a particularly acute chilling effect of such a designation of human rights defenders, activists and civil society organizations. We also express concerns that the provisions of the draft law, if adopted in its current format, would contravene Georgia’s obligations under the ICCPR and other relevant international human rights instruments, including those undertaken within the framework of the Council of Europe. Finally, we express strong concerns about the excessive use of force and violence by security forces and riot police against peaceful protesters and about the lack of genuine, inclusive and meaningful consultations with civil society.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the legislation.
2. Please explain how the draft law “On transparency of foreign influence” (N 07-3/433/10) is compatible with your Excellency’s Government’s obligations under international human rights law and standards detailed above, such as under articles 2, 17 and 22 of the

ICCPR and article 20 of the UDHR; and how your Excellency's Government would remediate the aforementioned inconsistencies with international human rights standards enshrined in the draft law.

3. Please explain how the definitions of "foreign agents" and "foreign influence" are compatible with the principle of legal certainty established under the ICCPR; and please explain how the measures foreseen under the draft law "On transparency of foreign influence" would meet the requirements of necessity and proportionality under international human rights law.
4. Please provide any information on the remaining stages of the legislative process with regard to the draft law, including your Government's plan for consultation with civil society and concerned individuals and groups.
5. Please provide information about the measures taken to protect the rights to freedom of peaceful assembly and of expression of those protesting peacefully against the draft law.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Annex

Reference to international human rights law

We would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by Georgia on 3 May 1994, which guarantee the right to freedom of opinion and expression and the right to freedom of association.

Article 19 of the ICCPR protects the right to freedom of opinion and expression. Article 22 of the ICCPR protects the right to freedom of association with others. We would like to remind your Excellency's Government that any restrictions to the exercise of the right to freedom of opinion and expression and the right to freedom of association must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in general comment No. 27 (CCPR/C/21/Rev.1/Add.9), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), 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" (paragraph 15). Furthermore, as the Human Rights Committee emphasised in general comment No. 34 (CCPR/C/GC/34), any restrictions to the freedom of expression "must not be overbroad" (paragraph 34), "may not put in jeopardy the right itself" (paragraph 21) and may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23).

We also wish to 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 UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would like to bring to the attention of your Excellency's Government such provisions of the Declaration as article 5(b) reiterating the right to form, join and participate in non-governmental organizations, associations or groups); article 6(b) and (c) stating the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and article 13(b) and (c) reiterating the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

We also wish to refer to Human Rights Council resolution 22/6, which reiterates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

We would also like to recall the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association calls on Member States to "ensure that associations... can seek, receive and use funding and other resources from natural

and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities” (A/HRC/23/39, para. 82(b)).

Similarly, the report of the Special Rapporteur on the situation of human rights defenders (A/73/215) noted that the right to access funding is among the key rights articulated in the UN Declaration on Human Rights Defenders (paragraph 18). It is instrumental to the defence of human rights, and its implementation is a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work (paragraph 19). The Special Rapporteur also noted that this right protects the ability of defenders to raise funds internationally and underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders.

Additionally, during the 3rd UPR cycle (November 2020), the Government of Georgia supported a number of recommendations relating to civil society and human rights defenders, including to ‘increase the efforts of political leaders to publicly acknowledge and protect the important role of human rights defenders and independent human rights institutions in the democratization process’; to ‘further develop measures to ensure a safe environment for human rights defenders, including protection measures, as part of the national human rights action plan’; to ‘continue to allow and safely facilitate peaceful protests without discrimination’; and to ‘ensure prompt and impartial investigations into all incidents of excessive use of force by law enforcement authorities against protesters and journalists’; and to ‘strengthen the representation of civil society in the decision-making processes of the country’, among others.