



ARMENIA

**Based on a Joint Submission by a Group of Civil Society Organisations to the UN Human Rights Council
35th Session of the Universal Periodic Review (20 – 31 January 2020)**

ANTI-DISCRIMINATION

The majority of recommendations related to the issues of discrimination and gender equality issued during the second cycle of UPR remained unaddressed. The state failed to adopt an effective domestic violence and anti-discrimination legislation and ratify the Istanbul Convention and CRPD Optional Protocol. Furthermore, no effective actions were taken towards combating hate speech and hate crime against LGBTI persons, and fighting discrimination against ethnic minorities and people with disabilities.

Anti-Discrimination law

The lack of comprehensive anti-discrimination legislation in Armenia deprives citizens of effective legal protection from discrimination. In March 2018, the government introduced a new draft law on discrimination. The draft law addresses the gaps in current legislation, including definition of discrimination and its types, shifting of the burden of proof. However, it fails to provide effective protection against discrimination, including access to justice, and to establish an effective and independent national equality body.¹

¹ Equal Rights Trust, Draft Law of the Republic of Armenia “On Ensuring Equality” Legislative Analysis, March, 2018 <http://www.equalrightstrust.org/resources/law-ensuring-equality-armenia-legislative-analysis>.

The draft does not explicitly prohibit discrimination on several protected grounds that are well-recognised under international human rights law, including sexual orientation and gender identity. The draft law does not allow organisations to bring cases of discrimination before the court. This limits access to justice for representatives of the most marginalized groups, and undermines the potential to address structural discrimination. Access to justice is further hindered, as the law does not guarantee legal aid for victims of discrimination seeking legal redress.

The effectiveness of the national equality body, envisaged in the law, is undermined by the limited scope of its powers. Particularly, it is deprived of essential litigation and support competences, and is only assigned a limited function to promote equality and prevent discrimination through awareness raising and research. Furthermore, the equality body is designed to operate only as an advisory body under the Ombudsman, and lacks essential decision-making competences. As a part of the Ombudsman office the equality body will have a limited competence to consult the Ombudsman on cases of discrimination and will not be able to independently receive and examine individual complaints, and to adopt binding decision on the fact of discrimination.

Recommendation

- Explicitly mention all the prohibited grounds recognized under the international human rights law to prevent legal ambiguity;
- Prescribe the right of associations and organisations to bring *actio popularis* claims on behalf of persons seeking redress, with their approval, or on their own behalf, where they have a legitimate interest in the realisation of the right to equality
- Guarantee the right to legal aid to persons who have been subjected to discrimination and seek legal redress and an effective remedy.
- Entitle the equality body to conduct investigation on their own initiative; to provide legal support and other advice to victims of discrimination; to represent victims of discrimination or to bring cases of discrimination in its own name before the courts.

Freedom of religion

The secular foundation of the state and the freedom of religion and expression are undermined by increasingly interventionist stance of the Armenian Apostolic Church (AAC). Abusing the declarative constitutional provision for the AAC's "exclusive mission,"² both state authorities and the AAC present and promote the AAC as a 'state church.' Not only does it hold a monopoly of access to education and armed forces by law, but it also abuses its position by interfering in these institutions jeopardising their secular nature. The content and instruction of the

² Article 18, RA Constitution <http://parliament.am/parliament.php?id=constitution&lang=arm&enc=utf8&lang=eng#1>.

mandatory “AAC History” in public schools does not convey information and knowledge in an objective, critical and pluralistic manner and amounts to indoctrination.³ There is mass baptising of conscripts and daily morning prayers in the army, claimed to be voluntary.⁴ At the same time, the legislation stipulates prohibitions for the personnel of police, National Security Service and Rescue service, as well as limitations for Armed Forces concerning the membership to religious organisations, which in practice does not refer to the membership to AAC. Statements by former and current government officials expressing their allegiance to the AAC or extensively criticising other religious organisations, often crossing the threshold of hate speech, contribute to the further extension of the gap.

Recommendations

- Revise current Law on Religious Organisations in line with Venice Commission Recommendations (2011 and 2018) particularly in regards to the dominance of the AAC, the high threshold for the registration of organisations and labelling of preaching as “soul hunting” (proselytism);
- Align the public school course “History of the Armenian Church” with OSCE Toledo Principles;
- Prohibit forceful participation of soldiers in religious rituals by AAC clergy;
- Remove legislative limitations and restrictions upon law enforcement and military units regarding the membership to religious organisations;
- Address the propaganda and hate speech against other religions and hold perpetrators accountable.

Discrimination on the ground of SOGI

During 2015-2017, the civil society organisations documented 35 incidents of hate crimes against LGBTI persons,⁵ but the lack of appropriate regulations limits legal recourses for many crimes committed.⁶ The police do not conduct effective and comprehensive investigation into the cases of threats and violence against them. LGBTI persons and those defending their rights become targets of hateful rhetoric and threats on social media, by public figures, including representatives of political parties and members of parliament.⁷ LGBTI persons are frequent targets of discrimination in closed institutions such as prisons and the army. Homosexual prisoners

³ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Armenia, May – June 2013, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>.

⁴ US Department of State, International religious freedom report for 2016, Armenia, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dlid=268786>.

⁵ OSCE/ODIHR, Hate Crime Reporting, Armenia, 2017, <http://hatecrime.osce.org/armenia?year=2017>.

⁶ Society Without Violence NGO, “The Human Rights of LGBTI individuals in Armenia: A practical assessment”, 2016, https://ge.boell.org/sites/default/files/swv_the_human_rights_situation_of_lgbti_individuals_in_armenia_eng.pdf.

⁷ PINK Armenia, Human rights situation of LGBT people, annual review Armenia, 2017, https://issuu.com/pinkarmenia/docs/2017annualreview_en.

face violence, sexual abuse, degrading treatment and discriminatory attitude displayed by both prison officers and inmates. They are segregated in penitentiaries, placed in separate cells, usually of worse conditions, and are forced to perform degrading labour.⁸ Gay men who served in the army reportedly faced physical and psychological abuse and blackmail.⁹ Gender reassignment is not regulated as a health service in Armenia. As a result, transgender persons undergo reassignment surgeries secretly by doctors invited from abroad with no further access to relevant medical services.¹⁰

LGBTI persons face challenges in exercising their rights to freedom of expression and assembly. In July 2017, two LGBTI-themed movies were withdrawn from the program of Golden Apricot International Film Festival in an act of censorship and discrimination by the Union of Cinematographers of Armenia.¹¹ In November 2018, the Forum of LGBT Christians of Eastern Europe and Central Asia was cancelled in Yerevan, justified by the police inability to provide guarantees for the safety of forum participants.¹² In April 2019, a transgender activist spoke about hate crimes against transgender people during the public hearing on Armenia's implementation of the UPR recommendations at the National Assembly. The speech was followed by an aggressive reaction of the Chair of the SC on Human Rights Commission presiding the hearing. The chair's act fuelled online hate speech and actions of protest outside the National Assembly. "Prosperous Armenia" parliamentary fraction initiated legislative amendment in the Criminal Code of the republic of Armenia in May, 2019, to introduce criminal liability for "Propaganda of non-traditional sexual orientation among people under sixteen".

Recommendations

- Include sexual orientation and gender identity as protected grounds in the anti-discrimination legislation;
- Criminalise hate speech by state officials based on SOGI and make SOGI-motivated bias an aggravating circumstance in criminal law;
- Conduct effective and comprehensive investigation into the cases of homophobic and transphobic attacks as hate crimes;
- Adopt a legislation recognising and regulating gender reassignment as a health service.

⁸ Penitentiary Monitoring Group, Annual report, 2014-2015 <https://goo.gl/sCGq0C>.

⁹ "Armenia 2018, human rights report," US Embassy, 2018, <https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2018.pdf>.

¹⁰ Eurasian Coalition on Male Health (ECOM), Legislative analysis related to LGBTI rights and HIV in Armenia, 2017

¹¹ "Censorship in Armenian cinematography: "Golden Apricot" has removed the "Armenians: Internal and External Views" program from the festival" PINK Armenia news release, July 7, 2017, <https://goo.gl/oQMb7g>.

¹² "Armenia, Events of 2018," Human Rights Watch report, <https://www.hrw.org/world-report/2019/country-chapters/armenia#e81181>.

Ethnic minorities

The government does not have a comprehensive strategy towards protection and promotion of the culture, language and the identity of ethnic minorities. The government does not maintain disaggregated data on economic and social indicators by ethnicity and nationality to understand better the impact of state policies on ethnic minority communities.¹³ Around 70% of children in Armenia are not enrolled in preschool education, because of the lack of relevant services or the poor quality of infrastructure. Due to the lack of kindergarten facilities in communities with ethnic minority population, ethnic-minority children have limited access to pre-school education.¹⁴ School enrolment and attendance rates for children from ethnic minority groups, in particular Yezidis, Kurds, and Molokans, were significantly lower than average, and dropout rates after the ninth grade were higher.¹⁵ The government took no steps to address harmful customs and traditions among ethnic minorities. Particularly, the Yezidi girls remain vulnerable to early marriage and its consequences, including reduced access to education and reproductive healthcare services. Statistical information on early marriages is limited as most child marriages are not registered officially or are registered only after the couple reaches the legal age of marriage.¹⁶

Recommendations

- Develop a national strategy for protecting the ethnic, cultural, religious and linguistic identity of minorities and creating conditions for the promotion of that identity in line with the UN Declaration of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- Improve legislation and enforcement mechanisms to prevent underage marriage;
- Establish an effective mechanism for identification and referral of out-of-school children.

Gender-based violence and reproductive rights

Gender-based violence remains prevalent as on average 10 women are killed every year in Armenia. After the law on domestic violence went into force in July 2018, the police documented more than 1500 cases over the period of nine months. Though the law accords the police the authority to intervene in cases of domestic

¹³ Concluding observations on the combined seventh to eleventh periodic reports of Armenia, Committee on the Elimination of Racial Discrimination, 31 May 2017, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPriCAqhKb7yhsr%2bUMaaWwQKp670qcK-00TruF2cExOlmV%2fRHf%2b9CKkv4fJlg50tNijGyZxdhhQjHx9IMj4HjA3FkUFgTXnllxkDIBBU9Np%2fGUqKq2d5MapRnUESDOK%2fez5lYrEBPQMx-PA%3d%3d>.

¹⁴ "A world ready to learn: prioritizing quality early childhood education" global report, UNICEF, 2019, <https://www.unicef.org/reports/a-world-ready-to-learn-2019>.

¹⁵ "Armenia 2018, human rights report," US Embassy, 2018, <https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2018.pdf>.

¹⁶ US Department of State, Country reports on Human Rights practices for 2016, <http://www.state.gov/j/drl/rls/rrpt/humanrightsreport/index.htm?year=2016&dlid=265392>.

violence through protective measures, the efficiency of immediate response remains low. In most of the cases police only issues a warning to the perpetrator as a protective measure, which does not increase the safety of the victim. There are no follow-up visits by the police and social workers to monitor the behavioural change. The police also fail to address the violations of protection orders by the perpetrators, and the burden of proof in such cases is on the victim, who has to provide evidence to the police in a written form. The government has recently announced its intention to adopt the Istanbul Convention, which has sparked an aggressive campaign from radical groups labelling it as a green light for same sex marriages.

In 2017, a comprehensive research¹⁷ on the cases of sexual violence against women for the period of 2015 – 2016 revealed serious gap in law and practice. The lack of gender sensitive and victim-centred approach and further victim-blaming by the law enforcement and judiciary undermines access to justice for women victims of sexual violence and assault. Marital rape is not recognised as a separate crime and type of sexual violence despite the fact that in 38% of the cases the suspects or accused were the partners of the victims.

The new legal regulations initiated by the government aimed at preventing sex-selective abortion (SSA) threaten to create undue burdens for women seeking safe abortion, including three-day waiting period and mandatory counselling.¹⁸ While the stated purpose of the law was to reduce the prevalence of SSA, its effect is primarily to restrict women's reproductive choices due to the lack of accessibility of reproductive services.

Women living with HIV face discrimination, especially in terms of violations of sexual and reproductive health rights. According to the Minister of Health Decree 77-N (28 November 2013),¹⁹ obstetrical and gynaecological medical services are provided mostly on territorial basis, but women living with HIV prefer not to exercise this right, because other rights (privacy, confidentiality, non-discrimination) are violated when they attempt to exercise their sexual and reproductive rights.

Recommendations

- Ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) without any reservations and amend the national legislation, including the Criminal Code; conduct awareness-raising on the Convention;
- Develop the capacities of the judiciary, law enforcement and social workers to secure effective response to cases of gender-based violence and enforcement of protective measures;
- Adopt a comprehensive legislation on sexual violence and harassment, and establish effective mechanisms for preventing and addressing the cases of sexual assault; provide a definition of consent;
- Repeal the legislative requirement of mandatory waiting period and mandatory counselling for women seeking abortion, and provide impartial counselling on family planning.

¹⁷ Sexual Assault Crisis Center NGO, Crimes against Bodily Integrity and Sexual Freedom; Criminal Proceedings of Such Crimes between 2015 and 2016, <http://www.saccarmenia.org/files/uploads/ReportE.pdf>

¹⁸ Amendments to the Human Reproductive Health and Rights Law, Aug. 6, 2016 (Arm.) <http://parliament.am/drafts.php?sel=show-draft&DraftID=38184> and Amendments to the Code of Administrative Offenses, Aug. 6, 2016 (Arm.) <http://parliament.am/drafts.php?sel=show-draft&DraftID=38189>.)

¹⁹ Order N 77 of the RA Minister of Health, 28 November 2013 (in Armenian), <https://www.arlis.am/DocumentView.aspx?docid=104881>.

People with disabilities

In July 2015, the European Court of Human Rights found a violation of the right to a fair trial in the case of *Shamoyan v Armenia*, where Ms Shamoyan, who uses a wheelchair, was denied access to the Court of Cassation. The government fails to provide effective mechanisms against disability-based discrimination. A study published in 2013 cites a 92% rate of unemployment among persons with disabilities.²⁰ The most significant barriers to employment are employers' negative attitudes, the failure to provide reasonable accommodation, lack of state-provided incentives. Major cultural, sport, leisure and recreation venues, and many governmental buildings remain inaccessible to persons with disabilities. Most public facilities, e.g. educational and healthcare institutions, are widely inaccessible much like polling stations during elections, which disenfranchise persons with disabilities, hindering their political participation. Measures taken by the state and local authorities usually address the needs of people only with physical disabilities.

Recommendations

- Adopt an effective law on the rights and inclusion of persons with disabilities and ensure that the Ministry of Labour and Social Affairs overseeing its implementation has the legal standing to demand its implementation in court;
- Ensure the implementation of legal guarantees to accessibility in all areas, including appropriate sanctions in the Code on Administrative Offences for breaches of accessibility norms and standards; set up a monitoring mechanism based on reporting to ensure the effective implementation of such norms and standards;
- Introduce effective quotas and incentive measures for employers in public and private sectors to employ people with disabilities;
- Ensure that women with disabilities have access to medical services and facilities, including sexual and reproductive health.

Mental health

Psychiatric care is still mainly provided in specialised mental health institutions. Besides psychotropic medicines, the care lacks services, such as psychosocial and community-based support. The mental health system still contains elements of outdated models and practices, including easy and frequent hospitalisation of people with mental health conditions, overmedication and long-term confinement based on labels such as "chronic patients". In several institutions, patients remain confined for long periods of time not because they need to be hospitalised but because there are no care structures at the community level.²¹ Many patients undergo compulsory treatment in psychiatric hospitals, which they cannot challenge on their own: there are no direct mechanisms for an affected individual to seek review of hospitalisation. A court decision on their release might be sought only by the hospitals.

²⁰ Save the Children, Employment of people with disabilities in Armenia: Needs and barriers, 2013.

²¹ Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Preliminary observations, 5 October 2017, Yerevan.

Under the current legislation, persons with mental health problems can be recognised legally incapable and become deprived of the possibility to exercise their rights fully and properly and to make decisions about their life independently. There are no effective mechanisms for restating person's legal capacity. The court trials of cases challenging person's legal incapability fail to ensure the "equality of arms," and a guardian is appointed for the person declared legally incapable without consulting with them. This regulation was found unconstitutional and needs a revision in line with CRPD standards.²²

Recommendations

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and the remaining optional protocols on individual complaints procedures of the international human rights treaties;
- Stop prioritising investments in large psychiatric hospitals and residential institutions for people with mental health conditions and scale up investments in alternative mental health services and support models that respect the dignity and autonomy of users of services and empower them;
- Repeal laws and prohibit detention, including involuntary hospitalisation and forced institutionalisation, and non-consensual psychiatric treatment on the grounds of impairment; introduce a provision for a periodic review of involuntary civil hospitalisation at least once every six months.
- Revise the Civil and Civil Procedure Codes to abolish regulations allowing deprivation of legal capacity and develop supported decision-making mechanisms in line with CRPD principles.

²² Republic of Armenia Constitutional Court, decision SDV-1197, 07 April 2015.