



THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA



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INTRODUCTION

1. Human Rights Defender of Armenia (HRD) welcomes the fact that Armenia has wholly or partially accepted almost all recommendations presented by member states, which highlights the Armenian Governments' awareness of the need to take action across a wide range of human rights issues. HRD welcomes the Governments efforts aimed at improving the country's current human rights situation. At the same time, HRD deems it necessary to comment on the main issues of concern, which remain to be resolved, including ones which have not yet been mentioned in UPR recommendations to Armenia.

CONTINUE TO STRENGTHEN THE NATIONAL HUMAN RIGHTS INSTITUTION

2. Following 2015 constitutional amendments, mandate of HRD was significantly strengthened. Everyone has a constitutional right to receive the assistance of the HRD in the event of violation of their rights, enshrined by the Constitution and laws, on part of state and local self-government bodies and officials, in the cases prescribed by the Law on HRD - on part of organizations (Article 52 of the Constitution). Provisions of the Constitution are further developed in the Constitutional Law on Human Rights Defender adopted in December of 2016.

3. Status of regional offices has been significantly strengthened since 2016: main changes pertain to the autonomous activities of the regional offices, as well as a significant increase in capacities and safeguards of their staff members. A central and only three regional offices operate in Gegharkunik, Shirak and Syunik Provinces. It is envisaged to increase the number of regional offices and preparatory work is underway to establish a new office in Tavush Province.

EQUALITY AND NON-DISCRIMINATION

4. A separate chapter of the HRD's annual report is dedicated to discrimination and protection of persons' rights based on gender ground (including LGBT). Complaints addressed to HRD, *inter alia*, relate to discrimination based on age, discrimination against women within protection of their labor rights, representation of women in political and public life, persons with disabilities in regards to accessibility of different services, access to education, to health care, etc.

5. To effectively protect victims of discrimination, proper legal mechanisms are needed as the existing framework does not provide clear provisions (e.g. concept of discrimination, procedural issues, etc.), as well as mechanisms should be set for effective investigation of discrimination cases and remedies for them. Also, proper awareness-raising campaigns are needed to break stereotypes.

6. In this regard, HRD welcomes the Government' efforts on adopting Law on Ensuring Equality, which is in the process of public discussions, however, it has not yet been sent to the Parliament.

GENDER-BASED VIOLENCE: COMBATING DOMESTIC VIOLENCE

7. Cases of GV or DV remain subject of concern. Although some progress has been made (e.g. setting standards, protective mechanisms and adopting legislative measures to fight violence against women), there is still a lack of effective implementation. Significant steps need to be made in terms of training professionals, changing their mind-sets; conducting sensitization campaigns to raise public awareness on domestic violence and gender equality; as well as providing services for victims, especially in rural areas.

8. In 2017, the National Assembly adopted the Law on Prevention of DV, Protection of Persons Affected by DV, and Family Restoration and a number of related laws. However, the Law does not qualify all types of domestic violence as being such (e.g. acts of harassment, forced marriage, forced termination of pregnancy, etc.) therefore, relevant authorities are sometimes unable to provide a proper response to those cases.

PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

9. Prohibition of torture, inhuman and degrading treatment is an absolute ban (Article 26, RA Constitution). In June 2015, definition of torture has been provided by Article 309.1 of the Criminal Code of the in conformity with Article 1 of UN CAT. However, the Criminal Code does not provide a definition on inhuman and degrading treatment, responsibility for such act. There is no precise legislative and practical mechanism for determining inhuman treatment lacking elements of criminal offence excluding the possibility of recording violation and get compensation of non-pecuniary damage for such act.

10. The issue of effective investigation of torture cases is concerning. From June 9, 2015 to January 1, 2019 the Special Investigation Service has examined 113 torture cases, out of which only 2 criminal cases were sent to court with a closing indictment, for 84 cases the proceedings were ceased, while pre-trial proceedings continued only for 9 cases. Such data is due to fact that public officials qualify various occurrences of torture by other articles of Criminal Code, such as abuse of official power. This leads to the lack of effective investigation such as the component of appropriate and adequate punishment of the perpetrators. The state should take precise steps in order to appropriately respond to such cases, to prosecute perpetrators as a result of effective investigation, as well as to prevent torture in the country.

11. In annual and ad hoc public reports HRD revealed deficiencies in legal regulations, which violate or put unjustified restrictions on rights of persons deprived of liberty and made targeted specific recommendations towards its resolutions. Based on it, HRD prepared and circulated draft legal acts (see Annex 1).

12. The adoption of the Constitutional Law on HRD strengthened the mandate by providing certain guarantees (financial, etc.). The amount of allocation for funding provided from state budget to the HRD as NPM cannot be less than amount provided for the previous year (see Article 8.5).

Issues pertaining to penitentiary system

13. It is concerning that penitentiary system continues to be of punitive nature. Deprivation of liberty, including detention must be the measure of last resort. Along with this, the State has a positive obligation to conduct re-socialization and rehabilitation programs to eventually prepare detainees for releasing from the very first day of detention. Risk assessment mechanism of every prisoner's behavior should be established and all inmates should be treated with an individual approach regardless of severity or nature of committed crime. The role of the Probation Service is essential in this regard, which, in practice, does not operate properly because of capacity deficits.

14. Monitoring visits to penitentiary institutions, as well as individual complaints addressed to HRD revealed specific issues relating to ensuring of right to health of persons deprived of liberty. Issues mostly pertain to adequate staffing and institutional independence of health personal in penitentiary institutions, availability of medicines and medical equipment, proper and timely organization of health care, etc.

CHILD RIGHTS

15. As Child Rights monitoring body, HRD published Ad hoc public report on its commitments under UN CRC and its optional protocols: state of fulfillment by Armenia, noting that despite some positive changes, the Government failed to fully implement recommendations of Child Rights Committee.

16. During HRDO's monitoring visits, several cases of corporal punishment against children have been recorded. HRDO receives more complaints on cases of children's corporal punishment in schools, and express its concern on this matter. However, the Ministry of Labor and Social Affairs lacks both a tool to identify and monitor cases of violence and a clear frequency of applying such a tool. Databases of the Ministry, and the National Statistical Service lacks any violence statistics and analyses of such cases. HRD recommends that State should establish and improve mechanisms preventing violence against children and rehabilitation services; adopt legislation creating enforcement mechanisms, such as relevant sanctions, including sanctions for violations etc.

17. HRD notes that there is no comprehensive strategy to prevent and address all forms of violence against children and there is a need to develop guiding principles for effective detection of violence cases and proper reporting and investigation of such cases. Clear guaranteed legal and practical protection procedures are needed for children to report in person the cases of violence.

18. Since 2013 health and education allocations have not shown any significant progress. And the share allocated from the GDP to the Ministry of Labor and Social Affairs for the improvement of the child's rights protection system also decreased. Thus, HRD recommends to increase allocations to health, education, and improvement of child's rights protection system; to highlight protection of children's rights as an indicator within program budgeting and provide respective methodological instruction. In June 2019, the Government approved a decision to make medical care free for children.

19. HRD is concerned that 2017-2021 Strategy for the Protection of Children's Rights in Armenia lack enough financial support to implement the envisaged activities. Thus, the HRD highlights, that the State should among other activities connect the processes of children budgeting and gender-based budgeting as a step towards the realization of SDGs.

20. The HRD welcomes that the RA Government Decree № 551-N of May 26, 2016 defines the principles and criteria for providing alternative care to children in difficult life situations, including children with disabilities and regulates relations on guidance for alternative care provision. Such procedure is consistent with basic provisions of Common European Guidelines on the Transition from Institutional to Community-based Care and the UN Guidelines for Alternative Care of Children.

21. While the number of children under the care of social protection institutions of general type continues to drop, it does not generally drop in specialized institutions due to continuous transfer of newborns with health problems from medical facilities to children's homes. This is also conditioned by the fact that it appears almost impossible for children with disabilities to return to their biological families, be transferred to an adoptive or a foster family. The State should, in parallel with the deinstitutionalization process, carry out social support programs for families of children with disabilities; implement projects aimed at enhancing and creating community-based multi-sectoral services especially for children with disabilities, etc.

PROTECTION OF PERSONS WITH DISABILITIES' RIGHTS

22. Besides being designated as a monitoring body, the HRD receives complaints revealed that following alarming issues.

23. Although the draft law on the Protection of Rights of Persons with Disabilities and Social Inclusion gives a comprehensive definition to the term "discrimination", its types (direct, indirect, victimization, etc.) are not defined which significantly hinders discriminated persons with disabilities from full realization of their rights.

24. A major problem remain discrimination against children with disabilities facing an intersectional form of discrimination based on gender and disability.
25. The problem of accessibility of buildings for low-mobility groups and PWDs in urban construction remains unresolved. In many cases, even if the building ramp meets requirements of construction rules and norms, there are obstacles to movement within the building.
26. HRD is concerned that unemployment rate PWDs remain high, despite promotional programs implemented by state. As of January 2018, the number of PWDs registered in centers of the State Employment Agency is 2983 persons. The HRD recommended to take steps to promote employment opportunities for PWDs both in private and public sectors.
27. Steps should also be taken in areas of healthcare, employment and participation of PWDS in political and public life, especially in regional and remote areas. The HRD also recommends to ratify Optional Protocol to Convention on the Rights of Persons with Disabilities.

FREEDOM OF OPINION AND EXPRESSION

Protection of journalists' rights

28. Considering the protection of freedom of opinion and expression, the HRD follows the insurance of journalists' professional activities, especially during mass rallies and events of public concern.
29. During April 2018 events, a number of illegal interventions in journalistic freedom and violations against journalists took place and proper legal assessment should be provided to such acts. They were accompanied by damaging journalists' equipment proving that infringements were aimed at hindering their activities. Hence, HRD stresses the importance of initiating criminal proceedings by law enforcement bodies as a guarantee of the principle of inevitability of criminal responsibility.
30. HRD monitors cases when journalists are engaged in criminal proceedings. Given the importance of non-disclosure of the source of information by the journalist, HRD particularly observes whether conditions justifying obligation to disclose the source of information by the journalist are met (e.g. revealing grave or particularly grave crimes, overwhelming public interest, etc.).

Insulting and hate speech in social networks

31. HRD conducts regular monitoring of mass media and social network publications that shows considerable increase in offensive, insulting speech and hate speech. In separate cases, the tendency to divide society into different groups provokes hostility against specific people. In this context, it is necessary to carry out large-scale public campaigns regarding hate speech and insulting speech, its negative impact and respect of dissenting opinions.
32. HRDO continuously organizes capacity-building activities for journalists (on national/international standards on freedom of opinion and expression, right to private life, HRD mandate, rights redress mechanisms, etc.) where journalists are urged to remove from their accounts any comment containing hate speech or insulting speech.

RIGHT TO PEACEFUL ASSEMBLY

33. A number of democratic processes and developments took place recent years aimed at changing the social and political life of the country (e.g. 2016 July assemblies, 2018 April-May demonstrations, etc.). During the whole period of assemblies and demonstrations, the task of HRDO as NHRI was to guide the human rights protection process, to provide advice and recommendations to all parties ensuring maximum level of publicity and openness.
34. Based on the results of monitoring of 2018 April-May assemblies, HRD concluded that the assemblies took place in a largely peaceful manner, enabling the participants of the demonstrations to

realize their right to peaceful assembly, and the police refrained from large scale activities aimed at dispersing the demonstrations.

35. However, a number of (systemic) violations have been recorded during such as cases of using excessive force by persons wearing masks, or those without police uniforms. Means of civilian transportation have also been used for apprehending the participants of demonstration. This practice failed to ensure the foreseeability of police actions from the protestors perception. During April-May demonstrations police failed to apply special means in compliance with legal standards (e.g. warning the protestors, etc.). This issue was continuously raised by HRD since 2016 July events.

36. Recorded systemic issues showed the need for trainings for law enforcement bodies on human rights standards related to the freedom of assembly and their obligations.

Police arrests and minimum rights of detainees

37. Systemic problems in deprivation of liberty and ensuring minimum rights exists while apprehending or arresting a person because of is no clear understanding about the minimum rights of a person (right to be informed about the reasons of apprehension, access to lawyer and doctor, right to remain silent, etc.) and corresponding obligations of the state by law enforcement officials.

38. Identification of initial moment of deprivation of liberty remain an issue. From human rights protection perspective, a person is deprived of liberty from the moment when they have to follow the police officer's will or have to stay with the police.

ADMINISTRATION OF JUSTICE AND FAIR TRIAL

39. Serious reforms are needed in judiciary system, particularly, related to (external/internal) independence of the courts, lack of trust towards judiciary, lack of mechanisms for guarantee of a fair trial, court hearing delays, etc.

40. Judicial practice of applying detention as a preventive measure continuous to be concerning. Detention should be imposed only as a measure of last resort. Since 2018 the number of motions for pretrial detention brought before the courts were decreased which is a progressing practice. Since this is an obvious result of changes in political will, long-standing legislative changes are needed for making solid institutional changes.

41. Reforms must be carried out in a strict compliance with the Constitution and laws, with a primary and essential commitment to guarantee the independence of the judiciary.

RIGHT TO VOTE

42. 2018 was full of electoral processes accompanied by principally altered public perceptions and high public trust towards these processes. The results of the democratic developments set the public authorities on solid institutional foundation based on high trust of citizens that is one of the main sources of its legitimacy.

43. Although 2018 elections proceeded calmly, HRD reveals following continuing issues: (1) inaccessibility of polling stations for persons with disabilities as voters and candidates in electoral process; (2) attempts to offer a bribe to voters; (3) lack of guaranteeing the secrecy of voting typically due to a need for voters to wait for a free booth; (5) overcrowding in the polling stations and in their vicinity due to poor queue control or inadequate layout of polling stations.

LABOR RIGHT

44. Despite numerous legal regulations for exercise of labor rights, the field's study proves that labor rights are not fully protected in the country due to legislative gaps and incomplete regulations. One of

the main reasons for the labor rights violations is the lack of awareness of protection mechanisms and the absence of an extra judicial body exercising state control over labor rights and legislation. Moreover, many cases of labor rights violations remain unreported, since workers often find themselves in difficult socioeconomic situations due to the lack of vacancies, small labor market, etc. **45.** HRDO revealed the following systemic issues: 1) non-provision of the final settlement by the employer; 2) unjustified dismissal or application of disciplinary penalties; 3) failure to notify employees, within the timeframe prescribed by law, before resolving the employment contract; 4) incorrect calculation of annual leave; 5) transferring an employee to another work without consent; etc.

JUVENILE JUSTICE

HRD notes that there is no comprehensive juvenile justice system and recommends the Government to take actions to ensure that the rights of children are protection in justice system, such as ensuring efficient juvenile justice mechanisms in the Criminal Procedure Code, introduce rehabilitation programs for juvenile offenders in community, set up responsible agencies and organizations and regulate their powers, create an institute for mediation in juvenile affairs, etc.