

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 28/9, 32/19 and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family, adopted by the National Assembly (Parliament) of Armenia on 8 December 2017.

According to information received, credible surveys have revealed that up to sixty percent of Armenian women have experienced some sort of domestic violence. As of October 2017, 602 cases of domestic violence had been reported to the Armenian police that year, but women's rights NGOs reported having received more than 5,000 calls to their hotlines. Many women have reported having their complaints of domestic violence ignored by the police, or being urged by the police to reconcile with their abusers. Between 2010 and 2017, at least 50 Armenian women died at the hands of their partners or former partners.

Responding to this prevalent problem, on 9 October 2017, the Government held a public hearing on a draft law on domestic violence, at which a number of groups spoke in opposition to the law. Following this hearing, a number of edits were made to the draft before its formal presentation to the Parliament on 16 November 2017. These changes included changing the name of the law from "Prevention of domestic violence and protection of victims of domestic violence" to "Prevention of violence within the family, protection of victims of violence within the family, and restoration of peace in the family". The new draft also included protection of "traditional family values" as one of its key principles. Some groups claimed that these revisions might be used to reinforce obsolete gender roles and stereotypes. This bill was passed by the Parliament with a vote of 73 in favor, 12 against, and 6 abstentions.

The law creates a framework for action in cases of domestic violence, which is defined as "a physical, sexual, psychological, or economic act of violence" between family members. It is not clear if the law applies to couples who are not in registered or unregistered marriages. The law allows for the initial issuance of a warning to a perpetrator of domestic violence, followed by the potential of a protective order. It

mandates the creation of new shelters for those seeking to escape domestic violence, and training for police, prosecutors, judges and others on how to respond to domestic violence cases. Currently, there are only two domestic violence shelters, both of them being in the capital. It also creates new bodies known as “support centres”, which are empowered, among other things, to promote reconciliation between abusers and their targets. The law requires that certain services be provided to those who have been subject to domestic violence, but provides no measures for reparations to be paid to them.

While the passage of a law regarding domestic violence is an important first step in curbing the abuse faced by Armenian women, we wish to express our concern that the Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family may not be strong enough to truly protect those facing domestic violence, and that a number of provisions contained in the law may contravene the right to the highest attainable standard of physical and mental health of women who have been subjected to violence, and hinder their rights to access to justice and effective remedies for the harms that they have suffered.

We would like to remind your Excellency’s Government of its obligations under the Convention on the Elimination of All Form of Discrimination against Women (CEDAW), ratified by Armenia on 13 September 1993. Article 2 of CEDAW places States parties under an obligation to respect, protect and fulfill the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of de jure and de facto equality with men. In its general recommendation No. 35, the Committee on the Elimination of Discrimination against Women elaborates in paragraph 26(a) that States must adopt legislation prohibiting all forms of gender-based violence (including domestic violence), and that such legislation must consider the survivors of such violence as rights holders and contain age-sensitive and gender-sensitive provisions and effective legal protection, including sanctions on perpetrators and reparations to survivors.

We would like to express our grave concern that the Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family does not explicitly criminalize domestic violence, referring instead to criminal cases under the penal code, which is currently in draft form. The measures provided in the law - warnings and protective orders - may not be sufficient to fulfill Armenia’s human rights obligations to protect rights-holders from the violations inherent in domestic and gender-based violence, because of the amount of discretion that they allocate to law enforcement and judges, the limited time frames involved, and the weakness of the consequences imposed on perpetrators of domestic violence. We are also concerned that the law contains no specifics regarding the burdens of proof that will be necessary for the attainment of warnings or protection orders or for criminal prosecutions of perpetrators of domestic violence, including the importance of not requiring medical certifications that may be onerous to obtain. Further, we are concerned that the law limits the relationships considered in the definition of intimate partner violence to spouses, common law spouses, and former spouses, thereby potentially foreclosing access to

justice for those who may be subject to domestic violence in other forms of intimate partner relationships.

In this regard, the Committee on the Elimination of Discrimination against Women, in its general recommendations No. 19 (1992) and No. 35 (2017), considered that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. Moreover, the Declaration on the Elimination of Violence against Women places upon the State the duty to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

With regard to the change in the title of the law and the addition of the principle of strengthening traditional values and restoring peace in the family, we wish to recall that it is firmly settled that cultural or religious tradition cannot be used to justify violations of human rights. Specifically, we would like to recall to Your Excellency’s Government’s attention Article 5 of CEDAW, which requires States parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to eliminating prejudices and practices based on the idea of inferiority or superiority of either sex. As the Working Group on the elimination of discrimination against women in law and practice has noted, this article establishes a legal basis for the primacy of women’s right to equality over discriminatory cultural patterns of conduct, including those stemming from religious edicts (A/HRC/29/40). The Declaration on the Elimination of Violence against Women also provides that States should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence against women.

Successive Special Rapporteurs in the field of cultural rights have made clear that cultural rights “are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence....They are firmly embedded in the universal human rights framework. Hence, the implementation of human rights must take into consideration respect for cultural rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms” (A/HRC/31/59, para. 27). Indeed, “[c]ultural diversity is not a justification for practices that violate women’s human rights...” Instead, “the principle of non-discrimination, which lies at the root of the principle of universality of human rights, must always be respected” (A/67/287, para. 60.).

We would also like to express our grave concern that the provisions of the law providing for “reconciliation” between perpetrators of domestic violence and their accusers may lead to coercion of abuse survivors to remain in situations where they are subject to harm and violence, especially given common power imbalances within the

family structure. In this regard, we would also like to call Your Excellency's Government's attention to Article 16 of CEDAW, which requires that States take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. The Working Group on Discrimination against Women in Law and Practice has noted the importance of guaranteeing women's equality in the family for the protection of women's human rights, including protection from domestic violence (A/HRC/29/40, paras. 28-33).

These issues were also addressed in a joint statement in June 2017 by a number of independent human rights experts, including the Working Group on the elimination of discrimination against women in law and practice, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur in the field of cultural rights, the Special Rapporteur on freedom of religion or belief, and the Independent Expert on sexual orientation and gender identity. In the statement, the experts stressed that discriminatory practices frequently take place within families, where, for example, women and girls may be limited to certain roles, experience harmful practices and patriarchal oppression, and suffer other human rights abuses, including domestic violence and sexual abuse. While recognizing that the family is the fundamental group unit of society and is entitled to protection, they insisted on the need to affirm women's right to equality in all aspects of family life.

With regard to the provisions of the law providing for shelters and training for law enforcement and judicial officials, we would like to recall to Your Excellency's Government's attention the necessity of acting with all due haste to implement regulations that will give substance and particularity to these general requirements. In particular, we are concerned that the law does not specify the number of shelters or their capacity, accessibility, or the funding available. We would also like to emphasize that while training of law enforcement and judicial officials is important, broader public education around these issues is key to domestic violence prevention. We would again like to draw Your Excellency's Government's attention to the Committee on the Elimination of Discrimination against Women's general recommendation No. 19, which sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfill their obligations regarding crimes of violence against women. Reference is also made to its report on a human rights-based approach to integrated services and protection measures on violence against women, with a focus on shelters and protection orders (A/HRC/30/35).

With regard to the law's lack of reparations for domestic violence survivors, we would like to bring Your Excellency's Government's attention to the Declaration on the Elimination of Violence against Women, which states that women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered, and that States should inform women of their rights in seeking redress through such mechanisms. We also recall the Committee on the Elimination of Discrimination against Women's general recommendation No. 35, which spells out State obligations at the executive level, including providing "accessible, affordable and adequate services to

protect women from gender-based violence, prevent its reoccurrence and provide or ensure funding for reparations”.

A comprehensive law, in compliance with human rights standards, should detail clear prevention measures, facilitation of complaint procedures (with appropriate police, judicial, medical and social training), adequate protective and punitive measures and rehabilitation programs for women victims of violence. To this end, multi-disciplinary centers combining medical, psychosocial and legal services that would be accessible to all women throughout the country, even in rural areas, would constitute a more appropriate response to the needs of women victims of violence. Violence is among the most heinous forms of discrimination against women and clear political will is needed to combat this scourge. As referenced above, this law represents an important first step towards instituting the protections for women victims of violence that are required under international human rights law. However, while acknowledging again some of the progress marked by this law, we fear that the numerous gaps in the law could limit its effectiveness, and we urge that steps be taken to bring it into full compliance with the relevant international norms.

Finally, we would like to take this opportunity to urge Your Excellency’s Government to proceed with ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which provides a solid and comprehensive legal framework to protect those who are subject to gender-based and domestic violence.

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 therefore 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 provide information on specific plans to implement the requirements of the law, particularly those related to the creation of new government-funded shelters, including the number and location of new shelters planned, time frames for their opening, and budget allocations.
3. Please provide details of the training programmes that will be used to instruct law enforcement and judicial officials, as well as health and social workers, in handling domestic violence cases.
4. Please provide details of any planned programmes of public education in order to prevent domestic violence, and of any efforts to ensure access to information regarding this law, complaint mechanisms, and related services for those who may be subject to domestic violence.

5. Please provide details of any concrete measures that will be taken to ensure that domestic violence complainants are not coerced into undergoing reconciliation with their abusers.
6. Please provide information on any further measures Your Excellency's Government intends to take in order to ensure the safety of domestic violence survivors, provide them with justice and restitution, and address the root causes of domestic violence in Armenian society

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration. We also would like to inform your Excellency's Government that this communication, as with other comments on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Working Group on the issue of discrimination against women in law and in practice.

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

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Special Rapporteur on violence against women, its causes and consequences

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