

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

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(Please use this reference in your reply)

6 February 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 58/14, 52/9 and 59/4.

We wish to draw the attention of your Excellency's Government to the **United States President's executive order of 22 September 2025 designating the left-wing, anti-fascist, direct action movement "Antifa" as a "domestic terrorist organization"**.¹ We are concerned that this designation is not consistent with international human rights law.

The Executive Order

Section 1 of the Executive Order alleges that Antifa is a "militarist, anarchist enterprise that explicitly calls for the overthrow of the United States Government, law enforcement authorities, and our system of law." It then details the various ways in which Antifa allegedly threatens the United States and how it organizes to do, indicating an "organized effort... to achieve policy objectives by coercion and intimidation" that constitutes domestic terrorism.

Section 2 designates Antifa as a "domestic terrorist organization" due to its "pattern of political violence designed to suppress lawful political activity and obstruct the rule of law". It further directs relevant U.S. government bodies, by utilizing "all applicable authorities", to investigate, disrupt, and dismantle all illegal operations — especially those involving terrorist actions — conducted by Antifa or persons claiming to act for or provide "material support" to it, and to investigate and prosecute those who fund such operations.

Section 3 provides the Order "shall be implemented consistent with applicable law".

Human rights concerns

We are concerned that the Order could result in government action restricting human rights, including the rights to freedom of association and expression, in the

¹ <https://www.whitehouse.gov/presidential-actions/2025/09/designating-antifa-as-a-domestic-terrorist-organization/>.

absence of such restrictions being duly authorized by law as required by international human rights law.

Firstly, the Order does not specify any legal basis for its purported designation of a “domestic terrorist organization”. While there is U.S. legislative authority for the executive designation of categories such as “foreign terrorist organization”, “specially designated global terrorist”, and “State sponsor of terrorism”,² there is no legal framework for the executive designation of domestic terrorist organisations or any special crime of “domestic terrorism”. The Order further does not identify any source of Presidential authority to make designations.

Secondly, while the Order directs U.S. authorities to take action against Antifa under “all applicable authorities”, and requires implementation “consistent with applicable law”, it does not specifically identify which laws would be relevant to combating a “domestic terrorist organization” in the absence of such legal category or specific powers attaching to it. There is accordingly a risk of that U.S. authorities may be tempted to act outside existing law in attempting to implement the President’s Order, or to apply powers which were not intended for, or are not suitable for, combating domestic terrorism. To the extent that the Order does not create new powers, it would appear to have no legal effect and is redundant.

Thirdly, empirically Antifa is widely regarded as a diffuse ideology without any leadership, membership, headquarters, financial structure, or other attributes of organizational capacity that would render it a recognizable group or enable it to facilitate or coordinate terrorist action by such group. As such, the designation would not satisfy any acceptable legal criteria for the identification of an “organization”, even if such a legal framework existed.

We recall that any legal powers to list terrorist groups must comply with international human rights law (see annex), including legitimate purpose, legality, necessity and proportionality, due process, and judicial safeguards. The legal consequences of listings must similarly respect such obligations (see annex).

The definition of terrorism used for listings must also confirm with best practice international standards, including by focusing on intentionally causing death or serious bodily injuring and excluding harm to property and acts of protest in a democratic society (see the revised model definition of the Special Rapporteur on the promotion and protection of human rights and fundamental while countering terrorism (see annex). Most of the acts allegedly committed by Antifa under section 1 of the Order do not appear to constitute terrorism according to international standards. Where criminal conduct does not qualify as terrorism, the appropriate law enforcement response is to apply ordinary criminal laws. The U.S. has a wide range of string and effective criminal laws available.

We are further concerned that the various acts attributed to Antifa under the Order do not, in any event, appear to have been substantiated by relevant evidence.

² U.S. law defines “domestic terrorism” under 18 USC § 2331(5) for other purposes.

Finally, given that the Order appears to have no concrete legal effects, we are concerned that it may be misused to target ideologies and viewpoints with which the Government disagrees, including legitimate expression that is protected by the right to freedom of expression under international human rights law and under the First Amendment of the U.S. Constitution. Stigmatization of political critics, dissents or human rights defenders as “terrorists”, and their supporters and funders as “material supporters” of terrorism, has a destructive chilling effect on the legitimate exercise of freedoms of expression, association and peaceful assembly and the right to take part in public affairs under articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, to which the U.S. is a State party, and on civic space and democracy.

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 cases 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 allegations.
2. Please specify the domestic legal basis for the designation of Antifa under section 2 of the Order.
3. Please identify the specific domestic laws and agencies purportedly applicable to combating Antifa under section 2 of the Order.
4. Please provide evidence that Antifa is an organisation, as alleged in section 1.
5. Please provide evidence of the responsibility of Antifa as an organisation for the acts attributed to it in section 1 of Antifa.
6. Please indicate whether the designation of Antifa will be reviewed and repealed.
7. Please explain whether and how the Order is compatible with international human rights law, including articles 19, 21 and 22 of the ICCPR.
8. Please indicate which safeguards have been put in place to ensure that the Order is not misused against political critics, dissidents, human rights defenders and civil society organizations, including those engaged in peaceful promotion of democracy, anti-fascism, or resistance to fascism or authoritarianism.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. 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.

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

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

Respect for human rights while countering terrorism

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm 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.³ Counter-terrorism measures must conform to fundamental requirements of legality, necessity, proportionality, and non-discrimination.

Listing of terrorist organisations

The designation of "terrorist" organizations must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 35 and A/80/284, paras. 17 - 39). Specifically:

- (a) there must be reasonable grounds to believe that the person or entity has knowingly engaged in terrorism, as properly defined according to international standards, including the requirement of legality;
- (b) the listed person or entity must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights;
- (c) there must be a right to apply for de-listing and to have it reviewed within a reasonable time, and a right to judicial review of any resulting decision, in both cases affording due process, including sufficient disclosure of evidence and access to a lawyer;
- (d) the listed individual or entity must be afforded the right to make a fresh application for de-listing or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;
- (e) listings must lapse automatically after 12 months unless renewed afresh; and

³ 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.

- (f) reparation, including compensation, must be available for any wrongful listing.

In addition, to list an organization, it must have the substantial purpose of engaging in terrorist offences. It is not enough that some individuals commit isolated acts of terrorism while acting outside of the organization's legitimate purposes and leadership. Even where an individual or organization meets the formal criteria, listing must still be necessary and proportionate in the circumstances, including by demonstrating that less invasive means, such as surveillance and criminal investigation, would be ineffective. Proportionality will also depend on the nature and scope of the restrictive measures that flow from designation, including whether they apply automatically or in a tailored manner, and whether any offences are overbroad. Where listing activates criminal liabilities, the link between the organization and any offences must be articulated in a sufficiently narrow and precise manner, to avoid unjustified liability.

Legality and the definition of terrorism

The principle of legality under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be 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, including to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)) and suppress the exercise of fundamental rights and freedoms (A/HRC/40/52).

Although no universal treaty generally defines "terrorism", States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,⁴ the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the revised model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, "best practice" guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28 and A/HRC/61/52). The model definition of terrorism provides that:

Any person commits a terrorist offence if that person, by any serious criminal act, intentionally causes death, serious bodily injury, or hostage-taking, where:

- (a) The purpose of the conduct, by its nature or context, is:
 - (i) To provoke a state of terror in⁵ the public or a group of persons; or
 - (ii) To unduly compel a Government or an international organization to do or to abstain from doing any act;

⁴ See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.

⁵ "To seriously intimidate" could be substituted for "To provoke a state of terror in".

- (b) The conduct is intended to advance a political or ideological purpose, which must be a substantial purpose; and
- (c) The conduct, given its nature or context, intentionally causes serious damage to a country or an international organization.

In order to further reduce overbreadth and safeguard human rights, the Special Rapporteur's model definition also includes essential exceptions from the definition:

A terrorist offence does not include:

- (a) An act of advocacy, protest, dissent or industrial action that does not intentionally cause death or serious bodily injury;⁶
- (b) Conduct committed in armed conflict that does not violate⁷ international humanitarian law;
- (c) The provision of humanitarian activities by impartial humanitarian organizations in accordance with international humanitarian law;
- (d) The activities of State military forces in the exercise of their official duties, inasmuch as they are accordance with international law; and
- (e) An act intended to establish or re-establish democracy, constitutional Government or the rule of law, or to exercise or safeguard human rights.

Departing from the best practice standards raises the likelihood of national definitions being vague and or overbroad and infringing the requirements of legality and certainty.

Freedom of association

Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1). Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

Freedom of expression and opinion

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

⁶ If harm to property is included in the definition.

⁷ Or "is in accordance with" humanitarian law.

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 and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend. In 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” (para. 11).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. 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. To be provided by law, a restriction must be formulated with sufficient precision to enable individuals to regulate their conduct, accordingly, must not confer unfettered discretion, and 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 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” (general comment No. 34, para. 35). The relation between right and restriction and between norm and exception must not be reversed. A restriction must be “the least intrusive instrument among those which might achieve their protective function” (para. 34).

The Human Rights 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. 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” (general comment No. 34, para. 23).