



**Helsinki Citizens' Assembly - Vanadzor
&
Norwegian Helsinki Committee**

**Joint submission to the UN Human Rights Council
21st Session of the Universal Periodic Review**

**Armenia
June 2014**

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Abbreviations

NGO - Non -governmental organisation

CS - Civil Society

HRD - Human Rights Defenders

HCA Vanadzor - Helsinki Citizens' Assembly – Vanadzor

SR - Special Rapporteur

NPM – National Preventive Mechanism

UN – United Nations

CCPR - International Covenant on Civil and Political Rights

OP CCPR - Optional Protocol to the International Covenant on Civil and Political Rights

SPT - A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture

CPT - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

OPCAT - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OSF - Open Society Foundations

GONGO- Governmental Non-governmental organisations

CC – Constitutional Court

RA – Republic of Armenia

Introduction

This submission is prepared by Helsinki Citizens' Assembly – Vanadzor and Norwegian Helsinki Committee. The report aims at assessing the implementation of Armenia's commitments with regards to human rights and fundamental freedoms, the government policy with regards to providing inclusion of civil society (CS) in human rights protection mechanisms, as well as protection and promotion of activities of human rights protection mechanisms, including human rights defenders (HRD).

As a member state to the UN, CoE and OSCE, Armenia has a wide range of obligations, aimed at ensuring human rights and fundamental freedoms. On national level human rights protection mechanisms are: the RA Courts and Advocates, Human Rights Ombudsperson, Standing Committee on Protection of Human Rights and Public Affairs of the National Assembly, Public monitoring groups¹ and civil society organizations (human rights organisations, NGOs, non-formal groups and initiatives, activists, journalists etc.).

Although Armenia has been working towards signing the Association Agreement with the EU over the last three years, Armenia's President Serge Sargsyan expressed willingness to join the Customs Union with the Russian Federation, Belarus, and Kazakhstan in September 2013. The U-turn by the Armenian authorities left the Armenian civil society wondering where the democratic processes will go, what value-set will be promoted with the new agenda of the authorities, and where that will leave civil society in terms of participation in decision-making processes. A large rally against the accession into the Customs Union was on December 2, 2013 when Russian President Vladimir Putin visited Armenia. The police unlawfully apprehended at least 110 protesters and took other excessive security measures violating the rights of citizens to freedom of movement and assembly, and their right to liberty and security. The increase of harassment against human rights defenders and activists in 2013 is an indicator of the Armenian government's inclination towards adopting a far more unfavourable position to civil society.

An overall analysis of the situation for human rights defenders in Armenia today shows that the Armenian authorities not only have failed to ensure effective engagement of human rights defenders in human rights protection, they also make extensive use of police as leverage to limit the work of human rights defenders. The police often violate the right to freedom of assembly and movement, right to liberty and security. Despite numerous documented evidences, measures have not been taken to hold transgressing police officers liable and to ensure the citizens' right to defend their own and others' rights and freedoms through actions not prohibited by law.

Scope of international obligations

As of May 2014, Armenia is a state party to the major UN and CoE human rights treaties.

However, some of the vital treaties are either not ratified or signed:

- Optional Protocol to the Convention on the Rights of Persons with Disabilities.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
- CoE Convention on preventing and combating violence against women and domestic violence.

¹ Prison Monitoring Group was formed in 2005, Public Observers Group of Detention Facilities of the Police of the Republic of Armenia was formed in 2006, Public Monitoring Group over Special Educational Institutions was formed in 2009, according to the in 2014 public monitoring group over psychiatric institutions should be established.

The activities of Public monitoring groups are regulated by Law on "Custody of Detainees and the Arrested Persons" and regulations approved by the Minister of Justice and Chief of Police, Minister of Education and Science.

- CoE Convention on Access to Official Documents.
- European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.

Due to absence of requests from the government, there has been limited number of country visits by special procedures of the Human Rights Council.

From 12 to 18 June 2010, UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, conducted an official visit to Armenia at the invitation of the government. After her visit, the Special Rapporteur released a report² addressing the main achievements and challenges in the sphere of human rights defenders activities, both in legislative and institutional dimensions.

From 3 to 6 September, 2013, the UN SPT visited Armenia. The purpose of the visit was to provide advice and technical assistance to the Armenian NPM. Further on, the Subcommittee submitted separate and confidential reports to the RA government and Armenian NPM.

The CoE CPT carried out visits to Armenia in 2010, 2011, 2013, and 2014 and is going to make another visit in 2015. The 2013 and 2014 reports have not been published yet. Regardless of reports being public or confidential the state takes little or no steps towards effective implementation of those recommendations.

In general, the government does not take any steps towards disseminating information about the international human rights instruments and procedures. Although Armenia has ratified the Optional Protocol to the international Covenant on Civil and political rights on June 23, 1993, there has been only one individual complaint sent to the Human rights Committee so far.

Legislative framework

The RA Constitution guarantees the protection of fundamental freedoms and human rights in conformity with the principles and norms of the international law. Yet the government fails to ensure proper implementation of human rights and freedoms both in legislation and practice.

Freedom of expression is regulated by the Law on Freedom of Information (adopted on September 23, 2003), Civil Code, Criminal Code and Code of Administrative Offences. In May 2010, the Criminal Code of the Republic of Armenia was amended and defamation was decriminalized and brought to the area of civil law. After the decriminalization a large number of civil cases were brought to the court against mass-media, and the courts satisfied claims, handing down large compensation sums from the respondents³. According to research,⁴ the picture changes in 2012 and 2013 after the November 15 2011 Constitutional Court decision No 997. The decision contains clarifications on how the corresponding articles should be interpreted in order to prevent their arbitrary use for restriction of freedom of speech and expression.⁵

² Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Mission to Armenia, 23 December 2010 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/179/19/PDF/G1017919.pdf?OpenElement>

³ "Decriminalization of Defamation Law will Destroy Free Speech," Artur Sakunts <http://hcav.am/en/events/%E2%80%9Cdecriminalization-of-defamation-law-will-destroy-free-speech%E2%80%9D-artur-sakunts/>

⁴ Defamation and libel lawsuits against media outlets, Ara Ghazaryan and Artak Zeyanlyan (in Armenian) <http://www.idcarmenia.am/hy/node/38>

⁵ <http://concourt.am/english/decisions/common/resume/997.pdf>

The recommendation to Ensure that, if the amended law decriminalizing libel is adopted, it is implemented in a way that protects freedom of expression was adopted by the Armenian government during the First UPR session (Re. No 155)

On April 14, 2011, the Law on Freedom of Assemblies was adopted, which according to some assessments does not correspond to the principle of legal certainty. Although the provision about “granting permission” was changed to “accepting the notification”; the Police can none the less provide an opinion, which may prohibit an assembly.

The activities of the Ombudsperson are regulated by the RA Law on Human Rights Defender. According to the Law, the Ombudsperson is a national preventive mechanism, established in accordance with the UN OPCAT. A council of experts, composed of the staff of the Defender’s office and representatives of different NGOs, was created as a support to the national preventive mechanism. Nevertheless, the Law on Human Rights Defender does not sufficiently regulate the activities of NPM. The involvement of NGOs in the activities of the NPM is left to the discretion of the Ombudsperson and is not regulated by the Law. At the same time, the relevant internal regulations approved by the Ombudsperson are not publicized⁶.

According to the Administrative Procedure Code Article 154 part 4, individuals and legal entities can bring Cassation appeal only through a licensed attorney. The same regulation is contained in the draft Criminal Procedure Code. These regulations can restrict access to justice for private individuals and legal entities, and be a disproportionate barrier to the protection of one’s rights⁷.

In recent years, the Ministry of Justice and Public Council of Armenia⁸ prepared two separate draft concepts on the development of CS. The circulation of two drafts is confusing.

In terms of NGO legislation, development steps have not been taken towards legal stipulation of the right of national human rights organisations and institutions to bring *actio popularis*⁹ cases before the court. Hence, the Decision of the Constitutional Court (CC) is not effectively implemented. The need of special legislative amendments was addressed by the RA Constitutional Court in 2010¹⁰. The Constitutional Court also mentioned that those amendments would not only contribute to the protection of violated rights and legal interests but would also increase the role of NGOs, which are a part of civil society.

Non-effective and incomplete implementation of the CC decisions leads to continuous violations of human rights and negatively affects the development and establishment of the rule of law in the country. Some trivial steps to implement the CC decisions are being taken, yet, in fact, substantive changes are not observed when it comes to sensitive or controversial topics. For instance the CC found that some provisions of the Law on State and Official secrets¹¹ disproportionately interfere with the

⁶ See also Monitoring Report of Eastern Partnership Roadmap 2012-13. Armenia, OSF-Armenia. Yerevan 2013, page 13-21
<http://www.osf.am/wp-content/uploads/2013/11/1m.pdf>

⁷ See more at Restrictions on Access to Cassation Court under the Recent Procedural Rules
<http://hcav.am/en/events/26-04-2014/>

⁸ A consulting body, created by the RA Presidents decree on July 2008, after 1 March, 2008 incidents, which purposes are: representation of interests of the Armenian citizens and non-governmental associations in State policy formulation and implementation, identification and discussion of problems that emerge in various areas of State and public life, provision of recommendations for State bodies and for public at large, establishment of traditions that contribute to consolidation of civil society, support for civic initiatives that aim to protect rights, freedoms and legitimate interests of Armenian citizens and civic associations. <http://www.publiccouncil.am/en/>

⁹ Action to obtain remedy by a person or a group in the name of the collective interest.

¹⁰ The decision of the Constitutional Court of the Republic of Armenia on the case concerning the determination of the issue regarding the conformity of the phrase his/her after the word has been violated of article 3 part 1 point 1 of the Administrative Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the non-governmental organisation Helsinki Citizens Assembly Vanadzor Office

See the resume at <http://www.concourt.am/english/decisions/common/resume/906.pdf>

¹¹ The decision of the Constitutional Court of the Republic of Armenia on the case concerning the determination of the issue regarding the conformity of article 8, part 4, subpoint 12, article 12, points 6 and 7 of the law on state and official secret of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of Helsinki Citizens Assembly Vanadzor NGO.

See at <http://www.concourt.am/english/decisions/common/pdf/1010.pdf>

right to freedom of information and should be amended. The Law was amended in compliance with Constitutional Court decision, however, insofar no practical measures have been taken by governmental agencies to incorporate amendments into the internal regulations.

Participation in decision-making on human rights protection mechanisms

The impact of CSOs on policies adopted by the government is sporadic and minimal confirming that CSO involvement in decision-making processes has a superficial and formalistic nature, especially in the sphere of government transparency and accountability.

Monitoring groups of public oversight over closed and semi-closed institutions, namely prisons, police detention facilities, and special schools, have been somewhat successful in voicing human rights violations in the respective institutions. However, the lack of adequate response by the government discredits the institute of public monitoring and belittles the potential contribution of monitoring groups to the improvement of human rights in these institutions.

In her 2010 report on Armenia, the SR on the situation of human rights defenders specifically addresses the exclusion of CSOs and defenders from the preparation of the National Strategy for Human Rights Protection. The SR further makes a recommendation to address the specific needs of human rights defenders, including women and LGBT human rights defenders in the National Strategy on Human Rights.¹² The Strategy was developed by the National Security Council, approved by the President on October 29, 2012, and was enforced on 17 November, 2012. The National Strategy's Action Plan was developed by the government and the Ministry of Justice. It was approved by the government on 27 February, 2014. There were several discussions on the draft Action Plan between Government agencies and CS members, who presented a large number of recommendations to the Action Plan; however most of these recommendations were disregarded.

Although the final action plan approved by the RA government in February 2014 included a chapter on the development of Human rights protection mechanisms, it only included actions concerning the development of the institute of the Ombudsperson. The chapter referring to the protection of human rights defenders proposed by Helsinki Citizens' Assembly – Vanadzor was not included at all. Recommendations towards establishing a mechanism where government agencies should provide the Parliament with annual reports on human rights issues in their respective fields were also rejected. This tool could have contributed to improving the transparency and accountability of the government and, consequently, the level of trust towards these agencies. Eventually it would contribute highly to the institutional protection of human rights.

Further, none of the recommendations concerning the accountability and transparency of the government agencies on specific issues were considered, such as a provision of regular information and statistical data from the Ministry of Justice and Ministry of Defense, Police, on instances of death in closed and semi-closed institutions and non-arms related budget expenditures in defense.

Also, recommendations to provide effective investigation into cases of violence against human rights defenders to provide an opportunity to use free broadcast time on public television for countering anti-HRD propaganda as well as aimed at implementing the SR recommendations were also rejected.

The overall action plan seems to avoid most sensitive human rights issues such as prohibition of discrimination or gender based violence. The government is not inclined to allocate sufficient funding for the protection of human rights; according to the Action plan, 72 (60%) out of 119 activities do not require funding.

¹² Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Armenia, retrieved on April 17, 2014 <http://www2.ohchr.org/english/issues/defenders/docs/A-HRC-16-44-Add2.pdf>

The situation of human rights defenders and human rights organisations

The indifferent attitude of the government to the challenges faced by human rights defenders and organizations as well as their unwillingness to acknowledge and work with CSOs and HRDs usually manifests itself in government propaganda against NGOs and defenders involved in the protection of rights of women, LGBTI people, religious and national minorities, soldiers, election observers, and those who advocate for Armenia's European Integration. The situation became worse during the process of final negotiations on the Association Agreement with the EU in 2012-2013, when pressure, threats, and hate speech against HRDs became more aggressive¹³.

Members of marginalized groups and their defenders are especially vulnerable due to low public awareness and deliberate misinformation. Such misinformation and negative propaganda succeeded mainly due to lack of genuinely independent media. Television, particularly the Public Broadcaster, being under government control, does not provide comprehensive information. HRDs and HROs are unable to present their views to the larger public and to counter the misinformation.¹⁴

The NGOs receiving foreign funding are labelled as grant-eaters and traitors who shatter national interests, security and traditions¹⁵. For instance, on October 16, 2011, the Arajin Lratvakan (First Informative) program on public television aired a report about Artur Sakunts, Chair of the Helsinki Citizens' Assembly-Vanadzor, and Levon Barseghyan, Chair of the Board of Journalists' Club Asparez. Sakunts and Barseghyan had spoken out about the number of non-combat deaths cases in the armed forces and had demanded a fair investigation. The television report presented a distorted picture of the activities of the organisations and the projects they implemented, by quoting random excerpts from project descriptions and characterising them as an unreasonable waste of money and resources¹⁶.

This kind of government-led propaganda and failure to protect HRDs brings to hatred and discrimination against them. NGOs, individual defenders and even licensed advocates become victimized for protecting the rights of vulnerable groups.

Adoption of the Law against Discrimination and Law against Domestic Violence¹⁷ which will provide legal grounds and mechanisms for resolving some of the abovementioned issues, is not even on government agenda.

Infringements against HRDs are usually carried out by various groups, gangs, or GONGOs, and aim to intimidate and restrict their activities. The problem of impunity for abuses against HRDs was raised by

¹³ The recommendation to Ensure that civil society activists and journalists are able to carry out their work free from harassment or violence was adopted by the Armenian government during the First UPR session (Rec. No 154)

¹⁴ Broadcast media maintains the same policy as observed by the SR on the situation of human rights defenders in 2010.

"56. The Government seems not to consider NGOs as potential partners, nor are they perceived by society as representative. Awareness about the activities of civil society organisations is also very low. The media often ignores NGO initiatives, reports and press conferences, and, furthermore, NGOs are frequently denied access to the media. The Special Rapporteur notes with serious concern that human rights defenders are regularly depicted in a distorted manner in State-controlled media and even smeared. Human rights defenders have been time and again labeled as foreign agents, spies, cronies and the "fifth column".

¹⁵ "Vladimir Gasparyan, former Deputy Minister of Defense, gave two interviews in October 2011 in which he criticized defenders who demanded fair investigations of human rights violations in the army. In one interview, Gasparyan stated, "How can one's heart ache for the army of this country if one is financed from other countries? How can one's heart ache when one thinks the more sensational and the more terrible the case is, the better, because one can earn more money off of it? Those who are engaged in such activities are without a fatherland and with disgrace." Situation of Human Rights Defenders in Armenia, January 2011 – November 2012 Helsinki Citizens' Assembly – Vanadzor, Vanadzor 2012, page 10, See at <http://hcav.am/wp-content/uploads/2013/02/Report-English.pdf>

¹⁶ Situation of Human Rights Defenders in Armenia, Report, January 2011 – November 2012 Helsinki Citizens' Assembly – Vanadzor, Vanadzor 2012, page 10

See at <http://hcav.am/wp-content/uploads/2013/02/Report-English.pdf>

¹⁷ The draft Law on domestic violence is developed and was presented to the RA Government in 2010, but was not approved.

See more at http://www.wrcorg.am/en/activities/act_67.htm

the SR who stated that the apparent culture of impunity is closely related to deep-rooted problems within the police system and shortcomings of the justice system¹⁸.

As a general rule, the complaints and reports submitted by human rights organisations and activists on attacks, reprisals and intimidation against them are not properly investigated¹⁹. In several cases the only witnesses testifying in court are police officers; this calls for suspicion on the integrity of the investigation and charges. During the reporting period, journalists, civil activists, LGBTI and women's rights defenders, lawyers, and environmental activists have been intimidated and harassed. Attacks and violence against HRDs has been perpetrated and encouraged by the police²⁰.

On April 17, 2012 the Helsinki Citizens' Assembly-Vanadzor planned to host the Caucasus Centre for Peace Making Initiatives' film festival at its premises. The day before the event, the organisation's office was attacked by protesters demanding cancelation of the festival. Protestors gathered in front of the office and threw rocks and eggs, breaking windows and injuring an employee. The police did not take any action to ensure the safety of the organisation's staff, even though the organisation informed the police about the situation. Several police officers, who accompanied the protesters, simply stood by and watched. The authorities did not bring criminal charges against any of the attackers. HCA Vanadzor appealed to court against the decision of the investigator not to institute a criminal case, as well as against the inaction of the police. The criminal case was instituted and dismissed shortly without any results; the appeal against the inaction of police officers is in court since 2012.

Freedom of Peaceful Assembly

The attacks and intimidation against defenders and activists were accompanied with violation of the right to freedom of assembly. Defenders and activists were coercively apprehended and taken to police stations from the assembly venues without any legal grounds. There were numerous administrative cases filed against them. In a number of cases of reporting about physical violence by police against activists, the police filed a case against the activists themselves, accusing them of false statement, disobedience to a representative of authorities, or violence against a representative of authorities.²¹

The violations of the freedom of assembly were manifested both by forcing people to take part in some assemblies and by preventing them from participating in other assemblies. The prohibition or coercion of participation depended on whether the event was organized by pro-government or anti-government actors.

During the reporting period there have been cases of oligarchs using bribed supporters to counter genuine actions of protest. Most vivid examples of these were counteractions against activists protesting against the distortion and transformation of the historical building of the Closed Market in Yerevan into a supermarket (which belongs to businessman Samvel Aleksanyan, Member of Parliament from the ruling Republican Party) as well as a number of environmental actions against open mining and construction of new hydropower stations on scarce rivers.

The official information provided by the Yerevan Municipality shows that the right to freedom of assembly was severely restricted before the adoption of the new Law on Freedom of Assembly in April

¹⁸ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Armenia, retrieved on April 17, 2014, See more at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/179/19/PDF/G1017919.pdf?OpenElement>

¹⁹ The recommendation to effectively investigate the cases concerning attacks against journalists, opposition members and human rights defenders, and to ensure that crimes and violations against human rights defenders, journalists and members of the opposition are effectively investigated and prosecuted, and that those responsible are brought to justice, to ensure the swift, transparent and effective prosecution of violence against journalists was adopted by the Armenian government during the First UPR review.(Rec. No 16, No 121, No. 156)

²⁰ "RA POLICE, WHAT A SHAME!", See at <http://hcav.am/en/events/ra-police-what-a-shame/>

²¹ Charges filed against Argishti Kiviryan, retrieved on April 19, 2014, <http://www.investigatory.am/en/news/item/431/>

2011. The authorities consistently prohibited assemblies in Freedom Square, following the fatal crackdown on peaceful protesters in March 2008. The first formal permission to hold an assembly in Freedom square was granted to the Armenian National Congress on April 28, 2011.

In 2012, 10 % of notifications about assemblies were returned to the organizers without consideration on justification of violation of the formal requirements of the new law. The number of notifications about assemblies and the number of assemblies rapidly increased in 2013. It should be noted that although there were only 20 cases of restrictions officially placed on a public assembly, the police often arbitrarily imposed undue restrictions on rallies, in an attempt to disperse them without grounds. Most commonly, actions of protest held in 2013 were accompanied by police violence against protesters and reporters. In several cases they were apprehended, arrested, or intimidated by the police. In most of those cases, administrative or criminal charges were brought against protesters. Activists often noted that the police had disguised instigators among the protesters, who initiated a fight or an argument with the police or other protesters creating grounds for the police to disperse the rally or unlawfully arrest the participants.

Despite the reform programs carried out by the police, including assurances about ongoing training of police officers assisted by the OSCE on police behaviour during peaceful assemblies, the actual violations of the right to freedom of assembly testify about the formal character of those reforms. During the assemblies and rallies, the police consistently referred to the protection of rights and freedoms of other, hypothetical citizens at the expense of restricting the route and duration of peaceful rallies. The unwillingness of the police to ensure the right to freedom of assembly is also manifested in the fact that the police categorically refuse to allow for any minimum set-up for long-term demonstrations such as tents. The practice was criticized by the RA Ombudsperson, who argued that setting-up at least one tent was a legitimate demand by the protesters; however it did not lead to changing the police behaviour.²²

Recommendations

1. Improve human rights protection mechanisms by:
 - ratifying the Optional protocol to the Convention on the rights of persons with disabilities,
 - ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,
 - signing and ratifying Additional Protocol to the European Social Charter Providing for a System of Collective Complaints,
 - signing and ratifying the CoE Convention on Access to Official Documents,
 - signing and ratifying European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.
2. Implement recommendations of international treaty bodies and special procedures, including recommendations of SR on HRDs.
3. Provide the publicity of SPT and CPT reports.
4. Raise public awareness on OP1 to CCPR individual complaint procedure.
5. Adopt a separate law on NPM according to the UN OPCAT.
6. Make amendments to the Administrative Procedure and Criminal Procedure Code, abolishing the rule, according to which Cassation appeals can be submitted only by a licensed advocate.
7. Develop and adopt legislative amendments stipulating the right of NGOs to bring *actio popularis* cases before the court.
8. Ensure full and effective implementation of the Constitutional Court decisions.

²² Decision of the Ombudsperson on finding a violation in police actions and holding the perpetrator liable (available in Armenian), retrieved on April 19, 2014, http://www.ombuds.am/this_time/view/article/230

9. Provide sufficient financial resources for the effective implementation of the Human Rights Action plan.
10. Provide annual reports on human rights situation in relevant spheres by the governmental agencies to the RA Parliament.
11. Provide effective investigation into cases concerning attacks and reprisals against HRDs, activists, journalists and advocates.
12. Adopt standalone laws against Discrimination and Domestic Violence.
13. Set up a comprehensive system of laws prohibiting hate speech and discriminatory statements by public officials.
14. Invite to Armenia:
 - SR on HRDs,
 - SR on Human Rights on the question of torture,
 - SR on independence of judges and lawyers,
 - SR on freedom of opinion and expression,
 - SR on freedom of religion or belief,
 - SR on violence against women,
 - WG of arbitrary detention.
15. Ensure broad consultation with civil society and all relevant stakeholders on issues related to foreign policy affecting domestic policy making.