

Human Rights Monitoring Group of Ethnic Minorities

Alternative report Human rights monitoring group of national minorities «MRMG»

- 1. Violation on the Georgian-Armenian border by Armenia in the Georgian villages Beitaraphchi, Tazakendi, Burma, Sadakhlo Mollaogly, Xuludere, Irgancai - Marneuli, Dmanisi districts of Kvemo Kartli, Georgia .**
- 2. Violent actions by Armenia against civilians in the settlements of Azerbaijan Republic.**
- 3. The situation surrounding the implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment by Armenia**

Violation on the Georgian-Armenian border by Armenia in the Georgian villages Beitaraphchi, Tazakendi, Burma, Sadakhlo Mollaogly, Xuludere, Irgancai - Marneuli, Dmanisi districts of Kvemo Kartli, Georgia.

1. The residential settlements of Beitaraphchi, Tazakendi, Burma, Sadakhlo, Molaoghli, Xuludere and Irgancai are located on the Georgian-Armenian border. These residential settlements are quite close to the border: the border is only several meters to several hundred meters away, while in the case of Irgancai – several kilometres. The border in this area is rather wavy and sometimes it goes deep into Armenia. Local residents are all citizens of Georgia and represent an Azerbaijani ethnic minority of Georgia's Kvemo Kartli Region.

2. The Advisory Committee of the Council of Europe on the Framework Convention for the protection of national minorities has received information from reliable sources that these people have become victims of violence, their land and other property was taken over and livestock stolen. There are also reports on people disappearing. This is said to be done by people living on the other side of the border, in a region where boundaries are not always clearly marked. People interviewed by representatives of the Advisory Committee has stressed that Georgian law-enforcement bodies do not intervene in such cases and that victims remain unprotected and vulnerable.

3. Residents of Beitaraphchi, Tazakendi, Burma, Sadakhlo, Molaoghli, Xuludere and Irgancai settlements believe that with the connivance of Georgian authorities they, as an ethnic minority living on the territory of Georgia in areas bordering on Armenia, are subjected to the policy of discrimination on the part of Armenian authorities. Their rights and freedoms are being breached and they are gradually being squeezed out of their native homes in contravention of the Framework Convention.

4. MRMG believes that Armenian authorities have no intention of building an atmosphere of tolerance and dialogue with Georgian residential settlements bordering on Armenia and settled by national minorities. Instead, they are conducting a consistent policy of squeezing-out.

5. Georgian citizens living in Beitaraphchi, Tazakendi, Burma, Sadakhlo, Molaoghli, Xuludere and Irgancai settlements consider that they are not guaranteed security. They are afraid that Armenian servicemen may use arms against them at any time. Therefore, they have no confidence in the future.

Facts for 2005-2010

Burma village, June 2009

6. Applicants Bakir Mammadov and Zakir Mammadov indicate that Armenian authorities are oppressing them and accusing them of wrongdoing they did not commit. The applicants point to a lack of assistance from Georgian authorities and accuse the Armenian authorities of falsification and provocation aimed at compelling the local population to abandon their homes.

Commentary: an application was sent to the Georgian Ombudsman's Office and local authorities of Georgia. There is no reaction.

Tazakendi village, June 2009

7. Applicant Vaqif Naibov and his family. Armenian border troops and a policeman have conducted unlawful searches in his house four times. The house is on Georgian territory and the Armenians had no legal right to do that. No documents from judicial institutions of Georgia or Armenia were provided. Vaqif Naibov believes that such unwarranted searches are intended to create an atmosphere of fear and absence of a future in this area, to put pressure on the ethnic Azerbaijani population of Georgia's borderline villages.

Commentary: an application was sent to the Georgian Ombudsman's Office and local authorities of Georgia. There is no reaction.

Tazakendi village, August 2007

8. The illegal movement of the Georgian-Armenian border into Georgian territory by the Armenian armed forces has led to the announcement of three houses in the Tzakendi village, owned by Georgian citizens Ahmad Ismayilov, Zakir Rustam oglu Mammadov and Kamal Kamandar oglu Ismayilov as Armenian territory and the demand by the Armenian military that the houses be vacated. This is happening in a unilateral manner without any intervention on the part of Georgian authorities.

Tzakendi village, April 2007

9. Applicant Mahammad Huseynov was subjected to arbitrary treatment on the part of Armenian border troops in the Tzakendi village in the vicinity of Sadakhlo. The Armenians seized his cattle and arrested him although he is a citizen of Georgia. He and his cattle were released on the same day, but 12 sheep were retained. Mahammad Huseynov has applied to law-enforcement bodies and Georgian authorities, but despite that his property has yet to be returned to him. He demanded from law-enforcement bodies that compensation be paid to him if the cattle is not returned.

Tzakendi village, 2006

10. According to residents of the Tzakendi village Yusif Allahverdiyev and Mehman Karimov, the cow of a resident of the Tzakendi village, Abdulla Abdullayev, was grazing in the borderline zone when she was seized by Armenian border troops. The cow has yet to be returned. In the same year, the village herd numbering 100 head of cows was also captured by Armenian border troops. One old cow was lagging behind the rest of the herd and, as she was holding the herd, Armenian border troops knocked her down with a UAZ vehicle and then shot her to death. After the population vented its fury, Georgian law-enforcement bodies intervened and arranged for the return of the cattle to villagers.

Tzakendi village, 2006

11. According to applicant Vahid Naibov, Armenian border troops have seized a horse on a borderline area called Garadash, and have not returned it yet. Vahid Naibov, the owner of the horse, has seen Armenian border troops riding his horse but could not take it away on his own.

Xuludere village, 2006

12. In 2006, Vali Afandiyev was attacked by Armenian border troops when he was fetching water. Vali was carrying the water on a cart drawn by a donkey. During the attack Vali managed to escape, but the donkey-drawn cart has been seized by the Armenians. Vali Afandiyev has been unable to return it.

Xuludere village, 2008

13. According to Huseyn Mammadov, the cow of his neighbor Elimdar Isa oglu Afandiyev was seized by Armenian border troops in 2008 and has not been returned yet.

Xuludere village, June 2008

14. According to Mahammad Naibov, the brother-in-law of Banovsha Naibova, a widow and mother of three, his daughter-in-law was subjected to outrageous treatment on the part of Armenian border troops. Banovsha is leasing a land plot where two of her cows were grazing. The cows were the only source of subsistence for the widow and orphans. Armenian border troops stole both cows. One broke free and managed to return to the village, while the second was taken away. After demands from villagers, Armenian border troops allowed them to search the Armenian border garrison built on Georgian territory. The cow was not found but a cow head and hide were discovered. Villagers applied to Georgian law-enforcement bodies and the parents of the Armenian soldier who had stolen the cow reimbursed part of the cow's cost.

Burma village, 2008

15. Armenian soldiers fired on Etibar Jafarov Turkmen oglu from Armenian territory although Etibar was on the territory of Georgia. He was lucky to stay alive.

Beitaraphchi village, 2006

16. Resident of the Beitaraphchi village Ismayil Ismayilov notes that villagers are facing "outrageous treatment on the part of Armenian authorities. As an example he referred to the fact that the Armenian side has illegally seized over 100 hectares of lands which had always been on the balance-sheet of the Beitaraphchi village on Georgian territory. It was also noted that until now have been paying tax to the Georgian government for using these lands, while now they 'suddenly'

happen to be in Armenian territory. For example, a resident of the village, Adil Gahramanov, has lost his garden and the land for which he was paying tax to Georgian authorities. Villagers believe that such connivance of Georgian authorities creates conditions for unlawful and groundless intrusion and expropriation of private property by Armenian authorities. Villagers indicate that all this is being done to create unbearable conditions for residents of the Beitaraphchi village, which will eventually compel them to leave their homes. The population has subsistence farms and depends on land for survival.

Sadakhlo village, April 2008

17. This incident occurred in April 2008 when the horse of Georgian citizen Almaz Bediyev, a resident of Sadakhlo, was seized by Armenian military on Georgian territory. The horse was subsequently used in the construction of an Armenian military base on the border with Georgia. All appeals by the local resident to Georgian authorities did not yield any fruit. For Almaz Bediyev this horse was the only source of income.

Sadakhlo village, January 2010

18. Valeh Naibov, a citizen of Georgia, was kidnapped by Armenian military and released a day later. Georgian authorities did not rise to support their citizen in any way. No legal assessment was given to this issue either.

Burma village, 2008

19. Allahverdi Ziyatkhan oglu Jafarov, a citizen of Georgia, was illegally detained by Armenian border troops on Georgian territory, taken to Armenia for two days and released after the payment of a ransom. Georgian authorities did not rise to support their citizen in any way.

Burma village, 2008

20. Elmaddin Yusif oglu Jafarov was detained by Armenian border troops while grazing cattle on Georgian territory and kept for one day. His cow was taken away, while he was released only after paying a bribe to Armenian border troops. Georgian authorities did not rise to support their citizen in any way.

Tzakendi village, December 2008

21. Annagi Palangov, Amirkhan Naibov, JamalJafarov, all citizens of Georgia, were illegally detained by Armenian troops and, together with their cattle, taken to Armenia. After hours of humiliation, insults and payment of a ransom-bribe, they were released. Georgian authorities did not rise to support their citizen in any way.

Tzakendi village

22. Tahir Mammadov, a citizen of Georgia, was taken to Armenia together with three cows he owned. After return he suddenly died causing suspicion that he had been poisoned. Georgian authorities did not rise to support their citizen in any way.

Burma village

23. Vahid Mammadov, a citizen of Georgia, was robbed by Armenian military on the Georgian border. His two sheep were taken away. Georgian authorities did not rise to support their citizen in any way.

Burma village, 2008

24. Shamistan Allaz oglu Fatalov, a citizen of Georgia, was arrested by Armenian border troops on Georgian territory. His six cows he had been grazing near his home were taken away. He was released only after his family had paid 400 Lari (about \$300). Georgian authorities did not rise to support their citizen in any way.

Xuludere village, 2008

25. Eldar Khudiyev, a citizen of Georgia, was robbed, humiliated and insulted by Armenian military in 2008. His cow was taken away. Georgian authorities did not rise to support their citizen in any way.

Sadakhlo village

26. Shani Gara oglu Jalilov, a citizen of Georgia, was illegally detained by Armenian military, paid a ransom-bribe of \$ 200 and released after intervention by Georgian authorities. Armenian military took away his horse and cart.

Sadakhlo village, 2005

27. Sadraddin Mola Gara Palangov, a citizen of Georgia, went missing while grazing his cattle on Georgian-Armenian border in 2005. Only his blood-stained clothes were found. The investigation by Georgian authorities did not establish those guilty.

Molaoghli village

28. Kamandar Jahangir oglu Mustafayev and Mehman Asgarov were detained by Armenian military, beaten up, taken to Armenia and, after intervention on the part of Georgian authorities, released only nine days afterwards. They experienced a severe stress because after seeing the “death corridor”. No charges were leveled against Armenian authorities or compensation paid to victims. The contribution of Georgian authorities was limited only to the participation in their release. No further legal or any other assistance was provided to the victims.

Tzakendi village

29. Armenian armed forces have beaten up Georgian citizen Gabil Ayatxan oglu Xanov on Georgian territory and taken to Armenia. His illegal arrest lasted two days. According to him, when arrested he was on a territory he had always known to be Georgian. The arrest did not lead to any administrative implications for the “offender”, which is further evidence of the fact that the arrest was illegal.

Burma village, 2008

30. Georgian citizens Allahverdi Ziyadxan oglu Jafarov and Jamal Ismayil oglu Jafarov were arrested illegally and humiliated by Armenian soldiers on Georgian territory. Without any court decision or investigation, they were illegally taken to Armenia and kept there for two days. The intervention of local authorities facilitated their return but no legal assessment was given to the illegal action by Armenian armed forces.

Molaoghli village, 2006

31. Kamandar Jahangir oglu Mustafayev states that his 13-year-old daughter left the house of her grandmother, who lives in the Sadakhlo village, but never reached home. The search lasted two days and the girl’s body was discovered near the Debeti river near the Georgian-Armenian border.

Molaoghli village, October 2007

32. Applicant Kamandar Jahangir oglu Mustafayev. In October, this citizen, together with his fellow villager Mehman Asgarov, was detained by the Armenian side in the forest and taken into captivity for nine days. Since he is uneducated, he cannot specify the place in which he was kept in custody. The two were released only after the local population repeatedly requested the local police to have them returned.

Sadakhlo village, 2008

33. Applicant Ali Yusif oglu Mammadov. This citizen claims that in the 1930s the Mushul forest was a cattle breeding and apiculture place belonging to Georgia. He was born in that area himself. The area was also home to several generations of the Bayramgullu, Musalli and Mollahallarov families, who were also engaged in cattle breeding and apiculture on the territory. Ali notes that there were water tanks near the area, which supplied drinking water to adjacent villages. He said there is a stone near the tanks on which the year of their establishment, 1934, is inscribed together with the name of the then chairman of the collective farm, Elman Eminov. In 2007, Mamish Isa oglu Dushturov, who was also engaged in cattle breeding and bee-keeping, was kidnapped by the Armenian side together with all his property. He was released only after repeated demands of the local population and police, but his property has yet to be returned.

34. Applicant Ali Mammadov was kept in captivity for one day, after which he was released. After all these developments, local population realized that it wasn’t safe to live there and had to move to neighboring villages. “I am living in the house of my son, but I want to return to where I was born and grew up. I do hope that our state will finally demarcate the official border and return its territory, thus ensuring our security.”

Sadakhlo village, 2008

35. In 2008, Armenian border troops stole two cows from Zalxa Valiyeva, a citizen of Georgia. The cows have not been returned yet.

Sadakhlo village, April 2008

36. Applicant Ali Mammadov notes that Armenian border troops stole Alladin Salmammadov's horse on Georgian territory. People have repeatedly seen Armenian servicemen riding the horse to borderline territories, but the owner of the horse cannot have it returned. He still hopes that Georgian authorities can help him solve this problem.

Burma village, 2007

37. Georgian citizen Suleyman Xuda oglu Palangov states that the Armenian side has stolen his cattle and only after repeated appeals by local residents and Georgian authorities released it.

Burma village, 2009

38. Applicant Tahir Mammadov, a citizen of Georgia whose house is located 20 meters from the Armenian border, says Armenian border troops have illegally seized five of his cows while they were grazing near the house and returned them a week later only after intervention by local Georgian authorities. After this, all the animals contracted an unknown disease and died. The Armenian military also took away one turkey and two sheep which had left the courtyard. Citizen Tahir Mammadov also states that it was not safe to live in this area because there are only Armenian border troops there and not a single Georgian soldier to protect the villagers. Mammadov does hope that Georgian authorities come back and protect them from the Armenian arbitrariness.

Tazakendi village, 28 February 2010

39. Kidnapped by Armenian military together with 10 cows and a horse and was still in captivity when this report was being prepared.

Irgancay village

40. Each of the following facts in the Irgancay village was accompanied by humiliation of the following people. None of these people received any compensation or legal support from the Georgian authorities. The absence of an effectively protected border makes it possible for Armenian armed forces to commit breaches of the rights and freedoms of the region's national minorities:

- Zakir Valiyev, Armenian troops have taken away one horse. There is no legal assessment of what happened. **June 2007**
- Vahid Yagubov, Armenian troops have taken away 8 head of cattle. **2008**
- Ilham Mammadov, Armenian troops have taken away one horse. **June 2007**
- Nabi Omarov, Armenian troops have taken away one horse with a colt. **June 2007**
- Mahir Omarov, Armenian troops have taken away three cows. **October 2008**
- Alpasha Suleymanov, Armenian troops have taken away one horse. **June 2007**
- Mustafa Aliyev, Armenian troops have taken away one horse. **April 2008**
- Polad Gulmammadov, Armenian troops have taken away one horse. **October 2009**
- Xaladdin Valiyev, Bafali Yagubov, Shahin Aliyev – Armenian troops have taken away eight cows. **June 2007**
- Tarzan Aliyev, Armenian troops have taken away one horse with a colt. **2007**
- Elchin Nabiyev, Armenian troops have taken away a herd of 30 sheep. **May 2007**
- Salim Osmanov, Armenian troops have taken away one horse and returned it for a bribe of 150 Lari. **October 2009**
- Karem Cherpanov, Armenian troops have taken away one cow. **October 2008**
- Gazanfar Suleymanov – Armenian troops have taken away one horse. **June 2007**
- Ali Yusibov, Armenian troops have taken away one cow. **October 2009**

Violent actions by Armenia against civilians in the settlements of Azerbaijan Republic.

41. This report is intended to draw attention of the existing violence near the Azerbaijani-Armenian border, as well as the territories of Azerbaijan, that were captured by the occupying armed forces of Armenia. According to the UN resolutions by number 822 (1993) of 30 April 1993 , by number 853 (1993) of 29 July 1993 , and by number 884 (1993) of 12 November 1993 , Armenia is recognized as one of the parties to the conflict. According to the above resolutions, the UN recognized Armenia illegally occupying side and on the basis of which is responsible for the situation in Nagorno-Karabakh and in other contiguous and occupied areas of the Azerbaijani Republic. Based on the above, the Armenian authorities are responsible for the violent actions of the Armenian armed forces against civilians and local residents in Azerbaijani-Armenian border, and in the territories of the Republic of Azerbaijan that were captured by Armenian armed forces .

42. A large number of killed and wounded, the maimed civilians, citizens of Azerbaijan, which the violation continues to occur at the present time, the systematic attacks on civilian population centers, attacks on civilians by Armenian snipers gives rise to a violation of fundamental human rights - the right to life, the right live in a safe environment. This situation calls into question the arguments of the Armenian authorities on the situation on the implementation of Armenia's international obligations concerning the fundamental human rights, including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

2007 year

43. As a result of the shooting at civilians by Armenian armed forces:

- 31.03.2007 – Azad Allahverdiyev and Sarkhan Shukurov, residents of Fizuli area were injured
- 02.12.2007 – Habil Asqarov, resident of Fizuli area was injured
- 22.05.2007 – Sanan Quliyev, resident of Khocavand area was injured
- 28.06.2007 Mahabat Pashayev, resident of Gadabay area was killed (was born in 1993)
- 14.11.2007 Emin Qahramanov, resident of Aqjabadi area was injured (was born in 1982)

2008 year

44. As a result of the shooting at civilians by Armenian armed forces:

- 04.03.2008 - Rahman Aliyev and Miralim Heydarov, residents of Goranboy area were injured (birth date 1970 and 1962)
- 08.03.2008 - Mashallah İsmayilov, resident of Aghdam area was injured (was born in 1963)
- 08.03.2008 - Niyamaddin İsmayilov and Etibar Mikayilov, residents of Aghdam area were killed (birth date 1982 and 1971)
- 22.06.2008 - Yeqana Mammadova, resident of Aghdam area was injured (was born in 1980)

45. In the conflict zone as a result of undermine mines:

- 29.02.2008 - Nabi Nadjafov, resident of Aghdam area was injured
- 19.05.2008 - Ahad Valiyev, resident of Beylaqan area was injured (was born in 1985)
- 16.11.2008 - Abdulla Qurbanov, resident of Aghdam area was injured (was born in 1988)

2009 year

46. As a result of the shooting at civilians by Armenian armed forces:

- 01.06.2009 - Mulkadar Ismailov, resident of the Kazakh area was injured (was born in 1942)
- 22.11.2009 - Gahramanov Saday, resident of Goranboy district was killed (was born in 1977)

In the conflict zone as a result of undermine mines:

- 17.07.2009 Sayad Mustafayev, resident of Kazakh area was injured area (was born in 1984)
- 23.12.2009 Sabir Khasanov, resident of Terter area was killed (was born in 1938)

2010 year

47. As a result of the shooting at civilians by Armenian armed forces:

- 02.26. 2010 -Asif Guliyev, resident of Aghdam area was injured (was born in 1972)
- 03.03.2010 - Hasan Huseynov and Sakit Namazov , residents of Kazakh area were killed (birth year -1982 and 1983)
- 25.03.2010 - Abdullaev Shamistan, resident of Aghdam area was injured (was born in 1994)
- 28.08.2010 - Maharamova Nurana, resident of Aghdam area was injured (was born in 1983)
- 17.09.2010 -Nusraddin Piraliev,resident of Kazakh area was killed (was born in 1957)

48. In the conflict zone as a result of undermine mines:

- 29.08.2010 - Ilgar Aliyev, resident of Hodzhaved area was injured (was born in 1984)
- 03.09.2010 - Mirzaev Ali , resident of Hodzhaved area was injured (was born in 0982)
- 28.10.2010 -Fairuz Salakhov, resident of Aghdam area was injured (was born in 1952)

2011 year

49. As a result of the shooting at civilians by Armenian armed forces:

- 25.01.2011 - Shovkat Aslanov, resident of Aghdam area was injured (was born in 1953)
- 08.03.2011 - Fariz Badalov, resident of Aghdam area was killed (was born in 2000)
- 27.07.2011- Rahila Poladova, resident of Kazakh area was injured (was born in 1987)
- 27.7.2011 - Naila Mammadov, resident of Tovuz area was injured (was born in 1984)
- 10.09.2011 - Dashkyn Aliyev, resident of Tartar area was injured (was born in 1967)
- 12.22.2011 -Elmira Hasanov, resident of Aghdam area was injured (was born in 1956)

50. In the conflict zone as a result of undermine mines:

- 25.04.2011 - Askyarov Shaban, resident of Goranboy area was killed (was born in 1980)
- 28.04.2011 - Algama Abbasova, resident of Dzhabrail area was injured (was born in 1962)
- 03.06.2011 - Piriye Elmar, resident of Aghdam area was killed (was born in 1960)

2012 (January - March)

51. As a result of the shooting at civilians by Armenian armed forces:

- 30.03.2012 - Vusal Guliyev, resident of Tovuz area was injured (was born in 1991)

In the conflict zone as a result of undermine mines:

- 01.23.2012 - Valiev Mamedand Gambar Abbasov, residents of Goranboy area were injured (birth years 1973 and 1987)
- 09.03.2012 -Rovshan Bayramov, resident of Aghdam area was injured (was born in 1979)

The situation surrounding the implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment by Armenia.

Introduction:

52. As we know, during the reporting period the amendments to the Constitution of the Republic of Armenia were adopted through a national referendum on 27 November 2005. Article 3 of the Constitution states that the human being and the dignity, fundamental rights and freedoms thereof are ultimate values. The state ensures the protection of fundamental human and civil rights and freedoms in conformity with the principles and norms of the international law. Also in the reporting period, the Republic of Armenia has ratified fundamental international human rights treaties such as the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 2002, the Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols (1–8, 11, 12, 14), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 and its two protocols, etc.

It should be emphasized that the new Criminal Code of the Republic of Armenia was adopted on 18 April 2003. In accordance with internationally accepted principles and values, the Criminal Code is based on the principles of legality, equality before the law, inevitable liability, fault-based liability, justice and humanity. Thus, article 11 of the Criminal Code prescribes that the Criminal Code of the Republic of Armenia serves to provide for physical, mental, material, ecological, and other human security, and that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Moreover, based on the commitments under the Convention, article 119 of the

53. Criminal Code of the Republic of Armenia qualifies torture as a criminal offence and prescribes a relevant punishment therefore. Pursuant to the mentioned article, torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. Such act shall be punished by imprisonment for a maximum term of three to seven years, and in case of aggravated circumstances, by imprisonment for a term of three to seven years.

However despite these amendments, in reality there are repeated violations of human rights in Armenia.

In this report, we list the specific cases that occurred in Armenia during the reporting period.

Cases of Torture:

54. Since 2008 5 persons were sentenced under article of torture (article 119 of Criminal Code of Armenia): 2 of them were later granted amnesty, and means of coercion of medical nature was applied to the third one. According to Caucasus Regional Director of Penal Reform International (PRI) Tsira Chanturia in Georgia and in Armenia there are many cases when people commit torture but are not punished for it.

55. According to her, impunity rules since the cases of torture do not get equivalent legal estimation. "Each case should be investigated in a proper and objective manner. Investigations should be conducted by an independent authority, such as Special Investigative Service. All the evidence should be gathered, including the medical documentation about the consequences of torture and ill treatment, after which those government officials, who committed it, should be charged under the right article. This would be a solution to the impunity problem", says Tsira Chanturia.

56. Member of the UN Sub-committee on Preventing of Torture and President of Civil Society Institute NGO Arman Danielyan mentions that the definition of torture in the RA Criminal Code doesn't correspond to the definition of the UN Convention on the Prevention of Torture. The torture

according to the convention is the physical or psychological violence towards a citizen committed by an official with the aim to get confession or other information, etc. According to the RA legislation, torture can occur between citizens as well. According to Arman Danielyan this makes the situation difficult and it becomes hard to differentiate between two types of crimes. "As a result officials, who commit torture, are sentenced under other articles, such as abuse of power, etc.

57. "Very few government officials are punished under the article of torture or ill treatment as a result of committing or giving permission to commit acts of torture. If there are after all officials, who are brought to justice, they are brought under different articles, such as abuse or exceeding of power, etc. In very rare cases, and I can't even remember now a recent case in 2010 or 2011, was there somebody charged under the article of torture", says Tsira Chanturia.

58. Arman Danielyan supports the reduction of the numbers of torture instead of having increase in the number of convicts under the article of torture. "I am for preventing tortures. It is easier to prevent rather than eliminate the consequences. In this case courts play a huge role". According to Danielyan, the main reason for torture in Armenia is the process of obtaining confession by force and sentencing the person based on this confession. "Today even if the person enters the court and states that he was tortured and therefore he refuses from his confession, still the basis for the conviction is the confession obtained by torture. Therefore, if the courts didn't accept these confessions, this would completely change the situation" mentions Danielyan.

59. The expert sees one more method as a way to eliminate torture. That is eradicating the practice of racing for the highest percentage of revelation of criminal cases. "It is considered in our system, that the higher the percentage of disclosed crimes of one policeman or police department is, the higher the productivity of that policeman or department is. And for reaching these high rates, policemen use the easiest way- torture, for getting confession and increasing the number of revealed cases", says Mr. Danielyan, adding that eradication of such practice could also reduce the number of torture in our country.

60. Tsira Chanturia also mentions that it is important to carry out the investigation in all places of detention, either in police, or prison, or mental health hospital or army units, wherever the people are deprived of their liberty, in order to reveal cases of torture. "However, for having a positive result also political will is needed on the part of Armenian authorities", adds Ms. Chanturia.

Police activities in 2011

61. Karen Andreyan, Human Rights Defender, assesses the RA Police activities in 2011: "In some cases, investigation and preliminary investigation bodies subjected people to cruel, inhuman, as well as humiliating treatment for obtaining testimony". Ombudsmen: "In many cases a person has been unreasonably "invited" to a police department", kept there against his/her will, factually being deprived of liberty without having an appropriate status foreseen by the RA Criminal Procedural Code.

- There were often cases when a person suspected of a crime was brought to the police department (without any status) and kept there more than 3 hours violating the requirements of the Article 131.1 of the RA Criminal Procedural Code.
- In many cases reports on crimes were not followed up in the order foreseen by the Criminal Procedural Code, and they were "attached to a series".
- In some cases, a person's passport was taken from him/her by police officers without legal grounds and kept as a guarantee.
- In many cases, people, having physical injuries as a result of a crime, were not given a forensic examination official document or were provided with them after unduly delays and sometimes very untimely.

- There are many cases, when terms, defined by the Article 180 of the RA Criminal Procedural Code for consideration of reports about crimes, were violated.
- Sometimes criminal cases were not initiated in case of contradictions in explanations given during preparations of materials, which would enable the investigation body to carry out face to face interrogations to ensure objectivity, fullness and comprehensiveness of the case.
- In some cases, the terms of keeping detainees in Detention facilities were violated.
- During investigation and preliminary investigation people were sometimes invited to interrogation with violations of the requirements of the Article 205 of the RA Criminal Procedural Code.
- In some cases, people brought to police departments, were deprived of the right of having a defender.
- There were complaints that under the pretext of identifying the wanted person, police officers had entered one's apartment and conducted a search without a corresponding court decision.
- The Passport and Visa Department and territorial departments often unreasonably denied the citizens of Armenia in providing them with passports, due to not being registered.

Instances of inhuman treatment occur primarily in police departments.

62. In its 2010 Progress Report Armenia (which was published in 2011) the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated that torture and other manifestations of ill-treatment continue to occur in police departments. The Report says that ill-treatment mainly consisted of punches, kicks and blows inflicted with truncheons, bottles filled with water or wooden bats, with a view to securing confessions or obtaining other information. In several instances, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture.

63. The CPT recommended the Armenian authorities to deliver a firm message of "zero tolerance" of ill-treatment to all officials. In 2011, there has been no positive change in Armenia. The instances described by the CPT went on also in 2011¹.

64. In 2011, the civic group that exercises supervision over the RoA Police detention centers recorded instances when investigators arranged for a transfer of a detainee to a detention center 5-55 hours after apprehension or investigative actions were organized outside detention centers and lasted up to 25 hours.

65. By its 21 March 2011 decision the RoA Special Investigative Services for the third time closed a criminal case that had been opened in connection with Levon Gulian's death¹, thereby failing to implement the 27 August 2010 RoA Cassation Court ruling to correct the violation of the person's rights and freedoms committed during the pre-trial investigation. The decision to close the case was appealed to a higher court. A reply was received from prosecutor H. Harutiunian that said that the appeal is not reviewed because powers of attorneys H. Ghukassian and A. Karakhanian, the representatives of the aggrieved party's legal successors, are not recognized². The decision of the higher court was appealed against at the court of general jurisdiction.

¹ Citizen A.D. and his wife were taken to a police department on June 14 with a view to extorting a confession. The wife was held in the police department for one day. A.D. was subjected to beating first with a piece of parquet and with truncheons and then to electric shocks inflicted to his back. He was held for four days in the police department and then transferred to a detention center.

² According to the body in charge of the pre-trial investigation the powers were terminated upon expiration of the term of the power of attorney; however, the RoA Criminal Procedure Code does not list that as grounds for termination of powers.

66. By its 25 May 2011 ruling the court overturned the decision to close the case. The ruling was appealed against by the prosecutor's office to the Appeals Court for Criminal Cases.

67. By its 30 June 2011 ruling the Appeals Court upheld the ruling. On July 18, 2011, the prosecutor's office lodged a complaint with the RoA Cassation Court against the ruling.

68. By its 26 August 2011 decision the RoA Cassation Court returned the complaint to the prosecutor's office. The proceedings in the closed case were resumed based on the decision of the RoA Cassation Court.

Torture and ill-treatment in police custody remains a serious problem³

69. Local human rights groups report continued ill-treatment in police custody. For example, on April 13, 2010, police detained 24-year-old Vahan Khalafyan and four others in Charentsavan, north of Yerevan, on suspicion of robbery. Khalafyan died of knife wounds some hours later. Police say he stabbed himself with a knife obtained in the station, and deny allegations of ill-treatment.

70. On April 23, investigators charged the head of Charentsavan's Criminal Intelligence Department and three others with abuse of authority. The trial is ongoing at this writing. Khalafyan's relatives and human rights groups want additional murder and torture charges. An internal police investigation led to the dismissal of Charentsavan's police chief and three officers. The Helsinki Citizens' Assembly (HCA) Vanadzor Office reported that police ill-treated two other men detained with Khalafyan. Police failed to conclusively investigate these incidents.

71. On August 27 a court ordered the investigation into the death in custody of Levon Gulyan be reopened. In May 2007, Gulyan was found dead following a police interrogation. Authorities say he jumped from the second-story of a police station trying to escape. Gulyan's relatives deny this, insisting he was tortured.

72. During a September 2010 visit the United Nations Working Group on Arbitrary Detention interviewed numerous detainees and prisoners who alleged beatings, other ill-treatment in police custody, and refusal by prosecutors and judges to admit evidence of the ill-treatment into court.

73. In September a YouTube video showed Army Major Sasun Galstyan beating and humiliating two conscripts. An investigation into abuse of power is ongoing.

74. In June the European Court of Human Rights (ECtHR) found Armenia had twice violated the prohibition against inhuman or degrading treatment in the case of Ashot Harutyunyan. Convicted of fraud and tax evasion in 2004, Harutyunyan died of a heart attack in prison in January 2009. The court determined authorities had denied him necessary medical care for his multiple chronic health problems, including heart disease, an ulcer, and diabetes. The court also found the government's public restraint of Harutyunyan in a metal cage during his appeal hearings amounted to degrading treatment.

75. On July 26, 14 human rights groups issued a statement citing a 20 percent rise in the national prison population, which is leading to overcrowding, health problems, and conflicts among detainees.

³ <http://www.hrw.org/world-report-2011/armenia>

Penitentiaries:

76. Arthur Sakunts the head of Prison Monitoring Group established in 2004 which carries out public control of the penitentiary institutions under the RA Ministry of Justice didn't record any positive change in penitentiaries in 2011. In 2004 in the penitentiary institutions on the contrary, in his opinion the trends have been and are negative. According to Sakunts one of the common problems is that non-legal mechanisms or "non-written laws" are more influential in penitentiaries than the acting legal norms. The laws are not enforced by one reason that the protection of prisoners in places for keeping the arrested is not ensured if they raise a question" says the head of the Monitoring Group. In his opinion that is the reason that the prisoners prefer to keep silence about the bad treatment towards them.

77. Human rights defenders are concerned about the problem of the convicts who have diseases that may prevent the bearing of punishment and about the gaps of Conditional Early Release System which didn't get systematic solution in 2011.

78. The quality of medical service in penitentiaries is a serious issue on which the Monitoring Group and the human rights organizations have raised alarm on different occasions.

79. According to their evaluation there is no dispensary control in penitentiaries though there is a decision made by the Government on that. According to Arthur Sakunts the resources of medical service are not sufficient to provide a proper medical aid. The situation is worse in case of convicts with mental health problems as there are no relevant doctors, the staff is not ready to work with such people.

80. According to Sakunts "Nubarashen" penitentiary is another story. The human rights' defender has mentioned for a number of times that the extremely poor conditions of penitentiary degrades human dignity and are equal to inhuman treatment. In his opinion the best solution is to close that penitentiary as it is impossible to provide normal conditions there by renovation.

81. It is mentioned in the report of the Monitoring Group that "Nubarashen" penitentiary institution is the largest with its full staff in Armenia and corresponds to neither national nor international legal requirements. In 2009 this was the only penitentiary where the prisoners didn't have separate places to sleep and had to sleep in shifts.

82. Arthur Sakunts thinks the head of penitentiary administration must be appointed not by the RA President but by the Minister of Justice otherwise the subordination of the administration to the Ministry is formal. "Sometimes we receive 2 different answers to ad hoc reports one from the Ministry of Justice and the other from the penitentiary administration" says the head of the Monitoring Group. The official response to the ad hoc reports the human rights' defender considers non adequate. "They do not try to solve the problem but to justify the penal system by different grounds."

83. The Monitoring Group which carries out social control in penitentiaries introduced a package of reforms of penal system to the Ministry of Justice at the beginning of the year. According to Arthur Sakunts the Ministry responded mentioning that the recommendations would be taken into account. The year is close to the end but it is not clear for the Monitoring Group whether the recommendations were taken into account and if yes then which one.

Overcrowded prisons:

84. "Prisons are overcrowded, conditions do not satisfy human conditions and come within article 3 (prohibition of torture) of the European Convention of Human Rights", says attorney-expert Artak Zeynalyan. The convention reads: "No one shall be subjected to torture or inhuman or degrading treatment or punishment".

85. Arthur Sakunts, head of the Group of Public Observers of Penitentiary Institutions, has also many times raised the alarm about overcrowding and inhuman conditions in prisons. The human right activist believes that the increase of death rate in penitentiaries is connected with health problems due to bad conditions. According to Sakunts, 35 convicts died in prisons in 2010 against 7 in 2009. Attorney Hayk Alumyan says that the cases when a convict needs urgent medical intervention in a penitentiary but does not get it can also be considered as torture. He proposes to legislatively stipulate procedures for solving disputes rising during the imprisonment of the convicts (including disputes connected with the release from prison due to existence of illnesses incompatibility with prison conditions).

86. Overpopulation in Armenian prisons⁴, and particularly in Nubarashen penitentiary, is a serious issue, said Artur Sakunts, head of the Helsinki Citizens' Assembly Vanadzor office and head of the civic group monitoring Armenia's prisons, at a press conference in Yerevan today on the state of prisons in the country.

87. Weighing in on instances of death in prison, the human rights activist said that there were 7 such cases in 2009 as compared to 35 in 2010.

88. The causes of death, according to Sakunts, are tied to poor air circulation, which leads to serious health issues. Other prevalent issues include establishing contact with the outside world, and free time and recess. All these, he continued, create risks for corruption.

89. "We have presented a package of reforms and proposals on behalf of our monitoring group to the justice minister back in February of this year and we expect there will be certain actions, steps regarding our proposals and also we will receive some information," he said.

90. Arsen Babayan, head of the public relations office at the justice ministry's penal institutions department, who acknowledged the problem of overcrowding, but in this case, he said, the overcrowding is exaggerated. He denied talk of prisoners sleeping in turns. "We have no such issue at this time and we never have."

91. "As for communication with the outside world, it's no secret that as a result of prisoners being so many (in these overcrowded conditions) and shortage of prison staff, there will be some difficulties, but to date we haven't received any complaints about phone calls or recess," said Babayan.

92. The government official then informed the press that a new penitentiary is being built in Armavir and with it, the issue of overcrowding will be resolved. Lifers — of which there are 100 — will also be kept in this new prison, he said.

93. According to Babayan, currently in Armenia there are 5,100 arrested and imprisoned, of which 140 are women and 17 are minors, with an additional 20 minors in pre-trial detention

Illegal detainment:

94. There is no statistics on the number of cases on Article 3 of the Convention sent to the ECHR from Armenia but there is statistics about the verdicts against the RA on the same article. The research "The Process of Implementation of the European Court of Human Rights Verdicts in Armenia: Problems and Peculiarities of their Implementation in Armenia" authored by three lawyers presents 4 such cases.

95. Three of the cases concerned illegal detainment of three villagers (who in 2003 participated in

⁴ <http://www.epress.am/en/2011/06/02/overcrowding-in-armenia-prisons-tantamount-to-torture-says-human-rights-activist.html>

the opposition demonstration) and putting them under 10 day administrative arrest. The villagers were kept at the Armavir police temporary detention cell. ECHR decided that Article 3 of the Convention was violated since the detention conditions were equivalent to inhuman treatment.

96. "The Court has decided that taking into consideration the general effect of detention conditions, difficulties experienced by the detained person, sufferings and feelings of insult and humiliation caused by it have undoubtedly surpassed the minimum allowable limits by which detention conditions can inevitably have negative effect on both mental and physical well-being of the person", the ECHR verdict reads.

97. The RA Government responded to the European Court inquiry that by the President's order of December 2004, large-scale renovation projects works were implemented in all penitentiaries; also in July 2005 the RA Law on Keeping Arrested and Detained Persons was amended due to which the area for keeping arrested persons in police departments was increased up to 4 square meters.

The system of early conditional release

98. The number of persons released on parole has decreased in the last 5 years. In 2006 22 percent of prisoners eligible for release on parole were released, while in 2010 only 7 percent were released.

99. These data were published in the study conducted by Civil Society Institute "The system of early conditional release in Armenia", according to which the reason of decline in the number of prisoners released on parole is that the administrative commissions are guided by the "criteria" of the independent commissions and do not present the categories of prisoners which are rejected by the independent commissions.

100. The Chart in the Study makes it clear that about 30% of prisoners appearing before the independent commissions for early conditional release are released according to the court's decision.

101. CSI lawyer Arman Zrvandyan mentioned that the mere fact that the prisoner did not provide reparations to the victim is not a sufficient ground for rejecting the early conditional release of the prisoner. "In a number of European countries the social rehabilitation of the prisoner is dominant, i.e. if the penitentiary facility achieved its correctional goals the prisoner should live in the society" Zrvandyan said.

102. As a result of the study CSI recommends to make reforms in three phases. First it is necessary to review the competences, staff and the proceedings of the decision-making bodies in the system of early conditional release, as well as to develop and introduce new tools.

103. "It is necessary to withdraw the penitentiary from the bodies which make decisions on early conditional release. In case of written consent of the prisoner whose mandatory prison term stipulated by law is completed the penitentiary must present the corresponding documents to the consideration of the independent commission. The documents should include the assessment of the penitentiary on the behavior, programs implemented with the prisoner and their effects, degree of willingness to live a law-abiding life".

104. The second phase includes the establishment of probation service in the Republic of Armenia. In this phase the penitentiary carries out the assessment of behavior, the impact of the conducted activities and estimation of the results thereof with regard to the prisoner in the penitentiary.

105. "The results of assessment are sent to the independent commissions. After the release the evaluation of risk of reoffending by the prisoner is carried out by the probation service, which sends its substantiated opinion together with the suggested conditions of release to the

independent commission. The commission evaluating the received materials makes a conclusion on releasing the prisoner early or rejects the release” is mentioned in the recommendations.

106. In the last phase effective operation of the penitentiary and probation service should be ensured. As a result the need for the independent commissions may cease to exist.⁵

107. Local and international human rights organizations reported ill-treatment of detained persons in police custody. In August 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 torture of detainees, allegedly in order to secure confessions and other information. In August police beat and detained seven ANC activists after they intervened in what they believed was an illegal police stop and search of another man in a Yerevan park. Medics diagnosed the activists with concussions. Police charged all seven with hooliganism and assaulting an official. A court remanded one activist, Tigran Arakelian, to four months of pre-trial detention. At this writing there had been no investigation into the police’s actions. In June two plainclothes Yerevan police officers shot and killed robbery suspect Arman Yengibaryan. Police justified the use of force by saying Yengibaryan fired a gas pistol at police while fleeing. Local human rights groups contend police actions were excessive. Yengibaryan’s gun had no live ammunition and gunshot wounds to his head and abdomen suggest police did not try to minimize recourse to lethal force. An initial criminal investigation concluded the police actions were lawful, but Yengibaryan’s family is challenging that outcome on the basis that the investigation was not effective, as required by international law, and in particular because they, as the family of the deceased, had no access to the investigation.

108. Despite a May amnesty releasing 590 prisoners, prison overcrowding persists, leading to violations in detention conditions and standards of treatment, such as unhygienic conditions, inadequate medical care, and lack of exercise. Overcrowding is mainly due to courts improper overuse of pre-trial detentions

Deaths in Custody

109. Unexplained deaths in custody also mar Armenia’s human rights record. In October 2010 Slavik Voskanyan died in pre-trial detention in Vanadzor two weeks after his detention on murder charges involving a police officer’s mother. According to his family, Voskanyan died from gangrene, which developed after a wound sustained in custody became infected and was not properly treated. A criminal investigation was closed after it concluded that the prison doctor’s negligence was not responsible for Voskanyan’s death. The investigation never examined how Voskanyan sustained the wounds that lead to his death. In November 2010 a court convicted Ashot Harutyunyan, former head of the Charentsavan Police Investigative Department, to eight years for abuse of authority and incitement to suicide with respect to Vahan Khalafyan, who died from knife wounds in police custody in April 2010. Local human rights groups and Khalafyan’s family believe he was stabbed to death. In May 2011 a court overturned prosecutors’ March 2011 decision to terminate the investigation into the 2007 death of Levon Gulyan. Officials claim Gulyan jumped from the second story of a police station while trying to escape. Gulyan’s relatives insist he was tortured.

⁵ The attorney Narine Rshtuni referred to the case of her defendant Manuk Semerjyan who has been in prison for 20 years and the term of consideration of his early release stipulated by law has expired. The judge of the Criminal Court of Appeal Mher Arghamanyan did not take the arguments of Semerjyan’s attorney Narine Rshtuni into consideration that Semerjyan has a right to make use of the opportunity to be released on parole and there is no psychological conclusion that in the last 5 years Semerjyan behaved in such a way that today he is dangerous for the society. “Besides they bring a reason that Semerjyan hasn’t compensated the damage caused to the victim. We have looked for the victim and Haven’t found him, besides during these 20 years he hasn’t been given a chance to earn money himself and compensate the caused damage”

Army Abuses

111. Local human rights groups report ill-treatment, hazing, and an alarming number of noncombat deaths in the army. The Helsinki Citizens' Assembly's Vanadzor Office reported at least 17 non-combat deaths through October 2011. For example, Torgom Sarukhanyan, 21, died in February, allegedly of a self-inflicted gunshot. Ministry of Defense investigators arrested three servicemen on charges of incitement to suicide. Sarukhanyan's family claims that he was murdered and that his body bore signs of beatings. In December 2010 a court sentenced Maj. Sasun Galstyan to three years imprisonment for abuse of authority.