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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

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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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **lack of effective protection provided to demonstrators during the International Day against Homophobia and subsequent threats made against members of the LGBT organization Identoba.**

Identoba is a human rights organization working to promote gender equality and respect for the rights of lesbian, gay, bisexual, transgender and intersex (LGBT) individuals in Georgia.

According to the information received:

On 17 May 2013, a demonstration was planned by LGBT human rights defenders, including members of Identoba, on the occasion of the International Day against Homophobia. The day before, on 16 May 2013, an individual had visited the offices of the organization and told human rights defender Ms. Anna Rekhviashvili that "she and her colleagues would be treated the way they deserved the following day". It is also reported that in the afternoon of the same day, the Patriarch of the Georgian Orthodox Church made a public statement calling on the Government to ban the demonstration of what he allegedly referred to as "sinners". The Government and the Mayor of Tbilisi reportedly responded that everyone had the right to assemble peacefully and to express themselves, and that the rally would go ahead as planned.

The rally had been scheduled to begin at 1:00 p.m. outside the former Parliament building on Rustaveli Avenue. However, it is reported that an hour earlier counter-protesters had occupied the space, bearing banners with slogans such as “Stop Homosexual Propaganda in Georgia”, and forcing the LGBT defenders to move to nearby Freedom Square.

Despite police attempting to block the avenue next to Freedom Square to prevent the counter-protesters from reaching it, reportedly that the counter-protesters, who included Orthodox priests, broke the line of law enforcement officers and rushed towards the LGBT demonstration. Police allegedly escorted LGBT rights defenders to several municipal buses and evacuated them from the scene, although it is unclear from reports received whether all participants in the LGBT demonstration made it onto the buses. Sources inform that the counter-protesters invaded Freedom Square and the nearby streets. It is reported that 28 people were injured as a result of the confrontations that ensued.

In another part of downtown Tbilisi, on a street adjacent to the main avenue, a minibus carrying mostly women was attacked by counter-demonstrators who allegedly believed that it was carrying LGBT activists. It is reported that the windows of the minibus were broken by the counter-protesters, but that no-one was injured.

It is reported that that Prime Minister, the Speaker of Parliament and other Government officials condemned the attack and promised a thorough investigation into the events. Sources also inform that the Patriarch of the Georgian Orthodox Church made a statement condemning the violence, but that he also emphasized that “the sinners had brought it upon themselves”.

Following the demonstration, Identoba members reportedly received threats via social networks. The organization’s media officer received messages on Facebook with threats such as “You will be destroyed”, reportedly from the fore mentioned individual who had visited the offices of Identoba on 16 May 2013. It is reported that the sender of these messages had followed Identoba members after the demonstration on 17 May 2013 and told them that the organization had no future and would be destroyed. Identoba member Ms. Rusudan Jijelava was later threatened at gun-point on 25 May 2013.

While we recognize the significant efforts employed by your Excellency’s Government in relation to the LGBT demonstration on 17 May 2013 and commend the statements made by high-level public officials affirming the universality of the right to freedom of peaceful assembly, concern is expressed at the lack of sufficient and effective protection provided to LGBT human rights defenders, and the subsequent injuries inflicted on protesters and others. Further concern is expressed at threats received by

members of Identoba, especially as these appear to be in response to the individuals' peaceful activities in defence of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR):

- article 19, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice";

- article 21, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others"; and

- article 22, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

In this connection, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

We wish to bring to the attention of your Excellency's Government provisions contained in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), adopted by the General Assembly on 25 November 1981. Specifically, article 1, paragraph 3, holds that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." Moreover, article 4, paragraph 2, establishes that "all States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter."

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully and also the related right to freedom of expression is respected and that the physical and psychological integrity of those exercising this right is guaranteed, especially for those espousing or promoting minority views.
6. Please provide information on measure taken to ensure the security of members of Identoba.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the LGBT human rights defenders and of the members of Identoba are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of

any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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freedom of opinion and expression

Maina Kiai
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