

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
AL ARM 2/2018

13 November 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 34/18, 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning homophobic and transphobic hate speech and the violent attacks on nine people, including **Robert Karapetyan, Arayik Beybutyan, Rima Sardaryan, Anna Baghramyan, Elvira Meliksetyan, Hayk Hakobyan, and Anush Gabrielyan**, amongst them lesbian, gay, bisexual, trans and intersex (LGBTI) human rights defenders.

According to the information received:

On the night of 2 August 2018, the house of Hayk Hakobyan located in the village of Shurnukh, Syunik region, was attacked by locals throwing stones and other objects at the house while he was hosting 8 friends.

The next day, two persons who are believed to have attacked Hayk Hakobyan and other defenders in the city of Goris, located close to Shurnukh village a month prior to the incident, came to the village with dozens of friends and summoned Hayk Hakobyan to come out of his house, yelling hate speech and threats. When attempting to flee the house, Hakobyan and his friends were violently attacked by the crowd that had been joined by local villagers. They were kicked and beaten, pelted with stones, and subjected to homophobic and transphobic insults. The victims called the police at 8.25 p.m. To escape the attackers, they ran towards the highway but the crowd followed them and continued to beat and insult them along the way. When they arrived at the highway, the victims tried to stop a vehicle, but the attackers prevented cars from stopping and shouted "they are 'faggots', don't help them".

At around 9.30 p.m., the police arrived at the highway and transported the victims to Goris Police Station where they filed a report. Two of them, who suffered serious injuries, were transferred to the hospital by ambulance.

The incident was broadly relayed through the media, which sparked a wave of hatred and intolerance on online platforms towards the victims and more generally the LGBT community in Armenia. This trend was fuelled by public posts and comments made by several opinion leaders and public figures. A parliamentarian and University lecturer made for example public posts inciting hatred towards LGBT people and activists, and calling for the expulsion of sexual and religious minorities and their defenders. The statement was reported to the police for investigation by a civil society organization.

At the time of the attack in the village of Shurnukh, the Human Rights Defender's Office of the Republic of Armenia was made aware of the attack through its hotline and contacted the Goris Division of the Syunik Provincial Police Department that had already sent the Police Task Force to the place of the incident. It then initiated a procedure and requested clarifications from both the victims and Goris Police Station. According to the Human Rights Defender's Office, the police officers were preparing materials for the case, in the scope of which forensic medical examinations were scheduled. The Human Rights Defender's Office also conveyed concerns about Hayk Hakobyan's safety to the police through an official letter.

The Human Rights Defender's Office also publicly stated that every manifestation of ill-treatment or violence is unacceptable and recalled that the Constitution of Armenia guarantees everyone's equality before the law and prohibits discrimination on any grounds. It called on Armenia to make sure that all the circumstances of the case are studied and that the incident is investigated objectively. It also asked that measures be taken to address the safety concerns of those affected by the incident.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about these allegations of homophobic and transphobic attacks against these nine persons, amongst them LGBTI human rights defenders. Serious concern is also expressed regarding the spread of hate speech based on sexual orientation and gender identity on online platforms, including by opinion leaders and public figures. Given the harm that these incidents of hate speech can have on the LGBTI community, which can lead to serious human rights violations against the community and put their personal integrity and their life at risk, we consider these allegations of extreme gravity. We also express our concern that this attack takes place in a climate that has become increasingly unsafe and discriminatory towards LGBTI persons and about the lack of anti-discrimination provision and protection against hate crimes on the basis of sexual orientation and gender identity in the national legislation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations of attacks and hatred towards the nine victims, including Robert Karapetyan, Arayik Beybutyan, Rima Sardaryan, Anna Baghramyan, Elvira Meliksetyan, Hayk Hakobyan, and Anush Gabrielyan, that happened at the beginning of August in the village of Shurnukh. Please also provide information with regard to the incident affecting Hayk Hakobyan and another LGBTI human rights defender that preceded these events in the city of Goris. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on the measures your Excellency's Government has taken to publically condemn the homophobic and transphobic hate speech disseminated through public posts and comments on on-line platforms, including by opinion leaders and public figures.
4. In the event that the alleged perpetrators of the above mentioned hate speech and hate crimes were identified, please provide the full details of any prosecutions undertaken. Have penal, administrative or other sanctions been imposed on the alleged perpetrators?
5. Please provide information on any other measures taken by the authorities to prevent further calls for, and acts of discrimination, incitement, hostility and violence against the LGBT community.
6. Please provide information on any plans to ensure that the draft anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds and to amend the Freedom of Speech Law and the Criminal Code as to include the grounds of sexual orientation and gender identity as prohibited grounds for hate speech, incitement to discrimination, and incitement to violence and hate crimes.
7. Please indicate what measures have been taken to ensure that defenders of the human rights of LGBTI people are able to carry out their peaceful and legitimate work in an enabling environment.

We would appreciate receiving a response within 60 days, passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual  
orientation and gender identity

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case, we would like to recall articles 2, 9, 17, 19, 20 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Armenia acceded in 23 June 1993. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. Under article 1 of the Universal Declaration of Human Rights, '[a]ll human beings are born free and equal in dignity and rights', and '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (article 2 of the Declaration).

The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3). The Committee expressed concerns about the widespread discrimination and violence against LGBTI persons, and recommended Armenia to not tolerate any form of social stigmatisation and prohibit discrimination towards LGBT persons based on their sexual orientation or gender identity (CCPR/C/ARM/CO/2, para. 10).

The Committee on Economic, Social and Cultural Rights has also affirmed that the non-discrimination guarantee of the International Covenant on Economic, Social and Cultural Rights includes sexual orientation, gender identity and sex characteristics. In 2016, the Committee explained that non-discrimination: "[...] encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health" (E/C.12/GC/22, para.23). The Committee on the Elimination of Discrimination against Women made a recommendation in 2016 to criminalise hate speech and acts against lesbian and bisexual women and transgender and intersex persons and provide victims with effective access to justice (CEDAW/C/ARM/CO/5-6, para. 45).

We would also like to recall resolutions 17/19, 27/32 and 32/2 of the Human Rights Council, expressing grave concern for acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity. On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has recommended that States, inter alia, ensure that anti-discrimination legislation includes sexual orientation and gender identity among

prohibited grounds; enact hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing; conduct prompt, thorough investigations of incidents of hate-motivated violence against LGBT persons, holding perpetrators to account, and providing redress to victims; prohibit incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for hate speech (A/HRC/29/23, para. 78 (a)(b)(d) and 79(c)).

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring your Excellency's Government's attention to its article 17, which provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

We would like to also recall that the International Covenant on Civil and Political Rights provides in its Article 20(2) that States must prohibit by law and to ensure full enforcement of the law against every incident of advocacy of hatred that constitutes incitement to discrimination, hostility or violence in accordance with article 20(2), which is further provided for by the Human Rights Committee in paragraph 8 of its General Comment No. 34.

Finally, we would also like to remind your Excellency's Government that States have the responsibility to protect persons from human rights violations committed by non-state actors, by exercising due diligence to prevent, punish, investigate and bring perpetrators to justice; this is set out by the Human Rights Committee General Comment No. 31 ((CCPR/C/21/Rev.1/Add.13, paras. 8).