

ANNEX 1 - TERMS OF REFERENCE

1. Name of the Assignment:

Policy Research on Effectiveness of the Parliament's Response to the Recommendations of the Ombudsman

2. Context and background information

The Human Rights Defender of the Republic of Armenia (Ombudsman) is a core democratic institution and one of the constitutional safeguards of human rights in Armenia. The institute of the Ombudsman has been established in October 2003, and was functional since January 2004. The 2005 constitutional reform further enhanced the mandate and the status of the Ombudsman upscaling it to the constitutional body (Article 18 of 2005 Constitution), intruding safeguards for the independence of the Ombudsman and its immunities, as well as establishing duties of state and local self-government bodies to cooperate with the Human Rights Defender.

The 2015 constitutional reform enhanced the powers and the mandate of this institution further – an entire chapter in the 2015 Constitution (Chapter 10) is now backing its mandate and powers, safeguards and independence, core functions, as well as duties of public officials and bodies. Since 2006, the Ombudsman's mandate and powers in Armenia comply with the requirements and standards established under Paris Principles, and as such has “A” grade. It is also an accredited National Institute with the United Nations.

The 2016 Constitutional Law of the Republic of Armenia on the Human Rights Defender elaborates the mandate, powers, functions of the Ombudsman as an independent official who observes the protection and promotion of human rights and freedoms by public and local self-government bodies and officials. The 2016 Constitutional Law also regulates further the constitutional mandate of the Ombudsman, particularly to act towards improvement of regulations and legal acts related to rights and freedoms.

With such strong and core mandate in protection and promotion of human rights, the Ombudsman has explicit powers to contribute towards improvement of regulations and normative legal acts under the 2016 Constitutional Law. Thus, Article 29 of the Law mandates the Ombudsman a right to submit a written opinion on draft normative legal acts regarding human rights and freedoms prior to their adoption to the relevant body, including the National Assembly of the Republic of Armenia. May the Ombudsman consider that a specific issue relating to the human rights and freedoms is not duly regulated by law or a legal act, they have the mandate to submit a recommendation to the body responsible for the adoption of the legal act, indicating the need to and the extent of amendments or changes to the legal act. Moreover, target body bearing the responsibility for regulating the relevant issue is obliged by the constitutional law to consider the Ombudsman's recommendation and provide due feedback to them within the 30 days after receiving Ombudsman's recommendation. Additionally, the Ombudsman has the right to appeal to the Constitutional Court of the Republic of Armenia in regard to compliance of laws, decisions of the National Assembly of RA, orders and instructions of the President, decisions of the Government and the Prime-Minister, by-laws with the Chapter 2 of the Constitution of RA.

The Ombudsman is mandated to act as a National Preventive Mechanism under the Optional Protocol to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman is conducting monitoring of the implementation of the provisions of the

1989 UN Convention on the Rights of the Child aiming at prevention of violations and protection of the rights of the child. They have also the mandate to conducting monitoring of the implementation of the provisions of the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD) acting for prevention of violations and promotion of the rights of the persons with disabilities. With such a mandate, the Ombudsman has the powers to submit relevant recommendations on regulatory reforms to the duty bearer bodies related to preventing torture and other cruel, inhuman or degrading treatment or punishment; protection of the rights of the child and persons with disabilities.

Finally, the 2016 Constitutional Law provides the Ombudsman with due instruments and mechanism to fulfil the above-mentioned mandate and powers, specifically, through annual and *ad hoc* communication and reports of the Ombudsman, participation in the activities of state and local self-government bodies, as well as establishment of councils to advise the Ombudsman. In addition to indicating the cases and evidence on the violation of rights, the Ombudsman is mandated to provide recommendations on regulatory reforms related to the human rights and freedoms (*Article 31*). The Ombudsman has also the right to be present at the sittings of the National Assembly of RA, deliver a speech as prescribed by the Constitutional Law on Rules of Procedure of the National Assembly, whenever an issue related to human rights and freedoms is being considered (*Article 32*). However, the developments in March 2021 indicate that the acting government and political leadership attempt to restrain the mandate and powers of the Ombudsman instituted by the 2016 Constitutional Law, as well as to imply an undue political pressure on this core democratic independent institution.

The International Center for Human Development (ICHD) in partnership with UNDP Armenia, OxYGen Armenia, Westminster Foundation for Democracy and financial support of the governments of the UK and Swede, is implementing a multi-actor project on “Modern Parliament for a Modern Armenia” project (hereinafter Project) for improving quality of legislative oversight and policy-making in Armenia since mid-2019.

In the framework of the Project UNDP Armenia and ICHD aim at supporting the National Assembly of RA to engage with the Ombudsman to fulfill the mandates of both institutions in protection and promotion of human rights and freedoms more effectively.

3. Purpose, objectives and scope

To this end, ICHD mobilises expertise to conduct a policy research on effectiveness of the parliament’s response to the recommendations of the Ombudsman, and to provide data, analysis and recommendations to enhance the interaction between the two core institutions and improve the protection of human rights in Armenia. The research will concentrate on the practices of submitting recommendations by the Ombudsman to the parliament and latter’s response and follow up to the recommendations on regulatory reform.

ICHD will solicit services of a Policy Analyst to conduct the research.

4. Working approach and methodology

Under the overall technical supervision and guidance of the Senior Research and Development Specialist and in close cooperation with the Human Right Defender’s Office (HRDO), the Policy Analyst will accomplish the following tasks and will provide relevant key deliverables:

- Conduct desk study of the recommendations submitted by the Ombudsman to the National Assembly in their annual reports; special reports on prevention of torture and other forms of ill-treatment (under mandate of the National Preventive Mechanism), rights of the child and rights of persons with disabilities (under mandate of the National Monitoring Mechanism); *ad hoc*

reports of the Ombudsman; appeals to the Constitutional Court; opinions on draft regulatory documents and legal acts; legal analyses of the legislation, regulations and international experience; guidelines.

- Review highlights in media related to the response of the National Assembly of RA and intra-parliament institutions to the public recommendations of the Ombudsman (the indicative timeframe covers December 2018 – April 2021), and select illustrative 2-3 cases to be presented in the Report.
- Conduct semi-structured interviews with a selected expert at HRDO and CSOs to complement the data and findings of the desk study and media review (interviews with the relevant respondents at the National Assembly may be also considered).
- Develop a Draft Report and submit to ICHD: it should contain an executive summary, the main report (should not exceed 50 pages) and annexes as necessary (this ToR is an integral part of the Report and will be provided in an annex, as well as the list of experts interviewed, other annexes whenever appropriate, abbreviations and acronyms).
- Develop a Final Report incorporating the feedback received from HRDO and ICHD.
- Prepare a multimedia presentation (in Microsoft PowerPoint format) on the Report.
- Participate in discussions as requested by ICHD and HRDO.

Below are the key evaluation questions that the Report will either answer explicitly or will provide evidence-base for further assessment in the context of improving the responsiveness and effectiveness of the National Assembly of RA to the recommendations of the Ombudsman.

Evaluation Question 1: How responsive is the national parliament to the recommendations of the Ombudsman related to improvement of the regulations and mechanisms of the protection and promotion of human rights, including the recommendations of the Ombudsman on regulatory reform aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment, child rights and the rights of persons with disability?

- Are there accepted indicators and benchmarks for assessing the responsiveness of the parliament and effectiveness of the response by national and/or international public institutions (e.g. the National Assembly, Ombudsman, etc.)?
- To what extent has the practice of responding to the recommendations of the Ombudsman resulted in enhanced regulations for the protection of human rights and freedoms?
- To what extent is there effective response to the recommendations? How effectiveness of the response assessed? Are they mutually agreed indicators? What are these, if any

Evaluation Question 2: To what extent are the conditions and due capacities for responsiveness to the recommendations of the Ombudsman on regulatory reform and effectiveness of the response in place?

- Are there formal internal rules and procedures on the discussion of the Ombudsman's recommendations and decision-making procedures related to the response to the recommendations at intra-parliament institutions established?
- Are there transparent mechanisms to communicate the consolidated practices and culture to the public and/or stakeholders on the discussion of the recommendations on regulatory reform or the response of the parliament?

- To what extent are relevant capacities available in the parliament to respond to HRDO recommendations effectively?

5. Data Sources:

The Policy Analyst will use the following sources of relevant data and information:

- Annual Reports of the Human Rights Defender submitted to the National Assembly on his activities in the past year, as well as on the state of protection of human rights and freedoms.¹
- Annual reports of the Human Rights Defender on prevention of torture and other forms of ill-treatment submitted to the National Assembly on his activities in the past year fulfilling its mandate of the National Preventive Mechanism.²
- Annual reports of the Human Rights Defender on the rights of the child submitted to the National Assembly on his activities in the past year fulfilling its mandate of the National monitoring body.³
- Annual reports of the Human Rights Defender on the rights of persons with disabilities submitted to the National Assembly on his activities in the past year fulfilling its mandate of the National monitoring body.⁴
- Ad hoc public reports of the Human Rights Defender.⁵
- Appeals of the Human Rights Defender to the Constitutional Court with respect to the provisions of laws, decisions of the National Assembly, orders and instructions of the President, decisions of the Government and the Prime-Minister, by-laws conformity with the provisions of Chapter 2 of the Constitution on Basic Rights and Freedoms of the Human Being and the Citizen.⁶
- Opinions of the Human Rights Defender on draft regulatory legal acts regarding human rights and freedoms.⁷
- Legal Analyses published by the Human Rights Defender.⁸
- Guidelines published by the Human Rights Defender.⁹
- Research literature

¹ Annual communication reports of HRD. https://www.ombuds.am/en_us/site/SpecialReports.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ HRD appeals to the Constitutional Court (*amicus brief*). <https://www.ombuds.am/am/site/WorkDocumentOpinion>.

⁷ HRD Opinions on Draft Normative Legal Acts. https://www.ombuds.am/en_us/site/LegislativeProposals.

⁸ Legal Analyses published by HRD. https://www.ombuds.am/en_us/site/WorkDocumentAnalysis

⁹ HRD Guidelines. https://www.ombuds.am/en_us/site/Link