

EPF Occasional Policy Brief

RECOMMENDATIONS ON TOLERANCE AND NON-DISCRIMINATION

September 2017

The situation and recent developments in Armenia pertaining to tolerance and non-discrimination and respective policy recommendations are presented below. They are based on studies conducted by EPF as a part of its programmatic activities, hands-on experience accumulated through several years of grassroots work and feedback collected from the various beneficiaries.

TOLERANCE AND NON-DISCRIMINATION

1. The lack of specific anti-discrimination legislation

SITUATION AND RECENT DEVELOPMENTS

The adoption of Decision No. 303-N of the Government of the Republic of Armenia dated February 27, 2014 has been one of the first steps in the state policy towards non-discrimination. The 2014-2016 Action Plan for the National Strategy on Human Rights Protection, approved by that decision, defined in point 8 the need for studying the compliance of the legislation of the Republic of Armenia with international legal norms on the prohibition of discrimination, as well as for discussing the feasibility of adopting a separate law “On anti-discrimination”. Within the framework of implementation of the above point with the support of the Embassy of the Kingdom of the Netherlands to Georgia and Armenia, EPF conducted a legal research entitled “**Is it expedient to adopt a separate ‘non-discrimination law’?**”¹ which highlighted the need for adopting a stand-alone anti-discrimination law in Armenia. Based on this research, an agreement was reached with the Ministry of Justice of Armenia (MoJ) to draft a new non-discrimination law, bearing in mind the fact that the adoption of a comprehensive stand-alone anti-discrimination legislation has been prescribed as one of the specific conditions under the EU Direct Budget Support agreement with Armenia. To note, the indicators for the EU Direct Budget Support agreement relating to the anti-discrimination block were developed with EPF’s advice and guidance. It should be mentioned that back in May 2013, another draft anti-discrimination law was prepared and posted on the website of the Armenian Ombudsman, but discussions on it were then suspended mainly due to the controversy over the categories of gender and religious belief, their interpretation and incorporation in the law.

Alongside with the study and the development of the new draft law, EPF embarked upon gathering and coordinating the government, Armenian CSOs and IOs to discuss and further develop the anti-discrimination draft law and its adoption strategy. The process marked an unprecedented level of cooperation between a CSO and the government, since this was one of the rare instances in Armenia where a CSO facilitated the process of adoption of legislation and elaborated a legislative act together with the Armenian authorities. The Law on Equality combating discrimination was drafted by two independent experts and two representatives of the Ministry of Justice.

While formally the Draft Law addressed the gaps in the current legislation, it lacked the comprehensiveness needed for compliance with European and international anti-discrimination

1. http://www.epfarmenia.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination_-21.05.15-ENG_Final-1.pdf

standards when it came to certain key provisions. Hence, EPF together with 11 civil society organizations revised the anti-discrimination draft law (with the preliminary title “On Equality”) through consultations ensuring its compliance with international best practice and Armenia's international obligations, and submitted it to the Ministry of Justice on **May 30, 2016**. These consultations have not been held in a more public setting due to a concern of unwanted speculations around the Draft and the adverse effect they might have on the entire process of its further negotiations and adoption (which had previously happened with the Anti-Discrimination Draft Law elaborated by the Armenian Ombudsman in 2013, resulting in its termination).

The redrafted law added more clarifying provisions and contains:

- 1. necessary regulations on definitions of key concepts, burden of proof, forms of discrimination, independence of the Equality Council, provision of protected features in labor relations and educational processes, mechanisms for prevention and countering discrimination;**
- 2. It is free of discriminatory exclusions which would reflect the exceptional role of the Armenian Apostolic Church, and consider the de-facto discriminatory in-family practices as not covered by the law.** Apparently, though, the old version prepared by the working group stayed as such and the hope is that the MoJ will be persuaded to incorporate regulations from the second Draft (the CSOs' refined version) into the old one, to the extent possible.

From **May 2016** till **September 2017**, no significant changes in Armenia's anti-discrimination agenda have taken place, apart from drafting and adopting the new National Human Rights Action Plan (HRAP) 2017-2019 by the MoJ, which has been shared through the official website on circulating draft laws, following informal consultations with civil society (including EPF) and other governmental and international agencies, calling for civil society and all interested parties to submit recommendations on the draft.

EPF has submitted a package of recommendations primarily referring to anti-discrimination legislation and redrafting the Armenian textbooks in line with human rights friendly, tolerant approaches. The HRAP was adopted on May 4, 2017 and entered into force on May 21, 2017. Point 77 of the HRAP envisages “Establishing legislative mechanisms for ensuring equality provided by the Constitution of Armenia,” which the MoJ, in response to EPFs enquiry, interpreted as meaning to adopt a separate anti-discrimination law. EPF deems it worrying that, despite the MoJ's interpretation, the HRAP does not specifically mention adoption of a separate legislation on non-discrimination. Moreover, since the HRAP doesn't contain the *performance indicators* essential for effective implementation and monitoring of human rights action plans, it is impossible to predict the standard that would be set for drafting the anti-discrimination law by the Government.

The fourth quarter of 2017 has been set as the deadline for the adoption of the anti-discrimination law by the HRAP, however it appears from non-formal discussions with the representatives of MoJ that the Law is expected to be adopted in 2018.

Nonetheless, bearing in mind that societal and media discrimination remain the most prominent and difficult to combat forms of discrimination in Armenia, as well as public mistrust and deepening disappointment in the Government, the expected resistance to the process of adopting the draft law should not be overlooked. Given the present situation of political instability in Armenia, the MoJ and the government are becoming very receptive to negative attitudes with respect to the anti-discrimination agenda. In particular, there is a medium-to-high

risk that the conservative, religious and marginal organizations will campaign against the anti-discrimination legislation; therefore, a carefully crafted public campaign with the involvement of CSOs, the government, media and international community needs to be organized in order to mitigate these risks.

RECOMMENDATIONS TO THE GOVERNMENT OF ARMENIA

With the engagement of civil society, ensure the adoption of the Law of the Republic of Armenia “On Equality” guaranteeing the protection and promotion of equal rights and freedoms and equal opportunities for every person and citizen. The anti-discrimination law should, inter alia, prescribe:

- the definitions of key concepts and forms of discrimination.
- a wider scope of protected attributes directly mentioning sexual orientation and gender identity among them, which is due to the necessity of setting forth additional safeguards against discrimination for the most vulnerable groups of society.
- a separate chapter on the mechanisms for prevention and countering of discrimination, which defines in detail the obligations and rights of the National Assembly, the Human Rights Defender, Government, State and local self-government bodies, non-governmental organizations, natural and legal persons.
- the formation of the Equality Council as a collegial body adjunct to the Defender with minimum interference by the Defender in its activities (particularly, within the context of its functions, election of its members, termination of powers, approving its Rules of Procedure and the Code of Conduct for its members) for the purpose of providing the objectivity, impartiality and independence of the Equality Council.
- the competence of the Equality Council, non-governmental organizations and other associations carrying out activities prescribed by law to bring an actio popularis claim before the court in discrimination cases, taking into account decision No. 906 of the Constitutional Court of the Republic of Armenia dated September 7, 2010 explicitly acknowledging the right of the aforementioned organizations whose statutory purposes cover protection from discrimination to bring an actio popularis claim before the court.
- a provision regarding the burden of proof in compliance with European Union Council Directive 2000/43.

RECOMMENDATIONS TO CSOS, THE GOVERNMENT OF ARMENIA, INTERNATIONAL COMMUNITY

- accompany the process of the adoption of the anti-discrimination law with a coherent, meaningful, carefully crafted and well-coordinated public campaign, which should be done in a manner of delivering pro-active messages to society before conservative, religious and marginal organizations start aggressive campaigning against the anti-discrimination legislation. It should be borne in mind that the majority of governmental offices, MPs and other decision makers are oftentimes ignorant of what discrimination is, hence they should be well prepared through informal explanatory discussions facilitated by the MoJ before the draft law reaches them for consideration.
- the nationwide media, having a strong influence on the public, communities, community-based CSOs and local authorities should also be the targets of the campaign.
- undertake special trainings and other capacity building measures for judges and lawyers following or in parallel with the adoption of the anti-discrimination legislation; conduct intensive work with CSOs, educational institutions and society in general.

2. Hate speech and hate crime

SITUATION AND RECENT DEVELOPMENTS

According to research² on hate crimes conducted by the Collaboration for Democracy Centre in 2016, no comprehensive report on hate crimes has been ever prepared by the Armenian government, except for the research or statements produced by some human rights organizations dealing with specific spheres, and reports sent to international organizations related to concrete cases. Despite the government's claims on the insignificant number of hate crimes in Armenia, information provided by human rights organizations, the mass media, and government bodies, if studied thoroughly, indicates the occurrence of elements of hate crimes. According to these sources, hate crimes in Armenia are **predominantly committed against people based on their ethnic origin, religious belief, sexual orientation and gender identity**. Moreover, the Criminal Code of Armenia only covers hate crimes committed with motives of national, racial or religious hate or religious fanaticism, leaving out the sexual orientation and gender identity grounds. Hate speech also widely occurs in mass media and social networks, lacking adequate legislative regulation. Point 26 of the Armenian Human Rights Action Plan 2017-2019 envisages discussions of possible models of hate speech criminalization which are due to be accomplished by the end of 2019.

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- introduce the definition of “hate speech” and define liability for hate speech against persons with protected features, including on the ground of sexual orientation and gender identity.
- amend the existing criminal legislation on hate crimes to consider the committal of a crime on the basis of sexual orientation and/or gender identity of a person as a circumstance aggravating the guilt.

3. Tolerance and education

Point 81 of the National Human Rights Action Plan envisages the revision of the content of school educational materials based on the Toledo Guiding Principles, UNESCO's Convention against Discrimination, the UN Convention on the Rights of Persons with Disabilities, aiming to eliminate the dissemination of stereotypes leading to discrimination and intolerance. However, the point is excessively broad and no performance indicators are introduced to increase the effectiveness of its implementation and monitoring.

At the same time, the field³ study by EPF for the Council of Europe, which was conducted through focus group discussions with children, clearly indicates that the issue of compulsory teaching of history of the Armenian Apostolic Church in schools is one of the main concerns of both children and their parents. History of the Armenian Church has been taught as a subject in public schools (5-10 grades) since 2002.

The Law on relations between the Republic of Armenia and the Holy Armenian Apostolic Church was adopted in 2007 providing several privileges to the latter, such as budgetary support, the right to take part in drafting school syllabus for the Church history course and in implementation of school curricula in educational institutions. The class is mandatory; students are not permitted to opt out of the course, and no alternatives are available to students

2. <http://religions.am/en/article/hate-crimes-in-the-republic-of-armenia/>

3. <http://www.epfarmenia.am/en/current-programs/human-rights/rights-of-children-from-religious-and-ethnic-minority-groups-in-armenia-field-study/>

of other religious groups. In addition, the law grants the Armenian Apostolic Church the right to organize voluntary extracurricular religious classes in state educational institutions. Other religious groups may provide religious instruction to members in their own facilities.

EPF has collected striking evidence of intolerance and discrimination towards the “others” over the last years while working on religious tolerance within the projects funded by the Government of the Netherlands. In order to understand **the roots of tolerance/intolerance** which are closely interlinked with discrimination and structural violence, EPF is trying to look deeper into the Armenian culture, literature, customs, traditions, folklore and arts.

EPF will soon publish a print and electronic book, consisting of 8 studies on manifestations of tolerance and intolerance in Armenian literature. One of the research pieces focuses on the themes of tolerance and intolerance in 9th, 10th, and 11th grade textbooks on Armenian literature, history of the Armenian nation and history of the Armenian Church. Research revealed that school textbooks in Armenia often display ethno-national, religious, gender, and social-based intolerance. The ethno-nationalism prevails in Armenian textbooks, being closely intertwined with religious and gender intolerance. Particularly, in the textbooks one can frequently encounter the uniqueness of the Armenian nation and the representation of its superior character, which is also demonstrated as stemming from the Armenian apostolic direction of Christianity as the only true way, as well as the idea of the Armenian woman’s decency based on her nationality. This phenomenon is particularly striking in the context of comparing two similar phenomena (Armenian-foreigner, Christian-Muslim, etc.).

Due to the fact that Armenian high school textbooks consist of the authors’ comments and reviews, the subjective approaches of the textbook authors are displayed as the only acceptable interpretations, which directly contributes to the formation of respective social constructs, containing at times intolerant approaches towards a number of phenomena, groups and other issues.

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- before being officially approved, school textbooks should undergo scrutiny by human rights experts in order to exclude the presence of elements leading to intolerance or discrimination.
- study the perceptions of some or all school textbooks by schoolchildren to be able to identify the impact of apparently intolerant approaches the textbooks contain on schoolchildren.
- eliminate the subjective interpretation of literary pieces by the authors of the textbooks, particularly, on Armenian literature, to enable children to form and express their own views regarding Armenian literature and develop critical thinking skills.
- revise the content of the subject of History of the Armenian Church, reflecting the coverage of historical events and excluding religious preaching.
- eliminate the instances of religious preaching in schools by the AAC as well as anti-preaching against other religions and beliefs, which lead to intolerant and discriminatory practices, through the intervention of authorized bodies (where necessary) guaranteeing that the education on religion is provided in line with the objective, impartial and democratic principles of pluralism.
- eliminate prayer, crossing oneself and other religious ceremonies while teaching the history of the Armenian Church at schools.