

REPUBLIC OF ARMENIA

Communication sent on 3 May 2019 by the Working Group on the issue of human rights and transnational corporations and other business enterprises

In response to the letter of May 3, 2019 the Office of the Human Rights Defender of the Republic of Armenia would like to communicate the following:

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses

- 1. Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?**

The Human Rights Defender of Armenia has been re-accredited with the highest «A» status by the recommendation of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institution. It confirms the Human Rights Defender's full compliance with the United Nations Principles relating to the Status of National Human Rights Institutions (Paris Principles).

The NHRI has a mission to balance conflicting fundamental rights. The NHRIs are vested with a broad mandate to protect and promote human rights throughout the country, including material and personal scope. Therefore, NHRIs are entitled to protect human rights against business activities from one side, and NHRIs are not deprived of rights to deal with the case of protecting the rights of legal entities from another side (such as rights to good administration, right to property, etc.). In case of Armenia, the Constitution provides absolute rights for everyone, including legal entities, to benefit from the Human Rights Defender's Assistance (ombudsman). In such cases, there is an unavoidable necessity to develop and implement a mechanism to balance various interests with the aim of preventing conflict between various interests.

According to the new Constitutional Law on the Human Rights Defender, adopted after the 2015 Constitutional amendments, the Human Rights Defender was endowed with a new mandate enabling the Defender, inter alia, to consider issues on violations of human rights and freedoms by organizations operating in the field of public service. Attaching great importance to the formation of an equal, fair and transparent business environment, the Human Rights Defender of Armenia established a Unit on Business and Human Rights.

The Business and Human Rights Unit deals with the protection of rights in the field of business, including handling complaints on business-related human rights abuses

- 2. What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?**

The Human Rights Defender of Armenia contributes to the protection of the rights of the business sector from state bodies by providing legal advice to citizens and entrepreneurs on their rights and freedoms, considering complaints of both entrepreneurs and individuals abuses, promoting or providing education and training for legal professionals, developing guidance materials for businesses on how they can be the mechanisms available for the protection of their rights, etc.

3. Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.

The Human Rights Defender of Armenia has a mandate to investigate violations of human rights and freedoms by public service organizations, if there is information on mass violations of human rights or freedoms, or whether it has a public interest, or is connected with the need to protect the interests of persons who cannot exercise their rights on their own and legal remedies for the protection of freedoms.

Individual cases of alleged human rights abuse by businesses are being transferred to appeal to the consideration of another body. Then, it periodically inquires about the course of the discussion of the matter within a reasonable period of time.

The Human Rights Defender of Armenia doesn't have a mandate of adjudication or mediation of cases of alleged human rights abuses by businesses actors.

As a result of a complaint or a discussion procedure commenced on its own initiative, the Defender shall take one of the following decisions:

- If a violation of human rights or freedoms has been discovered by the state or local self-governing body, their official or organization during the consideration of the complaint;
- Absence of violation of human rights or freedoms, if no violation of human rights or freedoms has been found during the discussion by the state or local self-governing body or its official or organization;
- Filing a lawsuit to the court on declaring the state or local self-governing body or its official infringing human rights or freedoms invalid, in whole or in part, of the normative legal acts contradicting the law and other legal acts, if the state or local self-governing body or its official does not recognize in full or in part invalid his or her respective legal act;
- Cessation of the consideration of the complaint, if during the consideration of the complaint the grounds for not discussing the complaint or termination of the discussion were provided by this Law.

4. Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalized groups? If yes, what measures have been taken in this regard?

The Human Rights Defender of Armenia considers violations of human rights and freedoms enshrined in the Constitution and the laws of the Republic of Armenia by state and local self-government bodies and officials, as well as by organizations exercising the powers delegated

thereto by state and local self-government bodies, and issues concerning violations of human rights and freedoms by organizations operating in the field of public service not only in case of a complaint, also by his own initiative.

The Defender gives special attention to the protection of vulnerable or marginalized groups. The Defenders hot-line service works 24/7 and provides legal consulting to citizens. In case of a necessity,

Telephone numbers, email addresses, social media (Facebook, Instagram, Twitter) and web forms for contacting the Defender and Defender's Staff are also available, whether with a human rights complaint or for any other purpose. Relevant information is available on the Defender's website (www.ombuds.am; www.pashtpan.am). The website itself is available in both English and Armenian, with an easy toggling feature for viewing any given page in either language (a new website is being developed that will be even more accessible for persons with disabilities).

The Defender prepared an application to the Constitutional court of the Republic of Armenia about the protection of the right to water. The application is about forbidding the company of disconnection of water supply in case of non-payment by vulnerable or marginalized users.

5. What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?

The Human Rights Defender of Armenia gives special attention to gender-sensitive and gender-responsive measures.

The Universal Declaration of Human Rights, along with all of the other international human rights instruments, provides that sex and gender discrimination must be identified and redressed to ensure that everyone can equally enjoy human rights. The UN treaty bodies have used interpretive, general, comments to advance understandings of gendered inequalities and the steps that must be taken to identify and remedy these within the context of international human rights obligations.

Human rights obligations to prevent and eliminate gender-based discrimination require that all duty bearers develop systems, such as due diligence processes, to analyze, prevent, and respond to gendered inequalities. All forms of discrimination against women in the enjoyment of all human rights are gender-specific violations.

The Defender takes gender-sensitive and gender-responsive measures through monitoring, raising awareness about rights and remedial mechanisms, promoting or providing education, and training for legal professionals, developing guidance material etc.

6. What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?

The Office of the Human Rights Defender of Armenia provides legal advice to citizens on their rights and freedoms, as well as on legal measures and procedures for the effective protection of those rights and freedoms, within its jurisdiction conducts the reception of citizens, ensures the procedure of examining and handling complaints of human rights abuses in the field of business, requires information, explanations and supporting documents from competent state and local self-government bodies and their officials to ensure the procedure of handling complaints, reveals and analyzes legislative problems and gaps in the domestic legal acts in the sphere of protection of business rights and, if necessary, prepares letters and recommendations addressed to the relevant state bodies, studies the international experience in the field of protection of business rights, ECHR precedent decisions and other international documents, participates in meetings and discussions with NGOs and international organizations, representatives of state bodies, international experts and other persons, participates in the development of public reports through analysis of the results of the visits and studies and identification of systemic problems, within its competence cooperates with state and local self-government bodies and international organizations. processes the applications to be submitted to the Constitutional Court of the Republic of Armenia.

One of the key directions of the Defender's activities is to contribute to changes of human rights system through education and trainings. The Constitutional Law stipulates the functions of the Defender to organise trainings for the HRDO, as well as for beneficiary bodies and organisations on issues related to human rights and freedoms (Article 29). In order to fulfil the above mentioned mandate, the Defender has established the Human Rights Research and Education Centre within the HRDO. Based on this function reports and recommendation of the Defender are used by special education institutions and universities to compose their respective syllabi and curricula (Justice Academy, School of Advocates, Yerevan State University, etc.).

7. How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

According to the Constitutional Law on the Human Rights Defender of Armenia, the complaint shall not be considered and the discussion commenced on the complaint shall be terminated if the complaint has been filed to the court by the interested party on the same grounds and subject matter as the complaint or the final judicial act of the court on the same grounds and in the same subject.

During the investigation or consideration of a complaint, the Defender is authorized to apply to the bodies responsible for summarizing the judicial practice and to obtain advisory clarifications on legal issues arising in judicial practice, as well as suggestions on improving the judicial practice. The Defender shall not be entitled to intervene in the proceedings or to exercise the powers of the judges in a particular case.

8. Can your NHRI deal with alleged business related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and

exchange of information or a cooperation arrangement with counterparts in other States)?

Projects with international organizations have special significance in the area of international cooperation.

The Human Rights Defender of Armenia has well-established cooperation with international human rights organizations (USAID, UN agencies, CoE, etc.), national human rights institutions of other countries, as well as partner embassies and diplomatic representatives. Within the established cooperation mutual study visits, exchange of information and expertise as well as other capacity building activities are initiated. One of such examples is the upcoming international conference on the protection of the business and human rights with the participation of the Public Defender's Office of Georgia, Bulgarian Ombudsman's Office and other international partners in July.

Moreover, the Defender's institution cooperates with its counterparts within the Eurasian Economic Union aimed at the full realization of human rights through joint efforts.

9. Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for abuses?

The Human Rights Defender's institution attaches great importance to the protection and promotion of business-related human rights.

The aim of the Defender is to contribute to the protection of the rights of the business sector from state bodies, including tax and customs improper administration and implementation of business-related human rights, across the country through research, monitoring etc. It also includes educational activities, with a view to improving respect for human rights and sustainable development principles in business context.

The Defender also promotes the creation of healthy environment for business, through the establishment of reliable basic conditions for local enterprises.

States must also ensure that both entrepreneurs and persons whose rights are adversely affected have access to state and, where necessary, non-state grievance mechanisms and redress. Enterprises must play an active part in state instruments and should also play an active part in non-state grievance mechanisms.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

Armenia does not have a National Action Plan on Business and Human Rights. The Human Rights Defender of Armenia developed a draft proposal of the implementation of a National Action Plan on Business and Human Rights, which will be introduced to the Government of Armenia.

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?

The most common cases are the following: complaints regarding protracted administrative procedures, requests of unwarranted fees, failure to receive certain information, concerns on the day-to-day relation with the public administration, etc.

States must ensure that both entrepreneurs and persons whose rights are adversely affected have access to state and, where necessary, non-state grievance mechanisms and redress. Enterprises must play an active part in state instruments and should also play an active part in non-state grievance mechanisms.

2. What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?

The Protection, improvement, and rehabilitation of the environment are one of the objectives of the state.

One of the reasons for pollution of the atmosphere, subsoil, water, and soil is waste. The dangers of which have been repeatedly voiced by the Human Rights Defender's annual reports and communiques. The impacts of heavy metals, toxic substances- contained in tailing dumps, and their accumulation in reservoirs, rivers, are particularly negative for the environment. Additionally, the issue of maximum utilization of waste, reduction of their generation and environmentally safe disposal (destruction) is still actual and unsolved.

For many years, the Human Rights Defender has voiced the issue of promoting proper public awareness on it, and ensuring proper involvement of society in the solution of environmental issues. It is mentioned in the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention. In particular, development of procedures for ensuring public participation at all decision-making levels, through undertaking proper means aimed at ensuring accessibility of effective justice, as a suggestion, as well as keeping both national and conventional provision ensuring public participation in different stages of decision making process as an issue, are particularly highlighted by the Human Rights Defender.

Problems with the overuse of water resources and issues with river ecosystems, the issue of conducting environmental inspections at "Teghut" CJSC, the problem of the Amulsar Gold Project and the problems arising from it have always been included in the Annual Reports and Communiques of the Human Rights Defender of the Republic of Armenia.

3. How has your NHRI dealt with complaints involving multiple victims?

During the investigation of complaints, the Defender is authorized to freely visit a competent state or local self-governing body or organization, request and receive from the competent state or local self-governing body or its official the necessary materials, documents, information or clarifications as well as assistance during the visit to these institutions by the Defender's assessment of the complaint or the matter under his / her own initiative, clarifications on matters arising during the discussion of the competent state or local self-governing body or its official, except for the courts and judges, In the cases of alleged violations of human rights and freedoms by organizations referred to in Article 15 (1) of this Law, such organizations shall be required to request and receive from the competent persons representing them all necessary information, explanations, materials or documents concerning the complaint or question etc.

4. What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?

Complaints were forwarded to the Defender in regard to the following: some individuals appealed to water and energy suppliers concerning their decision to check the operation of commercial metering devices (gas or water meters) in residential buildings: as a result of this, the commercial metering devices were replaced. Subsequently, the gas supply company notified that, according to the expert opinion of the metrological authority, somebody had interfered with commercial metering devices, which was why the company had to recalculate the gas costs. Residents expressed their disagreement concerning such an outcome. Also, the Defender received complaints about disconnection of water and energy supply in case of non-payment etc.

To efficiently tackle the issues voiced in complaints forwarded to the Human Rights Defender's staff, close cooperation has been initiated between the Commission regulating the Public Services and the Defender's Office of the Republic of Armenia: this has resulted in creation of a working group that has already discussed issues related to the water supply, water tariff increase, gas supply, energy supply, applicants' disagreement over the results of the recalculation of commercial metering devices' data. On account of the aforementioned collaboration, residents' problems have been positively resolved in the majority of cases.

III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

- 1. Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?**

Following the Defender's intervention, the supply of energy, gas, and water has been restored in the flats of those who appealed to the Defender. Apart from that, the gas supply company has replaced a gas pipe at their own expense and has placed a gas detector in a resident's flat, where they previously would not do that.

- 2. Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?**

The Human Rights Defender is in close cooperation with representatives of the civil society. One of the main directions of the Defender's work is to promote the work of non-governmental organizations and to make their activities visible in state bodies. Highlighting this specificity of the activities, an extensive work has been carried out with non-governmental organizations working in various areas such as protection of women, people with disabilities, children, prevention of torture, protection of human rights in the armed forces, and other areas.

For example, within the framework of the project implemented with the American Bar Association Rule of Law Initiative (funded by the USAID) a number of coordination meetings (themes of discussions: Women Rights Issues, Rights of People with Disabilities, Strengthening the Role of Women in Public and Economic Life, Domestic Violence Prevention in Armenia, Protection of Socio-Economic Rights) took place between the HRDO, NGOs and youth leadership. The meetings aimed at fostering the coordination and collaboration between the Defender's Office and the NGOs, create a platform to identify and brainstorm together how to resolve human rights challenges.

Another example of good cooperation with NGOs is within a pilot project that the HRDO has initiated. This includes awareness raising and capacity building activities for women in all regions of the country. The project also promotes creation of women resource centers in different regions of Armenia, which tend to become members of WINNET Armenia. Besides, the new created regional networks and resource centers provide economic and labour opportunities for women in different regions.

- 3. Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?**

The Defender has a capacity to file amicus curiae briefs with the Constitutional Court concerning the issues of constitutionality of current legislation with human rights perspective.

Furthermore, according to the Constitutional Law, the Defender also has a mandate to apply to the Constitutional Court of the Republic of Armenia in regard to compliance of laws, decisions of the National Assembly, orders and instructions of the President, decisions of the Government and the Prime-Minister, by-laws with Chapter 2 of the Constitution (Basic Human Rights and Freedoms of the Human Being and the Citizen).

Last but not least, within the constitutional function to facilitate the improvement of national legislation, currently the practice of drafting laws by own initiative is being widely exercised. The HRDO is in a position to summarize the legislative problems revealed during the monitoring activities and consideration of complaints.

There has been a number of draft legal acts and drafts substantially amending various laws of high importance prepared by the Office of Human Rights Defender of Armenia.

As a result of studying the Laws “On Advertising”, “On Lotteries”, “On Prized Games, Internet Prized Games and Casinos”, “On Television and Radio” and other related laws of the Republic of Armenia, as well as their implementation practices, it was revealed that the detailed legal regulation of advertisements of the internet prized games and lotteries (betting pools). Meanwhile, this legal gap can be a cause for violation of rights of persons, including juveniles. Hence, the Defender's Office developed a draft, proposing to prohibit in the advertising of lotteries and internet prized games: addressing juveniles in any form; use of audio-visual and any other forms of human images; creating an impression that the participation in the game ensures and opportunity of regular income (profit) or is an alternative to labour; creating an impression that the income (profit) is guaranteed; create an impression, that achievement of social, professional, sport or personal success through the game is possible; criticize for not participating in the lottery or internet prize game. It was also suggested that the advertising of lotteries and Internet prized games should contain warning information about the inadmissibility of playing in drunk or depressed state.

The Constitutional Court of Armenia has accepted the Defenders application on challenging the compliance of the Tax Code with the Constitution. The application challenges provisions of the Tax Code providing fixed fines for violating rules of using cash control machines and do not provide any possibility to adjust the fines to the facts and individual circumstances of violations. The fines are often disproportionately high.

Also the Defender prepared an application to the Constitutional court of the Republic of Armenia about protection of the right to water. The application is about forbidding the company of disconnection of water supply in case of non-payment by vulnerable or marginalized users.

the Human Rights Defender developed guides on the rights of people in the sphere of gas and water supply. This activity is based on the Human Rights Defender's new functions in the field of protection of business and consumers' rights. The purpose of the guide is awareness raising

and human rights education aimed at preventing human rights violations in the future. The guide is based on the complaints addressed to the Human Rights Defender and the results of the monitoring.

Also, the Human Rights Defender released short awareness raising videos concerned business-related human rights.

As a result of the Human Rights Defender's efforts the government of the Republic of Armenia amended the Tax Code, as a result income tax was exempted of real estate purchase and sale transactions made between private individuals.

4. What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

After the 2015 Constitutional amendments, the Human Rights Defender was endowed with a new mandate, which covers all business-related human rights issues.

The Human Rights Defender of Armenia can be involved not only in the protection of human rights in the context of business activities but also in the protection of entrepreneurs rights from unduly custom and tax policy.

The most common cases, complaints, regarding protracted administrative procedures, requests of unwarranted fees, failure to receive certain information, concern the day-to-day relation with the public administration, etc.

5. How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?

The institution of the Human Rights Defender in Armenia has been in the process of continuous formation and development since the day of its inception. Such a development can only be achieved through consistent work: work that is also called to ensure institutional development and public trust.

Nevertheless, human rights protection is full of challenges that are constantly changing and require new approaches to overcome each of them. At the same time, the protection of rights can be effective only if there is a clear and specific system of bodies and organizations dealing with the relevant issues inside the state. This, in its own turn, implies clear separation of the functions of certain bodies or organizations, conditioned by their roles and issues. Each of them must have a legal status, which is specific to that particular body or organization and does not repeat those of the others. The high mission of protecting human rights and freedoms, being one of the key areas of each country, is essential both for the development of the country and for the protection of every person. According to the newly formed Pan-European principles, the states themselves should take the possible steps so that every person can feel fully protected in his country. Therefore, the Ombudsman's institution is given a special importance as an independent actor of the system of the protection of rights and freedoms. Nevertheless, the

Human Rights Defender's institution should be perceived as an entity, which adds on to the system of state institutions and, being above any ministerial interests, is called to promote the strengthening of the whole mechanism of protection of rights in the country, while actively working with civil society and international partners. A permanent connection is established with the United Nations High Commissioner for Human Rights, the United Nations Development Program, the United Nations Children's Fund and other institutions. As a new direction of work, cooperation with the European Court of Human Rights is important. The legal criteria developed by the European Court are a cornerstone for the development of the country's legal system. Therefore, one of the Human Rights Defender's primary tasks is to promote the introduction of these criteria in the country using all legal instruments provided by law. Active work has been commenced with the Committee of Ministers of the Council of Europe in connection with the participation in execution of the decisions of the European Court of Justice. Projects with international organizations have special significance in the area of international cooperation.