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How the “War on Terror” has Metastasized to Silence U.S. Social Movements and Shrink Civic Space

NGO Shadow Report before the United Nations Human Rights Committee
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This report is being submitted by the following human rights and community organizations: Movement for Black Lives, Community Movement Builders, US Campaign for Palestinian Rights, Louisiana Bucket Brigade, Last Real Indians, and the Center for Constitutional Rights. The partners welcome the opportunity to contribute to the UN Human Rights Committee’s review of the United States’ compliance with the International Covenant on Civil and Political Rights.

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I. ISSUE SUMMARY

Earlier this month, the Georgia Attorney General issued an indictment charging 61 protestors advocating racial and environmental justice with a criminal enterprise that includes charges of domestic terrorism. The breathtakingly sweeping indictment reads more as a political screed, and sweeps acts of solidarity, mutual aid, and anarchist ideology into a terrorism-related conspiracy. This latest dramatic escalation is the culmination of years of efforts - by the United States federal government and states, along with private industry - of applying the ever-expanding concept of “terrorism” to target protest for social change.

Over 20 years after 9/11, the terrorism framework and the “War on Terror” has taken hold at almost every level of government and law enforcement, shrinking the space for movements, dissent, and civil society, and hindering the rights enshrined and protected in the ICCPR. Today, it has become clear that the laws passed, agencies and infrastructures created, and rationales promulgated to ostensibly make Americans safer, combat terror, and preempt harm have all been turned against Black dissent, Indigenous activists, Muslim, Arab and South Asian communities, environmental justice groups, and the increasingly intersectional movements that challenge an unjust status quo. Rather than being “unintended consequences” of the security apparatus, the chilling and disruptive effect of these laws must be understood as an intentional outcome. It is a feature, not a bug, of the so-called “counterterrorism” architecture.

This report situates the origins of the concept of terrorism in U.S. law in efforts to achieve political, rather than security outcomes. This has been a throughline, escalating with the expansion of state powers with the “War on Terror.” The lack of accountability for “War on Terror” abuses such as mass-detentions, round-ups, torture and other abuses from Guantánamo Bay to Abu Ghraib have cemented the category of the counterterror measure as one seemingly impervious to oversight or scrutiny. And one that is capable of unlocking seemingly endless state resources. This terrorism framework has been deployed inward, towards domestic protest movements where the U.S. has suspended civil and political rights of protestors and organizers in the name of “national security,” and/or “counterterrorism/ counter-extremism.” Efforts by the U.S. government to label white nationalists as domestic terrorists, such as those who stormed the U.S. capitol on January 6, 2021, should not be celebrated as a correction of decades of double standards with regard to its discriminatory targeting of non-white communities, but cautioned as a further entrenchment of a framework that will only continue to be weaponized against activists and communities of color.¹

This report outlines the contours and impacts of federal legislation and prosecutions, such as the Material Support to Terrorism statute and domestic-terrorism enhancements, as well as state-level legislation. Although authorities to investigate or prosecute terrorism have historically sat with the federal government, the United States has seen a proliferation of state-level anti-terrorism laws. These laws have many of the same overbroad and stratifying features as their federal counterparts, and in both intention and application violate international human rights

¹ See Diala Shamas and Tarek Ismail. “Calling the Capitol riot ‘terrorism’ will only hurt communities of color,” The Washington Post. (Jan. 10, 2021); <https://www.washingtonpost.com/outlook/2021/01/10/capitol-invasion-terrorism-enforcement/>; Shirin Sinnar, *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 Mich. L. Rev. 1333 (2019).

protections, such the right to be free from discrimination, and freedoms of expression, association, religion. Further, the U.S. government’s dangerous interpretation of “states of emergency” to justify derogations of its international human rights obligations have been widely condemned by human rights defenders, scholars, and members of the international community for creating conditions of impunity for state and private actors and precarity for rights-holders around the world.

Indeed, any review of the impact of U.S. counterterrorism strategy requires a global perspective. The U.S. has just as aggressively pursued counterterrorism strategies globally as it has domestically. Many of the surveillance, blacklisting, and criminalization of laws that make up the counterterrorism architecture have a global reach: either because of the transnational nature of the movements they are targeting, or because they are imposed on U.S. actors operating globally, such as U.S. financial institutions. Through its bilateral relationships, the U.S. has insisted upon the adoption of its anti-democratic, anti-human rights-based approach.² It has also set itself up as the golden standard for the U.N. Counterterrorism architecture.³ The U.S.-based partners to this submission join and echo the concerns of our transnational allies in condemning the U.S.’s role in propagating “counterterrorism” policies that have threatened the rights of marginalized communities as well as civil society around the world.⁴

The Human Rights Committee, together with other UN Treaty Bodies and Special Procedures, has regularly expressed concern and collected decades of documentation regarding the U.S.’s approach to counterterrorism, including a recent global study devoted specifically to the impact of counterterrorism on civil society and civic space.⁵ Amidst growing opposition to the counterterrorism and national security framework, and the U.S.’s failure to address the concerns of the international community, the HRC must take firm action to remedy the country’s human rights deficits in its approaches to counterterrorism. Recommendations must center the experiences of impacted communities and uplift demands to abolish the national security framework and to recalibrate national priorities so as to divest public wealth from a militarized approach and invest instead in a rights-based approach to public safety.⁶ The U.S. must be compelled to dismantle the architectures it has constructed to justify human rights violations and suppress movements, so that all communities can flourish with their human dignity intact in a society transformed.

² See, e.g., Lisa Bhungalia, *Elastic Empire, Refashioning the War through Aid in Palestine*, (Stanford University Press, Forthcoming Dec. 2023); Samar Al-Bulushi, *Twenty Years On: The War on Terror in East Africa*, Items (Aug. 7 2018), <https://items.ssrc.org/from-our-fellows/twenty-years-on-the-war-on-terror-in-east-africa/>.

³ See Ramzi Kassem, Rebecca Mignot-Mahdavi and Gavin Sullivan, *Watchlisting the World, Digital Security Infrastructures, Informal Law, and the “Global War on Terror,”* Just Security (Oct. 28, 2021). <https://www.justsecurity.org/78779/watchlisting-the-world-digital-security-infrastructures-informal-law-and-the-global-war-on-terror/>

⁴ Movement Law Lab et. al., Letter from global civil society to the UN Human Rights Committee providing information for the United States of America’s upcoming review, (Sept. 12, 2023).

⁵ See Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms), *Global Study on the Impact of Counter-Terrorism on Civil Society and Civic Space* (June 2023), https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT_GlobalStudy.pdf.

⁶ See Arun Kundnani, “*Abolish National Security*,” Transnational Institute, (June 17, 2021), <https://www.tni.org/en/publication/abolish-national-security>.

II. A “Security” Frame that Suspends Civil & Political Rights (Arts. 2, 17, 18, 19, 21, 22, 25, 26, 27)

A. The Origins of the US Counterterrorism Framework

The architecture of United States’ counterterrorism laws, which ballooned after the attacks of September 11, 2001, has its origins in efforts less concerned with security than with providing state and private actors additional and seemingly impervious tools of exerting political influence. The first mention of terrorism in US law was in 1969, in relation to funding for Palestinian refugees, and was intended to achieve foreign policy goals in alignment with Israel, a U.S. ally.⁷ The first creation of a terrorism tort in 1992 was also in reference to Palestinians, and was similarly supported by Israel-advocates.⁸ The first designated terrorist organizations were also in relation to U.S. foreign policy in the Middle East, indicating the troubling origin and association of the terrorism framework with Palestinian, Arab, Muslim communities.⁹

Since 9/11, counterterrorism provisions in various corners of U.S. law and policy have expanded exponentially. With a massive investment of public wealth, the legislative, executive and judicial branches have all given more powers to the police, military, and intelligence agencies to investigate and prosecute “potential” threats. These new tools continued to disproportionately impact communities of color, and in particular Muslim, Arab, and South Asian communities. The word “foreign terrorists” has become racialized as Muslim. And significantly, the broad interpretations and sweeping measures of the anti-terror effort, with its emphasis on preventative policing, has brought lawful protest, religious practice and political speech within its ambit.¹⁰ This has been particularly the case for those associated with Muslim populations, or perceived to be Muslim.

The Material Support to Terrorism laws, which were passed as part of legislation in response to the 1995 Oklahoma City bombing - an act of white supremacist violence - are an example of counterterrorism laws that have disproportionately impacted Muslim, Arab, and Palestinian communities. “Material Support to Terrorism” has been broadly interpreted by legislators and the courts to include such efforts as advocacy and humanitarian assistance if it is deemed to be

⁷ As mentioned by Prof. Darryl Li in discussing a larger research project on the centrality of Palestine to the development of early U.S. antiterrorism law. *Webinar: Resisting Lawfare: What USCP’s Win Means for The Movement*, recording available at <https://www.facebook.com/watch/live/?ref=search&v=233972646193119>. The referenced statute is the Foreign Assistance Act of 1969, Pub. L. No. 91-175, § 108 (a), 83 Stat. 805, 819 (1969) (codified as amended at 22 U.S.C. § 2221(c)). Although the term terrorism was not defined, it appeared in that year’s Foreign Assistance Act, excluding refugee support funds from reaching members of the Palestinian Liberation Army.

⁸ See Darryl Li, “*Terrorism Torts and the Right to Colonize*,” The Law and Political Economy Project, March 13, 2023: <https://lpeproject.org/blog/terrorism-torts-and-the-right-to-colonize/>.

⁹ See Wadie Said, *The Material Support Prosecution and Foreign Policy*, 86 Ind. L. J. 543, 557(2011); see also Sudha Setty, *Country Report on Counterterrorism: United States of America*. <https://digitalcommons.law.wne.edu/facschol/285/>

¹⁰ Human Rights Watch, *Illusion of Justice: Human Rights Abuses in US Terrorism Prosecutions* (July 21, 2014) (Hereinafter “*Illusion of Justice*”) <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>.

“in coordination” with designated terrorist organizations.¹¹ These broad definitions have created vast gray areas that create a significant chilling effect, as individuals and organizations self-censor their speech and behavior out of fear of running afoul to criminal laws. The negative impact on Muslim philanthropy - a form of religious and political expression - has been significant.¹² The full extent of the chilling effect of these laws remains unknowable.

The potent elasticity of the term “terrorism” was made clear when decision-makers created a new crime in the context of animal rights and environmental justice activists. As a result of lobbying by pharmaceutical and other industries, Congress passed the Animal Enterprise Protection Act of 1992 and created the new crime of “animal enterprise terrorism,” as a way to criminalize protests targeting their sector. The way the terrorism framework is wielded by decision-makers and corporations against those advocating for social change or those engaging in activism to challenge the status quo has long been a concern of civil liberties advocates.

To date, and by design, there is no singular definition of terrorism in U.S. Law, which is a subjective and political categorization.¹³ Because the definition of terrorism is inherently nebulous and malleable, “counterterrorism” remains a powerful vehicle for both states and corporations to articulate their political priorities, and target disfavored groups or opinions.

B. The Use of Terrorism Laws to Criminalize Protest Movements

1. Deploying the full weight of the federal government’s counterterrorism powers against protestors

The expanded government authorities, although primarily focused on Muslim, Arab and South Asian communities post-9/11, have been quickly mobilized against other protest movements such as those for racial or environmental justice. During the mass popular uprisings that gripped the United States in the summer of 2020 following the murder of George Floyd, protestors - especially Black protesters - were framed as “terrorists” and “domestic terrorists” by the highest levels of government, from the Attorney General to the President.¹⁴

“These are terrorists. They’re looking to do bad things to our country” - Donald Trump¹⁵

These high-level directives resulted in the initiation of hundreds of federal criminal cases against protestors, despite limited federal interest in those cases. This push to federalize charges in cases that would have normally been left to local authorities was unprecedented, and it deployed the

¹¹ Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2712 (2010).

¹² American Civil Liberties Union, Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing” (June 2009), <https://www.aclu.org/wp-content/uploads/legal-documents/blockingfaith.pdf>.

¹³ See Sudha Setty, Country Report on Counterterrorism: United States of America, 62 AM. J. COMP. L. 643 (2014) <https://digitalcommons.law.wne.edu/facschol/285/>.

¹⁴ William P. Barr, U.S. Dep’t of Justice, Statement on the Death of Mr. George Floyd (May 31, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

¹⁵ Katie Rogers, Jonathan Martin and Maggie Haberman, *As Trump Calls Protesters ‘Terrorists,’ Tear Gas Clears a Path for His Walk to a Church*, N.Y. Times, (June 1, 2020), <https://www.nytimes.com/2020/06/01/us/politics/trump-governors.html>.

full tools of the federal government against the largest protest movement in U.S. history.¹⁶ Former U.S. Attorney General Bill Barr tasked the federal government's counterterrorism infrastructure - including Joint Terrorism Task Forces¹⁷ to investigate and prosecute protestors. In some of these cases, federal prosecutors argued that terrorism sentencing enhancements should be applied to protestors. This was the case for Collin Mathis and Urooj Rahman, two young lawyers of color who participated in an act of vandalism against an empty, damaged, and abandoned police vehicle, injuring no one.¹⁸

Our (Movement for Black Lives and CLEAR) 2021 report lays out how the federal government greatly exaggerated the threat of violence from protestors during the summer 2020 uprisings and charged them with inflated federal indictments that carry significantly harsher penalties than local charges, all in an attempt to wrest power from local communities that had taken to the streets nationwide. This year, we've seen the same tactics wielded by both the city of Atlanta and the state of Georgia against the organizers fighting to #StopCopCity.

This is not a new tactic—in fact, it's as old as the repression of any movement toward liberation, because fear is the best tool to make us forget that there are always more of us than there are of them. The organizers who are bold enough to take the lead remind us that the power of the people will always be stronger than the power of the few, despite all their attempts to tip the scales.

For more than a century, the U.S. federal government has actively sought to suppress Black social movements, employing tactics to control Black mobility and stifle collective action and power. Beginning in 1910, just two years after the creation of the Bureau of Investigation (BI), the agency refused to investigate a series of brutal lynchings, claiming they had no authority to protect citizens of African descent's civil rights. In 1963, following the massive March on Washington for Freedom and Jobs, the FBI, led by J. Edgar Hoover, intensified surveillance and interrogation of Black movement leaders such as Fannie Lou Hamer, Martin Luther King Jr., Angela Davis, and leaders of the Black Panther Party, aiming to disrupt and preserve the established white supremacist order. Decades later, in 2017, the FBI's Counterterrorism Division introduced the label "Black Identity Extremists" (BIEs) to broadly categorize Black activists as national security threats, justifying government surveillance and punishment. Throughout history, regardless of the strategy adopted by Black resistance movements, the federal government has consistently aimed to undermine radical organizers for racial justice and

¹⁶ Movement for Black Lives and the Creating Law Enforcement Accountability & Responsibility (CLEAR) Project, *Struggle For Power: The ongoing persecution of the black movement by the U.S. government*, [Hereinafter *Struggle for Power*] <https://m4bl.org/struggle-for-power/>.

¹⁷ *Id.*

¹⁸ Muslims for Just Futures & Urooj Rahman's Solidarity Committee, "Statement in Solidarity with Urooj and an Urgent Call for Building a Stronger Movement Defense Infrastructure for Protestors" (Dec. 2021), <https://uprisingsupport.files.wordpress.com/2021/12/11594-statementinsolidaritywithuroojampurgentcalltoaction.pdf>; Tamar Sarai, *Over a Year After the 2020 Uprisings, Federal Charges Continue to Loom over Protesters*, *Prism* (Nov. 29, 2021), <https://prismreports.org/2021/11/29/over-a-year-after-the-2020-uprising-federal-charges-continue-to-loom-over-protesters/>.

Black power, constructing justifications to use their power to surveil, exploit, dominate, or punish these movements, mirroring the misuse of terrorism laws to criminalize protest.

We demand an end to these violent, abusive, anti-democratic intimidation tactics of political repression. We demand an immediate end to the criminalization of protest. - Paige Ingram, *Movement for Black Lives*

Federal prosecutors have similarly pursued terrorism enhancements against environmental justice protestors engaging in civil disobedience. They were sought against Jessica Reznicek, an activist who was charged with tampering with the Dakota Access oil pipeline, despite her having gone to lengths to ensure that her acts would not harm anyone, only property.¹⁹

We learned very quickly how the state, the American corporate state, criminalizes and dehumanizes human beings, Indigenous nations / peoples, by labeling us religiously driven Indigenous jihadists & or eco-jihadists and attempts to further create dichotomies of terrorists and non-terrorists. - Chase Iron Eyes, *Last Real Indians (Indigenous Media Movement)*.

Even when not charging individuals with terrorism-related laws, prosecutors have often classified cases as relating to terrorism. In the cases of animal rights activists, prosecutors have consistently deployed the terrorism label in their communications about cases, even when there is no accompanying terrorism-related legal violation attached. Investigative journalists at The Intercept found that of 70 federal prosecutions of “radical environmentalists and animal rights activists”, 52 did not result in charges under anti-terrorism laws. Yet, the Justice Department repeatedly referred to the defendants as terrorists in public statements and internal communications.²⁰ Human Rights Watch noted a similar phenomenon within post-9/11 prosecutions usually targeting Muslim individuals. Although the Department of Justice labeled prosecutions as relating to terrorism, most of those cases did not involve any terrorism-related charges.²¹ These examples stand in stark contrast with the labeling of acts of white supremacist violence, highlighting the discriminatory and highly politicized nature of the anti-terrorism regime.²²

¹⁹ Elsa Maria Mota, *An activist challenges her “Terrorism” sentence for civil disobedience in the fight against the Dakota Access Pipeline*, (Nov. 15, 2021) <https://ccrjustice.org/home/blog/2021/11/15/activist-challenges-her-terrorism-sentence-civil-disobedience-fight-against>.

²⁰ Alleen Brown, *The Green Scare: How a movement that never killed anyone became the FBI’s No. 1 domestic terrorism threat*, The Intercept (March 23, 2019) <https://theintercept.com/2019/03/23/ecoterrorism-fbi-animal-rights/>.

²¹ Human Rights Watch, *Illusion of Justice* (2014) <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>.

²² Trevor Aaronson, *Terrorism’s double standard: Violent far right extremists are rarely prosecuted as terrorists* (March 23, 2019) <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions/>.

2. State-level anti-terrorism legislation used to suppress protest

At least 34 states had anti-terrorism legislation in 2019,²³ and the number has risen in the past four years. Just this year, Oregon legislators are considering terrorism legislation ostensibly in response to white supremacist violence against “critical infrastructure” (more below),²⁴ and West Virginia’s legislature introduced a bill in January 2023 that could attach the “terrorism” designator to non-violent protestors.²⁵ A proposal in Washington state, the “Preventing Economic Terrorism Act,” could reclassify civil disobedience protests as felonies, including the disruption of highways, a common and effective form of public protest.²⁶

Many of these state laws are dangerously overbroad. In Florida, the state’s anti-terrorism law was expanded to attribute “terrorism” to any “violent act” that is intended to “influence the policy of a government by intimidation or coercion.”²⁷ This vague wording means that if an encounter between law enforcement and protesters against police brutality escalates into violence, the demonstrators could potentially be charged with “terrorism,” even if nobody is injured. The current Florida House Speaker has repeatedly equated property damage at protests with domestic terrorism.²⁸

Many of these laws have been promoted by private actors, embracing the power of “War on Terror” language to suppress their critics. Private industry has characterized Indigenous protest and efforts to protect the environment as “eco-terrorism.” It has engaged in militarized repression of protests by fossil fuel companies.²⁹ For instance, at a 2011 conference attended by members of the oil and gas industry, an executive recommended military-style tactics against protestors, suggesting attendees “download the US Army/Marine Corps counterinsurgency manual because

²³ Margot Williams, Trevor Aaronson, *How individual states have criminalized terrorism* (March 23, 2019) <https://theintercept.com/2019/03/23/state-domestic-terrorism-laws/>.

²⁴ Natasha Lennard, *Oregon Domestic Terrorism Law Targets the Far Right. Here’s How It’ll Backfire* (Apr. 24, 2023) <https://theintercept.com/2023/04/24/oregon-domestic-terrorism-law/>.

²⁵ West Virginia Legislature, House Bill 2916 (Introduced January 23, 2023), http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=hb2916%20intr.htm&yr=2023&sesstype=RS&i=2916.

²⁶ Essex Porter, *Protest bill creates crime of 'economic terrorism,'* Kiro 7 news (Nov. 18, 2016), <http://www.kiro7.com/news/local/washington-state-senator-seeks-to-criminalize-illegal-protests/467962158>.

²⁷ Florida Statutes Title XLVI. Crimes § 775.30. Terrorism; defined - last updated January 01, 2019 .

²⁸ Dara Kam, *Florida House panel backs protest bill after fierce debate*, Jacksonville.com, (Jan. 28, 2021) <https://www.jacksonville.com/story/news/politics/state/2021/01/28/florida-house-panel-backs-protest-bill-after-fierce-debate/4292100001/>; Gov. Ron Desantis, *News Release: Governor Ron DeSantis Announces the “Combating Violence, Disorder and Looting and Law Enforcement Protection Act”* (Sept. 21, 2020), <https://www.flgov.com/2020/09/21/governor-ron-desantis-announces-the-combating-violence-disorder-and-looting-and-law-enforcement-protection-act/>; See generally, Nick Robinson, *How DHS is Fueling Georgia’s “Terrorism” Crackdown on Cop City Protests*, Just Security, <https://www.justsecurity.org/86944/how-dhs-is-fueling-georgias-terrorism-crackdown-on-cop-city-protests/>.

²⁹ Susie Cagle, “Protesters as Terrorists”: Growing Number of States Turn Anti-Pipeline Activism Into a Crime, *The Guardian* (Jul. 8, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements>; Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, Brennan Center for Justice (Mar. 17, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements>.

we are dealing with an insurgency here;” and another executive noted that they have “psy ops” experts on staff, applying lessons learned from the Middle East.³⁰

Case Study: Defend the Atlanta Forest Movement to Stop Cop City in Georgia

One prominent use of state “domestic terrorism” legislation is currently garnering national and international attention. In Atlanta, Georgia, the public organizing to stop the development of “Cop City,” a police training facility slated to be built in one of Atlanta’s largest forests, has grown into a powerful, intersectional mass effort uniting abolitionist, Indigenous, environmental, anti-gentrification, and racial justice causes in a single protest movement. As the protests have escalated, 42 protestors have been arrested under Georgia’s “domestic terrorism” law—a law that passed in response to the 2015 massacre in a Black church in Charleston, South Carolina, by white nationalist Dylan Roof, which expanded the definition of “domestic terrorism” to include property crimes. As was the case with the post-9/11 prosecutions described above, activists who were arrested and not charged with domestic terrorism were still labeled domestic terrorists, or charged with conspiring with domestic terrorists, and other adjacent crimes.³¹

In early September 2023, prosecutors released a new indictment charging 61 defendants in a criminal conspiracy under the Racketeer Influenced and Corrupt Organizations (RICO) law that includes the domestic terrorism charges.³² According to this highly political indictment, the ideology driving the Cop City protesters is “militant anarchism,” which prosecutors demonize and define poorly. Another target of the indictment is the sharing and pooling of resources, or what activists refer to as mutual aid. For activists, mutual aid is an essential way to secure and provide for basic needs amid a political struggle. It has also been key to the very survival of communities that have not been able to rely on the State or other formal forms of support for their survival and thriving. Said differently, the indictment is a direct attack on the lifeblood of social movements: solidarity.

The official smearing of the movement to Stop Cop City as terrorist has been coupled with other repressive, rights-violating measures including in January 2023, when police officers fatally shot forest defender Manuel Esteban Paez Terán, known as “Tortuguita”. An autopsy later revealed that Tortuguita was sitting down with their hands in the air when they were killed. The police have dispatched SWAT teams to confront people engaged in First Amendment-protected acts and officials are preventing activists from taking part in political affairs (Art. 25), including by interfering with democratic processes and manipulating procedural restrictions. The state and the corporations heavily invested in the construction of the police facility and the destruction of the

³⁰ Eamon Javers, *Oil Executive: Military-Style ‘Psy Ops’ Experience Applied*, CNBC (Nov. 8, 2011), <https://www.cnbc.com/id/45208498> ; see also Antonia Juhasz, *Paramilitary Security Tracked and Targeted DAPL Opponents as ‘Jihadists,’ Docs Show*, *Grist* (Jun. 1, 2017), <https://grist.org/justice/paramilitary-security-tracked-and-targeted-nodapl-activists-as-jihadists-docs-show/> (describing use of “jihadist” label).

³¹ Prior to the RICO indictment, Georgia’s governor called the three bail fund activists “criminals [who] aided and abetted domestic terrorism.” Timothy Pratt, ‘Threatened and vulnerable’: Cop City activists labeled as terrorists pay high price

<https://www.theguardian.com/us-news/2023/aug/28/copy-city-atlanta-protesters-lives-domestic-terrorist-label>

³² Atlanta Community Press Collective, Georgia Attorney General brings RICO indictments against 61 activists (Sept. 5, 2023) <https://atlprescollective.com/2023/09/05/georgia-attorney-general-brings-rico-indictments-against-61-activists/>. See also Zohra Ahmed and Elizabeth Taxel, *How Georgia Indicted a Movement*, *the Nation*, (Sept. 12, 2023), <https://www.thenation.com/article/society/cop-city-indictment-atlanta/>.

Atlanta forest (activists have totaled the cost at \$60+ million in corporate funding and \$30+ million in public tax dollars), are weaponizing the terrorism framework and deploying a range of tactics to stifle a mass protest that is calling for public investment in actual community safety measures, such as education, healthcare, infrastructure and social services.

The impact of state repression shows itself in various ways among organizers and activists within the movement to Stop Cop City. Some of us are experiencing frequent surveillance by police, which in one case, includes officers parking across the street from the home of an activist and shining their headlights into her home during the night, so as to disturb her sleep. Others have been deterred from organizing and showing up for actions since the state decided to levy domestic terrorism charges against organizers and activists with the goal of chilling protest and the expression of freedom of speech. Charging individuals with domestic terrorism or related charges for common acts, such as attending a music festival, or wearing dark clothes, is the kind of repression that is scary and confusing. It is what has caused many to reevaluate how we show up in the movement against Cop City, and even caused some to walk away altogether.

I have completely changed the way I participate within the movement. My husband and I no longer show up at the same actions, so that one can always be free to take care of our children, should one get arrested. It means that we have to be careful about who we contact, and how. Because the domestic terrorism and RICO statutes in the state of Georgia are so expansive, we have to walk a very fine line, even with close friends who are also a part of the movement. The fact that the State is taking the position that the RICO statute in Georgia simply requires that like-minded people work together toward a common goal, organizers are worried about being in danger of indictment for things like collaborating on art projects. If the art projects are symbols against Cop City, then could they be deemed “overt acts in furtherance of the conspiracy” to stop Cop City”?

This is extremely alarming because the movement recently launched a campaign to place a referendum on an upcoming election ballot, and we are worried that that effort’s momentum will be affected by the RICO indictment. This campaign comprises numerous voting rights organizations and individuals, all working for the cause of direct democracy to get the referendum on the ballot. According to the Georgia prosecutors, could this activity (guaranteed by the Georgia State Constitution and protected under the First Amendment) be seen as an “overt act in furtherance of the conspiracy”? The prosecutors have sent us a clear message that even lawful participation in democratic processes, protected under the First Amendment, could be targeted for prosecution under their interpretation of the Georgia RICO statute. It tells us that dissent is a criminal act, as opposed to a central tenet of democracy, and will be punished to the fullest extent of the law. - Keyanna Jones, Stop Cop City Organizer for *Community Movement Builders*

Case Study: Community Efforts to Protect Louisiana from Environmental Racism, Corporate Capture and Climate Catastrophe: Terrorism Charges & Critical Infrastructure Laws

In Louisiana, two activists who participated in a public-awareness campaign to protect their state from petrochemical companies' pollution were charged with a felony for "terrorizing" local oil and gas lobbyists after they delivered a box of plastic pellets found as pollution in bays near the homes of their colleagues in Texas.³³ The activists fought the outlandish charges, which carried a potential penalty of up to 15-years in prison, and the District Attorney ultimately dismissed the charges.

"The irony of the terrorism charges filed against me is that the petrochemical lobbyists insist that the plastic pellets are harmless, yet when we bring the pollution to them, it was considered so dangerous that it became felony terrorism. At the root of this is the belief that some people - the lobbyists for the oil and chemical industry - are worth protecting, while Black communities along the Mississippi River are not. These communities in the region known as Cancer Alley are not only seen as a viable dumping ground for corporate pollution, but are now also threatened with terrorism charges for standing up for themselves." - Anne Rolfes, *Louisiana Bucket Brigade*

Another key tactic in Louisiana and across the U.S. has been to pass "critical infrastructure" bills to stifle Indigenous-led environmental and climate justice movements, such as the 2016-2017 Standing Rock protests against the Dakota Access Pipeline (DAPL), or the Bayou Bridge Pipeline protests at the southern end of the DAPL in Louisiana. There has been a proliferation of critical infrastructure bills across the U.S., led by private industry, conservative lawmakers, and the American Legislative Exchange Council, a political platform where corporations "pay to play" and work with conservative lawmakers to develop repressive legislation that will advance industry's interests.³⁴ The passage of federal "critical infrastructure" law was a direct response to 9/11, and part of the USA PATRIOT Act of 2001,³⁵ and the term was used to refer to the protection of the nation's key sectors – "critical infrastructure" – from terrorist attacks. Although many industry sectors are designated critical infrastructure under federal law, including agriculture, energy, water and communications, the most recent state critical infrastructure laws focus narrowly on oil and gas pipelines. These bills create new criminal offenses and dramatically increase penalties for participating in protests that might interfere with those industries.³⁶ Protestors protesting on or near pipeline construction sites, on both public and

³³ Emily Holden, *US Climate Activists Charged with 'Terrorizing' Lobbyist over Plastic Pollution Stunt*, Guardian (June 25, 2020, 3:08 PM), <https://www.theguardian.com/us-news/2020/jun/25/louisiana-bucket-brigade-arrests-formosa-plastics-protest>.

³⁴ Center for Constitutional Rights, et. al. "ALEC Attacks: How evangelicals and corporations captured state lawmaking to safeguard white supremacy and corporate power." at alecattacks.org; Nina Lakhani, *Revealed: Rightwing US Lobbyists Help Craft Slew of Anti-Protest Fossil Fuel Bills*, Guardian, (Sept. 14, 2022), <https://www.theguardian.com/us-news/2022/sep/14/rightwing-lobbyists-at-heart-of-anti-protest-bills-in-republican-states>; See also the International Center for Not-for-Profit Law's Protest Law Tracker: <https://www.icnl.org/usprotestlawtracker>.

³⁵ Critical Infrastructures Protection Act of 2001, 42 U.S. Code § 5195c.

³⁶ Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, Brennan Center for Justice, (Mar. 17, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements>

private property, have been targeted by these laws. These laws' overbroad, vague language and steep penalties have sent a chilling effect across the movement.³⁷

In Louisiana, only a week after Louisiana's critical infrastructure law was enacted, Bayou Bridge pipeline protestors were charged with trespassing for being in kayaks on public waters on the border of a pipeline easement.³⁸ The law, which was drafted by the Louisiana Mid-Continent Oil and Gas Association (LMOGA), is unconstitutional on its face for being vague, overly broad, and clearly targeting speech and expression in opposition to the construction of environmentally devastating pipelines. A coalition of Louisiana-based activists have challenged the law and are currently awaiting a decision.³⁹

3. Private Actors Exploiting the Breadth of US terrorism laws

An often-ignored feature of the repression discussed above is how private actors - ideological or political opponents of social justice movements - have wielded the sprawling nature of the US counterterrorism laws. Through laws creating "terrorism torts," private actors can make use of federal antiterrorism laws, with their vast reach and global jurisdiction.⁴⁰ This is prominently on display in the context of attacks on Palestine advocates. Various "lawfare" groups have created a cottage industry in either filing litigation, or threatening to do so, against organizations that speak out for Palestinian rights.⁴¹ For instance, the Israeli Jewish National Fund has recently sued a prominent Palestinian-American advocacy organization, the US Campaign for Palestinian Rights for "material support to terrorism." Central to its complaint is the allegation that the organization's support for Boycott, Divestment and Sanctions – an inherently non-violent movement – and support for the rights of protestors in Gaza, is a form of support for terrorism.⁴² Short of litigation, private advocacy groups have sought to pressure private companies to deplatform Palestinian speech by leveraging material support to terrorism laws, attempting to convince various funding and web hosting platforms to suspend services to Palestinian organizations.⁴³

Right-wing forces are using these terrorism laws to harass and scare human rights defenders fighting to protect the most vulnerable. Our organization is one among many

³⁷ International Center for Not-for-Profit Law, *Critical Infrastructure Bills: Targeting Protesters through Extreme Penalties* (October 2019), <https://www.icnl.org/wp-content/uploads/CI-Bill-Briefer-final-formatted.pdf>.

³⁸ Center for Constitutional Rights, *Case Page: White Hat v. Landry* <https://ccrjustice.org/home/what-we-do/our-cases/white-hat-v-landry>.

³⁹ *Id.*

⁴⁰ Darryl Li, *Terrorism Torts and the Right to Colonize*, The Law and Political Economy Project (Mar. 13, 2023), <https://lpeproject.org/blog/terrorism-torts-and-the-right-to-colonize/>; Maryam Jamshidi, *How the War on Terror Is Transforming Private U.S. Law*, 96 Wash. U. L. Rev. 559 (2018).

⁴¹ Kay Guinane, *Charity and Security Network*, The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel (September 2021); *See also* Palestine Legal, *Who Are David Abrams and The Zionist Advocacy Center?* <https://palestinelegal.org/who-is-david-abrams>.

⁴² *Id.* *See also* Jewish National Fund v. US Campaign for Palestinian Rights' case page, Center for Constitutional Rights, <https://ccrjustice.org/home/what-we-do/our-cases/jewish-national-fund-v-us-campaign-palestinian-rights>.

⁴³ *See, e.g.*, Electronic Frontier Foundation, *FOIA Lawsuit reveals U.S. State Department resisted Pressure to Censor Leila Khaled*, <https://www.eff.org/deeplinks/2023/04/foia-lawsuit-reveals-us-state-department-resisted-pressure-censor-leila-khaled>; Zachor Legal Institute, *Letter to Jeff Session, Call for Investigation of Domestic Activities of Affiliates of Certain Designated Foreign Terror Organizations*, (July 12, 2018).

Palestinian advocates who have faced these false accusations. For decades, the struggle for Palestinian freedom and dignity has been maligned as a terrorist cause, and the loudest voices in the room have usually been those most implicated in depriving us of our freedom. We know that the goal is to isolate us, and to distract us. In the case of the lawsuit brought against us by the JNF, due to our outstanding legal counsel, an outpouring of support from across our movement, and the determination to continue our advocacy unapologetically, we got the lawsuit dismissed and continued doing our work. However, absent definitive action by the US government to reign in these laws, we will continue to see tactics of repression utilized by private actors, and more. Our democracy being at risk isn't just a political slogan in DC, it is being felt on the ground by activists across the US. - Ahmad Abuznaid, the *U.S. Campaign on Palestinian Rights*.

The breadth of the U.S. counterterrorism framework has also been used by foreign states for repression: the State of Israel has sought to leverage U.S. law by designating Palestinian human rights organizations as terrorists under Israeli law. Although these organizations have not been designated under U.S. law, the primary goal of this designation by Israel is to intimidate third parties such as funders and financial service providers into ceasing their funding or infrastructure support of the organizations for fear of running afoul of U.S. counterterrorism financing laws.⁴⁴ The aim is to defund and deplatform these vital civil society organizations advocating for the rights of Palestinians.

C. The Investigation, Surveillance & Stigmatization of Social Justice Movements

Prosecutions are the visible part of a sprawling infrastructure of surveillance and monitoring of social movements. Under the guise of combating terrorism and extremism, federal and state law enforcement have engaged in the widespread monitoring, surveillance, and disruption of social movements in the United States. The notion of “terrorism” is increasingly coupled with concepts like “radicalization” or “extremism” that, like terrorism, lack any definitional clarity and lend themselves to abuse and disproportionate targeting of racialized and marginalized communities.

The Federal Bureau of Investigations (FBI) has applied a counterterrorism frame to Black Lives Matter activists, designating them as “Black Identity Extremists.”⁴⁵ Although this targeting builds on a long history of surveilling and criminalizing Black activism and freedom struggle, the “War on Terror” has unlocked new tools, broadening powers, resources and infrastructure. It has also rolled back previous, hard-won limits and protections.⁴⁶ Black Lives Matter activists have been approached by local and federal law enforcement and questioned about their lawful

⁴⁴ DIALA SHAMAS, *The Downstream Effects of Israel's "Terrorist" Designation on Human Rights Defenders in the US*, Just Security (Nov. 4, 2021), <https://www.justsecurity.org/78884/the-downstream-effects-of-israels-terrorist-designation-on-human-rights-defenders-in-the-us/>.

⁴⁵ Jana Winter, Marquise Francis, & Sean D. Naylor, *New Terrorism Guide Shows FBI Still Classifying Black 'Extremists' as Domestic Terrorism Threat*, Yahoo! News (Dec. 30, 2020), <https://news.yahoo.com/new-terrorism-guide-shows-fbi-still-classifying-black-extremists-as-domestic-terrorism-threat-190650561.html>.

⁴⁶ Emily Berman, Brennan Center for Justice, *Domestic Intelligence: New Powers, New Risks* (2011), <https://www.brennancenter.org/media/291/download>.

activities, such as organizing protests.⁴⁷ Records reveal that they have sent confidential informants to infiltrate a Black Lives Matter protest at a mall.⁴⁸ To conduct this surveillance, investigation, and data-preservation, the FBI invokes expansive authorities that it obtained post-9/11, for the purported purpose of combating and disrupting terrorism. The FBI has also targeted other non-violent protest movements: it has compiled dossiers on Palestine solidarity activists under the auspices of monitoring affiliation with terrorism;⁴⁹ approached Palestinian activists and Indigenous water protectors for questioning and interrogation; and compiled dossiers on other environmental justice activists and Occupy protests.⁵⁰

The Department of Homeland Security (DHS), created after 9/11, has developed its own intelligence gathering and retention apparatus and has similarly targeted dissent.⁵¹ It has flagged activists as potential threats, monitored Black Lives Matter cultural events,⁵² and has disseminated documents ominously titled the “Race Paper.”⁵³ DHS compiles and disseminates “threat assessments” or suspicious activities reports, and has adopted broad, vague labels like “Domestic Violent Extremist” to describe individuals who are engaged in non-violent protest or have expressed grievances regarding government conduct online. A stark illustration of the damage these broad labels and their dissemination can have is in the context of Stop Cop City, described above, where arrest warrants for 17 Stop Cop City activists in Atlanta have cited DHS’s alleged designation of the protest movement as “Domestic Violent Extremists.”⁵⁴ Advocates have pointed to this troubling reality when they have opposed efforts to expand or deploy these same surveillance practices in efforts to curb white supremacist violence, urging alternative, more effective, solutions.⁵⁵

The post-9/11 architecture has placed an emphasis on the collaboration between federal and local law enforcement, through the creation of Fusion Centers. Local police departments, often in coordination with or in continuation of these federal policies, engage in this spying through Joint

⁴⁷ Chris Brooks, *After Barr Ordered FBI to “Identify Criminal Organizers,” Activists Were Intimidated at Home and at Work*, The Intercept (June 12, 2020), <https://theintercept.com/2020/06/12/fbi-jttf-protests-activists-cookeville-tennessee/>

⁴⁸ Chip Gibbons, *Defending Rights and Dissent, Still Spying on Dissent* (2019), <https://rightsanddissent.org/fbi-spying/>.

⁴⁹ Chip Gibbons, *FBI opened Terrorism investigations into nonviolent Palestinian solidarity group, documents reveal*, The Intercept, (Apr. 5, 2020), <https://theintercept.com/2020/04/05/israel-palestine-fbi-terrorism-investigation/>.

⁵⁰ *See generally*, Chip Gibbons, *Defending Rights and Dissent, Still Spying on Dissent* (2019), *available at* <https://rightsanddissent.org/fbi-spying/>.

⁵¹ Rachel Levinson-Waldman & Harsha Panduranga, *Invasive and Ineffective: DHS Surveillance Since 9/11* (Sept. 15, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/invasive-and-ineffective-dhs-surveillance-911>.

⁵² Mara Hvistendahl, *Austin fusion center spied on nonpolitical cultural events*, The Intercept, (Nov. 30, 2020), <https://theintercept.com/2020/11/30/austin-fusion-center-surveillance-black-lives-matter-cultural-events/>

⁵³ Center for Constitutional Rights, *Racial Justice Groups Sue DHS to Release Contents of Fully Redacted “Race Paper”* (Mar. 19, 2018), <https://ccrjustice.org/home/press-center/press-releases/racial-justice-groups-sue-dhs-release-contents-fully-redacted-race>.

⁵⁴ American Civil Liberties Union et al, *Letter on DHS Use of “Domestic Violent Extremism” Label and Its Negative Impact on Civil Rights and Liberties*, https://www.naacpldf.org/wp-content/uploads/2023.07.27-DHS-letter_final_logos.pdf.

⁵⁵ Azadeh Shahshahani and Fatema Ahmad, *The Surveillance State Can’t Solve White Supremacy*, The Progressive Magazine, (Sept. 6, 2022), <https://progressive.org/latest/surveillance-state-white-supremacy-ahmad-shashahani/>.

Terrorism Task Forces (JTTF). JTTFs have also investigated Black Lives Matter protestors.⁵⁶ But local law enforcement, even without federal influence, have also spied on individuals and groups' political expressions under the guise of conducting terrorism investigations.⁵⁷

- Local police departments adopt and deploy the “War on Terror” framework

Local police departments have approached protest movements through a militarized lens of occupation and domination of the “Other”.⁵⁸ They have adopted “War on Terror” rhetoric and tactics when referring to local protest movements or racialized groups - from Black Lives Matter activists to Muslim communities. This ideological frame has material implications through the existence of the controversial 1033 program, which enables local law enforcement to obtain surplus military equipment from the Department of Defense. Local police departments have obtained military gear such as armored vehicles that were designed to withstand explosive blasts during U.S. military occupations in Iraq and Afghanistan - with no obvious use in local law enforcement. These profoundly disproportionate and violent tactics and weapons came to public attention during the popular uprisings against racist police violence in Ferguson, Missouri in 2014. The 1033 program also extends to federal agencies such as Customs and Border Patrol, which similarly deployed “elite units” to crackdown on Black Lives Matter protestors in Portland, Oregon.⁵⁹

- The Chilling Effect of the surveillance of dissent

The Center for Constitutional Rights, in collaboration with Essex University, has interviewed over 50 partners from a range of movements for social, racial, economic, environmental and gender justice to better understand the harms of surveillance. A cross-cutting theme across all of these interviews was an acute awareness of government surveillance of social movements. Whether or not individuals were certain they had been subjected to surveillance, they felt like a target because of their identities, activism, or relationships. Interviewees cited hypervigilance, and the resultant mistrust of their communities. This had a range of concrete harms and human rights violations, vicarious and intergenerational trauma, and overall damage to the ability of individuals and collectives to participate in democratic processes. The impact of surveillance on movement building is highly significant. Many organizers described increased internal security culture and implementing vetting and other protocols. In addition to diverting energy and resources, these also increase barriers to entry to new, or less initiated, members. They also signal the perception of being under surveillance, which has a stigmatizing effect and also impacts recruitment and mobilization. Overall, this has meant less effective organizing and movement building.⁶⁰

⁵⁶ Movement for Black Lives and CLEAR, *Struggle for Power*, *supra* note 16.

⁵⁷ Diala Shamas and Nermeen Arastu, *Mapping Muslims, NYPD Spying and its Impact on American Muslims* (2012), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

⁵⁸ Asli Bali, *Defund America's Endless Wars*, *Just Security* (July 29, 2020) <https://www.justsecurity.org/71723/defund-americas-endless-wars/>.

⁵⁹ Ed Pilkington, 'These are his people': inside the elite border patrol unit Trump sent to Portland, *The Guardian* (July 27, 2020),

<https://www.theguardian.com/us-news/2020/jul/27/trump-border-patrol-troops-portland-bortac>.

⁶⁰ Research on the chilling effect of surveillance, on file with the Center for Constitutional Rights.

III. PRIOR CONCLUDING OBSERVATIONS

Since the Human Rights Committee's first review of the United States following the 9/11 attacks and the country's resulting campaign of human rights abuses, the Committee has expressed concern about the potentially overbroad reach of the definitions of terrorism under domestic law. Specifically, in 2006, the Committee identified in Concluding Observation 11 that 8 U.S.C. § 1182 (a) (3) (B) and Executive Order 13224 seemed "to extend to conduct, e.g. in the context of political dissent, which, although unlawful, should not be understood as constituting terrorism."⁶¹ While the Committee recognized these distorting characterizations as failures to comply with Articles 17, 19 and 21, the U.S. code persists as good law. The Committee went on in Concluding Observation 19 to express concern for the foreseeable outcome for those suspected of having committed "terrorism-related offenses", where the Committee rightly anticipated that such individuals would receive fewer protections and have limited access to reparations. Indeed, the suspension of key civil, political and criminal protections for those suspected of or designated as "terrorists" has been a feature of U.S. government treatment of individuals and communities impacted by the various machinations of the "War on Terror" infrastructure.⁶²

In 2014, the Committee turned its attention to the vast surveillance apparatus, particularly the unchecked authority of the National Security Agency (NSA). We agree that the stated interest of "protecting national security" cannot be justification for suspending such civil and political rights of targeted individuals and communities, as Arts. 2, 5(1) and 17 of the ICCPR.⁶³ Despite clear recommendations from the Committee that the U.S. take all necessary measures to ensure that its surveillance activities, both within and outside the United States, comply with its obligations under the Covenant, the U.S. government at all levels has only increased its surveillance capacities and, as described in the case studies above, has weaponized such technologies and tactics against organizers fighting for human rights, racial justice, Indigenous sovereignty, and environmental protection.

IV. U.S. GOVERNMENT RESPONSE

We regret that the U.S. government refused to update its 5th periodic report to the Committee, which was prepared by and submitted in the final days of the Trump administration (received on January 15, 2021). We thus understand the state report to reflect the Biden administration's assessment of the social, political and cultural conditions in the country as well

⁶¹ U.N. Hum. Rts. Comm., Concluding Observations on the Second and Third Periodic Reports of the United States of America, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), <https://www.ohchr.org/en/documents/concluding-observations/ccprcusaco3rev1-concluding-observations-united-states-america>.

⁶² See Baher Azmy, *The Legacy of 9/11: Reckoning with a 20-Year Ideology of War, Nativism, and Authoritarianism*, Center for Constitutional Rights blog (Sept. 2, 2021) available at <https://ccrjustice.org/home/blog/2021/09/01/legacy-911-reckoning-20-year-ideology-war-nativism-and-authoritarianism>

⁶³ U.N. Hum. Rts. Comm., Concluding Observations on the Fourth Periodic Report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), <https://www.ohchr.org/en/documents/concluding-observations/ccprcusaco4-concluding-observations-fourth-periodic-report-united>.

as its approach to its obligations under the ICCPR.⁶⁴ The report indicates a troubling posture of exceptionalism and disregard for human rights standards with regard to the fundamental rights to protest and privacy as well as freedom of expression and association. Unusually, in paragraph 97, the U.S. government denounced the non-violent movement to boycott, divest and sanction the State of Israel for its ongoing violations of Palestinian human rights. In addition to clearly expressing opposition to certain social movements and expressions, throughout the country report, the U.S. government either fails to adequately respond, or outright dismisses the concerns of the Committee.

With regard to issues of surveillance and the right to be free from interference in privacy, the state report appears in paragraph 92 to justify derogations of Art. 17 when looking for “national security-related threats”. The government believes that such procedures that facilitate surveillance and clandestine information gathering are critical for “preserving the operational effectiveness of foreign intelligence collection efforts.” Such vague language underscores the government’s problematic approach described in the case studies above that disproportionately target marginalized and racialized communities, and results in substantial chilling effect on community organizing efforts.

The U.S. government’s analysis of the mass popular uprisings in the summer of 2020 against racist police violence, which inspired international attention - including by the Human Rights Council and the UN High Commissioner for Human Rights - is characterized by demonizing language against some protestors, described as “rioters and anarchists.” While acknowledging in paragraph 103 that a number of states have enacted laws in the last several years restricting certain activities related to demonstrations and protests, such as “critical infrastructure laws”, the U.S. government fails to provide its own independent assessment whether such restrictions comply with its international human rights obligations. We are concerned that the Biden Administration is similarly ambivalent with regard to state suspension of international human rights law and is complicit in the disproportionate violence employed by state and local law enforcement and the effective silencing of popular protest through increased restrictions, prosecutions and penalties.

The country’s report with regard to supplying state and local law enforcement with military grade equipment minimizes the gravity of the 1033 program, by emphasizing that transferring excess supplies of the Department of Defense helps with “general equipment needs, such as file cabinets and copiers that agencies need but perhaps are unable to afford.”⁶⁵ With complete disregard for the Committee’s legitimate concerns, and community experiences facing tanks and other military equipment during peaceful protests, the U.S. government appears to justify the program as necessary for “fighting terrorism and crime.” The shallow policy responses and justifications throughout the state’s report indicate a failure to appreciate both the gravity of the violations described above, as well as a persistent justification for such violations in the name of national security or terrorism.

Biden officials have not only adopted this posture of justification for the mass degradation of international norms and human rights standards, but are also aiming to bolster impunity for violations by deflecting responsibility. On the anniversary of Resolution 1373, Ambassador Richard Mills, in his remarks before the UN Security Council stated “history has also shown us over and over again that measures to prevent and counter terrorism that come at

⁶⁴ Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, CCPR/C/USA/5, [Date received: 15 January 2021].

⁶⁵ *Id.* at para 104.

the expense of human rights and the rule of law are counterproductive. That is why the United States will continue to object to certain countries' actions to engage in mass detention of religious minorities and members of other minorities, engage in repressive surveillance and mass data collection, and to use coercive population control like forced sterilization and abortion. Governments, including governments sadly represented in this Council, must not use counterterrorism as a pretext for stifling freedom of religion or belief and other human rights and fundamental freedoms." The partners are profoundly troubled by the Biden Administration's hypocritical remarks to the Security Council, and encourage the Committee to center the lived experiences of activists, organizers and frontline community members who are facing escalating human rights violations by federal, state and local government actors.

V. OTHER UN & REGIONAL HUMAN RIGHTS BODIES RECOMMENDATIONS

Despite the continued pressure by the United States on the global community to adopt similar measures of mass surveillance, violent repression of social movements, and criminalization of racialized and minoritized communities, successive treaty bodies and UN Special Procedures have since joined the longtime analysis and advocacy of human rights defenders and frontline communities in denouncing such practices as clear violations of human rights and international norms. Like the Human Rights Committee, both the Committee Against Torture and the Committee on the Elimination of Racial Discrimination have expressed clear concern about the U.S.'s anti-terrorism measures as well as restrictions on the right to peaceful assembly.⁶⁶ With specific attention to the popular uprisings of recent years, the Chair of the CERD Committee sent a letter to the Permanent Mission of the U.S. in 2021 expressing concern about U.S. suppression of protests against controversial oil pipelines and suspected human rights violations.⁶⁷ In 2022, the CERD Committee expressed concerns about the increase in legislative measures at the state level in response to anti-racism protests that "unduly restrict the right to peaceful assembly," and called out harassment and surveillance of law enforcement officials against human rights defenders.

Former Special Rapporteur Professor Martin Scheinin stated in 2013 that the United States has 'been involved, and continue[s] to be involved, in activities that are in violation of [its] legally binding obligations under the [ICCPR].' He asserted clearly that U.S. surveillance lacks an adequate legal basis, intrudes into the 'inviolable core of privacy,' is not necessary in a democratic society, leaves room for unfettered discretion, is disproportionate with respect to its benefits, and is open to abuse."⁶⁸ The 2022 report by Clément Voule, Special Rapporteur on the

⁶⁶ See U.N. Comm. against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America*, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014), <https://www.ohchr.org/en/documents/concluding-observations/catcusaco3-5-concluding-observations-combined-third-fifth>.

⁶⁷ See Committee on the Elimination of Racial Discrimination, *Letter to His Excellency Mr. Benjamin Moeling, CERD/EWUAP/104th session* (Aug. 25, 2021), <https://yellowheadinstitute.org/wp-content/uploads/2021/03/canada-cerd-decision-dec-2019.pdf>; see also Committee on the Elimination of Racial Discrimination, *Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, Decision 1 (100)* (Dec. 13, 2019), available for download at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&DocTypeID=13

⁶⁸ See Statement by Professor Martin Scheinin, Hearing before the LIBE Committee Inquiry on Electronic Mass Surveillance of EU Citizens, European Parliament, October, 14, 2013, <http://www.europarl.europa.eu/document/activities/cont/201310/20131017ATT72929/20131017ATT72929EN.pdf>.

rights to freedom of peaceful assembly and of association, examined key global trends that impede the protection of human rights in the context of peaceful protests in crisis situations. The report evaluates measures that are widely used by U.S. government and law enforcement, which include abuse of emergency measures, militarization, use of unlawful force to stifle peaceful protests, and endemic impunity for serious violations.⁶⁹ Finally, a recent report by the current Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Fionnuala Ní Aoláin, offers clear criticism of the ever-expanding counterterrorism infrastructure that is ripe for abuse with particular concern for the targeting of civil society seeking to realize “peaceful, just and inclusive societies”.⁷⁰ The Special Rapporteur calls for urgent action by the UN and Member States against such “systemic, abusive, and counter-productive practices.”

VI. RECOMMENDED QUESTIONS TO THE U.S.

1. What efforts are the Biden administration making to substantially reduce the severely bloated counterterrorism and national security infrastructure to ensure human rights compliance?
2. Will the Biden administration take steps to dismantle key elements of the War on Terror infrastructure that are documented as sources of abuse and human rights violations, including the Department of Homeland Security, the U.S. Immigration and Customs Enforcement (ICE), and the Joint Terrorism Task Forces (JTTF)?
3. How can the Biden administration ensure that “material support to terrorism” laws are not used to suppress political and human rights advocacy?
4. What additional mechanisms of transparency will the Biden administration put in place to ensure that federal agencies are held accountable for systematically undermining human rights protections by engaging in widespread surveillance, intimidation of activists and organizers for social change?
5. What commitments will the Biden Administration make to repair the harm of surveillance, criminalization, and intimidation of social justice movements?
6. What commitments will the Biden administration make to ensure that state agencies are in compliance with ICCPR and not subjecting individuals to laws and policies that would suspend their human rights?
7. Will the U.S. government condition federal resources to the State of Georgia given its continued use of domestic terrorism laws and RICO to target protestors working to defend the Atlanta forest and Stop Cop City?
8. Given the intentional suspension of international human rights by state agencies and legislatures, what concrete steps will the Biden administration take to hold state and local government agencies and law enforcement accountable?

⁶⁹ Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Protection of Human Rights in the Context of Peaceful Protests During Crisis Situations*, U.N. Doc. A/HRC/50/42 (May 16, 2022), <https://www.ohchr.org/en/documents/thematic-reports/ahrc5042-protection-human-rights-context-peaceful-protests-during-crisis>.

⁷⁰ See Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms), *Global Study on the Impact of Counter-Terrorism on Civil Society and Civic Space* (June 2023), https://unglobalstudy.wpenline.com/wp-content/uploads/2023/06/SRCT_GlobalStudy.pdf.

9. Will the U.S. government, through the Internal Revenue Service (IRS) or other appropriate federal agencies, initiate an investigation into the activities of the American Legislative Exchange Council (ALEC), including a potential violation of federal laws governing the activities of charitable organizations?

VII. SUGGESTED RECOMMENDATIONS

1. The State party should immediately engage in a whole-of-government review of War on Terror infrastructure, laws, policies and practices to comprehensively assess compliance with the Covenant with a commitment to accountability and repair in accordance with the right to an effective remedy.
2. The State party should bring its current counterterrorism and counter-extremism laws and practices into full compliance with the Covenant, specifically taking immediate steps toward ending the criminalization of communities by eliminating laws and policies that are ripe for abuse against activists as well as Black, Muslim, Arab, and South Asian, Indigenous, Latinx, and LGBTQIA+ communities, such as:
 - a. Repeal 18 U.S.C. §2339B of the material support statute;
 - b. End the surveillance, intimidation and prosecution of lawful, first Amendment protected activity;
 - c. End the application and dissemination of the “Domestic Violent Extremists” label;
 - d. Rescind all DHS bulletins and other publications labeling individuals associated with the Stop Cop City movement as Domestic Violent Extremists or otherwise associated with terrorism or extremism.
 - e. Implement policies to ensure that any information obtained by federal agencies from local law enforcement regarding Stop Cop City and other activists is corroborated and does not intrude on protected speech and association.
3. The State party should, in conformity with the provisions of articles 18 and 19 of the Covenant, guarantee the freedom of thought, conscience and religion and the freedom of expression by making efforts to repeal state-level terrorism laws that chill speech and protest, like Georgia’s “domestic terrorism” law, GA Code § 16-11-220 (2022), and Louisiana’s 2018 amendments to the “critical infrastructure” law, La. R.S. 14:61.
4. The State party should oppose any new domestic terrorism crime legislation, the creation of a list of designated domestic terrorist organizations, or any other expansion of existing terrorism-related authorities.
5. The State party should abolish federal agencies engaged in mass criminalization, surveillance, and incarceration of marginalized communities, including the U.S. Department of Homeland Security (DHS).
6. The State party should adopt effective measures to prevent and prohibit federal law enforcement agencies from cooperating with and providing assistance to local and state law enforcement agencies engaged in utilizing domestic terrorism and

critical infrastructure laws to target individuals exercising rights included in the Covenant for arrest and criminal prosecution.

7. The State party should dismantle the Joint Terrorism Task Forces (JTTF) and Fusion Centers.
8. The Department of Justice should investigate Georgia law enforcement's unconstitutional use of state domestic terrorism and RICO laws against protestors to ensure compliance with international human rights.
9. Ensure that private industry and entities such as the American Legislative Exchange Council (ALEC) are not in violation of federal laws, and are prohibited from promoting non-rights respecting laws through state legislatures.