



Governor Brian Kemp
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Director D. Victor Reynolds
Georgia Bureau of Investigation
3121 Panthersville Road
Decatur, GA 30034

Sent via email

18 May 2020

Case of Ahmaud Arbery: lethal shooting by private citizen

Dear Governor Brian Kemp and Director D. Victor Reynolds:

Amnesty International USA is writing to you regarding the fatal shooting of Ahmaud Arbery, a 25-year-old unarmed black man, in Brunswick, Georgia on 23 February 2020. The circumstances of this case raise serious concerns about the protection of some of the most fundamental human rights: the right to life; the right to equal protection under the law, and the right not to be subject to discrimination on any grounds.

On 23 February 2020 Ahmaud Arbery, was out jogging when Gregory and Travis McMichael, – both of whom were armed, confronted Mr. Arbery. During the encounter, caught partially on video, Ahmaud Arbery is seen running past the passenger side of the McMichaels white pickup truck, then reentering the view and visibly engaging in a scuffle with Travis McMichael, who was standing outside the truck with a shotgun while Gregory McMichael was standing in the bed of the truck. Shots are heard and immediately after Ahmaud Arbery falls to the ground. The McMichaels claim that they were seeking to make a citizen's arrest of Ahmaud Arbery because they perceived him to be a suspect in the recent burglaries in the neighborhood. Gregory McMichael claimed that Ahmaud Arbery attacked Travis McMichael when he attempted to make that citizen's arrest and that Travis McMichael used lethal force to defend himself. Both men remained free as two separate County Prosecutor's offices failed to bring charges due to conflicts of interest and a third District Attorney's office was continuing its investigation of the case. On 5 May 2020, video of the encounter taken at the scene, leading up to and during the lethal shooting of Ahmaud Arbery publicly surfaced. On 7 May 2020 Gregory and Travis McMichael were arrested by the Georgia Bureau of Investigation and charged with felony murder and aggravated assault. On 11 May 2020, the Cobb County

District Attorney's Office accepted the appointment from the State Attorney General to handle the prosecution.

Amnesty International USA welcomes the Georgia Bureau of Investigation's (GBI) ongoing investigation into the death of Ahmaud Arbery. We seek assurances that your office will promptly conduct a thorough, transparent and impartial examination of all the circumstances of this case. Furthermore, we welcome the separate investigation by the GBI, upon the request of Attorney General Chris Carr, into how local prosecutors handled the killing of 25-year-old Ahmaud Arbery. Amnesty International requests that the family of Ahmaud Arbery be kept updated on developments and determination throughout the process of the investigation into both of these matters, and that the methodology and results be made public once they are completed.

Amnesty International USA is concerned about a number of aspects of the case to date, for instance, whether racial stereotyping of black youth, Gregory McMichael's role as a former police officer and former investigator for the Brunswick Judicial Circuit District Attorney's Office, and the State's Stand Your Ground (SYG) law may have played a role in the initial failure of the police and prosecutors to file charges more promptly in Ahmaud Arbery's case. Under the state's SYG law, OCGA § 16-3-21, in part,

- a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.
- b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he:
 - 1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
 - (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
 - (3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force. ...

Stand Your Ground laws, in effect, presume the individual is acting in self-defense, unless there is specific evidence to the contrary, and the burden is on police and prosecution to prove that the individual did not act in self-defense.

While everyone has the right to self-defense, Amnesty International is concerned that SYG laws may encourage the use of deadly force in situations where it is not warranted, for example

where such force is used as a last resort and only where lesser measures are unavoidable. We are also concerned that SYG laws may serve to pervert the concept of self-defense, so that it protects aggressors rather than victims of violence. The ultimate result of this could be more, instead of less, violence.¹ Early data also suggests that SYG laws may legitimize racial bias in the criminal justice systems of the states where they are enacted² and application of these laws is “unpredictable, uneven, and results in racial disparities.”³

Furthermore, the McMichaels claimed their initial reason to confront Mr. Arbery was to stop and detain him under Georgia’s Citizen’s Arrest law, OCGA §17-4-60, which states,

A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

Despite his decision to recuse his office from the investigation, District Attorney George Barnhill of the Waycross Judicial Circuit issued a letter to the Glynn County Police Department determining that there was insufficient probable cause to issue arrest warrants for the McMichaels in the death of Ahmaud Arbery. Mr. Barnhill based his determination largely on a combination of the state’s citizen’s arrest and SYG laws above, among other statutes. Citizen’s arrest laws place too much authority and risk on people who have neither the training nor the experience that law enforcement officers undergo in order to perform their jobs. Even with extensive training, law enforcement officers make mistakes. It is precisely the circumstances exposed by Mr. Arbery’s death that demonstrates how citizen’s arrests in a state such as Georgia with a SYG law may lead to human rights violations and a lack of accountability for unlawful killings by non-state actors.

We urge the Governor to work with the state legislature to repeal Georgia’s Stand Your Ground law, OCGA § 16-3-21, as it violates international law and standards on the use of force and self defense as well as the Georgia’s Citizen’s Arrest law, OCGA §17-4-60, which is incompatible with international standards regarding law enforcement and public safety.

If you have questions or seek to discuss these matters further, please contact Jasmeet Sidhu, JSidhu@aiusa.org and 202-823-1832 or Kristina Roth, kroth@aiusa.org and 202-945-2021. We look forward to your response.

Respectfully,



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Cc:

Chris Carr, Attorney General of Georgia

¹ For instance, a 2012 study by Texas A&M University of 23 states with stand-your-ground laws found that homicide rates increase by 7-9 per cent in those states as compared to states without such laws, leading to anywhere from 500 to 700 more homicides every year. See, Cheng, Cheng, and Mark Hoekstra, “Does Strengthening self-defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine”, Texas A&M University Journal of Human Resources, 2012, publicly available at http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf; A 2012 study by the National Bureau of Economic research also found an increase in firearms-related homicides in states which had introduced similar bills. See McClellan, Chandler and Erdal Tekin, “Stand Your Ground Laws and Homicides”, National Bureau of Economics, July 2012, publicly available at <http://ftp.iza.org/dp6705.pdf>. A 2016 study published in the Journal of the American Medical Association found that when compared to the period 1999-2005, before the Stand Your Ground law was enacted in Florida, and the period 2006-2016 after the law was passed, there was a 24.4% increase in homicides overall and a 32% increase in firearm-related homicides specifically. E. Chuck, Florida had first Stand Your Ground law, other states followed in ‘rapid succession’, NBC News, 2 November 2015, www.nbcnews.com/news/us-news/florida-had-first-stand-your-ground-law-other-states-followed-fina6C10672364. In a follow up study by the same researchers, published in 2017, there was a 75% increase in justified homicides (or the lawful use of lethal force) in Florida during the same time periods. “Stand your Ground” Laws, Giffords Law Center to Prevent Gun Violence, www.lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/stand-your-ground-laws/.

² According to a study of criminal justice data from 23 states with stand-your-ground laws, white homicide defendants with black victims were more likely to have their homicides ruled justified than black defendants whose victims were white. See, Roman, John K., “Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide report Data”, Urban Institute, July 2013, available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>; see also, Examining the Race Effects of Stand Your Ground Laws, U.S. Commission on Civil Rights, 6 April 2020, <https://www.usccr.gov/pubs/2020/04-06-Stand-Your-Ground.pdf>; The Effects of Stand Your Ground Laws, RAND research report, 22 April 2020, <https://www.rand.org/research/gun-policy/analysis/stand-your-ground.html>. Another study found that, according to the available data, if you are an African American asserting a Stand Your Ground defense where a white person is killed, you have double the chances of being convicted as opposed to if the victim was black. See, Examining the Race Effects of Stand Your Ground Laws, U.S. Commission on Civil Rights 6 April 2020, <https://www.usccr.gov/pubs/2020/04-06-Stand-Your-Ground.pdf> at 18.

³ The American Bar Association’s 2014 National Task Force found that the application of Stand Your Ground laws is “unpredictable, uneven, and results in racial disparities.” The Task Force found evidence that self-defense related homicides, particularly interracial homicides, spiked in the 33 states that had Stand Your Ground laws at the time. See, American Bar Association, National Task Force on Stand Your Ground Laws - Preliminary Report and Recommendations, 8 August 2014, available at <https://www.abajournal.com/files/GunReport.pdf>.