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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on human rights and international solidarity; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: OL GEO 2/2025
(Please use this reference in your reply)

4 April 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on human rights and international solidarity; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 50/17, 52/9, 52/4, 53/12, 53/5, 50/10 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a set of legislative reforms recently adopted by the Parliament of Georgia. These reforms **modify the Code of Administrative Offenses, the Law on Assemblies and Demonstrations, and the Criminal Code** by introducing provisions that could represent a serious risk to the effective exercise of fundamental human rights protected by the International Covenant on Civil and Political Rights (ICCPR), a binding treaty to which Georgia is a party since 3 May 1994.

The gravity and scope of these legislative modifications, approved through expedited procedures between December 2024 and February 2025, present particular risks due to their potential cumulative impact on civic and democratic space in Georgia. The provisions analyzed in this communication directly affect a number of human rights including those protected by articles 9 (liberty and personal security), 19 (freedom of opinion and expression), 21 (right of peaceful assembly), and 22 (freedom of association) of the ICCPR, the guarantee of which is essential for the functioning of any democratic society and for compliance with the international obligations freely assumed by the Georgian State.

Context

On 28 November 2024, the Prime Minister announced the suspension of the European Union accession process and the non-request for financial assistance from the

Her Excellency
Ms. Maka Botchorishvili
Minister for Foreign Affairs

bloc until 2028. This announcement sparked massive spontaneous demonstrations throughout the country, including the cities of Tbilisi, Kutaisi, Zugdidi, Gori, and Batumi, as well as rural areas. The protests, generally peaceful, have been characterized by authorities as attempts to impose a 'revolution' although protesters maintain they are defending European integration.

We communicated to your Excellency's Government the information received on the above mentioned protests and our concerns on them via AL GEO 4/2024 of 11 December 2024 and AL GEO 1/2025 of 20 January 2025.

We regret that we have not received yet a response to these communications. In these communications we also noted the lack of implementation of the recommendations included in the report of the Special Rapporteur on the situation of human rights defenders following her visit to the country in November 2023 (A/HRC/55/50/Add.2).

In this regard, we remind your Excellency's government in particular of that report's recommendation calling on the Government to: "Amend the Administrative Offences Code to bring it into line with international human rights law and standards," and "abandon the legislative initiative from 2023 to amend the Law on Assemblies and Demonstrations".

Legislative Modifications Adopted

According to the information received, between December 2024 and February 2025, the Parliament of Georgia adopted a series of legislative modifications through the following normative instruments:

(a) Modifications to the Code of Administrative Offenses:

- Document No. 169-Iმს-XIმპ; Registration Code: 020000000.05.001 .102437; Date of Adoption: 13/12/2024; Date of Entry into Force: 29/12/2024

- Document No. 273-IIმს-XIმპ; Registration Code: 020000000.05.001 .102496; Date of Adoption: 06/02/2025; Date of Entry into Force: 06/02/2025

(b) Modifications to the Law on Assemblies and Demonstrations:

- Document No. 176-Iმს-XIმპ; Registration Code: 010300000.05.001 .102445; Date of Adoption: 13/12/2024; Date of Entry into Force: 29/12/2024

- Document No. 274-IIმს-XIმპ; Registration Code: 010300000.05.001 .102499; Date of Adoption: 06/02/2025; Date of Entry into Force: 06/02/2025

(c) Modifications to the Criminal Code:

- Document No. 175-Iმს-XIმპ; Registration Code: 080000000.05.001 .102436; Date of Adoption: 13/12/2024; Date of Entry into Force: 01/02/2025

- Document No. 275-IIმს-XIმპ; Registration Code: 080000000.05.001 .102494; Date of Adoption: 06/02/2025; Date of Entry into Force: 06/02/2025

- Document No. 285-IIმს-XIმპ; Registration Code: 080000000.05.001 .102484; Date of Adoption: 06/02/2025; Date of Entry into Force: 06/02/2025

According to information received, these legislative modifications were approved through expedited procedures, in periods of just one week for each, without prior consultation with civil society and without considering alternative proposals. The use of an accelerated procedure for legislative reforms that directly impact the exercise of fundamental rights does not allow for informed public debate or an adequate assessment of the impact that the modifications might have. The rushed nature of the legislative process, especially in the context of political tensions, impedes the possibility to protect legitimate legal interests.

Analysis of the Legislative Modifications

Below, we present an analysis of the provisions that appear to be contrary to international human rights law:

Substantial aggravation of administrative sanctions for offenses related to assemblies and demonstrations

Article 174 of the Code of Administrative Offenses, which regulates sanctions for violations of the rules for organizing and conducting assemblies or demonstrations, has been subject to substantial modifications that significantly increase the applicable sanctions. The revised text of article 174 establishes:

"*1. Violation of the rules for organizing and conducting an assembly or demonstration, as provided in articles 5 and 8 of the Law of Georgia 'On Assemblies and Demonstrations', shall result in a fine of 2,000 GEL.*

2. The same action committed by the organizer of an assembly or demonstration, shall result in a fine of 5,000 GEL.

3. The repeated commission of an act provided for in the first or second part of this article by a person convicted of any act provided for in this article, shall result in a fine of 6,000 GEL or administrative detention for a period of up to 60 days.

4. Blocking the entrance to a court, holding an assembly or demonstration at the residence of a judge or at the General Court of Georgia, shall

result in a fine of 5,000 GEL or administrative detention for a period of up to 60 days.

5. *Violation of the rules provided for in article 9, article 11 (except subsections 'a¹', 'a²', and 'g' of paragraph 2 of article 11) and article 111 of the Law of Georgia 'On Assemblies and Demonstrations', shall result in a fine of 5,000 GEL or administrative detention for a period of up to 15 days, with confiscation of the object of the offense, and if the offender is an organizer – 15,000 GEL, with confiscation of the object of the offense.*

6. *The repeated commission of an act provided for in part 5 of this article by a person convicted of any act provided for in this article, shall result in a fine of 5,000 to 10,000 GEL or administrative detention for a period of up to 20 days, with confiscation of the object of the offense, and if the offender is an organizer – a fine of 15,000 to 20,000 GEL or administrative detention for a period of 5 to 60 days, with confiscation of the object of the offense.*"

The modifications to article 174 appear to be contrary to the ICCPR. As the Human Rights Committee clarifies in its general comment No. 35 (para. 12), any restriction on liberty must be analyzed considering its adequacy, fairness, predictability, and respect for procedural guarantees.

The increase in fines that reach up to 60 times the subsistence minimum for a common demonstrator and almost 60 times for an organizer does not appear to meet these criteria, without other relevant justifications, especially considering the economic context of Georgia.

The penalties that can be applied include that establish administrative detentions of "up to 60 days" for offenses related to demonstrations.

The amount of the imposed fines is considered particularly disproportionate when considered in the Georgian socioeconomic context. Fines of up to 20,000 GEL for organizers (approximately 6,800 euros) represent an overwhelming economic burden that can effectively prevent the exercise of the right to peaceful assembly and discourage human rights defenders from organizing peaceful protests to voice their concerns about human rights violations and abuses and to conduct their public advocacy work. Such severity in economic sanctions, combined with the possibility of prolonged administrative detention, creates a chilling effect that discourages citizen participation in legitimate demonstrations for fear of ruinous consequences, both economic and personal. This disproportion could turn sanctions not only into an excessive punishment but into a mechanism for deterring the exercise of the right to peaceful protest itself.

Increase in the maximum period of administrative detention

Article 32 of the Code of Administrative Offenses has been modified to establish that:

"*1. Administrative detention shall be established and applied only in exceptional cases, for administrative offenses, for a period of up to 60 days. A person shall be sentenced to administrative detention by a court.*"

"*3. Administrative detention may not be imposed on pregnant women, mothers with children under twelve years of age, persons under eighteen years of age, or persons with severe or significantly pronounced disabilities.*"

The increase in the maximum period of administrative detention from 15 to 60 days in article 32, which represents a quadrupling of the previous limit, raises serious questions about its compatibility with international human rights standards.

As the Human Rights Committee has clarified in its general comment No. 35 (paras. 11 and 12), any deprivation of liberty, even when authorized by national legislation, may be arbitrary if it does not comply with the criteria of reasonableness, necessity, and proportionality. As the Committee notes in paragraph 12: "The notion of 'arbitrariness' is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality." Furthermore, paragraph 15 establishes specific limitations on detention for security reasons, noting that "in the most exceptional circumstances, if a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden falls on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures."

The Human Rights Committee, in its general comment No. 35, establishes that "pre-trial detention should not be mandatory for all persons charged with a particular offense, without regard to individual circumstances" (para. 38). Pre-trial detention refers to the period of detention from arrest until time of judgment at first instance. The extension of the maximum period of administrative detention, that could be consider as pre-trial detention, from 15 to 60 days represents a disproportionate response that ignores the need for individualized assessment, as required by international standards, and constitutes an excessive restriction that affects not only the right to personal liberty but also the presumption of innocence established in article 14 of the ICCPR.

Administrative detention should be considered as a measure of last resort and should only be applied in exceptional circumstances when there is an urgent need to prevent the commission of serious crimes and when arrest is absolutely necessary. The substantial increase in the maximum period of administrative detention not only raises serious doubts about its reasonableness, necessity, and proportionality, but could also have a significant chilling effect on the exercise of fundamental rights such as freedom of peaceful assembly and freedom of expression and on the free and safe conduct of human rights work. These severe sanctions could deter potential participants from exercising their rights for fear of facing prolonged periods of deprivation of liberty for relatively minor administrative offenses.

Additionally, Georgia has obligations to take all legislative, administrative, judicial and other measures to prevent torture and other cruel, inhuman or degrading

treatment or punishment, in accordance with article 2 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment, to which Georgia acceded on 26 October 1994 and article 7 ICCPR. The longer someone is held or during arbitrary deprivation of liberty, it is well established that the risk of torture and other cruel, inhuman or degrading treatment or punishment increases (see HRC general comment No. 35, para. 56).

Preventive detention to prevent future offenses

Article 244(1) of the Code of Administrative Offenses has been modified to allow the preventive detention of persons who have previously committed an administrative offense, with the declared purpose of "preventing the repetition" of such offense, for a period of up to 48 hours.

The modification of article 244(1), appears to contravene the ICCPR. In its general comment No. 35 (para. 15), the Human Rights Committee states that "if a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden falls on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and the burden increases with the length of the detention." It would appear that the Code of Administrative Offenses does not require the demonstration of a present, direct, and imperative threat, but allows detention based merely on the possibility of repetition of offenses, which is excessively broad. Additionally, as the Human Rights Committee has clarified in its general comment No. 35 (para. 38), "pre-trial detention should not be mandatory for all persons charged with a particular offense without regard to individual circumstances." The rule in question seems to ignore the need to evaluate each case individually, allowing preventive detentions based on general presumptions about future conduct of persons.

This provision is particularly concerning as it could grant the authorities excessively broad discretionary power to preventively detain persons who have participated in previous demonstrations, under the pretext of "preventing" future offenses. We welcome the oversight by the courts, which under the recent amendments should be guaranteed immediately after arrest (within 48 hours), with any extended detention requiring further judicial approval. However, by not requiring an individualized assessment based on objective criteria demonstrating the existence of a concrete, direct, and imminent threat, this measure could be applied arbitrarily against activists, civil society leaders, human rights defenders and peaceful demonstrators, becoming an instrument of intimidation to discourage participation in future demonstrations. Furthermore, there appears to be a lack of effective judicial control over these decisions, which aggravates the risk of arbitrariness.

Prior notification obligation for spontaneous demonstrations

Article 8(1) of the Law on Assemblies and Demonstrations, introduced through the recent modifications, establishes:

> "*In the case of the organization or holding of a spontaneous meeting /demonstration, notification to the executive body of the municipality is allowed without adhering to the deadline established in the first paragraph of this*

article. In such cases, the notification must be submitted immediately, within a reasonable period, after the responsible person becomes aware of the organization or holding of the spontaneous meeting/demonstration. The municipality may establish a different form and procedure for submitting the notification in such cases."

While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restriction in accordance with article 21 of ICCPR. In its general comment No. 37 on the right of peaceful assembly, the Human Rights Committee clearly establishes that "a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers" (para. 72). Furthermore, in the same general comment, the Human Rights Committee expressly recognizes that "spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21" (para. 14). The new Georgian legislation, by imposing the obligation of prior notification for spontaneous demonstrations, appears to contradict these international standards.

This provision also appears to be in contradiction with the judgment 3/3/1635 of the Constitutional Court of Georgia of 14 December 2023, which specifically analyzed the issue of prior notification for spontaneous demonstrations. In said judgment, the Constitutional Court declared that: "The normative content of article 8, paragraph 1, of the Law of Georgia on Assemblies and Demonstrations, which requires notification of the municipal executive body no later than five days before holding an assembly or demonstration, is unconstitutional in relation to article 21, paragraph 1, of the Constitution of Georgia when such notification is impossible due to the spontaneous nature of the assembly or demonstration."

In its reasoning, the Constitutional Court expressly recognized that "as in the past, today the role and importance of the freedom of assembly and demonstration, enshrined in article 21 of the Constitution of Georgia, remain immeasurable." The Court noted that "when it comes to a spontaneous reaction to ongoing events, postponing a protest not only for five days but even for a few hours can be critical or essential, potentially undermining the urgency and effectiveness of the protest."

The Court also emphasized that "expressing protest in an acute or intense manner is often the only or the most effective way to attract the attention of the authorities and/or society," and that "in certain cases, delaying public reaction may be completely ineffective for achieving the intended goals and may make a delayed response lose meaning."

A particularly problematic element in the new regulation of spontaneous assemblies is the restrictive definition introduced in article 3(b), which characterizes them as meetings "without prior planning and immediately due to a significant public event that could not have been foreseen."

This definition is excessively limited and ambiguous, by including requirements such as being "without prior planning" and in response to a "significant" and "unforeseeable" event. The inclusion of these subjective elements gives authorities a

wide margin to arbitrarily determine which demonstrations qualify as "spontaneous" and, therefore, which could benefit from the exception to the five-day notification requirement. In practice, this could mean that legitimate demonstrations that involve some minimal degree of coordination or that respond to events that the authorities would not consider "significant" or "unforeseeable" (such as a demonstration following the announcement of a government policy or a counter-demonstration) might not be recognized as spontaneous and, therefore, be considered illegal if they do not comply with the five-day notification deadline.

The European Court of Human Rights, in the case of Éva Molnár v. Hungary (application No. 10346/05, judgment of 7 October 2008, para. 38), expressly recognized that "in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly." Georgian legislation, by imposing excessive restrictions and sanctions on spontaneous demonstrations, directly contradicts this European jurisprudential standard.

The prior notification obligation for spontaneous demonstrations established in article 8(1) of the Law on Assemblies and Demonstrations would appear to contradict both the constitutional jurisprudence of Georgia and international human rights standards.

As the Human Rights Committee has clarified in its general comment No. 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)" (para. 17). Imposing sanctions, including administrative detentions, for non-compliance with notification requirements in spontaneous demonstrations, whose very nature implies the impossibility of anticipating them, constitutes a punishment for the legitimate exercise of the right to peaceful assembly. Additionally, as the Human Rights Committee notes in the same general comment, "the procedural and substantive guarantees of article 9 coincide and interact with other guarantees of the Covenant" (para. 53). This interrelation is evident in the case of the prior notification obligation for spontaneous demonstrations, which affects not only the right to personal liberty but also the effective exercise of the right to peaceful assembly guaranteed by article 21 of the ICCPR.

Prohibition of blocking public roads

Article 11(1) of the Law on Assemblies and Demonstrations establishes:

"*If the participants of a meeting or demonstration partially or totally block the roadway, the Ministry of Internal Affairs of Georgia is authorized to decide on reopening the roadway and/or restoring traffic, provided that, considering the number of participants, the meeting or demonstration can be conducted in an alternative manner.*"

Article 11(4) of the same law prohibits "*artificially blocking the roadway unless required by the number of participants in the meeting or demonstration.*

Additionally, it is forbidden to block the roadway with vehicles, various structures, or objects."

These provisions, which prohibit "artificially blocking" the roadway without clearly defining this concept, appear to be contrary to the ICCPR. As the Human Rights Committee has clarified in its general comment No. 35, "*all substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application*" (para. 22). The vague terms used in Georgian legislation do not satisfy this precision requirement, granting a broad margin of discretion to the authorities. Additionally, in the same general comment (para. 17), the Human Rights Committee clarifies that any detention that occurs as a consequence of the legitimate exercise of the right to peaceful assembly could be considered arbitrary. Demonstrations frequently involve some degree of disruption to normal traffic, and criminalizing this inherent aspect of many peaceful protests without clear criteria may result in disproportionate restrictions on the right of assembly and in arbitrary detentions.

In its general comment No 37, the Human Rights Committee clarifies that "peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets (…) peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city" (para. 55).

Prohibition of covering the face

The new article 11(2)(a) of the Law on Assemblies and Demonstrations, which prohibits participants from "covering the face with a mask or any other means", is problematic and contrary to the ICCPR and the clarifications provided by the Human Rights Committee in in its general comments Nos. 35 and 37. The generalized prohibition of covering the face, with the severe sanctions it entails (fines of 2,000 GEL or administrative detention of up to 7 days, and for cases of recidivism, fines of 2,000 to 5,000 GEL or administrative detention of up to 20 days) may discourage participation in legitimate demonstrations for fear of reprisals or in contexts where covering the face might be necessary for health or safety reasons.

In its general comment No. 37, the Human Rights Committee explicitly recognizes that "the wearing of face coverings or other disguises by assembly participants, such as hoods or masks, or taking other steps to participate anonymously may form part of the expressive element of a peaceful assembly or serve to counter reprisals or to protect privacy" (para. 60). Also, as noted in paragraph 12 of general comment No. 35, the concept of "arbitrariness" includes considerations of inadequacy, injustice, and unpredictability, characteristics that could apply to this absolute prohibition that does not contemplate legitimate situations for covering the face during a demonstration.

Besides, in paragraph 17 of general comment No 35, the Human Rights Committee establishes that "arrest or detention as punishment for the legitimate

exercise of the rights guaranteed by the Covenant," including the freedom of assembly, is arbitrary.

Violation of the principle of non-discrimination

The amended article 14(1) of the Law on Assemblies and Demonstrations, which indicates that assemblies can be banned if police collect clear evidence that the assembly will promote "*affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest*", following Georgia's Law on Family Values and the Protection of Minors.

As the Human Rights Committee has clarified in its general comment No. 37, "the approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities". Also, it indicates that States have the obligation to ensure that laws and its application "do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status". Moreover, the Human Rights Committee in the same general comment clarifies that States have a positive obligation to "ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination, or that may face particular challenges in participating in assemblies", as we as a "duty to protect participants from all forms of discriminatory abuse and attacks".

Besides, as the Human Rights Committee clarifies in its general comment No. 37 (para. 46), restrictions on peaceful assemblies should only exceptionally be imposed for the protection of "morals", and that "this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition, and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination". Specifically, the Human Rights Committee establishes that "restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity".

Criminalization of threats against public officials

The new article 353 of the Criminal Code, incorporated by virtue of the modifications, establishes:

> "*1. A threat of violence against a state-political official of Georgia, a political official, a state servant, a person equated to a state servant and/or a public servant and/or a member of their family, when the threat is related to the performance of official duties or their professional activities, shall be punishable by a fine or imprisonment for a period of up to three years.*

2. The same act committed under aggravating circumstances shall be punishable by a fine or imprisonment for a period of two to six years."

While we do not condone at any time threats of violence against anyone, whether other citizens or State officials, we note that this new provision appears in conflict with article 151 of the Criminal Code, which defines the crime of "threat" as "a threat of death, inflicting bodily harm, or destroying property, when the threatened person has a reasonable fear that the threat will be carried out." The latter establishes penalties of a fine, community service for a period of 120 to 180 hours, correctional work for up to one year, house arrest for six months to two years, or imprisonment for up to one year, with or without restrictions related to firearms. It is of concern that the terminology of "threat of violence" is left undefined in this law and so could be interpreted overly broadly and that it should be defined.

Furthermore, the lack of clear criteria for determining what constitutes a "threat of violence" in the context of political expression directed at public officials, combined with disproportionately severe penalties, creates a significant risk of arbitrary application that could unduly restrict freedom of expression. In this regard, we emphasize that any restriction on this right must respect the principle of legal certainty, which entails the need for a law that is clear and precise enough to prevent arbitrary application of the established restriction, as enshrined in article 19(3) ICCPR. As the Human Rights Committee notes in its general comment No. 34, "laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not" (para. 25).

The Human Rights Committee, in paragraph 38 of general comment No. 34, emphasizes: "As noted earlier in paragraphs 13 and 20, concerning the content of political discourse, the Committee has observed 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. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties." The criminalization of "threats of violence" against public officials without clear criteria of gravity or definition, could have a chilling effect on political expression and criticism of authorities, contravening these standards.

The new article 353, which establishes substantially more severe penalties for threats against public officials compared to similar threats against ordinary citizens, raises serious doubts about its proportionality. As the Human Rights Committee has clarified, when additional restrictions on liberty are imposed, "it must be justified by compelling reasons in view of the gravity of the crimes committed and the likelihood that the prisoner will commit similar crimes in the future" (general comment No. 25, para. 21) and "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function" and "be proportionate to the interest to be protected" (general comment No. 27, para. 14). In the case of Georgian legislation, the disparity between the sanctions imposed for similar threats depending on the category of the victim does not seem to be based on an objective assessment of the gravity of the conduct.

Analysis in light of international human rights standards

In our analysis, the legislative modifications adopted by the Parliament of Georgia appear to seriously compromise the effective exercise of internationally recognized fundamental rights, particularly in a context of citizen demonstrations and expressions of political opinions critical of the government.

These legislative modifications must be examined considering not only their formal content but also the sociopolitical context in which they have been adopted, characterized by massive protests in response to the government's announcement to suspend the European Union accession process. The simultaneity of these protests and the accelerated approval of restrictive reforms of fundamental rights generates legitimate concerns about the possible instrumentalization of law to restrict political dissent and citizen participation in matters of public interest.

Principle of legality

Article 15 of the ICCPR establishes that no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. This fundamental principle requires that laws be formulated with sufficient precision to allow people to clearly understand what conduct is prohibited and to regulate their behavior accordingly.

The Human Rights Committee emphasizes that "all substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application" (general comment No. 25, para. 22). Moreover, " a norm, to be characterized as a 'law', must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public", and "laws must not confer unfettered discretion for the restriction of freedom of expression on those charged with their execution", and they must "provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not" (general comment No. 34, para. 25).

The provisions introduced in Georgian legislation, particularly those that use vague terms such as "artificially blocking" the roadway or that refer to "threats of violence" without precisely defining their constitutive elements, would appear to violate this basic principle of legality. This imprecision would grants the authorities an excessive margin of discretion in the application of the law, which could lead to arbitrary interpretations and the criminalization of legitimate conduct in the exercise of fundamental rights.

When it comes to restricting fundamental rights such as freedom of peaceful assembly and freedom of expression, international human rights law establishes a rigorous three-part test: any restriction must 1) be prescribed by law, 2) pursue a legitimate aim specifically enumerated in international treaties, and 3) be necessary and proportional to achieve that aim in a democratic society. The first part of this test, the requirement of legality, demands that restrictions not only have a formal legal basis but also be formulated with sufficient precision and clarity so that any person can

reasonably foresee the consequences of their actions. Several of the legislative modifications adopted in Georgia would appear not to satisfy this basic requirement, by employing vague and ambiguous terms that grant the authorities an excessively broad margin of discretion in their interpretation and application.

Right to liberty and security of person

Article 9 of the ICCPR guarantees in its paragraph 1 that "no one shall be subjected to arbitrary arrest or detention" and that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

The Human Rights Committee has clarified that "[t]he second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits the deprivation of liberty except on such grounds and in accordance with such procedure as are established by law", and that that detention for security reasons must be exceptional (general comment No. 35, paras. 11 and 15).

The provisions that allow preventive detention to avoid possible future offenses (article 244(1) of the Code of Administrative Offenses) and the significant increase in the maximum period of administrative detention to 60 days (article 32 of the same code) raise serious doubts about their compatibility with these standards. General comment No. 35, in its paragraph 12, is clear in noting that "An arrest or detention may be authorized by domestic law and nonetheless be arbitrary."

During periods of deprivation of liberty, especially in the first hours and when detention is arbitrary, there is a heightened risk to personal security and of torture and other cruel, inhuman or degrading treatment or punishment. Georgia has obligations to take all necessary measures to prevent these risks, including a robust and rights-compliant legal framework on peaceful assembly and association, and deprivation of liberty.

Freedom of expression

Article 19 of the ICCPR protects the right to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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).

General comment No. 34 highlights that "Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities" and that this may justify certain restrictions (para. 21). However, it adds that "paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights" (para. 22).

Additionally, it notes that the Committee has observed 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. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties" (para. 38).

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. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving "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, 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).

Right to peaceful assembly

Article 21 of the ICCPR recognizes the right of peaceful assembly and establishes that its exercise "shall be subject to no restrictions other than those imposed in conformity with the law and which are 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."

General comment No. 37 of the Human Rights Committee clearly establishes in paragraph 72 that "a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers."

General comment No. 34, in its paragraph 4, expressly establishes that "Freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote." Furthermore, paragraph 23 notes that "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression" and that "paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights."

As noted in paragraph 21 of general comment No. 34, when a State party imposes restrictions on the exercise of freedom of expression, "these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed."

Furthermore, paragraph 38 of general comment No. 34 specifically states 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. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."

With regard to the policing of assemblies, the 2024 "Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests" (A/HRC/55/60 dated 31 January 2024) provides important guidance on the human rights-compliant facilitation of peaceful protests by law enforcement officials.

We also refer to the equipment deployed and that states shall ensure that the use, procurement, development and trade in such items is compliant with human rights standards, including a proper legal foundation, risk assessments are undertaken, and monitoring and investigations carried out for breaches (See Report of the Special Rapporteur on torture, A/78/324, and associated annexes).

The provisions that reintroduce the prior notification obligation for spontaneous demonstrations (article 8(1) of the Law on Assemblies and Demonstrations), in contradiction with the judgment of the Constitutional Court, as well as the disproportionate sanctions for offenses related to assemblies and demonstrations, such as the absolute prohibitions on covering the face or blocking public roads, raise serious doubts about their compatibility with these standards.

Human Rights Defenders

The legislative amendments to the Code of Administrative Offenses, particularly those to article 174, would appear to be inconsistent with 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 5(a) 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 as well as the right, individually and in association with others, to meet or assembly peacefully. Further, articles 2 and 12, sections 1 and 2, state that it is the prime responsibility and duty of the State to protect, promote and implement all human rights and fundamental freedoms and that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Observations and concerns

The preceding analysis allows us to identify several aspects of the legislative amendments to the Code of Administrative Offenses that would appear to be contrary to international human, with the risk of a serious setback in the protection of human rights in Georgia. The examined legislative modifications directly affect the human rights and fundamental freedoms for the functioning of a democratic society: personal liberty, freedom of expression, and the right to peaceful assembly. Furthermore, they

might have a chilling effect on the civic space and impact people's ability to exercise these rights and freely and safely work for their protection and promotion.

The Human Rights Committee has underlined that "freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone of every free and democratic society" and that "freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote" (general comment No. 34, paras. 2 and 4).

The cumulative effect of provisions that appears to significantly increase administrative sanctions, allow preventive detentions without sufficient justification, reintroduce bureaucratic requirements for spontaneous demonstrations, selectively criminalize criticisms of public officials, and use imprecise terms to typify offenses, risk creating a legislative environment that could severely discourage the legitimate exercise of fundamental rights. As the Human Rights Committee notes in its general comment No. 34, "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" (para. 28), precisely because public scrutiny of authorities constitutes an essential element of any functional democracy.

The detailed analysis of judgment 3/3/1635 of the Constitutional Court of Georgia of 14 December 2023, reveals that the new provisions on spontaneous demonstrations not only directly contradict what was established by this high court but represent an attempt to reintroduce, through a slightly different formulation, requirements that were expressly declared unconstitutional. The Constitutional Court recognized the importance of immediacy and spontaneity as inherent elements of certain demonstrations, noting that temporal urgency is precisely what gives them their efficacy as a mechanism of public expression. By imposing requirements of "immediate" notification and by limiting the definition of spontaneous demonstrations to those "without prior planning," the legislative amendments violate the very essence of the right to spontaneous demonstration as protected by the Constitutional Court.

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

1. The process of elaboration, consultation, deliberation, and approval of the legislative package, including human rights impact assessments conducted prior to their adoption, if any; the process of consultations carried out with civil society organizations, human rights defenders, independent experts, and international bodies, if any; and the specific justification that supports the urgency of their approval through expedited procedures.

2. In light of the principle of proportionality, kindly provide an explanation of the objective justification for the significant increase in administrative sanctions related to demonstrations; specially the objective criteria used to determine the scale of sanctions, the safeguards envisaged to avoid their disproportionate application.

3. In relation to the modification of article 244(1) of the Code of Administrative Offenses, kindly clarify its compatibility with the fundamental principle of presumption of innocence, the prohibition of arbitrary detentions established in article 9 of the ICCPR, the standards included in general comment No. 35.

4. In relation to the new article 353 of the Criminal Code, kindly provide information on the objective criteria for determining what constitutes a "threat of violence" in the context of political expression, and the safeguards envisaged to prevent its use as a mechanism for restricting public debate.

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.

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

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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Graeme Reid
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment