

Criminal and Legal Coverage for Persons Engaging in Human Rights Protection

A Study to Support Establishment of Legislation in Armenia

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OF HUMAN RIGHTS AND HUMANITARIAN LAW



**MINISTRY OF JUSTICE
OF THE REPUBLIC OF ARMENIA**





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I. Introduction

This publication presents a study developed by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) in collaboration with the Ministry of Justice of the Republic of Armenia, under RWI's human rights capacity development programme in Armenia. The programme is implemented with financial support from Swedish Development Cooperation (Sida).

The RWI programme aims to support key actors in Armenia, including selected policymakers, academic institutions and civil society organisations, to increase their capacities to apply international human rights standards in support of ongoing reforms. Under this programme, RWI has engaged with the Ministry of Justice of the Republic of Armenia to support implementation of the country's National Human Rights Action Plan 2020-2022 (NHRAP). The NHRAP mandates, inter alia, the establishment of legislation enhancing criminal and legal coverage for persons engaging in human rights protection activities (Action 33 of the Plan).

The presented study was developed to support these efforts by reviewing international best practices and standards on criminal and legal coverage for persons engaging in human rights protection activities, as well as examining relevant Armenian legislation and conducting a gap analysis. It was developed by RWI experts Phillip Tahmindjis (Australia) and Syuzanna Soghomonyan (Armenia), and supported by stakeholder consultations held on 2 and 3 June 2021 with relevant Armenian state institutions and civil society organisations.

II. Executive Summary

This paper is a contribution to the implementation of Action 33 of the Armenian 2020-22 National Strategy for Human Rights Protection and related Action Plan. It is a study of international standards and practices regarding legal and policy coverage of persons engaging in human rights protection activities, to facilitate consideration of a bill submitted to the National Assembly to effect legislative amendments and/or policy and practice guidelines.

This paper considers:

- The persons who might be the focus of the National Strategy (“Human rights defenders and activists”)
- Flashpoint events in Armenia relevant to the treatment of human rights defenders and activists and the human rights issues that arise therefrom
- The international and regional human rights matrix applicable to Armenia
- Relevant Armenian domestic laws
- The international guidelines for the treatment of human rights defenders and activists
- The Armenian National Strategy for human rights protection and gap analysis
- The National Strategy Action Plan and gap analysis
- Other non-legislative relevant issues and international comparisons
- Special consideration of anti-discrimination and hate speech laws
- Some suggested amendments for legislation
- Some activity and policy-oriented issues for consideration

III. Definitions and contextual background

Human rights defenders and activists

A primary concern of this report is to examine the extent to which, in the light of international obligations and domestic law, Armenia can create and maintain a safe and enabling environment for civil society.

In this report, the term “human rights defenders and activists” (hereafter HRDA) is used to encompass those who actively work for the implementation of human rights, whether for themselves or others, and whether in a formal manner (for example, the work of human rights NGOs) or in an informal or ad hoc manner (for example, spontaneous demonstrations). This may be in the public or the private sphere.

Flashpoint events in Armenia relevant to the actions and treatment of human rights defenders and activists

The conflict with Azerbaijan over Nagorno-Karabakh has dominated recent events in Armenia. Both sides in the conflict have been accused of breaches of international law. The focus of the present report is the domestic civil response to the conflict and its outcome. There have been many public protest demonstrations. The reaction of the authorities to the protests is relevant to the treatment of HRDA in Armenia, including treatment of people protesting about the situation of prisoners of war.

The government responses to the Covid-19 pandemic have included the declaration of states of emergency. Actions taken under the emergency have included: requiring telecommunications companies to provide authorities with phone records of all their customers to facilitate tracking, as well as access to confidential medical information; refusal to reveal information on the people in charge of the tracking system; national or local lockdowns; restrictions on gatherings and protests; school closures (where an estimated 80 percent of children lacked equipment and/or internet connection to enable distance learning);¹ and police response to protests. (Note that permissible exceptions to human rights in states of emergency are dealt with below).

¹ Human Rights Watch *World Report 2021* <https://www.hrw.org/world-report/2021/country-chapters/armenia> (accessed 26 April 2021).

The immediate response to protests of all kinds can raise issues of **police powers and accountability**. Allegations of the excessive use of force and violence, including by plainclothes police beating peaceful demonstrators, have been made.² Investigations into the violent dispersal of protests have frequently been suspended.³ The European Court of Human Rights has raised concerns about police violence and impunity.⁴

Related to this is the **treatment of journalists and other media commentators** who report on the protests, as well as other issues of concern. Attacks on journalists have not been uncommon in Armenia, by both law enforcement officials and by others who do not wish their activities exposed.⁵ Eyewitnesses have reported seeing police targeting journalists at protests and, despite being shown press credentials, confiscating and damaging video equipment.⁶ The United Nations General Assembly has made it clear that it condemns attacks and violence against journalists and media workers and impunity for such attacks.⁷

Environmental issues can also raise concerns that are relevant here. For example, environmental activists protesting the construction of a gold mine in Amulsar were arrested for not obeying police orders in a peaceful demonstration outside Parliament.⁸ Although the protesters were fined and released after **administrative proceedings**, the administrative justice system is itself may profit from an analysis for compliance with human rights standards.

The activities of businesses and financial institutions are now regarded *prima facie* as being subject to human rights principles. The *UN Guiding Principles on Business and Human Rights*⁹ articulates the core human rights responsibilities of businesses. The *Voluntary Principles on Security and Human Rights*¹⁰ establish a framework for extractive companies to grapple with security issues. However, while these remain largely voluntary principles and “an

² See Amnesty International press releases <https://www.amnesty.org/en/latest/news/2015/06/armenia-investigate-alleged-police-abuses-after-protesters-doused-with-water-cannon-and-arrested> (accessed 26 April 2021) and Human Rights Watch press releases <https://www.hrw.org/news/2017/01/12/armenia-no-accountability-police-violence> (accessed 26 April 2021).

³ Human Rights Watch press release <https://hrw.org/news/2018/10/10/delayed-justice-police-violence-armenia> (accessed 26 April, 2021).

⁴ Citation

⁵ See Human Rights Watch press release <https://www.hrw.org/news/2017/10/26/armenian-journalists-assaulted-doing-their-jobs> (accessed 26 April, 2021).

⁶ Amnesty International press release <https://www.amnesty.org/en/latest/news/2015/06/armenia-investigate-alleged-police-abuses-after-protesters-doused-with-water-cannon-and-arrested> (accessed 26 April 2021)

⁷ The safety of journalists and the issue of impunity GA Resol 74/157, 18 December 2019 (A/RES/74/157)

⁸ See <https://protectdefenders.eu/armenia-arbitrary-arrest-of-human-rights-defenders/> (accessed 26 April 2021).

⁹ Citation

¹⁰ Citation

accountability-free zone”¹¹ the activities of HRDAs can be essential to advancing respect for human rights by such institutions. Laws and policies should not only protect HRDAs but also be directed at businesses and institutions which infringe HRDA rights.¹²

The concerns about **violence against women**, particularly domestic violence reportedly remains a widespread problem in Armenia.¹³ Even though Armenia passed its first law on domestic violence in 2017¹⁴ women's human rights defenders protesting about the lack of comprehensive protection for victims of domestic violence (non-criminalisation of acts of violence; emphasis on traditional values rather than victims' rights; lack of training for law enforcement officials and judges) have been subjected to personal attacks, infringing their ability to assist women. Such concerns will frequently include the rights of **children** as well, either directly as the objects of violence or indirectly when their mothers' nurturing role is jeopardised. Although Armenia's Parliament passed a law in 2017 on violence in the family, police response to complaints of domestic violence remains an issue.¹⁵ Despite the law requiring police intervention when there is a reasonable suspicion of violence, and training for law enforcement and justice officials, its recognition of "traditional values" and "restoring harmony" within the family can act as an impediment to full implementation. Thus, the work of HRDAs such as the #Me Too movement should be given adequate protection, especially when domestic violence is neither a stand-alone felony nor an aggravating criminal circumstance in the Criminal Code and Covid-19-related measures further jeopardise the security of survivors of domestic violence.

Lesbian, gay, bisexual, transgender and intersex people have been frequently subjected to violence, intimidation, extortion and harassment.¹⁶ LGBTI activists, such as the group Pink Armenia, often lose jobs and face police harassment.¹⁷ The Criminal Code does not recognise homophobia and transphobia as aggravating criminal circumstances in hate crime. Public debate, including statements by elected parliamentarians, has been vitriolic on this issue. In

¹¹ Human Rights Watch submission to the UN Working Group on Business and Human Rights <https://hrw.org/news/2017/09/08/human-rights-watch-submission-re-human-rights-defenders-and-civic-space-context> (accessed 26 April 2021)

¹² See Human Rights Watch *World Report 2021* <https://www.hrw.org/world-report/2021/country-armenia> (accessed 26 April 2021)

¹³ See *Armenia Stakeholder Report for the United Nations Universal Periodic Review* submitted by Advocates for Human Rights, Human Rights Research Center and Women's Resource Center Armenia, 35th UPR Working Group session, 20-31 January, 2020.

¹⁴ The Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.

¹⁵ See Human Rights Watch Report <https://www.hrw.org/news/2018/01/12/armenia-little-protection-aid-domestic-violence-survivors> (accesses 26 April 2021)

¹⁶ See Amnesty International report *Armenia: No Place for Difference* AI Index EUR 54/002/2013, August 2013

¹⁷ See Amnesty International press release <https://www.amnesty.org/en/latest/news/2017/12/former-soviet-states-entrenching-homophobia-and-demoralizing-lgbti-rights/activists/> (accessed 26 April 2021)

2019, an openly transgender activist addressed Parliament during a hearing on human rights. She received public threats, including death threats. A member of Parliament publicly called for her to be burned alive.¹⁸

Attorneys at Law have also been subjected to insults, threats and violence when they defend clients in high-profile cases (whether the client be a former public official of a HRDA) as they are often identified with the actions of their client. The threats can extend to their families.¹⁹

Despite significant changes in Armenia in April 2018 (the Velvet Revolution), and despite Armenia's accession to major human rights treaties (discussed below), Armenia's human rights record remains uneven. While media diversity has blossomed, polarisation within the media, with interests coinciding with the interests of owners, has not.²⁰ Defamation campaigns are carried out to stigmatise HRDAs and discredit their work. In particular, those who oppose or challenge the state or mainstream values are harassed and intimidated, or worse. This comes at the hands of authorities, such as the police and public officials, and also from individuals. The issue of ensuring rights for HRDAs remains pending at legislative and law enforcement level due to legislative gaps or inaction by law enforcement agencies, contributing to an atmosphere of impunity. This hampers constructive discourse on human rights and other important matters.

Prima facie, the human rights issues raised by the circumstances described above include:

- Freedom of expression (including media freedom)
- Freedom of Opinion
- Freedom of Association
- Women's rights
- Children's rights
- Right to privacy
- Right to access information
- Right to education
- Police powers
- Due process rights (arbitrary detention, administrative procedures)
- Minority rights (including LGBTI rights)
- The issue of impunity

¹⁸ Amnesty International World Report 2019 Human Rights in Eastern Europe and Central Asia.

¹⁹ See <https://bit.ly/33J03e> (accessed 13 May 2021),

²⁰ See Report of Protect defenders <https://protectdefenders.eu/armenia-arbitrary-arrest-of-human-rights-defenders/> (accessed 26 April 2021)

IV. The international human rights matrix applicable to Armenia

Armenia has ratified all the major UN human rights conventions, all without reservations:

- *International Covenant on Civil and Political Rights* (acceded 23 June, 1993; Optional Protocol 1 ratified 23 June, 1993; Optional Protocol 2, 18 March, 2021)
- *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (acceded 13 September, 1993, including agreement to the investigation procedures of the Torture Committee under Article 20 but not receipt by the Committee of individual complaints under Article 22)
- *Convention on the Elimination of All Forms of Discrimination against Women* (acceded 13 September 1993 and to the Optional Protocol 14 September 2006)
- *International Convention on the Elimination of All Forms of Racial Discrimination* (acceded 23 June 1993, but not declared agreement to the receipt of individual complaints by the Race Discrimination Committee under Article 14)
- *International Covenant on Economic, Social and Cultural Rights* (acceded 13 September 1993, and to its Optional Protocol on 13 October 2020, but not to the competence of the Committee on Economic Social and Cultural Rights to investigate possible breaches)
- *International Convention on the Rights of the Child* (acceded 23 June 1993, including Optional Protocols 1 and 2 on 30 September 2005 and Protocol 3 on 24 March 2021)
- *Convention on the Prevention and Punishment of the Crime of Genocide* (acceded 23 June 1993)
- *Convention on the Rights of Persons with Disabilities* (ratified 22 September 2010, but with a specific objection to Azerbaijan's claims to sovereignty over the Nagorno-Karabakh region, and signing the Optional Protocol on 30 March 2007 but not yet ratifying it)
- *International Convention for the Protection of All Persons from Enforced Disappearance* (ratified 24 January 2011, including the competence of the Committee on Enforced Disappearances to undertake investigations, but without the necessary declarations for the Committee to consider individual or State party complaints under Articles 31 and 32)
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (signed 26 September 2013, but not ratified)

These conventions relate to the concerns indicated above and either generally, or in their specific contexts, impose obligations under the international legal system on Armenia to comply.

A partial exception occurs during declared states of emergency, where temporary derogations from some provisions is allowed.²¹ These must be limited to the extent strictly required by the emergency, non-discriminatory, and cannot derogate from the rights to life, freedom from torture, slavery, non-imprisonment for contractual obligations, non-retroactivity of criminal offences, recognition as a legal person and freedom of thought, conscience and religion.²² Armenia invoked declarations of emergency from March to September 2020 with respect to the conflict in Nagorno-Karabakh. In September 2020 it declared martial law. It has also introduced measures limiting freedoms in order to deal with the COVID-19 pandemic. It has been argued that these measures may go beyond what is necessary, lawful and proportionate.²³

Armenia has taken some measures to address human rights issues, as its responses to the UN monitoring mechanisms in the treaties above indicate,²⁴ and under the United Nations Periodic Review System.²⁵ Stakeholder submissions to these processes indicate further improvements can be made.²⁶ NGOs have recorded that most of the UPR recommendations relating to civic space, while supported by Armenia, have not been fully implemented.²⁷

Armenia joined the Council of Europe on 25 January 2001 and is a party to the European Convention on Human Rights (*Convention for the Protection of Human Rights and Fundamental Freedoms*) the rights and State Party obligations under which are substantially the same as those for the corresponding UN Conventions. Armenia's reservations under the European Convention relate only to the application of Article 5 (right to liberty of the person and due process) to the discipline of members of the armed services.²⁸ Under this Convention

²¹ International Covenant on Civil and Political Rights Article 4

²² Article 4(2) citing Articles 6, 7, 8(1), 8(2), 11, 15, 16 and 18 respectively.

²³ See Human Rights Watch news release [HTTPS://www.hrw.org/news/2020/04/03/armenia-law-restricts-privacy-amid-covid-19-fight](https://www.hrw.org/news/2020/04/03/armenia-law-restricts-privacy-amid-covid-19-fight) and CCPR Centre Monitor <https://ccprcentre.org/ccprpages/monitor-iccpr-violations-in-the-context-of-covid-19-pandemic> (both accessed 26 April 2021).

²⁴ For example, the response to the Committee Against Torture in Specific information on the implementation of articles 1-16 of the Convention CAT/C/ARM/QPR/5, 9 December 2019, and the Third Periodic Report by Armenia under article 40 of the Covenant CCPR/C/ARM/3, 30 September 2019 plus Replies of Armenia to the list of issues in relation to its third periodic report CCPR/C/ARM/RQ/3, 16 March 2021.

²⁵ See National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 A/HRC/WG.6/35/ARM/1 19 November 2019.

²⁶ See Summary of stakeholders submissions on Armenia A/HRC/WG.6/35/ARM/3, 5 November 2019.

²⁷ Civicus, *Republic of Armenia: Joint Submission to the UN Universal Periodic Review, 35th Session of the UPR Working Group* 18 July 2019 www.civicus.org/documents/Armenia.JointUPRSubmission.pdf (accessed 26 April 2021).

²⁸ *Reservations and Declarations for Treaty No. 005* https://www.coe.int/en/web/conventions/treaty/005/declarations?p_auth=EBn2HCJC (accessed 26 April 2021).

the European Court of Human Rights has ruled that Armenia has been in breach with respect to torture,²⁹ administrative detention,³⁰ freedom of expression³¹ and freedom of assembly.³²

Other European human rights treaties are also relevant to the concerns listed above. The European Union insisted that the Armenian government pass legislation on domestic violence (the victims of which are not effectively protected) as a condition of certain budgetary support in 2017. Armenia signed the Convention on Preventing and Combating Violence against Women and Domestic Violence (the *Istanbul Convention*) in 2018. A hate-filled campaign against ratification followed, supported by some public officials.³³ Armenia has not ratified the convention.

Armenia already has obligations in international law to address the concerns raised above. During the 2020 Universal Period Review process, a number of countries made recommendations that related to HRDAs, specifically that Armenia should:

- Intensify efforts in creating a safe and enabling environment for civil society, human rights defenders and journalists and ensure that threats and attacks against journalists and human rights defenders, notably those working in the field of anti-discrimination and women's rights, are duly investigated (Lithuania)
- Guarantee freedom of expression and freedom of the press by ensuring the protection of journalists and human rights defenders (France)
- Carry out prompt, independent and just investigations into attacks on human rights defenders in order to ensure that those responsible are brought to justice (Norway);
- End the culture of impunity for attacks against human rights defenders by carrying out prompt, impartial and effective investigations and prosecutions of threats and violence against them (Australia)
- Ensure immediate and effective investigation of all threats and attacks against human rights defenders (Austria)
- Carry out an independent, prompt, effective and impartial investigation into attacks on human rights defenders to avoid a potential feeling of impunity among perpetrators of such attacks (Belgium)

²⁹ *Mushegh v Armenia* 20 September 2018 and *Virabyan v Armenia* 2 October 2017 (police ill-treatment of HRDAs after arrest).

³⁰ *Galstyan v Armenia* 15 November 2007 (imposition of administrative penalties including detention after demonstrations)

³¹ *Meltex Ltd and Mesrop Movsesian v Armenia* 17 June 2008 (independent broadcasting company refused a licence without reasons being given).

³² *Ter-Petrosyan v Armenia* 25 April 2019 (dispersal of a protest rally and lack of an effective remedy).

³³ Human Rights Watch press release <https://www.hrw.org/news/2019/10/24/countering-domestic-violence-myths-armenia> (accessed 26 April 2021).

- Adopt specific laws that will prohibit hate speech and take concrete steps to end smear campaigns and threats against human rights defenders (Canada)
- Support human rights defenders with official condemnation of attacks when they occur (Estonia)
- Take measures to protect human rights defenders and civil society from harassment (Sweden)³⁴

V. Relevant Armenian domestic laws

The *Constitution of the Republic of Armenia* contains many human rights guarantees. Based on the “inalienable dignity of the human being”³⁵ public powers are obliged to respect and protect basic rights and freedoms and their actions are restricted by these rights.³⁶ The Constitution has supreme legal force and in the event of a conflict between the norms of ratified international treaties and domestic laws, the former shall prevail.³⁷ Treaties are ratified by the National Assembly,³⁸ but only on the recommendation of the government,³⁹ to ensure they are in conformity with the Constitution (and not the other way around). However, once ratified they have the force of domestic law and will prevail if there is an inconsistency between them and an Armenian law except for the Constitution which is supreme (and thus not over the National Assembly itself if it is acting in accordance with the Constitution). However, the Constitution itself expressly guarantees in Chapter 2⁴⁰ personal liberty, physical integrity, equality before the law, freedom from torture, non-discrimination, equal rights of men and women, children’s rights (including the right to an education), freedom of thought, conscience, religion, opinion, assembly, association and expression. Rights to impartial and fair examination by administrative bodies, and to judicial protection, are guaranteed, as is the right to apply to international bodies where provided under ratified human rights treaties.

In addition, ideological pluralism is guaranteed⁴¹ and the state is obliged to promote the preservation, improvement and restoration of the environment.⁴²

³⁴ <https://www.upr-info.org/en/review/Armenia/Session-35---January-2020>

³⁵ Article 3(1)

³⁶ Article 3(2), (3)

³⁷ Article 5

³⁸ Article 116

³⁹ Article 116(2)

⁴⁰ Articles 23-81

⁴¹ Article 8

⁴² Article 12

Temporary suspension of these rights may occur during a state of emergency or martial law, but only to the extent required by the situation (similar to the provisions of ICCPR Article 4),⁴³ and any restrictions cannot exceed those prescribed by the ratified treaties.⁴⁴

Moreover, the implementation and enforcement of these rights shall be defined by organisational mechanisms and procedures necessary for their effective exercise.⁴⁵ The principle of proportionality shall apply to any restriction on these rights⁴⁶ as well as the principle of certainty of the laws.⁴⁷ The inviolability of the essence of the provisions on basic rights and freedoms is expressed.⁴⁸ The practice of the international bodies operating under the ratified human rights treaties shall be taken into account when interpreting constitutional provisions.⁴⁹

In addition, in 2020 the *Judicial Code on the Republic of Armenia* was amended to create anti-corruption courts.

There is considerable public disagreement over the composition of the Constitutional Court, when an amendment to Article 213 of the Constitution in June 2020 meant that the three longest-serving members of the court were obliged to retire. It was allegedly designed to end the control of the court by loyalists of the former regime.⁵⁰ A referendum on the transitional constitutional reforms was scheduled but has been postponed indefinitely because of the COVID-19 pandemic.

Other human rights-based laws are also expressly linked to international human rights treaties, such as the *Law of the Republic of Armenia on Freedom of Information*, which is expressed to operate in congruence with and subject to the provisions of international treaties.⁵¹ The *Criminal Code of the Republic of Armenia* is also expressed to be based on both the Constitution and international principles and norms.⁵² The Code in fact makes a breach of a citizen's legal equality a crime,⁵³ as is hindrance to the legal professional activities of a journalist.⁵⁴ Under the *Criminal Procedure Code* respect for the rights, freedoms and dignity

⁴³ Article 76

⁴⁴ Article 81(2)

⁴⁵ Article 75

⁴⁶ Article 78

⁴⁷ Article 79

⁴⁸ Article 80

⁴⁹ Article 81(1)

⁵⁰ Armen Gregoryan "Armenia's Reformers Struggle On", *Open Democracy Analysis*
<https://www.opendemocracy.net/odr/armenian-reformers-struggle-on> (accessed 26 April 2021)

⁵¹ Article 2(2)

⁵² Article 1(2)

⁵³ Article 143

⁵⁴ Article 164

of a person is mandatory for all bodies and persons participating in criminal proceedings and there must be appropriate legal grounds for issuing warrants.⁵⁵ Under the *Law of the Republic of Armenia on Police*, police activity is mandated to be based on respect for human rights and freedoms,⁵⁶ and police must act in a non-discriminatory manner.⁵⁷ The use of physical force by police, while discretionary on the part of the police officer, is subject to compulsory special training.⁵⁸ However, an ill-defined crime of "hooliganism", a "brutal violation of public order", remains an offence in the Criminal Code.⁵⁹

There is also a role for Armenian executive authorities in the execution of the judgements of the European Court of Human Rights.⁶⁰ By Decree N 1751-N (2003) the Armenian Government Representative to the European Court of Human Rights within the Armenian Ministry of Justice has the job not only of protecting Armenian interests before the Court, but also of supervising the execution of those decisions which are binding on Armenia.⁶¹ In 2014, a new Division (Division for Execution of Judgements and Securing Conventional Requirements) was set up under the Department of Relations with the European Court of Human Rights of the Armenian Ministry of Justice to ensure compliance with ECHR judgements and the introduction of European human rights standards as well as the UN Torture Convention in the Armenian legal system.⁶² There is also the Standing Committee on Protection of Human Rights and Public Affairs and the Standing Committee on State and Legal Affairs. These have a duty to address the issues of the exercise of human rights and ensuring the rule of law.

In addition to the National Human Rights Strategy and Action Plan discussed below, there is also the *National Child Rights Protection Strategic Program and Action Plan for 2017-21*,⁶³ the *Comprehensive Program on the Social Inclusion of Persons with Disabilities and Action Plan 2017-21*,⁶⁴ the *Strategy for Overcoming the Consequences of Ageing and for Social Protection of the Elderly and Action Plan*,⁶⁵ and the *Strategy for the Implementation of Gender Policy*

⁵⁵ Article 9

⁵⁶ Article 3

⁵⁷ Article 5

⁵⁸ Article 29

⁵⁹ Article 258

⁶⁰ See Helsinki Citizens' Assembly Vanadzor *Situation of Execution of European Court of Human Rights Judgements by Republic of Armenia 2016*, www.hcav.am (accessed 26 April 2021).

⁶¹ www.arlis.am/DocumentView.aspx?docid=38207

⁶² http://moj.am/storage/uploads/Hashvetvutyun_2014.pdf

⁶³ Approved by the Protocol Governmental Decree No.30 July 13, 2017.

⁶⁴ Approved by the Protocol Governmental Decree No. 1, January 12, 2017

⁶⁵ Approved by the Protocol Governmental Decree No. 20, May 18, 2017

and *Action Plan 2019-23*.⁶⁶ The Strategy for Legal and Judicial Reforms which created the anti-corruption courts has been mentioned above.

There is also a Human Rights Defender established in the Constitution.⁶⁷ The operation of this is similar to the Ombudsman in other countries. The Defender is to be independent (and cannot belong to any political party) and observes the maintenance of human rights and freedoms on the part of the state and local self-government bodies. The office has immunity from prosecution and adequate financing is required on the part of the State.

Armenia therefore has, at least in theory, strong and interlinked international and domestic legal guarantees for the implementation and enforcement of human rights and policy initiatives to support them. However, it has been questioned whether the Regulations of the Standing Committees have any enforcement powers.⁶⁸

VI. International Guidelines for the Treatment of Human Rights Defenders and Activists

The United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*⁶⁹ (often referred to as the Declaration on Human Rights Defenders) is not legally binding in the same way as a ratified treaty. However, as it is based on universally recognised human rights, it provides a useful template for state action. In particular, it acknowledges that everyone has the responsibility to promote and protect human rights, so that the notion of a human rights defender or activist should be widely construed. They may address any human rights concern and not necessarily those that affect them personally. Their actions might include collecting and disseminating information; supporting victims of human rights violations; taking action to secure accountability and to end impunity; supporting better government and government policy; contributing to the implementation of human rights treaties; and providing human rights education and training.

It is acknowledged that HRDAs strive to make human rights a reality. In doing so, they may face reprisals from the government, government officials and agencies, or from individuals who disagree with their views. The scale of reprisals worldwide against human rights defenders

⁶⁶ Approved by the Governmental Decree No. 1334L, September 19, 2019.

⁶⁷ Chapter 10

⁶⁸ Helsinki Citizens' Assembly Vanadzor report, above, at p.8

⁶⁹ GA Resol 53/144, 9 December 1998

and activists (hereafter HRDAs) has been such that the United Nations adopted the Declaration on Human Rights Defenders and also established the mandate of the Special Rapporteur on the Situation of Human Rights Defenders. Recorded reprisals against HRDAs include killings, death threats, kidnappings, beatings, torture, arbitrary arrest and detention, criminal prosecutions, harassment, defamation, security measures designed to affect the actions of HRDAs, obstructing the funding of HRDA organisations, enacting and enforcing laws designed to curtail legitimate activities, and attacks on the offices and homes of HRDAs.⁷⁰ Sometimes these reprisals are directed towards the family and associated of HRDAs. Impunity for all of the foregoing is also an important issue.

Women HRDAs face all of these challenges, but their particular social, economic and political situation may mean they are affected differently to such pressures and an awareness of this is also necessary for their effective protection.

Providing protection for HRDAs does not involve creating new human rights. Rather it articulates existing human rights already binding on Armenia specifically towards HRDAs. And it only applies to HRDAs conducting peaceful activities.

The template for HRDA protection involves four aspects: the rights and protections accorded to HRDAs; the duties of States; the responsibilities of everyone; and the roles of national law.

The rights and protections accorded to HRDAs include:⁷¹

- To seek protection and realisation of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organisations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To make submissions to government bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realisation of human rights;
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;

⁷⁰ See United Nations Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No.29

⁷¹ See Articles 1-13 of the Declaration

- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To have unhindered access to and communication with non-governmental and intergovernmental organisations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against, or opposing, through peaceful means, acts or omissions attributable to the State that result in violation of human rights; and
- To solicit, receive and utilise resources for the purpose of protecting human rights, including the receipt of funds from abroad.

The duties of States in addition to respecting the rights above, include:⁷²

- To protect, promote and implement all human rights;
- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;
- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, 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;
- To promote public understanding of civil, political, economic, social and cultural rights;
- To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions; and
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.

⁷² Declaration Articles 2, 9 12, 14, 15

The responsibilities of everyone include promoting human rights and not violating the human rights of others, particularly for those exercising professions that can affect the human rights of others (such as police officers, lawyers and judges).⁷³

The role of national law to assure the application of the highest possible legal standards of human rights.⁷⁴

The Armenian National Strategy for the Protection of Human Rights and Its Implementation Action Plan and Gap Analysis

The Government of Armenia approved the **2020-2022 National Strategy for the Protection of Human Rights and its Implementation Action Plan** on 26 December 2019. It entered into force on 17 January 2020.⁷⁵

The Strategy expressly recognises that the guarantee of human rights is important for democracy and the rule of law, is required by Article 3 of the Constitution, and that “all public administration bodies should strive to achieve by joint efforts.” The importance of UN and European human rights monitoring bodies and processes is also expressly acknowledged.

The problem areas relevant to HRDAs that are specifically acknowledged are:

- Due process and fair trial rights
- Equal rights and non-discrimination
- Freedom of assembly
- Inappropriate state responses to violence and human rights violations against vulnerable groups.

However, the problem areas identified above which are **missing** are:

- Freedom of expression and opinion
- The right to privacy
- Impunity for actions

⁷³ Declaration Articles 10, 11, 18

⁷⁴ Declaration Articles 3, 4

⁷⁵ Government Decree N 1978-L dated December 26, 2019

In addition, the National Strategy expressly acknowledges the shortcomings from previous national strategies:

- Failure to properly consider recommendations from civil society
- Failure to properly consider Armenia’s international obligations, including those highlighted in the UPR process
- Failure to include proper and effective monitoring, assessment and coordination mechanisms
- Insufficient linkages between the action plans and Armenia’s international and constitutional obligations regarding human rights
- Absence of a standard reporting format

These are at least in theory addressed in the current plan.

The guiding principles of the Strategy and Action Plans are:

- Their human-based and rights-based nature
- Transparency and accountability
- Participation and inclusiveness
- Visibility and measurability of the Action Plans
- Continuous improvement, as these are “live documents” which may need modification in line with current developments
- The long-term goals are:
- Efficient protection and safeguarding of human rights
- Implementation of a consistent public policy regarding human rights
- Improvement of protection mechanisms
- Raising of public awareness of human rights
- Providing the groundwork for future activities

The methodology is:

- Improve monitoring of human rights. And allocate necessary resources
- Improve legislation and create conditions for appropriate enforcement
- Education and awareness raising
- Establishment and enhancement of mechanisms for human rights protections, including the Office of the Human Rights Defender and other organisations
- Coordinated activities by public bodies and other stakeholders to implement the Strategy and Action Plans

The strategic priorities are:

- Protection of civil and political rights
- Protection of social and economic rights
- Ensuring equal rights and opportunities

The Strategy contains human rights related sectors:

- Right to life (including life-threatening situations of domestic violence), which includes preventive activities and measures for efficient investigation of violations.
- Prohibition on torture (including a recognition of the legislative gaps, prevention and investigation needs and capacity building for responsible stakeholders – which could include HRDAs)
- Right to a fair trial (encompassing civil, administrative and criminal procedures)
- Equality of rights and non-discrimination
- Freedom of assembly (recognising unjustified criminal prosecutions against participants of peaceful assemblies in the past, and the police responses)
- Right to health
- Right to education
- Freedom of expression and opinion, including access to official information and mass media
- Right to employment and labour rights
- Right to social security and minimal living conditions
- Rights of the child
- Freedom of economic activity
- Strategic communication of the Strategy and Action plans

While the rights to expression and opinion are included here, these sectors **do not include:**

- The right to privacy
- Impunity for past actions
- Redress for past breaches

VII. Armenian Human Rights Action Plans and Gap Analysis

The Implementation Action Plan contains 89 actions which are specifically related to the human rights sectors above.

With respect to **the right to life**, these target abuse of military personnel and domestic violence. With respect to the latter, the actions are: changes to the Penal Code; analysis of the Code of Criminal Procedure for compliance with international standards; training of police officers, investigators, judges, educators and healthcare staff; creation of support shelters and enhancement of services to survivors of domestic violence.

What might profit from **additional consideration** here are **processes to guarantee quality control** for the amendments, analyses and training.

With respect to the **prohibition of torture**, the actions target installation of video and audio recording equipment in police stations; procure suitable vehicles for transportation of detained persons (including persons with disabilities); address by legislation issues of the application of the Statute of Limitations to cases of torture; develop guidelines for the interpretation of “severe physical pain” and “mental suffering”; renovation of cells to comply with international standards; instigate a mechanism for anonymous reporting of torture and inhuman or degrading treatment; effective implementation of rights of torture victims to psychological, social and legal service; staffing the Special Investigating Service with field agents to eliminate the need to assign agents from other investigative entities; raise awareness of the rights of persons with mental health problems; pass legislation banning corporal punishment of children; anti-torture training to police, investigators, prosecutors, judges and staff in mental health institutions, childcare institutions and correctional facilities.

Again, these might profit from **additional consideration** of **processes to guarantee quality control** for the amendments and the guidelines.

With respect to **rights to a fair trial**, ensure video and audio recording of investigative and procedural actions; establish clear standards for the use of bail as an alternative to pretrial restraint; establish legislation for the procedure of deposition; review legal regulations for detention procedures; establish legislation on reporting a crime to reduce violations of crime victims’ rights; **establish legislation enhancing criminal and legal coverage for persons engaging in human rights protection activities**; training on fair trial rights for police, investigators, prosecutors, and judges; improve legislation regarding notification to appear before an examining authority; improve legislation on attachment of property; improve

legislation on the conduct of intelligence operations; and improve personal data protection mechanisms.

Here in particular, **consideration could be given to the necessity of an adequate definition** of “human rights protection activities”.

With respect to **equality of rights and non-discrimination**, establish anti-discrimination legislation; equality training for police, investigators, prosecutors, judges, medical staff, social workers, and educators; raise awareness of equality rights; define responsibility for hate speech; ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities; raise awareness of hate speech; establish legislation on the rights of persons with disabilities; and promote the engagement of women in the armed forces.

While a **Draft Law on Ensuring Equality** is currently under review, **further consideration should be given to the scope of the discrimination the law prohibits**, as, although it is widely drafted, it does not include discrimination on the basis of health status, family or marital status, place of residence, economic status, or sexuality/sexual orientation. The draft Law also **does not cover hate speech**. This is discussed in more detail below.

With respect to **the right to health**, raise awareness of medical services provided by the state and improve those with respect to children and people with disabilities. There are **no apparent gaps** here.

With respect to **freedom of assembly**, amend the Law on Freedom of Assembly so that it complies with international standards; train police officers on freedom of assembly; establish legislation on police activity to comply with international standards.

This is **restricted** to police officers. **Consideration should be given** to expanding the width of application and also of the related training.

With respect to **the right to education**, introduce human rights curricula in schools; establish legislation for the identification and registration of school drop-outs; adopt inclusive education (special needs); establish legislation on principles of good academic performance.

This **does not include** assistance with distance education, especially the access of students to adequate IT equipment, which was an issue during the compulsory COVID lock-down mentioned above.

With respect to **freedom of expression and opinion**, establish legislation to reveal real ownership of media organisations; review licensing and broadcast rules; train all officers of

public bodies in the right to receive information; sign the Council of Europe Convention on Access to Official Documents; and amend the Law on Conscience and Religious Organisations.

What is **omitted** here is the fact that peaceful demonstrations are a lawful exercise of freedom of expression. Police and others should be trained. Also, members of minorities such as LGBT people and transsexuals have the right. Smear campaigns often based on religion occur. Therefore the **limits** on religious views need to be expressed and balanced with other human rights.

With respect to **the right to property**, amend the Law on Alienation for Public and State Needs to comply with international standards. There are **no apparent gaps** here.

With respect to **the right to employment**, raise awareness of labour rights; simplify labour relations procedures; establish holistic and efficient control systems for labour legislation; establish a national program for work safety and health; define the methodology and risk-based controls of the Health and Labour Inspectorate; and pass improved legislation on professional associations including trade unions.

Consideration should be given to guaranteeing that this will be in line with international standards.

With respect to **social security rights**, increase state pensions; assistance to families with children; create a system of sustainable income for disadvantaged families; and develop and online pension recalculation system for pensioners who are working. There are **no apparent gaps** here.

With respect to **the rights of the child**, establish a National Commission on the Protection of the Rights of the Child; adopt legislation on the rights of the child in the criminal justice system; improve adoption procedures; raise awareness of the rights of the child; establish a single statistical system for registration of child's rights issues; establish legislation for child custody and welfare; establish legislation for a child's right to visit parents as part of legal enforcement proceedings; and improve sanitary conditions in educational institutions.

This should be **expressed** to be in accordance with Armenia's legal obligations under the Convention on the Rights of the Child.

With respect to **freedom of economic activity**, raise awareness of customs regulations within the Eurasian Economic Union; and establish legislation to improve the State Commission for the Protection of Economic Competition. There are **no apparent gaps** here.

With respect to **strategic communication**, establish a plan for better communication of the National Strategy for Human Rights Protection and action plans. There are **no apparent gaps** here.

VIII. General Gap Analysis, Comparisons and Conclusions

A significant observation from the constitutional and international human rights obligations discussed above, is that Armenia has extensive human rights coverage in international, regional and domestic legal systems, all of them binding obligations. If Armenia fulfilled in practice all of these obligations it would adequately satisfy the human rights of all people in the country, including HRDAs.

Under the European human rights system, Armenia has created the Government Representative to the European Court of Human Rights.⁷⁶ This official not only protects the interests of Armenia before the European Court of Human Rights but also supervises the execution of the Court's decisions domestically. In 2014, a Division for the Execution of Judgements and Securing Conventional Requirements was set up under the Department of with the European Court of Human Rights within the Ministry of Justice to ensure compliance with the judgements as well as the introduction of European human rights standards m as well as those under the UN Torture Convention into the Armenian legal system.

The expansion of this existing system to include Armenia's other international obligations under the UN treaty system would be a relatively straightforward catch-all method of closing any gaps in Armenia's human rights implementation. To ensure this, such a system may need to be set up by legislation, as neither the Armenian Constitution nor the Law on National Assembly Regulations impose any *obligation* to supervise or require the systematic application of human rights standards.

This would also require knowledge of and accessibility to these norms (preferably translated into Armenian) by all stakeholders. There are also existing UN publications which may be of use, such as *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*.⁷⁷ Past practice has shown that legislative change alone is insufficient to ensure conformity of the behaviour of state and law-enforcement agencies with human rights standards. There needs to be a system to address

⁷⁶ Decree N° 1751-N 2003

⁷⁷ UN Doc HR/PUB/16/1, 2016

systemic problems, otherwise the “solutions” are incomplete. In this regard, the *Paris Principles*⁷⁸ may be useful. They indicate that such an institution should promote and ensure harmonisation of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation, contribute to human rights reporting, and assist in programmes of human rights education and training, including public awareness. There should be effective co-operation and consultation with all stakeholders (governmental and civic) and have a stable mandate for the staff of the body. The Human Rights Defender of the Republic of Armenia has A-status accreditation⁷⁹ under these Principles and therefore consideration should be given to using it for an expanded oversight system.

It is clear that Armenia has commenced many steps to address the shortcomings of its laws, particularly in the area of criminal process.⁸⁰

With respect particularly to HRDAs, they have often been subjected to judicial harassment, smear campaigns, threats and acts of intimidation. This has been particularly so for women, members of sexual minorities and journalists. In addition to legislation and training on human rights standards for all stakeholders, a register of statistics of such threats and attacks could be compiled together with a public campaign to support HRDAs in their lawful activities.

The International Service for Human Rights has produced a Model Law for the Recognition and Protection of Human Rights Defenders.⁸¹ The Model Law articulates how a system of protection of human rights defenders can look like at a domestic level, with the aim to provide guidance to states on how to implement the UN Declaration on Human Rights Defenders, and touches on:

1. The rights of human rights defenders and responsibility to defend human rights.
2. The obligations of public authorities to respect, promote and protect the rights of human rights defenders as well as to facilitate their work, to ensure effective remedy and full reparation for violations of their rights, provisions of free access to justice and other obligations regarding the protection of human rights defenders.

⁷⁸ Principles relating to the Status of National Institutions (the Paris Principles), adopted by General Assembly Resolution 48/134 of 20 December 1993

⁷⁹

<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20March%20201%20EN%20.pdf>

⁸⁰ See for example the issues raised by the Committee against Torture prior to the submission of Armenia’s fifth periodic report (CAT/C/ARM/QPR/5, 9 December 2019) and Armenia’s response (25 December 2020).

⁸¹ <http://www.ishr.ch/news/model-law>

3. The mechanisms for the protection of human rights defenders coordinated by an independent body whether established as a separate body or by way of conferring such a mandate within an existing body. Such a mechanism must ensure to follow twelve basic principles.
4. Two annexures containing additional detailed and precise provisions on the effective operation of a protection mechanism and providing for processes and principles to ensure that other laws and regulations are consistent with the Model Law.

Section 20 further clarifies that the recognition and the protection of human rights defenders is not limited only to the provisions envisaged in the Model Law and that human rights defenders are always entitled to more extensive rights that can be found under domestic or international law.

However, the attempts of other countries to introduce such laws for the protection of HRDAs can be illustrative, if mainly in a negative way. Most countries do not in fact have specific laws directed towards the rights of HRDAs. Rather, because HRDA rights are those of the community generally, these general protections are sufficient to provide for the needs of HRDAs. It is perhaps worth noting that within the Council of Europe laws on protection of human rights defenders do not exist at national levels, although other, softer regulations can be found in Germany, Spain and Belgium. Those countries which have introduced specific laws or mechanisms have been those where the legal system has been demonstrably in disorder and/or are post-conflict countries, and have often focused on curbing and controlling police powers. While these may be necessary, alone they are inadequate and insufficient.

For example, in 2012 Mexico passed a *Law for the Protection of Human Rights Defenders and Journalists* which established a state-run protection mechanism for journalists and human rights defenders at risk in the wake of numerous attacks and amid a culture of impunity. The mechanism was intended to assess requests for protection received by journalists and human rights defenders, provide protection measures and implement a unit which would be in charge of prevention, monitoring and analysis. Challenges however continued, further to a reported lack of political will to cooperate despite the provisions in the law stipulating such cooperation, lack of involvement of civil society, stigmatization, narrow scope of protection, lack of structural measures to create a safe and enabling environment and more.⁸²

⁸² Protecting Journalists and Human Rights Defenders in Mexico, Freedom House Police Brief, 2012, available at: freedomhouse.org/sites/default/files/Protecting%20Journalists%20and%20Human%20Rights%20Defenders%20in%20Mexico.pdf

Similarly, in 2015 the National Congress of Honduras passed a *Law to Protect Human Rights Defenders, Journalists, Social Commentators and Justice Officials*.⁸³ The law provides for the creation of a National Council for The Protection of Human Rights Defenders, responsible for maintaining coordination with other governmental and social institutions in order to adequately protect human rights, with functions envisaged to include receiving and addressing requests for protection and development of operating protocols for the effective implementation of the law.⁸⁴ Again, the law has been beset by ineffective implementation, an inadequate police approach to protective measures, lack of effective participation of civil society in different stages of decision making in relation to protection provided to human rights defenders, and lack of adoption of measures to fight against impunity in cases of attacks against defenders.⁸⁵

Other countries in similar circumstances have adopted related mechanisms, such as Colombia, where in 2011, a National Protection Unit was established under the *National Plan for Collective Protection* within the Interior Ministry, intended to give emergency and physical security measures to people at risk, including human rights defenders.⁸⁶ However, impunity for attacks against human rights defenders persists, and other weaknesses and deficiencies of the protection mechanisms include long delays, the reactive nature (instead of preventive nature) of the law, the omission to protect Afro-Colombian leaders and LGBTI human rights defenders, and a lack of consultation with civil society.⁸⁷ More than 400 human rights defenders have been killed in Colombia since 2016.⁸⁸ Guatemala also established a *Coordinating Unit for the Protection of Human Rights Defenders, Legal Administrators and Officers, Journalists and Media Commentators* in 2004, intended to analyse patterns of attacks against human rights defenders and therefore to make recommendations to the authorities in order to address them via preventive and protective measures. Again, the unit has been accused of inadequate function and protection deficiencies.⁸⁹

The requirement of extensive consultation with human rights groups itself has been shown to be ineffective in overcoming systemic problems such as delays in (or total lack of) implementation of security measures for HRDAs, measures being reactive rather than preventive (thus ignoring underlying causes), individually-oriented rather than collectively

⁸³ Situation of Human Rights in Honduras, Inter-American Commission on Human Rights, 2015, available at www.oas.org/en/iachr/reports/pdfs/honduras-en-2015.pdf

⁸⁴ <https://latinno.net/en/case/12047/>

⁸⁵ Ibid. Other countries to pass specific legislation include Burkina Faso and Côte d'Ivoire.

⁸⁶ Americas: State Protection Mechanisms for Human Rights Defenders, Amnesty International, 2017

⁸⁷ Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, Inter-American Commission on Human Rights, 'OEA/Ser.L/V/II. Doc. 262, 6 December 2019, page 106, para 280 available at www.oas.org/en/iachr/reports/pdfs/ColombiaDefenders.pdf

⁸⁸ Colombia: Protection Gaps Endanger Rights Defender, Human Rights Watch, 2021, available at www.hrw.org/news/2021/02/10/colombia-protection-gaps-endanger-rights-defenders#

⁸⁹ Americas: State Protection Mechanisms for Human Rights Defenders, Amnesty International, 2017

focused, impunity issues being overlooked or ignored, insufficient representation of and consultation with human rights organisations, inadequate coordination with other government departments, and failure to address important but non-traditional aspects of actions against HRDAs such as smear campaigns and stigmatisation.

Special consideration of anti-discrimination and hate speech laws

Among recommendations provided by the UPR and ECRI, is the establishment of the autonomous body in Armenia, which will be responsible for protecting HRAs, and people in general, from the manifestation of discrimination. Some regulation is envisaged in the scope of the draft law, however, this regulation is not sufficient and effective enough to be considered as an autonomous body. In particular, within the RA draft law “On Ensuring Equality” the Equality Council will be established. This is a consultative body adjunct to the Human Rights Defender, with a purpose to assist the Human Rights Defender in ensuring equality and protection from any type of discrimination. The Equality Council consists of at least 7 members, who are selected for a period of 3 years by the HRD and can be re-appointed for one time only. They work on voluntary basis. The HRD selects the members of the Council among human rights activists and scientists. The organizational and technical aspects of the work of the Equality Council shall be ensured by the Secretariat of the Office of the HRD.

The objectives of the Equality Council are to assist the HRD in his activities towards ensuring equality before the law and prevention of discrimination in the Republic of Armenia. Hence, the Equality Council has the following powers:

1. Assist the HRD in considering the complaints relating to the areas equality and non-discrimination (by the permission of the complainant) and shall present its advisory opinion to the HRD relating to violations identified therein.
2. If necessary, shall submit to the HRD the recommendations to carry out the specific powers reserved by the Constitutional Law of the Republic of Armenia "On the Human Rights Defender". The Council may also recommend the Human Rights Defender to submit a supportive position (*amicus curiae*) on the discrimination cases to the Constitutional and Cassation Courts of the Republic of Armenia based on a request by the latter.
3. Shall assist the Human Rights Defender also in:
 - a. Sending consultative explanations and recommendations for the purpose of summarizing the results of the study based on the results of the studies and analysis of information on human rights and freedoms to national and local self-government bodies, organizations and their officials.

- b. Raising public awareness to ensure equality before the law and protect from all forms of discrimination and prevent all forms of discrimination.
- c. Conducting research and studies about discrimination as well as developing the Human Rights Defender’s annual report in regard to issues of equality and elimination of all forms of discrimination.⁹⁰

In order to find out whether the proposed option is in compliance with international requirements and standards, it is necessary to have a comparative analysis of similar bodies. Therefore, a number of international organizations have developed policies, resolutions, and other documents on standards on equality or non-discrimination bodies. One of the prominent documents is general policy No. 2 on “Equality Bodies to Combat Racism and Intolerance at National Level” (GPR) developed by the ECRI.⁹¹ According to this policy, the Equality bodies should have the following criteria:

1. **Independent:** Equality body should be established by constitutional provision or legislation and clearly set out that equality bodies are independent and should establish the conditions to ensure this independence. Equality bodies should have both *de jure* and *de facto* independence, be separate legal entities placed outside the executive and legislature, and have the necessary competences, powers and resources to make a real impact.⁹² The mandate, institutional architecture, functions, competences and powers, appointment and dismissal procedures, safeguards and terms of office for the leadership positions and the arrangements for the funding and accountability of equality bodies should be set out in the law in a manner that ensures both their independence and effectiveness.
2. **Mandate:** The mandate should cover promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society (equality mandate); all areas in both the public and private sectors, in particular: employment, membership of professional organisations, education, training, housing, health, social protection and social advantages, social and cultural activities, goods and services intended for the public, whether commercially or freely available, public

⁹⁰ Draft Law on “Ensuring Equality”, available here: <https://www.osce.org/files/f/documents/d/2/443335.pdf>, (accessed 13 May, 2021)

⁹¹ ECRI General Policy Recommendation No. 2: Equality Bodies to Combat Racism and Intolerance at National Level, available here: <https://rm.coe.int/ecri-general-policy-/16808b5a23>, adopted on 7 December 2017, (accessed 13 May, 2021)

⁹² The different elements, which are necessary to guarantee actual independence and effectiveness of the Equality body, are set out in paras. 22 to 39 of the General Policy Recommendation (GPR), available here: <https://rm.coe.int/ecri-general-policy-/16808b5a23> (accessed 13 May, 2021)

places, exercise of economic activity and public services and functions, including law enforcement.

3. **Institutional framework:** Equality bodies can cover a single ground or multiple grounds. In the case of a multi-ground equality body, it is necessary to ensure a clear and appropriate focus on each of the grounds covered and on the intersections between them. Equality bodies can be stand-alone or form an equal part of multi-mandate institutions that include a human rights or Ombudsperson mandate. In this latter case, the following provisions should apply:
 - a. Legislation should explicitly set out the equality mandate of the institution.
 - b. Appropriate human and financial resources should be allocated to each mandate to ensure an appropriate focus on the equality mandate.
 - c. Governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility of the equality mandate.
 - d. Reporting arrangements should give adequate prominence to the concerns arising and work carried out under the equality mandate.

Other international documents also refer to the independence and functions of the body, where independence is the most primary requirement.⁹³ Obviously, the draft law and well-established international standards have completely different regulations. The principal differences are the followings:

Independence of the body

National Equality body: According to the draft law, it is envisaged to establish a consultative Equality body under the supervision of the RA HRD. The body has not a certain level of independence and is not based on a specific key feature under a particular law. The body has not the ability and discretion to make its own decisions on organizational, policy implementation, or decision-making in combating discrimination. No adequate functional, structural, financial, and social guarantees for both the body and its members are prescribed. The work of its members will be conducted voluntarily. The Equality Council consists of at

⁹³ See, for example, the European Commission Recommendation of 22.06.2018 on standards for equality bodies, No. C(2018) 3850, available here: https://ec.europa.eu/info/sites/default/files/2_en_act_part1_v4.pdf, (accessed 13 May, 2021)

Resolution No. A/RES/48/134 on Principles Relating to the Status of National Institutions (Paris principles), adopted by the UN General Assembly on 20 December 1993, available here: <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx> (accessed 13 May, 2021)

least 7 members, who are selected for 3 years by the HRD and can be re-appointed for one time only. The HRD selects the members of the Council among human rights activists and scientists.

International Standards on Equality body: Equality bodies should function without any interference from the State, political parties or other actors and should not be given any instructions by them; they should be fully independent at institutional and operational level under the on a stand-alone law. The persons holding leadership positions in equality bodies should be selected and appointed by transparent, competency-based and participatory procedures. The executive should not have a decisive influence in any stage of the selection process. The persons holding leadership positions should benefit from functional immunity, be protected against threats and coercion and have appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm. Equality bodies should be provided with sufficient staff and funds to implement all their functions and competences with a real impact. They should have a separate budget or budget line and their funding should be subject annually to the approval of parliament. The body should cooperate with CSOs.

Mandate

National Equality body's mandate: The Equality body has power to assist the HDR in considering the complaints relating to ensuring equal opportunities for implementation of the rights and freedoms of every individual and citizen with no discrimination and present its advisory opinion, to submit a supportive position (*amicus curiae*) on the discrimination cases to the Constitutional and Cassation Courts of the Republic of Armenia, to send consultative explanations and recommendations for the purpose of summarizing the results of the study based on the results of the studies and analysis of information on human rights and freedoms to national and local self-government bodies, organizations and their officials, to raise public awareness on equality, to conduct research and studies about discrimination as well as developing the HRD's annual report in regard to issues of equality and elimination of all forms of discrimination.

International Standards on Equality body's mandate: The mandate should cover promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society (equality mandate); all areas in both the public and private sectors, in particular: employment, membership of professional organisations, education, training, housing, health, social protection and social

advantages, social and cultural activities, goods and services intended for the public, whether commercially or freely available, public places, exercise of economic activity and public services and functions, including law enforcement. In the scope of the mandate, the body promotes and achieves equality, prevents and eliminates discrimination and intolerance, and promotes diversity and good relations between the different groups in society, builds a continuous dialogue with groups experiencing discrimination and intolerance and their representative organisations, and with organisations working more generally on human rights and equality issues, develop standards and provides information, advice, guidance and support to individuals and institutions in the public and private sectors on good practice for promoting and achieving equality and preventing discrimination and intolerance, etc.

Institutional framework: According to the GPR, one of the ways to establish the national Equality body is considered an equal part of multi-mandate institutions that include a human rights or Ombudsperson mandate.⁹⁴ However, in this scenario it is of infrequent importance that legislation explicitly set out the equality mandate of the institution, allocate appropriate human and financial resources to each mandate, to ensure an appropriate focus on the equality mandate, organize governing, advisory, and management structures in a manner that provides for clear leadership, promotion and visibility of the equality mandate. Noticeably, that the draft law is not provided these guarantees, even more, the respective amendments and addendums should be made to the RA Constitutional Law on HRD aimed at ensuring the abovementioned guarantees.

In addition, ECRI also recommends that the authorities amend the Law on the Human Rights Defender and to give him/her the power to examine complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector. Alternatively, the authorities should establish an independent equality authority dealing *inter alia* with the discrimination grounds that are of interest to ECRI, as recommended in GPR No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.⁹⁵

The draft law does not cover specific regulations of hate speech, which is an integral part in fight against discrimination.

⁹⁴ ECRI General Policy Recommendation No. 2: Equality Bodies to Combat Racism and Intolerance at National Level, II. Institutional Architecture, points 5-9

⁹⁵ ECRI report on Armenia (fifth monitoring cycle), adopted on 28 June 2016, available here: <https://www.refworld.org/docid/5836d1767.html>, recommendation 3, at 35 (accessed 13 May, 2021)

Concerning civil legislation, the Civil Code defines only the concept and framework of insult and defamation (article 1087.1).⁹⁶ In pursuant of article 22(5) of the Civil Code, The damage caused to a person upon illegal use of his or her name shall be subject to compensation in accordance with this Code. In case of distorting or using the name of a citizen in a way or in a form that affects his or her honour, dignity or business reputation, the rules provided for by Article 1087.1 of the Code shall apply. According to the article 1087.1:

“1. The person whose honour, dignity or business reputation have been disgraced through insult or slander, may apply to court against the person having insulted or slandered.

2. Within the meaning of the Code, insult shall be deemed as a public statement made with the purpose of disgracing the honour, dignity or business reputation through speech, image, voice, sign or other means. Within the meaning of the Code, public statement may not be deemed as an insult in the given situation and by virtue of its content where it is based on accurate facts (except for congenital disorders) or is conditioned by overriding public interest.

3. Within the meaning of the Code, slander shall be deemed as public communication of factual data (statement of fact) relating to a person, which do not correspond to the reality and disgrace the honour, dignity or business reputation thereof.

4. Under the cases on slander, the burden of proof in respect of the availability or absence of necessary factual circumstances shall lie with the defendant. It shall be transferred to the plaintiff, where the burden of proof requires from the defendant unreasonable actions or efforts, whereas the plaintiff possesses all the necessary evidence.

5. Public communication of factual data shall not be deemed as slander where:

- (1) they appeared in the statement made or evidence submitted during the pre-trial or trial proceedings by the participant of the proceedings with regard to circumstances of the case under examination;
- (2) it is, in the given situation and by virtue of its content, conditioned by overriding public interest, and where the person having publicly communicated factual data proves that he or she has undertaken measures to a reasonable extent in order to ascertain the accuracy and justification

⁹⁶ RA Civil Code, adopted on 5 May, 1998, available here: <https://www.arlis.am/DocumentView.aspx?DocID=148978> (Armenian) (accessed 13 May, 2021)

thereof, and has submitted information in a balanced manner and in good-faith;

- (3) it derives from the public speech or response of the slandered person or the representative thereof, or the documents communicated therefrom.

6. The person shall be exempt from the liability for insult or slander where the factual data expressed or communicated thereby constitute the literal or good-faith reproduction of information disseminated by a media agency, as well as of information contained in another person's public speech, official documents, other mass media or work of authorship, and in course of dissemination thereof a reference has been made to the source (author) of information.

7. In case of insult, the person may require through judicial procedure the application of one or several of the following measures:

- (1) making public apology. The form of apology shall be defined by court;
- (2) where the insult appeared in the information disseminated by an entity carrying out media activities, promulgation of the court judgement in full or partially through the given media. The manner for promulgation shall be defined by court;
- (3) paying compensation in the amount of 1000-fold of the defined minimum salary (1 mln AMD).

8. In case of slander the person may require, through judicial procedure, the application of one or several of the following measures:

- (1) where the slander appeared in the information disseminated by an entity carrying out media activities, public refutation of factual data considered as slander and/or publication of its response with regard thereto. The form of refutation and the response shall be approved by the court, guided by the Law of the Republic of Armenia "On mass media";
- (2) paying compensation in the amount of 2000-fold of the defined minimum salary (2 mln AMD).

9. Where at the time of insulting or slandering a reference was not made to the source (author) of information or the source (author) information was unknown, or the entity carrying out media activities, availing of its right of not disclosing the source of information, does not reveal the author's name, the liability for compensation shall lie

with the one having publicly communicated the insult or slander, and if it was communicated in the information disseminated by the entity carrying out media activities, the entity carrying out media activities.

10. The person may not benefit from the means of protection defined in points 7 and 8 of this Article, where he or she, before applying to court, has required refutation and/or publication of the response thereof as prescribed by the Law of the Republic of Armenia “On mass media”, and the entity carrying out media activities has complied with that request.

11. When defining the amount of compensation established in points 7 and 8 of this article, the court shall take into consideration the specific aspects of the specific case, including:

- (1) the form and scope of dissemination of the insult or slander;
- (2) the property status of the person having insulted or slandered.

In the cases envisaged in points 7 and 8 of this article, when defining the amount of compensation, the court should not take into consideration the property damage caused due to the insult or slander.

12. Along with benefiting from the means of protection defined in points 7 and 8 of this article, the person shall have the right to require, through judicial procedure, from the person having insulted or slandered him or her to compensate the property damage caused due to the insult or slander, including the reasonable judicial expenses and the reasonable expenses incurred for the restoration of violated rights.

13. Under the procedure established by this Article, a claim on the protection of right may be filed with the court within one month after the person has become aware of the insult or slander, but not later than within six months from the moment of the insult or slander.”

It should be noted that on 24 March 2021 the Parliament adopted amendments to the RA Civil Code to increase the amount of compensation for the insults and slander.⁹⁷ Accordingly, the compensation for insult is increased to 3000-fold (3 mln AMD) of the defined minimum salary, instead of 1000, and for the slander: to 6000-fold (6 mln AMD) instead of 2000. The Law on these amendments has not yet entered into force. On the other hand, media outlets and media

⁹⁷ Law on the amendments to the RA Civil Code, available here:
http://www.parliament.am/draftreading_docs7/P-665_DR2.pdf (Armenian) (accessed 13 May, 2021)

experts believe that these amendments are, in fact, pursuing an illegal purpose. It aims to restrict the right of the media and journalists to freedom of speech and expression rather than to fight against discrimination and hate speech.⁹⁸ Notably, that even the Deputy Minister of Justice sought to decrease the amount of the fines even lower. The MoJ presented several judgments of the ECHR, which note that heavy sanctions inadvertently lead to the public or journalists in particular not discussing certain issues of interest. Parliament, however, rejected the Government's proposal.⁹⁹

This regulation is applied to examine hate speech cases in civil disputes. However, it can be hardly said that regulation is aimed at protecting the discriminative and hate speech against persons, including HRAs, due to the lack of a clear definition of discriminative and hate speech. Hence, apart from the criminal liability, it is also essential to adopt comprehensive civil and administrative legislation to combat discriminative and hate speech at civil and administrative levels, in cases where a criminal act, as such, is not committed.

Hate Speech and Hate Crime legal framework

The current RA Criminal Code¹⁰⁰ was adopted on 18 April 2003 (hereinafter referred as version of 2003). On 5 May 2021, the Parliament¹⁰¹ adopted a new Criminal Code (hereinafter referred as version of 2021), which will be submitted to the RA President's office for signing, according to the procedures. When the new Criminal Code enters into force, the old one will repeal.

According to article 143 (*Breach of citizens' legal equality*) of the Criminal Code of Armenia (version of 2003), direct or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen's nationality, race, sex, language, religion, political or other views, social origin, property or other statuses, which damaged the citizen's legal interests, is a crime.

In general, the Criminal Code (version of 2003) envisages two approach in defining hate crime and hate speech. The first approach defined certain acts are as distinct hate crime. These are the crimes under article 226 (*Inciting national, racial or religious hatred*), Article 390 (*Serious breach of international humanitarian law during armed conflicts*), article 392 (*Crimes against*

⁹⁸ <https://www.lragir.am/2021/03/18/627998/> (Armenian) (accessed 13 May, 2021)

⁹⁹ <https://armenpress.am/eng/news/1046287> (Armenian) (accessed 13 May, 2021)

¹⁰⁰ New RA Criminal Code (version of 2021, the finalized version was not publicly available as of 12 May, 2021), available here: http://www.parliament.am/draftreading_docs7/K-634_DR2.pdf, (Armenian) (accessed 13 May, 2021)

¹⁰¹ http://parliament.am/draft_history.php?id=11680 (Armenian) (accessed 13 May, 2021)

human security), article 393 (*Genocide*), and Article 397.1 (*Denial, derogation, approval or justification of genocide and other crimes against peace and human security*).

This approach is adopted in the case of the new Criminal Code (version of 2021) as well. In particular, a number of hate crimes prescribe under Chapter 22 (*Crimes against peace and human security*), Chapter 26 (*Crimes against freedom, honour, dignity, physical or psychiatric immunity*), Chapter 33 (*Crimes against public order and morality*), etc.

On 15 April 2020, an amendment to the Criminal Code (version of 2003) was adopted under which a new article was added in order to criminalize and further prevent the act of public calls for violence against a person or a group of persons and publicly justifying or advocating this violence. One of the justifications of these amendments was the recent growth of hate speech against HRAs with the purpose to ensure the prohibition of abuse of rights under article 17 of the ECHR.¹⁰² According to this article, the calls based on sex, race, skin colour, ethnic or social origin, genetic characteristics, language, religion, ideology, political or other views, ethnic minority status, property status, origin, disability, age, or other personal or social grounds are punishable.

It is worth mentioning, that article 330 of the new Criminal Code (version of 2021) with some differences also envisages the criminal liability for public calls for violence against a person or a group of persons and publicly justifying or advocating this violence or disseminating materials and objects for this purpose. The grounds are as follows: race, national, ethnic or social origin, religion, political or other views, other personal or social grounds.¹⁰³ The difference is that article 329 of the new Code also criminalizes a public speech aimed at inciting or advocating hatred, discrimination, intolerance, or hostility and disseminating materials or objects for that purpose.

As to the second approach, the Criminal Code (both the versions of 2003 and 2021) defines religious, ethnic nationality, social origin, political or other view, personal and social hatred, intolerance and hostility as aggravating elements to the crimes defined in the Code.¹⁰⁴

To sum it up, it should be noted that the new Criminal Code envisages wider and, in fact, unlimited grounds for claiming violation of discrimination under criminal law, which are

¹⁰² See justification of the Law here: <https://www.e-draft.am/projects/1862/justification> (Available in Armenian) (accessed 13 May, 2021)

¹⁰³ See article 330 here: http://www.parliament.am/draftreading_docs/7/K-634_DR2.pdf?fbclid=IwAR0Tzc5LLtzm-BeoYm6jCbxUqPbcLvDYEqWTiyVlftmmjNIHuwCn5l_YBJ4, (Armenian) (accessed 13 May, 2021)

¹⁰⁴ It is worth mentioning that the Criminal Code of 2003 envisages three grounds of hate as a prohibition of discrimination. The Criminal Code of 2021 enshrines the grounds and added social origin, political or other views, personal and social grounds, as well as hatred, intolerance, or hostility as motives.

mostly in line with the recommendations of ECRI.¹⁰⁵ In particular, the new Code (version of 2021) prescribes a wider scope of the grounds that prohibited acts of discrimination and it is the first time in Armenia when the concept of the general prohibition of discrimination as a separate crime (article 203, Discrimination) is defined. According to that definition, discrimination is “*a differentiated treatment that violates person’s honour and dignity or rights and freedoms or gives the person privilege without an objective basis or reasonable explanation...*” The article lists non-exhaustive grounds protecting from the act of discrimination. Thus, the Code of 2003 envisages only *race, ethnicity, and religious belief as grounds of hate crime, hate speech, and discrimination*, but the Code of 2021 prescribes *ethnicity, nationality, ideology, language, health status, disability, origin, political and other views, racial and religious hate, as well as the code envisaged hate, intolerance, or hostility as motives of discrimination*.¹⁰⁶

IX. Further recommendations

Overall, Armenia should strive to create a safe and enabling environment for civil society, HRDAs and journalists and ensure that threats and attacks are duly investigated. However, this can only be done in a holistic manner so that systemic issues are addressed. The approach so far has tended to address symptoms rather than causes. The approach so far has tended to address symptoms rather than causes. It is therefore further recommended that Armenia adopt anti-discrimination laws to include hate speech, as well as including mechanisms for addressing discrimination at all levels such as expanding the powers of the Human Rights Defender (HRD) to investigate complaints of discrimination.

- Equality legislation should include sexual orientation and gender identity as grounds for protection. These were specifically removed from an earlier draft of the Bill. The government should investigate and address LGBT violence and homophobia.
- Amend the Criminal Code to include crimes based on real or perceived sexual orientation or gender identity. Include these in hate crimes. Provide effective remedies for victims. Sexuality training for stakeholders. Hold to account officials making discriminatory statements.
- Amend laws to limit the use of pre-trial detention.

¹⁰⁵ European Commission against Racism and Intolerance (ECRI) Report on Armenia (Fifth Monitoring Cycle), at 35-36

¹⁰⁶ See, for example, the following articles of the Criminal Code of version 2021, 167(2)(15), 191(2)(9), 192(2)(10), 264(2)(4). etc.

- Amend laws to eliminate uneven prosecution of protesters vs police using violence at demonstrations.
- Amend Criminal Code and the law on *Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace within the Family* to criminalise domestic violence and less emphasis on “traditional values”. Amend the law so that it applies not only to current and former spouses but also to current and former partners.
- Ensure laws will require prompt and impartial investigation of allegations of violence against HRDAs, and to conduct impartial and effective investigations and prosecutions of individuals responsible for torture, sexual violence and abuse, and other egregious assaults, particularly in order to end impunity.
- Make observation of trials a presumptive right.
- Introduce laws to guarantee transparent processes for the nomination, appointment and disciplining of judges and the termination of their powers based on international standards.
- Introduce full accountability for breaches by state agencies and officials, including personal liability.
- Require notification of assemblies rather than blanket prior permission – a presumption in favour of the right to assemble.
- Ensure labour laws include collective bargaining and the right to strike.
- Provide sufficient resources to implement and enforce the laws to address effectively the needs of victims.
- Training to be a priority for all stakeholders. Introduce COVID-safe training processes to avoid the postponement of training. Training should not only be about human rights and laws, but also issues such as crowd control and proportionate use of force by police.
- Ratify the Istanbul Convention
- Acknowledge that perpetrators of threats and violence can be: the state and its officials and agencies; non-State actors including armed groups, corporations, religious groups, community elders and individuals.
- Provide protection for family members and associates of HRDAs when they have been targeted.
- Provide effective data collection to monitor court decisions.
- Support HRDAs by open official condemnation of attacks against them, including action to end smear campaigns and threats.
- Construct a comprehensive and unified database with quantitative and qualitative data to reflect the human rights situation in Armenia.

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