



**Civil Society Institute (CSI) and
the 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**

**Prepared by Civil Society Institute (Yerevan, Armenia)
and FIDH – International Federation for Human Rights**

YEREVAN, ARMENIA

APRIL 2012

1. Executive Summary

1. This report covers issues relating to torture and other cruel, inhuman or degrading treatment in Armenia. It provides information on both the legal system and state practice in Armenia, illustrated by concrete cases that cover a wide range of torture practices.
2. Although Article 17 of the Constitution of the Republic of Armenia provides that, “No one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to humane treatment and respect for dignity”, the Criminal Code provides no specific provision on “torture”, as defined by Article 1(1) of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The UN Committee against Torture has called for Armenia to undertake legislative amendments to bring the definition of torture in line with Article 1 of the UNCAT.¹ However, no such legislative amendments have been made to date.
3. Most acts of torture are inflicted by law enforcement officials (namely, the police) during arrest and interrogation, with the aim of obtaining confessions. The independence and effectiveness of investigations into allegations of torture are compromised because the police themselves are in charge of such investigations. A Special Investigation Service (SIS) was established in 2007 to specialize in investigating cases involving possible abuses by public officials. However, the prosecutor’s office does not send all allegations of torture to the SIS for investigation; instead police investigators continue to handle most of these cases. Consequently, communications about torture are investigated within the framework of the very entity to which the perpetrators of torture themselves belong.
4. Most cases of police mistreatment continue to be unreported due to fears of retaliation. In the exceptional cases in which torture is reported, effective investigation is very rare. This report shows that, to date, major instances of torture have been met with impunity.
5. In most instances, human rights defenders and the general public become aware of cases of torture and ill-treatment after the victims have died as a result of the duress inflicted upon them (see, for example, the cases of Levon Gulyan and Vahan Khalafyan).
6. Moreover, rights to have access to a defence attorney, a doctor, notification of a relative and information about one's rights are not provided from the very outset of detention.
7. Neither defence attorneys nor victims of torture can apply directly to licensed forensic medical practitioners for a medical examination because such an examination is carried out only on the basis of a decision by the investigating body, the investigator or the prosecutor.² Sometimes medical examinations are arranged with delays, and conclusions not provided to suspects/defendants and/or their defence attorneys.

¹ Concluding observations of the Committee against Torture: Armenia, published on 17 November 2000, para. 39, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.paras.33-39.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.44.paras.33-39.En?OpenDocument).

² Republic of Armenia Criminal Procedure Code, Article 243.

Contents

1.Executive Summary	2
2.Introduction.....	6
3.General Background	6
4.Defining and criminalizing criminalising torture (Article 1 and 4 UNCAT)	7
5.Inadequate legislative, administrative, judicial or other measures taken to prevent acts of torture (Article 2 UNCAT).....	10
(i) Rights to access to a lawyer, notification of custody	10
(ii) Access to a doctor.....	11
(iii) Notification of one's rights.....	13
6.Failure to promptly and impartially examine and investigate credible torture complaints (Article 12 UNCAT).....	14
7.The inadmissibility of statements obtained through torture (Article 15 UNCAT) ..	16
8.Condition of detention and treatment of detainees (Article 16 UNCAT)	17
9.Complaint mechanisms for inmates in prisons by inmates (Article 13 UNCAT).....	19
10.Information on specific cases referred to by the Committee	19
11.CONCLUSIONS AND RECOMMENDATIONS TO THE STATE OF ARMENIA.....	24

CSI:

Civil Society Institute (CSI) is a human rights non-governmental organization, founded in 1998 and located in Yerevan, Armenia. CSI seeks to assist and promote the establishment of a free and democratic society in Armenia. Since 2001 CSI has been combating torture by monitoring places of detention, reporting on torture cases and raising public awareness.

In 2005 Civil Society Institute implemented a campaign advocating for the signature and ratification of the Optional Protocol to the UN Convention against Torture (OPCAT). The campaign resulted in Armenia's accession to the Protocol in 2006.

Since its establishment, CSI has been working on civil society development, penal system reform, human rights advocacy and awareness, peace-building and conflict resolution, freedom of information and anti-corruption, and political advocacy and lobbying.

CSI is a member organization of the International Federation for Human Rights (FIDH).

FIDH:

The **International Federation for Human Rights (FIDH)** is a federation of 164 human rights NGOs in over 100 countries. It was founded in 1922 and has consultative status within the United Nation's Economic and Social Council (ECOSOC).

Fact finding – Investigative and trial observation missions

Engaging in activities ranging from dispatching trial observers to organising international investigative missions, FIDH has developed rigorous, impartial procedures for establishing facts and lines of responsibility. Experts dispatched to the field give their time to FIDH on a voluntary basis.

FIDH has conducted over 1,500 missions in over 100 countries in the last 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society – Training and exchange

FIDH organises numerous activities in partnership with its member organisations in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to advance change at the local level.

Mobilising the international community – Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to human rights violations and refers individual cases to these bodies. FIDH also takes part in the development of international legal instruments.

Informing and reporting – Mobilising public opinion

FIDH informs and mobilises public opinion. FIDH makes full use of all means of communication to raise awareness of human rights violations, including through press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, and websites, amongst others.

2. Introduction

1. This report is submitted to the Committee against Torture (“the Committee”) with a view to providing additional information for its consideration of Armenia’s third periodic report. This report is expected to enhance the Committee’s ability to assess the Government’s performance in implementing the UN Convention against Torture.

3. General Background

2. Armenia is a landlocked country situated in the South Caucasus. Armenia's independence was officially recognized on 21 September 1991, after the dissolution of the Soviet Union.
3. According to the Constitution of the Republic of Armenia (RA), Armenia is a sovereign, democratic, social state governed by the rule of law. Power lies with the people who exercise it through free elections and referenda, as well as through State and local self-government bodies and officials (RA Constitution, Article 2). State power is exercised in conformity with the Constitution, and the law is founded on the separation and balancing of legislative, executive and judicial powers (RA Constitution, Article 5).
4. In 2008, Serzh Sargsyan of the Republican Party of Armenia (RPA) was sworn in as president. The Republican Party of Armenia dominates the three-party ruling coalition in the National Assembly.
5. Torture and ill-treatment in custody are widely reported by civil society organizations in Armenia. The government fails to provide meaningful investigations into and accountability for such abuses. In August 2011 the Council of Europe’s Committee for the Prevention of Torture (CPT) made public the report on its 2010 visit, which documented a “significant number of credible and consistent allegations of physical ill-treatment of detained persons,” as well as the torture of detainees, allegedly to secure confessions and other information.³
6. A number of changes in the Penitentiary system have taken place in the last 10 years. In 2001 the prison system was transferred from the supervision of the Ministry of Inner Affairs to the Ministry of Justice. As a result, the torture and inhuman or degrading treatment of persons in custody with the aim of extracting confessions was reduced. Nevertheless, torture practices in Police facilities continued, and in prison, cases of torture perpetrated as punishment were recorded.
7. A critical event in recent Armenian history was the presidential election of 19 February 2008 and its aftermath, in which clashes occurred between law enforcement agents and political opposition activists holding public demonstrations against the election results. Mass arrests and detentions occurred, 10 individuals were killed and 200 injured. Investigations targeting demonstration organisers were conducted. Over 5,000 persons were arrested for several hours, and 110 opposition activists charged and tried for offences such as “mass disorder”, “possession of weapons”, “resisting arrest” or “usurpation of State authority”. Those

³ Report to the Government of Armenia on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or degrading treatment and punishment from 10 to 21 May, 2010, para 12, available at <http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.htm>.

imprisoned in relation to 1 March incidents were subsequently released on the basis of an amnesty.

8. Armenia acceded to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT or “the Convention”) on 13 September 1993. Upon accession to the Convention, the Government failed to make a declaration under Articles 21 and 22, thus denying the competence of the Committee to receive and consider individual complaints.

4. Defining and criminalising torture (Article 1 and 4 UNCAT)

9. Torture is criminalised and defined in Article 119 of the Criminal Code of the Republic of Armenia. However, this definition does not comply with Article 1 of the Convention on several grounds.

(I) Article 119 of the Criminal Code: a definition of torture inconsistent with the UNCAT

10. Article 119 of the Criminal Code states that torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, unless it has led to the consequences specified in Articles 112 and 113 of the Criminal Code (harm of utmost or medium gravity intentionally caused to a person’s health).⁴ Consequently, if an act caused harm of utmost or medium gravity to someone’s health, it falls outside the definition of torture and can only be prosecuted under other articles (Art. 112, Art. 113). An act of torture is punishable by imprisonment for up to three years, and in aggravated circumstances by imprisonment for a term of three to seven years.
11. The definition of torture provided by the Criminal Code does not include harm of medium or utmost gravity intentionally caused to a person’s health; this makes torture look like a lesser public threat. “Torture”, as defined by the Criminal Code, is considered to be a crime of medium gravity in that Code.⁵ The *corpus delicti* of torture as prescribed by Article 119 of the Criminal Code does not include elements of specific purpose or specific actors.

⁴ **Article 112. Intentionally causing grave harm to health** 1. Intentionally causing bodily injury or another grave harm to another person’s health, which is dangerous to life or has resulted in the loss of eye-sight, speech, hearing or any organ or any function of an organ, or was expressed by irreversible defacement; as well as has caused another harm to health dangerous to life, or has resulted in the disruption thereof accompanied by constant loss of not less than one third of general working capacity or full loss of professional working capacity obvious to the criminal, or has resulted in miscarriage, mental illness, drug addiction or toxicomania — shall be punished by imprisonment for a term of three to seven years.

Article 113. Intentionally causing medium gravity harm to health 1. Intentionally causing bodily injury or another harm to another person’s health, which is not dangerous to life and has not resulted in the consequences provided for in Article 112 of this Code, but has caused a persistent health disruption or a significant constant loss of less than one third of general working capacity — shall be punished by detention for a term of one to three months, or by imprisonment for a maximum term of three years.

⁵ According to the Criminal Code, a crime for which the maximum sentence does not exceed five years imprisonment is considered a crime of medium gravity. Without aggravated circumstances a sentence for an act of torture is stipulated to be three years.

8. The regime for opening a criminal case privately applies the *corpus delicti* of "torture"; here, the victim's complaint is required to institute a private prosecution. In the event of reconciliation between the victim and the perpetrator (suspect, accused or defendant) in such circumstances, the criminal case is closed.
12. An analysis of court practice demonstrates that the absence of a proper *corpus delicti* for the crime of torture in Armenia results in perpetrators of acts defined as torture under the Convention, being prosecuted instead for abuse, exceeding their powers or causing medium gravity harm to a person's health.⁶ In consequence, the monitoring of legal proceedings in Convention defined torture cases by NGOs and the general public is rendered difficult, and statistics on torture distorted.
13. It should be stressed that perpetrators of these crimes sometimes avoid criminal prosecution or punishment through amnesty or pardon.⁷ Thus, according to statistics provided by the Judicial Department:⁸
 - In 2008, two persons were convicted under Article 119 (Torture) of Criminal Code. A medical enforcement measure was applied to one of them.
 - In 2009, two persons were convicted under Article 119. One was released pursuant to an amnesty measure.
 - In 2010, there were no convictions under Article 119.
 - In 2011, three people were convicted under Article 119. An amnesty decision was made in favour of two of them.
14. Article 119 does not restrict torture to acts undertaken by state agents. It has also been applied in the context of horizontal relations between two citizens, without any involvement by state agents.

Thus, in one case a man periodically beat the woman with whom he lived, and contributed to her turning to prostitution. He was found guilty under Article 119, among other provisions, on 19 May 2011 by a judgment of the Court of General Jurisdiction of Ajapnyak and Davtashen Districts. However, the man was released on the basis of an amnesty decision, applied by the Court of Appeals on 21 July 2011.⁹

⁶ UNDP, Research on the implementation by Armenian Courts of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2009, Yerevan, p. 10, available at http://www.undp.am/docs/publications/CAT_report_2009_eng.pdf.

⁷ *ibid*

⁸ The letter of the Judicial department E-4148, dated 21 June, 2011

⁹ Case number EADD/0109/01/10 against Armen Khachatryan, Appellate Court decision of 21 July 2011.

In another case, a baker and a mechanical-worker for a bread company kidnapped two other workers and tortured them to find out whether they had been involved in a robbery that had taken place at the company. Among other articles, Article 119 was applied to them.¹⁰ Judgments from the Court of General Jurisdiction of First Instance of Arabkir and Kanaker-Zeytun Administrative Districts, dated 21 and 26 January 2011, convicted both defendants. The decision was appealed to the Court of Appeals, which upheld the conviction on 2 December 2011.

15. Regarding the definition of torture in Armenia, in 2000 the UN Committee against Torture called on the government of Armenia to undertake legislative amendments to bring the definition of torture into conformity with Article 1 of the UNCAT.¹¹ No legislative amendments have been made to date.

(II) Article 341(2) of the Criminal Code: criminalisation of the use of torture to obtain a testimony during trial

16. Under Article 341(2) of the Criminal Code, a judge, prosecutor, investigator or person carrying out an inquest, who uses torture or other violence to compel a witness, suspect, accused, person on trial or victim to testify, or to compel an expert to issue a false opinion, or a translator to provide an incorrect translation, is punishable with three to eight years imprisonment.
17. This article criminalises as torture instances of coercion to give testimony or bear false witness *only during a trial*. It does not therefore criminalise torture in the sense of that word under the Convention, where it is perpetrated by or at the instigation of a public official in numerous other spheres, such as in penitentiary institutions, in the armed forces, etc.¹²
18. In addition, severe pain or suffering inflicted by an investigator or policeman with the purpose of extracting a testimony from a third person or to obtain an explanation, information or confession are excluded from the definition. In all such cases, the public official will be criminally prosecuted for abusing his powers in conjunction with the offence of causing serious harm to a person's health.¹³ Between 2008 and 2011 no cases under Article 341 were examined by the court. This Article is very rarely applied. Generally, Article 309 (Excess of official powers) is applied in cases involving allegations of torture.

¹⁰ Case number EAQD/0032/01/10 against Hrant Mkhoyan, Yegor Hakobyan, Decision of the Court of First Instance of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of 26 January 2011 (with regard to Yegor Hakobyan) and 21 July 2011 (with regard to Hrant Mkhoyan) .

¹¹ Concluding observations of the Committee against Torture: Armenia, published on 17 November 2000, para. 39, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.pparas.33-39.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.44.pparas.33-39.En?OpenDocument).

¹² UNDP, Research on the implementation by Armenian Courts of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2009, Yerevan, p. 10, available at http://www.undp.am/docs/publications/CAT_report_2009_eng.pdf.

¹³ *ibid.*

Recommendation

- *To amend the Criminal Code and relevant legislation to define torture and ill-treatment according to the provisions of the UN Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment.*

5. Inadequate legislative, administrative, judicial or other measures taken to prevent acts of torture (Article 2 UNCAT)

(i) Rights to access to a lawyer, notification of custody

19. According to Article 180 of the Criminal Procedure Code, after a crime is reported to police, in considering the legitimacy of the reasons for initiating a prosecution the police can request explanations to be provided.¹⁴ In such instances, people can be summoned to appear before the police without being designated any formal status (e.g. suspect, defendant, witness etc.). At this stage, such persons do not have the right to notify a relative, have access to an attorney or doctor, or any other right belonging to arrested and detained persons. They can only enjoy such rights once the protocol on arrest is drawn up.¹⁵
20. According to Article 131¹ of the Criminal Procedure Code the protocol on arrest should be drawn up within three hours of the time that the relevant person is taken to the “body of inquiry”, investigator or prosecutor. However, practice shows that periods of deprivation of liberty preceding the drawing-up of the protocol often considerably exceed three hours. Such periods are also used for eliciting confessions and/or collecting evidence before the apprehended person is formally declared a criminal suspect and informed of their rights.¹⁶

For example, before criminal proceedings were instituted, Stepan Hovakimyan was called without a proper summons to the police station on 11 and 14 January 2010. On 6 February 2010 Stepan Hovakimyan again attended Yerevan police department where he was subjected to torture and inhumane and degrading treatment. Only after he signed a confession was a criminal case instituted, and, having the status of defendant, was Hovakimyan permitted to call his relatives and have access to a lawyer.¹⁷

21. Consequently, there are serious concerns about the general practice of allowing apprehended persons access to a lawyer only after formal involvement in a case as a suspect or defendant, and not from the moment of de facto apprehension.

¹⁴ RA Criminal Procedure Code, Article 180.

¹⁵ According to point 4, part 2 of Article 63 of the RA Criminal Procedure Code a suspect is entitled to access to a lawyer from the moment the protocol on arrest is drafted and presented to the suspect.

¹⁶ European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report on visits to Armenia in May 2010, CPT/Inf (2011) 24, Strasbourg, 17 August 2011, para. 9.

¹⁷ Statement of International Federation for Human Rights (FIDH) and Civil Society Institute (CSI) NGO, 23 February 2012, can be found at <http://www.fidh.org/FIDH-and-CSI-demand-fair-trial-and>

22. In addition, the presence of defence attorneys during initial interrogations is extremely rare. According to one survey conducted on ill-treatment and torture in Armenia, of 10 arrested persons, only 1 had a defence attorney; that individual was a juvenile, for whom access to a defence attorney was mandatory under point 5 of Article 69 (1) of the Criminal Code.¹⁸

(ii) Access to a doctor

23. The right of arrested and detained persons to have access to a doctor is conditional upon their health problems and bodily injury. According to Article 21 of the Law on “the Custody of Arrestees and Remand Prisoners”, adopted on 26 February 2002, where any bodily injury is detected on arrested or detained persons, the medical personnel of the place of arrest or detention shall examine that person immediately. A medical representative of the injured person’s choice can participate in the examination.
24. This Article also stipulates that examination of the arrested or detained person should be conducted out with the hearing of police, and if expressly requested by the doctor, out of sight of the police also. In practice, however, medical examinations are frequently carried out in the presence of police staff and medical certificates are accessible to non-medical staff.¹⁹
25. In the majority of places for holding arrested people (PHAP) there are no medical staff. Only Yerevan PHAP has appropriate conditions and a medical nurse. First aid is left to the PHAP’s daily police officer on duty, who lacks the requisite medical education and basic knowledge. First aid is also provided by means of ambulances, which sometimes face difficulties in the regions due to the weather.²⁰
26. The Group of public observers monitoring PHAPs in police stations found that they do not comply with Paragraph 179 of the Internal Regulation of the RA, Police Places for Holding Arrested Persons (as approved by the government on 5 June 2008), and that they hold arrested persons who need specialist medical assistance.²¹
27. In practice, medical practitioners are not invited to the places for holding arrested people, even in cases of examination of revealed injuries. Any injuries, which according to the administration of the institution are not serious and do not threaten the health of the arrested

¹⁸ Country Report on Armenia, “Combating ill-treatment and impunity and effective investigation of ill-treatment”, Eric Svanidze, 2010 Yerevan, “Antares”, para. 18

¹⁹ Report to the Armenian government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment from 10-21 May, 2010, para.33, is available at http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.htm#_Toc281837842

²⁰ 2010 Annual report “On the activities of the group of public observers monitoring the places for holding arrested persons in the police system of the Republic of Armenia”, 2011 Yerevan, p. 34, can be found at http://www.policemonitoring.org/DownloadFile/210eng-2.Report_Eng_2011.pdf

²¹ Paragraph 179 of the Internal Regulation of the RA Police Places for Holding Arrested Persons (PHAP) provides “It shall be prohibited to hold in a PHAP arrested persons with mental disorders, acute infectious diseases, or need for specialized medical assistance. Such persons shall, based on a written report by a PHAP medical worker or an ambulance doctor, be transferred to specialized or civilian health care institutions by decision of the Head of the Police authority”.

person, are simply included in the protocol on health examination of the arrested person. Attorneys note that relevant documentation and information about the health condition of arrested persons are provided with delay.²²

28. Access of arrested persons to a doctor from the moment of de facto deprivation of liberty is not guaranteed, as it is observed under the same conditions as the right to access a lawyer and have relatives notified, as mentioned above.
29. Under Article 243 of the Criminal Procedure Code expert examination including forensic medical examination is implemented on the basis of a decision by the body conducting the inquiry, the investigator or the prosecutor. Neither defence attorneys nor victims of torture can directly apply to licensed forensic medical practitioners for a medical examination.

(iii) Notification of one's rights

30. The right to be informed of one's rights is also only enjoyed from the moment the protocol on arrest is drawn up. Its application is therefore de facto delayed. In practice, information forms outlining a person's rights are not given to arrested persons.²³

Recommendations

- *To reform the judicial system relating to access to a lawyer, notification of a relative, information on rights, medical examination and other safeguards from the moment of a person's de facto apprehension, regardless of its legal status according to law;*
- *To take practical measures to ensure the involvement of defence attorneys from the early stages of a pre-trial investigation;*
- *To amend the Criminal Procedure Code to provide that whenever a person is interrogated in the absence of a defence attorney, even where they have waived the right to a defence attorney's presence, written testimony may not be relied upon unless the interrogated person affirms the veracity of the statement before the court;*
- *To amend legislation allowing the exclusion of tainted evidence if a judge has reasonable doubts as to the legality of the means through which it was obtained;*
- *To ensure that persons in custody and detention, have the practical possibility of being medically examined by a doctor, out with the presence of police and penitentiary officials, as stipulated in RA legislation;*
- *To ensure lawyers have prompt access to medical documentation and conclusions about arrested persons;*
- *To create the possibility for independent doctors to obtain a forensic medical qualification, and entitle detainees to an examination by an independent doctor with*

²² Country Report on Armenia, "Combating ill-treatment and impunity and effective investigation of ill-treatment", Eric Svanidze, 2010 Yerevan, "Antares", para 19

²³ Ibid, para 23 and Report to the Armenian government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment from 10-21 May, 2010, para. 36

recognised forensic training without prior authorisation from an investigator, prosecutor or judge.

6. Failure to promptly and impartially examine and investigate credible torture complaints (Article 12 UNCAT)

31. The investigations department was removed from the system of the prosecutor's office in the course of judicial and legal reforms in the Republic of Armenia. The prosecutor's office can exercise control over the legality of pre-trial investigation and inquiry, but cannot carry out investigative actions. Upon receiving a statement concerning torture, the prosecutor's office should consider it to be a communication about a crime and send it to a designated entity for investigation.
32. In late 2007, a separate agency specialising in the investigation of potential cases of abuse by public officials, the Special Investigation Service (SIS), was established. The law instituting the SIS entered into force on 1 December 2007. The Head of the SIS is appointed by the Armenian President, upon the recommendation of the Prosecutor General. Together with a deputy appointed by him, the Head of the SIS manages a team of 25 special investigators. According to Article 190, part 6 of the Criminal Procedure Code, SIS investigators conduct pre-trial investigations into crimes committed by persons performing a special State service or situations in which such persons have become accomplices in connection with their official position. As with other investigative bodies, the Office of the Prosecutor General exercises control over the legality SIS investigations. The SIS cooperates with the police, but does not have any direct connection to them. It is not responsible for their work, and vice versa.
33. In practice, however, verification of the majority of torture allegations is carried out by police investigators.²⁴ There are no guidelines requiring cases to be sent to a designated entity. Moreover, Article 53(2) point 3 of the Criminal Procedure Code empowers the Prosecutor to remove a criminal case from a body of inquiry and pass it to a preliminary investigation body, or pass a case between preliminary investigation bodies, in order to ensure a comprehensive and objective investigation pursuant to Article 190 of the Criminal Procedure Code.
34. The prosecutor's office does not send all statements of torture for investigation by the SIS; police investigators deal with most of these cases.²⁵
35. The requirement for a proper investigation into communications concerning torture is jeopardised from the very beginning by these arrangements in the law-enforcement system. This is because communications about torture are investigated within the framework of the very entity to which the perpetrators of such acts of torture themselves belong.

²⁴ Country Report on Armenia, "Combating ill-treatment and impunity and effective investigation of ill-treatment", Eric Svanidze, 2010 Yerevan, "Antares", para. 41

²⁵ *ibid*, para 42.

36. The prosecutor's office oversees the lawfulness of inquests and preliminary investigations, as well as pursuing charges relating to such inquiries in court. This creates a conflict of interest. These functions should therefore be separated and vested in different bodies.
37. The same prosecutor supervises the legality of an investigation, approves the indictment submitted by the investigator upon completion of the investigation and defends the relevant charges in the court. Thus, the same prosecutor exercises three powers relating to the same case; namely, supervision, approval and defence. This fact creates a situation where a prosecutor is not interested in preventing abuses during an investigation, because they are in need of the evidence collected by the investigator, whether lawfully or not. The prosecution is also not motivated to exclude unlawfully obtained evidence, because accepting that the evidence is tainted equates to accepting that the prosecution has failed to carry out its supervisory functions during investigation properly.

Recommendations

- *Take measures to ensure the independent, efficient investigation of cases of torture and ill-treatment;*
- *Adopt structural reforms to ensure that all allegations of torture be duly and promptly reported to and investigated by the Special Investigation Service (SIS);*
- *Prosecutors exercising supervision over the legality of an investigation conducted by the SIS should be different from the prosecutors exercising supervision over the legality of an investigation conducted by the Police;*
- *Prosecutors supervising the legality of an investigation into a case and prosecutors presenting such cases in court should be different.*

7. The inadmissibility of statements obtained through torture (Article 15 UNCAT)

38. The monitoring of judicial practice in the Republic of Armenia shows that statements obtained under torture or ill-treatment are often obtained during the trial stage of a case.²⁶
39. However, in practice, the courts usually fail to take action on the basis of these statements. This issue was highlighted in the OSCE report, “Trial Monitoring Project in Armenia”, covering the period April 2008 to July 2009.²⁷ Trial monitors recorded that the defendants stated in court that they had been beaten by police and subjected to cruel and inhuman treatment while in custody. They provided evidence, including photos, medical records, and other evidence, to support their statements.²⁸ At least 27 defendants alleged ill-treatment at

²⁶ “Combating ill-treatment and impunity and the problems of legislation and judicial practice of the Republic of Armenia”, Vahe Yengibaryan, Anna Vardapetyan, p. 17, 2010, Yerevan, “Antares” Directorate General of Human Rights and Legal Affairs, Council of Europe,

²⁷ OSCE report “Trial monitoring project in Armenia” 2010, Warsaw, p. 57, can be found at <http://www.osce.org/odihr/41695>

²⁸ Ibid

the hands of law enforcement officers at the time of arrest or during pre-trial detention. Only on two occasions did trial judges address the prosecutors' office with requests to institute criminal proceedings, both times in relation to witnesses who alleged that their pre-trial testimonies were given under duress. No law enforcement official was charged.²⁹

40. The courts also show huge reliance on police evidence. Among the cases observed by OSCE, in 17 cases the testimony of police witnesses was the only witness testimony given in court and became the primary basis for the court's decision. In some cases, police testimony was accepted by judges even where there were significant contradictions between the pre-trial testimony of these witnesses and their statements at trial, or clear inconsistencies with the testimony of other officers in the same case.³⁰

8. Condition of detention and treatment of detainees (Article 16 UNCAT)

41. There are three public monitoring groups conducting independent oversight of closed institutions:
- (1) A group of public observers conducting public monitoring of penitentiary institutions and bodies under the RA Ministry of Justice, established in 2004 ("Prison Monitoring Group");
 - (2) A group of public observers of the places where arrested people are held under the RA Police, established in 2005 ("Police Monitoring Group"); and
 - (3) A Public Monitoring Group of Special Boarding Schools under the RA Ministry of Education, established on 16 December 2009.

These groups are comprised of members of non-governmental organizations and work on a voluntary basis.

42. One of the operational shortcomings of the Police Monitoring Group is that it does not have access to the police stations where arrested persons are subjected to duress and intimidation during interrogation. The group has access only to the facilities where the arrested people are held. Sometimes, people are illegally held in police stations during interrogation for longer periods than anticipated by Armenian legislation. These cases cannot be recorded by the Police Monitoring Group because of lack of access.
43. The Prison Monitoring Group reports poor living conditions, particularly poor medical care and bad quality of food, as well as overcrowding in some penitentiary institutions.³¹
44. Overcrowding in penitentiary institutions is an urgent problem faced by the penitentiary system. In particular, the following data shows possible and actual prison populations in five Armenian prisons as of 1 January 2012.

²⁹ Ibid, p. 59

³⁰ OSCE report "Trial monitoring project in Armenia" 2010, Warsaw, p. 50

³¹ Report of the group of public observers conducting public monitoring of penitentiary institutions and other bodies under the RA Ministry of Justice, 2009, Yerevan, pages 9-10, available at http://hra.am/i/up/pmg_report_2008_eng.pdf.

Penitentiary Institution	Capacity	Actual
“Nubarashen”	840	1157
“Vardashen”	154	218
“Erebuni”	391	420
“Sevan”	548	608
“Kosh”	640	796

Source: Data provided by the Prison Monitoring Group.

45. There are not enough beds for inmates. Persons deprived of their liberty therefore have to sleep in turns; some at night, some in the afternoon. An area of less than 2m² is allocated to each person deprived of their liberty, whereas domestic legislation and international standards require at least 4m² to be afforded.³² In addition, according to Article 160 (1) of the RA Penitentiary Code, up to 4 prisoners can be kept in a closed type of penitentiary, and up to 6 prisoners can be kept in a semi-closed penitentiary (Article 159 (1)). These provisions are also violated.
46. Overcrowding has, for example, led “Nubarashen” Penitentiary Institution to install 2-4 additional beds in cells, and the Prison Monitoring Group has encountered up to 13 inmates in some cells, with up to 18 prisoners in a cell for 8 people.³³
47. This overcrowding is the result of an increased number of crimes, wide usage of detention as a measure of restraint, the limited application of alternative sentences, and the limited application of release on parole.³⁴
48. Manifestations of the ill-treatment of prisoners in penitentiary institutions are hard to identify. Experience has shown that, in cases of ill-treatment discovered by the Prison Monitoring Group, the penitentiary institutions in question fail to document the use of special measures (handcuffs, truncheons, and the like), while health-care staff fail to document the injuries sustained by prisoners.
49. In penitentiary institutions the underlying basis for torture is punishment for bad behaviour.

The latest case documented by us took place in December 2008 in “Nubarashen” Penitentiary Institution, where an ad-hoc search was conducted within the facility, resulting in a serious clash between inmates and the Rapid Response Group (RRG). During these clashes many inmates were heavily beaten and the Head of the RRG was injured. This resulted in continuous violence

³² The commentary to Rule 18 of the European Prison Rules indicates that the CPT considers 4 square meters to be a minimum requirement in shared accommodation, and 6 square meters to be the minimum for a prison cell.

³³ Ibid, p. 18.

³⁴ Statement released by 14 NGOs, including CSI about the overcrowding of penitentiary institutions, 26 July, 2010, available at <http://www.hra.am/en/point-of-view/2010/07/26/statement>.

towards all convicts in the cell, who were subsequently beaten. The Prison Monitoring Group qualified the incident as torture that had been applied as a punishment measure.³⁵ A criminal case was instituted on the basis of the Prison Monitoring Group's statement. This case was terminated by the decision of the investigator on 28 April 2009 on the ground of a lack of *corpus delicti* in the actions of the penitentiary's administration.

50. There are a number of shortcomings in the system of early release of prisoners on compassionate grounds. In particular, due to multiplicity of decision-making bodies and an absence of clear and accessible procedures, the process of decision-making prisoner's cases suffers from undue delays. These delays negatively affect prisoners in ill health, whose sufferings continue while waiting for long periods for a negative or positive decision on early release. Decisions on prisoner's release frequently lack any justification. Grounds for these decisions are not specified.
51. According to the European Court of Human Rights, Article 3 (prevention of torture and inhuman or degrading treatment) of the European Convention of Human Rights may go as far as requiring the conditional liberation of a prisoner who is seriously ill or disabled.³⁶

57. Manukyan Ruzan was imprisoned on 12 December 2008. On 15 December 2008 she was transferred to "Grigor Lusavorish" civic hospital. Throughout her imprisonment she has been transferred to hospital 8 times; her total stay in hospital has been 548 days. Doctors diagnosed Ruzan with chronic heavy asthma. This illness is found on the list of illnesses specified in RA legislation as making a person eligible for early released because the purpose of punishment cannot be met. Nevertheless, in 2010 the Medical Working Commission decided that Ruzan required further examination, questioning the conclusions of doctors at the civic hospital. However, the Commission did not specify what kind of examination should be conducted. No further steps have been taken with regard to Ruzan and at the time of writing this report (April 2012), she is still in prison.

9. Complaint mechanisms for inmates in prison (Article 13 UNCAT)

52. Complaint mechanisms in prisons do not operate effectively. Complaint letters are opened and read by the prison administration. In practice, such letters are stamped by the administration and then put in their envelopes.³⁷ This lack of confidentiality undermines the ability to bring a complaint to the attention of the outside world.

³⁵ Report of the group of public observers conducting public monitoring of penitentiary institutions and other bodies under the RA Ministry of Justice, 2009, Yerevan, page 8 http://hra.am/i/up/pmg_report_2008_eng.pdf

³⁶ Aleksanyan v Russia [2008] ECHR, *no.* 46468/06, para 136

³⁷ This information was provided by an expert of the public monitoring group of penitentiary institutions under the RA Ministry of Justice

10. Information on specific cases referred to by the Committee

53. The Committee has requested information on investigations and criminal proceedings concerning a range of individual cases. In response to this request, the following information is produced.

Levon Gulyan

12 May 2012 will mark the 5th anniversary of Levon Gulyan's death. So far, no state official has been held responsible for this death.

Mr. Gulyan was a witness in a murder case. He was called to the police station on 9 May 2007, and despite having already provided his testimony, was held there until the evening of 10 May 2007. He was subsequently allowed to return home twice but was obliged to return. Levon Gulyan obeyed this request both times.

On 12 May 2007 Levon Gulyan died at the police headquarters. Police officers insisted that he either committed a suicide or died while trying to escape, after jumping from the 3rd floor window.

Members of Gulyan's family saw bruises on his body upon its return home and lawyers present at the forensic medical examination stated that there were signs of violence on Levon Gulyan's body.

An investigation of the case has been initiated since 2007. Throughout this period the case has been terminated several times by the investigative body and re-opened on the basis of court orders.

On 21 March 2011, the Special Investigation Service of the Republic of Armenia closed the criminal case on Levon Gulyan's death for the third time without further investigation. This was a stark contradiction of an official statement of the Court of Cassation on 27 August 2010, announcing its decision to "eliminate the violations of the rights and the freedoms of a person during the pre-trial investigation".

According to the decision of the Court of Cassation, the investigative actions in Levon Gulyan's case were not conducted in a full and efficient manner. The Court obliged the Special Investigative Service to undertake a number of investigative actions, including an expert examination using mannequin reconstruction to find out how Mr. Gulyan could fall out of the window.

The Court's order was ignored by the Special Investigative Service and those investigative actions were not carried out. The decision of Special Investigative Service to close the case was again appealed in the Court of First Instance of General Jurisdiction of Kentron and Nork Marash Administrative Districts. It upheld the complaint in May 2011 and obliged the Special Investigative body to conduct an investigation. A number of civil society organisations released statements about the case³⁸.

³⁸ NGO statement, including CSI, released on 12 May 2011, available at <http://hra.am/en/events/2011/05/12/statement>.

Sasha Davtyan

In September 2008 a criminal case was opened into the rape of an under-age girl. On 6 February 2009 the case was suspended due to a failure to identify the perpetrator of the crime. In May 2009 the case was re-opened under a new investigator. Sasha Davtyan, the girl's father, was charged with (1) the rape of his own daughter, Sh. D.; and (2) the torture of his two daughters, Sh.D and T.D., under Articles 138.2 (3), 119(2) and 119.2 (3) of the Criminal Code.

In August 2009, Sh.D and T.D refuted their testimonies and filed a complaint to the RA Prosecutor General's Office. In court, Sh. D stated that she and her sister were taken to Kentron Police Station on 7 May 2009 and subjected to torture, inhumane and degrading treatment over 4 days. They were forced to confess that Sasha Davtyan had tortured and raped Sh.D. The testimonies received under this physical pressure served as the ground for the accusations against Sasha Davtyan.

Sasha Davtyan too was repeatedly beaten and tortured.

On 5 February 2010, FIDH President, Mrs. Souhayr Belhassen, together with Mr. Arman Danielyan, Civil Society Institute (CSI) President, visited Sasha Davtyan in prison. They documented his testimony on the ill treatment to which he was subjected and certified that he had lost 8 teeth as a result of beatings. They also met with the head of "Nubarashen" prison and the prison's doctor, who presented documents certifying Mr Davtyan's very bad state upon his arrival in prison.

On 17 December 2009, the Aragatsotn District Court of First Instance acquitted Sasha Davtyan of the rape of his daughter but found him guilty of committing ill-treatment against his daughters. Sasha Davtyan was sentenced to 4 years of imprisonment based on Article 119.2 (1). This decision was appealed and the sentence was reduced to 3 years of imprisonment. On the basis of a Decree on amnesty of the National Assembly, Sasha Davtyan was eventually released.

No investigation has been carried out into the allegations of torture and ill-treatment perpetrated against Sasha Davtyan and his daughters by the police.

Vahan Khalafyan

On 13 April 2010, at around 17.00 pm, 24-year old Vahan Khalafyan died in Charentsavan town police station as a result of knife stab wounds to the stomach. Mr. Khalafyan's successors insist that he could not have stabbed himself twice in the stomach and was probably murdered.

The Court of First Instance of General Jurisdiction of Kotayk region found that Vahan Khalafyan committed suicide by stabbing. It also found that Mr. Khalafyan had been subjected to beatings by the Head of the Criminal Investigations Division of Charentsavan police, Ashot Harutyunyan. The latter was found guilty of exerting violence to obtain a confession, thereby exceeding his powers which negligently caused grave consequences. He was sentenced to eight years of imprisonment under Article 309(3) of RA Criminal Code. According to the court, Harutyunyan's actions induced such a psychologically tense state in Vahan Khalafyan that it led him to commit suicide by stabbing himself in the stomach twice with a knife.

Movses Hayrapetyan, a policeman from the Criminal Investigations Division, was sentenced to two years of conditional imprisonment under Article 308 (1) of the Criminal Code (Abuse by

official authorities). He was present during Khalafyan's beatings from Ashot Harutyunyan and did not prevent them. Moreover, Hayrapetyan signed and dated the protocol for bringing Khalafyan to the police station for 17.00 pm, when Khalafyan had, in fact, already been at the police station since 10:00am on 13 April 2010.

An amnesty decision in respect of both convicted police officials was adopted on 26 May 2011. Ashot Harutyunyan's sentence was reduced by one third.

Artak Nazaryan

Artak Nazaryan joined the Armed Forces as a contractual serviceman in December 2009. According to the official account, on 27 July 2010 Artak Nazaryan committed suicide in a place of military service. However, Nazaryan's relatives claim that he was murdered. The incident took place at a military base under the control of the "Mehrabner" military unit, situated not far from Chinari village, Berd district, Tavush marz.

The incident was submitted to the court classified as a case of "Causing to commit suicide". The judicial process was launched in September 2011 in the Court of First Instance of Tavush marz.

Nazarian's family claim that the preliminary investigation was conducted in an illegal manner, leading to the destruction and falsification of material evidence: a cartouche (cartridge-case) was destroyed and a false cartouche presented to the expert; the investigating body destroyed the finger-prints from the machine gun; three document-photos sent by the center of forensic medical examination were destroyed, and so on.

Moreover, the family has doubts about the place and date of Nazarian's death.

All petitions submitted by Nazaryan's family to obtain photos of the place of the incident and of Artak Nazaryan's corpse have been rejected – most, on the grounds of pre-trial secrecy. Only the decisions requesting expert enquiries and their conclusions were provided.

According to the forensic medical examination there were 54 injuries on different parts of Nazarian's body, though no investigative action was taken to find out the cause of these injuries.

The Nazaryan family also do not understand how Artak Nazaryan can be alleged to have committed suicide when all 120 bullets he possessed remained in place.

Twelve days after Nazarian's death, the commander of Nazaryan's battalion, Misha Gabrielyan, submitted a suicide note allegedly written by Artak Nazaryan to the Police. According to the Nazaryan family, the note has been written in handwriting does not belong to the deceased.

The trial continues.

Tigran Ohanjanyan

On 30 August 2007, junior sergeant Tigran Ohanjanyan of the military unit in Karchaghbyur village of the Geharkunik region died. On 31 August 2007 a criminal case was instituted and a preliminary investigation into death was assigned. According to investigation findings, the

death was caused by electrocution. Allegations were made against Karen Tovmasyan and Rostom Asatryan, both employees of the military unit's radio station.

On 30 May 2008 the case was remitted to the Court of First Instance of Gegharkunik region. On 13 January 2010 the Court acquitted Rostom Asatryan and Karen Tovmasyan on the basis of a lack of evidence. The Prosecutor's Office appealed this decision in the Court of Appeal and the Court of Cassation. On 3 March 2010, the Court of Appeal upheld the decision of the Court of First Instance. On 7 June 2010 the Court of Cassation ordered that the case be re-investigated.

Ohanjanyan's parents state that not all the injuries present on Tigran's body were recorded in the conclusions of his forensic examination. It was not recorded that Ohanjanyan's left ear was injured, being swollen and reddened and different from the right ear; nor was it recorded that there were bruises on the palm side of Ohanjanyan's fingers. Moreover, at the time of his conscription Ohanjanyan was missing one of his upper front teeth, whereas the forensic examiner recorded Ohanjanyan's upper dentition to be integral.

By an order of the Minister of Health Care, dated 9 September 2010, a commission of 10 experts was established to examine the evidence in the case and determine the true cause of death. The Commission confirmed the original forensic report concluding that death was caused by an electric current generated by an R-419 electric device. However, according to the expert conclusions of four professionals from the Scientific Research Institute of Radiophysics, a blockette of R419 radio electric device is not capable of causing death, because it could not generate sufficient electric power to do so.

The preliminary investigation is still in progress.

11. CONCLUSIONS AND RECOMMENDATIONS TO THE STATE OF ARMENIA

54. Torture, in particular by the police, remains an urgent issue in the Republic of Armenia. There have been few prosecutions and even fewer convictions for torture. This situation reflects serious shortcomings in investigation methods and accountability mechanisms, resulting in an overall climate of impunity.
55. The Armenian authorities must, among other measures, urgently address the following issues as crucial steps towards fulfilling their obligations under the Convention.

Recommendations to the State:

- To make amendments to the Criminal Code and relevant legislation to define torture and ill-treatment according to the provisions of the UN Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment;
- To ensure enforcement of effective internal and external complaint mechanisms, including the confidentiality of complaints;
- To take measures to ensure the independent, efficient investigation of cases of torture and ill-treatment;
- To adopt structural reforms to ensure that all allegations of torture be duly and promptly reported to and investigated by the Special Investigation Service (SIS);
- Prosecutors exercising supervision over the legality of an investigation conducted by the SIS should be different from the prosecutors exercising supervision over the legality of an investigation conducted by the Police;
- To ensure that prosecutors supervising the legality of an investigation into a case and prosecutors presenting such cases in court are different;
- To reform the judicial system relating to access to a lawyer, notification of a relative, information on rights, medical examination and other safeguards from the moment of a person's de facto apprehension, regardless of its legal status according to law;
- To take practical measures to ensure the involvement of defence attorneys from the early stages of a pre-trial investigation;
- To amend the Criminal Procedure Code to provide that whenever a person is interrogated in the absence of a defence attorney, even where they have waived the right to a defence attorney's presence, written testimony may not be relied upon unless the interrogated person affirms the veracity of the statement before the court;
- To amend legislation allowing the exclusion of tainted evidence if a judge has reasonable doubts as to the legality of the means through which it was obtained;
- To ensure that persons in custody and detention, have the practical possibility of being medically examined by a doctor, out with the presence of police and penitentiary officials, as stipulated in RA legislation;
- To ensure prompt access for lawyers to medical documentation and conclusions about arrested persons;
- To create the possibility for independent doctors to obtain a forensic medical qualification, and entitle detainees to an examination by an independent doctor with recognised forensic training without prior authorisation from an investigator, prosecutor or judge;
- To ensure that the police monitoring group has access to the police departments where most cases of torture occur.