

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

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(Please use this reference in your reply)

12 February 2025

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **bill entitled "Bill on Amendments to the Notary Law and Certain Other Laws", also referred to as the "Agents of Influence Law"**. In particular, we would like to bring attention to article 339/A of the Turkiye Penal Code.

This bill was submitted to the Turkish Grand National Assembly (TBMM) on 18 October 2024 and subsequently approved by the TBMM's Justice Commission. On 13 November 2024, responding to public and political opposition to its provisions, article 339/A was withdrawn from the bill. Subsequently, Government officials promoted several discussions with the opposition parties to reintroduce article 339/A and declared publicly that its intention is to have the provision approved, as it will help the State to address national security concerns raised by the MIT (Millî İstihbarat Teşkilatı), which is the National Intelligence Organization.

In the present communication, we comment on article 339/A which, in our view, may be at odds with the obligations of your Excellency's Government under international human rights law.

We recall that Türkiye ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 September 2003 and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), on 18 May 1954.

**The Bill's proposed article 339/A introduces a new offense under the section titled "Offenses Against State Secrets and Espionage" (articles 326-339), which will amend the penal code (Law 5237, 2004). It specifically aims to penalize actions considered to harm the state's security or political interests if carried out under the influence of foreign entities.**

The full text of the proposed article 339/A is as follows: *"Those who commit crimes against the security of the state or its internal or external political interests in line with the strategic interests or instructions of a foreign state or organization shall be sentenced to imprisonment from three to seven years.*

*If this crime is committed during wartime, the penalty shall be increased to between eight and twelve years. If committed by personnel working in national security institutions, the penalty shall be doubled.*

*The penalty to be imposed shall be doubled if the crime is committed by those who work in institutions and organizations that perform projects, facilities and services together with units that are of strategic importance in terms of national security.*

*Prosecution for this crime is subject to the permission of the Minister of Justice."*

We bring to your Excellency's Government's attention the principle of legal certainty under article 15(1) of the ICCPR, which requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)). States must ensure that measures to combat terrorism and preserve national security do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

When a State invokes national security and the protection of public order to restrict human rights, it is essential to demonstrate the precise nature of the threat and the specific danger involved. Merely referring to the general security situation is insufficient; national, political, or governmental interests are not synonymous with national security or public order (A/HRC/31/66).

In this regard, the Human Rights Committee has asserted that any State seeking to invoke a legitimate ground for restriction of freedom of expression on the basis of a perceived threat to national security or public order, must demonstrate "in specific and individualised 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, para. 35).

We respectfully refer your Excellency's Government to the many resolutions of the United Nations General Assembly, Security Council, and Human Rights Council reaffirming that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.<sup>1</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

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<sup>1</sup> 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); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.

In this sense, it is worth noting that laws, amendments, or revisions to laws may have the unintended consequence of restricting and seriously hindering the exercise of human rights, including the enjoyment of freedom of peaceful assembly and association. Some of the key terms used in the wording of article 339/A, such as "state security," "political interests," "strategic interests," and "instructions", are broad, vague and undefined, which undermines the principles of predictability and legality and could open doors to malicious interpretations leading to the curtailment of the legitimate exercise of human rights, including the right to freedom of association and expression.

The article undermines the principle of legal certainty, as citizens may not know whether their actions would be considered criminal. Therefore, the unpredictability of its application could render the possibility for unlawful inspection, suspension, and even dissolution of associations that are considered to be committing "crimes against the security of the state" for their alleged alignment with foreign entities. This may include donors and any other actor that provides financial, in-kind and/or technical support to civil society, human rights defenders, and the independent media, as well as impede on the creation of new associations.

As established in general comment 35, "Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17)." (CCPR/C/GC/35).

Associations are born and governed by the will of their founders, associates, or members, and should be free to determine their statutes, structure, governing bodies, activities and funding. The suspension and/or dissolution of an association are the most severe types of restrictions and should only be allowed exceptionally when there is a clear and imminent danger resulting in a serious violation of national law (A/HRC/20/27, para. 75). Restrictions to freedom of association are the exception to the rule and must be applied and interpreted narrowly. A restriction does not meet the legality requirement simply because it is formally enacted as a national law. The laws concerned must be accessible and sufficiently precise to allow members of the society to decide how to regulate their conduct (foreseeability) and may not confer unfettered or sweeping discretion on those who enforce them. Restrictions should not impair the essence of the concerned right or be aimed at discouragement and casting a chilling effect to deter its enjoyment (A/HRC/50/23, paras. 13 and 14).

#### *Relevant international human rights standards*

We would like to recall article 21 of the ICCPR, which recognizes that everyone should enjoy the right to freedom of peaceful assembly, as provided by article 2 of the ICCPR and resolutions 15/21, 21/16, and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs and human rights defenders.

Article 22 of the ICCPR further protects the right to freedom of association, guaranteeing everyone's right to associate with others and pursue common interests.

Freedom of association is closely linked to the rights to freedom of expression and peaceful assembly; is of fundamental importance to the functioning of democratic societies and can only be limited through necessary and proportionate restrictions that serve a legitimate public purpose that is consistent with international standards. The Human Rights Committee has further affirmed that recognizing the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure their exercise without discrimination.

States must ensure that any restriction on civil society organizations 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:

**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 must be accessible and sufficiently precise to allow members of society to decide how to regulate their conduct (foreseeability). They may not confer unfettered or sweeping discretion on those who enforce them.

**Legitimacy—To be lawful,** any restriction must protect only the interests enumerated in article 22 (2): national security or public safety, public order (ordre public), public health or morals, or the rights and freedoms of others.

The state cannot simply claim that national security is threatened when an association receives funding from foreign sources or uses this argument to legislate on vaguely defined concepts.

International human rights standards are clear that, in order to invoke "interests of national security," states must demonstrate that "restrictions are necessary to preserve the State's ability to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force. Moreover, national security cannot be used to justify measures aimed at the repression of population.

**Necessity and proportionality** – To meet the condition of necessity, authorities must demonstrate that the restriction can indeed be effective in pursuing the legitimate aim and be the least intrusive means among those that 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 order.

States must examine, in consultation with the civil society sector, whether the measure is excessively burdensome and whether the nature and severity of the sanctions imposed in case of non-compliance are proportionate to the gravity of the wrongdoing. Restrictions should not impair the essence of the concerned right or be aimed at discouragement and casting a chilling effect to deter its enjoyment.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “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 states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output.

The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (para. 23).

Additionally, according to the Committee “the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression” and any restrictions on the operation of websites, blogs or any other internet-based information dissemination system “are only permissible to the extent that they are compatible with paragraph 3” (para. 43). In this regard, it is “inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government” (para. 43).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. As established by the Human Rights Committee in its general comment 34, any State party seeking to invoke a legitimate ground for restriction of freedom of expression on the basis of a perceived threat to national security or public order, has the burden of proving how the restrictions are compatible with the Covenant and, in that regard, the State must demonstrate “in specific and individualised 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, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. (CCPR/C/GC/34, para. 34).

Attacks against individuals, such as through arbitrary detention and criminalisation, for the exercise of freedom of expression are incompatible with the Covenant. The Human Rights Committee asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34, para. 23).

Furthermore, the Human Rights Committee also describes how freedom of expression applies to both public and political issues. It states that “the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.” It also states that “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition” and that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high” (CCPR/C/GC/34, para. 13 and 38).

We would also like 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, we would like to refer to articles 1 and 2 of the Declaration which 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. We would also like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 points b) and c), which provides for 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;

Both the General Assembly and the Human Rights Council repeatedly urged the States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals and insecurity (e.g., the General

Assembly resolutions 74/146 (A/RES/74/146) and 70/161 (A/RES/70/161), and the Human Rights Council resolutions 22/6 (A/HRC/RES/22/6) and 13/13 (A/HRC/RES/13/13)). They also repeatedly called upon the States to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association (e.g., the General Assembly resolutions 74/146 (A/RES/74/146), 72/247 (A/RES/72/247), 70/161 (A/RES/70/161), 66/164 (A/RES/66/164), and the Human Rights Council resolution 22/6 (A/HRC/RES/22/6)).

#### *Other relevant provisions*

On 15 September 2024, the United Nations Special Rapporteur on the rights of Freedom of Peaceful Assembly and of Association, the Special Rapporteur on Freedom of Expression of the Inter American Commission on Human Rights (IACHR), the Commissioner Rapporteur for Human Rights Defenders of the IACHR, the Special Rapporteur on Human Rights Defenders and focal point on reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), published a Joint Declaration on Protecting the right to freedom of association in light of 'foreign agents'/'foreign influence' laws.

In the declaration, the signatories noted with concern the spread across all regions of these legislative initiatives and laws with similar effects, which introduce unnecessary, disproportionate and discriminatory obligations, restrictions or prohibitions on associations falling within the broad definition of "foreign agent"/"foreign influence" or the like. They also indicated that these laws mostly employ vague, overbroad and/or ambiguous definitions, and as such fail to comply with international human rights standards, including the principle of legal certainty and foreseeability of legislation, and allow wide discretion and arbitrary application on the part of the implementing authorities.

The declaration also stated that these laws are discriminatory, as they target associations based on the foreign origin of their funding, their legal form, and do not apply to for-profit entities, resulting in a disproportionate level of scrutiny. These laws, intended or not, have an indirect discriminatory impact on certain categories of associations, as specifically targeted by these laws are associations and activists that promote human rights and democratic values and those that may be considered critical to the government. The provisions have been used by states to exacerbate hostile narratives against and stigmatize civil society, human rights defenders, rights movements and peaceful protests, further stifling dissent and silencing critical voices.

As it is included in the joint communication, as well as in the report that the Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association presented at the General Assembly in 2024 (A/79/263), the adoption of 'foreign agents' type of laws are surrounded by anti-civil society narratives that create a climate of mistrust, fear and hostility against civil society members, journalists, human right defenders, religious leaders and any other actor affiliated to an association, including from the general public. This poses serious threats to those associated with the concerned civil society organization and independent media, including members, staff

and their families, as well as beneficiaries, to the functioning or even existence of associations, and is harmful to wider civil society, human rights, and democracy. Therefore, they create a wide, deep, and chilling effect in society, discouraging the public from expressing views and opinions related to certain issues such as gender, sexual diversity, sexual and reproductive rights, among others, due to fear of stigmatization, vilification and criminalization.

Such laws, in general, constitute undue restrictions of an association's right to access resources, which is an intrinsic part of the right to freedom of association, and endanger associations' very existence in a context with very limited access of domestic funding especially for independent associations, an organization may need to choose between either refusing all foreign funding or being subject to new restrictions. International standards assert that restrictions on foreign financing imposed based on the protection of state sovereignty are not listed as a legitimate reason for restrictions under the Convention (A/HRC/53/38/Add.4).

The declaration indicates that governments must refrain from adopting legislation that allows the imposition of sanctions on associations and/or individuals linked to them, unless these are strictly necessary, and ensure that the imposed sanctions are the least intrusive means to achieve the desired objective and proportionate to the civil society organization's infringements of the law, ensuring access to effective remedy. Custodial sentences, pre-trial detention or denial of bail, should not be imposed for the exercise of the right to association; proscription or dissolution should be an exceptional measure of last resort (only when other less intrusive measures have demonstrable failed to achieve the legitimate aim being pursued).

We would also like to remind Your Excellency's Government that States have the primary responsibility and duty to protect, promote, and fulfill all human rights and fundamental freedoms by taking the necessary measures to create the social, economic, political, and other conditions and the legal safeguards required for the effective enjoyment of all these rights and freedoms by all persons under their jurisdiction, individually or collectively.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all situations 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 information.
2. Please advise on the compatibility with international human rights law of the provisions of the "Bill on Amendments to the Notary Law and Certain Other Laws", also referred to as the "Agents of Influence Law", in particular of article 339/A.
3. Please provide information on justifications of your Excellency's Government for the introduction of such a legislative initiative, including the concrete, transparent and thorough risk assessment in terms of its impact in human rights and fundamental freedoms, as well as what specific gaps it seeks to fill in Türkiye's existing legal

framework.

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 presented to the Human Rights Council.

In light of the above observations, and while we wait for a reply, we urge Your Excellency's Government to reconsider the adoption of this initiative to make sure it is fully in compliance with international human rights standards.

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

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