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THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA



The Written Submission of the Human Rights Defender of Armenia for the Fourth Cycle of the Universal Periodic Review

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Introduction

1. The Human Rights Defender's Office of Armenia is an Ombudsman and National Human Rights Institution with the highest "A" international status, functioning in accordance with Paris and International Principles. The institution of the Human Rights Defender of Armenia was established by the RA Law on the Human Rights Defender adopted by the National Assembly of Armenia on October 21, 2003, and which entered into force in January 2004. On November 27, 2005, as a result of the constitutional amendments adopted by a referendum, a number of constitutional norms enshrined the role and importance of the Human Rights Defender as a constitutional institution.

2. The constitutional amendments of 2015 established the Human Rights Defender's Office as a constitutional body; the Constitution established the absolute constitutional right of every person to apply to the Defender. Based on these mentioned amendments, the Constitutional Law "On Human Rights Defender" of Armenia was adopted in 2016 and entered into force in 2017. It elaborated and safeguarded the provisions of the Constitution; it established the Human Rights Defender as an independent official, tasked with monitoring the respect for human rights and freedoms by state and local self-government bodies and officials, as well as by private organizations operating in the field of public service, and facilitating the restoration of violated rights and the improvement of the legislation related to human rights and freedoms. In the context of their legal mission, the Human Rights Defender conducts discussions on individual and collective complaints, as well as discussions on their own initiative. The Defender also conducts discussions on concrete complaints and cases (on his own initiative), as well as preventive activities at the systematic level.

3. The Human Rights Defender is entrusted with the mandate of the National Preventive Mechanism provided by the Optional Protocol, adopted on 18 December 2002, to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Armenia.

4. The Human Rights Defender also conducts the monitoring of the implementation of the provisions of the UN Convention on the Rights of the Child adopted on 20 November 1989, as well as the UN Convention on the Rights of Persons with Disabilities (CRPD), adopted on 13 December 2006, and carries out the prevention of violations of the human rights of the child and persons with disabilities, and their protection. In this regard, the Defender established the Department for Provision of Convention Mandates in 2022,

encompassing the Unit for the Protection of Children's Rights, and the Unit for the Protection of Rights of Persons with Disabilities.

5. Furthermore, the Constitutional Law was amended in 2022, to enlarge the scope of the mandate of the Defender, expanding the mandate also on the protection of whistle-blowers. According to the latest amendments, the Defender is authorized to consider complaints from whistle-blowers and affiliated persons regarding the violations of their rights not only by public bodies and officials but also by organizations.

6. Furthermore, the Constitutional Law provides the Defender the capacity to establish councils adjunct to the Defender, composed of representatives of non-governmental organizations and independent specialists who have the necessary experience and knowledge in the field of human rights. The expertise provided by the public councils provide an important input for the analysis of the situation of the human rights protection system in Armenia.

The mandate of the Human Rights Defender in the UPR Assessment Process and Implemented Methodology

7. The Human Rights Defender of Armenia has a crucial role in implementing international commitments of Armenia which are provided by international human rights treaties and conventions, and their adoption into national policies and laws.

8. The Human Rights Defender constantly observes and assesses the process of the UPR, presenting measures to address the recommendations and outstanding challenges. Each year the Defender presents an annual report on the state of protection of human rights and freedoms in the country. In relation to specific issues forming public resonance or gross violations of human rights, the Defender also prepares ad hoc public reports. The summarized information provided in this report is based on the independent monitoring activities of the Defender's Office, and the analysis of complaints addressed to the Defender's Office.

Methodology

9. The themes covered by the submission of the Human Rights Defender for the Universal Periodic Review reflect the priorities of the direction of the activities of the Human Rights Defender's Office, which include the rights of persons with disabilities, the rights of the child, the rights of persons belonging to national minorities, the rights of LGBTI persons, and gender-based violence. Review of the implementation of recommendations made to

Armenia regarding the National Human Rights Institution, and the activities of the National Preventive Mechanism and the fight against torture and ill-treatment is also referred to in the submission.

I. The right of persons with disabilities

153.150 Ensure that the right to education is effectively offered to all, especially to girls and to children with disabilities, in particular to those in the most remote areas of the country (Holy See): Also covers 153.151, 153.152, 153.153, 153.154, 153.155, 153.156, 153.215, 153.216

10. The State has established the respect for the right of persons with disabilities to receive education as one of the main principles of the State policy for guaranteeing, promoting and protecting the rights of persons with disabilities. For this purpose, the state has declared universal inclusive education as a guarantee of every child's right to education.

11. However, the Human Rights Defender (HRD) has registered systemic issues in this regard; for example, problems related to ensuring the accessibility of the premises of educational institutions, including kindergartens, general educational institutions, primary and secondary vocational, and higher educational institutions, remain relevant; issues related to the quality of education provided; and the problem of organizing the education of children with disabilities in a separate environment.

12. The HRD highlights that the inaccessibility of the transportation system is one of the essential obstacles in exercising the right to education of children with disabilities, especially in communities and villages which lack educational institutions. Issues related to ensure the availability of information and communication in educational institutions were also recorded (such as sign language interpreters),

13. The HRD registers that despite the measures taken by the state to ensure access to the right to education for persons with disabilities, such as legislative amendments, measures aimed at ensuring accessible and accommodated textbooks, construction and reconstruction of schools and kindergartens, the issues registered remain unresolved.

14. Additionally, the monitoring conducted by the HRD has revealed that very often the approaches to the education of persons with disabilities are not aimed at the formation of

knowledge, skill, development capacities and the potential of each person. The HRD also finds it concerning that some children with disabilities continue to receive education in a separate environment. To ensure inclusive education for children with disabilities, measures should be undertaken to increase public awareness, as certain parents fear that their children might be subjected to bullying by classmates.

153.214 Continue efforts to promote the rights of persons with special needs (Lebanon): Also covers 153.230, 153.231, 153.232

15. The key directions of State policy on ensuring, promoting and protecting the rights of persons with disabilities are the creation and development of accessible services in communities; the creation and improvement of conditions necessary for the independent living of persons with disabilities, their social inclusion, and provision with a family or near-family environment; deinstitutionalization of round-the-clock care facilities; the transformation of care services into community-based services, etc. The improvement of services provided to persons with disabilities, and ensuring independent living are also priorities set by Decision 943-L of the Armenian Government¹.

16. In this regard, the HRD has registered several issues, including issues related to the provision of community-based services aimed at ensuring deinstitutionalization, the development of independent living skills of a person with disabilities, issues related to ensuring the right of persons with disabilities to make their own decisions in matters concerning them, etc.

17. The HRD has registered issues related to legislative regulations on accessibility of the physical environment, physical accessibility of both newly built and reconstructed buildings and structures, bus stops, and apartments/houses owned or used by persons with disabilities. The HRD emphasizes the need to ensure accessibility, adherence to the principles of universal design and the provision of reasonable accommodations in all spheres, including education, culture, sports, commerce, and entertainment must be ensured.

¹ See, RA Government Decision 943-L: <https://www.arlis.am/DocumentView.aspx?DocID=178901> (Armenian version)

18. The main directions of the state policy for ensuring, promoting and protecting the rights of persons with disabilities is the effective and full participation of persons with disabilities in political and public life; however, the HRD has registered certain issues, including, for example, the fact that polling stations remain inaccessible for persons with mobility difficulties.

19. Furthermore, the HRD has registered issues in the sphere of the right to education of persons with disabilities, which include: Issues related to ensuring accessibility and accommodations, to the quality and efficiency of education, and the organization of education of children with disabilities in a separate environment.

153.220 Raise the awareness of the key provisions of laws on disability issues, once enacted, among all relevant stakeholders to ensure their effective implementation (Singapore).

20. The HRD underlines that Armenia adopted the Law on the Rights of Persons with Disabilities of Armenia² in 2021; the HRD considers this a step forward towards the realization of the commitments undertaken by Armenia by the ratification of the CRPD. The Law guarantees independent living, accommodation, accessibility; the Law provides the necessary provisions to allow persons with disability to enjoy their rights on an equal basis with all persons.

21. However, the HRD notes that there is a low level of awareness on the rights and needs of persons with disabilities in the society. In this regard, the HRD regularly raises awareness on the rights of persons with disabilities; in 2020, the Defender established the Council for the Protection of the Rights of People with Disabilities. The main purpose of the Council is the promotion of the respect for the dignity of persons with disabilities, ensuring their full and equal access to human rights and freedoms, promotion of the creation of independent living opportunity, and participation in decision-making process on issues that relate to them.

² See the Law the Rights of Persons with Disabilities of Armenia

<https://www.arlis.am/documentview.aspx?docid=196661> (Armenian version)

153.225 Adopt comprehensive legal and administrative measures aimed at combating discrimination against persons with disabilities and guarantee full access to health, education and employment (Argentina): Also covers 153.226, 153.228

22. The HRD notes that ensuring effective employment and dignified work for persons with disabilities was set as a priority by the RA Government's Decision No. 943-L "On Approving the Comprehensive Program for Social Inclusion of Persons with Disabilities for 2023-2027 and the List of Measures to Ensure the Implementation of the Program".

23. In 2023, 199 persons with disabilities were employed with the support of the territorial centres of the Unified Social Service, 25 of them as a result of state employment programs. Persons with disabilities are employed in agriculture, industry, services, information and communication, and HORECA sectors. Additionally, in 2023, the new employment promotion measures, the amount and duration of support provided to the employer were approved by the Government Decision 242-L³.

24. The HRD also underlines that Article 118(1) of the Labor Code⁴ provides that the employee may apply to the employer for reasonable adjustments in order to properly perform his/her working duties or to switch to another job with the same employer, after he/she is recognized as a person with disability.

25. The monitoring conducted by the HRD has registered issues related to ensuring control and oversight over the observance of the prohibition of discrimination on the basis of disability, and issues related to the promotion of employment, self-employment, and entrepreneurship of persons with disabilities. The HRD also registers that in 2023, no effective employment promotion mechanisms for the caregivers of persons with disabilities are implemented, and no program was implemented for job placements or promotion of self-employment of graduates of orphanages who have disabilities.

³ See, <https://www.e-gov.am/gov-decrees/item/39917/> (Armenian version)

⁴ See, Labor Code of Armenia: <https://www.arlis.am/documentview.aspx?docid=45138> (Armenian version)

II. NHRI

153.39 Seek to ensure sufficient and sustainable funding for the national human rights office, including for the operation of its regional offices and prevention mechanisms (Serbia): Also covers 153.40

26. The sufficient and sustainable funding for the HRD is guaranteed by the Constitutional Law on the HRD of Armenia⁵. Article 8 of the Law stipulates that the budget of the HRD constitutes a separate line item in the annual State Budget. Additionally, the Law stipulates that the budget for the upcoming year cannot be lower than the budget allocated to the HRD for the previous one; that is, the budget cannot be reduced from year on year. Furthermore, the Law provides additional guarantees of financial independence, namely, if the budget request is rejected by the government, the request is submitted to the National Assembly, where the government shall provide the justifications of rejection.

27. The activities of the HRD as the NPM are also specifically funded from the same budget line. The HRD underlines that since 2019 the budget of the HRD has never been lower than the budget allocated for the previous year. The HRD manages the financial resources received from the State Budget in accordance with the legislation without obtaining the permission or the positive conclusion of another state body.

28. In 2022, the HRD received 542.396.600 AMD from the State Budget; in 2023 and 2024, 587.082.600 AMD.

29. The HRD underscores that is important to ensure an appropriate and sufficient salary level for the staff of the HRD, considering the tendency to increase the monthly salaries of investigators and prosecutors in recent years (in the amount of 92 percent of the official rate), whereas the salaries of the staff of the HRD has been remained unchanged. The HRD constitutently advocates for the improvement of the salaries of the staff, to guarantee the attractiveness of working at the HRD's Office.

⁵ See the Constitutional Law on the Human Rights Defender of Armenia

https://ombuds.am/en_us/site/AboutConstitution/79

III. LGBT

153.43 Take prompt and resolute action against all instances of violence, hate speech and hate crime, online as well as offline, especially targeting lesbian, gay, bisexual, transgender and intersex persons and women (Germany); Also covers 153.48, 153.58, 153.61, 153.62, 153.66, 153.69, 153.71, 153.244, 153.67, 153.70

30. The HRD underlines that the problem of the lack of effective legislative structures for the prevention of discrimination continues to be relevant. Armenia lacks a stand-alone anti-discrimination legislation which will define the concept of discrimination, type of discrimination, procedural guarantees ensuring the effective protection of rights in cases of discrimination, as well as create legal bases for the activity of the equality body.

31. The new Criminal Code⁶ expanded the list of circumstances under which a hate crime acquires qualifying attributes; thus, factors aggravating criminal liability and punishment include hate motives based on racial, national, ethnic or social belonging, religion, political or other beliefs or personal or other social circumstances. The Code prescribes a non-conclusive list of protected characteristics, under which a person's SOGI may fall, and this decision is left to the discretion of the law enforcement bodies. Similarly, SOGI is not described as protected under the Law on Visual and Auditory Media.

32. The HRD registers that existing studies, as well as the monitoring conducted by the HRD Office, provide evidence that intolerant attitudes and homophobic and transphobic ideas towards LGBT persons are quite prevalent in the society. The HRD has documented instances of incitement to hatred and promotion of violence towards LGBT persons in online platforms; HRD also recorded instances of discriminatory and degrading attitudes in state institutions or non-commercial organizations set up by the state towards LGBT persons.

33. The HRD registers that “transsexualism”, other gender identification issues, puberty disorder, Ego-dystonic sexual orientation, and other psychological and behavioral disorders related to sexual orientation are included as diseases in "Mental and Behavioral Disorders" chapter of the Order No. 871-Ն of Ministry of Economy, which can lead to stigmatization and may

⁶ See, the Criminal Code of Armenia: <https://www.arlis.am/documentview.aspx?docid=194397> (Armenian version)

reinforce the prejudices and discriminatory attitude already found in the society, especially in the healthcare system.

34. The HRD underlines that, taking into consideration the prevalence of intolerance towards LGBT persons in the Armenian society, not setting out SOGI as a protected circumstance is problematic. Furthermore, the HRD notes that data are missing on cases of hate crimes and hate speech offenses investigated on grounds of SOGI, since specific data is not collected.

153.63 Ensure prompt, thorough and effective investigations into all cases of violence against lesbian, gay, bisexual, transgender and intersex persons (Malta); Also covers 153.67, 153.70

35. The HRD receives complaints regarding inaction or mishandling of the cases related to hate crimes by law enforcement bodies. According to the information received by the Investigative Committee, insults, degrading and/or ill-treatment on grounds of a person's SOGI were not reported, or were not revealed; furthermore, the Investigative Committee informed the HRD that 1 criminal proceeding which was related to the SOGI of the person who had reported was ongoing in 2023.

36. In 2023, the HRD initiated an examination of the issue within the context of the HRD's mandate, underlining the importance of evaluating whether the murder of a 28-year-old resident of Armavir province was a hate crime based on gender identity. Letters were addressed to the competent state bodies with a request to make the circumstances of the case the subject of a detailed and multi-faceted investigation⁷. In this regard, the HRD highlights that the case is under trial in the Criminal Court of Yerevan⁸.

37. The Criminal Code stipulates the factors aggravating criminal liability and punishment include hate motives based on racial, national, ethnic or social belonging, religion, political or other beliefs or personal or other social circumstances. However, the Code does not recognize the victim's sexual orientation or gender identity as an attribute qualifying the offense involving hate

⁷See, https://ombuds.am/en_us/site/ViewNews/2657

⁸See, https://www.datalex.am/?app=AppCaseSearch&case_id=48976645947668965 (Armenian version)

crimes. The Human Rights Defender has no right to intervene in the preliminary investigation and trial of the case. In similar cases, the Defender initiates the proceedings both on the basis of the application and on its own initiative, and requires clarification from the competent state body.

38. In view of the above-mentioned, it is necessary to directly address hate speech towards and bullying of LGBT persons as part of activities combating hate speech and bullying. Conducting training for police officers, investigators, prosecutors and judges aimed at embedding sensitive, non-discriminatory approaches towards LGBT persons, is also very important.

IV. National Minorities

153.233 Enhance the efforts to protect and guarantee the rights of persons belonging to minorities, including ethnic and religious minorities (Italy).

39. In 2016, The draft laws "On Ensuring Equality" and "On National Minorities" were developed in 2016; However, they have not been adopted. Although Armenia still lacks a comprehensive legislative framework prohibiting discrimination, challenges in protecting and promoting the rights of persons belonging to national minorities have been registered.

40. HRD underlines that the Government Decision N 1978-L⁹ (26.12.2019) "On Approving the National Strategy for the Protection of Human Rights and the Ensuing Action Plans for the Years 2020-2022 and 2023-2025" envisaged the creation of legislative guarantees for the protection of the rights and freedoms of national minorities. In this regard, the HRD emphasizes the need for a comprehensive anti-discrimination legislation in Armenia.

41. The HRD emphasizes a comprehensive law on excluding discrimination and the protection and promotion of the rights of national minorities, in accordance with international standards, and through the mandatory participation of the relevant stakeholders, thus guaranteeing the proper realization of cultural, linguistic, educational, religious, cultural and other rights of national minorities.

42. To ensure the effective guaranteeing of the rights of national minorities through the

⁹ See, Government Decision N 1978-L : <https://www.arlis.am/DocumentView.aspx?DocID=138194> (Armenian version)

joint efforts of the HRD's Office, representatives of national minorities, and civil society, the HRD has established the Public Council for the Protection and Promotion of the Rights of Persons Belonging to National Minorities adjunct to the HRD. The Council is composed of representatives of non-governmental organizations engaged in the protection of human rights of national minorities in Armenia, including the Yezidis, Russians, Assyrians, Kurds, Ukrainians, Greeks, Georgians, Belarusians, Jews, Poles, Germans, Udis, etc.

V. Rights of the Child

*Continue efforts to end online and offline child sexual exploitation and abuse (Greece);
Also covers 153.204, 153.205, 153.206*

43. The HRD underlines that the State is committed to enacting necessary legislative, administrative, social, and educational measures aimed at shielding children from all forms of physical or mental violence, insult, neglect, ill-treatment, or exploitation including sex abuse by parents, legal guardians or other caregivers. This includes addressing and preventing sexual abuse perpetrated by parents, legal guardians, or other caregivers.

44. However, the HRD has registered several systemic issues in this regard including: related to the lack of a strategy and incomplete legal regulations providing comprehensive approaches to the detection, prevention and response of violence against children; issues related to professional training in identifying, preventing and responding to cases of violence against children; and issues related to the lack of accurate statistical data on violence against children.

45. The HRD highlights the fact that in 2023, the compared to previous years, there was an increase in the number of written and verbal complaints addressed to the HRD regarding violence against children; the cases of violence reported occurred in intuitions such as kindergartens, schools, and child care facilities, as well as within families and in online platforms.

Continue efforts to improve juvenile justice (Tunisia); Also covers 153.208, 153.20

46. The HRD has registered several issues in the sphere of juvenile justice, including issues related to associated with preventive community services; issues of ensuring the child's right to education when house arrest is used as a preventive measure; issues in executing resocialization initiatives for minors who have engaged in criminal acts; issues in conducting rehabilitation programs for child victims and witnesses, and etc.

47. In this regard, the HRD recommends the development and implementation of programs aimed at the prevention of juvenile delinquency, taking steps to ensure the rights of minors under house arrest, and ensuring of the right to education during house arrest; to develop and introduce effective mechanisms for implementation of individual resocialization programs for juvenile offenders during the application of alternative restraint measures.

153.201 Develop an oversight mechanism to monitor the situation of children placed in residential institutions, foster families or under guardianship or trusteeship (Croatia).

48. The State has adopted a policy of deinstitutionalization, committing itself to the realization of the child's right to receive adequate care in a family environment, with his/her biological parents.

49. The HRD has registered systemic legislative and practical issues that require effective solutions regarding the organization of child care in the biological family and alternative family environments. This is evidenced by the fact that many children, many of whom are children with disabilities, continue to receive care in state institutions. The HRD highlights that inadequate living conditions, and the lack of appropriate community-based services hinder the organization of child care in the biological family, which often leads to the placement of children in institutions that provide round-the-clock care.

50. Systemic issues have also been registered regarding the defining of guardianship and trusteeship; clear tools and procedures for assessment have not been introduced, and subjective decisions are often made, and adequate continuous monitoring is not guaranteed in practice.

51. Additionally, to guarantee the child's right to live in the family, in recent years, the state has carried out work on the formation of foster families, and measures have been implemented to improve the legal framework. However, the HRD highlights the systemic issues related to the number of foster families, the organization of foster care, etc.

52. The HRD, as an independent official, conducts monitoring of the situation of children placed in residential care institutions, and implements both announced and unannounced visits. Additionally, the HRD monitors the activities of the local self-government bodies, which in turn are responsible to supervise the activities of the guardianship and trusteeship bodies. The HRD conducts analysis, and provides recommendations regarding the legislation and legislative procedures regulating this field.

VI. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

153.93 Safeguard the full enjoyment of the procedural rights of detainees from the very outset of detention, including its notification, and prompt access to medical and legal assistance (Poland):

53. During the monitoring visits to cells intended for temporary detention of persons in the administrative buildings of the courts (persons can be kept for up to 12 hours or more), the HRD has registered that the right of persons to receive legal assistance, including the opportunity to have a private interview with an attorney, is not regularly guaranteed before the court session. Additionally, issues related to the healthcare of persons in the court cells were also registered; in particular, detained persons did not have the possibility to receive the medications which are prescribed to them.

54. The HRD has also registered issues related to medical confidentiality rules and medical ethics during the monitoring visits. For example, examinations are carried out in the presence of Police servicemen, who also have access to medical records.

55. The HRD registers that among the issues registered in penitentiary institutions are the

improper registration of torture and ill-treatment cases, improper implementation of primary medical examination, issues related to the provision of prescribed medicines, etc.