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ОО ФОНД ПРОТИВ ПРАВОВОГО ПРОИЗВОЛ
FOUNDATION AGAINST VIOLATION OF LAW NGO

15.06.2012

To: **Margaret Sekaggya**
Special Rapporteur on the situation of human rights defenders

Dear Ms. Sekaggya,

By this letter we present the answers to Your questions raised on June 2, 2012 on States in meeting their obligations under the Declaration on Human Rights Defenders. The information contained in the answers consist of our own research and the experience of the organization.

1	<p>a/ the article 14 of the Constitution proclaims the human rights and fundamental freedoms as a supreme value. Article 14.1 proclaims equality of all before the law without discrimination. Article 15 stipulates the right to liberty and security for everyone. Other articles contain the recognized rights enshrined in the Universal Declaration on Human Rights and Fundamental Freedoms /hereinafter Declaration/.</p> <ul style="list-style-type: none">- Human rights field is free for anyone who would like to engage in such activities. The individual can engage in such activity individually or through creation of NGOs by association with others.- Outside the NGOs as a state institution acts the Human Rights Defender based on the law on "Human Rights Defender".- Based on the Law on Penitentiary within the Ministry of Justice is created a Prison Monitoring Public Council as rights protecting organization, the similar council is created in the police system - Public Monitoring Group at the Detention Facilities of the Police of the Republic of Armenia, within the Ministry of Defense is created a Public Monitoring Council of army /FAVL is member to the Prison Monitoring Group, the OPCAT with the HR Defender office and the Public Monitoring Group of Army/.- The regulations governing the activities of these public monitoring groups enable the non-governmental organizations to enter the places of detention and arrest, to study the storage conditions, to hear complaints and to present those to the corresponding institutions demanding implementation of necessary measures.- The Law on Penitentiaries does not prohibit an access of other rights defending organizations and media representatives to the places of detention and to meet the persons kept in those facilities. The internal regulations of such facilities define the terms and conditions of entrance permit. <p>There is no specific legislation in Armenia directed at the protection of activities and work of the human rights defenders. However, there is a number of legislation which contains provisions of protection of human rights defenders, such as</p> <ul style="list-style-type: none">Constitution of Armenia /chapter 1 and 2/Law on non-governmental organizationsLaw on conducting meetings, assemblies, rallies and demonstrationsLaw on Human Rights Defender – Ombudsman of ArmeniaCriminal Law /which applies general principles for committing crime/ <p>b/ Prevention of the lawful activities of a journalist, violence against him, illegally restricting the freedom of speech, individual cases of discrimination in the Criminal Code are among the crimes and such restrictions applied towards the HR defenders are punishable by the principles provided in the Criminal code.</p> <p>Among the crime is unlawful deprivation of man from freedom, illegal conviction. Therefore, the pursuance of the HR defender for implementation of his/her lawful activities can be qualified as crime.</p> <p>c/ These laws and regulations are in conformity with international human rights standards. Article 6 of the Constitution of Armenia declares that international treaties shall come into force in the country only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia.</p> <p>There is a number of treaties ratified and signed by Armenia, which are mostly respected by the country.</p>
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2	<p>a/ National security, the protection of public order and morality, as well as counterterrorism laws do not contain such provisions, which can be used for illegal limitation of the rights of HR defenders. The mentioned laws are in conformity as long as they do not contain the norms illegally limiting the rights, human rights; freedom of speech is envisaged by the Constitution.</p> <p>Let us mention that there is a range of national laws and international conventions ratified by Armenia connected to the public safety, counter-terrorism, money laundering etc. There are no specific measures taken to restrict the scope of activities of the human rights defenders, however, there are some restrictions, which apply by the law enforcement bodies given them authorities by law to take measures during investigation on national and international level, these are the once that are regulating the national security and public safety. For example, during interrogation of the suspect/accused, the later are not deprived of presence of their own attorneys or visitations conducted by representatives of public monitoring groups /which as mentioned are from NGOs/. The later are not deprived by <u>law</u> at any sort to take necessary actions directed at protection of their beneficiaries, however, the reality shows that sometimes the state authorities abuse their power of authority by not letting the attorneys to see their beneficiaries, not letting them to get acquainted with the case materials.</p> <p>b/ For example the law on the National Security Bodies of RA contains a provision, which envisages that “The citizens related to the national and professional secret within the activities of the national security bodies are responsible for dissemination of secret information according to the RA legislation”.</p>
3	<p>a/ Article 135 and 136 of the Criminal Code of the RA provided criminal responsibility for defamation and insult.</p> <p>These articles could have been used for illegal restriction of freedom of expression of his/her opinion; the expressed opinion could be arbitrarily qualified as defamation or insult and bring to criminal liability. On 15.05.2010 by the law adopted by the National Assembly those articles have been eliminated. Currently defamation and insult bring to civil liability.</p> <p>b/ The procedural guarantees of justice are general, there are no specific guarantees envisaged for HR defenders.</p>
4	<p>a/ The state registration of the non-governmental organizations is regulated by the law “On Non-governmental Organizations” and the law “On State Registration of Legal Persons”.</p> <p>The law “On Non-governmental Organizations” provides for finding of non-governmental organization, approval of the charter, membership, the issues connected to the activities of the NGOs, funding, as well as the documents necessary for state registration.</p> <p>The law “On State Registration of Legal Persons” provides for the procedures of state registration, on the basis of registration denial, the documents provided after registration.</p> <p>b/ The procedure of the registration of NGOs is simplified, the registration can be denied only in cases, when the presented documents do not correspond to the law. Consequently, there are no artificial obstacles to form an NGO and we cannot say that these laws limit the freedom of association by creation of such unions and the rights to membership in those unions. Therefore, those laws correspond to the RoA international commitments.</p>
5.	<p>The type and the area of HR protection is chosen by the organization or individual, which is governed by the law on non-governmental organization. The HR activists are not obliged to be registered to implement their activities.</p>
6.	<p>The issue of receipt of information is regulated by the law “On Freedom of Information”, by the law “On State and official secret”, by law “On Banking secrecy”.</p> <p>The list of state secret information is approved by the Government of Armenia, the Government also approves the procedure of classification of secrets to the list of official once.</p> <p>The articles 306 and 307 of the Criminal Code provide for criminal liability for dissemination of state secrets, for violation of the procedures of maintenance of such secret documents.</p> <p>As the subject of such crimes may be eligible those subjects who has a right to become acquainted with the state secret information, dealing with such information due to a service and those who bear responsibility for handling of those documents.</p> <p>Therefore, if the HR defender does not have a status of such subject, thus his/she is not subject to criminal liability.</p> <p>There is another issue with the laws on “Registration of civil status”, “On Notary”, “On state registration of property rights”, as well as a range of other laws, which have unnecessarily expanded the list of the</p>

	personal information, which can be provided only through consent of the right holder. This limits the freedom of information of not only of HR defenders, but also of any person.
7.	<p>a/ As it has been mentioned above the liability for defamation and insult envisaged before by articles 135 and 136 have been eliminated and thus the issue solved.</p> <p>Instead in the Civil Code has been added an article 1087.1, which provides for material liability for caused damage to honor, dignity or business reputation through insult or defamation.</p> <p>Decriminalization of the act has been aimed to guarantee the right to have certain beliefs, opinions and to have freedom of expression on the later.</p> <p>b/ There is no law on censorship in Armenia. A court dispute can be initiated by person whose rights were violated by publication. In article 1087.1 of the Civil Code are defined those standards, in case of violation of which the publisher can bear certain responsibilities. In this relation the law corresponds to international standards.</p> <p>The fair solution of such disputes only clash with the problem of the principle of fair trial.</p>
8.	<p>The person or organization executing HR protection has an opportunity to choose the assistance in restoration of violated rights of person through the laws corresponding to his/her area of protection.</p> <p>According to the Civil Procedure and Administrative Code the HR defender, except for Human Rights Defender, is not competent to participate in litigation as a side in protection of the beneficiary.</p> <p>As it was mentioned above, except the law on Human Rights Defender there are no separate specific legislation covering the rights protecting organizations. Their work is governed by the law "On Non-governmental Organizations".</p> <p>During the elections the organizations and persons implementing the observer mission are also equalized to the HR defenders, the area of which is governed by the Electoral Code.</p>

Sincerely Yours.

Mikayel Aramyan

President of NGO

Foundation Against Violation of Law (FAVL) is a non-governmental non-profit organization working in the human rights area. It was founded in 1991 and registered by the Ministry of Justice in April 1992. The mission of FAVL is assistance to spreading and implementation of international humanitarian law, human rights and fundamental freedoms, social-economic and civic development of remote communities, establishment of democratic traditions and values in Armenia.