



ANNUAL REPORT

**ACTIVITIES OF THE REPUBLIC OF ARMENIA'S
HUMAN RIGHTS DEFENDER, AND ON VIOLATIONS OF HUMAN
RIGHTS AND FUNDAMENTAL FREEDOMS
IN ARMENIA DURING 2004**

YEREVAN 2004

About the Report

Under Article 17 of the Armenian Law on the Human Rights Defender, the Human Rights Defender (hereinafter, the “Defender”) shall, during the first quarter of each year, present a report on her activities and on violations of human rights and fundamental freedoms in the country during the preceding year.

The first report of the Defender covers the year 2004.

Assessments, conclusions, and recommendations made herein are based on letters of aggrieved persons, as well as investigations and monitoring carried out by the Defender *proprio motu*. Such investigations mainly targeted cases that generated broad public attention—most often based on the media or other leads (from private individuals, NGOs, CSOs, public agencies, and international organizations).

The Report singles out cases dealt with by the Defender with the aim of reinstating rights of women, children, refugees, the disabled, internally displaced persons (IDPs), and other vulnerable and special groups. The analysis has covered areas such as the development of international links, collaboration with NGOs, dissemination of information, legal counseling, and the like.

Being the first, this Report does not aspire to cover all possible violations of human rights in the country, especially because the 10-month period in question is too short for such coverage.

The assessments in this Report do not necessarily coincide with the views of certain groups of society.

Nevertheless, they testify to the fact that the Republic of Armenia—as a nation whose history dates back thousands of years—has irreversibly chosen to construct a democratic, social, and legal state, as confirmed by, among other things, the institutionalization of the Human Rights Defender.

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Preface

Humanity has, at all times, confronted the need to exert efforts to uphold universal values, such as human rights and fundamental freedoms. It is a political, civic, and societal challenge for any generation.

The national system for human rights protection is currently emerging on the basis of the “Paris Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights” (Paris Principles). Such a system should, first of all, be independent of the authorities and have its mandate enshrined in the Constitution and laws of the state, affirmed by safeguards for its performance and publicity of its activities.

In the Republic of Armenia, the Human Rights Defender institution was founded in accordance with the Paris Principles. As evils such as local and international terrorism, social polarization, and trafficking become widespread, making people more vulnerable and increasing the need for permanent legal protection, the role of national institutions for the protection of human rights, including the Armenian Human Rights Defender, has become more important than ever before.

The main principles underlying the Armenian Defender’s activities are independence, impartiality, fairness, and credibility of investigations into allegations of human rights violations. There is hope that in a culture of dialogue and enhanced civic and social accountability, efforts aimed at strengthening tolerance will promote human rights protection in Armenia.

To counter human rights violations caused by abuses of official positions, poor administration, and the adoption of sub-legislation conflicting with the Constitution and laws, enhanced legal practices and improved legal awareness are essential in instilling confidence and faith in the safeguards of human rights protection in Armenia.

Larisa Alaverdyan
Human Rights Defender of the Republic of Armenia

1. INFORMATION ON THE HUMAN RIGHTS DEFENDER INSTITUTION

1.1. Creation

Economic, political, social, cultural, and international legal challenges encountered by the Republic of Armenia on the constitutional path towards democracy and the rule of law must be overcome by enhancing legality and promoting human and citizen's rights and freedoms.

In order for such challenges to be addressed successfully, social justice must prevail. The ideological aspirations of law-enforcement activities and the focus on governmental interests must be eliminated; and public and private interests must enjoy equal protection.

Success in these areas will be contingent upon the effective separation of powers and a functioning system of checks and balances. In this context, the Human Rights Defender (a.k.a. Ombudsman), as a standalone institution, has a unique yet duty-bound role. To protect human rights against arbitrary actions by the state, the Defender's institution must have an independent standing within the hierarchy of the state, free from the authorities and above any political, ideological, or pecuniary interests.

The Ombudsman's institution was created on the basis of law that defines the procedure for the Ombudsman's selection. As a rule, an Ombudsman is elected by the parliament of a country. This procedure is prescribed under Article 3(2) of the Armenian Law on the Human Rights Defender for electing the Armenian Ombudsman.

The Constitution of Armenia does not provide for a Human Rights Defender, but the constitutional grounds for creating the Human Rights Defender institution are beyond any doubt. Article 4 of the Constitution, for instance, provides that the state shall ensure protection of human rights and freedoms on the basis of the Constitution and the laws, in accordance with the principles of international law.

Pending constitutional reforms, which will introduce provisions into the Constitution on the appointment of the Defender, Article 27(2) of the Armenian Law on the Human Rights Defender, which lays down the transitional provisions, defines the procedure by which the President of Armenia consulted with the various groups and factions in the National Assembly. Based on this, the President issued Decree 23-A of February 19, 2004, which appointed Larisa Alaverdyan as the Human Rights Defender for Armenia.

The safeguards of the Defender's independence are enshrined in the Armenian Law on the Human Rights Defender. Article 5 of this law provides that the Defender shall not be subordinate to any central or local government body or official. The Defender is not obligated to give any explanation or testify on the substance of complaints or documents received by the Defender, or to make them available in any way, except as provided by law.

As a crucial safeguard of the Defender's independence, this law prescribes the Defender's immunity (Article 19) and an exhaustive list of cases in which the Defender may be removed from office before expiration of the term (Article 5).

Article 2 is rather important because it refers to the Defender as "an autonomous and independent official." The legislature does not treat or refer to the Defender as a "state official."

Articles 23 and 25 of this law lay down essential safeguards for the Defender's independence, including rights to recruit and manage the Defender's staff.

After assuming office on March 1, 2004, the Defender proceeded accordingly to form her staff, of which she is directly in charge and has the power to approve the structure and by-laws of the staff.

Forming a staff of 35 positions, the Defender recruited young specialists, representatives of national minorities and those deported from Azerbaijan, as well as individuals with disabilities, trying to ensure even representation of different groups. More than half of the Defender's staff are women. National minorities are approximately 10 percent.

1.2. Goals and Objectives

From its very inception, the Defender's institution has focused on protecting and restoring human rights and fundamental freedoms violated by central and local governments and their officials, implementing safeguards for the state to protect human and citizens' rights and fundamental freedoms, and promoting respect for such rights and freedoms on the part of central and local governments, their officials, and public servants.

With a view to attaining these goals, the institution has been active in the following areas:

- Enhancing legal protection of humans by improving law-enforcement practices;
- Supporting improvements in legislation on human rights and fundamental freedoms, and harmonization of Armenian legislation with universal principles of international law;
- Initiating a process of constructive cooperation between the Defender and the authorities, between the Defender and the public, and facilitating the development of such cooperation;
- Fostering the development of international cooperation in the sphere of human rights and fundamental freedoms;
- Promoting access to the system for protection of human rights and fundamental freedoms;
- Facilitating increased awareness of human rights and fundamental freedoms, as well as the forms and methods of their protection; and
- Ensuring transparency and accountability in, and regularly and widely disseminating information on, the Defender's activities.

In order to achieve the aforementioned goals and objectives, the Defender has reviewed the allegations of human rights violations, paid visits to institutions where vulnerable groups are located (orphanages, homes for the elderly, psychiatric hospitals, prisons, etc.), and identified, investigated, and, to the extent possible, addressed violations of human rights and fundamental freedoms of those who were unable to attain protection and redress by legal means. The Defender has also provided legal advice in Yerevan and the regions, publicized cases in which human rights violations were successfully remedied, analyzed and summarized human rights violations and presented conclusions and recommendations to the respective authorities. Furthermore, the Defender has raised public awareness of respect for human rights and fundamental freedoms, prepared and presented materials and reports initiated by the Defender *proprio motu* and/or on the basis of law, and studied and applied the international experience of similar institutions.

The following principles have guided the Defender's activities in the aforementioned areas:

- Establishing constructive relations with public agencies;
- Starting case review with "soft" methods and intensifying them gradually if encountering resistance to the provision of remedies;
- Principle of "supplementarity", i.e. undertaking measures aimed at supplementing human rights protection arrangements prescribed by law;
- Favoring preventive measures for the protection of human rights;
- Making recommendations to the appropriate bodies and agencies on the basis of human rights violation cases reviewed by the Defender; and
- Establishing partnerships with civil society.

1.3. Structure

The Defender has developed the institution's staff and has coordinated activities and priorities through the following units:

- Secretariat;
- Division for Citizens' Reception and Letters;
- Human Rights Protection and Remedy Teams;
- Resource Center;
- Rapid Response Team;
- Information and Public Relations Team;
- International Collaboration Team; and
- Logistics Service.

The Secretariat is comprised of the Staff Secretary, two Advisors to the Defender, the Assistants to the Defender and to the Deputy Defender, and the Defender's Referent. They coordinate collaboration with various public agencies, different groups of society, and international organizations. They also develop staff training programs, and facilitate the activities of the Defender and the Deputy Defender.

The Division for Citizens' Receptions and Letters holds meetings with citizens and provides legal counseling, receives complaints, performs early processing, registration, and analysis of complaints, organizes meetings of citizens with the Defender or Deputy Defender, and carries out general administrative functions. At present, this division uses computer software for registering and summarizing complaints. This software was developed and implemented by Armenian specialists on the basis of a needs assessment performed by the staff.

The Human Rights Protection and Remedy Teams provide free legal advice to those who apply to the Defender's staff. Moreover, the Employment, Social, Economic, and Cultural Rights and Civil Servants' and Special and Vulnerable Groups' Rights Remedy Team, as well as the Criminal Procedural, Penitentiary, and Military Servicemen's Rights Remedy Team, and the Property Rights Remedy Team investigate allegations of violations concerning rights in their respective areas. Experts who work in these teams take part in the *Rapid Response Team* visits and make legal evaluations of human rights violations identified in the course of such visits.

The Resource Center staff analyzes laws and draft legislation and makes recommendations in order to facilitate improvements of the human rights legislation so that Armenian legislation is in line with universal principles of international law. The members analyze and summarize measures taken regarding complaints and prepare the Defender's annual and other reports, statements, and appeals.

The Rapid Response Team engages in rapid response, investigates allegations of human rights violations in the field (in hospitals, orphanages, homes for the elderly, detention institutions, pre-trial detention facilities, courts, prosecution offices, police stations, communities, and central or local governments), and monitors court sessions, if necessary.

The Information and Public Relations Team ensures mass media coverage of the Defender's activities, develops and implements measures to raise awareness of the public and the international community on activities of the Defender and her staff. This team also publishes information materials on human rights, and investigates mass media allegations and leads concerning human rights violations, which can trigger *proprio motu* initiatives by the Defender.

The International Collaboration Team facilitates the creation and development of international links to help ensure respect for human rights and fundamental freedoms, as well as undertaking joint projects with international organizations, and ensures:

- Links between the Defender's staff and similar international institutions;
- Participation of the Defender and the staff in various events held by international organizations; and
- Analysis of reports and other materials prepared by inter-governmental and international human rights organizations.

The Logistics staff helps to support the efficient operation of the Defender, the Deputy Defender, and the staff.

2. PRIORITY AREAS

2.1. Collaboration with Central and Local Government Agencies

Experience has shown that positive collaboration with central and local government agencies in the field of human rights protection enables the Defender to address allegations and complaints quickly and effectively.

The Defender's institution collaborates with *the National Assembly and the Government of the Republic of Armenia* by participating in discussions held by the National Assembly committees and issuing opinions on the respective issues. As for the Government, the Defender or Deputy Defender are always present in the sessions of the Government.

There is still no binding requirement to obtain the Defender's opinion on the impact of draft laws on human rights and fundamental freedoms.

The groundwork has been laid for collaboration with the respective *ministries and public agencies*.

In view of the close engagement of *police authorities* in the protection of citizens' rights and fundamental freedoms, the Defender's institution has entered into a Memorandum of Cooperation with the Armenian Police, which contemplates information sharing on matters of mutual interest and the rapid response of the Police to the Defender's comments and suggestions.

The foundations for sustainable collaboration with *the Prosecution of Armenia and the Cassation Court* have been laid through meetings and consultation on issues of common interest. The Cassation Court Chairman has expressed willingness to discuss the Defender's recommendations on court session monitoring and complaints against courts in the Council of Court Chairmen. A proposal has already been made to the Cassation Court Chairman.

Despite a number of meetings and discussions with the staff of the *Yerevan Mayor's Office*, the collaboration that exists to date can hardly be deemed efficient. There are a large number of complaints against the Mayor's Office concerning urban land disposal, alienation of private assets for state needs, compensation for apartments demolished by the state, and other allegations that raise human rights concerns. There are serious delays in addressing these matters or restoring the violated rights. In some cases they unreasonably disagree with the Defender's suggestions. Nevertheless, the Defender is constantly seeking new ways of collaborating with the Mayor's Office.

Collaboration with the *State Committee of the Real Estate Cadastre* and the *Judicial Enforcement Department* can be considered as inadequate, though these agencies have intervened to provide solutions to a number of complaints raised.

Collaboration is rather efficient with *Governors and town and village mayors in the regions*. In a number of regions, the Governors and mayors have expressed willingness to support the establishment of a representative office of the Defender in their respective regions.

All the village mayors with whom the Defender or the staff have dealt are ready to engage in close collaboration to raise the legal and legislative awareness of their community residents. Owing to such collaboration, a considerable number of complaints have been addressed positively at the initial stages of the investigation.

In order to further enhance performance, the Defender attaches high importance to strengthening collaboration with central and local government agencies.

2.2. Collaboration with NGOs

The Defender highly appreciates the experience and reputation of non-governmental organizations and considers collaboration with NGOs an important tool. This is why the Defender has regular meetings with NGO representatives whenever she visits the regions. In order for the

Defender's meetings with citizens in the regions to be sincere and unimpeded, the Defender's meetings with the affected citizens are mostly channeled through NGOs (in Lori, Syunik, Armavir, Shirak, and Vayotz Dzor regions).

Another success story of NGO collaboration is the participation of several NGO members in the Expert Council under the Defender.

The Defender has held a number of discussions and consultation workshops with NGOs in the Defender's Office, as well. Five workshops have been held in the Defender's Office with direct participation of NGOs to discuss the introduction of social security cards. NGOs have taken part in round table discussions on environmental protection and protecting the rights of refugees, the disabled, women, children, and consumers.

The Defender has taken the initiative to discuss collaboration agreements with four charitable and human rights organizations. As well, the Defender's staff actively participates and makes presentations at events held by various NGOs.

In order to further enhance the efficiency of joint measures, NGOs are expected to present specific proposals on collaboration.

2.3. Awareness and Public Relations

The Defender's activities are characterized by accountability (while maintaining confidentiality of complaints), accessibility of information, and readiness to engage in a dialogue with the mass media. During 2004 alone, over 140 articles were published in the press concerning the Defender's activities. Moreover, the Defender's activities have been reported on by nearly 90 TV and radio reports, including meetings and press conferences with the Defender, as well as news reports. Agreement has been reached with the editors of several newspapers to provide a permanent column in their newspapers on the Defender's activities. These efforts are driven by the unconditional interest of the mass media in the development of this national human rights institution.

Among the Defender's priorities is close collaboration and partnership with the mass media, as confirmed by the Defender's responses to, and initiatives in, respect of mass media allegations of human rights. Collaboration with the mass media facilitates increased public awareness of the Defender's institution, better knowledge among members of society of their rights, and enhanced ability to protect such rights.

Press conferences of the Defender were held on the 45th and 100th days, and the 6th and 9th months, after the creation of the Defender's institution. On these occasions, statistical data and booklets prepared by the Information and Public Relations Team were distributed to the mass media.

In the frameworks of a joint project between the National Assembly and UNDP entitled "Support to Human Rights Protection and Increased Public Awareness of Human Rights in Armenia", some members of the Defender's staff took part in the creation of documentaries, posters, and brochures on the Defender's institution, as well as the Defender's website. These documentaries are regularly broadcast on various TV stations in Armenia.

2.4. International Collaboration

The Defender's institution has been active in establishing practical collaboration with inter-governmental and international organizations, as well as national and international ombudsman institutions.

During 2004, practical links were established with the Council of Europe's Directorate General for Human Rights, the Council of Europe Human Rights Commissioner's Office, the European Court of Human Rights, the Organization for Security and Cooperation in Europe, UNESCO, UNDP, and international organizations and embassies accredited in Armenia.

Databases have been created on organizations implementing projects jointly with international and inter-governmental institutions, international donors, and the Defender's staff.

A Memorandum of Understanding was signed with the Helsinki Fund for Human Rights (Poland), which provides that the Fund will finance the participation of one representative of the Defender's staff in training courses held twice a year by the International School of Human Rights.

In response to the new global threat of international terrorism, agreement was reached with UNESCO's Paris and Moscow offices to carry out an international conference in Yerevan entitled "Tolerance, Discrimination, and Xenophobia in the Context of International Terrorism (Caucasus Region)". The Conference will be held from May 24 to 25, 2005 with the financial support of UNESCO's Moscow office.

In the frameworks of round tables held by UNDP, close contacts have been established with national ombudsman institutions of Europe and the CIS. During 2004, the Defender and the staff took part in the Third and Fourth Round Tables, during which an agreement was reached on holding the Sixth Round Table in Yerevan.

Meetings of ombudsmen held in the frameworks of CIS inter-governmental summits have provided an additional forum for information and experience sharing with CIS ombudsman institutions.

The effective collaboration with the People's Defender's Office of Georgia is noteworthy. In 2004 the Armenian Defender's staff participated in all the international human rights conferences and training courses held in Tbilisi. A delegation of the Georgian People's Defender's Office visited the Armenian Defender's institution for experience sharing and learning about the activities of the Defender and the structure and practices of the institution. Meetings with the Defender's staff were also held.

In cases in which rights of Armenian citizens were violated abroad, the Defender undertook measures to draw attention to such cases through the ombudsmen or equivalent authorities of such foreign states.

In 2003, an international working group made up of representatives of the following diplomatic missions and international organizations was created to issue an expert opinion on the Law on the Human Rights Defender and to support the creation and strengthening of the Defender's institution: UNHCR Country Office for Armenia, UNICEF, Information Center of the Council of Europe, UNDP, OSI AF, World Learning, Embassy of the UK in Armenia, the International Bar Association, ABA/CEELI, and ALSP.

During 2004, a number of meetings with the working group were held. During these meetings, the participants discussed the working visit of Dean M. Gotterher (UNDP Advisor on the Ombudsman) to Armenia, the amendments proposed to the Armenian Law on the Human Rights Defender, the new concepts regarding the status of the Defender's staff, the Strategic Action Plan for Development of the Defender's Staff, and the Defender's relationship with the mass media.

The Defender's staff submitted a proposal to the Armenia Country Office of DFID's Development Program requesting its support for the creation of regional representative offices for capacity building. This support will help the Defender's staff to promote joint efforts between local self-government and civil society aimed at preventing human rights violations caused by social conflicts.

The Defender positively responded to the proposal initiated by the European Commission's Armenia Regional Development Program (REDAM-TACIS) to have regional representation of the Defender throughout Armenia. Moreover, the Defender presented a project proposal and signed a bilateral Memorandum of Understanding with REDAM on the creation of the Defender's Representative Offices in two regions of Armenia.

In light of important final recommendations made during a discussion of reports presented by participating states to the session of the Committee for the Rights of the Child (CRC), and especially the recommendation on the appropriateness of establishing an institution for effectively protecting the rights of children and for conducting additional monitoring into the *rights of children*, the Defender's staff has presented a project proposal to the Country Office of USAID on enhancing the role of the Ombudsman in introducing legislation on the protection of children's rights.

In view of CRC's important recommendation on having a separate institution in the Defender's staff to deal with the protection of children's rights, and commending the 10-year Strategic Action Plan on Protection of Children's Rights in the Republic of Armenia, the Defender has presented a project to UNICEF regarding the coordination of projects in the area of children's rights and monitoring of compliance with CRC's recommendations.

Implementation of these projects is expected to take place during 2005 and 2006.

2.5. Own Initiatives

The Defender's approach is as follows: in the event of any violation of human rights and freedoms, intervention is mandatory regardless of whether a complaint has been filed.

During March and April, 2004, when there were reported cases of the police limiting the movement of passenger transport, the Defender took the initiative to set up teams of its staff to check various roads leading into Yerevan and, based on its observations, filed appropriate motions.

The Defender took the initiative to visit prisons where individuals sentenced to administrative detention were held, and monitored court sessions that preceded such detention.

As a result of these visits, and due to the motions of the Defender, the limitations on passenger transport were mitigated, and the number of administrative detention cases fell.

The Defender took the initiative to meet with prisoners who went on hunger strike every time the Defender learned about such cases from the press, or from prison administration officials during such visits, which were conducted in conjunction with other purposes. In most cases, the prisoners were convinced to stop the hunger strike.

The Defender took the initiative to meet with individuals sentenced to life imprisonment and to study their issues. In this respect the Defender took the initiative to hold discussions with the representatives of the authorities on these inmates' cases.

Quite important was that the Defender and her staff visited military detachments in order to investigate the conditions of the servicemen, military services, sanitation, and hygiene. These visits raised the awareness of non-career servicemen of their rights, including the right of appeal to the Defender, the procedure of filing such appeals, and to investigate other related matters.

Due to the peculiar nature of the military in Armenia, there are at times difficulties associated with site investigations. However, frequent meetings create an atmosphere of mutual confidence, and the Defender is now seen as an official who helps address and resolve certain problems, rather than someone who controls.

Regarding disagreements and dissatisfaction due to the implementation of the social security system and the distribution of social security cards, the Defender took the initiative to hold over a dozen discussions and meetings at various levels (in both Yerevan and the regions).

In criminal cases of public interest, the Defender investigated media leads on her own initiative and made appropriate recommendations to the Prosecutor General of Armenia.

In view of extreme dissatisfaction with the urban development projects in Yerevan and the ensuing violations of citizens' property rights during the alienation and condemnation process, the Defender took the initiative to investigate these matters as well.

The Defender regularly takes the initiative to monitor court sessions in cases of public interest.

Activities initiated by the Defender not only are helpful from a standpoint of human rights protection and restoration, but also facilitate prevention of violations.

2.6. Rapid Response

Rapid response, as a separate area, emerged from the very start of the Defender's activities as an effective technique of discovering, reporting, and often preventing human rights violations.

Rapid response is engaged:

- In cases that require immediate intervention, based mainly on oral allegations of human rights violations;
- With the aim of determining the actual situation in respect of human rights by visiting, without prior notice, places where human rights are at an increased danger. Information gathered during such visits later serves the Defender's *proprio motu* investigations and helps in the restoration of violated rights;
- To prevent unlawful interference by central or local government bodies in complaints under investigation or review; and
- To establish an around-the-clock presence during certain periods, such as election days, in order to receive warning at any time, to respond immediately, and to intervene for restoring violated rights.

Forty-two visits were organized on the Defender's own initiative, or on the basis of complaints to the Yerevan Police Custody Center and some penitentiaries under the Ministry of Justice (including the facilities at Gyumri, Goris, Vanadzor, Kosh, Yerevan, Yerevan-Center, Nubarashen, Erebouni, and Prisoners' Hospital). Meetings were arranged with life prisoners, imprisoned foreign citizens, Jehovah's Witnesses avoiding compulsory military service, all prisoners known to be on a hunger strike, and 62 other inmates. During these visits, legal advice was rendered to individuals who were not aware of their rights and who could not otherwise protect such rights on their own.

The visits were aimed at studying not only the imprisonment conditions, but also the protection of the staff's rights and the working conditions. The same activities were carried out at military units, hospitals, and children's institutions.

The Rapid Response Team makes at least two visits a month to various regional institutions which, in the absence of the Defender's representatives in the regions, facilitates citizens' access to the Defender's institution.

Due to the speed with which the Rapid Response Team operates, success was reported in cases such as unlawful evictions by the Judicial Enforcement Department, unlawful police detention, limitations of passenger transport movement, and the like.

Thus, rapid response has proven to be an important and efficient tool in the Defender's staff's arsenal.

2.7. Workshops

Feedback from special and vulnerable groups, as well as human rights organizations advocating their causes, was taken into consideration in identifying legal and social problems encountered by such groups, and to develop recommendations on addressing such problems.

To this end, workshops were held on women's and children's rights, environmental protection, issues faced by refugees and the disabled, and consumer protection.

The workshop on legal protection of refugees was attended by non-governmental organizations, a representative of the UNHCR Armenia Office, and a representative of the Armenian Government's Department for Migration and Refugees. The participants of the meeting discussed issues related to the acquisition of Armenian citizenship by refugees and, in particular, cases of refusing to issue a passport due to the lack of registration. Also discussed was housing and other social problems affecting refugees, violation of refugee rights during the privatization process, and the position of the judiciary on these cases.

The workshop on the protection of the disabled was attended by the Armenian Association of Individuals with Disabilities and NGOs such as "Bridge of Hope", "Faith", "Unison", and "Astghik", as well as representatives of the Labor and Social Affairs Ministry's Department for Individuals with Disabilities. Current issues were discussed and legislative amendments suggested.

Several workshops were held on social security cards, which were attended by representatives of the various authorities and the respective NGOs.

A special workshop was held on the problems of individuals sentenced to death under the previous Criminal Code, but whose sentences had not been executed before the enactment of the new Criminal Code.

2.8. Expert Council

Under Article 26 of the Armenian Law on the Human Rights Defender, the Defender may create an Expert Council to provide advice to the Defender. The members of the Expert Council are unpaid volunteers.

In light of the need to gain access to impartial expert opinions on issues encountered during human rights activities, the Defender adopted a decree on September 28, 2004 to create an Expert Council consisting of 15 legal scientists, professors, advocates, and legal counselors. Under the same decree, the Defender approved the By-Laws of the Council, which lays down its goals, objective, and operational procedures.

The members of the Council have appropriate knowledge and experience in human rights protection, which facilitates the Defender's activities.

The Council convenes sessions at least once every two months to discuss the most urgent issues encountered during the Defender's activities, as well as those complaints to the Defender which have generated a large amount of public interest and are related to mass violations of human rights (e.g. the cases of the Northern Boulevard, Buzand Street, the Dalma Orchards, etc).

During its sessions, the Expert Council has discussed, among other things, the Defender's relationship with courts during the review of complaints on alleged human rights violations by the courts, the necessity and appropriateness of classifying the Defender's staff as civil servants, and the human rights context around the deprivation of ownership regarding the construction of Northern Boulevard. The Defender has highly appreciated the advisory views and positions of the Expert Council on the aforementioned issues.

2.9. Handling Complaints

2.9.1. Complaint Statistics

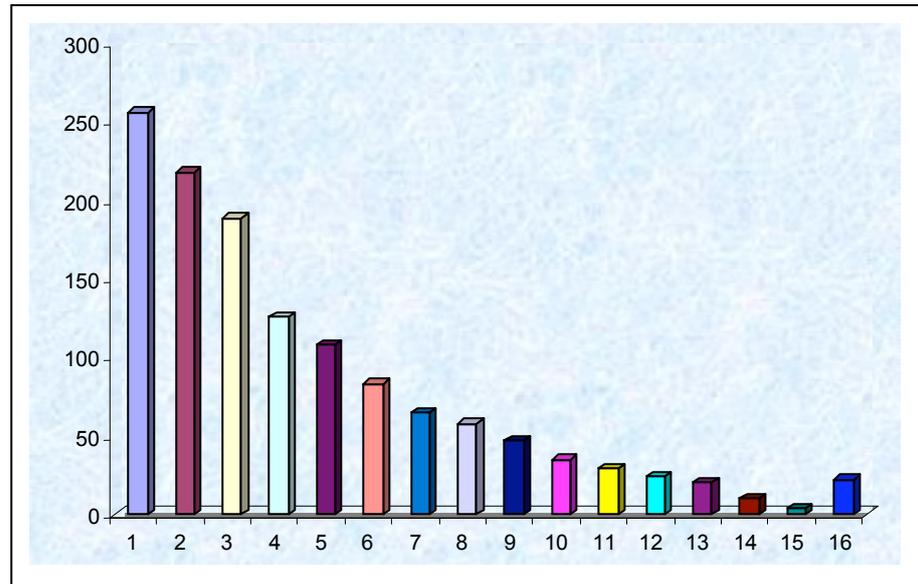
During the period from March 1, 2004 to December 31, 2004, the Defender received 1,294 written complaints from 2,346 citizens. The Defender, her Deputy, and staff experts received 1,337 citizens and answered about 2,300 telephone calls to provide the necessary legal advice.

A general overview and classification of complaints has made it possible to assess how well rights and freedoms are protected in different aspects of public life, and to review problems that need to be solved.

The complaints were related to the following spheres:

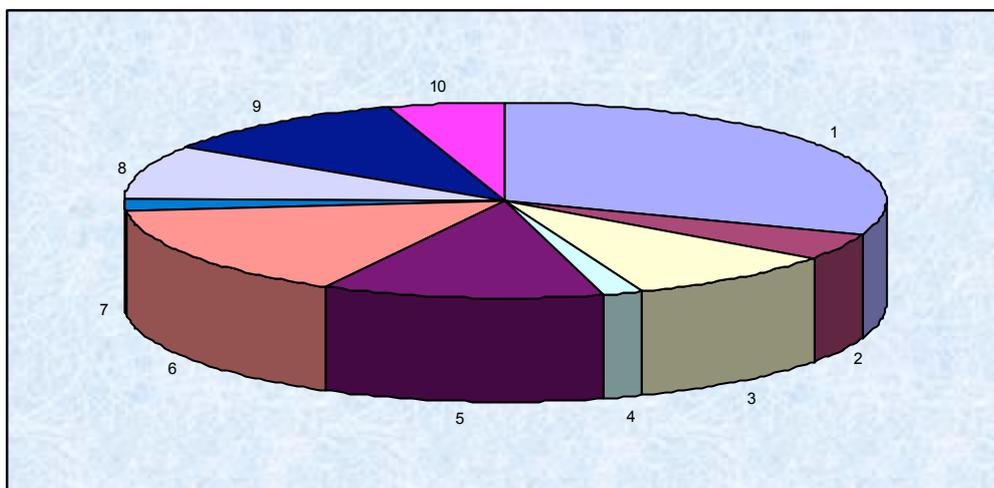
1. Civil law and management of assets	256
2. Criminal law	218
3. Social security	189
4. Administrative law and housing	126
5. Employment law	108
6. Criminal procedure law	83
7. Local self-government	65
8. Education and science	58
9. Penitentiary law	47
10. Rights of servicemen and public servants	35
11. Economic law, taxes and duties, and consumer rights	29
12. Constitutional and international law	24

13. Family law and rights of the disabled	20
14. Health care	10
15. Rights of national minorities and foreigners	4
16. Miscellaneous	22



The complaints were mainly related to the following violations:

1. Right to a fair trial (courts): 132
2. Right to effective judicial remedy: 19
3. Complaints against the judicial enforcement department: 40
4. Right to freedom of movement (police): 7
5. Right to immunity against violence and cruel and inhumane treatment (police): 52
6. Right to a fair trial and effective protection against charges (prosecution and investigation): 67
7. Right to social protection (social security agencies): 9
8. Right to housing (municipalities): 38
9. Right to ownership and other economic rights (local self-government): 47
10. Other property rights (real estate cadastre): 22



The following is a geographic breakdown of complaints:

1. Yerevan City	982
2. Aragatsotn Region	43
3. Ararat Region	47
4. Armavir Region	53
5. Gegharkunik Region	61
6. Lori Region	75, of which Vanadzor: 41
7. Kotayk Region	59
8. Shirak Region	97, of which Gyumri: 49
9. Syunik Region	32
10. Vayots Dzor Region	12
11. Tavush Region	22
12. Other areas	11

The number of complaints from the regions is relatively small, because the Defender is not represented in the regions, and the regional public is less aware of the existence and functions of the Defender.

The large number of complaints from residents of Yerevan is due, among other reasons, to the large number of courts and investigative authorities in the capital city, as well as urban development activities in Yerevan resulting in the alienation of citizens' real property assets. In this context, the number of complaints against the Mayor's Office is rather high.

2.9.2. Progress and Results

All complaints addressed to the Defender are presented to the Defender.

❖ The Defender familiarizes herself with the complaint and allegations stated therein and, with a view to making a decision on the complaint within a one-month period, assigns the respective staff expert to *study* the complaint and *collect information* on the issues raised by means of inquiries, visits, monitoring, legal reviews, and other legal means.

❖ The Defender reviews the findings of the study and, under Article 11 of the Armenian Law on the Human Rights Defender, *makes a decision on*:

- Accepting the complaint for review;
- Sending the complaint to another body;
- Explaining the available remedies; and
- Refusing to accept the complaint.

❖ *After studying the complaint accepted for review, a decision is made either finding or not finding a violation of human rights* in the activities of the respective central or local authority or official.

If a human rights *violation is not found*, the review of the complaint shall be deemed concluded. Thereafter, the complainant shall be notified within 5 days of adopting such decision.

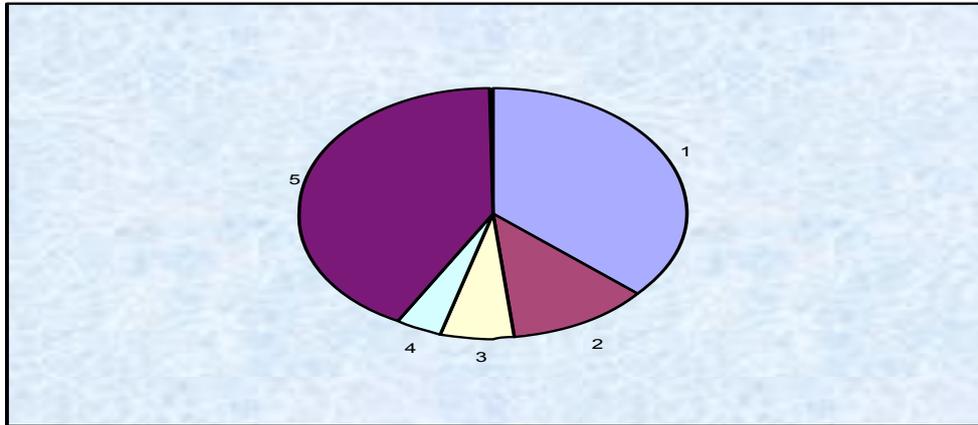
If a human rights violation is found, a suggestion on restoring the right is made to the respective state agency, and the complainant is notified thereof.

❖ The following scenarios are possible regarding the *restoration of violated human rights*:

1. The authority agrees with the Defender's suggestion, in which case the review of the complaint shall end when the violated right is restored; or
2. The authority may disagree or fail to respond to the Defender's suggestion, or provide various excuses to delay addressing the issue, in which case the Defender takes other legal measures, and the activities regarding the complaint do not end unless the violated right is restored by such authority. This is the reason why dozens of complaints received last year, which were found to be violations of human rights and suggestions were made, are still pending.

❖ Here are some *statistics* concerning the outcome of reviewing 1,294 written complaints and applications addressed to the Defender:

1. Accepted for review	471
2. Applicant informed of available remedies	150
3. Forwarded to another agency	79
4. To be supplemented	53
5. Not accepted for review	541



As a result of the review, a certain number of applications were *not accepted for review*. The reasons are listed below:

1. The matter is exclusively subject to *judicial procedure*, has been through all the judicial steps, and there are court judgments that have become final;
2. The complaint is related to violations of citizens' rights in the *private sector* or disputes between private parties;
3. The complaint is *generic*, rather than specific, and:
 - a) The complainant has failed to name the central or local government body or official which has violated a right;
 - b) The complainant has failed to make any claim; or
 - c) The complainant has failed to give his telephone number, and there is no way to contact him to fill in the missing information;
4. There are other reasons, as prescribed by law, such as the matter that was raised in the complaint is subject to judicial review.

❖ The number of inadmissible complaints is rather high (541), which is partially a consequence of the fact that the public and, in particular, vulnerable groups, have a limited awareness of the Defender's mandate and activities, i.e. the public expects more than the Defender's mandate prescribes.

Nevertheless, inadmissible complaints have been studied. The studies have covered:

- A meeting with the complainant, if the complainant is in prison, in the military, or in a remote area;
- An inquiry with the agency or official against whom the complaint was lodged and, where necessary, a meeting to discuss the issue;
- Seeking possible ways of assisting the complainant with regard to the issues raised in the complaint; and
- Reviewing legislative gaps which cause problems that are ultimately raised in complaints and developing recommendations on how to address such gaps.

During meetings with the Defender, the Deputy, or staff, those whose complaints were declared inadmissible were able to present the problems in person and to receive an explanation as to why their complaints were not reviewed and, if necessary, to receive professional counseling.

❖ Though private sector employment-related violations of human rights by employers are beyond the Defender’s mandate, a large number of complaints raised apparent violations of human rights in this sphere, which led the Defender to review the legislation and practices concerning human rights violations in the private sector employment (see Appendix 2).

❖ A large number of inadmissible complaints were those from prisoners, most of which had to do with allegations of charges against such prisoners not being adequately proven. Such complaints were not reviewed in light of the courts’ jurisdiction based on its review of evidence.

However, in all of these cases, the Defender made sure to meet with prisoners because regardless of the substance of their complaints, they always need some advice on their cases and their situations. These prisoners do not have access to lawyers; many of the prisoners had not used lawyers during their cases due to a lack of knowledge of their procedural rights.

❖ Of the 471 complaints reviewed, investigations were carried out in 245 cases, including:

1. Making a suggestion on the basis of the review	93
2. Review terminated:	
o Due to the complainant appealing to court	33
o Due to the lack of any allegation or claim related to a violation of human rights	110
o At the request of the complainant—due to a change in circumstances raised in the complaint	9

Of those:

The number of successful cases was: 85

❖ During review of the complaints, the Defender sent 679 letters to various public agencies suggesting that the rights be restored, including letters to the following:

o The President of Armenia	2	
o The National Assembly (recommended legislative amendments)	2	2
o The Prime Minister	2	
o Ministries	103	
o The Prosecutor General	41	
o The Military Prosecutor	4	
o Prosecution offices	54	
o The Chief Judicial Enforcement Officer	54	
o The Cassation Court	5	
o The Appellate Court	8	
o First instance courts	22	
o The National Security Service	2	
o State Committee for the Real Estate Cadastre	38	
o State Tax Service	2	
o State Customs Committee	4	
o Department for Migration and Refugees	14	
o Police of Armenia	56	
o State Fund for Social Insurance	16	
o Regional Social Security Agencies	6	6
o Utilities	7	
o Yerevan Mayor’s Office	67	
o Regional Governors’ Offices	60	

○ District Municipalities	39
○ Community Heads	12
○ University Administration	8
○ Other	51

❖ The officials of certain central and local government agencies do not realize the importance of human rights protection; therefore, certain agencies or officials at times ignore, delay, or never even respond to the Defender's letters or suggestions. For example, responses to some of the Defender's letters to the Yerevan Mayor arrive late, i.e. in breach of the time periods specified by the Defender. As a rule, these responses are inadequate, because the issues raised are not fully clarified. The Yerevan Mayor has not personally responded to any of the letters addressed to the mayor.

❖ Without any expectation of the Defender to achieve sudden or fundamental systemic improvements in the protection of human rights in freedoms in just one year, it is a positive sign that all the agencies with which the Defender has dealt know that if they violate rights or freedoms, the chance of the Defender's involvement will arise. This is already a deterrent, the force and effect of which will continue to grow.

During 2004, the Defender's activities focused on strengthening and improving awareness of the institution as a body, with powers to intervene and demand an elimination to the violations of human rights. The Defender and her staff have conducted meetings and discussions with the respective agencies and officials with a view towards strengthening this newly-established institution.

With regard to the Police, for instance, they know that unlawful apprehension, confinement, or any unlawful act against anyone may become known to the Defender, and that the Defender may get involved. They also know that the Defender's Rapid Response Team unexpectedly appears where there has been or may be a violation of human rights.

In the Judicial Enforcement Department, they are well aware that complaints regarding violations or failures in enforcement reach the Defender's office, and that they will have to at least provide clarification on such cases.

In the judiciary, they know that the Defender monitors judicial sessions, and that procedural violations observed may serve as a basis for disciplinary actions against judges.

In the Yerevan Mayor's Office, they are aware that the Defender is focusing its attention closely on violations related to land allocation.

In the Military Police, they know that special attention is paid to lawfulness of confinement in pre-trial police custody facilities.

❖ Consequently, *positive results* were reported not only at the stage of restoring violated rights, but also during the review and investigation of complaints.

In 72 out of 541 complaints *studied, but not accepted for review*, the Defender invited the authorities to examine the facts raised and made inquiries that resulted in those authorities restoring the rights violated. Therefore, it was no longer necessary to make a decision on accepting the complaint for review.

Success was also achieved regarding complaints forwarded to *competent authorities*, with the consent of the complainants, where the authorities exercised their power to restore the violated rights upon the suggestion of the Defender. Based on information received from such authorities and applicants, the rights mentioned in 27 out of 79 forwarded complaints were restored.

Legal counseling on remedies has been rather important, as it has led to over 46 satisfied complainants.

Here are some of the *achievements* regarding the review of complaints:

- Restoring the job of a person unlawfully dismissed;
- Discharge of a person unlawfully conscripted into the army;
- Restoring a person's land ownership rights;
- Restoring the right to continue education in a university;

- Terminating unlawful imprisonment;
- Proving groundless a dismissal of a criminal case; and
- Terminating a detention order, etc.

Thus, the collaboration between the Defender and certain bodies of central and local governmental agencies has generated positive results, especially when the complaints were related to violations caused by poor administration.

All of this shows that recognition of human rights, as a priority, is an effective path that will, without any financial or material investment, allow for the fundamental improvement of respect for human rights.

3. VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ARMENIA

In her assessment of violations of human rights and fundamental freedoms, the Defender has been guided by the Republic of Armenia's Constitution and laws, and the UN and Council of Europe declarations and treaties on human rights and fundamental freedoms such as:

- The Universal Declaration of Human Rights;
- The Convention on Human Rights and Fundamental Freedoms and its Protocols;
- The International Covenant on Civil and Political Rights and its Optional Protocols;
- The International Covenant on Economic, Social, and Cultural Rights;
- The Convention on the Status of Refugees;
- The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment;
- The Convention relating to Civil Procedure;
- The Convention against Discrimination in Education;
- The Convention on Technical and Vocational Education;
- The Convention on the Elimination of All Forms of Discrimination against Women; and
- The Convention on the Rights of the Child.

The principles regarding human rights and fundamental freedoms, which are enshrined in the aforementioned international treaties, are mainly reflected in the chapter of the Republic of Armenia's Constitution on "Fundamental Rights and Freedoms of Humans and Citizens." Therefore, this report will analyze such rights as prescribed under the Republic of Armenia's Constitution.

3.1. Right to Life

Everyone has the right to life. Until such time as it is abolished, the death penalty may be prescribed by law for particularly grave crimes, as an exceptional punishment.

(Republic of Armenia's Constitution, Article 17)

❖ Any violation of human life or health qualifies under the Armenian Criminal Code as a crime which subjects the offender to punishment. The death penalty is not prescribed under the new Criminal Code. For those convicted and sentenced to death under the previous criminal code, their death penalty has been transmuted to life imprisonment.

The Law on Enactment of the Criminal Code (dated April 18, 2003) provides an *ad hoc* solution to the problem of those sentenced to death by prescribing a retroactive effect of a law which provides for a lighter sentence (the retroactive effect of the law concerning abolishment of the death penalty was not applicable to those who were convicted of murder with aggravating circumstances, a terrorist act, or rape of minors. For the other categories of individuals, their death penalty sentences were, under the aforementioned law, subject to judicial review and substitution with a new sentence of life imprisonment). (See Article 3(4) and Article 6 of this law.)

Under Article 3(4) of this law, the death penalty which was imposed, regarding the categories of individuals mentioned in this article, was subject to enforcement. The issue was resolved by the President of Armenia by granting a form amnesty to such persons by Presidential Decree dated August 1, 2003, and their death penalty sentences were then transmuted to life imprisonment.

Individuals sentenced to death under the previous Criminal Code have rightfully complained that this law violated their constitutional right to be free from sentencing to a more serious punishment than that which existed under the laws at the time when the crime was committed.

Life imprisonment was not prescribed under the previous criminal code, and the maximum imprisonment term was 15 years, or 20 years for cases in which the death penalty was replaced with imprisonment, as a measure of leniency. Therefore, when the death penalty was abolished under the new law, which also prescribed the retroactive effect of law that decriminalizes an act, mitigates a sentence, or improves the condition of the offender in any other way (Article 13 of the Criminal Code), individuals sentenced to death under the previous code have the right to demand that their sentence be replaced with imprisonment that does not exceed the maximum prison sentence prescribed under the previous criminal code.

In order to find a solution to this problem, the Defender organized discussions with representatives of the Ministry of Justice, the Prosecution, and the National Assembly. It was concluded upon these discussions that the aforementioned problem could be addressed by means of an appropriate legislative initiative.

❖ Though the number of murder and physical injury cases is declining, they still happen, and their comprehensive and impartial investigation, combined with a timely and complete solution, is the key to prevention of such cases and an improved perception of everyone's physical security.

In murder cases, complaints are lodged by both the suspects and the victims' successors. Suspects normally complain about breaches of their procedural rights, fabricated prosecution evidence and, in general, a non-impartial investigation. Victims mainly complain about inadequacy and deficiencies of the investigation which, in their opinion, allows some criminals to avoid punishment.

The Defender may, and does, intervene in these complaints, when there is an apparent breach of procedural rights. For example when a person is not declared a successor of the victim, when the victim's successor is not granted access to the case file, when the suspect is deprived of the right to have a lawyer, or when the detention goes beyond the time period prescribed by law, and so on.

Parallel to this there have been, and currently are, complaints containing facts concerning the investigative authorities' impartiality, procedural violations, limitations of suspect's rights, and the like.

There is, in particular, much dissatisfaction about cases investigated by the Military Prosecution. People complain that this agency fails to ensure a complete and impartial investigation, and that the parties charged in cases are often unlawfully held in custody.

The Defender has invited the General Prosecutor to pay attention to this issue.

3.2. Right to Freedom and Immunity

Everyone has the right to freedom and personal security. No one may be arrested or searched except as prescribed by law. A person may be detained only by court order and in accordance with the procedure defined by law.

(Republic of Armenia's Constitution, Article 18)

Investigative authorities continue to detain suspects as a preventive measure, without justifying its necessity. Though detention orders are issued by a court, the pre-trial investigation authorities have the power to request such detention. Quite often they do so with a lack of sufficient proof to support the charges. When authorizing detention orders, courts do not examine whether the charges are supported by facts, and ignore a lack of facts that would ordinarily be required to order detention. Bail is rarely granted as an alternative to pre-trial detention.

The Defender often receives complaints on police and investigative authorities failing to comply with the procedural requirements on summoning witnesses, victims, suspects, or the accused. For instance, there are complaints of the summoned person not receiving the summons, or not being notified of the case and his status in the case.

According to complainants, and based on the review of complaints accepted by the institution, there are quite a few cases in which the criminal investigator may issue a groundless order on apprehending a person, and keep him in custody without ever making an apprehension decision. Or cases in which a person suspected of a crime, despite the lack of sufficient evidence to prove his guilt, is convicted of an administrative infraction. He is then detained by the court for the purpose of implementing the so-called "operational measures".

In a number of cases where a pre-trial detention ordered, as a preventive measure, was an apparent mistake, the Defender made a suggestion to replace it with a different type of preventive measure. These suggestions were rarely accepted.

3.3. Right to Be Free from Torture and Cruel, Inhuman and Degrading Treatment and Punishment

No one may be subjected to torture and cruel or degrading treatment and punishment.

(Republic of Armenia's Constitution, Article 19)

Violations of this right mainly concerned apprehension of a person by the police or investigative authority, upon suspicion or facts of committing a crime or an administrative infringement, the holding of such persons in custody and their interrogation.

In their complaints, the complainants insist that the police have not abolished the practices of groundless apprehension, detention, the use of violence, the extraction of self-incriminating testimony and evidence, and fabricated prosecution evidence regarding the alleged crime.

In criminal cases in which the police prepared the file, there are allegations that the concerned persons had to provide self-incriminating testimony in conditions of unlawful custody under the threat and use of violence and intimidation. These persons state such allegations both during pre-trial proceedings, before the investigative authority, and in court. Such statements and allegations are not fully investigated by the authorities; moreover, only superficial investigations are conducted, but only with the aim of refuting such allegations.

Cases are not initiated on the basis of complaints addressed to the Prosecutor General of the country or to regional prosecutors. The review of such complaints is mainly assigned to the same investigator who is investigating the case, even when this investigator is the person whose actions are the subject of such allegations. In rare cases, when a different unit of prosecution is instructed to investigate these allegations, there are still no safeguards of an impartial investigation. During the hearing courts tend to ignore these allegations.

Grisha Virabyan's criminal case is a rather typical example of this situation.

Virabyan was apprehended and taken to the Artashat City Police Station from his village, without any grounds, at around 2:30pm on April 23, 2004. While in the police station, a police

officer insulted, degraded, cursed at, and hit Virabyan. Virabyan, who did not tolerate the degrading treatment, in turn hit this police officer. Later, less grave physical injury was inflicted upon Virabyan while he was in police custody.

The Prosecution initiated a criminal case against Virabyan for inflicting physical injury upon the police officer. In the criminal case, all the acts of the police officer were ruled as lawful, and there was no mention of the fact that Virabyan, who was unlawfully detained by the police, received his physical injury while in police custody. Further, no police officer had been punished for inflicting such injury upon Virabyan.

The Defender's reaction to the case was straightforward: what happened must be characterized as cruel and degrading treatment against Virabyan, because the head of an agency is responsible for the health and security of a person taken or invited to his institution. The person's behavior in the institution may not serve as a justification for injuring him, and the staff has the duty to be tolerant.

In this case, the Defender had a meeting with not only Virabyan, but also the regional prosecutor and the regional and local police leadership. The circumstances of the case were discussed, and it was assumed that an impartial investigation of the case would be ensured. However, no progress was reported. With this background, the Prosecutor General was requested to assign another investigative authority to investigate the case; this request was granted, and the Erebouni Community Prosecution Office was instructed to investigate the case. However, there was still no progress, and Virabyan was still the only one being charged. By that time his indictment was ready to be sent to court. The Prosecutor General ordered that the charges be dropped only after the Defender intervened.

In other police stations, too, the Defender found two cases of violence against persons deprived of liberty. However, nothing was done with these cases because the victims of violence themselves denied the fact that anything wrong occurred.

It is stated in complaints addressed to the Defender that Article 17 of the Armenian Criminal Procedure Code provides that "All statements of the suspect, the accused, and their defense attorney about their innocence, on the availability of evidence absolving the suspect or the accused or reducing their responsibility, and all appeals on violation of the law in the course of criminal proceedings shall be thoroughly examined by the body conducting the criminal proceedings." However, this provision is never complied with and the violations are not addressed. In the end, the officials responsible for the violations do not face any consequences.

All of this leads to the conclusion that there are systemic problems that need to be resolved. Courts need to take a firm stand against such violations, which need to be discussed in order to deter criminal investigation authorities from engaging in such unlawful practices in the future.

3.4. Right to Freedom of Movement

Every citizen has the right to freedom of movement and choice of residence within the territory of the Republic.

(Republic of Armenia's Constitution, Article 22)

❖ The early stages of the Defender's activities coincided with the demonstrations that were held in the country during March and April of 2004.

The opposition began to hold demonstrations and meetings with constituents in several regions starting in early February. The authorities did not interfere with these meetings.

The first time the authorities interfered with the demonstrations was at the end of March in Gyumri, which involved the arrest of demonstration participants and the commencement of criminal cases against them.

The Defender visited the Shirak Region regarding the Gyumri demonstration and had meetings with those arrested, those testifying against them, the regional prosecutor, and the police chief. Thereafter, the Defender presented to the Prosecutor General of Armenia and to the regional prosecutor her written assessment of what had happened, suggesting that they investigate all the flaws of the local authorities regarding these cases.

The Defender found a number of human rights violations in police actions regarding demonstrations held in the capital city in April.

On the days of the demonstrations, the police reportedly limited the movement of public transport into the capital city, which violated citizens' right to freedom of movement within the country.

Also during this period, the Defender visited the regions, observed police activities on the roads, met with drivers of passenger transports, and visited the passenger transport parking lots.

In one of the passenger transport lots in Etchmiadzin, for instance, all of the public transport was idle as of mid-day. The lot manager avoided the meeting with the Defender; lower-ranking officials, when asked why the transport was not operating, claimed there was a technical checkup.

The Minister of Transport and Communication was notified of this situation and invited to intervene in order to ensure the movement of transport on roads between the various regions. The National Police Chief was asked to explain why passenger transportation from the regions to the capital city was banned.

Though the responses did not contain an assessment in line with reality, noticeable improvement was thereafter observed.

During this period, individuals were frequently apprehended for administrative infractions and taken to police stations where administrative detention was ordered against them by the court.

A review of these cases shows that the legislation on administrative infractions was abused: "foul language" was cited as a basis for sentencing a person to administrative detention.

❖ The fundamental human right to choose a place of residence is, in a way, limited under the legal rules on the passport system. There are numerous cases in which a married woman maintains her registration at her parent's address, and then becomes divorced. Thereafter she chooses another home, but will not be registered at, or be considered a resident of, the new place because of disagreements with the home owner.

Such an artificial ban is caused by a misunderstanding of the right of residence prescribed under Article 225 of the Civil Code: the home owners avoid registering other persons in their home because they are afraid that the other person will obtain some type of use or ownership rights in the home.

There was a case where children living with a divorced woman could not get passports at their place of residence because the mother was not registered at that address, and the By-Laws of the Passport Department provide that minors shall be registered at the same place as their parents. This reason was invoked to deny the registration of a 17-year old minor in an apartment owned by him and to refuse the issuance of a passport to him.

It must be concluded, therefore, that the time has come for adopting a law on the passport system.

3.5. Right to Conduct Meetings, Gatherings, Rallies, and Protests

Citizens shall have the right to conduct peaceful and unarmed meetings, gatherings, rallies, and protests.
(Republic of Armenia's Constitution, Article 26)

In cases related to demonstrations, there is wide use of the notion of “unauthorized demonstration” based on the former USSR Supreme Council Presidency Decree of July 28, 1988 on the “Procedure of Organizing and Holding Meetings, Demonstrations, Street Rallies, and Processions in the USSR”. However, the right to hold peaceful and unarmed meetings, demonstrations, rallies, and processions is guaranteed to Armenian citizens under Article 26 of the Armenian Constitution.

The Defender took from the courts a number of cases related to administrative infractions and conducted a thorough study. The findings were sent to the Prosecutor General of Armenia and, in light of the apparent abuses of power in such cases, it was recommended that the guilty parties be punished. Some of the Defender’s findings were isolated and sent to the Armavir Region Prosecutor for corroboration and processing. The regional prosecutor later announced that no crime was identified. The police officers in question were given warnings for some of the less significant violations.

In this respect, several criminal cases were initiated and pre-trial detention was ordered against some individuals charged under Article 225 of the Criminal Code (mass disorder), Article 300 (usurpation of state power), and Article 301 (public calls to violently change the constitutional order).

The possibility of initiating such criminal cases points to the need to amend the unduly harsh parts of the aforementioned articles, to define the crimes more specifically, and to rule out any possibility of their broad interpretation. The title of Article 300, for instance, which reads “Usurpation of state power”, does not correspond to the meaning of the article. The article is actually concerned with violent usurpation of state power and the forceful holding of the power thereafter.

The Defender did not agree that the acts of the concerned individuals qualified as criminal offences and, based on that, held a number of discussions with the Prosecutor General and presented her position in writing. These types of criminal cases were then dropped by the prosecutor’s office.

The Armenian Law on the Procedure of Conducting Meetings, Demonstrations, Rallies, and Processions, adopted on April 28, 2004, which is designed to regulate the exercise of these constitutional rights, still contains some uncertainty that could be interpreted as a restriction on these rights.

By defining a “mass public event” as one with 100 or more participants, there is a threat that non-mass public events may be prohibited if the number of participants reaches or exceeds 100 spontaneously during the event.

This law does not prescribe a direct requirement for obtaining permission to hold a mass public event, but it is implied given the substance and meaning of this law. The mere fact that the failure to notify in advance is a ground for terminating the event means a requirement to obtain authorization beforehand.

The list of sites where the holding of mass public events may be prohibited and the list of grounds for restricting the holding of such events are rather long; there is a limitation on the possibility to organize a counter-demonstration. All the organizers of the event are unjustly required to be present throughout the event. In this sense, this law needs to be entirely revised.

Parallel to this, the Armenian Law on Amending the Criminal Code added Articles 225-1 and 258-1 to the Criminal Code, which allows for the termination of any mass public event or the

prohibition of any public speech, and to hold the organizers and participants liable in criminal proceedings.

All of this shows that laws on the right to hold meetings, demonstrations, rallies, and processions must be harmonized with the principles of international law and the international commitments undertaken by Armenia.

3.6. Right to Form and Join Associations

Everyone has the right to form associations with other persons, including the right to form or join trade unions. Every citizen has the right to form political parties with other citizens and to join such parties. These rights may be restricted for persons serving in the armed forces and law-enforcement agencies. No one shall be forced to join a political party or association.

(Republic of Armenia's Constitution, Article 25)

Various laws of the Republic of Armenia (such as the Law on Parties, the Law on Non-Governmental Organizations, the Law on Trade Unions, and so on) prescribe the procedure and terms for exercising the right to form and join associations, as guaranteed by the Constitution.

Laws on economic associations and companies have been adopted on the basis of the Civil Code's principles. Therefore, the legislative grounds for exercising the right to form and join associations are present.

The 2004 amendments to the Law on Parties, which require parties to have at least 2,000 members at all times after registration, pose certain obstacles to people's right to join parties.

The attack on the Justice Faction's offices and the infliction of damage to the office's assets by law-enforcement officers on April 12, 2004 was reported as a negative phenomenon. The Prosecution initiated a criminal case, but to date has failed either to discover the perpetrators or to punish anyone.

The Law on Trade Unions has not facilitated the enhancement of such unions, which is seen as a considerable shortcoming in the area of employee rights protection.

Enhancement of trade unions is especially important because in this market economy, which still suffers high rates of unemployment, the new Labor Code has still not become effective. Further, the State Labor Inspectorate has not been formed and employees are left unprotected against arbitrary actions by employers.

3.7. Right to Fair Trial and Judicial Protection

Everyone has the right to restore his violated rights and to have his case heard publicly by an independent and impartial court in conditions of equality and in accordance with all the requirements of justice for the determination of any charges against him.

(Republic of Armenia's Constitution, Article 39)

❖ As a result of judicial reform in the country, Armenia now has universal first instance courts, an Economic Court, an Appellate Court for Criminal and Military Affairs, a Civil Appellate Court, and a Cassation Court.

The Constitutional Court's role within the judiciary is unique: it has very little influence over safeguarding the right to judicial protection and the right to a fair trial insofar as application to the Constitutional Court is limited only to certain entities.

In this new judiciary, the Appellate Court is rather valuable because here, the whole case may undergo *de novo* review by a panel of three professional judges, which is a sound guarantee for minimizing errors.

There are still no administrative courts in the judiciary. The creation of such courts is in the agenda, anticipated to happen sometime in 2005.

First instance courts have been created and are currently active in all the district communities of Yerevan and in the regions, where they are located in the former regional centers.

Courts are geographically accessible for the population, though residents of remote settlements face some difficulties.

The court fee for civil cases, coupled with a lack of sufficient funds, makes it impossible for a large share of the public to apply for judicial protection of their rights.

Under Article 92 of the Civil Procedure Code of Armenia, an application may be returned if the court fee has not been paid. There should be discussion as to whether this clause should be maintained.

❖ Complaints against courts are generally related to procedural violations such as the right to be present at hearings, the right to have a lawyer, the right to examine and confront adverse witnesses, and other similar rights.

In criminal cases, there is a high level of dissatisfaction about passing judgments that use illegally obtained evidence. Courts avoid reviewing procedural violations committed by investigative authorities; as a consequence inadmissible evidence obtained as a result of such violations is used to convict people.

A review of complaints, and the findings from monitoring court session, supports the conclusion that courts often fail to justify their decisions on rejecting defense motions in criminal cases. Delaying the review of any motion is common practice, especially when such motion is related to a finding that evidence is inadmissible.

There are often cases of groundlessly rejecting motions for ordering additional or new expert opinions, conducting experiments, summoning new witnesses, or performing other acts.

The defense does not necessarily enjoy a level playing field with the prosecution. Courts often take the side of the prosecutor, especially when the indictment runs the risk of failure. There is no justification for the courts to uphold anything but the interests of justice. A case was reported where the hearing was conducted and a judgment entered while the accused was absent, which is an extraordinary case of judicial misconduct.

Investigative authorities continually violate the procedural deadlines for making decisions on tips received on unsolved crimes. The Criminal Procedure Code provides three days or, in certain cases, 10 days for reaching such decisions. However, there are cases when the police or prosecution takes months to prepare cases regarding such leads. No attention is paid to the fact that it is a breach of the procedural deadline and that, under Article 174 of the Criminal Procedure Code, investigative findings obtained in violation of the procedural deadlines are inadmissible as evidence.

❖ In civil cases, there is considerable dissatisfaction with undue delays in proceedings, the failure to send applications, other documents, decisions, or judgments in a timely manner, as well as the adjudication of cases in the absence of respondents who have not received proper notice, and other similar violations.

There was an incident when the first instance court sent a civil case file to the appellate court 40 days after the appellate court receiving the appeal. No member of the administration faced any disciplinary action for this violation.

Another example of faulty judicial practice is when court staff (chief of staff, registrar, **or judge's assistant) retain for themselves the right to reject or assess an application, or to assume a number of functions that otherwise should be performed by the judge.** Thus, artificial obstacles are created **impeding citizens' ability to exercise their right to appeal their cases.**

There are a large number of complaints concerning the efficacy of judgments. One of the reasons, perhaps, is that in civil cases, there is a party against whom the judge rules, and this "losing" party ends up not satisfied. However, studies have shown that manifestly unfair judgments are made in some cases, with only formal justification, at times circumventing irrefutable evidence that would otherwise lead to a decision in favor of the "losing" party..

In almost all cases of disputes with those implementing Yerevan's urban development programs, usually related to unusually low property appraisal or unacceptable contract terms, courts have generally ruled in favor of the developers and have failed to consider the facts proving bias, issues of common ownership, owner's foregone profits, changes in market prices, and other circumstances.

Having summarized the results of these judicial decisions, the Defender requested the Cassation Court Chairman to discuss the matter in the Council of Court Chairmen in order for the Council to issue specific commentaries and guidelines for courts.

❖ Enforcement of judgments is a crucial component of the right to effective judicial protection.

Insofar as respect for citizens' rights is concerned, the activities of the Judicial Enforcement Department of the Ministry of Justice are far from satisfactory, as illustrated primarily by the number of complaints alleging the Department's failure to enforce judicial decisions.

Though the insolvency of a debtor may somehow explain the creditor's failure to collect the amount payable (when both parties are private citizens), the non-enforcement of the collection of unpaid salaries and outstanding debt from legal entities cannot be justified.

Several hundred judgments entered in 2003 have still not been enforced to collect back salaries from the Fiber Plant and Passenger Transport Company in Vanadzor, and the Dvin Hotel and Nairit Plant in Yerevan.

Vanadzor's Passenger Transport Company has already been declared insolvent, and the collection of back salaries owed by them is no longer realistic. This is partially the fault of the Judicial Enforcement Department that failed in both collecting the back salaries in a timely manner and seizing company assets.

Most of those who claim back salaries from the Nairit Company are retired, elderly people who are in desperate need of those payments.

Nothing is being enforced against Nairit. On May 8, 2003, the Government of Armenia declared Nairit a company fulfilling a state order, and the Judicial Enforcement Department therefore suspended all enforcement and seizure proceedings against Nairit based on Article 38(3d) of the Armenian Law on Enforcement of Judicial Acts. This article states "An enforcement officer shall have the right to suspend enforcement proceedings, if the debtor is engaged in the performance of a state order".

Nairit, in fact, is not fulfilling any state order. The aforementioned decision was made by the Government with the sole aim of suspending the collection of these back salaries. This resulted in a suspension being imposed by the Judicial Enforcement Department.

The Defender found the suspension of the enforcement proceedings by the Judicial Enforcement Department a violation of the right to receive remuneration for work. The Defender suggested resuming proceedings and ensuring collection. The Judicial Enforcement Department failed to carry out the Defender's suggestions. The Minister of Justice was notified, but he also found that these judgments are not subject to enforcement as long as there is a valid government decision declaring that the plant is carrying out a state order.

These developments show that the aforementioned provision of Article 38 of the Law on the Judicial Enforcement Department contradicts Article 14 of the Civil Procedure Code. The latter states that "a judicial act that has entered into legal force shall be binding upon all the state bodies, local government bodies, their officials, legal entities, and citizens, and shall be enforceable throughout the Republic of Armenia."

Article 38(3) of the Law on the Judicial Enforcement Department effectively gives an enforcement officer the right to not enforce a judicial act that has entered into legal force. In the case discussed above, this right was abused by the enforcement officer.

We believe Article 38(3) of the Law on the Judicial Enforcement Department should be repealed.

Moreover, the ability to exercise the right to a fair trial and judicial protection would benefit from the imposition of liability for breaching procedural processes or adopting groundless or unfair decisions, judgments, or rulings. At present, a higher court has no right to hold a lower-court judge liable for breaches, regardless of their nature.

Amendments to the Criminal and Civil Procedure Codes should be considered to authorize a higher court to overturn a lower court's decision.

3.8. Presumption of Innocence

A person accused of crime shall be presumed innocent until proven guilty, in accordance with the procedure defined by law, by a court sentence properly entered into force. The defendant does not have the burden to prove his innocence. Unproven doubt shall be resolved in favor of the defendant.

(Republic of Armenia's Constitution, Article 41)

This principle is guaranteed in both the Constitution and Article 18 of the Criminal Procedure Code, which defines the presumption of innocence to include also the defendant's right to be free from the burden of proving his innocence, the right to be convicted of a criminal offence only on the basis of sufficient and relevant interrelated credible evidence, the right to have unresolved doubt construed in favor of the defendant, and the right to be free from pre-trial preventive measures that contain elements of punishment.

There are no issues regarding the requirement that a person's conviction of a crime be endorsed by a court judgment that has entered into legal force. There are, however, problems related to respecting the presumption of innocence in the assessment of evidence underlying the conviction. Complaints received by the Defender are mainly concerned with the neglect of these principles by the pre-trial agencies and the courts. Such principles are the cornerstone of a fair trial. Unfortunately, courts often ignore them which lead to breaches of the right to a fair trial. There are quite a few cases in which courts adjudicate without ever considering the inadmissibility of illegally obtained evidence, thereby resulting in judgments reached on the basis of assumptions.

The Defender studies complaints concerning criminal cases pending before courts and regularly invites the courts to pay closer attention to these breaches.

3.9. Right to Legal Aid and a Counsel

Everyone has the right to defend his rights and freedoms by all means not prohibited by law. Everyone has the right to judicial protection of his rights and freedoms enshrined in the Constitution and the laws.

(Republic of Armenia's Constitution, Article 38)

Everyone has the right to receive legal aid. Legal aid shall be provided free of charge in cases prescribed by law. Everyone has the right to have legal counsel from the moment he is arrested, detained, or charged. Every convicted person has the right to have his conviction reviewed by a higher court in accordance with the procedure defined by law. Every convicted person has the right to request pardon or mitigation of his sentence. Compensation for harm inflicted upon the wronged party shall be provided in accordance with the procedure defined by law.

(Republic of Armenia's Constitution, Article 40)

Article 40d of the Armenian Constitution establishes everyone's right to legal assistance, the right to receive free legal aid in cases prescribed by law, and the right to have a lawyer from the moment of one's arrest, detention, or being charged.

Under the Criminal Procedure Code of Armenia, suspects or defendants who are insolvent are entitled to free legal aid. The law does not provide any possibility of free legal aid for parties to civil proceedings.

The Law on Advocacy, adopted on December 14, 2004, allows for free legal aid in some civil cases through lawyers of the Chamber of Advocates. Cases include alimony collection, disability or health issues, and compensation for damages incurred due to the loss of the head of the household.

The same law contemplates the creation of the Public Defender's Office within the Chamber of Advocates, which will be funded by the state budget and employ lawyers to provide free legal aid and assistance.

This is a step towards the complete safeguarding of the right guaranteed in Article 40 of the Constitution. The newly-emerging Chamber of Advocates should ensure the quality of these services.

Article 40 of the Constitution limits the scope of those entitled to have a lawyer in criminal cases. As a result, individuals who are suspected of involvement in criminal cases, though the investigative authority has not formally given them the status of suspects, may not exercise the right to have a lawyer.

As a consequence of this limitation, investigative authorities summon the *de facto* suspects in order to prepare and process the case, but do not allow their lawyers to be present. In the meantime,

they capitalize on these individuals' lack of legal knowledge to extract self-incriminating evidence from them. At this stage, violations like unlawful apprehension, unlawful deprivation of liberty, and the use of violence take place.

The constitutional reforms should address these principles under Article 40.

During the preliminary investigation, the exercise of the right to a lawyer is mainly ensured. However, the lawyer is often not given sufficient time to study the case files and to make motions. During the pre-trial investigation, in particular, when the detention period risks expiration, the investigators groundlessly limit the length of time for the lawyer to study the case files; the investigators then accuse the lawyer of "undue delays."

When a new lawyer is engaged, the court, too, will sometimes allow an unreasonably short period of time for him to study the case file.

These practices result in serious breaches of the right to defense.

3.10. Inadmissibility of Unlawfully Obtained Evidence

A person accused of a crime shall be presumed innocent until proven guilty, in accordance with the procedure defined by law, by a court sentence properly entered into force. The defendant does not have the burden to prove his innocence. Unproven doubt shall be resolved in favor of the defendant.

(Republic of Armenia's Constitution, Article 41)

A person does not have to testify against himself or against his spouse or close relative. The law may foresee other circumstances relieving a person from the obligation to testify. Unlawfully obtained evidence may not be used. It shall be prohibited to order a sentence that is more severe than that which could apply under the law in effect at the time the crime was committed. A person may not be considered guilty of a crime, if at the time of its commission, the act was not considered a crime under law. Laws prescribing liability and laws prescribing more severe liability shall not have retroactive effect.

(Republic of Armenia's Constitution, Article 42)

Inadmissibility of illegally obtained evidence is detailed in Article 42 of the Constitution. The Criminal Procedure Code defines the procedure and terms of obtaining evidence, as well as the grounds and procedure of discarding illegally obtained evidence.

Respect for this procedural requirement is a guarantee of the right to a fair trial. Moreover, it is a step towards establishing the rule of law.

Complaints regarding criminal cases and our monitoring efforts have led us to the conclusion that courts avoid any review or, let alone, granting of motions on declaring evidence inadmissible due to it being illegally obtained. Normally, decisions are made to delay the review of such motions instead of assessing the evidence in the judgment.

In the famous case of Lavrenti Kirakosyan, for instance, the defense moved to declare inadmissible the narcotic substance that was used as evidence. The motion was based on the evidence being obtained by an apartment search that failed to comply with the procedural requirements, namely as to the presence of a sufficient number of search witnesses and the searching officers not being visible to the two search witnesses that were present.

The court delayed the review of this motion; the court never came back to this issue.

This practice contradicts the letter and spirit of the law, because the very idea of evidence inadmissibility implies that it should result in either the charges being dropped, the ordering of a different preventive measure, the ordering of an additional investigation, or the termination of court proceedings.

The Council of Court Chairman can and should specifically address this issue and emphasize the need for ruling evidence inadmissible before the end of the hearing.

3.11. Freedom of Thought, Conscience, and Religion

Everyone has the right to freedom of thought, conscience, and religion. The freedom to practice one's religion and express one's beliefs may only be restricted by law on the grounds prescribed in Article 45 of the Constitution.

A total of 55 religious organizations which follow Christian, Judaist, Pagan, and new religious movements, have been registered in the Republic of Armenia.

❖ Allegations concerning violations of freedom of faith and conscience have been received from representatives of the Jehovah's Witnesses organization in respect to military service, as opposed to any intolerance of their faith.

The registration of the Jehovah's Witnesses organization in 2004 and the adoption of the Law on Alternative Service have, by and large, addressed the issues faced by followers of this belief.

There still remains the problem of how to deal with individuals who have once been convicted for avoiding the regular military draft, served their sentence, and are again avoiding the next draft. This problem exists in regard to members of the Jehovah's Witnesses organization.

There was a case where the Prosecution decided to drop charges in a criminal case on the ground that prosecution and conviction of these individuals would mean "conviction twice for the same act," which is impermissible.

The military commissioners disagree with this approach of the Prosecution, claiming that conviction for avoiding the regular draft does not exempt a person from the duty to fulfil his military service when he has finished serving the sentence. Therefore, conviction for avoiding the next draft, according to them, cannot be considered "a second conviction" for the same act.

The solution to this problem must be found by amending the Armenian Law on Military Duty.

The military commissioners, who still have unresolved problems concerning the military duty of those who call themselves Jehovah's Witnesses, unlawfully retain the passports of these individuals, and by doing so they cause unnecessary complaints and dissatisfaction.

There was a case where the military commissioner refused to sign up a person who served a prison sentence, which then deprived him of the right to receive his passport.

❖ As a consequence of the Armenian Law on Social Cards containing incomplete and ambiguous provisions, dissatisfaction has arisen among those believers who consider "replacement of one's name with digital data" as blasphemy.

The provision of this law, whereby receiving a social card is labeled as voluntary and is only necessary to address a number of crucial social problems, is illogical in that it makes receiving a social card, in effect, obligatory. No one may receive a salary, a pension, other payments, or engage in any financial transaction if he does not have a social card.

This law should have clearly specified what social issues the introduction of these cards addresses. It should have also declared that acquisition of these cards is obligatory in light of the importance of addressing such issues.

The incompleteness of this law makes it impossible to understand why one's passport is not sufficient to store his personal data and how salaries, other incomes, and financial transactions are related to having such cards.

Since this shortcoming in this law has caused vague interpretation and much dissatisfaction, the Ministry of Social Security suggested considering amendments to this law with a view of adding clarity to the text. For whatever reason, the Ministry still has not done so and tensions regarding social cards continue.

3.12. Freedom of Expression and Right to Seek, Receive, and Impart Information

Everyone has the right to assert his opinion. It shall be prohibited to force a person to retract or change his opinion. Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas by any medium of information, regardless of state frontiers.

❖ Freedom of the press and other mass media, as guaranteed in the Armenian Law on the Mass Media, is a safeguard of the exercise of the right to freedom of expression, the right to assert one's opinion, and the right to disseminate ideas. The Armenia Criminal Code (Article 164) criminalizes the act of impeding the lawful professional activities of a journalist. However, during April 2004 and later, the failure to identify and punish the individuals who engaged in violent acts of inflicting physical, emotional, and financial damage upon mass media professionals points to the inadequacy of safeguards prescribed in this law and the inability to ensure the freedom and security of such professionals.

Much has been publicly discussed concerning the incidents that happened with journalists representing a number of mass media outlets ("Kentron", "Hye-TV", "Shant" private TV station, and the Public Television Company; the newspapers *Aravot*, *Haikakan Jamanak*, *Chorrord Ishkhanutyun*, *Aragats Ashkharh*; the Fotolure Agency; the Hetq website, and the Public Television Company of Russia) at various locations throughout Armenia (Yerevan, Ashtarak, Tsaghkadzor, Goris, and Aragats).

The Armenian Human Rights Defender has, either on the basis of complaints or on a *proprio motu* basis, responded to all of these cases. The Defender has met with the Prosecutor General to draw his attention to what happened and to suggest that he deal more diligently with the investigation and punishment of the perpetrators of unlawful acts against the mass media.

To a certain extent, the Defender's intervention has resulted in punishment. However, even for those who are caught and punished, such punishment is inadequate.

Active involvement of civil society and the mass media, as well as the intervention of the Defender and the commitment of the relevant authorities, have resulted in some, though not considerable, progress.

❖ There is major objection to criminalizing the act of insulting someone. This article in the *Criminal Code* threatens freedom of expression and, in particular, limits the freedom to criticize; the one being criticized can regard any expression as an insult and an act that tarnishes his honor and dignity. Furthermore, it is unacceptable that the punishment for the act of insulting an official differs from that of insulting an ordinary person.

❖ It is inspiring, regarding the freedom of expression, that over 40 TV channels, about 20 radio stations, 10 information agencies, and over 35 newspapers and journals currently operate in the country. Nevertheless, the involvement of the president in forming the National Television and Radio Commission raises doubt as to the Commission's impartiality.

❖ Concerning the Armenian Law on the Freedom of Information, it defines the principles, procedure, and terms of access to information and publicity. Parallel to this there is a problem with central and local authorities, at all levels, complying with the legally-prescribed procedure on the provision of information. There is a widespread practice of groundlessly refusing to provide information to individuals or NGOs.

To date, the Yerevan Mayor's Office has not made available the information demanded by the Association of Investigative Journalists to the Association, though there is a court decision ordering the Mayor's Office to provide this information. A similar situation can be found in Vanadzor where the Vanadzor Branch of the Helsinki Civil Assembly obtained the necessary information after a lengthy judicial process.

The notions of "commercial secrecy" or "personal data" are interpreted arbitrarily.

One citizen, for instance, wanted to receive documents concerning his mother's illness and death in order to resolve some inheritance-related matters. Though the heir had title to his mother's personal data, he was refused by both the respective medical institution and the Ministry of Justice.

Unconditional compliance with the provisions of the Law on the Freedom of Information by all levels of government is a crucial safeguard for respecting human rights.

3.13. Suffrage Rights

Citizens of the Republic of Armenia who have attained the age of eighteen have the right to participate in the governance of the state directly or through their freely elected representatives. Citizens declared incapacitated by a court judgment or duly convicted of a crime and serving a sentence may not vote or be elected.

(Republic of Armenia's Constitution, Article 27)

There were no elections during 2004. However, the aftermath of the 2003 presidential and parliamentary elections continues to influence political life in the country. Elections are a volatile subject giving rise to dissatisfaction and political confrontation.

Violations of law at any level of elections must be condemned because they amount to violation of the rights of the whole constituency, rather than just one or two individuals. Such violations should be treated as acts against the political stability of the country.

The Criminal Code and the Code of Administrative Infringements prescribe different types of liability for different types of violations. However, law enforcement agencies do not sufficiently pursue election violations and the perpetrators go unpunished, as confirmed by the termination of criminal cases initiated by the Prosecution.

In view of the need to amend the Electoral Code, especially the parts concerning the formation of electoral commissions, it should be kept in mind that any amendment will be in vain unless punishment for election violations is ultimately enforced.

3.14. Right to Privacy and Immunity of Home

Everyone has the right to defend his private and family life from unlawful interference and defend his honor and reputation from encroachment. The unlawful gathering, maintenance, use, and dissemination of information about a person's private and family life shall be prohibited. Everyone has the right to privacy of his correspondence, telephone conversations, mail, telegraph, and other communication, which may only be restricted by court order.

(Republic of Armenia's Constitution, Article 20)

Everyone has the right to privacy of his home. It is prohibited to enter a person's home against his will except under cases prescribed by law. A home may be searched only by court order and in accordance with the procedure defined by law.

(Republic of Armenia's Constitution, Article 21)

Everyone has the right to respect for his privacy, family, home, and correspondence. This principle has been enshrined in universally-recognized international documents on human rights.

Public authorities may not interfere with the exercise of this right except in accordance with the law and as is necessary in a democratic society, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.)

These provisions of international law have been reflected in the Armenian Constitution, which allows restriction of this right only on the basis of a court decision.

Article 12 of the Criminal Procedure Code clearly prescribes everyone's right to the immunity of the home and the procedure of ensuring respect for this right.

Article 14 of this code prescribes the right of privacy of correspondence, telephone conversations, mail, telegraph, and other communication. During criminal proceedings it is prohibited to unlawfully deprive a person of, or restrict, such rights.

During criminal proceedings, surveillance of correspondence, mail, telegraph, and other communication and wiretapping of telephone communications may only be performed on the basis of a court decision.

Problems with the exercise of this right can be addressed if the courts carry out a comprehensive investigation into complaints regarding this right. Once again, it comes down to the need for having a fair, impartial, and independent judiciary.

The Defender has not received any allegations regarding these matters; however, in view of the importance of these rights, the Defender considers it necessary to carry out studies in this field in the future to determine the exact nature of the situation.

3.15. Rights of National Minorities

Citizens, regardless of nationality, race, sex, language, religion, political or other views, social origin, property or other status, are entitled to all the rights and freedoms, and subject to the duties, enshrined in the Constitution and the laws.

(Republic of Armenia's Constitution, Article 15)

Citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture.

(Republic of Armenia's Constitution, Article 37)

National minorities make up about 3 percent of Armenia's population and include over 15 ethnicities such as Yezidis, Kurds, Assyrians, Russians, Jews, Greeks, Poles, Germans, Georgians, and others.

At present, there are different international legal documents concerning the protection of human rights, including the rights of national minorities. Armenia has joined or ratified the most important ones, including the Framework Convention for the Protection of the Rights of National Minorities, which Armenia ratified on February 17, 1998.

At the beginning of 2004, a Department for Ethnic and Religious Matters was created within the Government which has managed to address a number of problems inherited from the past.

The Defender has not received any application or complaint regarding ethnic or racial discrimination. The only case, which was related to a public statement regarding the Jews, has been addressed and the speaker received a criminal sentence.

During meetings with heads of national minority NGOs, the Defender has learned about a number of problems concerning minorities, such as language and cultural problems. The Defender has proposed introducing legislation prescribing state safeguards for the preservation of the national minorities' identity.

A Law on National Minorities is currently being drafted and will be submitted to the National Assembly for debate.

3.16. Equal Rights of Women

Citizens, regardless of nationality, race, sex, language, religion, political or other views, social origin, property or other status, are entitled to all the rights and freedoms, and subject to the duties, enshrined in the Constitution and the laws.

(Republic of Armenia's Constitution, Article 15)

Family is the natural and fundamental cell of society. Family, motherhood, and childhood shall enjoy the care and protection of society and the state. Women and men enjoy equal rights when entering into marriage, during marriage, and in divorce.

(Republic of Armenia's Constitution, Article 32)

Armenian legislation prescribes a percentage quota on women's mandatory presence in the executive and legislative branches authorities, which in turn promotes women's participation in NGOs and encourages the active role of NGOs that focus on women's issues. These are important steps towards ensuring the equal participation of women in governance and public and political life.

The Labor Code defines certain privileges for women, including rights to certain work conditions, pregnancy, delivery, and child care. Special monitoring, especially with regard to private-sector employers, is required in order to ensure protection of these rights. This important function will be vested in the newly-formed Labor Inspectorate.

The social and economic difficulties of the past few years have given rise to problems of prostitution and exploitation of women in the commercial sex industry.

Equality of rights between women and men is not as pressing as some other urgent problems facing the country. However, greater participation of women in decision-making remains a crucial matter (see *Appendix 3* on women's issues).

Right to Protection of Children

Citizens, regardless of nationality, race, sex, language, religion, political or other views, social origin, property or other status, are entitled to all the rights and freedoms, and subject to the duties, enshrined in the Constitution and the laws.

(Republic of Armenia's Constitution, Article 15)

Family is the natural and fundamental cell of society. Family, motherhood, and childhood shall enjoy the care and protection of society and the state. Women and men enjoy equal rights when entering into marriage, during marriage, and in divorce.

(Republic of Armenia's Constitution, Article 32)

The Armenian Law on the Rights of the Child guarantees the main rights and freedoms of children in accordance with the European Convention on the Rights of the Child. However, it cannot be deemed sufficient to simply ensure the exercise of such rights given the uncertainty and incompleteness of mechanisms to protect such rights. The new Family Code of Armenia does not contribute anything to the mechanisms for protection of the rights of children.

The Law on the Rights of the Child specifies the public agencies that are in charge of protecting children's rights. Government Decree 111, on approving the By-Laws of the Trusteeship and Guardianship Authorities, states that the list of such agencies includes community heads that may create trusteeship and guardianship commissions to facilitate the performance of their functions, and to issue opinions on documents received in connection with these proceedings.

Community heads have already created these commissions which operate on a volunteer basis and, like any other volunteer body, they do not adequately ensure the performance of their functions as they relate to protecting children's rights.

The commissions are charged with going out and identifying children left without parental care. Once identified, the commissions look after these children, ensuring their registration, and cooperating with special schools and institutions for these children to organize and implement child care. Unfortunately, the commissions simply limit their activities to merely responding to applications, often only formally and superficial.

The commissions have an important role in court proceedings regarding disputes over child care and visits between separated parents. The opinion of a commission is required, which must naturally be based on a thorough review of the situation. However, these reviews are quite often just a formality, or are not carried out at all, when the parents live in different communities, for instance.

There was a case when a commission issued an opinion without performing a review of the circumstances. Instead, the commission based its decision on its knowledge of the children communicating with the father, on the need for taking the children away from the mother in a court case regarding child care. The commission disregarded the fact that the father did not have sufficient housing and was too busy with work to look after the children. On the basis of this opinion the two minors were placed with the father and the commission was not even interested in the plight of the children.

Forced taking of a child from one parent or from another person on the basis of a court order, and placing the child with the other parent, as well as meetings with a parent who lives separately, are performed by the Judicial Enforcement Department. In these cases the presence of a commission representative is required to prevent any violence against the child. However, commission members rarely participate in these meetings, and when they do, they do not report inappropriateness of enforcement in cases where enforcement clearly contradicts the child's best interests.

After visits to a number of schools in Yerevan, there is no alternative but to report the horrible sanitation and hygiene situation in these schools.

In a number of schools, the average classroom temperature is no more than 10-12 degrees Centigrade during winter. Many schools are heated with asbestos tiles, which is a serious health hazard.

We consider it necessary to have a special public agency with a broad mandate to protect children's rights (see Appendix 4).

3.18. Right to Ownership and Other Economic Rights

Everyone shall have the right to ownership and inheritance. An owner may be deprived of ownership only by a court in accordance with the procedure defined by law. Alienation of ownership for the needs of society and the state may be performed only under exceptional circumstances, on the basis of law and with prior adequate compensation.

(Republic of Armenia's Constitution, Article 28)

❖ Articles 8 and 28 of the Constitution safeguard diversity of ownership and equal protection of all forms thereof. Deprivation of ownership may only be performed by a court in cases prescribed by law.

Alienation of ownership was addressed by the *Constitutional Court of Armenia in its ruling of February 27, 1998*, in which it found that in each case the law must define the exceptional necessity of alienation of ownership for the needs of society or the state, and the terms and procedure of such alienation.

Urban development projects in Yerevan have brought about the need for taking away citizens' apartments, buildings, and land for public needs. This need was, however, defined in government decrees rather than a law, which ran contrary to the aforementioned ruling of the Constitutional Court. The list of decrees are as follows: Government Decree 645 of July 16, 2001 on the Action Plan for the Development of the Northern Boulevard in Yerevan; Government Decree 950 dated October 5, 2001 on Taking away Land Plots, Purchasing Real Estate, Pricing, and Realization Procedure in the Territory of the Northern Boulevard and Other Alienation Zones in Yerevan; Government Decrees 1169-N of August 1, 2002 and 57-N dated January 29, 2004 on Amending Decree 950; Government Decree 1151-N of August 1, 2002 on Action Plan of Urban Development Projects in the Territory of the Center District Community in Yerevan; Government Decree 399-N dated March 4, 2004 on Providing Land Plots without Tender in Alienation Zones within Administrative Boundaries of the City of Yerevan; and Government Decree 909-N dated June 17, 2004 on Provision of Land Plots without Tender for Implementation of Urban Development Investment Projects in Areas Taken away for Needs of the State in the Main Boulevard in the City of Yerevan.

A separate law was not adopted on this process; instead, references were made to the Civil Code and the Land Code. As a consequence of not adopting a separate law, rights of owners and users were seriously violated in the process, and its economic impact has proven to be quite negative.

Matters regarding violations of ownership and economic rights must be viewed and addressed primarily in the context of the Poverty Reduction Strategy Paper.

The problem is that land and homes owned or leased by citizens have been taken away from them in order to carry out a large-scale urban development project in Yerevan. As a consequence, hundreds of families are left without homes because the compensation paid to them is not adequate to purchase a new home. Parallel to this, market prices of apartments are artificially inflated, and those in need of housing are deprived of the opportunity to purchase a home.

Citizens whose homes are taken away as a result of these projects are left in need of housing. This is an indication of the economic inefficiency of urban development projects in Yerevan and their failure to comply with the Poverty Reduction Strategy Paper objectives.

The Government has a responsibility regarding several dozen citizens whose homes were taken away from them and demolished back in the 1980s, and who still have not received either another home or adequate compensation. Partially constructed buildings in which such citizens are due to receive apartments are usually not being finished, or are being sold to private parties that do not assume the obligation to allocate apartments to such citizens. Nevertheless, the authorities are, first of all, obligated to provide housing to such citizens because they lost their apartments as a result of the public agencies' failure to honor their contractual obligations.

There still remains the problem of apartments begun through housing cooperatives, but never finished due to the depreciation of the Ruble. Hundreds are still awaiting these apartments.

The fact that one or more problems remain in an area, and more are resulting, makes the process inefficient and useless.

❖ Everyone appreciates the importance of building up and developing the capital city of Armenia. However, such development may not amount to grave violations of, or complete disrespect for, laws at the cost of increased poverty. The “Northern Boulevard and Cascade” and “Main Boulevard” projects have been implemented in this exact manner: they are a cover-up for redistribution of ownership—*impermissibly unfair* redistribution, indeed, which takes away ownership from hundreds of families to generate unlawful profits for certain “businessmen”, and placing ownership of central Yerevan in the hands of certain individuals.

In Soviet times, when owners had limited rights over their ownership, especially housing, hundreds of families obtained housing in the central parts of Yerevan on the basis of “inside” contracts with owners, which were never legally reported. However, those who obtained apartments and, later, their successors openly possessed and used these apartments for several decades as owners, and paid all real estate taxes. The fact that the urban authorities did not try in a timely manner to clarify the status of such housing, and failed to recognize the ownership rights of these families, often citing superficial grounds, cannot serve to justify depriving them of ownership rights and arbitrarily taking away these properties. Doing so means shifting the consequences of public agencies’ impermissible inaction on to the shoulders of ordinary citizens. This is, however, exactly what has been done by the Government and Yerevan Mayor’s Office in the context of urban development projects in Yerevan. Several dozen families, most of which have many members, and have had ownership since the 1930s and 1940s, are currently being treated simply as “users” of these apartments and are being expelled without any compensation.

This situation has arisen because the development and implementation of these projects was not based on a thorough consideration and clarification of the status of the properties in question. Their owners were not given the opportunity to exercise their legal rights to obtain formal title of ownership. Rather, the authorities invoked artificial grounds to preclude rights and impeded all efforts at eliminating such grounds.

There is, for instance, a three-story structure at 11 Buzand Street with dozens of standalone buildings in the courtyard, with land plots and trees that are not separate from the “11 Buzand” address. Most of them were built in the 1920s and were later modified and restructured with permission of the local authorities. The families who lived there dealt with numerous public agencies in respect of housing matters and never encountered any problems. They were not registered as families in need of housing and were not entitled to a lease. Therefore, they were deprived of the right to receive a part of the then publicly-owned housing stock during the privatization process. The only reason was that they were considered owners of their buildings, which were not being taken away from them, because they were being treated as users. People cannot understand this approach; they cannot understand how a house, in which their grandparents and parents lived, is now being taken away from them, and they are being told that they never had any ownership rights in the housing in the first place.

As was already mentioned, alienation of citizens’ properties in the context of these urban development projects was based on government decrees, and the Government in effect defined the need for, and procedure of, alienating real estate in the so-called “alienation zone”.

❖ In its ruling of February 27, 1998 on the conformity of several provisions (Article 22(2), 22(3), 22(4), and 22(5)) of the Law of the Republic of Armenia On Real Estate with the Constitution of the Republic of Armenia (Article 8 and Article 28(2)), the Constitutional Court found in respect of the meaning of Article 28(2) of the Constitution that: “... real estate may only be expropriated through the adoption of a law on the expropriation of that particular real estate, in which the exceptional importance and significance of the expropriation of real estate shall be substantiated. Such a law has to specify which needs of society and the State will be satisfied through the expropriation of real estate. ... The Government may not establish a procedure for expropriation of real estate which would grant it the power of forced expropriation of real estate.”

Articles 8 and 28 of the Constitution are still in force, and the aforementioned ruling of the Constitutional Court is in effect, as well. Therefore, since no law was adopted on the real estate included in the alienation zone of Yerevan's urban development projects, and the owners did not agree to such alienation, the Government did not have the right to adopt such decrees.

Government Decree 950, dated October 5, 2001, defines the compensation terms, compensation calculation procedure, and other significant conditions imposed on the owners and users of real estate. The Government, acting as a party to the transaction, also had the right to adopt a legal act regulating the contractual relationship. Therefore, the Government acquired a more favorable position as compared to the other party (i.e. the owner) and, in the event of a court dispute in which the owner challenged the alienation procedure and terms, the court would invoke the disputed legal act adopted by the Government. In other words, it is known *a priori* that any such dispute will be resolved in favor of the Government, here acting as a party to the dispute.

Government Decree 950 has a clause providing US \$2,000 in assistance to apartment users, per each family member, and a US \$1,500 bonus if they vacate the apartment or space within five working days. This provision is concerned with individuals who did not privatize their apartment and, for whatever reason, did not legitimize or formalize their ownership rights. The Government is not interested in how a family can address its housing need with this amount of money.

The developer has mainly concluded purchase and sale, rather than compensation contracts with the citizens, though the price proposal was one of compensation. In many cases the contract was concluded based on a court decision, i.e. against the owner's will. With both purchase and sale and compensation contracts, 10 percent income tax was withheld from the amount in violation of Article 9 of the Law on Income Tax, which provides that the compensation amount is fully deductible for tax purposes.

❖ Appraisal of the taken real estate was performed by "Artin Enterprise" LLC, with which the Project Implementation Unit had a contract giving it a monopoly over appraisal. This created a conflict of interest that resulted in minimizing the appraised value of property. In all cases the appraiser disregarded the interests of the owners and failed to consider the owners' objections to appraisal.

Viewing what happened as a grave violation of citizens' rights to ownership and other economic rights, the Defender suggested to the Government and, in turn, obligating the Yerevan Mayor, to reconsider all of the property alienation contracts signed in respect of the Northern Boulevard and Cascade Project in order to address the violations and to restore the violated rights. To date there has been no progress, and the properties in the alienation zone of the "Main Boulevard of Yerevan" project were alienated in the same manner, with the only difference being that five private companies and one individual acted as developers in this case (including "Elite Project Shin", "Glendale Hill", "Griar", "Avantour", "Gap", and Melik Gasparyan) under Government Decree 909-N of June 17, 2004, which authorized the Yerevan Mayor to allocate land to them without a tender in order to carry out development projects. To date, they are acting as parties to these contracts and, naturally, are pursuing their interests in paying as little as possible. The land taken away for state needs is being made available to them for a 3-year period to carry out urban development projects. After this 3-year period they can lease the same land plots for a term of 99 years.

Government Decree 909-N makes reference to the allocation of land taken away for state needs to these companies and this individual, whereas they are already acting as users of land that still has not been taken away, and making price proposals to owners and users of such land. In effect, the Mayor's Office has arbitrarily dealt with the current rights of citizens by finding that a government decree is sufficient to deem their legal rights terminated in these areas.

❖ *Economic rights of citizens are seriously violated* in terms of a discriminatory policy of allocating land within the administrative boundaries of Yerevan, disregarding the rights of actual land users, arbitrarily changing the designated purpose of land, and holding spurious tenders and auctions.

In the past, collective farmers used agricultural land within the administrative boundaries of Yerevan. After their dissolved, the Council of Ministers adopted decree 397 on June 13, 1991 that deprived collective farm members of the right to take part in land privatization. Instead, the land

was leased to them for a 10-year period. Leases were signed through the former executive committees on the basis of regional land reform committee decisions. Those leases, despite applications of citizens, were not registered by the state, which claimed that the 1997 Presidential Decree on the Status of the City of Yerevan delegated land allocation powers within the administrative boundaries of Yerevan to the Yerevan Mayor.

❖ Former collective farmers of the Noragavit District of Yerevan received land as owners of the land and obtained temporary ownership title certificates from the land reform committee. Later, these certificates did not serve as a ground for recognition of their ownership rights and they were barred from exchanging of their certificates.

Thereafter, the Government adopted decree 1253-N on October 2, 2003 on taking such land from them for state needs and for allocating the land to the Erebouni Airport for reconstruction and expansion projects. The Mayor's Office does not wish to treat them as owners and to provide adequate compensation. One would not have expected any objections here, but our proposal on this matter has not been implemented, though it has not been rejected, either.

Yerevan Mayor's decision number 1314-A (dated June 17, 2003) sold to Edik Simonyan a 1.5 hectare land plot around the intersection of Kurghinyan and Sebastia streets in an auction to build a training center. However, back in 1994, the same territory was leased to families of deceased soldiers of the Karabagh War for a 10-year period. The Mayor's Office disregarded the lessees' right of first refusal, basing the decision on the fact that the lease had not yet expired, and the fact that the territory became usable only due to the investments of those lessees.

Government decree 503-A of March 27, 2003 authorized the Yerevan Mayor to lease a 3 hectare land plot near Admiral Isakov Avenue in Yerevan to "Renco Armestate" LLC for a 50-year term, though without a tender, to build a diplomatic district. A 5 hectare land plot in the area between the road connecting Leningradyan Street with Isakov Avenue and the "Sun Institute" CJSC was allocated to "Frank Muller Armenia" CJSC without a tender, with the right of lease, and with the right of first refusal, to build a watch parts production factory.

These allocations, too, were made in violation of the rights and interests of lawful users. Those who acquired the land have already managed to resell their rights.

❖ The areas in the Dalma Orchards, too, as land of the former Shahumyan Collective Farm, were leased, rather than privatized, to the former collective farmers for a 10-year period. Since this term expired in September 2004 for most of them, the Government and the Mayor's Office have been trying to take these areas back as well.

It is irrelevant at this point whether or not the Government's plans related to the Dalma Orchards were justifiable. What was worrisome was that implementation of this plan would mean taking away this land; land which is the only source of income from hundreds of families.

It is common knowledge that some areas included in the administrative boundaries of Yerevan were inherently unusable due to the overabundance of rocks. People living close to such areas exerted efforts to clean up the majority of the areas, to bring in soil, and to make it arable land. For decades they have openly and continuously used these areas with the knowledge and silent consent of the city authorities. Based on Article 72 of the Land Code of Armenia, these citizens have the legal standing to obtain ownership or lease rights over such areas on the basis of lengthy de facto use. Therefore, before doing anything with these areas, the Mayor is obligated to terminate these rights of the de facto users by court procedure in accordance with law, if there are any grounds to refuse formalization of such rights.

In reality, the Mayor's Office never takes into consideration the users' rights, limiting itself to viewing the right as one that has not been registered by the state, and ignoring the use as allegedly unlawful.

In the area adjacent to Tbilisyan Avenue, for instance, Suren Yeghyan has, for over 17 years, been using a 1,000 square meter land plot that he cleaned of stones and made arable. In 2003, he requested that the Mayor formalize his use. The District Mayor issued a positive opinion. The Mayor's Office responded positively, stating that the issue would be addressed after surveying the area. No one knows when the surveying ended, but Yeghyan's application was never reviewed again. Instead, the area was sold in an auction on July 31, 2004, of which Yeghyan was not notified.

All the contracts on alienation of ownership related to urban development projects in Yerevan need to be revised in order to identify violations and restore ownership rights.

The Land Code needs to be amended to provide that designated use of land may only be changed after the adoption of a law on this issue.

❖ *Violations of citizens' economic rights in the privatization process of state-owned assets are of particular interest, as well.*

Before being privatized, large state-owned enterprises usually have large salary arrears. The privatization contract shifts the arrears to the new owner, who later is declared bankrupt due to the inability or unwillingness to revitalize the enterprise, and the salary arrears are never paid.

It is our belief that a public agency may not transfer its salary arrears to a buyer unless a specific obligation to repay such arrears is prescribed in the transaction.

In terms of the Civil Code, debt may be transferred to a third party only with the consent of the creditor. When transferring the debt to the buyer, the public agency does not obtain the consent of workers towards whom it has salary arrears.

At present, privatized companies such as the Nairit Plant, the Vanadzor Fiber Plant, the Vanadzor Passenger Transport Company, the Dvin Hotel, and other companies have considerable outstanding salary arrears for which there are no repayment guarantees. Moreover, court orders on confiscation are not being enforced.

It is necessary for the state budget to finance clearance of all past salary arrears that privatized companies had prior to privatization.

3.19. Right to Education

Every citizen has the right to education. Secondary education shall be free of charge in state educational institutions. Every citizen has the right to receive higher and other vocational education in state educational institutions free of charge and on a competitive basis. The establishment and operation procedure of non-state educational institutions shall be defined by law.

(Republic of Armenia's Constitution, Article 35)

In Armenia, the exercise of the right to free elementary and secondary education is secured; education sector funding is increasing every year which will gradually allow for the obtaining of properly furnished schools throughout the country. Teachers' annual salary increases, professional training courses and, more generally, a special attention towards schools should result in a considerable improvement in the quality of secondary education.

Efforts aimed at rehabilitation of vocational education institutions are commendable. Access to vocational education is an important aspect of the right to receive an education. As the economy develops, this education will help facilitate more opportunities for access to employment.

Access to university education for those of limited financial means is another vital aspect of an effective right to education. To this end, it is necessary to improve the admission test system, to provide for a larger number of government-subsidized students, to introduce additional exemptions regarding tuition, and to subsidize the tuition of students who display academic excellence.

Education-related complaints have been received from some of the individuals referred to Armenian universities on the basis of an inter-state agreement with Russia. These students assert their inability to effectively exercise this right and to be readmitted to university upon completion of military service. With the active intervention of the Defender, these problems have been resolved.

A complaint was received regarding discrimination in admission to the medical university on the basis of the admission test results. Once again, the Defender's intervention rendered success in resolving this problem.

3.20. Cultural Rights and Copyrights

Everyone has the right to freedom of literary, aesthetic, scientific, and technical creation, to benefit from the achievements of scientific progress, and to participate in the cultural life of society. Intellectual property shall be protected by law.

(Republic of Armenia's Constitution, Article 36)

Simply declaring the right to freedom of literary, aesthetic, scientific, and technical creation, the right of access to achievements of science, and the right to participate in the cultural life of society is not sufficient to ensure the effective exercise of such rights.

The effective exercise of such rights is possible only if the state creates adequate conditions for creativity and provides the necessary financial and other support for such activities.

An author of a literary or artistic creation is not necessarily able to publish the work because rules of the market apply here, and any unknown author who wants exposure for his work must pay for it, otherwise he will remain unknown.

The fact that the state frequently tries to take facilities away from associations of artists shows the lack of attention to this group. For example, there was an attempt to take away the Polyclinic of the Writers' Association. There have also been attempts at shutting down cultural institutions, reducing their funding, and the like.

Maintenance, funding, and renewal of the library stock, if not its expansion, is a safeguard for the exercise of the right to participate in cultural life and the right of access to achievements of science.

The ongoing incident regarding the Isahakyan Library, which is in effect an attempt at shutting down a library that constitutes a crucial element of the cultural heritage and is accessible for the public at large, shows that the right to participate in cultural life and to access achievements of science is being ignored. A library is the primary location where a person can learn about the achievements of science and take part in cultural life.

The number of historical and cultural monuments preserved by the state is declining from year to year. This, in and of itself, means that future generations will be deprived of access to the living history of its people.

Urban development projects in Yerevan are causing destruction of a number of cultural assets, including buildings that have historic significance due to the name of their founders or various public figures. Serious problems are encountered in this respect. Public discussions have been held but no success can be reported yet.

3.21. Right to Social Protection

Every citizen has the right to free choice of employment. Everyone has the right to wages that are fair and that are no lower than the minimum established by the state, and to working conditions that meet sanitary and safety requirements.

(Republic of Armenia's Constitution, Article 29)

Every citizen is entitled to an adequate standard of living for himself and his family, including housing, as well as to improved living conditions. The state shall take measures necessary to ensure the exercise of such rights.

(Republic of Armenia's Constitution, Article 31)

Every citizen is entitled to social security during old age, disability, sickness, loss of breadwinner, unemployment, and in other cases defined by law.

(Republic of Armenia's Constitution, Article 33)

Everyone is entitled to health care. The procedure of providing medical care and services shall be defined by law. The state shall carry out public health programs and promote the development of sports and physical education.

(Republic of Armenia's Constitution, Article 34)

According to the Constitution, the Republic of Armenia has been declared a social state, which implies that economic policies should focus on economic development as a way of achieving complete social security for the population. During 2003 and 2004, there was economic growth that

supported greater budgetary funding for social sectors such as health care, education, social allowances, unemployment and poverty benefits, and the like.

Beginning January 1, 2004, the minimum monthly salary was set at 13,000 Drams, which is the estimated basic survival minimum.

Public servants who are paid from the budget need to be secure in order to treat their duties diligently and to abstain from corrupt behavior. Public servants who often perform rather difficult duties are not adequately compensated. Moreover, their housing and social conditions are inadequate.

❖ In this context, the military and the penitentiary institutions are rather important, where low ranking soldiers and prisoners, respectively, are considered vulnerable from a human rights standpoint.

In the military, commanders deal with young men who are still in need of care, protection, education, and life skills. It is contingent upon the commanders to protect all the rights of these young men, including their rights to life, health care, adequate living conditions, and other rights guaranteed in the Constitution and recognized principles of international law.

Even a minor flaw in the performance of a serviceman's duties, already with a rather heavy scope of duties, will inevitably cause violation of the rights of these young men. A serviceman who has financial and living needs cannot perform his duties perfectly, because these needs distract him from the performance of his official duties.

The risk of staff corruption is high in penitentiary institutions if the staff is not paid adequately. Corrupt objectives will inevitably compromise prisoners' rights.

Studies have shown that the financial situation of military commanders is far from adequate. Parallel to this, they and their families do not receive adequate military housing. Servicemen who live away from their detachments do not have access to transport that would take them to their detachments, even when over a dozen servicemen live along the same route.

After the transfer of penitentiary institutions to the Ministry of Justice, much has been done to rehabilitate buildings and to harmonize the institutions with international standards. Social, psychological, and legal services have been introduced. However, in view of low salaries, qualified experts cannot be recruited to fill these positions. As long as adequate salaries are not offered, it will be impossible to recruit qualified specialists. The salaries of penitentiary staff were due to be increased on January 1, 2004. To date, it has not been done.

The Ministry of Justice has much to do in order to improve the financial and living conditions of penitentiary staff.

❖ Financial support for courts is another sensitive area. Budgetary financing for the logistical needs of courts is far from sufficient. There is always a scarcity of funds for paper, office supplies, and computer maintenance, which inevitably causes delays in the delivery of judicial acts to parties, failures in providing a sufficient number of copies, and, at times, unlawful requirements upon the parties.

It can be concluded, therefore, that budgetary funding for any service must be sufficient to provide for at least the basic requirements.

❖ Parallel to an increase in the minimum salary, it would be logical that minimum pensions would be increased, as well. However, the minimum monthly base pension of 3,000 Drams established by government decree 707-N on June 19, 2003 still remains unchanged. Pensions and allowances to the elderly, the disabled, war veterans, disabled servicemen and their families, the families of deceased servicemen, and others in similar categories are, at present, insufficient. The limited amount of pensions, allowances, and other similar payments has caused dissatisfaction among the beneficiaries.

Though the pension and allowance accrual and payment procedure has improved considerably, which has resulted in timely payments, poor administration and corruption result in a large number of complaints from pensioners and beneficiaries.

There are, at times, excessive red-tape and arbitrariness in authorizing family allowances or other benefits and entitlements. This causes dissatisfaction and raises doubt as to the fairness of distribution of social assistance.

❖ A serious problem faced by pensioners is their *inability to receive pensions if they do not have social cards*. The Social Insurance Fund has declared that there are about 11,000 such pensioners. 2,778 of them did not receive social cards because they have failed to substitute their former “Soviet” passports with new ones. Another 3,813 have not applied for social cards, 539 are missing; and *only 461 pensioners refuse to receive social cards*.

It follows that the introduction of cards, designed to improve social protection, is working against the interests of those it was designed to uphold.

❖ The amounts of pensions and allowances to veterans of the Second World War have still not been revised, under the appropriate bilateral agreement, to be equal to the amounts paid by the Russian Federation. For years now there has been no regulation on the provision of long-term soft loans to those who were oppressed (i.e. those arbitrarily conviction and sentenced under the Stalin regime) or to their primary heirs to build private houses.

❖ There is a problem related to Article 6 of the Law on the Oppressed, which provides that those oppressed from the territory of Armenia shall receive land of a specified size in their former place of residence to build a private house. The notion of “their former place of residence” in the Law is abused by the Yerevan Mayor’s Office, and those who live in Yerevan and were oppressed from other parts of Armenia are unable to receive land in Yerevan, even in cases when it is possible to do so.

For reasons that are difficult to understand, the right of the oppressed to receive land under Article 64 of the Land Code is limited to two years, starting from the date of amending this article (November 28, 2002). This means that the oppressed are no longer able to exercise this right.

As of March 1, 2005 the oppressed and their primary heirs have addressed over 20 complaints to the Defender. A review of these complaints has revealed the following legal and regulatory problems:

○ A time limitation on the right of the oppressed and their primary heirs to receive land in accordance with the procedure defined by law

Under the Law on the Oppressed, the right of the oppressed and their primary heirs to receive land is not subject to any time limitation. However, this limitation was introduced under Article 64(5) of the Land Code which provides that state-owned land may be donated in cases prescribed in Article 64(1) during the two years following adoption of the Code. Therefore, state-owned land could have been allocated (donated) to the oppressed and to their primary heirs only prior to April 1, 2004. It is our belief that the time limitation was not justified and posed an insurmountable obstacle to the exercise of this right by most beneficiaries.

Our review of complaints suggests that the oppressed and their primary heirs were often unable, by virtue of these obstacles, to exercise their rights. Such obstacles include the health of the oppressed, their age, unawareness of legal privileges, the primary heir being a minor, and other circumstances. Information from the Yerevan Mayor’s Office alone suggests that during 2004, 38 families of the oppressed applied to the Yerevan Mayor’s Office requesting donation of state-owned land to construct private houses. Unfortunately, their requests were rejected on the ground that the time limit specified in Article 64(5) of the Land Code had expired.

Moreover, there is a need to clarify the application of the two-year period under the Land Code of Armenia. The Land Code reads: “The period of state-owned land plot donation in cases prescribed in paragraph 1 hereof shall be two years.” This wording does not make it clear whether this period starts running from the time the person applies to the authorities, or whether it is a limitation on the provision of land regardless of when the application is filed.

It is our belief that land must be provided to the oppressed and their primary heirs who applied before April 1, 2004, without any time limitation. Otherwise, the purpose of this provision would become unclear, because expiration of the term would depend exclusively on the discretion of the authorities. Some of the oppressed applied to the proper authorities before 2002, but the inaction or slowness of such authorities has caused the citizen to be refused on the basis of the expiration of the period prescribed in law. Therefore, a citizen would be deprived of the ability to exercise his legal rights due to the inaction or poor performance of public authorities.

The application of the time period is rather clearly defined in the Law on Privatization of the State-Owned, Publicly-Owned, and Community-Owned Housing Stock in the Republic of Armenia,

which was adopted on June 10, 1993. Article 29 of this law provides: “There shall be no time limit on the privatization of the housing stock on the basis of applications lodged in accordance with the established procedure prior to December 31, 1998.” *It is our belief that the same wording should be introduced in Article 64(5) of the Land Code of Armenia.*

○ Amount of compensation paid to the oppressed in accordance with the law. Under Article 11 of the Law on the Oppressed, lump-sum monetary compensation in the amount of 12 times the minimum salary in Armenia shall be paid to the oppressed in return for assets taken away, fines paid, and salaries foregone while serving the sentence. Therefore, under this provision of the law, all of the oppressed, regardless of the amount of assets taken away, fines paid, and salary foregone while serving the sentence, shall be entitled to the lump-sum monetary compensation in the amount of 12,000 drams, which we think is far from reasonable. Moreover, this provision contradicts the principle of fair compensation as guaranteed in Article 28 of the Constitution of Armenia and Article 1 of Protocol 1 to the European Convention on Human Rights, because there is no differentiation by either amount or compensation.

There is an inconsistency between the Law on the Oppressed and the Criminal Code of Armenia. Article 13 of this law provides that the primary heirs of those sentenced to death and those who died during or after serving prison sentences shall be entitled to the exemptions specified in Articles 6 and 7 of the law. Therefore, Article 13 implies that the primary heirs of the oppressed shall not be entitled to a lump-sum monetary compensation prescribed in Article 12 of the law. This provision contradicts Article 66(11) of the Criminal Procedure Code which provides that in the event of death or incapacity of the acquitted person, the closest heir shall take over the right to claim. Therefore, the closest heirs of the acquitted are entitled to receive the salaries, pensions, benefits, and other income that the oppressed was deprived as a consequence of asset seizure and the conversion of such assets into state ownership, seizure by investigative authorities, and property bans. Article 9(6) of the Law on Legal Acts prescribes that within the scope of matters regulated by a code, all other laws of the Republic of Armenia must correspond to that code. Therefore, Article 13 of the Law on the Oppressed should prescribe the right to compensation for both primary and other close heirs of the oppressed in accordance with law.

Moreover, it is unclear why the Law on the Oppressed prescribes such entitlements only for the primary heirs of those who were sentenced to death or died during or after serving their prison sentence. In effect, these entitlements are not available to primary heirs of those who were deported from the former USSR or subjected to unlawful medical coercion, although in the meaning of Article 1 of this law they too have the status of the oppressed, and it would only be fair for their primary heirs also to enjoy these entitlements.

Particular attention should be paid to numerous violations of legislation on the oppressed by the Armenian Ministry of Finance and Economy.

Under the Law on the Oppressed and Government Decree 410 of July 20, 2000, the oppressed and their heirs, if they are in need of improved housing, shall receive land as owners in order *to build a private house*. However, considering that purchasing an apartment would be less costly than housing construction, and that state budget funds would be saved as a result, the Ministry of Finance and Economy authorized some borrowers to use the loan proceeds to buy apartments. In other words, the Ministry of Finance and Economy violated the requirement on providing a loan to build a private house. Later, the Ministry rejected other borrowers’ requests to use loan proceeds to purchase an apartment.

It is our belief that in this situation the Ministry of Finance and Economy clearly violated the lending procedure defined by law. If the Ministry found it appropriate to make loans to purchase apartments, rather than to build new houses, the Ministry should have proposed the respective amendments to the Government, which it still has not done.

❖ There still remain problems with the housing and social needs of those forcibly deported from Azerbaijan, though the Government has carried out a number of projects to address refugees’ housing issues since 1988. Many still live in dormitories, hotels, and other temporary dwellings. Some live in hazardous buildings that often do not have the basic living conditions. The same holds true for families of Karabagh War veterans who died or became disabled, as well as orphans and families with four or more children.

Though the Government is making some progress towards addressing the social and economic needs of these groups, the slow process, the indifference of local authorities and some officials, and bureaucracy impede rapid resolution of these problems.

The Government has adopted decrees prioritizing actions aimed at resolving refugees' social and housing needs. However, the urgency of the matter is often ignored by central or local authorities or officials.

The campaign undertaken by the Mayor's Office against refugees who found shelter in the building of the former Central Committee of Communist Party Higher School, in the area known as "Orchards of Nork", is unacceptable. Dozens of refugee families found shelter there as early as 1988. A large number have already obtained Armenian citizenship. At the beginning of 2004 a court recognized their ownership of the living space occupied by them, which was a solution to the housing needs of these refugees.

The Prosecution of Armenia found that addressing the housing needs of these refugees amounted to a violation of the pecuniary interests of the state and appealed the first instance court's judgment, which shows that the Prosecution prefers the state's pecuniary interests to the housing needs of refugees. The Prosecution found that refugees were only temporarily residing in the building and that it was unacceptable to recognize their ownership rights. As strange as it may seem, the Cassation Court agreed with the Prosecution in this matter.

One might claim that the Prosecution and the Cassation Court were guided by the letter of the law, which would be encouraged. However, it was not the case here because a formal approach was adopted regarding the alleged violation of the law, thereby ignoring the state's policy in this sphere. In other cases related to ownership rights in the "alienation zones" in Yerevan, the courts have prioritized sub-legislation (i.e. a government decree) over laws.

During the privatization of state-owned buildings and premises, the placement of refugees residing therein is often neglected.

The Law on Refugees does not differentiate between Armenians deported from Azerbaijan (here one would expect this law to use the term "deportees") and refugees from other countries. Moreover, it does not streamline the obligations of the state regarding these individuals, which creates opportunities for avoiding or neglecting their interests.

When considering the eviction of refugees from dwellings, local authorities often fail to pay any attention to the opinion of the Department for Migration and Refugees. There was a case when the district mayor's office sold the basement of a residential building and obtained a court order on evicting a refugee who resided there for several years.

Government decree 747-N of May 20, 2004 "On the Priority Program for Housing of Individuals Deported from Azerbaijan during 1988-1992" approved an action plan that already constitutes certain progress in the right direction. In accordance with this action plan, the State Property Management Department sets forth in sales contracts the obligation of any buyer of buildings and premises occupied by refugees to provide another apartment or adequate compensation to refugees. The law should be amended to require that contracts contain such a clause.

It is worthy of commendation that the state-owned property sales contract with the buyer of the "Bari Tsitsernak" Youth Tourist Center OJSC obligates the buyer to create new jobs for the refugees who used to live in the Center's buildings.

❖ The Earthquake Zone Rehabilitation Action Plan is currently successfully underway, which instills hope that social problems in the Earthquake Zone will be minimized in the years ahead. Complaints from the Earthquake Zone are the consequence of poor administration, lack of information on projects, activities, and legislation, and housing problems caused by unfair distribution of available units, inadequacy of compensation, the failure to provide housing in the time promised, and the like.

When addressing housing needs, compensation is awarded only for the housing lost in the earthquake. This requirement of the Program implies that families that currently have many members will not get any more than they lost in the earthquake, which could have been as little as a one or two room apartment. It is our belief that this approach, although a relatively easy solution to housing problems today, will cause major problems later on.

There are complaints from the Earthquake Zone and other settlements in Armenia concerning social allowances, pensions, unlawful firing, and other issues.

❖ Article 47 of the Law on State Pensions causes a general problem that needs to be addressed: this article provides that prior to the implementation of this law (April 10, 2003) and the creation of a personal database, the Labor Book was the main document that confirmed the employment record of an insured person, and *from January 1992, it was also the document that confirmed the payment of mandatory social insurance contributions.*

The same is defined in Decree 793-N of the Government dated May 29, 2003.

On the basis of this provision, social security agencies do not treat as employment history the years during which the employer accrued contributions, but did not make actual payments due to insolvency. The insurance agency's right of claim towards such employers has survived, and the insurance agency will collect the outstanding amount plus fines whenever the employer has funds. However, the failure of employers to act in good faith has grave consequences for employees who retire because their insured career record is not included in the calculation unless the employees submits a document proving that social insurance contributions have been made.

This requirement is justifiable only regarding the self-employed, sole entrepreneurs, and natural persons who are employers. It should not, however, apply to employees who were employed under a regular employment contract.

This problem is currently being faced regarding the insurance career record of the retired employees of the Nairit Plant. The plant has large arrears to the social fund. The arrears have been accrued and acknowledged by the plant which, however, has no money to pay.

Under the Law on Compulsory Social Insurance Fees, the social insurance agency is obligated to go to court seeking a declaration of bankruptcy. It is not clear why the agency has this right, if the employees are going to suffer the consequences of the employer's failure to make social contributions.

❖ In the context of high unemployment and the Education Sector Optimization Program, massive layoffs of teachers have exacerbated social tensions. Naturally, there is an issue of selection here, which highlights the influence of patronage and discretion on the part of officials who make decisions in this matter.

❖ No complaints have been received concerning the exercise of the right to health care, including free health care. However, it does not mean that the situation is fine. Our monitoring and studies have shown that little has been done to regulate free and paid health care, and to spare the patients and their relatives from "informal" payments. *Patients are never clear about what exactly they have to pay for and what not to pay for.*

A general overview of social problems shows that a large share of these problems could be addressed by means of legislative amendments, and that many of them will be addressed as economic progress continues.

3.22. Rights of Special and Vulnerable Groups

3.22.1. The Disabled

The reported number of persons with disabilities, according to data provided by the Head of the Medical and Social Expertise Committee Agency, is 135,716, of which 7,870 are under 18; 23,551 are between 18 and 40; and 51,390 are between 40 and pension age.

Thirty of the applications regarding social matters involve alleged violations of the rights of the disabled. The applications are concerned with different spheres.

There are many applications concerning the Medical and Social Expertise Committees (MSECs). The applicants claim that MSECs either deprived them of disability status without finding any improvement in their health status, or unlawfully changed their disability category.

Disabled mothers are not awarded disability status if their sons are close to military conscription age.

Studies have shown that Government Decree 780, dated June 13, 2003, “On Classifiers Used in Medical and Social Expertise and Criteria for Determination of Disability Categories” has introduced more rigid requirements which have caused numerous persons with disabilities to be deprived of their disability status. Persons with disabilities who were already in dire social straits were deprived of their pensions, and a number of other privileges associated with disability status.

NGOs have an important role to play in monitoring respect for the rights of the disabled and the provision of social assistance. The Defender is closely collaborating with NGOs. Round table discussions take place with a view of jointly exploring solutions.

3.22.2. Refugees

To date, the Defender has received about 50 complaints from refugees, some of which are collective complaints. The review of these complaints has shed light on a number of issues and shortcomings in both the legislation and its enforcement practices.

Our monitoring has shown that unfortunately, some of the refugees still do not have even temporary dwellings, whereas some of the refugees who have shelter are residing in extremely poor sanitation and hygiene conditions, because the housing allocated to them has not been renovated for many years. On the basis of these allegations, we have made inquiries with the relevant central and local authorities with a view to determining what possibilities exist for improving the refugees’ housing conditions. Due to the unavailability of housing, both the Department for Migration and Refugees and local self-government bodies are often unable to contribute to efforts aimed at resolving these problems.

Starting in 1988, the Government has been carrying out a number of projects, both at its own cost and with donor funding. However, refugees’ housing problems to date mostly remain unresolved, whereas the privatization of public assets has added to such problems because refugees are forcibly evicted from privatized buildings.

According to data provided by the Department for Migration and Refugees, about 10,000 of the refugee families deported from Azerbaijan, which found shelter in Armenia, are in need of housing. Of those, 3,470 families were registered by the Department in 2003 as residing in temporary dwellings and in urgent need of housing. Based on Government decree 747-N of May 20, 2004 “On the Priority Program for Housing of Individuals Deported from Azerbaijan during 1988-1992”, these families will receive housing in the years ahead. 1.161 billion Drams are allocated in the 2005 State Budget for this program.

In some cases, the pecuniary interests of the state are placed above the legal protection of refugees, though housing for refugees is a priority for the state.

The privatization process often causes violations of the rights and lawful interests of refugees residing in buildings that are being privatized.

Quite often, neither government decrees nor contracts on the sale of assets prescribe the obligation to provide adequate housing or compensation to the refugees. The Law on Privatization of State-Owned Assets does not contain provisions on the legal protection of refugees living in buildings that are subject to privatization either. As a consequence, there are frequent violations of the rights and lawful interests of refugees living in buildings subject to privatization. Such refugees are effectively evicted by the state or the buyer, without providing them with either shelter or compensation.

The Defender agrees with the position of UNHCR Armenia, which believes that legal protection of refugees should be thoroughly prescribed, and that the obligation to provide legal protection to refugees should be clearly prescribed in state asset privatization acts, including, first of all, the Law on Privatization of State-Owned Assets.¹

Though Article 23 of the Law on Refugees provides that the relevant public authorities shall, within the frameworks of their mandate, help refugees to obtain Armenian citizenship, there are

¹ UNHCR’s observations concerning the privatization of state/community-owned communal centers where refugees reside, UNHCR Armenia Office, January 20, 2003.

problems in this area as well. For instance, refugees are often refused a passport on the ground that they have no place of registration. Considering the housing problems encountered by refugees, this approach may cause serious obstacles to their integration. Moreover, the Law on State Duties requires a state duty for obtaining a passport and becoming registered, which is equivalent to the base duty for each act. Considering the social difficulties faced by refugees living in Armenia, the amount of these duties may amount to an additional obstacle to the acquisition of Armenian citizenship by refugees. Therefore, *it would be appropriate to initiate amendments to the Law on State Duties.*

3.22.3. The Homeless

On June 9, 1993, the Republic of Armenia joined the International Covenant on Economic, Social, and Cultural Rights and undertook, by virtue of Article 2 of the Covenant, to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

Moreover, Article 31 of the European Social Charter provides that with a view to ensuring the effective exercise of the right to housing, the parties agree to take measures designed:

- To promote access to housing of an adequate standard;
- To prevent and reduce homelessness with a view towards its gradual elimination; and
- To make the price of housing accessible to those without adequate resources.

Article 31 of the Constitution of Armenia provides: “Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The state shall provide the essential means to enable the exercise of these rights.” This right has also been reflected in Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights, which provides that the states parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Therefore, the Republic of Armenia has committed itself to undertake measures to ensure the fully-fledged realization of the right to adequate living conditions at the level of both legislation and practice. In certain areas, such as housing for the Earthquake Zone, for those residing in hazardous buildings, and for refugees, the Government has developed and implemented certain projects. However, the state has apparently failed to address the problems of the homeless who live on the streets and do not receive any social assistance. These conditions are favorable for an increase in morbidity and crime. Homeless people die in the street from cold, hunger, and various diseases. There is a separate section in cemeteries for the homeless; the tombstones specify only numbers, but not their names and surnames. According to unofficial data, over 35 homeless persons died in the streets in December 2004 alone. At present, the National Assembly is deliberating the draft Law on Social Assistance. It is planned that temporary shelter will be provided to the homeless, beggars, wanderers, and victims of violence in the form of social support, housing, medical, psychological, and legal assistance, as well as other forms of social assistance. The adoption of this law is necessary to support focused social assistance policies.

3.23. Other Rights

3.23.1. Environment

To date, the Defender has received a very limited number of complaints regarding violations of environmental rights. This suggests a lack of sufficient attention to environmental protection and poor environmental awareness.

In other words, in the interaction of society with the environment, economic motivation remains prevalent. There is no commitment on the part of the state to ensure a favorable environment. There is no awareness of the fact that adequate environmental protection is necessary for prosperity and the exercise of fundamental rights, including the right to life.

Complaints addressed to the Defender are mainly concerned with:

- a) *Unlawful construction* and unprecedented violations of numerous urban development laws; and
- b) *Unlawful land allocation*: predominantly violations in the land allocation procedure, the failure to declare auctions in advance or declaring auctions in violation of the procedure and deadlines prescribed by law. To this end, it is worth mentioning that hundreds of newspapers are published, and a small ad in a newspaper cannot be considered effective notification.

Moreover, the Law on Environmental Impact Assessment provides for public involvement in decision-making on future plans and participation in the adoption of concepts, projects, and master plans. However, this law, especially the provisions on public involvement, is not enforced effectively.

- c) *Violations concerning green space allocation and farm land for construction purposes.*

Allocation of green space for construction, which is a grave violation of the Master Plan of the City, is mainly done without an environmental impact assessment, and practically without any public hearings.

In violation of Armenian legislation (Law on Environmental Impact Assessment adopted in 1995) and the Aarhus Convention, nothing is done to ensure public involvement in decision-making on the aforementioned matters.

To this end, the Defender intends to take an active part in ensuring wide-scale enforcement of the provisions of the Aarhus Convention in Armenia. First and foremost this will be done by cooperating with the relevant state bodies and non-governmental stakeholders, because this is an area in which the following fundamental human rights are routinely violated:

- a) *Access to information;*
- b) *Public involvement in decision-making on environmental matters; and*
- c) *Access to justice.*

3.23.2. Consumer Rights

Violations by those delivering consumer services, the failure to render services in good faith, the supply of low-quality goods, and other related matters have a bearing upon economic, social, and other important human rights.

In a free and open market, consumers' main point of contact is the private company and the diversity and large number of private companies makes monitoring difficult. However, the state still has a duty to act through its entities to ensure that proper services are rendered to consumers.

Businesses try to maximize profit, often by lowering the quality of services and goods, and at times, also infringing upon consumer interests.

In this field, the Defender is particularly keen on sectors such as heating, power supply, gas supply, transport, communication, and notary services.

These services are rather important, because they are monopolies that dictate conditions for the consumer who is not protected against arbitrariness on the part of these entities.

The water supply company managed to dictate its conditions to consumers and, despite its obligation to meter the volume of potable water consumed, shifted the obligation of installing meters to the consumers.

The potable water supply contracts that were imposed on the consumers by the supplier do not provide any responsibility for the supplier in the event of delivering low-quality water or not

delivering water in a timely manner. An outrageous incident occurred in the Arabkir District of Yerevan when polluted water was supplied to the residents of this district for several days in a row.

One should commend the considerable progress towards improving the potable water supply to the public and the efforts exerted towards ensuring around-the-clock supply and enhancing water quality monitoring. However, the regular increases in the water tariffs are alarming. It is unacceptable for consumers to be obligated to pay higher tariffs in order to cover the excess losses caused by a flawed infrastructure.

The supply of irrigation water is in even worse condition. The creation of water user associations and unions has not resulted in any progress. Land users are still unable to receive the required volume of irrigation water in a timely manner.

Termination of the irrigation water supply, in the event of a user's failure to pay, at the most crucial points in time is absolutely unacceptable. Major losses may be inflicted by the suspension of the irrigation water supply, which will have a bearing not only on the individual water user, but also the whole economy, and especially the agricultural sector. The supplier has the option of judicial recourse to collect arrears, which it never uses, preferring to cut the water supply as a means of abusing its monopoly to force the user to pay.

The situation is the same in the field of power supply. As soon as any debt arises, the supplier cuts the power supply without advance warning and without any consideration of a positive payment history on the part of the defaulting consumer.

The supplier may terminate the power supply at any time and claim that there has been an accident. Consumers are unable to prove that they have suffered losses because of the unexpected termination of the power supply, because the power supply contracts do not define the procedure of reporting termination, issuing statements confirming the termination, or calculating losses. Power fluctuation often destroys electronic devices, and no one is ever held responsible for that.

There are quite a few multi-unit apartment dwellings in which power meters are installed on the first floor, outside of the residents' control. This makes it possible for the supplier's staff to abuse consumer trust.

Gas lines are intensively being installed throughout the country. Numerous installation companies have popped up, which are outside of the state's control, imposing their terms and prices upon the consumers. As strange as it may seem, the prices for these services are not declining despite the abundance of these companies and the competition between them, because they conspire to charge the same fees at all places and require consumers to buy the required materials from them.

The old gas lines are still present in a large number of apartments which could be repaired with very little effort. However, these companies do not like the idea of "repairing" lines and force consumers to install new lines, which artificially increases the cost of services.

Armentel's monopoly in the telecommunications field has caused much dissatisfaction among those who live in Armenia and have no alternative to Armentel's services.

Despite progress of science and technology, those living in Armenia are deprived of the possibility to purchase a mobile phone card.

An agreement was signed between Armentel and the Armenian Government in 2004 which effectively endorsed Armentel's monopoly in telecommunications, disregarding the fact that dozens of licenses had been issued to various companies to operate in this field. The Government has not achieved the improvements in quality and service that it was promising.

The quality of passenger transportation between towns and regions remains inadequate. Passenger buildups at bus stops and pointless time losses, which limits the amount of time left for work and rest, apparently does not bother the relevant authorities.

The transportation companies that have been licensed to operate certain routes often fail to honor their contractual obligations by not ensuring the necessary number of vehicles and failing to provide vehicles at regular intervals.

Suggestions have been made to the Ministry of Transport and Communication, based on studies of passenger transport, but tangible progress cannot yet be noticed.

There is much dissatisfaction about notary services, namely the arbitrary determination and collection of fees. Article 15 of the Law on Notaries is ambiguous regarding the payment for notary services, which enables notaries to charge not only state duties, but also other "fees." In addition to

a 500 Dram state duty required for endorsing a simple power-of-attorney, notaries charge 2,500 Drams as a service fee. This situation makes notary services inaccessible for society's vulnerable groups.

3.23.3. Right to Rest

Everyone has the right to rest. The Defender has received numerous complaints about night clubs operating on the first floors or basements of multi-unit apartment buildings in the Central District of Yerevan, especially at night, disturbing the rest of the inhabitants. Around a dozen of these "facilities", including the Omega, "2x2", the "Antonyan", "Karaoke", "Heaven", "Relax", the "Yozhik", and other clubs (following lengthy consistent efforts of the residents and the intervention of the Defender, the "Yozhik" was finally shut down by a court order dated July 15, 2004), which are located in the basements of residential buildings and adjacent areas, disturb the rest of the inhabitants by creating noise and an atmosphere conducive to criminal behavior.

The following findings are based on a review of the complaints:

1. Night clubs, bars, cafes, and strip clubs have become a popular business in the context of the newly-emerging free market;
2. These businesses are neither defined nor regulated by domestic legislation. There is no licensing requirement for these businesses and no specially-designated places for such clubs, which would not be inside or next to residential buildings;
3. Under current legislation, the business only needs two permits from the respective district's municipality:
 - o A permit to sell alcoholic beverages and tobacco; and
 - o A permit to operate after midnight.
4. Within the framework of current legislation, the relevant authorities fail either to supervise these businesses or to contribute to solving the problem, whereas:
 - a) The Ministry of Health's *National Hygiene and Epidemiological Inspectorate* is authorized to ensure the sanitary and epidemiological security of the public. It is designed to supervise and enforce measures against those who violate legislation on sanitation and epidemiological security, including the provisions on "noise in the workplace, residential and public buildings, and residential development areas";
 - b) In addition to its own initiatives, the Inspectorate is obligated to work with specialized agencies to perform assessments of the situation based on complaints from the public;
 - c) If violations of the standards and regulations are detected, the Inspectorate is obligated to instruct the business to eliminate the violation or its cause; and
 - d) If measures are not taken within the specified period, the Inspectorate has the power and the obligation to order administrative fines against the business in accordance with the Code of Administrative Infringements. These fines may reach 100 times the minimum salary. The Inspectorate also has the power to file a court claim requesting an order to terminate the business.

In reality, the "San-Epid" stations generally avoid any involvement with these problems. Whenever an assessment is performed on the basis of complaints, "no violation is found," as a rule.

In order to solve this problem, it is necessary to introduce legislation to prohibit the placement of restaurants, bars, and other entertainment facilities in or around multi-unit apartment buildings, or near apartments.

4. NEED FOR LEGISLATIVE REFORM

Republic of Armenia Law on Human Rights Defender

The Armenian Law on the Human Rights Defender was adopted in accordance with the Paris Principles on National Institutions and is particularly valuable in terms of guaranteeing safeguards for the Defender's independence. However, this law contains unclear and, at times, contradictory or restrictive language on a number of principles.

In light of this fact, and the need to strengthen the Defender's position, amendments are suggested to the Law on the Human Rights Defender and related laws. The following aspects have been taken into consideration.

The wording in Article 7(1)(2), which reads "The Defender has no right to interfere with the judicial proceedings. The Defender may demand information on any case in judicial proceedings and make suggestions to court concerning the proper exercise of the right to trial under the Constitution of Armenia and the principles of international law" is incomplete, allowing ambiguity and a perception of interference by the Defender in judicial proceedings.

In order to avoid this problem, this article should be supplemented with the following language: "Submission of such a proposal by the Defender may not be assessed as interference with the judicial proceedings." Moreover, it is necessary to amend the Criminal and Civil Procedure Codes to define the procedure by which courts shall review the Defender's suggestions. The courts will always retain the right to refuse groundless proposals of the Defender.

Article 7 provides for the Defender's right to be present in sessions of the National Assembly and the Government, to make speeches, and to present matters related to violations of human rights and fundamental freedoms.

However, the by-laws of the National Assembly and the Government have not been supplemented to allow for the Defender's presence and to prescribe the obligation to make a decision on matters presented by the Defender.

To this end, it is necessary to amend paragraphs 3 and 4 of Article 7 of the law, as well as the by-laws of the National Assembly and the Government.

On the basis of Article 12 of the law, which provides for the Defender's right to familiarize herself with criminal and civil cases, the Criminal and Civil Procedure Codes need to be amended accordingly.

The names of the decisions referred to in Articles 11 and 15 of the law do not correspond to the nature of the Defender's activities and restrain documentary procedures.

Proposals have been developed on these and other crucial matters.

On the basis of investigations and studies into alleged violations, the Defender intends to make proposals on amending the respective laws and other legal acts.

To this end, participation in the discussions of constitutional amendments is a top priority. The Expert Council of the Defender's institution has been discussing a comprehensive package of constitutional amendments that prioritize the distinct separation of powers. One of the proposals has to do with separating the chapter on the judiciary from the provisions on prosecution, and the chapter on the legislative power from those on the Control Chamber. One of the acceptable proposals has to do with adding a separate chapter in the Constitution on "Other Entities" to include the Defender, the Control Chamber, and the Prosecution.

Separating the prosecution from the judiciary is an urgent priority, because the prosecution, which is responsible for criminal charges and indictments, may not be among the bodies designed to administer justice; also, because of the objective to eliminate the undesirable influence of the prosecution over courts. The sound operation of the judiciary must be ensured as a matter of high priority. In this context, there is a need to revise the principles of the formation of the Justice Council and the role of the Ministry of Justice in taking disciplinary actions against judges.

The proposed constitutional amendments that are currently being discussed do not contain provisions on the Defender. However, such provisions have been drafted and will be presented by

the Defender. In this context, suggestions will be made on the Criminal and Civil Procedure Codes and the by-laws of the National Assembly and the Government.

The drafts currently being discussed touch upon the notion of “the rule of law” and “the power of the legislation.” The Defender finds it unacceptable, because there cannot be “power of the law”: if the law prevails, legislation limiting the law shall not have any effect. The rule of law should be prescribed in the legislation.

A number of other proposals have been drafted with the aim of further clarifying and expanding the provisions on human rights and fundamental freedoms. The proposed legislative amendments are mainly concerned with social legislation with a view toward facilitating enhanced mechanisms for protecting the rights of society’s vulnerable groups.

4.2. Related Laws

A number of considerable discrepancies in the legislation, especially regarding the Law on the Human Rights Defender, should be pointed out.

First of all, it is important for rights and freedoms to be safeguarded by the investigative authorities (investigative bodies, investigators, prosecutors, and courts). In this field, there are significant discrepancies in both legislation and practice, affecting the whole process starting from criminal case initiation and ending with review by the Cassation Court’s Criminal and Military Chamber.

There are quite a few complaints regarding the refusal by pre-trial investigation authorities to initiate criminal cases on the basis of evidence submitted by parties or the failure of prosecutors and courts to terminate such refusal decisions. To this end, violations of human rights should be presented in the context of legislative inconsistencies encountered in practical work. First of all, Article 180(1) of the Criminal Procedure Code states that allegations of crimes must be considered and addressed immediately, and if there is a need to check the lawfulness of the cause for initiating a case and the adequacy of grounds, then within 10 days of receiving them.

Our review of complaints suggests that criminal investigative authorities often violate this requirement. They normally claim it is due to their heavy workload, which certainly is not a ground for mitigating their liability. Moreover, the bulk of complaints have to do with poor or inadequate prosecutorial supervision. Some of these allegations have been forwarded to the Office of the Prosecutor General whereas in others, letters were sent to the relevant authorities.

From a standpoint of respect for human rights and fundamental freedoms, we find Article 185(3) of the Criminal Procedure Code of Armenia unacceptable: “A decision on refusal to instigate a criminal case may be appealed to a higher-standing prosecutor or to the appellate court.” Our review of complaints shows that once the decision has been appealed to the higher-standing prosecutor, the Appellate Court for Criminal and Military Cases refuses to examine the appeal. This approach has been supported by the Cassation Court, which too invokes the Criminal Procedure Code. Moreover, this position has been reinforced in a decision of the Council of Court Chairmen. In effect, this is an explicitly groundless restriction of the right to judicial protection which is guaranteed in both the Armenian Constitution and various instruments of international law.

There are some inconsistencies when demanding information or documents concerning cases pending before criminal investigative authorities. Paragraphs 1, 2, 3, and 6 of Article 12 of the Law on the Human Rights Defender rightfully state that after deciding to accept a complaint for review, the Defender may demand and receive documents and materials related to the complaint from any central or local government authority or official with the aim of investigating the allegations made in the complaint, as well as to receive clarification on matters arising in the review of complaints from central or local authorities or their officials and public servants, except for courts and judges, and to have access to any document or material related to the complaints.

Contrary to this, Article 201(1) of the Armenian Criminal Procedure Code provides that pre-trial investigation data is subject to publication only with the permission of the pre-trial investigation authority. Article 1 of the Criminal Procedure Code provides: “In the territory of the

Republic of Armenia, criminal proceedings shall be governed by the Constitution of the Republic of Armenia, this Code and other laws. Regulations established by the criminal procedure legislation to govern the conduct of criminal proceedings are mandatory in any court of law, any agency of inquest or preliminary investigation, in any office of prosecution, and for the participants of the proceedings.” The Law on Legal Acts (Article 9(1)) provides that within the scope of matters regulated by a Code, all other laws of the Republic of Armenia must correspond to the Code.

Article 6(2) of the Law on Prosecution provides that the prosecutor and investigator are not obligated to provide clarification on cases and materials pending before them, or to make them available for access in any way other than in the cases and procedure defined by law.

Under Article 12(1)(5) of the Law on the Human Rights Defender, the Defender may study cases related to criminal, civil, administrative, disciplinary, economic, and other offences with the aim of reviewing matters raised in a complaint, provided that court judgments, decisions, or rulings concerning such cases have entered into legal force. The Defender also has the right to access materials regarding criminal cases which were rejected. Clearly, this law does not make any reference to decisions on suspending criminal cases, dropping charges, or eliminating the decisions on suspending criminal cases. The practice gained by the Defender’s staff shows that whenever suspended or dropped case files are demanded, problems are encountered in that either they are not made available altogether (with reference to the Criminal Procedure Code), or access to them is granted, but only on the premises of the relevant authority. Therefore, amendments are necessary in both the Criminal Procedure Code and the Law on the Human Rights Defender.

The Law on the Human Rights Defender provides that the Defender is not obligated to provide clarification and be a witness on the substance of complaints or documents pending before the Defender, or to make them available in any way other than in the cases prescribed by law (Article 5(2) of the Law). This means that if the Defender prepares materials prior to the initiation of a criminal case (since the definition reads “clarifications,” one may conclude that it is concerned with the preparation of materials), or during the investigation of a criminal case, the Defender may not be interrogated and be required to testify as a witness. Contrary to this, Article 86(2) of the Criminal Procedure Code provides an exhaustive list of individuals that may not be summoned and interrogated as witnesses. As a comprehensive legal act, the Criminal Procedure Code has higher legal force than the Law on the Human Rights Defender. Therefore, the aforementioned provision of this law is not in effect. It is our belief that the Defender should be mentioned in Article 86(2) of the Code, as it may be a crucial step towards improving procedural safeguards for respect of human rights. However, Article 86(2) would need to be supplemented in order to do so.

Also worthy of mention are the violations of criminal procedure legislation by courts of unlimited jurisdiction in terms of the failure to comply with requirements on judicial proceedings and evidence examination, or the failure to honor the procedure of reviewing motions and challenges, or to ensure adversarial proceedings.

Article 303 of the Criminal Procedure Code clearly prescribes: “In case of the defendant’s failure to attend, the examination of the case is postponed. In case of the defendant’s failure to attend without good motives, the latter can be brought in by force, by court decree, and in case of availability of grounds specified in this Code, means to secure his appearance can be applied to him or replaced with more severe ones.” Article 398(3)(3) of the Code provides that a judgment must be overturned if the case was examined in the absence of the defendant. In other words, this is an unconditional ground prescribed in the law for overturning the judgment. These legal provisions are in keeping with the requirements of adversarial proceedings, including the requirement to ensure the presence of the parties in court during the hearing of the case (Article 23(8) of the Criminal Procedure Code). Article 398(1) of the Criminal Procedure Code provides that a breach of the criminal procedure principles (including the principle of adversarial proceedings) during the process of judicial review is considered a significant breach of the criminal procedure law.

Paragraph 7 of the February 12, 2000 decision of the Council of Court Chairmen of Armenia provides that if the defendant disturbs the judicial session, the court may decide to remove him from the courtroom. In such cases, the hearing goes on in the defendant’s absence. Clearly, this provision of the aforementioned decision is not consistent with the Criminal Procedure Code. Moreover, decisions of the Council of Court Chairmen are not binding.

There are quite a few complaints regarding unlawful deprivation of liberty by criminal investigative authorities, detention in various places without any orders, and ill-treatment. Unfortunately, these cases are difficult to prove and are often the consequence of poor prosecutorial and internal supervision. These cases are common especially in the regions of Armenia.

The arrest and detention periods defined by law are violated, as well. A large number of complaints have been reviewed concerning court decisions ordering detention as a preventive measure. However, it has been decided in most of these cases to refuse accepting such complaints.

We strongly believe that in the field of criminal procedure, the Defender should enjoy very distinct powers with the aim of strengthening the human rights protection system, rather than act as a substitute for the criminal investigative authorities.

4.3. Republic of Armenia Law on State Pensions

Article 47 of the Law on State Pensions, which has to do with the Procedure of Confirming Insured Career and Documents Supporting Length of Insured Career, is a considerable shortcoming in the legislation on social security, which is worth discussing. This article provides: “Prior to effectiveness of the Law and the creation of a personal database, the Labor Book is the main document that confirms the employment record of an insured person, and from January 1992, also the document that confirms the payment of compulsory social insurance contributions. In the absence of the Labor Book or career records or other legally prescribed documents, the career length shall be calculated on the basis of an archive statement or, in its absence, by means of judicial procedure. If the required (25 years) insured career length is available, judicial confirmation shall not be required. Judicial confirmation of a career length may cover the missing portion of the employment history, but not longer than 10 years.” It is unacceptable to demand documents confirming payment of social insurance contributions since 1992 from individuals who worked for registered employers.

4.4. Laws on the Disabled and Vulnerable Groups of Society

It has become clear, based on complaints from the disabled and from vulnerable groups in society, that there is some dissatisfaction about this law adopted by the National Assembly on June 9, 1997. This law introduced monetary compensation instead of all the exemptions and discounts available to the disabled, though the compensation was abolished altogether in 1998. On February 5, 2004, the Government adopted Decree 207-N on replacing privileges with monetary compensation for veterans of the Second World War and for disabled veterans. In 2005 the amount of this compensation was modified. In 2004, for instance, disabled veterans received 3,500 Drams monthly, which was increased to 4,500 Drams in 2005.

The disabled are also complaining about Government Decree 780 of June 13, 2003 “On Classifiers Used in Medical and Social Expertise and Criteria for Determination of Disability Categories,” which has deprived a large number of individuals with disabilities of the right to be awarded disability status.

It is worth mentioning that buildings do not have access ramps, which is an obstacle to the mobility of the disabled.

In order to ensure access for the disabled, it is necessary to amend the Law on Urban Development.

Moreover, we would expect changes in the procedure for issuing recommendations to the disabled for university admission. Under the Law on Social Security of the Disabled, the disabled are entitled to free education, which is not enforced in practice, because a disabled student can have free education only if the central Medical and Social Expertise Committee agency issues a recommendation. It hinders the access of the disabled to free education in universities with the same equal rights and opportunities as other students. This issue was raised with the Defender by

the “Bridge of Hope” NGO and a number of students with disabilities who are currently studying in universities and paying their own tuition.

4.5. Republic of Armenia Law on Social Security of Servicemen and Their Families

As a consequence of the massacre of Armenians in Sumgayit, Baku, Kirovabad, and elsewhere in Azerbaijan from 1988-1990, many Armenians either were murdered or became disabled. The surviving relatives of those killed in these brutal acts, and who are currently in Armenia, do not enjoy the same benefits as the family members of deceased servicemen; those who became disabled under the aforementioned circumstances do not have the same status as disabled Karabagh War veterans. There is no consideration of the fact that these individuals also lost their homes and assets simply because they were Armenian.

The situation of those held hostage in Azerbaijan and tortured into disability is the same.

In order to address this issue, the Armenian Law on Social Security of Servicemen and Their Families needs to be amended.

4.6. Republic of Armenia Law on Refugees and Law on Citizenship

The March 3, 2004 amendments to the Armenian Law on Refugees provide that “refugee children lose refugee status if their parents obtain Armenian citizenship in accordance with the procedure defined in law...” This amendment has caused the legal status of refugee children, currently between the ages of 14 and 18, to deteriorate because under the Law on Citizenship they do not obtain Armenian citizenship, but rather, turn into stateless persons, which contradicts Article 22 of the Law on Citizenship, the Convention on the Rights of the Child, and the Convention on Reducing Denationalization. Therefore, the Law on Refugees and the Law on Citizenship need to be amended to eliminate uncertainty and inconsistencies, and to introduce provisions to safeguard the interests of refugee children.

5. AVENUES FOR FURTHER DEVELOPMENT OF THE HUMAN RIGHTS DEFENDER'S INSTITUTION

Future directions of the Defender's activities can be developed, and more effective methods of human rights protection introduced, based on this overview and summarization of last year's experiences.

During the year the legislation on human rights and fundamental freedoms was studied. Based on the reviews and summaries of the findings, as well as the international experience of the nation, the Defender can propose amendments to laws and other legal acts.

Active involvement in the discussions of constitutional amendments is crucial in this context. The Defender has a comprehensive package of proposals that are being discussed within the Expert Council of the Institution.

Among the Defender's future priorities is child protection, in light of the fact that there are numerous and well established grounds to assess children's protection as inadequate.

Social and economic problems of those deported from Azerbaijan remain a top priority. Not all the refugees have received housing, and they still do not enjoy access to the most basic living standards.

In the future, regular visits to military detachments will remain a key aspect of monitoring efforts and training courses on human rights and freedoms.

The possibility of having a representative of the Human Rights Defender in the military will be discussed with the Ministry of Defense.

Since the risk of ill-treatment is rather high during apprehension and detention, these cases will always receive a great deal of attention and will be reviewed thoroughly to facilitate enhanced human rights protection in penitentiary institutions.

Since any restriction on the freedom of expression, including unlawful restrictions on the professional activities of journalists or the expression of private opinions, has a direct impact on human rights protection, the Defender will prioritize this right as well.

Penitentiary institutions will always remain a top priority. Individual work with those deprived of liberty will remain an important duty.

More attention will be paid to the activities of the Judicial Enforcement Department and the Real Estate Cadastre Committee, because these are areas in which human rights violations are rather frequent.

Court monitoring will become a permanent exercise with an increased focus on regional courts.

There will be visits to the regions and remote areas to meet with the population, to learn about the human rights situation, and to hold training courses in various legal topics. Regional representative offices can be established subject to funding. During meetings with the Defender, governors and mayors expressed their willingness to support the establishment of such offices and to provide space as necessary.

During the discussion of specific matters related to the protection of human rights, as well as while reviewing structural problems, the Defender will undertake measures to promote the harmonization of Armenian legislation and practice with the universally recognized international principles. The Defender will also help Armenia in fulfilling its undertakings related to international laws and norms.

6. APPENDICES

Human Rights Defender of the Republic of Armenia

The Human Rights Defender of the Republic of Armenia, Larisa Alaverdyan was born in Baku, Azerbaijan. She graduated from the State Pedagogic Institute of Azerbaijan and worked in Orphanage Number 2 in Baku, and thereafter in a school.

In 1968 she moved to Yerevan. From 1968 to 1991, she worked in various research institutions.

She is a founder of the “Artsakh” patriotic association which was created in 1988 and is currently the Secretary-in-Charge. She started working with the very first groups of Armenian refugees from Azerbaijan and supported their accommodations, employment, and household needs.

From 1990 to 1995 she was a senior expert in the Committee for Artsakh Matters in the Supreme Council of the Republic of Armenia.

In 1991 she founded the Fund against Legal Arbitrariness (formerly the “Fund for Protection of Hostages”), non-governmental organization. Through 2004 she served as its Executive Director. Under Larisa Alaverdyan’s leadership, the organization developed and implemented numerous projects with the primary purpose of locating and securing the return of hostages, those missing in action, and prisoners of war. She organized the provision of medical, psychological, and moral support to them, as well as to refugees and IDPs, and to facilitate human rights protection. Nearly 1,800 hostages, combatants, and prisoners of war were returned to Armenia thanks to the efforts of this organization. From 1992 to 1996 dozens of children were returned to Armenia because of the “Save Hostage Children” initiative.

Ms. Alaverdyan took part in the creation of the first Rehabilitation Center for Victims of Violence in the South Caucasus, which continues to operate today. She has participated in numerous international and regional conferences and workshops, and has presented the issues that the Fund against Legal Arbitrariness deals with.

From 2001 to 2003 she was a member of the Human Rights Protection Committee under the President of Armenia. Ms. Alaverdyan has published various papers and manuals on human rights and has participated in the development of the Poverty Reduction Strategy Paper. She has prepared several expert reports on the Karabagh issue.

Larisa Alaverdyan is married and has two daughters.

Deputy Human Rights Defender of the Republic of Armenia

Rafik Mkhitarian, the Deputy Human Rights Defender of the Republic of Armenia, was born in 1945 in Leninakan (presently Gyumri) into a working class family. From 1952 to 1963 he studied at the Sundukyan Secondary School of Gyumri. In 1963 he was admitted to the Physics Department of Yerevan State University.

Due to difficult social conditions, he went on academic leave in 1968 and worked as a locksmith in the Polishing Machine Plant in Leninakan. In 1970 he was elected as Deputy Secretary of the Young Communist Union Committee at Yerevan State University, and later, as secretary from 1973 to 1977. From 1971 to 1974 he studied and graduated from the Distance Learning Division of the Law School at Yerevan State University.

In March of 1977 he was appointed Head of the Yerevan City Department of Interior. In 1978 he joined the Council of Ministers of the Armenian Soviet Socialist Republic as a senior clerk. In 1980 he began work as an instructor for the Central Committee of the Armenian Communist Party. In 1985 he became a sector manager.

Mr. Mkhitarian was elected Chairman of the Executive Committee of the Artashat Regional Committee in 1986. In 1988 he moved back to the Central Committee of the Armenian Communist Party where he worked as a Deputy Department Head.

In 1990 he was elected First Secretary of the Artashat Regional Committee where he worked until September 1991. In 1990 he was elected as a deputy in the Supreme Council of the Republic of Armenia from district number 120.

In 1992 Mr. Mkhitarian was elected as a member of the Standing Committee for Legal Matters in the Supreme Council. In 1993 he was elected secretary of that committee. From 1992 to 1993 he worked in the Government of Armenia as the First Deputy Logistics Manager.

From 1990 to 1993 he took distance learning courses and graduated from the Governance Academy of the Russian Federation. From 2000 to 2004 he worked as an advisor to the Speaker of the Armenian National Assembly.

Rafik Mkhitarian is married and has two sons and one daughter.

HUMAN RIGHTS PROTECTION IN THE FIELD OF EMPLOYMENT

During 2004 the Defender's staff received nearly 130 complaints regarding compensation claims for dismissal from work, non-payment or late payment of salaries, or disability or work-related injuries. The bulk of these complaints were against the *private sector*. Though the Law on the Human Rights Defender gives the Defender the right to review only allegations of human rights violations by central or local government authorities and their officials, such violations are also reviewed in the context of the inaction of such authorities or officials.

An overview of the labor situation in Armenia suggests that violations of labor rights are widespread, *predominantly in the private sector*.

There are a number of reasons for this problem. One of them is the social and economic situation that has a bearing on the employer/employee relationship. Certain public agencies fail to use all their resources to ensure respect for human rights and social issues and, in particular, in the field of employment.

Another negative factor is the inadequacy of government supervision over compliance with employment laws. Some European countries have had labor inspectorates (social police) for nearly 150 years.

The National Assembly of Armenia is presently considering the creation of a National Labor Inspectorate in 2005. The absence of such a system for many years has given many employers confidence that they will not be held responsible for their breaches of labor legislation.

Delays in the payment of salaries and unlawful leaves, including forced unpaid leaves, may be explained by the economic crisis. The majority of violations, however, cannot be justified by economic reasons. So, these violations are becoming "tradition." The majority of violations are caused by unlawful termination of employees by employers. These violations are primarily the consequence of employees' lack of legal awareness, because the Labor Code specifically provides the grounds and procedure for terminating an employment contract, which does not include the possibility of an arbitrary interpretation of law by the employer.

When employees are sent on forced unpaid leave, hidden unemployment increases.

Change of ownership in a company will naturally result in violations of employee rights. The growth of the SME sector raises the need for protecting the rights and lawful interests of employees. These employees normally do not have trade unions or other associations, whereas employers in turn ignore labor legislation.

A breach of an employment contract begins from the very moment of signing the contract. Employment contracts are often not concluded in the proper legal manner. There are cases in which they mislead the employees by replacing the employment contract with a civil contract. It allows the employer to terminate the employment relationship and to not pay salaries without any grounds and any documentation. It is most often the case with small shareholders and temporary employees of private companies. The employer is free at any time to stop salary payment and never pay the back salary to the employee.

Labor cards are never documented or filled in properly, which later creates problems for the employee holding the card.

Employment contracts frequently contradict Article 5 of the Labor Code of Armenia. This article provides for the invalidation of such terms in employment contracts that make the employee's situation worse, as compared to the employment legislation of Armenia. Employers include contract terms that explicitly tilt the relationship in favor of the employer. For instance, with female employees, employers specify in the contract that the employee will be terminated in

the event of pregnancy. Due to the uneven bargaining power, potential employees often agree to these terms. Employers treat employees simply as instruments for making profit; they are concerned about more than their employees' social and employment rights and interests.

Numerous companies fail to comply with the basic conditions of work safety, which causes work-related injuries and other health problems.

Though production volumes have declined, there still remain accidents in companies. These accidents are due to the social and economic condition of employers who do not worry about work safety, because it would require large amounts of money and qualified experts. The lack of such experts is a rather serious problem, as well. In some companies the activities of work safety departments have ceased. First aid and preventive services have been eliminated. New companies in turn fail to create such services. There are also subjective factors.

The fact is that in the context of economic reform and enterprise privatization, reforms in the work protection system have been rather slow.

Employers often abuse their employees. In some companies the work day is at times much longer than the standard work day. The salary often does not depend on experience or qualifications, but rather on personal commitments or the willingness to deliver "other services."

In small and medium-sized companies, either there are no trade unions or the existing ones unconditionally comply with whatever the employer wishes to have done. As a rule, management exerts pressure on the trade unions, while trade unions leaders are granted a privileged status. Thus, trade union leaders become a part of the "elite" and, in turn, end up opposing the employees. In such situations, trade unions agree to the orders of unlawful leaves, fail to protect employee interests in cases of non-payment of salaries, and do not respond to other breaches of labor legislation by management.

Reasonable liberalization, which is inevitable during the transition to a market economy, is essential for trade unions to effectively perform their functions. Powerful trade unions are necessary not only to protect employee's rights and engage in collective bargaining, but also to ensure a balanced policy between the social partners' interests.

Here are some of the more characteristic breaches of employment rights.

1. Article 29(1) of the Constitution of Armenia provides that every citizen is entitled to the free choice of labor. Article 16 of the Labor Code more specifically prohibits unjustified refusal to hire a person.

Under the Constitution, it is prohibited to place any direct or indirect limitations on any right and to grant direct or indirect advantages on the basis of gender, race, nationality, and religion.

However, this requirement is almost universally violated in practice, especially in the private sector. It is commonplace to read "help wanted" advertisements that require highly-qualified senior accountants under the age 35, or nice-looking girls of ages 18-25 as sales personnel, waitresses, janitors, cooks, and the like.

Unfortunately, in these and other cases that are an integral part of the Armenian reality, employers who refuse to hire a potential employee do not necessarily state the grounds that are permitted under Armenian legislation and the principle of recruitment and hiring on the basis of skills.

A certain segment of our society (ages 40 to 63) is in the higher-risk zone. Although they are considered able-bodied citizens because of their age they demand a higher salary and, at the same time, are not yet eligible to receive a pension (or family allowances). This, in turn, makes them much less competitive in the labor market.

2. Article 27 of the Labor Code defines the procedure of issuing and filling out labor cards.

In practice, management often fails to fill out labor cards or fills them out well after the expiration of the time limit to do so. For instance, employers will only do it when dismissing an employee. In some cases the labor cards are filled out erroneously, and the new class awarded to a

worker or the transfer of a worker to a different workshop within the same company (especially when transferring a worker to a more dangerous and hazardous position) are not registered. The carelessness of human resource departments later weighs heavily on the determination of the amount of privileged or long-term service employment pensions, which causes serious frustrations for employees.

3. Article 36 of the Labor Code provides the grounds by which the employer may terminate an employment contract. This article provides an exhaustive list of the general grounds on which the employer may terminate the contract. No other ground may be invoked by an employer to fire an employee.

Though each of the nine grounds specified in Article 36 are mutually exclusive, there are cases in which numerous grounds are invoked at the same time to fire an employee, or none of the grounds are invoked at all.

4. Article 42²(1) of the Labor Code provides: "Employees shall be given individual notification of upcoming dismissal at least two months in advance." Article 18(c) of the Law on Employment more specifically provides: "Individuals dismissed as a consequence of reorganization, liquidation, or redundancy shall be notified of such dismissal at least two months ahead of the dismissal and shall receive a redundancy allowance in the amount of the average monthly salary."

Notwithstanding the clear wording in the aforementioned articles, employers often fail to provide written notification as required.

5. Employees are entitled to at least 15 working days of annual leave. However, in the cases prescribed in Article 74 of the Labor Code, some categories of employees are entitled to additional time off.

A leave must be granted every year, at the time required by law. The annual leave must be postponed or extended in case of temporary incapacity of the employee, in case the employee is performing state-ordered or societal duties, or in other cases prescribed by law.

In exceptional cases, when granting a leave during the current employment year that may have an unfavorable bearing on the company or organization, it is permissible, with the consent of the employee and the trade union, to defer the leave until the next employment year. Deferred leave may be merged with the next year's leave.

It is prohibited to not grant an annual leave for two years in a row. Annual leaves must be granted every year to employees who are under 18 and employees who are entitled to additional leaves due to hazardous work conditions (Article 80 of the Labor Code).

Article 82 of the Labor Code provides: "If an employee so requests for family circumstances and other reasons, the manager of the company or organization, or of its respective unit, may authorize the granting of a short-term unpaid leave. If necessary, the parties may agree that the employee work later in return for the leave, based on the conditions and circumstances of work."

These provisions are implemented in practice in different ways. In some private companies or organizations, the employer does not wish to grant an additional leave (of up to 12 working days) to employees who are working overtime. In both state and private companies and organizations, employees are not granted annual leave; in fact, years go by without any leaves being granted, which has a negative impact on the health of employees and makes them over-exhausted. This, in turn, diminishes productivity. In a number of private companies the notion of "leave" does not exist. In some cases it is replaced with monetary compensation, which is prohibited under Article 81 of the Labor Code.

A very common violation is when employers grant unpaid leave. Employers mainly impose long-term unpaid leave upon employees in breach of the time periods specified in the labor legislation.

6. Work-related injuries, professional ailments, and other health problems are among the most sensitive issues. They can cause partial loss of work capacity, which will force the person either to change jobs or become disabled.

Considering the importance of workers' financial well-being, Article 181 of the Labor Code provides: "In accordance with the Armenian legislation, companies and organizations are responsible for loss inflicted upon employees as a consequence of trauma or other health damage related to the performance of their work duties."

In addition, Government Decree 579 of November 15, 1992 approved the Rules on the Procedure of Compensating Loss Inflicted by Trauma, Professional Ailment, or Other Health Damage Due to the Performance of Work Duties by Employees of Companies and Organizations (regardless of ownership). Parts 1 and 2 of the Rules clearly define: "Companies and organizations, regardless of ownership, shall be materially responsible for trauma, professional ailment, or other health damage inflicted upon employees at their fault during the performance of their work duties, if it was caused during the performance of work duties inside or outside of the company, or at the time of performing any useful act for the organization.

The organization shall be exempt from damage compensation if it is proven that the trauma, professional ailment, or other health damage was not caused at the fault of the organization."

"Damage compensation shall be performed by the organization that is responsible for the trauma, professional ailment, or other health damage inflicted upon the employee." (Part 14)

"If the activities of the organization stop as a consequence of its liquidation or restructuring, such damage shall be compensated (compensation shall continue) by its successor or, in its absence, by the social security authorities under budgetary funding." (Part 16)

Clearly the rules require employers to pay compensation. However, many employers seriously violate these provisions and fail to provide due compensation to victims of such trauma, which increases social tension. Most of the violators are private companies without terminated succession, i.e. they are obligated to pay those salaries. However, they claim that they have nothing to do with the obligations of a non-existing company.

7. Protection of women's rights in employment is another crucial area. Article 197 of the Labor Code prohibits the non-recruitment of women or the lowering of their salaries on grounds related to pregnancy and nursing a child.

The employer may not fire pregnant women, nursing mothers, and mothers of children less than three years old. The exception is the complete liquidation of the company or organization, when such dismissal is permitted subject to the requirement of finding another job for such women.

Employers often ignore this provision and avoid hiring newly-wed women or women with young children. In some cases women are dismissed by the employer during pregnancy or maternity leave, or during additional leave granted for child care.

8. Another breach of legal and moral rules is the employers' practice of recruiting people "on the condition of working two months for free—as a 'test' period", and if they "pass the test", then they will start being paid. During the two month period a person will normally work 12 to 14-hour workdays, motivated by the idea of being on a "test period." Then, after two months, the employer tells the employee that the latter "failed" and does not pay the employee.

9. The Defender's staff has received complaints from the regions of Armenia concerning local self-government bodies going years without paying salaries. Inquiries have been made with all of the regional governors in this respect. They responded that there are salary delays in local self-government bodies in all the regions of the country, which is due to the communities' inability to collect their own revenues in a timely and complete manner. The governors claimed it was due to the flaws of community heads and their staffs in revenue collection. In light of the fact that salary delays are unacceptable, and assessing this situation as a clear violation of human rights, the Defender sent a letter to the Minister for Territorial Administration and Coordination of Infrastructures on February 2, 2005 proposing to undertake measures to ensure timely payment of salaries and to notify the Defender of such measures. The Minister in turn asked the governors to

take measures to correct the situation. At present, the Defender is receiving letters from the governors who are notifying the Defender of measures taken in this respect. We are confident that resolution of this problem will not only mitigate social tension in the regions, but will also facilitate the strengthening and development of local self-government bodies.

We believe that comprehensive measures are required in order to improve the situation in the field of employment. A comprehensive approach to regulation of employment-related matters is not just a slogan, but rather an objective need for addressing social-economic problems, including those in the field of employment.

The first important step in this direction was the adoption of the new Labor Code. However, in addition to the Labor Code, other legal acts need to be adopted.

State supervision of compliance with employment legislation is a crucial safeguard for respecting the rights of employees. The National Labor Inspectorate is to be created sometime during 2005. It is very important for the National Labor Inspectorate to ensure unconditional compliance with employment legislation in all companies and organizations, regardless of the social and economic status of their owners. It is vital to equip the Inspectorate with a highly-qualified workforce.

Another crucial step was for the new Labor Code to prescribe a system of social partnership. Social partnership is the cooperation of public authorities and parties to employment relationships with the aim of developing the economy, improving work conditions, and raising the living standard of employees.

Social partnerships should be seen as a special type of social-employment relationship typical of a market economy. It is anchored in the belief that equitable cooperation between the state, workers, and employers will ensure the balancing and realization of their fundamental interests.

In Armenia the economic, social, legal, and psychological grounds of such partnerships have yet to be created. Moreover, institutional, scientific, methodological, human resource, and financial experiences, and a culture of partnership, must be developed.

Successful attainment of this goal requires the active participation of all the social partners, including trade unions, businesses, and the state. It would be helpful for the role of trade unions to be enhanced. Working in parallel with the National Labor Inspectorate, they could perform social monitoring of compliance with employment legislation. Another important aspect is to facilitate an enhanced legal culture of the public, including employers and employees.

Thus, strengthening of the national employment legislation, developing a social partnership system, and ensuring proper monitoring and oversight of compliance with employment legislation can result in a considerable improvement in the field of employment, improved work productivity and efficiency, and contribute to harmonious social relations.

Protection of Women's Rights in the Republic of Armenia

Women's equal and fully-fledged participation in the political, social, economic, and spiritual life of the country is a prerequisite for creating a democratic state based on the rule of law and social justice.

The domestic legislation of Armenia and its international treaties prescribe extensive rights for women, but de-facto equality of the genders is the real issue. This is an area in which there are problems. Legislation on women's status is often merely declaratory and is not enforced. In real life, cases of discrimination against women can be found in the family, workplace, and elsewhere in society. Cultural and religious traditions and stereotypes diminishing women's roles contribute to the problem.

An important step towards the protection of women's rights was the adoption of Government Decree 645-N of July 16, 2001 on Approving the 2004-2010 National Action Plan (NAP) on the Improvement of Women's Status and Enhancement of Their Role in Society and the respective Timetable of Actions. The NAP defines the principles and priorities of state policies aimed at solving women's issues in Armenia.

In October 2004, an international conference on "Supporting Advancement of Women: National Plan in Action" was held in Yerevan.

The strengthening of non-governmental organizations dealing with women's issues in Armenia is commendable. These NGOs are engaged in diverse activities to facilitate women's advancement in various walks of life, including the political, economic, and social spheres. Moreover, they play a vital role in the development of democracy and civil society and the enhancement of women's political and social activity. NGOs are currently focusing very closely on problems such as the inaction or inadequate performance of public authorities regarding domestic violence and trafficking in women.

The development of NGOs playing a crucial role in women's advancement in Armenia was also noted by the Committee for the Elimination of All Forms of Discrimination against Women (hereinafter, "the Committee").

Women in Political Decision-Making

For many years the limited presence of women in Armenian politics has not been considered an important matter. To make matters worse, women were often blamed for this situation (accused of not being interested in politics and not being strong enough during campaigns, etc.). In contrast, we now often hear that women's limited participation in politics is an impediment to the development of not only women, but also democracy, and is a sign of an "unhealthy democracy."

The Convention on the Elimination of All Forms of Violence against Women, which Armenia joined in 1993, pays close attention to women's participation in political life.

This convention is not the only document of international law that addresses the issue of women's equal participation in political decision-making. A number of other conventions, declarations, and international studies are devoted to this problem, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Political Rights of Women, the Vienna Declaration, the Beijing Declaration, the Platform for Action, and others.

The Armenian Constitution and various laws rule out any limitation on women's participation in political life. Article 27 of the Constitution provides that citizens who have turned 18 are entitled to participate in the government of the state directly or through their freely elected representatives. Article 2 of the Electoral Code provides that citizens who have turned 18 have the right to vote, whereas Article 3 safeguards the right "to elect and to be elected."

Nevertheless, the situation in Armenia can hardly be considered satisfactory. Women are clearly underrepresented in decision-making and politics. The participation of women and men is unequal. In real life, reforms are necessary in Armenia, as confirmed by an overview of women's involvement in politics.

This is the current situation: after the 2003 National Assembly elections, *women have 4.1 percent of the seats in the Parliament*. One of the six female MPs was elected by majority vote, whereas the other five were elected in the party contest. Women made up 4 percent of the candidates nominated in majority lists and 14.1 percent of the party contest nominees.² In other words, the number of female MPs and female candidates running in elections is low.

As a result of lengthy efforts towards increasing the number of female MPs in the National Assembly, it was prescribed in the legislation that women must be at least 5 percent of the names nominated by each party during elections to the National Assembly. However, this issue is currently being widely discussed. A number of NGOs geared towards the protection of women's rights emphasize the fact that in reality parties put the names of female candidates at the end of their lists, which is one of the reasons why very few women are elected. There was also discussion of the need to increase the number of female candidates in party lists by at least 20 to 25 percent by specifying several female candidates among the first ten names in the list.

The international study carried out by the Inter-Parliamentary Group³ found that in terms of women's representation in the legislature, Armenia was number 109 out of 184 countries as of February 28, 2005.

The number of women in *executive positions* is not inspiring either. There are presently no female ministers in Armenia. Unfortunately, there are very few Armenian women in the sphere of international relations, as suggested by the limited number of female ambassadors and female members of delegations.

The situation is the same in bodies of *territorial administration* and *local self-government*. Armenia has *never had a female governor*, and in the 2002 local self-government elections, *only 8 out of 932 female candidates were elected to office*.

Unlike political decision-making, women are quite well represented in NGO activities.

In Armenia, the number of women exceeds that of men in the spheres of education, health care, culture, and services. Though the vast majority of teachers are women, the bulk of school principals are men.

Based on the foregoing it is clear that despite certain progress, including the ratification of international legal instruments by the Republic of Armenia, women's involvement in the decision-making process is rather low. Women's skills and potential are not being used adequately in the efforts of the state to combat the grave economic and social difficulties. Recently, at the suggestion of international organizations, Armenian society has been actively discussing the possibility of introducing special temporary measures, as prescribed in Article 4 of the Convention, including quotas, training programs, and awareness campaigns to facilitate the enhancement of women's roles in the political decision-making process.

Trafficking in Persons

Trafficking in persons, especially women and children, is a problem of global proportions. The sex industry and trafficking in persons is quite lucrative due to factors such as poverty, the lack of adequately paying jobs, dire economic straits, and unawareness. Socially vulnerable women often fall victim to trafficking.

Armenia has recently undertaken some important steps to combat trafficking in persons. The National Assembly ratified (by decision N-335-2) the UN Convention against Transnational Organized Crime Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Government Decree 58-N, dated January 15, 2004, endorsed the Concept Paper on Prevention of Smuggling and Trafficking of Persons from the Republic of Armenia and the 2004-2006

² 2004-2010 National Action Plan on the Improvement of Women's Status and Enhancement of Their Role in Society.

³ This study was commissioned on the basis of data received from governments of different countries.

National Action Plan for the Prevention of Smuggling and Trafficking in Persons from the Republic of Armenia. The main activities will be aimed at the elimination of trafficking in women and girls. The NAP will focus on studies, prevention, protection, and assistance.

In March 2004 the Government of Armenia and UNDP signed an Agreement on the Anti-Trafficking Program: Capacity Building Support and Victims Assistance project.

The Armenian legislation does not contain any law directly concerned with trafficking in persons. However, the Criminal Code (of August 1, 2003) prescribes trafficking in persons as a separate type of crime. Article 132 of the Criminal Code defines trafficking in humans as the “recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of sexual exploitation or forced labor, by means of the threat or use of force, of fraud, of using the dependence, of blackmail, of threat of destruction or damage to property, if this was done for mercenary purposes...” It is worth mentioning a number of other articles of the Criminal Code here, such as Article 131 (“Kidnapping”), Article 133 (“Unlawful deprivation of liberty”), Article 138 (“Rape”), Article 139 (“Violent sexual actions”), and the like.

The current situation requires comprehensive measures to raise public awareness of prostitution and trafficking in persons, and to support the integration of trafficking victims back into society.

There is no institution in Armenia to work with trafficking victims to provide psychological and legal services or, if necessary, shelter to them. These matters are mostly dealt with by various non-governmental organizations. It would be appropriate to create an institution where victims could find different services needed for their reintegration into society. Working with victims of trafficking is of paramount importance for the sake of not only their rehabilitation, but also the identification of criminal groups.

Protection of Women’s Rights in Education

The right to education is distinct from other rights because it is, in a sense, a unique foundation for the exercise of other rights, such as civil, political, social, cultural, and economic rights. It is natural that women’s equality in education is crucial to support their equal status in other areas, including work, in the family, and elsewhere in society.

The right to education is guaranteed in a number of international legal instruments. Article 13 of the International Covenant on Economic, Social, and Cultural Rights prescribes that the state recognizes everyone’s right to education.

Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women prescribes that the state shall take necessary measures to eliminate discrimination against women in the education sphere with a view towards ensuring equal rights for women and men.

Article 10 of the Convention requires the state to safeguard equal opportunities for active involvement in sports and physical education. To this end, it is worth mentioning that boys and girls in Armenia have equal opportunities to participate in sports.

In terms of enrollment at different levels of education, the 2004-2010 National Action Plan on the Improvement of Women’s Status and Enhancement of Their Role in Society has paid particular attention to gender discrimination problems. The NAP contains some interesting statistics which are worth being reviewed.

In 2002, 44,849 children attended pre-school institutions, of which 22,488 were girls. Children’s enrollment in pre-school institutions was 18.5 percent. The number of those enrolled in general education (grades 1-8) was 424,372, of which 208,029 were girls. During the 2002/2003 academic year, girls made up 51.8 percent of high school students. Women are the majority of those enrolled in vocational education. The data for the 2002/2003 academic year suggests that the discrepancy was rather large in secondary vocational education institutions, where women made up two-thirds of the total number. Women were 49.7 percent of university students, due to their large share in private universities. As for women’s low presence in post-graduate education (34.2 percent), it is mainly due to the large number of men attending post-graduate courses (about 65.9

percent), whereas women were the majority in master's programs (51.9 percent). The number of doctoral students was 28, of which 27.4 percent were women.

There are rather large discrepancies in the education system of Armenia in terms of gender composition of the teaching staff. Clearly, women make up the vast majority of teachers. However, the majority of principals are men. The number of teachers in pre-school institutions was 5,397 – all but three were women. Most of the pre-school institution staff is women.

During the 2002/2003 academic year, about 54,276 teachers worked in public schools, of which 83.4 percent were women.

The number of teachers in public secondary vocational education institutions was 4,157, of which 3,044 were women. The number of university professors was 8,495, of which 3,906 were women.

These numbers indicate a gender disproportion among teachers. There is a distinct feminization in the field of general public education (where 83.4 percent of teachers are women). Moreover, there is an ongoing loss of qualified experts, mostly due to low salaries. The majority of those leaving their teaching jobs are male teachers.

Employment

Protection of women's rights in labor and employment is worth particular attention. The international community has recognized the importance of this issue and has raised it on numerous occasions, trying to maximize the protection of women's rights in this field. In order to achieve equality in employment, it is necessary to define certain privileges in line with the appropriate international legal documents. It is prohibited to dismiss women on the grounds of pregnancy, maternity leave, child delivery, or family status.

There are a number of domestic legal acts in Armenia which regulate equality of rights between women and men in employment and remuneration, including the Labor Code, the Law on Remuneration for Labor, the Law on Remuneration of Civil Servants, and the Law on Employment.

It is necessary to emphasize the importance of creating a body to supervise employment matters. The National Labor Inspectorate was created under the Ministry of Labor and Social Affairs in September 2004 to regulate labor and employment rights, and to protect women's rights and to ensure gender equality in the workplace.

The Convention contains a separate article (Article 11) on the protection of women's rights in employment. Any restriction on women's employment rights runs counter to the Convention.

The 2004-2010 National Action Plan on the Improvement of Women's Status and Enhancement of Their Role in Society will play an important role in the protection of women's rights in employment. The NAP states that professional, public, or political activities of women cannot be put in conflict with family, and that instead, conditions should be created to ensure the complete realization of women's potential in both work and family. If implemented, the NAP could play an enormous role in facilitating the advancement of women.

According to the National Report for Armenia, there were 78,000 unemployed women in Armenia as of November 1, 2004. Women's share of the total number of unemployed remains rather high at 70 percent. 94 percent of unemployed women are urban residents. Unemployed women have the following education: 11.9 percent have university degrees, 23.7 percent have secondary vocational education, 60 percent have general secondary education, and 4.4 percent have incomplete secondary education. Women under age 18 are 0.2 percent of the total number of unemployed women; women between 18 and 22 are 4.9 percent; ages 22-30 are 20 percent; ages 30-50 are 66 percent and 8.9 percent are above 50.

In summary, the Armenian legislation is, by and large, in line with international standards. The main problem has to do with the practical enforcement of equal rights and equal opportunities.

Protection of Children's Rights in the Republic of Armenia

This overview of the protection of children's rights in Armenia is based on studies carried out in this area, including the "Lessons Learned and Recommendations" section of the Review of National Legislation conducted by the Judicial Department of the Ministry of Justice with UNICEF's support. Also contributing to this overview are the conclusions and recommendations made in the "Assessment of Health Status of Children with Special Education Needs" report developed jointly by the Association for Child Health and UNICEF, and the analyses elaborated in the National Action Plan for the Protection of Children's Rights.

This brief overview of the protection of children's rights in Armenia addresses the domestic legislation and international instruments on children's rights, the legislative safeguards for the protection of children's rights in Armenia, the legislative reforms, strategy, social policies, lessons learned, and recommendations.

During the first year of her activities, the Defender has not carried out a specific study into the protection of children's rights. Here, the Defender lays down the strategy and priorities adopted in the area of protection of children's rights.

Legislation and International Documents on Children; **Legislative Safeguards for the Protection of Children's Rights**

By ratifying the Convention on the Rights of the Child on June 12, 1992, the Republic of Armenia reiterated its commitment to prioritizing children's rights and to include them in national programs. The Convention was signed without reservations. In 1994 the President of Armenia signed the World Declaration on the Survival, Protection and Development of the Child. In 1996, the National Assembly of Armenia adopted the Law on the Rights of the Child, which was based on the Constitution of Armenia and the Convention on the Rights of the Child and defines children's rights and the commitments of the country to protect children's rights. The UN Committee for the Rights of the Child issued a report on the first regular report submitted by Armenia and mentioned in the final observations the main factors that impede the implementation of the Convention on the Rights of the Child.

There is still not a unified agency to coordinate and oversee the implementation of the Convention on the Rights of the Child in Armenia. One of the achievements in this field is the creation of a mechanism for implementing commitments in the area of children's rights, i.e. the 2004-2015 National Action Plan on the Protection of the Rights of the Child.

Government Decree 1654 of November 27, 2003 endorsed the National Strategic Program on Reform of Child Care Institutions and the Timetable of the Program.

The activities under the Program include the creation of a social work institution for children, the development of support mechanisms for children of conflict families or socially vulnerable families, the expansion of the nursery and kindergarten network, the creation of child daycare centers in all the regions and needs assessment of the child's natural family. Also included are the development of family support mechanisms, the training of parents in skills and knowledge to raise children, the implementation of modern technologies in orphanages, the provision and regular training of appropriate experts, the assistance of orphanage graduates to gain access to secondary vocational or university education, the implementation of a project to assist child care organizations, the development of legal acts to ensure compliance with Article 25 of the Law on the Rights of the Child, and a number of other measures.

The following agencies are responsible for implementing the Program: the Ministry of Labor and Social Affairs, the Ministry of Finance and Economy, the Ministry of Education and Science, and the Ministry of Health.

In April 2002, the Ministry of Foreign Affairs, with the support of UNICEF and a number of other ministries, developed a 10-year strategic plan of action for the protection of children's rights, which provides measures broken down by sectors, including health care, legislation, social security, education, rest, leisure, cultural life, and justice. The plan highlights problems and outlines solutions.

The National Action Plan for Protection of Children's Rights (hereinafter, the "NAP") has targeted the following obstacles:

- Inconsistencies between legislative requirements and the social-economic situation of the country;
- Shortcomings in infrastructure for enforcement of legal acts and regulation of the sphere; and
- ***Lack of a unified agency dealing with children's rights.***

In 2002 the Ministry of Foreign Affairs and UNICEF supported the creation of a Children's Resource Center to honor the obligation of creating a national action plan implementation monitoring entity, as specified in the report of the Committee for the Rights of the Child on Armenia.

In December 2003 the National Assembly approved the National Action Plan for Protection of Children's Rights. It has been incorporated in the Poverty Reduction Strategy Paper of the Republic of Armenia.

Monitoring and Follow-up

In terms of monitoring and follow-up on the issues raised in the NAP, the governmental and non-governmental stakeholders that developed the NAP suggest implementing specific projects to ensure protection of children's rights in Armenia. Under the NAP, progress and results will be monitored by means of annual project implementation reports produced by the various ministries.

Additionally, it would be worthwhile to establish a special structure, or a body for protecting children's rights which will conduct monitoring and ensure effective protection of those rights.

Despite considerable steps towards harmonizing the Armenian legislation with international standards, the Armenian laws simply repeat the provisions of the Convention and fail to point out mechanisms necessary for implementation. It is worth recalling the Committee's observation that clear and consistent steps are not being taken towards implementing recommendations made by the Committee earlier on, i.e. an independent commission has not been created to monitor the protection of children's rights. The Committee emphasized the importance of creating the Defender's institution in Armenia and suggested that the state institutionalize either an agency responsible for children's rights or a special unit within the Defender's institution responsible for protection of children's rights.

The Law on the Human Rights Defender does not contain any special provision on the protection of children's rights. It authorizes the Defender to deal equally with violations of children's rights. To this end, it was considered appropriate in the framework of the Plan to concentrate all the resources on carrying out an awareness campaign on promotion and protection of children's rights, and to discover and address violations of children's rights.

Issues

The review of national legislation carried out by the USAID-funded Armenia Legislative Strengthening Program states:

- There are provisions in the Armenian legislation that are inadequate in terms of impact and enforcement and are not consistent with the difficult social and economic conditions, impeding the complete realization of children's rights.

- Some of the serious flaws in legislation dealing with children include the deficiencies of infrastructure for enforcement of the legislative acts and the contradictory nature of existing different administrative orders and regulations.
- The legislative acts need to prescribe adult liability for ill-treatment and humiliation of children.
- Children from families that suffered from warfare, earthquakes and other natural disasters, as well as children from refugee and IDP families need special legal protection.
- The current legislative system needs to be reformed to ensure protection of the rights of vulnerable groups such as vagrant and beggar children.
- There are still no legislative provisions to protect children from smuggling, including smuggling abroad. To this end, it is necessary to join and ratify the respective international instruments.
- It is necessary to ensure protection of the rights of children of Armenian citizens abroad in view of the recent wide-scale migration. It is no secret that many of these children have unlawful status and cannot protect their rights and lawful interests from different violations. Moreover, in many cases parents are unable to realize the most basic rights of their children, including their right to a quality education.
- Recently there have been frequent cases of serious illnesses and deaths of minors due to their membership in various religious sects. In many cases, the activities of these sects represent a serious threat to the health and spiritual development of children, causing their alienation from family and society.
- Advertisements for alcohol and tobacco in different forms of mass media have become frequent. There are regular cases of disseminating information (films) advocating humiliation and violence.
- A number of laws are mutually restrictive, although they were adopted within a very short time of each other. Examples of such laws include the Law on Medical Care and Services and the *Law on the Rights of the Child*
- There are concerns about legislative gaps related to adoption. In view of the importance of the provisions of the Hague Convention on inter-country adoption, Armenia has revised its adoption procedures to grant an advantage to domestic adoptions.
- There are legislative concerns about the review of juvenile cases and the procedure for testimony by minors in the absence of juvenile courts. The new Criminal Code of Armenia contains some articles designed to prevent violence against children and to regulate child support matters. Legislative reform in the area of children's rights is an element of comprehensive reforms currently being pursued in the country.

Armenia has not ratified Conventions 138 (on the minimum age for employment) and 182 (on the worst forms of child labor) of the International Labor Organization. However, the new Labor Code contains articles on child labor, which are consistent with the international acts. In 2003 Armenia signed the two optional protocols to the Convention on the Rights of the Child (Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography), and developed a National Action Plan against Trafficking, which also addresses problems of minors.

In 2005, the National Assembly ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. This protocol condemns encroachments upon children's rights at times of armed conflict and defines the mechanisms and principles for their protection. By ratifying this protocol, Armenia agreed to use all possibilities to preclude the involvement of minors in armed conflicts and their service in the regular army, border troops, and interior forces. Moreover, Armenia agreed to prescribe the minimum army service age and to take measures towards honoring this commitment.

Institutional Conditions to Support Enforcement of Laws

As was mentioned above, a unified agency with comprehensive functions has not been created to facilitate implementation of the Convention on the Rights of the Child and related legal reforms.

Article 3 of the Law on the Rights of the Child provides: “The protection of children’s rights shall be performed by the authorized central and local government bodies. The state shall, through its competent authorities, cooperate with individuals and non-governmental organizations facilitating protection of children’s rights.” Article 144 of the Marriage and Family Code of Armenia provides: “The Government and the authorized nationwide and territorial agencies of public administration shall supervise the activities of trusteeship and guardianship bodies.” Government Decree dated March 13, 2000 provides that the authorized nationwide agency of public administration shall be the Ministry of Social Security (renamed in early 2004 to “Ministry of Labor and Social Affairs”), whereas the authorized regional agencies shall be the governors. The governors submit regular activity reports to the Ministry of Labor and Social Affairs.

The aforementioned decree endorsed the by-laws of guardianship and trusteeship agencies. It authorizes them to ensure the protection of the rights and interests of citizens with no or limited capacity, as well as minors left without parental care because of the absence of parents or care givers, or their deprivation of parental rights by court, or other reasons. Clearly, the mandate of these agencies fails to cover a large share of children.

Under these by-laws, the guardianship and trusteeship agencies may also create volunteer commissions for guardianship trusteeship.

In addition to guardianship and trusteeship committees, regional administration and local self-government bodies have regional, urban, and community committees for minors, the main function of which is to carry out preventive activities with minors and to ensure sound links between children and their families. A key issue in this area is the absence of *model* by-laws for such entities. In the past, committees for minors were guided by the by-laws approved as early as 1968. Having *model* by-laws would make it possible to ensure harmony between policies and activities aimed at addressing children’s needs in various areas and countrywide consistency, keeping in mind local requirements. In fact, it is considered appropriate to merge these two committees.

The review of national legislation carried out by the Armenia Legislative Strengthening Program concludes that there is no separate unit in the Staff of the Ministry of Justice to deal with issues related to children’s rights. In the Ministry staff there is a Department for Judicial Reform which has appointed a focal point for the protection of children’s rights.

The regional divisions for registration of civil status (e.g. birth, death, etc.) acts, which operate under the Ministry of Justice, were transferred to the communities under Government Decree 1699 of December 18, 2003. At present, the Ministry of Justice provides methodological guidance and carries out supervision of the regional divisions for registration of civil status acts. Moreover, the Ministry studies complaints against them and performs audits into the lawfulness of the registration operations performed by the divisions. The regional divisions for registration of civil status acts follow the Family and Marriage Code of Armenia, the Procedure of Activities approved by a government decree, the decrees of the Minister of Justice, and other pertinent legal acts.

Within the Health Care Department in the Ministry of Health, there is a division for mother and child health. Some of the functions of this division involve needs assessment, planning, project development and implementation, and general coordination of mother and child health activities. This division provides organizational and methodological counseling to health care institutions that render women’s and children’s health services. It provides legal regulations, prepares government-subsidized health care packages, and coordinates the activities of clinics, hospitals, and resorts within the Ministry.

There is also the “Seventh Division” of the Criminal Intelligence Department of the Armenian Police (Division for Cases of Juveniles), which is designed to prevent and solve crimes committed by juveniles, to protect children’s rights, and to maintain records of vagrant and beggar children. It also raises the awareness of, and to educate and provide employment for, their children, cooperates with regional administration and local self-government bodies, guardianship and trusteeship agencies, and urban, regional, and community committees, works with the Child Admission and Guidance Center of the Armenian Relief Fund (where a unit of the Seventh Division operates), and coordinates and administers the activities of the 60 units of the Seventh Division nation wide.

In the staff of the Ministry of Culture and Youth Affairs, there is no separate unit for children's rights. These functions are vested in the National Programs, Cultural Cooperation, Education, and Science Division within the Cultural Policy Department of the Ministry.

There is no unit within the Ministry of Education and Science dealing specifically with children's issues. In the staff of the Ministry there is a General Education Department that coordinates the development of education standards and guides the activities of general public schools, universities, and special educational institutions (formerly—boarding schools). In the Ministry there is also a Division for Information Analysis and Development Programs, which regulates programs in the fields of education and science.

Within the Staff of the Ministry for Labor and Social Affairs, there is a Department for Family and Women's and Children's Issues, which administers and coordinates the activities of public and non-public orphanages in the country. It also reviews the needs of children left without parental care, develops programs and policies, proposes amendments to laws and other legal acts, performs centralized registration of children subject to adoption and interested adoptive parents, supervises the activities of guardianship and trusteeship committees, and performs other functions related to this field.

Article 6 of the Law on Judicial Formation provides that courts shall administer justice in accordance with the Constitution, international treaties, and the laws of Armenia.

It is difficult to assess the role of courts in the protection of children's rights because there are no special courts or judges dealing with children's cases in the Armenian judiciary. Cases related to children are heard by courts under the general procedure, in line with Chapter 50 of the Criminal Procedure Code on proceedings in cases involving minors, as well as a number of other laws. The Criminal Procedure Code authorizes courts to exempt a minor from punishment and to order compulsory educational measures instead, if the court concludes that the minor could be rehabilitated without serving a prison sentence.

In the Republic of Armenia, the Council of Court Chairmen, which is comprised of the chairmen of the cassation court, its chambers, the appellate courts, the economic court, and the first instance courts, summarizes jurisprudence and issues consultative commentaries on the application of law. The Council of Court Chairmen has the power to apply to the relevant authorities with suggestions on improving laws and other legal acts.

If a unified agency is created in the future, bringing together representatives of central, regional and local authorities dealing with children's rights, as well as civil society, international organizations, independent experts, and children, it will be possible *to consolidate actions aimed at implementing the Convention on the Rights of the Child and other documents related to children's rights, and to achieve consistency and improved efficiency of such actions.*

Strategy and Actors

The overall reforms implemented in the country, including the policies aimed at protecting children's rights, could not be undertaken or implemented without the cooperation of public agencies, international organizations, and NGOs involved in various sectors. As was already mentioned, the working group drafting the 2004-2015 National Action Plan on the Protection of the Rights of the Child was made up of representatives of NGOs in accordance with Article 3 of the Law on the Rights of the Child.

At present, in the absence of a unified agency acting for the protection of children's rights, there is a Rapid Response Team within the Defender's Staff which, among other issues, deals with the protection of children's rights. The Rapid Response Team has a timetable of regular fact-finding visits to institutions of children with special needs, orphanages, and special education schools throughout Armenia.

The Defender is working with UNICEF's Armenia country office to coordinate governmental and non-governmental activities aimed at the protection of children's rights. To

this end, the Defender had a meeting with UNICEF's Country Representative and discussed the possible framework of cooperation.

In her strategy of protecting children's rights, *the Defender* emphasizes the following priorities:

Creating a unified agency for the protection of children's rights

It is necessary to establish a government-level agency for the protection of children's rights. This agency will be responsible for coordinating, monitoring, and implementing the National Action Plan in cooperation with international, governmental, regional, and community stakeholders.

Coordinating the activities of the main agencies acting on behalf of the State

Quite often, public agencies focus narrowly in their respective sectors when drafting documents concerning children's rights. This causes distortion and inconsistencies between the strategies and activities of public agencies. Therefore, the existence of an inter-agency coordination mechanism is vital to ensure a comprehensive approach towards protection of children's rights.

Strengthening cooperation between governmental and non-governmental stakeholders

Our studies have shown that children's rights are normally discussed by local and international NGOs. During the last 2 to 3 years a number of Armenian NGOs have been actively involved in the drafting of policy documents concerning children's rights, such as the National Action Plan, the National Anti-Trafficking Program, and the Poverty Reduction Strategy Paper. Nevertheless, it is necessary to further develop this cooperation in order to attain concerted action and to achieve a "child-friendly" state.

Filling in the gaps in legislation on children and their families

In addition to its strengths, the legislation was found in the study to have some gaps that need to be filled in the course of legal reform. Parallel to the ratification of some international documents (such as ILO Conventions 138 and 182, the Hague Convention on Protection of children and cooperation regarding inter-country adoption), it is necessary to address certain issues related to child protection. Issues include birth registration, the creation of special juvenile courts or training for judges, child employment issues, violence against children, the minimum marriage age for girls, and various other issues raised in the Report on the Implementation of the Convention in Armenia.

Improving mechanisms for the enforcement of legislation

Unfortunately, some of the advanced laws will not necessarily create a sound environment for protecting all children. The bulk of legislative enforcement mechanisms inherited from the Soviet Union lost their effectiveness due to radical changes that took place after independence and their inconsistencies with international standards. It is necessary to undertake measures such as the creation of standards, regulations, and guidelines to ensure more efficient enforcement of the existing legislation. Steps should be taken to reorganize the old institutions and to build new ones in accordance with international standards.

Filling in the gap in public awareness of children's rights

The lack of public awareness, in general, and awareness among public agencies, in particular, is an obstacle to the enforcement of national laws and international standards on the protection of children's rights. It is necessary to develop a comprehensive and sustainable program to fill in this gap. The emphasis should fall on raising the awareness of experts dealing with children's issues (e.g. teachers, doctors, law-enforcement officers, social workers, and the like).

The Defender's staff have paid special attention to the issues raised in the "Assessment of Health Status of Children with Special Education Needs" report developed jointly with the Association for Child Health, including the following:

- On average 16% of the children enrolled in the four special schools covered by the study did not meet the standards of the schools in terms of their “needs”;
- Chronic illnesses and emergency conditions were common among these children;
- The main reason why children without any special needs were in these institutions was their financial situation (in 42 out of 96 cases), divorced parents, child abuse in the family, parents’ disability, and so on;
- The majority (about 60%) of the children were found to be from Yerevan and the communities around the school (Ararat);
- Many cases of physical violence against children were found not only in their families (in 28 out of 391 cases), but also in the schools (in 9 out of 391 cases);
- There were school admission documentation problems as well as problems with medical cards, vaccination sheets, inadequate vaccination, and the lack of polio revaccination;
- The lack of reference sheets from the medical-psychological-pedagogic commission;
- The lack of a minority committee and legal decisions (in school number 18);
- The lack of birth certificates (in school number 11);
- The lack of awareness of new reforms and decrees in the schools (in school number 11); and
- The majority of children in the institutions were from single or divorced parents or families where parents had married a second time.

With the aim of sustaining these studies, the Rapid Response Team of the Defender’s staff regularly visits the special institutions, as well as the boarding schools and orphanages.

Full use will be made of the findings of these studies and the related recommendations in order to revise policies designed for children with special needs, supporting their integration, protecting their interests, and jointly developing strategies. The Defender’s staff will follow up on the following suggestions and recommendations made in the Report:

- Performing needs assessment, general review, and monitoring of medical services available to children with special needs;
- Raising public awareness of the health status of children with special needs; and
- Strengthening the participation and cooperation of the key stakeholders to improve the quality of medical services.

The purposes of these activities are:

1. To prevent child abuse;
2. To ensure practical implementation of the Convention on the Rights of the Child (training of teachers, law-enforcement officers dealing with juvenile cases, public figures, and children); and
3. Introducing a supervision system over special schools by engaging public agencies, NGOs, and other stakeholders.

Please send your comments and suggestions to:

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