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## EURASIA PARTNERSHIP FOUNDATION'S (EPF) POLICY RECOMMENDATIONS IN THE SPHERE OF TOLERANCE AND NON-DISCRIMINATION

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Working sessions 8 and 9*

### I. EPF: BACKGROUND INFORMATION

EPF became a local foundation in 2007. EPF is the successor of Eurasia Foundation, Washington DC. Its mission statement is 'to empower people to effect change for social justice and economic prosperity through hands-on programs, helping them to improve their communities and their own lives'. Through 20 years of experience in program implementation, grant making and developing the Armenian civil society EPF has nurtured a unique and strong program and grant-making portfolio, which covers several areas of Armenia's development needs. EPF can be described as a **think and do think**, which works the full circle from research to policy advice and implementation. EPF develops and implements strategies, unites networks and consortia, works on civil society capacity building, policy research and advocacy, creates alternative content, implements grant-making, organizes peace-building processes, as well as supports the state in development of the state policy on human rights. EPF's guiding vision is a South Caucasus that is peaceful, conflict-free and cooperative with civically engaged citizens, socially responsible businesses, and sustainable, accountable and effective third sector organizations.

**Paradigm of Transformative Change** lies at the core of Eurasia Partnership Foundation's (EPF) Human Rights Program. EPF works towards changing the structural causes of intolerance, violence and discrimination, as well as the attitudes and behavior of actors. Critical thinking methodology – deconstructing stereotypes, opening up tabooed discussions, changing imposed narratives and perceptions, challenging the notion of 'the other' – is a key for addressing issues of minority rights, rights of a child, non-discrimination, areas which are at the heart of EPF's Human Rights programming.

EPF is actively involved in the process of shaping the human rights policies of Armenia. Promotion of the right to **freedom of religion or belief (FoRB)** and **non-discrimination** are the main areas of EPF's programmatic intervention. EPF is a key civil society organization involved in development of the **new draft law on non-discrimination** (the Law of the Republic of Armenia "On Equality") together with the Ministry of Justice of Armenia and facilitating civil society dialogue with the government around adoption of the law. The adoption of a stand-alone, comprehensive law is one of the pre-conditions of the EU Human Rights Direct Support to Armenia. The draft is submitted by EPF to the Ministry of Justice



in May, 2016. According to the 2017-2019 Human Rights Action Plan the deadline for the adoption by the Parliament is the end of 2017.

Government of the Netherlands is the main donor of the EPF's human rights program. Support is also provided by the Government of Sweden to work with mainstream media towards adoption on the "Law on Equality" and UN Office of High Commissioner of Human Rights to increase CSOs capacities in work with UN Human Rights bodies. EPF closely cooperates with EU Delegation to Armenia, UNDP, OSCE/ODIHR and the Council of Europe.

**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 programmatic activities, hands-on experience accumulated through several years on grassroots work and feedback collected from the various beneficiaries.

## II. TOLERANCE AND NON-DISCRIMINATION

### 1. The lack of an anti-discrimination legislation

#### **Situation and recent developments**

The adoption of Decision of the Government of the Republic of Armenia No 303-N of 27 February 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 legislation of the Republic of Armenia with international legal norms on 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 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'?**"<sup>1</sup>, which highlighted the need of 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 standalone anti-discrimination legislation in 2017 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 anti-discrimination block were developed with EPF's advice and guidance. It should be mentioned that yet in May 2013 another draft Anti-discrimination law was prepared and posted on the web-site of the Armenian Ombudsman, which discussions were then suspended mainly due to the controversy over categories gender and religious-belief, their interpretation and incorporation in the law.

Apart from advocating for the anti-discrimination law EPF took a lead role in 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 when a CSO facilitated the process of adoption of legislation and elaborated a legislative act together with Armenian authorities. The Law on Equality combating discrimination was drafted by two

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<sup>1</sup> [http://www.epfarmenia.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination\\_-21.05.15-ENG\\_Final-1.pdf](http://www.epfarmenia.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination_-21.05.15-ENG_Final-1.pdf)



independent experts and two representatives of the Ministry of Justice. While formally the Draft Law addressed the gaps in current legislation, it lacked comprehensiveness needed for compliance with European and international anti-discrimination standards when it came to certain key provisions. Hence, EPF together with 11 civil society organizations has 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 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 Equality Council, protection of protected features in labor relations and educational processes, mechanisms for prevention and countering discrimination; 2. is free of discriminatory exclusions which would reflect the exceptional role of 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 as much as possible regulations from the second Draft (the CSOs refined version) into the old one.

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 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. The point 77 of the HRAP envisages "Establishing legislative mechanisms for ensuring equality provided by the Constitution of Armenia", which MoJ in response to EPFs enquiry interpreted as meaning to adopt a separate anti-discrimination law. EPF deems it worrying that despite MoJ's interpretation the HRAP does not specifically mention adoption of a separate legislation on non-discrimination. Moreover, since the HRAP doesn't contain *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 adoption of the anti-discrimination law by HRAP, however it appears from non-formal discussions with the representatives of MoJ 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 and public mistrust and deepening disappointment in the Government the expected resistance to the process of adopting the draft law shouldn't 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 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 crated public campaign with



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 (the Delegation presenting the State at HDIM)**

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 (the Delegation), 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 shall 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 MoJ before the draft law reaches them for consideration.
- the nation-wide 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 a research<sup>2</sup> 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 researches or statements, made by some human rights organizations, dealing with specific spheres, and reports, sent to international organizations and related to concrete cases. Despite Government's claims on insignificant number of hate crimes in Armenia, information provided by human rights organizations, mass media, governmental bodies, if studied thoroughly, indicates 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 legislation of Armenia only covers hate crime 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. The 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.

### Recommendations to the Government of Armenia (the Delegation presenting the State at HDIM)

- 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 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

The point 81 of the National Human Rights Action Plan envisages revision of the content of schools educational materials based on Toledo Guiding Principles, UNESCO's Convention against Discrimination, UN Convention on the Rights of Persons with Disabilities, aiming to eliminate the spread 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 field<sup>3</sup> study conducted by EPF for Council of Europe, which was conducted through focus group discussions with children, clearly indicates that the issue of compulsory teaching of History of 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

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

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



educational institutions. The class is mandatory; students are not permitted to opt out of the course, and no alternatives are available to students 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. Since the issue of the most up-to-date document that included legal analyses on the issue, very few pieces of legislation have been changed or amended. Unfortunately, despite numerous claims and recommendations both from Armenian civil society and the international community, the proposed changes in Law on Religious freedom.

Additionally, 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, as a part of the project, supported by the Government of the Netherlands will soon publish a print and electronic book, comprising of 8 studies on manifestations of tolerance and intolerance in Armenian Literature. One of the researches focuses on the themes of tolerance and intolerance in 9th, 10th, and 11th grades’ textbooks on Armenian literature, History of Armenian Nation and History of Armenian Church. The indicated 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 due to her nationality. This phenomenon is particularly striking in the context of comparing two similar phenomena (Armenian-foreigner, Christian-Muslim, etc.). Additionally, due to the fact that the textbooks of the Armenian high school comprise 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 constructions, containing at times intolerant approaches towards number of phenomena, groups and other issues.

#### **Recommendations to the Government of Armenia (the Delegation presenting the State at HDIM)**

- the school textbooks before being officially approved shall undergo scrutiny by human rights experts in order to exclude presence of elements leading 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 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 “History of the Armenian Church” subject, reflecting the coverage of historical events and excluding religious preaching.
- eliminate the instances of religious preaching at schools by AAC as well as anti-preaching against other religions and beliefs, which lead to intolerant and discriminatory practices, through 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.