



## **The Human Rights Defender of the Republic of Armenia**

### **The Written Submission of the Human Rights Defender of Armenia in relation to the State Report of Armenia and the Concluding Observations of the Committee Enforced Disappearances**

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## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Definition</b>
Human Rights Defender of Armenia	HRD, the Defender
Convention for the Protection of All Persons from Enforced Disappearance	the Convention
Committee on Enforced Disappearances	the Committee
Detention facility of the Police of the Republic of Armenia	the Police DF
Missing person	MP

## **I. Introduction**

1. The Office of the HRD is an Ombudsman and National Human Rights Institution with the highest "A" international status, functioning in accordance with Paris Principles and other international standards. The HRD is an independent official who observes the maintenance of human rights and freedoms by public and local self-government bodies and officials, as well as, in cases prescribed by the law, by organizations operating in the field of public service. The Defender also facilitates the restoration of violated rights and freedoms.

2. The Written submission considers the Concluding observations on the report submitted by Armenia under article 29, paragraph 1, of the Convention, adopted by the Committee at its eighth session (hereinafter "Concluding observations") and the Additional information submitted by Armenia under article 29 (4) of the Convention, as well as aims to highlight other issues related to the protection of rights of disappeared persons in Armenia. The submission might be made public by the Committee.

## **II. National human rights institution and National Preventive Mechanism (paragraphs 9-10 and 20-21 of Concluding observations)**

3. For the purpose of the full operation of the mandate of the HRD, the financial resources provided to the HRD's Office, a separate line from the state budget (which covers also the activities of the Defender as an NPM), tend to increase every year. In particular, in 2019, the Defender's Office received 454,915,700 AMDs, in 2020 - 515,412,300 AMDs, in 2021 - 532,166,900 AMDs, and in 2022 - 532,166,900 AMDs<sup>1</sup>. For the 2023 Budget cycle, HRD has requested an increase to inter alia open the 5th regional office. Currently, HRD has regional offices in 4 out of 11 regions of Armenia.

4. The scope of the mandate of the HRD as a National Preventive Mechanism is clearly outlined in the RA Constitutional Law on Human Rights Defender. According to Article 27 of the Constitutional Law, a separate Department on Prevention of Torture and Ill-Treatment was created within the Office of the HRD, which exercises the functions of the NPM. Furthermore, the Defender is authorized to make regular, as well as ad hoc visits to places of deprivation of liberty without prior notice. The places of deprivation of liberty include places of holding arrestees and detainees, penitentiary institutions, psychiatric organizations, garrison disciplinary isolators, vehicles envisaged for transferring persons deprived of liberty, as well as any other place where, by a decision, order, or instruction of a state or local self-government body or official, or with the consent or permission thereof, a person has been or may be deprived of liberty, as well as any place which the person may not freely leave without the decision or permission of the court, administrative or other body or public official.

### ***Recommendation***

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<sup>1</sup> USD 2019 - 1.106.850 \$; 2020 - 1.254.044 \$, 2021 - 1.294.809 \$.

***(a) Increase the funding for the activities of HRD in Yerevan and regions, including to continue effectively perform its mandate as a national preventive mechanism.***

### **III. Non-refoulement (paragraphs 16-17 of Concluding observations)**

5. Article 16 of the Convention envisages the obligation of the States to not expel, return (“refouler”), surrender, or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

6. The non-refoulement principle is enshrined in Article 55(1) of the RA Constitution according to which no one may be expelled or extradited to a foreign state if there is a real danger that he or she may be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in that country. Similarly, Article 9 of the Law on Refugees and Asylum provides for the ground of non-refoulement of refugees, foreign nationals, and stateless persons. Under Article 9(1), it is prohibited to return the refugee to any territory where their life or freedom may be threatened on the ground of race, religion, nationality, membership to a particular social group or political opinion, or due to widespread violence, external attack, domestic conflicts, massive human rights violations or any other serious violations of the public order. Furthermore, according to Article 9(3), no foreign national or stateless person may be expelled, removed, or extradited to a foreign state, if there is a real danger that they may be subjected to cruel and inhuman or degrading treatment or punishment, including torture.

7. While it might be implied that the prohibition of extradition and expulsion in case there is a real danger of that person being subjected to “inhuman or degrading treatment” includes the danger of being subjected to enforced disappearance, as well, the legislation nonetheless is too vague in this regards as neither the Constitution nor the Law on Refugees and Asylum does not explicitly refer to the danger of being subjected to enforced disappearance. In practice, this might create issues of misinterpretation of the law, resulting in the violation of the rights of foreigners and stateless persons.

8. It should also be noted that unlike the 2003 Criminal Code of the RA, the new CC does not include provisions on extradition, as it is planned that relations concerning mutual legal assistance, including extradition, will be regulated by the Law on Mutual Legal Assistance. However, as the Draft has not yet been finalized and the Law was not adopted, the only provisions on the prohibition of extradition are those referred to in point 7 of this Written Submission.

#### ***Recommendations***

***(a) Amend the Law on Refugees and Asylum to make sure that the relevant provisions on the non-refoulement principle explicitly mention the prohibition of extradition and expulsion in the event of the danger of the person being subjected to enforced disappearance,***

***(b) Finalize and adopt the Law on Mutual Legal Assistance and make sure that it establishes the non-refoulement principle covering the cases of the threat of enforced disappearance, as well.***

#### **IV. Register of persons deprived of their liberty (paragraphs 18-19 of Concluding observations)**

9. During the last years, the monitoring of the Police DFs revealed an issue of improper recording of the time and date of admission of arrested persons to the Police DFs which was addressed in the 2021 Annual Report of the HRD as an NPM<sup>2</sup>. Inconsistencies were noted between the data (e.g. regarding the date and time of the arrest) kept in different journals such as the Record Registration of Persons Held in the Police DF and Record Registration of Persons Brought to the Police Unit. In other cases, the fact of taking the arrested persons out of the cell (e.g. for conducting medical examination) was not properly recorded.

10. Furthermore, the lack of complete data on medical examinations is especially concerning. Particularly, in some cases (e.g. in the Police DFs of Vardenis and Gavar) the records did not contain information on the time of medical examination which made it impossible to assess whether medical examination or medical assistance provided to the arrestee was conducted on time. Moreover, in some cases the records of medical examination did not contain proper descriptions of the health situation of arrested persons, nor did they include information on the possible reasons for the injuries.

#### ***Recommendations***

***(a) ensure the proper recording of the medical examination of arrested persons, including regarding the time of conducting the examination,***

***(b) ensure the proper registration of all the cases of removal and transfer of arrestees,***

***(c) devise forms and guidelines for recording torture and other forms of ill-treatment in the Police DFs,***

***(d) conduct training of ambulance doctors regarding the proper recording of injuries.***

#### **V. Rights of the victims of enforced disappearances, including the right to know the truth (paragraphs 24-27 of Concluding observations)**

11. While acknowledging that the new definition of a victim introduced by the new Criminal Procedure Code which entered into force on July 1, 2022, whereas any person, state, community, or international organization who suffered harm as a result of the supposed crime or could have

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<sup>2</sup> See pages 287-291, Available at <https://ombuds.am/images/files/8636c95ac7349cbe5d51ff372cbcd8cc.pdf> (in Armenian), Accessed 12.12.2022

suffered harm if the supposed crime was committed, is of a broader scope and allows for the protection of persons who suffered both direct and indirect harm as a result of the crime, concerns remain regarding the legal and practical safeguards of exercise of the rights of the victims of enforced disappearances.

12. It should first be noted that after both the Nagorno-Karabakh conflict of the 1990s<sup>3</sup> and the 44-day war of 2020, hundreds of Armenians remain missing<sup>4</sup>. Additionally, according to the Investigative Committee of Armenia, 3 servicepersons are missing after the Azerbaijani attack on the territory of the Republic of Armenia on September 13-14, 2022.

13. Both the complaints received by the Office of the HRD, as well as the meetings of the Defender with the families of MPs, allow us to conclude that the families were neither duly informed of their rights nor were they provided adequate information regarding the fate and whereabouts of their missing relatives. During the conversations with the HRD, many relatives mentioned that it is not clear to them – which state body is responsible for the search for their missing relative and to whom should they apply to receive comprehensive information. Moreover, they also mentioned that state bodies oftentimes do not properly provide information or provide contradictory information. The amount of these kinds of complaints received by the Office of the HRD points out the systemic nature of the issues related to properly informing the relatives of MPs on the fate and whereabouts of their missing relative.

14. The Human Rights Defender addressed this issue in the 2021 Annual Report pointing out that while during the active conflict, it was oftentimes objectively impossible to collect information, this should not result in improper communication with the relatives of MPs for weeks or even months after the end of hostilities<sup>5</sup>.

15. It is important to note in this regard that there is no comprehensive legislation regulating the exercise of the rights of MPs, persons subjected to enforced disappearances, as well as their relatives. Accordingly, the legislation does not provide for the definition of an MP, nor does it enshrine the rights of the victims of enforced disappearances, including the right to know the truth regarding the circumstances of enforced disappearance and the fate and whereabouts of the disappeared person.

16. Furthermore, the responsibilities of each public institution in this field are not properly provided for, which in its turn results in the abovementioned issues where the relatives of MPs are not properly informed on the fate and whereabouts of their relative, as well as on their rights and the social assistance programs which they might benefit from. Moreover, oftentimes various

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<sup>3</sup> Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions, PACE Resolution 1553 (2007) available at <https://pace.coe.int/en/files/17541/html> (Accessed 13.12.2022)

<sup>4</sup> Nagorno-Karabakh conflict aftermath: Winter deepens agony of families of missing people, ICRC, available from <https://www.icrc.org/en/document/nagorno-karabakh-conflict-aftermath-winter-deepens-agony-families-missing-people> (Accessed 12.12.2022), See also “Information about Military Personnel and Civilians Killed during 44-day War as well as those whose Location is Unknown”, RA Investigative Committee, Available at <https://www.investigative.am/en/news/view/44orya-paterazm-texekatvutyun.html> (Accessed 12.12.2022)

<sup>5</sup> 2021 Annual Report on the Activities of the HRD, as well as the situation of the protection of human rights and freedoms, HRD, pp. 1049-1050, Available at <https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf> (in Armenian), Accessed 12.12.2022

public institutions provide contradictory information causing additional suffering to the relatives of MPs.

17. The Interagency Commission on the Issues of PoWs, Hostages, and Missing Persons, established in October 2022 by the Decision of the Prime Minister of the RA N 1236-A, is, inter alia, responsible for ensuring the communication with the relatives of MPs and promptly providing them available information (Point 4(4) of the Annex N2 to the Decision). However, as the Commission does not function on a daily basis, it cannot serve as an effective mechanism to promptly provide adequate and complete information to the relatives.

### **Recommendations**

***(a) adopt comprehensive legislation on the status of MPs and disappeared persons, including establishing the definition of a missing person, as well as explicitly providing for the right of the relatives of MPs to know the truth regarding the circumstances of enforced disappearance, as well as on the fate and whereabouts of the disappeared person,***

***(b) introduce a single-window mechanism at the national level to properly and adequately inform the families of MPs on the fate and whereabouts of their relatives, as well as to provide advice and counseling on their rights in this regard.***

## **VI. Issues regarding the socio-psychological assistance programs for the relatives of MPs**

18. Since 2020, several social assistance programs were launched by the RA Government, beneficiaries of which, inter alia, were the relatives of MPs. The duration of each program was established by the respective Government decision; in the case of the social assistance provided to the families of missing servicepersons, it was at first supposed to last for 6 months, but later was extended to first 9, then 12, then 15 months, etc. Currently, as of December 2022, this social assistance program was only extended until October 2022.

19. It should be noted that Armenian legislation does not provide for legal grounds for the right of the families of MPs to receive social assistance, psychological support, etc., nor does it contain any provisions regarding the assessment of needs of these persons based on which the relevant assistance would be provided. This results in both the arbitrariness of the amount of provided social assistance, as well as in the lack of systemic mechanisms aimed at providing necessary psychological support. In this regard, it is also important to mention that the relatives of missing civilians are particularly vulnerable; the relatives of missing servicepersons have a right to receive compensation in accordance with the Law on Compensation for the Damages Caused to the Life or Health of Servicepersons during the Protection of the Republic of Armenia if the MP is recognized as missing by the court. At the same time, this kind of right of the relatives of missing civilians to receive compensation from the state is not established by the law. As a result of this, they have to rely on social assistance programs launched by Government Decisions, which, as already mentioned, are not based on a needs assessment of each family, and are of shorter duration.

## ***Recommendations***

***(a) establish legal safeguards of social and psychological assistance for families of MPs, based on needs assessment with a particular focus on the specifics of conflict-related situations and with the engagement of families where possible.***