



PARTNERSHIP FOR OPEN SOCIETY

PARTNERSHIP FOR OPEN SOCIETY INITIATIVE'S Joint Submission to the Committee on the Elimination of Racial Discrimination on the Seventh to Eleventh Periodic Reports of the Republic of Armenia Regarding the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

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Hereby, the Partnership for Open Society Initiative,¹ representing more than 60 civil society organizations, presents a joint submission prepared by the following civil society coalitions and organizations:

Coalition to Stop Violence against Women;
Non-Discrimination and Equality Coalition;
Open Society Foundations – Armenia; and
Sinjar Yezidi National Union.

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¹ <http://www.partnership.am/en/index>

Anti-Discrimination Legislation

Armenia lacks effective and comprehensive anti-discrimination legislation. This has been continuously highlighted by local and international organizations as a vital issue depriving citizens from effective legal protection from discrimination. Legal provisions, prohibiting discrimination, are scattered throughout the pieces of legislation and do not provide for regulations for effective protection. The only definition of discrimination is present in the Law on “Equal Rights and Equal Opportunities of Men and Women”, however, is limited to the context of gender discrimination only. The new standalone law shall address the gaps in existing legislation, by providing definition of discrimination, types of discrimination and related concepts, removing the existing barriers in domestic procedural laws to effectively prosecute discrimination cases (e.g. shifting burden of proof), setting mechanisms for prevention and combating discrimination and establishing a national equality body.

In 2015 the RA government accepted the UPR recommendations related to the need for a standalone law on discrimination. At the same time the adoption of anti-discrimination legislation was included as a condition in EU budget support program. In response, the Eurasia Partnership Foundation and the Ministry of Justice initiated the process of preparing the new law on discrimination in 2015 by establishing a joint working group. The process for most of its part was not participatory and civil society was prevented from contributing to the development of the draft law. The text of the draft was presented to a group of NGOs in March 2016. Since then however, the Government has not yet officially published the draft and the work on the law is apparently halted. Neither the 6-month program of the new Government (adopted on 18 October 2016), nor the programs foreseen for 2017 include the adoption of the Law on Anti-Discrimination, even though it remains a condition for the EU Human Rights Budget Support Program.

It is apparent from the draft that has been provided to NGOs, that while formally the law addresses the gaps in current legislation, it is not comprehensive and does not comply with European and international anti-discrimination standards when it comes to providing mechanisms for prevention and combating discrimination and establishment of an effective and independent national equality body.

The draft law provides for the establishment of a national equality body, which however does not meet the core requirements for independence and effectiveness.

The main issues in the draft law undermining the independence of the national equality body are its legal structure, manner of appointment and composition, functions and accountability mechanisms. First of all, the equality body is designed to operate under the Ombudsman office, while the appointment procedures of ombudspersons in Armenia so far have only worked against pro-active and independently acting ombudspersons. Besides, objectively the Constitutional powers of the Ombudsman are quite limited, e.g. no power to issue sanctions. Secondly, the draft does not guarantee a pluralist representation in the body, which would also include NGOs working for protection of rights of people subject to discrimination. Thirdly, the draft does not prescribe such core functions of the body, which would guarantee its independence. These functions are: providing independent assistance to victims of discrimination in pursuing their complaints of discrimination; conducting independent surveys concerning discrimination; publishing independent reports. And finally, the draft lacks accountability mechanisms and the equality body is not obliged to report on the discrimination situation in the country and the activities of the body. The reporting may be included in Ombudsman’s yearly report, but a direct reporting to the parliament would have increased the transparency of equality body’s work and its independence.

The effectiveness of the national equality body is undermined by limited scope of its powers provided in the draft. While the primary role of such body is to enable people covered by the equal treatment legislation to exercise the rights afforded to them under this legislation, it is deprived of essential powers to receive individual complaints and to adopt binding decision on the fact of discrimination; to order sanctions; to monitor the implementation of decisions and recommendations on discrimination

cases; to bring cases to court as *actio popularis* claims, to provide legal support and other advice to victims of discrimination, to conduct an *ex officio* investigation and, based on the findings, to adopt a binding administrative act; to demand the necessary information from the relevant authorities and to receive it in due time.

The draft law also fails to precisely define the duties of state agencies and local authorities, as well as employers in the public and private sectors to guarantee equality. It also does not enlist the prohibited grounds of discrimination in line with CDESCR General Comment No. 20.² The draft does not prescribe the procedural right of NGOs to file claims in discrimination cases as a public interest issue, which limits access to justice for representatives of the most marginalized and vulnerable groups. It also undermines the potential to address structural and institutional discrimination.

Finally, the draft contains discriminatory provisions itself, by stipulating that the provisions of the Law should not be construed to the detriment of the exceptional role of Armenian Apostolic Church and the spousal relations of the family created under the expression of free will of a man and a woman.

Recommendations:

- Adopt an effective and comprehensive standalone law on anti-discrimination covering all types of discrimination and all protected grounds, with clear functions and obligations of the government and local authorities, as well as employers in preventing and combating discrimination;
- Secure access to justice for victims of discrimination by guaranteeing the standing for NGOs in the court for public interest litigation on discrimination cases and state legal assistance for victims of discrimination;
- Establish a National Equality Body complying with the core requirements for independence and effectiveness as defined in the Paris Principles of the United Nations, the ECRI General Policy Recommendation No. 2 and the Council of Europe ‘Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality’;
- Ensure the Body’s independence from the Ombudsman or any governmental institution in terms of appointment of its Board/Commissioners and adoption of its Code of Conduct. Guarantee representation of civil society organizations within the equality body.
- Entitle the Body to independently exercise the following functions: hearing and making binding decisions on cases of discrimination; providing independent assistance to victims; conducting investigation into individual cases; initiating and participating in court proceedings; launching *actio popularis* claims; monitoring legislation and providing advice to legislative and executive authorities; conducting independent research and issuing recommendations; maintaining statistic and conducting data collection; conducting awareness-raising or promotional work; supporting employers and service providers in developing good practices.

Hate crimes

According to OSCE/ODIHR the Armenian government has not reported reliable statistics on hate crimes. In fact, Armenian authorities have not registered any case of hate crime since 2014.³ Contrary to the government’s claims, the reason behind the lack of such data is not the absence of such crimes, but rather legal gaps, flaws in data collection, lack of awareness among population as well as the law enforcement and judiciary.

The national legislation on hate crimes is not comprehensive. The Criminal Code defines racism as a specific crime as well as aggravating circumstance for the liability and punishment for other crimes.

² <http://www.refworld.org/docid/4a60961f2.html>

³ OSCE/ODIHR, Hate Crime reporting, <http://hatecrime.osce.org/armenia>

The Article 226 of the Criminal Code also implies criminal liability for actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity.⁴ However, there are no clear provisions criminalizing public incitement to violence or discrimination.⁵ The legislation also neither defines nor provides effective regulations for protection from hate speech. Hate speech can be displayed in such a manner that would not have elements, mentioned in Article 226 of the Criminal Code, but nevertheless might contain element of discrimination and violate the right of citizens to dignity. In this case the legislation fails to provide for effective protection as the Civil and Administrative Codes do not define hate speech as a separate category and citizens seeking protection from hate speech in civil law relations, have to apply to the mechanism of legal protection from insult and defamation.⁶ This however is not an effective mechanism of protection from hate speech, as it implies strong protection of the freedom of speech, thus hinders claiming for an effective legal defense from hate speech.⁷

There is no special independent mechanism to collect and process data on hate crimes, and the institutions conducting data collection do this in a generalized manner. Neither the Police, nor the Prosecutor's Office have a classified and specific data on hate crime.

Finally, none of the training centers for professional groups has a special course on non-discrimination and hate crimes in their curricula. This applies to the Police Academy for police officers and the Academy of Justice for judges and prosecutors. Similarly, the curriculum of School of Advocates, which operates within the RA Chamber of Advocates providing training for students, who applied for the advocate license, lacks a special course on hate crimes.

Recommendations:

- Amend the civil, administrative and criminal codes according to ECRI General Policy Recommendation N7;
- Create a system of collection, processing and registration of hate crimes within the structure of the Prosecutor's Office with the inclusion of such data in annual reports of the Prosecutor's Office;
- Organize continuous courses on hate crimes for police officers, judges, prosecutors, advocates.

Access to education

Access to education for children from national minorities remains limited at all levels of education system.

According to Save the Children Armenia, only 28% of children in Armenia receive preschool education, because of the lack of relevant services or the poor quality of infrastructure.⁸ Due to the lack of kindergarten facilities in communities with ethnic minority population ethnic-minority children have limited access to pre-school education. As a result, these children enter elementary school without necessary linguistic skills, i.e. without speaking the language in which most classes are taught.⁹

Children from ethnic minority groups, in particular Yezidis, Kurds, and Molokans, had significantly lower than average school enrollment and attendance rates as well as higher dropout levels

⁴ Article 226 of RA Criminal Code, available at: <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>

⁵ Council of Europe, European Commission against Racism and Intolerance, Fourth report on Armenia (adopted on 28 June 2016), available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Armenia/Armenia_CBC_en.asp

⁶ Article 1087.1 of RA Civil Code

⁷ Ara Ghazaryan, Stepan Danielyan. Hate Crimes in the Republic of Armenia. Yerevan 2016
<http://www.religions.am/files/20627/english/Interpretations/Hate-Crimes-Eng.pdf>

⁸ Child Rights Situation Analysis: Armenia, Save the Children, 2015 <https://armenia.savethechildren.net/what-we-do/education>; <https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf>

⁹ Council of Europe, European Commission against Racism and Intolerance, Third report on Armenia (adopted on 7 December 2010), available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Armenia/Armenia_CBC_en.asp

after the eighth grade because of child labor and early marriage.¹⁰ The government, in turn, has no effective identification and referral mechanisms for children left out of mandatory education. Legislative gaps and discriminatory customs lead to violation of right to education especially of Yezidi girls. The community leaders of older generation reinforce the belief that girls should not study, but rather should get married. Some Yezidis think that the girls who have graduated from school and study at higher educational institutions are immoral and will not be able to marry.¹¹

According to official statistics 473 Yezidi girls entered schools in 2003-2015 in 15 Yezidi communities. 234 (54%) of them have graduated from 9th grade, 122 (26%) have obtained 12 years of education, while 177 (37%) of these girls have not even graduated from 9th grade school.¹²

Access to higher education of ethnic-minority secondary-school graduates' also remains limited. In spite of some steps taken by the government, the arrangements are mostly ad hoc and not formalized.¹³

Recommendations:

- Define criteria for the content of education materials that will rule out direct or indirect promotion of discrimination and intolerance, will be based on respect for human rights and fundamental freedoms, principles of secular state and Toledo Principles in line with State obligations under the UNESCO Convention against Discrimination in Education;
- Make the Armenian Church History course optional in line with Toledo Principles and eliminate AAC participation/leadership in development of textbooks and in-service teachers' trainings;
- Develop the capacities of school teachers on practical application of Toledo Principles through integration of Toledo principles into in-service teachers' training program and periodic trainings;
- Establish an effective mechanism for identification and referral of out-of-school children;
- Establish kindergarten facilities in communities with ethnic-minority children to provide necessary pre-school education;
- Undertake affirmative measures, including adoption of relevant legislation, in order to facilitate the access to higher education for ethnic-minority secondary-school graduates.

Separation of church and state in the context of education

The Armenian Apostolic Church (AAC) has a strong presence in public education system, although the law mandates that public education be secular. Courses in the history of the AAC are a mandatory part of the public school curriculum in elementary, secondary and high school. Children cannot skip these classes and there are no alternatives. In accordance with a memorandum of agreement between the AAC and the Ministry of Education the content of the course is exclusively shaped by the church and the latter is also in charge of nominating and training respective teachers. The teaching practice of the course is not aligned with OSCE Toledo Principles. According to experts the course goes beyond the history of the Armenian Church and focuses on presenting the faith system, history, values, and rites of

¹⁰ US Department of State, Country Reports on Human Rights Practices for 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dldid=265392>

¹¹ NGOs' shadow report on the 5th and 6th periodic reports submitted by Armenia on the implementation of CEDAW, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARM/INT_CEDAW_NGO_ARM_25449_E.pdf

¹² Kalashyan Z., Murazi B., *The Right to Education of Yazidi Women in Armenia is Being Violated*, available at (in Armenian): <http://epress.am/2016/01/29/t-q-n-h-l-wn-wn-g-l-r-p-n-l-p-wn-h-r-wn-l-n-l-n-p-h-wn-u.html>

¹³ Council of Europe, European Commission against Racism and Intolerance, Fourth report on Armenia (adopted on 28 June 2016), available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Armenia/Armenia_CBC_en.asp

the Armenian Apostolic Church as the only acceptable religion.¹⁴ Children are forced to pray and to perform religious rites.¹⁵

According to a survey analyzing the impact of the content of Church History textbooks on the level of religious tolerance of students, predominant majority of students (98%) think that religious minorities are a serious threat for solidarity of Armenian nation, with 69% calling to violent actions to ‘fight’ those. 98% of respondents didn’t allow the possibility that there can be a Muslim Armenian. 42.8% report that they will terminate any connections with a friend who turns out to belong to a religious minority.¹⁶ “Collaboration for Democracy” NGO has continuously reported cases of discriminatory attitude by the teachers towards children from religious minorities.

Yezidi community representatives reportedly had unsuccessfully appealed to the minister of education to make the class optional for the students of their community. The Ministry of Education stated that the government had no intention of following the 2013 recommendation by the UN Committee on the Rights of the Child to revise school curricula to reflect freedom of religion and eliminate the compulsory “History of the Armenian Church” course.¹⁷

Harmful customs and traditions: Early Marriages

Overall, the rate of child marriages has decreased in Armenia and the median age of first marriage has increased. However, according to UNICEF, 7 percent of children (both boys and girls) married by age of 18. On September 12, 2012 the government of the Republic of Armenia adopted a Draft Law “On Amending the Family Code of the Republic of Armenia”. According to this law, 18 years is determined as a minimum threshold of the marriage age for both men and women. The law also contains a provision providing for the possibility for 16-year-old women to marry with permission from their parents or legal guardians. This was a compromise with the Yezidi community who argued against the threshold of 18 years claiming that undermined their culture and traditions. However, the enforcement mechanisms of the legislation are ineffective when it comes to early marriage, which is especially widespread among Yezidi community. Statistic information on early marriages is limited as most child marriages are not officially registered or are registered only after the couple reaches the legal age for marriage. The government took no measures to document the scale or address the practice.¹⁸

According to a UNFPA study Yezidi girls usually marry at 13-14 years old; a girl who doesn’t marry until 17 is considered ‘late and not worthy of respect’ in the community. In most cases, marriages are arranged by parents.¹⁹ Early child marriages among Yezidi minority are primarily the result of traditional attitude to role of women simply as mothers and housewives, as well as the lack of value placed on education for girls.²⁰

¹⁴ US Department of State, International Religious Freedom Report for 2015, Permalink: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256161>

¹⁵ “Human Rights in Armenia 2016” Annual Report, Helsinki Committee of Armenia, <http://armhels.com/en/publications/ditord-1-71-human-rights-in-armenia-2016/>

¹⁶ Hovhannisyán H. & Davtyán A. (2013). Analysis of the content of Armenian Church History Textbook and its influence of young generation. Yerevan: OSF-Armenia. http://www.osf.am/wp-content/uploads/2014/04/H_Hovhannisyán_Research-.pdf.

¹⁷ US Department of State, International Religious Freedom Report for 2015

¹⁸ US Department of State, Country Reports on Human Rights Practices for 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265392>

¹⁹ UNFPA EECARO, Child Marriage in Armenia (Overview), available at: <http://eeca.unfpa.org/publications/child-marriage-armenia-overview>

²⁰ Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Armenia. 2016. A/HRC/31/58/Add.2

The impact of early marriages on girls is multi-fold. First of all, this practice limits the access to education for Yezidi girls forcing them to leave school early. Secondly, limitation of women's role to reproduction and the high rate of school drop-out among Yezidi women leads to unemployment. Third, the lifestyle of Yezidi people limits their access to quality healthcare facilities. Women in particular have limited mobility when families are in the pastures. This can result in serious health problems both for mother and child. Finally, girl spouses are also vulnerable to domestic violence and sexual abuse.

Recommendations:

- Adopt a comprehensive and effective standalone law on domestic violence in line with Istanbul Convention and CEDAW General Recommendation N19 as well as criminalize the acts of domestic violence, including forced marriage;
- Improve legislation and enforcement mechanisms to address underage married women as children, with regard to the protection of their rights;
- Develop an affective state policy which would address the root causes of early marriages and would combat different forms of discrimination against women and harmful practices normalized in ethnic minority communities through education and awareness raising;
- Ensure the full realization of sexual and reproductive rights of underage married women, as well as their access to education, health and employment;
- Hold statistics on the cases of early marriages especially among ethnic minorities, have mechanisms for reporting about such cases on community levels.