Statement of Support for Proposed Regulations to Implement Armenia's Law on Freedom of Information

September 2006

1. INTRODUCTION

Armenia's Law on Freedom of Information, a joint effort by civil society actors and members of the National Assembly to enact the right of access to information, was adopted on 23 September 2003. This groundbreaking and progressive law provides for a right to access all information held by public bodies, as well as to information held by private organisations of public importance (this includes private organisations who provide a public service, as well as those that have a monopoly or a 'leading role' in providing goods). It also imposes an obligation on these agencies to publish a wide range of information proactively, without a request for it being made, and it provides rules making public officials responsible for refusals to disclose information.

The right of access to information is a key human right, recognised in numerous international treaties that Armenia is party to (see primarily Articles 6, 8 and 10 of the European Convention on Human Rights, Strasbourg, 4 November 1950, ratified by Armenia 26 April 2002; Article 19 of the International Covenant on Civil and Political Rights, New York, 16 December 1966, acceded to by Armenia 23 June 1993; see also, with regard to information concerning the environment, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998, ratified by Armenia 1 August 2001). The Committee of Ministers of the Council of Europe, which Armenia is a member of, has stated:

Wide access to official documents, on a basis of equality and in accordance with clear rules:
• allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;
• fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
• contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

The utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests (Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, adopted by the Committee of Ministers on 21 February 2002, Preamble)…

The adoption of the Freedom of Information Law was an important first step towards making freedom of information a reality for everyone in Armenia, and honouring Armenia's international obligations in this

area. ARTICLE 19, along with numerous other international organisations, welcomed the adoption of the Law. However, while the Law formally entered into force within ten days of its official publication in 2003 (see Article 15 of the Law), it has been poorly implemented. One of the main reasons for this is that various rules and regulations necessary for the implementation of a number of crucial provisions have not been adopted.

The Freedom of Information Center of Armenia, a non-governmental organisation dedicated to defending and promoting the right of access to information, is seeking to remedy this and has drafted a set of rules and regulations to help implement these provisions. ARTICLE 19 supports this effort and believes it is of the utmost importance that the rules and regulations drawn up by the Freedom of Information Center are debated in the Armenian Government and adopted speedily. In their absence, the right of access to information cannot become a reality in Armenia.

This Statement looks at two of the proposed amendments in particular, puts them in an international context and explains why they are crucial to implementing the Law:
1. a draft Decree on Information Sharing, necessary to implement Article 5 of the Law; and
2. a draft Order on the Provision of Information, necessary to implement Article 10 of the Law (the Armenian FOI Center has also drafted a set of shorter amendments, proposing changes to the Criminal Code, the Law on Civil Service, the Law on Local Self-Governance, the Law on Community Service, the Code on Administrative Violations, the Law on State Tax, and the Law on local Taxes. These amendments are mainly self-explanatory and we will not elaborate on them in detail here. ARTICLE 19 supports their introduction also).

2. THE REGULATIONS

2.1. The draft Decree on Information Sharing

This Decree is necessary for the implementation of Article 5 of the Law, which states:

The recording, classification and maintenance of elaborated or delivered data on the part of the information holder is implemented as defined by the Government of the Republic of Armenia.

Principle X of the Recommendation 2002(2) of the Committee of Ministers of the Council of Europe requires all Member States to “manage their documents efficiently so that they are easily accessible” and to “apply clear and established rules for the preservation and destruction of their documents” (Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, adopted by the Committee of Ministers on 21 February 2002, Preamble). It is important that all public authorities properly manage their information so that requests can be speedily fulfilled; an important side-effect of this obligation is that a properly documented bureaucracy tends to function far more efficiently. Implementation of this principle should therefore not only help to fulfil the right of access to information; it will also bring important ancillary benefits in efficiency.

The draft Decree on Information Sharing proposed by the FOI Center would implement this principle by requiring information held by the Government and its agencies to be properly labelled (including electronically) and stored. Thus, Part II of the draft Decree requires the proper labelling of such government material as the agendas of government sessions, and information on governmental lawmaking activities, advisory bodies established by the government, official and business trips made by members of the government, and the names and contact details of government officers whose responsibilities include interacting with the public (all are included in points 5.1-5.18 of Part II of the draft Decree). In addition, Part II requires the categorisation and storage of information by government agencies on matters including their budget performance, trips made by their heads, contracts concluded by them, analytical reports on their activities, information on citizen requests received by them, and information on inspections conducted by them. This material is all part of the 'bread and butter' of government business and ought to be publicly accessible.

The detailed listing of all this material serves two important purposes. First, requiring the information to be properly labelled and stored will facilitate its retrieval and speed up the processing of information requests. Put simply, it means that requesters will get the information they asked for more quickly. Secondly, and almost as importantly, it reminds public authorities that in principle, this information is all subject to disclosure under the Law on Freedom of Information (unless one of the exceptions listed in Article 8 applies). In the absence of this draft Decree, there are no rules for the labelling of this information, resulting in a likely severe delay in the processing of access requests. We therefore strongly support the introduction of this part of the draft Decree.

Part III of the draft Decree sets detailed rules for the proper processing of access requests. It requires access requests to be properly documented and lodged in the correct place, and be given a registration number. Following the access provisions in the law itself, it then sets a strict five-day path for the request to be responded to, detailing the actions to be taken by the agency from which the request has been made. It details the circumstances under which an extension of this deadline may be sought, and, again following the relevant provisions in the law, sets the grounds on which access may be refused.

While much of the detail of Part III is also contained in the law itself, it is nevertheless important that they are included in separate rules. First, while the public officials who have to implement the law are unlikely to read the law itself, they will read implementing rules and guidance aimed specifically at them. Second, while the law is written in dry and legalistic language, implementing rules are meant to give guidance to public officials and are therefore written in more accessible style and language. We therefore recommend that these rules, too, are speedily debated by the Armenian Government and adopted, either as part of this draft Decree or as part of the draft Order on the Provision of Information (which is discussed below and to which it perhaps belongs more properly).

2.2. The draft Order on the Provision of Information

This draft Order is necessary for the implementation of Article 10 of the Law, which states:

Providing information or its copy from state and local self-government bodies is realized according to the Government Regulation of the Republic of Armenia (Article 10(1). The remaining paragraphs of Article 10 deal with the access fee).

This provision and its implementing regulations are key to the implementation of the Law: they concern the crucial matter of how requested information is provided.

The draft Order proposed by the Freedom of Information Center aims to implement this provision by setting out the manner in which information is to be provided and detailing the cases in which a fee should be waived. The draft Order is straightforwardly written and easy to understand and implement both for civil servants and for the general public. We see no reason why it should not be immediately debated in the Armenian Government and adopted ‘as is’, with the possible addition of part III of the draft Decree discussed above.