

## 1. Executive Summary

- 1.1 In this submission CSI provides information on the situation of human rights protection in Armenia under sections 2, 3, 4 and 5, in accordance with the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>
- 1.2 Section 2 highlights CSI's concern about Armenia's failure to bring the definition of torture into full compliance with international requirements, effectively prosecute allegations of torture and fight impunity, ensure non-admissibility of evidence obtained through torture.
- 1.3 Section 3 addresses infringements of the rights to effective remedy and equality before the law.
- 1.4 Section 4 concerns violations of the right to liberty and security of a person in the context of widespread application of unjustified pre-trial detentions. It also covers the issue of insufficient legal and practical safeguards protecting people with mental disorders against unlawful deprivation of liberty.
- 1.5 Section 5 raises problems identified in the penitentiary system of Armenia.

## 2. Torture and Impunity

### ***Definition and Criminalization of Torture***

- 2.1 Following its commitment to "review the definition of torture in its national legislation so that it fully complies with that set out in article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment", Armenian government prepared amendments to the relevant articles of the Criminal Code in 2011. However, the amendments did not entirely correspond to the Convention's definition, and the proposal was subsequently removed from the National Assembly's agenda. No further steps were undertaken to comply with the recommendation. As a result, *corpus delicti* of torture under Art. 119<sup>2</sup> of the Criminal Code continues to fall short of the Convention's requirements.<sup>3</sup> Because of erroneous definition, crimes falling within the ambit of the Convention are qualified and investigated under other articles of the Criminal Code, which does not allow to reflect the gravity of this crime and to ensure adequate redress for victims, since the perpetrators are often able to benefit from amnesty decisions.
- 2.2 **Recommendation:**
  - Bring the definition of "Torture" under Criminal Code into full compliance with the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

### ***Failure to Prosecute and Punish Torture and other Ill-Treatment***

- 2.3 During its UPR Armenia consented to "ensure that all allegations of torture and inhuman or degrading treatment are investigated promptly and that perpetrators are brought to justice". Nevertheless, failure to conduct prompt, impartial and effective investigation and prosecution of torture complaints committed by law enforcement officials and military personnel was highlighted by the UN Committee

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<sup>1</sup> Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, 27 September 2007.

<sup>2</sup> Article 119 of RA Criminal Code defines torture as "any action through which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, where it has not resulted in consequences provided for in Article 112 and 113 of the Criminal Code."

<sup>3</sup> Civil Society Institute (CSI) and International Federation for Human Rights (FIDH), "Alternative Report to the Committee Against Torture in Connection with the Third Periodic Report of the Republic of Armenia", April 2012, p. 6-8, available at <http://www.hra.am/i/up/CSI-FIDH%20Alternative%20Report-CAT48%20ArmeniaENG.pdf>

against Torture in May 2012.<sup>4</sup> A major reason for this practice is the fact that initial inquiries into allegations of torture and other ill-treatment are mostly carried out by the police; the very institution that perpetrators often belong to, which results in the dismissal of the majority of these complaints.

- 2.4 CSI observations demonstrate that the mechanisms for lodging complaints against police mistreatments are not effective, since they fail to ensure protection against reprisals or intimidation following the complaint. In addition, though there is a noticeable increase in the number of instituted criminal proceedings in response to the allegations of ill-treatment, the vast majority of these cases are closed before reaching trial stage. Thus, in 2013 the Special Investigation Service (SIS) examined 114 allegations of ill-treatment, only 2 of which were consequently sent to court. The same pattern can be observed over the past three years.<sup>5</sup> This practice creates an atmosphere of impunity, which is further augmented by the fact that for the last years police officers convicted for torture or ill-treatment (under the meaning of the Convention) were able to systematically avoid criminal prosecution or punishment through amnesty or pardon<sup>6</sup>, in violation of Armenia's commitments under the Convention<sup>7</sup>.
- 2.5 *Thus, in October 2013 the Court of General Jurisdiction of Kentron and Nork-Marash districts sentenced two police officers to 3 years of imprisonment for subjecting Robert Hovsepyan to ill-treatment with the aim of extorting confession. The court applied the decision announcing Amnesty in relation to the 22nd Anniversary of the Independence of the Republic of Armenia, releasing the defendants from the courtroom. The convicts' release under the amnesty decision was challenged by the victim, but was upheld by the Appellate Court.*
- 2.6 It is important to note, that except for reimbursement of material damages, the legislation does not envision any other means of reparation for victims of torture and other ill-treatment, contrary to the requirements of Art. 14 of the Convention.<sup>8</sup>

## 2.7 Recommendations:

- Ensure that amnesty decisions do not absolve state agents found guilty in torture or other forms of ill-treatment from criminal responsibility and punishment.
- Ensure prompt, thorough, impartial and independent investigations into all incidents of torture, ill-treatment and death in custody, and bring those responsible to justice.
- Amend RA legislation to include explicit provisions on the right of torture victims to redress, including fair and adequate compensation and rehabilitation.

### ***Inadmissibility of Evidence Obtained Through Torture***

- 2.8 In its 2010 UPR session, Armenia admitted the recommendation to “strengthen fair-trial safeguards, including the non-admissibility before the court of any evidence obtained through torture or ill treatment”. The ruling of Armenia's Court of Cassation of 2010 (No ԵԱԲԴ/0049/01/09) implies that judges shall apply to the Prosecutor with a motion to institute criminal proceedings when they identify evident elements of torture or ill-treatment during the examination of cases within their proceedings. Nevertheless, in practice Armenian courts demonstrate reluctance to react properly to the allegations of torture made in the courtroom and fail to refer them to the relevant authorities.

## 2.9 Recommendations:

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<sup>4</sup> UN Committee against Torture, Concluding Observations on Armenia, 6 July 2012, para. 12, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARM%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARM%2fCO%2f3&Lang=en)

<sup>5</sup> “SIS fails to institute criminal proceedings with regard to the majority of torture allegations”, 21 February 2014, available in Armenian at <http://www.hra.am/hy/events/2014/02/21/torture>.

<sup>6</sup> CSI statement, “Torture Perpetrators Shall not be Granted Amnesty”, 15 October 2013, available in Armenian at <http://hra.am/hy/position/2013/10/15/torture>

<sup>7</sup> UN Committee against Torture, General Comments 3, paras 38, 41; UN Committee against Torture, General Comments 2, para. 5

<sup>8</sup> UN Committee against Torture, General Comments 3, para. 2

- Ensure that in any case when a person alleges that the evidence was obtained through torture the proceedings are suspended until the claim has been thoroughly investigated.

### 3. Equality before the law and right to effective remedy

3.1 The right to an effective remedy and equality before the law are infringed in Armenia. In particular, cases were observed when depending on the political ground/affiliation and/or financial/economic status of the parties, decisions were made to either not initiate criminal proceeding at all, or interpret the facts of the case in a biased way protecting the perpetrators with certain affiliations or status, which reinforces public mistrust in the judicial system of the country.

3.2 *Thus, on 1 June 2013 Avetiq Budaghyan was killed during a shooting. The suspects in this case were the son of the head of Syunig region, and the latter's bodyguard. After spending several months in pre-trial detention the suspects were released, since their actions were qualified as necessary defense absolving them from criminal responsibility. However, according to the attorney, the case is very controversial and there are many facts which were not investigated properly*<sup>9</sup>.

3.3 Another example, attesting to the fact that cases with political background tend to remain unaddressed in Armenia, is the continuous lack of effective investigation into 10 deaths that happened during 1 March 2008 events, when excessive force was implemented by law enforcement bodies against opposition activists. Despite numerous calls urging Armenia to “provide for an independent and credible investigation into the 10 deaths following the events of 1 March 2008”, to this date no progress has been recorded in this field: the perpetrators remain unidentified and the victims are not provided with redress. The lack of political will to ensure effective investigation was reaffirmed in March 2014, when the National Assembly voted against the creation of an interim parliamentary commission charged with investigating legality and reasonableness of law enforcement authorities’ actions concerning March 1 events.

#### 3.4 Recommendation:

- Ensure effective implementation of the right to an effective remedy and equality before the law in all cases, irrespective of the perpetrator(s) political affiliations or economic status.
- Ensure independent and thorough investigations into the events of 1 March 2008, especially into the ten deaths, and provide relatives of the deceased persons with adequate redress.

## 4. Deprivation of Liberty

### *Pre-trial Detention*

4.1 Excessive use of prolonged and unjustified pre-trial and preventive detention is a serious issue in Armenia. According to official statistics for 2013, 94.9% motions for detention were granted by courts of general jurisdiction,<sup>10</sup> illustrating that detention appears to be the norm rather than exception.

4.2 Though the law requires decisions on pre-trial detention to be well-founded, Armenian courts routinely fail to provide relevant and sufficient reasoning in support of detention, limiting themselves to *in abstracto* and indeed stereotypical restatements of legal grounds of detention, rather than referring to the circumstances of the case. Meantime, courts do not seriously consider bail, as an alternative to detention. In 2013, only 22.4% of motions for replacing detention with bail were authorised by courts of general jurisdiction.<sup>11</sup>

4.3 *Thus in October 2013 the car of a renowned actor Vardan Petrosyan collided with another car, resulting in the death of two children. When granting the motion for pre-trial detention and extending it, the court justified its position based on the gravity of the crime and “on human morale”, meanwhile failing to*

<sup>9</sup> Article on media <http://en.aravot.am/2013/11/04/162335/>

<sup>10</sup> Judicial System of Armenia, “2013 report on issues in RA courts of general jurisdiction concerning judicial supervision of pre-trial investigation and implementation of judicial acts”, available in Armenian at <http://www.court.am/?l=lo&id=50>

<sup>11</sup> Ibid.

*articulate the considerations substantiating grounds of detention as provided under Armenian legislation*<sup>12</sup>. The court imposed detention without due regard to Mr. Petrosyan's health problems and the related consequences that being held in the detention centre might have entailed.<sup>13</sup>

4.4 While the law provides for a periodic review of detention,<sup>14</sup> in practice it has only a perfunctory character: once detention is authorised, its extension is almost universally granted upon request and on the same grounds, without due regard to the fact that those grounds might have become less compelling with the passage of time. An extensive majority of these cases end with guilty verdicts so to avoid granting financial compensation for detention.

#### 4.5 Recommendations:

- Increase the use of alternative measures of restraint to pre-trial detention.
- Ensure that decisions on pre-trial detention are well-founded and closely scrutinize motions for extending their term.

#### ***Placement of people in psychiatric institutions***

4.6 There are no sufficient legal and practical safeguards protecting people with mental disorders against unlawful deprivation of liberty. RA legislation allows the guardian of an incapable person to place him/her in a psychiatric institution irrespective of the latter's will and without any judicial proceedings, which creates serious risks of abuse.<sup>15</sup> Consequently, people find themselves in detention for an unlimited period of time, since the law lacks the institute of mandatory judicial review of the lawfulness of detention on such a ground at reasonable intervals.

4.7 In cases of declaration of incapacity of persons with mental disorders as well as subjecting them to in-patient involuntary treatment the right to access to court is not ensured. Under the law courts can declare a person incapable without providing him/her an opportunity to be heard. As a rule, proceedings on declaring a person incapable are not adversarial and the decision cannot be appealed.<sup>16</sup> A motion to restore legal capacity can be brought only by the guardian or the psychiatric institution, but not by the person concerned.

#### 4.8 Recommendations:

- Amend legislation to ensure judicial safeguards for placing a person declared incapable in a psychiatric institution and provide for the latter's right to apply for the judicial review of that placement.
- Ensure fair trial guarantees in the proceedings of declaring a person incapable as well as subjecting him/her to involuntary in-patient treatment and provide for an incapable person's right to bring a motion to restore his/her legal capacity.

## 5. Situation in Penitentiaries

5.1 Though Armenia pledged to "continue its efforts to bring its penitentiaries and detention centres into compliance with international human rights standards", poor living conditions and lack of personnel continue to be compelling issues. Bad quality of food and particularly poor medical care remain unaddressed. CSI's observations show that some penitentiaries lack medical personnel with adequate qualifications. The quality of rehabilitation activities aimed at ensuring re-socialization of inmates

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<sup>12</sup> RA Criminal Procedure Code, Article 135

<sup>13</sup> CSI and International Federation for Human Rights, "Joint Statement Concerning the Application of Detention as a Measure of Restraint in Armenia", 6 May 2014, available at <http://hra.am/en/position/2014/05/06/statement>

<sup>14</sup> Article 139 of RA Criminal Procedure Code

<sup>15</sup> CSI, "The Rights of Persons with Mental Disorders to Liberty, a Fair Trial, and Private Life in the Armenian Law and Practice", 2014, p. 20

<sup>16</sup> Ibid. p. 22

raises serious concerns, which, *inter alia*, results in a situation when only 5% of prisoners were released on parole for the past two years.<sup>17</sup>

- 5.2 Available complaint mechanisms are not effective, leading many prisoners to resort to extreme measures to express their protest, such as hunger strikes, thirst strikes or self-harming. <sup>18</sup> Additionally, confidentiality of external correspondences is not practically ensured.
- 5.3 Some prisons and detention centres are overcrowded, which essentially impairs inmates' enjoyment of other rights, including contacts with family members, access to medical assistance, etc. There are not enough beds for inmates. Thus, as of 26 May 2014, 957 prisoners were kept in "Nubarashen" penitentiary, which has a capacity of keeping maximum 840 people. As a result, prisoners are forced to sleep in turns.<sup>19</sup> In April 2014, the government closed "Erebuni" penitentiary and located its inmates in other prisons that were already overburdened. Though a new prison is planned to be opened soon, till then prisoners from "Erebuni" will be serving their sentences in austere material conditions.
- 5.4 For the last four years two amnesties were announced. However, in the light of almost universal usage of pre-trial detention, limited implementation of non-custodial sentences as well as deficiencies in the systems of early conditional release and compassionate release, amnesties can provide only a short-term solution to overcrowding.
- 5.5 As it was stated, the limitations in the system of early conditional release are one of the reasons for overcrowding in penitentiaries. In particular, the system lacks clearly established assessment standards guiding the recommendation of an inmate's release by the administration of a penitentiary. The independent parole commissions in charge of reviewing the expediency of a prisoner's release, do not have legally-established criteria guiding their decisions and are not required to substantiate their decisions, which makes it impossible to appeal them in court. <sup>20</sup> As a result, the process of early conditional release is not predictable for inmates, who are not protected against corruption, abuses and arbitrary decisions.
- 5.6 As to the system of compassionate release, it is highly defective in Armenia: different stages of decision making are either not regulated by law or only partially regulated, which creates considerable uncertainty in the implementation practice. A number of problems emanate from this situation: notably, the procedure of compassionate release is not clear and predictable for inmates, there happen to be substantial delays in the process, responsible bodies are sometimes constrained when adopting positive decisions and these decisions are often not adequately reasoned and properly recorded. As a result, a majority of prisoners are either released only after reaching the terminal stage of an illness or die in the penitentiaries.

#### 5.7 Recommendations:

- Take actions to solve the issue of overcrowding in penitentiary institutions and bring the conditions of penitentiaries into compliance with international standards.
- Ensure enforcement of effective internal and external complaint mechanisms, including confidentiality of complaints.
- Reform the systems of early conditional release and compassionate release, making them more transparent and effective.

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<sup>17</sup> CSI, "Qualitative and Quantitative Survey: Factors Contributing to Offending and Reoffending in Armenia", 2014, p. 51, available at <http://hra.am/i/up/qq-eng.pdf>

<sup>18</sup> Office of the Human Rights Defender of the Republic of Armenia, "Annual Report on the Activities of the RA Human Rights Defender and on the Violations of Human Rights and Fundamental Freedoms in the Country in 2013", page 354

<sup>19</sup> Ibid., pages 33, 400

<sup>20</sup> CSI, "The System of Early Conditional Release in the Republic of Armenia: Main issues and Ways of Development", 2012, p. 27, available at <http://www.csi.am/content/publications>