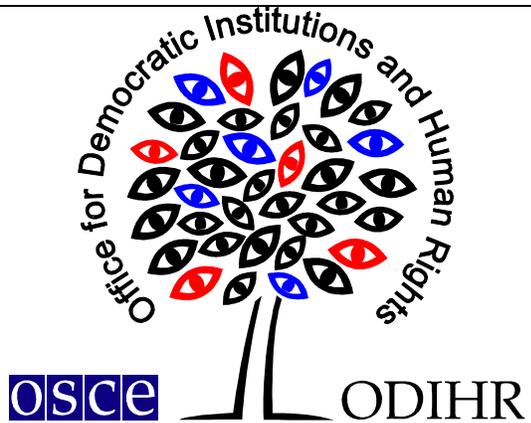


Warsaw, 2 December, 2009

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**Opinion**  
**on the Draft Law on Amendments to**  
**Law on “Public Organizations” of the**  
**Republic of Armenia**

**The Opinion is based on a translation of the draft Law on Amendments to the Law on “Public Organizations” of the Republic of Armenia, provided by the OSCE Office in Yerevan**

*This Opinion has been prepared based on the contribution of Dr Daniel Smilov, Sofia University, Bulgaria and peer review by*

*Ms Irina Urumova, ODIHR Expert.*

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## **I. INTRODUCTION**

1. *On 30 October, by letter addressed to the Head of the OSCE Office in Yerevan, the Minister of Justice of the Republic of Armenia requested the assessment of the draft law amending the Law on Public Organizations of the Republic of Armenia (hereinafter, referred to as the “Draft” or “Draft Law”, which together with a justification for the Draft Law, constitutes Annex 1 hereto). The Minister of Justice requested the assessment to be completed within two months.*
2. *Thereafter, the OSCE Office in Yerevan referred the request to the OSCE ODIHR. The Opinion contained herein, has been developed as a result thereof.*

## **II. SCOPE OF REVIEW**

3. The scope of the Opinion includes the abovementioned Draft within the context of the Law on Public Organizations of the Republic of Armenia of December 4, 2001, AL-268 (hereinafter referred to as, “the Law”), attached as Annex 2 hereto. Therefore, the Opinion does not constitute a full and comprehensive review of all framework legislation governing the operation of public organizations in the Republic of Armenia.
4. The Opinion analyses the proposed amendments to the Draft Law from the point of view of international standards on regulation of non-governmental organizations as well as the goals outlined in the justification attached to the Draft. The said justification states that:  
  
“The need to adopt the Law of the Republic of Armenia on making amendments to the RA Law on “Public Organizations” is conditioned by the fact that time and again a number of non-governmental organizations have submitted requests to the state authorities complaining that some provisions of the Law on NGOs create complications for their activities and have made a series of proposals related to enhancing the effectiveness of NGO activities, including amendments to legislation. This draft law is introduced based on the study of proposals and deliberations that the adoption of a part of them will create favourable conditions for effective activities of NGOs.”
5. The Opinion is based on an unofficial translation of the text of the Draft and Justification, and the Law. Errors from translation may result.
6. In view of the above, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Draft that the OSCE ODIHR may wish to make in the future.

### **III. EXECUTIVE SUMMARY**

7. It should be noted from the outset that in-depth consultations with the Armenian NGO community are highly recommended to take place on the Draft Law within the remit of the legislative procedure of the Republic of Armenia. In addition to international documents and standards, it is the parties and stakeholders directly affected who can shed most light on the operation of the current Law as well as the potential impact of the proposed Draft Law. Although this recommendation in itself is not decisive about the merits of the Draft, further public discussions, consultations, and possible reconsideration of some of the ideas could lend greater democratic legitimacy to the Draft, and could lead more directly to the achievement of its declared goals.
8. The Draft as it stands at the moment appears to lack overall coherence. Some of the changes could possibly be interpreted as improvements of the workings of public organizations in Armenia, but others impose additional burdens. Indeed, the balance of burdens and benefits for the setting and operations of public organizations, which it provides, is heavily tilted in favour of the burdens and attempts to strengthen the control of the State over public organizations. Some of the provisions are therefore difficult to justify, and are in tension with international standards and practices which even further buttresses the need for additional deliberations with the participation of the affected parties as recommended above.
9. In view of the above, as well as the analysis contained in this Opinion, it is recommended that;
  - A. While Article 1 of the Draft Law is generally acceptable, issues may arise concerning differential treatment of unions vis-a-vis foundations, associations, and others. More detailed contextual analyses and analyses of other laws is necessary for definitive conclusions to be made and the proposed Article should be reconsidered in this light; [par 14, 15]
  - B. Article 2 and 3 of the Draft Law should be reconsidered as they open the door for heavy and cumbersome registration procedures of the whole charter of public organizations for relatively minor changes, not affecting the legal status of the public organizations. Possible improvements could go in the direction of notification of the relevant authorities of the changes, and less difficult registration procedures; [par 16-21]
  - C. The amendments contained in Article 4 paragraph 1 of the Draft Law, be retained as being generally acceptable; [par 23- 26]
  - D. Article 5 of the Draft Law, in so far as it serves only to harmonize terminology with other legislation of the Republic of Armenia, be retained; [par 28]

- E. Consideration be given to further amending or deleting proposed Article 6 of the Draft Law, as while paragraph 1 of this article is acceptable and not-problematic, paragraph 2 and especially 3 are probably the most contentious proposals of the entire Draft Law. The latter paragraph imposes significant burdens on public organizations and threatens to ruin smaller organizations financially. The former paragraph continues the trend, of creating even further conditions and occasions for cumbersome registration (and re-registration) procedures, which could lead to a rejection of the registration of the organization as a whole. In this sense, proposing non permissible forms of interference with the freedom of association. [pars. 29 -34 and 36]
- F. The enforcement measure permitting the “state authorized body” to call a special meeting of the public organization, proposed in Article 6 paragraph 3 of the Draft Law, be reconsidered in light of its potential excessive limitation of the right of association. [pars. 37 -39]

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **(i) International Standards**

10. The freedom of association is embodied in the OSCE commitments<sup>1</sup> as well as all major international human rights instruments, in particular, Article 22 of the International Covenant on Civil and Political Rights<sup>2</sup> (hereinafter referred to as the “ICCPR”) and Article 11 of the European Convention on Human Rights<sup>3</sup> (hereinafter referred to as, the “ECHR”). Notably, freedom of association is essential to the exercise of other fundamental rights and freedoms such as the freedom of expression, which is the basis for ensuring that individuals may voice their opinions and raise issues of public concern in order to contribute to their resolution. The exercise of this freedom is therefore considered as a pivotal element of the OSCE’s comprehensive concept of security.

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<sup>1</sup> Amongst others; Conference for Security and Co-operation in Europe Concluding Document of the Vienna Meeting , Vienna 1989

<sup>2</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 , entry into force 23 March 1976, in accordance with Article 49.

<sup>3</sup> Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 Rome, 4.XI.1950

11. Broadly speaking, the freedom of association constitutes the right to choose whether or not to form and join associations<sup>4</sup>. The ability of citizens to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.<sup>5</sup> Although Article 11 of the ECHR specifically lists trade unions, the article is most certainly applicable to association in political parties, clubs and non-governmental organizations of various kinds.
12. Since the coming into force of the ICCPR and the ECHR as well as the development of the OSCE Commitments in this regard, many instruments and much case-law of the European Court of Human Rights has followed, further outlining the manner in which these freedoms ought be exercised and the extent to which State authorities may impose limitations thereon.
13. In terms of the said allowable limitations, the freedom of association may be restricted under the conditions set out in Article 11 (2) of the ECHR, which states that: “*No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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 (...)*”.<sup>6</sup> According to the case law of the European Court, which has (amongst others)<sup>7</sup> interpreted this provision in depth, allowable restrictions on the freedom of association must be construed narrowly; the legitimate aims enumerated in the provision are strictly exhaustive and they are defined in a necessarily restrictive manner.<sup>8</sup> Only convincing and compelling reasons can justify restrictions on the freedom of association.<sup>9</sup>

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<sup>4</sup> Clare Overy and Robin C.A. White, “Jacobs and White - The European Convention on Human Rights”, Fourth Edition, Oxford University Press, 2006, pg. 337.

<sup>5</sup> *Sidiropoulos and Others v. Greece*, Judgment 10 July, 1998, para 40 (57/1997/841/1047); *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, Judgment 3 February, 2005 para 44 (46626/99).

<sup>6</sup> The respective provision in the ICCPR is Art.22 (2). The UN Economic and Social Council has adopted the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights which serve as interpretative principles relating to the justifications of limitation clauses under the ICCPR.

<sup>7</sup> The manner in which freedoms and rights may be restricted has also been interpreted by amongst other, the United Nations International Criminal Tribunal for the Former Yugoslavia, and the United Nations Human Rights Committee.

<sup>8</sup> *Sidiropoulos and Others v. Greece*, Judgment 10 July, 1998, para 38 (57/1997/841/1047).

<sup>9</sup> *Sidiropoulos and Others v. Greece*, Judgment 10 July, 1998, para 40 (57/1997/841/1047).

**(ii) Name of the Public Organization**

14. Article 1 of the Draft (amending Article 10 of the Law on the Republic of Armenia on “Public Organizations” of December 4, 2001 AL-268, hereinafter referred to as “the Law”) concerns the name of public organizations. The proposed provision deletes the word „union” from a list of prohibited names. The justification for the amendment is as follows:

...the deletion of the word “union” from the 2<sup>nd</sup> sentence in paragraph 2 of Article 10 of the Law, proposed under Article 1 of the Draft, is due to the fact that a considerable part of NGOs in the past had the word “union” in their name and were well known for that name both in the Republic and among international organizations, have their own immovable property registered in their name in the state cadastre and removal of the word “union” will bring to serious difficulties and losses. Taking into account the circumstance that the retention of the word “union” in the names of aforementioned organizations cannot be confused with unions of legal entities, since it is clearly seen from the names of these organizations that such organizations are unions of natural entities, therefore it is proposed to remove the word “union” from the indicated article of the Law.

15. On its face, the proposed amendment is acceptable. While its utility remains to be further established, it is important to note that there are some possible problems, which could emerge as a result of its introduction. First, it is not an amendment based on a clear principle: it rather introduces an arbitrary exception to a previously existing rule. Secondly, this arbitrariness could be considered as undermining the equality of different public organizations before the law: the former unions will be in a clearly privileged position in comparison to foundations, etc. These considerations suggest that a further contextual analysis of the issue is required. If there are indeed no important concerns of differential treatment of types of organizations (leading to considerable privileges for some of them) then the new provision could be welcomed as an alleviation of administrative burdens. If, however, such concerns cannot be ruled out, a more general norm could be contemplated, which creates exception for a broader range of organizations (e.g. foundations, associations, etc.) allowing them to preserve their past names, provided that this does not lead to confusion about their nature and character as public, non-governmental organizations. The proposed amendment is therefore recommended to be reconsidered, in the broader context outlined above.

**(iii) Requirements for Registration**

16. The second group of proposed amendments concern the requirements for the registration of the charter of the organizations and their executive bodies. Article 2 of the Draft proposes an amendment to Article 11 of the current Law (see Annex 1 and Annex 2 hereto). This provision should be considered together with the next one that is Article 3 of the Draft amending Article 13 of the Law, which requires changes of the charter of the

organization as well as changes of the head of the executive body to be registered by the Ministry of Justice in the standard procedure of registration.

17. The proposed amendments (provided in Article 2 and Article 3 of the Draft), as they stand, impose undue burdens on public organizations and may constitute an unjustifiable interference in their internal affairs. This is so because the amendments extend the cases in which public organizations are required to go through the relatively complex procedure of registration before the competent authorities provided by Article 12 of the Law. According to this procedure public organizations need to submit a number of documents, as well as to pay a registration fee. The charter is to be considered in full, which means that the registering authority may review again the charter as a whole and need not focus only on the new elements. Relatively minor changes may lead to the registration procedure of Article 12, which increases unduly the opportunities for state intervention in the internal affairs of the public organizations.
18. Furthermore the proposal to repeal Art. 11 paragraph 5 of the Law (contained in Article 2 (2) of the Draft) will lead to the necessity of re-registration, in case of a simple change of the address of the organization.
19. Additionally, the amendment proposed by Article 3 of the Draft to Article 13 of the Law, provides an additional ground on which a public organization would be obliged to apply for the procedure laid down in Art. 12 of the Law, that is, in the event of a change of the head of the executive body of the organization.
20. The proposed amendments outlined in Article 2 and Article 3 of the Draft, contradict international standards, which stipulate that approval from the State is not required for changes to the statute of an organization, unless it concerns their name or objectives. The Recommendation of the Committee of Ministers (CM Rec (2007) )<sup>10</sup>14 on the legal status of non-governmental organizations in Europe states as follows:

**“C. Branches; changes to statutes**

....

43. NGOs should not require approval by a public authority for a subsequent change in their statutes, unless this affects their name or objectives. The grant of such approval should be governed by the same process as that for the acquisition of legal personality but such a change should not entail the NGO concerned being required to establish itself as a new entity. There can be a requirement to notify the relevant authority of other amendments to their statutes before these can come into effect.”

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<sup>10</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies)

21. The Draft Law clearly exceeds the circumstances in which subsequent interference in the affairs of public associations are admissible. The alternative course could be to require notification by the organization of the relevant authority, but without full application of Article 12 of the Law. It is therefore recommended to amend or refrain from introducing the proposed Articles of the Draft Law.

**(iv) Convening Supreme Bodies of a Public Organization**

22. The third group of amendments concerns the convening of the supreme bodies of the organizations, as well as their prerogatives.
23. Article 4, paragraph 1 and paragraph 2 of the Draft, amending Article 14, paragraph 1 and paragraph 3 of the Law, introduces relatively minor changes, some of which clearly improve the situation of public organizations in Armenia. Of particular significance is the elimination of the requirement to have the meeting of the supreme bodies of the organization every two years. The amendments suggest meetings once in four years, which halves the organizational costs mandatory by law. The right of the executive body to call a meeting of the supreme body is justified and will provide the opportunity for more efficient management and decision making in the organization.
24. The final two changes envisioned by the amendment proposed in Article 4 paragraph 3 of the Draft Law, concern the powers of the supreme body, which are thereby proposed to be strengthened. The supreme body receives the exclusive right to approve the charter of the organization (granted to the assembly of the founders as well, according to the current version of the law), and to appoint the persons having the right to represent the organization without power of attorney. Both of these amendments appear to be reasonable and do not in themselves impose burdens on the organizations.
25. However, the amendments referred to above will not be considered positive in case they are used as a pretext in order to require re-registration of the entire charter of a public organization, which charter does not comply with these two novel requirements. From the reading of the Draft Law and the Law as it stands now, it is probable that a number of organizations will be forced to reregister in the event this amendment were to be introduced. This is due to the fact that under Art. 11 paragraph 1, section 5 of the Law the charter needs to include the management and organization rules of the supreme body. As already mentioned above, such changes are also proposed to invoke the application of Article 12 of the Law and in practice, are likely to lead to a complicated additional registration (of changes) procedure.
26. Therefore these amendments concerning registration may only be considered positive if they do not lead to a complex registration (or re-registration) procedure. It is

recommended therefore, that the Draft Law be revised, in this context in order to comply with the already mentioned Recommendation CM Recommendation (2007)14<sup>11</sup>.

**(v) Rights and Obligations of Organizations**

27. The last group of amendments concerns the rights and obligations of organizations.
28. The amendment proposed by Article 5 and Article 6 paragraph 1 of the Draft Law are relatively minor. The substitution of „commercial organizations” with „economic companies”, is assumed as relating to ensuring consistency with other Armenian laws. Whereas, on it’s own, the change of the requirement for submission of reports before the general meeting once in four years, instead of once in two years is acceptable and indeed welcome.
29. However, the amendments envisioned by Article 6 paragraph 2 and paragraph 3 of the Draft Law are problematic, measured against international standards.
30. Article 6 paragraph 2 of the Draft Law requires re-registration in the event of change of the head of the executive body or the representative of the organization. As already mentioned above, requiring re- registration beyond the minimum instances (change in name or objective of an organization), is not in line with international standards and practice, as expressed in Recommendation CM (2007)14<sup>12</sup>. Furthermore, registration requirements impose a double burden on the organization and additional payment of registration fees. The provision is therefore recommended to be re-considered
31. Article 9 paragraph 3, of the Draft Law, which proposes an amendment to Article 16 paragraph 9 of the Law raises serious concerns. The proposed Article is problematic as it requires the disclosure of the sources of funding of public organizations and imposes a significant burden on public organizations by the requirement of printing one thousand (1000) copies of the annual report of the organization.
32. Regarding the requirement of printed copies of annual reports, this may be particularly problematic for small organizations and may lead to serious financial difficulties. The overall effect of the provision would be to stifle public activities thus negatively affecting the exercise of the freedom of association, in practice. The requirement to produce one

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<sup>11</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies)

<sup>12</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies)

thousand (1000) printed copies of the report may be considered excessive also given that the proposed article already introduces a requirement of public organizations to provide reports to any legal or natural person within ten days of such a request being made, with recourse to a court of law in the event that the public organization does not comply with the request. For these reasons Article 6 paragraph 3 of the Draft Law is highly recommended to be reconsidered. In this regard, alternative methods of disclosure to the public should be considered, amongst others by publishing the report on a website and providing State authorities with electronic copies.

33. Concerning disclosure of the sources of funding, Recommendation CM (2007)14<sup>13</sup> is far more parsimonious with regard to the possibility of imposition of such burdens on non-governmental organizations. This is particularly evident with regard to the disclosure of the finances and the sources of financing of the organizations. Recommendation CM (2007) 14<sup>14</sup> states that:

**A. Transparency**

62. NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body.

63. NGOs which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration.

64. All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.

65. NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management.

34. It is aparent from Recommendation CM (2007)14<sup>15</sup> that financial transparency could be required to a greater degree from publicly funded organizations, while the control over privately funded organizations could be much less rigorous.
35. Furthermore, the requirement to submit to the registration body, copies of reports previously filed with tax authorities also appears excessive, and cannot be justified by any legitimate need.

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<sup>13</sup> *ibid*

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

36. Therefore, overall, the last two changes envisaged by the Draft Law – i.e. the disclosure of donors and publishing one thousand (1000) copies the annual report need to be reconsidered.
37. Additionally, Article 6 paragraph 3 of the Draft Law also introduces an enforcement mechanism for a failure to publish the information within the specified period or for the publishing of false information, by a public organization stating that *“If the organization does not publish the Information within the specified period or the Information published includes apparently false information or substantial mistakes, each member or body of the organization or the state authorized body on their own initiative may submit a request for convening a special meeting or providing truthful information. If a special meeting is not convened within one month after the request for holding the special meeting is made, the requesting party can go to court with a claim to convene a meeting. The organization must provide copies of Information and reports to any natural and legal entity within ten days the request is made given the copying costs are reimbursed. In case the copy of Information and reports are not provided the interested party has a right to apply to the state authorized body or court to obtain it.”* While the intention of the legislator may be to ensure that public organizations are providing accurate and timely information, the provision may be considered as an excessive intrusion of the State into the affairs of organizations, because, firstly; it vests power in the “state authorized body” to call for the convening of a “special meeting” on its own initiative and secondly; it is not clear what the consequences may be in the event that the “state authorized body” is dissatisfied with the information received at the “special meeting” and whether this may constitute the basis for de-registration or dissolution of the organization. In the event that the provision may glean such a result (de-registration or dissolution), the question arises whether such a restriction on the freedom of association is allowable based on international law.
38. Notably, in order for a restriction or limitation to comply with international law and standards, it must satisfy the test of proportionality. Accordingly, in order to satisfy the test of proportionality, any limitations imposed on the freedom of association must be appropriate to achieving their protective function and they must be the least intrusive amongst those which might achieve the desired result. Furthermore, it should be borne in mind that the principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in application of the law. While the measure described above (the calling of a special meeting on the initiative of the State authorized body) may be intended and designed to serve as a measure to fight crime (for example, fraud), it is suggested that in the event that it results in de-registration or dissolution of a public organization it would not further any of the legitimate aims that Article 11 of the ECHR mentions, thus failing to pass the test of proportionality. The measure proposed in this amendment is therefore recommended to be re-considered.

39. Finally, the requirement expressed in Article 6 paragraph 9 of the Draft Law, which states that “[e]ach member of the organization is entitled to get acquainted with any document of the organization within three days after letting the respective competent body know about it” is not clear. It would be beneficial to clarify which competent body is being referred to in this provision, whether this is a body of the organization itself or a State body. In the case of the latter, this may also be seen as a potential interference with activities of the organization.

[END OF TEXT OF OPINION]

ANNEX 1 – UNOFFICIAL TRANSLATION OF THE DRAFT LAW ON AMENDMENTS TO  
THE LAW ON “PUBLIC ORGANIZATIONS” OF THE REPUBLIC OF ARMENIA AND  
JUSTIFICATION

Draft

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Based on the Protocol

Of the RA Draft Law on making amendments to the Law of the Republic of Armenia on “Public Organizations”

Approve the RA Draft Law on making amendments to the Law of the Republic of Armenia on “Public Organizations” and submit it to RA National Assembly by the stipulated procedure.

G. Danielyan

DRAFT

**LAW OF THE REPUBLIC OF ARMENIA**

**ON MAKING AMENDMENTS TO THE RA LAW ON “PUBLIC ORGANIZATIONS”**

Article 1. Delete the word “union” from the second sentence of paragraph 2 in Article 10 of the RA Law on “Public Organizations” of December 4, 2001 AL-268 (hereinafter referred to as the Law).

Article 2. In Article 11 of the Law

- 1) Replace the words “and the content” by “the scope of competence” in sub-paragraph 5 of paragraph 1;
- 2) Find paragraph 5 ineffective.

Article 3. Add the words “as well as information about the head of the executive body” after the words “of the new charter” in paragraph 2 of Article 13 of the Law.

Article 4. In Article 14 of the Law

- 1) Replace the words “two years” by the words “four years” in paragraph 2;
- 2) Add a new sentence with the following content after the 1<sup>st</sup> part of paragraph 3:

“The special meeting can also be convened on the initiative of executive bodies formed by the supreme body (including individual initiatives)”;

- 3) Delete the words “(If it was not approved by the founders assembly)” in sub-paragraph 1 of paragraph 6 and add the words “and the official entitled with the right to represent the organization without power of attorney and” following the word “including” in sub-paragraph 3.

Article 5. Replace the words “commercial organizations” by the words “economic companies” and the word “organizations” by the word “companies” in sub-paragraph 6, paragraph 1 of Article 15 of the Law.

Article 6. In paragraph 1 of Article 16 of the Law

- 1) Replace the words “two years” by “four years” in sub-paragraph 4;
- 2) Edit sub-paragraph 8 as follows:

“8) In case if the official entitled with the right to represent the organization without power of attorney has changed (or the head of executive body) and (or) if the legal address of the organization has changed, to submit to the state registration body, within the period of 14 calendar days these changes shall be submitted for state registration in the procedure prescribed by law”.

- 3) Add a new sub-paragraph 9 with the following content:

“9) The executive body formed by the supreme body of the organization must publish information about the work and property use (including finances) of the organization (hereinafter referred to as Information) by April 1<sup>st</sup> of the following year in no less than a thousand copies and submit one copy to the state authorized body within ten days. The Information shall include all income received by the organization (including membership fees) and other revenues, the sources they were received, the costs the organization incurred according to areas, transactions exceeding one million drams, activities undertaken to fulfill the tasks under the charter of the organization, number of members according to months, governing bodies of the organization and first and last names of persons occupying positions in the governing bodies, changes made in the staff of governing bodies within a year. Copies of annual reports (hereinafter referred to as Reports) submitted to tax and other bodies shall also be attached to the Information. The form of Information shall be determined by the state authorized body. If the organization does not publish the Information within the specified period or the Information published includes apparently false information or substantial mistakes, each member or body of the organization or the state authorized body on their own initiative may submit a request for convening a special

meeting or providing truthful information. If a special meeting is not convened within one month after the request for holding the special meeting is made, the requesting party can go to court with a claim to convene a meeting. The organization must provide copies of Information and reports to any natural and legal entity within ten days the request is made given the copying costs are reimbursed. In case the copy of Information and reports are not provided the interested party has a right to apply to the state authorized body or court to obtain it. Each member of the organization is entitled to get acquainted with any document of the organization within three days after applying to the respective competent.”

Article 7. This Law shall become effective on the 10<sup>th</sup> day upon its official promulgation.

## **JUSTIFICATION**

### **OF THE DRAFT LAW OF THE REPUBLIC OF ARMENIA**

#### **ON MAKING AMENDMENTS TO THE RA LAW ON “PUBLIC ORGANIZATIONS”**

The need to adopt the Law of the Republic of Armenia on making amendments to the RA Law on “Public Organizations” is conditioned by the fact that time and again a number of Public organizations have submitted requests to the state authorities complaining that some provisions of the Law on NGOs create complications for their activities and have made a series of proposals related to enhancing the effectiveness of NGO activities, including amendments to legislation. This draft law is introduced based on the study of proposals and deliberations that the adoption of a part of them will create favorable conditions for effective activities of NGOs. In particular, the deletion of the word “union” from the 2<sup>nd</sup> sentence in paragraph 2 of Article 10 of the Law, proposed under Article 1 of the Draft, is due to the fact that a considerable part of NGOs in the past had the word “union” in their name and were well known for that name both in the Republic and among international organizations, have their own immovable property registered in their name in the state cadastre and removal of the word “union” will bring to serious difficulties and losses. Taking into account the circumstance that the retention of the word “union” in the names of aforementioned organizations cannot be confused with unions of legal entities, since it is clearly seen from the names of these organizations that such organizations are unions of natural entities, therefore it is proposed to remove the word “union” from the indicated article of the Law.

The next important amendment to be made to the law is related to the recurrence of convening the organization’s supreme body. Many organizations that have members whose number exceeds a thousand and have branches in different marzes and towns of the country claim that convention

of the session of the supreme body no less than twice a year causes difficulties and significant financial expenses, since before a session of the supreme body is convened, assemblies must be organized in all branches in order to elect delegates who will take part in the session of the supreme body and to discuss the issues on the agenda for that session, which requires both time and financial means. Considering the above mentioned explanation substantiated, it has been proposed to replace the words “two years” in paragraph 2 of Article 14 of the Law by the words “four years”.

Taking into account that the draft law proposes to convene the session of the supreme body once in 4 years, in order to ensure the transparency of the organization’s work the draft also proposes that the executive body, formed by the organizations’ supreme body, should publish information about the work and property use (including finances) of the organization by April 1<sup>st</sup> of the following year in no less than a thousand copies and submit one copy to the state authorized body.

Other amendments proposed in the draft aim to eliminate the inconsistencies between certain provisions of the Law and the RA Law on “State Registration of Legal Entities”, as well as other provisions within the same Law.

Based on aforementioned, it is necessary to make the amendments found in the draft to the RA Law on “Public Organizations” of December 4, 2001 AL-268.

ANNEX 2 – RELEVANT EXCERPTS OF THE LAW ON PUBLIC ORGANIZATIONS OF  
THE REPUBLIC OF ARMENIA OF DECEMBER 4, 2001 AL-268

**Article 10. Name, Symbol and Location of Organization**

1. An organization shall have a name, also short name (abbreviation) and logos.
2. The name of organization shall express in Armenian the nature of its activities and shall contain the words “public organization”. With the exception of these words the name shall not contain other words indicating organizational-legal status, such as (fund, foundation, union, co-operative, association, partnership, commonwealth, representation, branch, etc.), as well as other words like (national assembly, supreme council, government, ministry, court, army, embassy, consulate, marz (region), community, etc.) so that the name of organization does not bear resemblance with the names of state and local-governance bodies.
3. A full or short name of a prominent person shall be used in the name of the organization only with his/her consent and in case if the prominent person is dead with the consent of his/her heirs. If the prominent person or his/her heirs, in case if the prominent person is dead, consider that the activities of the organization cast a shadow on the prestige of the prominent person, he/she may file a lawsuit to the competent court with the request of depriving the organization of the right to use the prominent person’s name in the name of the organization.
4. Any declension and translation of the word “Hayastan”, as well as the usage of the name of a prominent person that has no heirs, may be used in the order established by the Government of the RA.
5. The name of the organization, its short name (abbreviation) and logo, including the logo on the stamp of the organization, if such is envisaged, must be acceptable in terms of public moral, and it should be different from and not bear confusing resemblance with the names, abbreviations and logos of other organizations, as well as states, international and foreign well-known organizations, and other legal entities.
6. The location (legal address) of premises of the organization’s supreme body is recognized as the location of the public organization.

**Article 11. Charter of the Organization**

1. The founding document of the organization is its charter, which must include the organization’s:
  - 1) Name and location.

- 2) Purpose and goals of activity,
- 3) Procedures for becoming a member and for withdrawing membership;
- 4) The member's rights and obligations;
- 5) Management order, procedure and time frame for convening the supreme body, the range of issues to be solved exclusively by the supreme body and decision-making procedures; procedures for forming bodies elected by the supreme body (if the organization besides the supreme body shall have other bodies, including individual positions), procedures for making changes in the staff of those bodies, range and term of authority of each body and their decision-making procedures.
- 6) The position, the procedure of election and range of authority of the officials entitled with authority to represent the organization without the power of attorney (this clause is not necessary if such authority is not granted)
- 7) Those governing bodies, which are authorized to make decisions on acquisition, possession, usage and management, also on alienation and withdrawal of property, according to the type and size of the property (this clause is not necessary, if those actions are to be carried only by the supreme body).
- 8) The body, which is authorized to define the sum of membership fees and the procedure of their collection (this clause is not necessary if membership fees are not envisaged, or if the sum and the procedures for collection are stipulated by the charter)
- 9) Procedures for setting up separate branches and institution (this clause is not necessary if their creation is not envisaged)
- 10) Procedures for supervising the organization's activities (this clause is not necessary if the supervision is carried out by the supreme body)
- 11) Procedures for challenging decisions of bodies by the members of the organization (this clause is not necessary if the creation of bodies other than the supreme body is not envisaged).
- 12) Procedures for making changes and amendments to the charter.
- 13) Procedures for re-organization and liquidation.

The charter of the organization may also stipulate other provisions that do not contravene the RA laws.

2. Each copy of the charter, or of the changes and amendments to the charter shall be signed by the authorized person of the organization and fastened in such a way that the seal of the state registration body put on the place of fastening assures the integrity of the charter.

3. If the charter of organization contravenes the laws, including newly adopted ones, the organization is obliged on the next meeting of its supreme body to bring its charter into accordance with the provisions of laws, and until then the organization shall operate in accordance with the provisions of laws.

4. The charter of the organization acquires legal force at the moment of state registration of the organization.

The changes and (or) amendments to the charter of the organization or a new charter acquire legal force at the moment of their state registration.

The state registered changes and amendments of the charter of the organization form an inseparable part of that charter.

5. The change of the address of the organization's location within the borders of the same area does not require a change in the charter. The state registration body should be informed in the time frames stated in Article 16 of this law.

### **Article 13. State Registration of Amendments to the Charter of the Organization**

1. For the state registration of changes and (or) amendments to the charter of the organization, or for the state registration of a new charter the organization shall submit to the state registration body the following documents:

- 1) An application for state registration;
- 2) Copy of the resolution of the supreme body to introduce changes and (or) amendments to its charter or to adopt a new charter;
- 3) At least two copies of changes and (or) amendments to the charter, or of the new charter;
- 4) Receipt of the state duty paid for state registration;

2. The state registration of changes and (or) amendments to the charter or the new charter of an organization shall be carried out in the manner and time frame stipulated by Article 12 of the law hereof. The charter shall be considered in full text, with due regard to changes and amendments.

### **Article 14. The Structure, Management and the Supreme Body of the Organization**

1. The structure of the organization is stipulated by its charter and (or) by the decisions of its bodies corresponding to its charter.

The organization is managed through its bodies, which operate according to the law and to the organization's charter.

The bodies of the organization and their structure are formed according to the procedures stipulated by the law and the organization's charter.

The supreme body of the organization is its assembly (assembly, convention, summit, etc.), which has the authority to make the final decision on any matter concerning the activities of the organization.

2. The regular meeting of the organization shall be convened not less than once in two years, in the manner prescribed by the charter of the organization, in the form of joint meeting of its members, or via the telecommunication means, by drawing the appropriate protocol or by exchanging documents, which clearly show that the document comes from the person who is mentioned in the document as the author.

The charter of the organization may envisage the participation of all the organization's members or of their delegates, elected with the proportion determined according to the procedures envisaged by the charter, in the general assembly.

The participants shall be notified about the agenda, place, date and time of the beginning of work of the assembly by a registered letter, or by other ways envisaged by the charter of the organization, in terms stipulated by the charter, but no later than 14 days before the meeting.

3. In case of a valid demand from one third of the organization members or the supervising body (supervisor) of the organization, an extraordinary general meeting shall be convened in the period of 14 days and the participants shall be notified about the agenda, place, date and time of the meeting, in the manner prescribed for convening regular meetings and in the time frames envisaged by the charter, but no later than 3 days before the beginning of the meeting.

If the charter envisages the participation of delegates of the organization members in the meeting, and if it is not possible to elect new delegates within the time frames stated in this clause, the delegates who were elected to participate in the previous meeting of the organization shall take part in the extraordinary meeting.

4. The meeting of the organization shall be considered valid if convened in the manner prescribed by the charter, and if the number of participants exceeds the total number of all the

members or the delegates stipulated by the charter, which may not be less than half of the total number.

5. The minutes of the general meeting of the organization shall be kept for the time stipulated by the charter of the organization, which may not be less than three year.

6. The supreme body of organization enjoys the exclusive authority:

1) To approve the organization's charter (if it was not approved by the founders assembly), the introduction of changes and (or) amendments to it, or approval of a new charter.

2) To approve the reports on the activities of the organization and on utilization of property.

3) To elect those bodies, which are subordinate and accountable exclusively to the supreme body (if the organization has bodies other than the supreme body), including the election of the body which shall carry out supervision of the activities of the organization; to introduce changes to the staff or premature termination of the authority of those bodies, meanwhile the duration of their authorities may not exceed the time period envisaged by the charter for the convention of regular meeting of the organization.

4) To make decision on restructuring the organization; to approve the act on devolving property or the balance sheet on division of property, except restructuring by the decision of the court.

5) To make decision on dissolving the organization, except cases when decision on dissolution is made by court.

6) To solve other issues, if the charter of the organization envisages the solution of those issues exclusively by the supreme body.

The supreme body of the organization cannot delegate its right on adopting a decision on exclusive issues to other bodies of the organization.

7. The general meeting of the organization shall make decisions in the manner prescribed by the charter of the organization.

Decision on the issue of the exclusive authority of the supreme body shall be accepted, if more than half of the members of the organization or of all the delegates have voted for this decision, and if the law or the organization's charter does not envisage a larger number of votes for the adoption of this decision.

8. If during the activities of the organization or during the general meeting some situation arises that is not regulated by the charter of the organization, the issues shall be solved by the decision of the supreme body.

#### **Article 15. Rights of the Organization**

1. For the implementation of its statutory goals, in the manner prescribed by the law, the organization has the right:

- 1) To disseminate information about its activities;
- 2) To organize and carry out peaceful meetings, rallies, marches and demonstrations without weapons;
- 3) To represent and defend the rights and lawful interests of itself and its members in other organizations, before court, the state and local self-governance bodies;
- 4) To cooperate with other non-commercial organizations, including international and foreign non-governmental non-commercial ones; as well as to form unions with those organizations or become a member (participant) of the unions formed by them, pertaining its independence and the status of legal entity for the purpose of carrying out systemized activities, representing and protecting common interests;
- 5) To establish separate sub-units: branches and representations, in the manner prescribed by its charter;
- 6) To establish commercial organizations or participate in such organizations.

2. The law may also stipulate other rights of organization.

#### **Article 16. Obligations and Responsibilities of the Organization**

The organization is obliged:

- 1) Upon request of any person and within reasonable time frames, that should not exceed 7 calendar days, to give the person an opportunity to get acquainted with the charter of the organization;
- 2) To keep office and accounting records in the manner prescribed by the law;
- 3) To keep personnel records of its members;

- 4) To submit for approval to a general meeting of organization the reports on its activities and on utilization of its property, not less than once in two years, guaranteeing the publicity of those reports;
  - 5) To submit to the state bodies reports and information in the manner and cases stipulated by the law;
  - 6) Upon well-grounded demand of the state authorized body in the field of justice of the Republic of Armenia (hereafter referred to as state authorized body) within reasonable time frames to provide the latter with other documents concerning the activities of the organization, and to allow the representatives of that body to be present at the general meeting of the organization.
  - 7) To apply to the state registration body within the period of one month following the creation or dissolution of separate subdivisions or institutions, for their registration or withdrawal from the records, in the manner prescribed by the law;
  - 8) In case if the official entitled with the right to represent the organization without power of attorney has changed and (or) if the legal address of the organization has changed, to submit to the state registration body, within the period of 14 calendar days, the passport information of the newly elected person and (or) the information on the new legal address of the organization.
2. The law may stipulate other obligations of the organization.
  3. For carrying out illegal activities the organization and its officials bear responsibilities stipulated by the law

*[END OF ANNEX]*