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Implementation of CAT and Article 3 of the European
Convention on Human Rights in Armenia:
Challenges and achievements

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Armenia became a full member of the Council of Europe in 2001. In accordance with opinion no. 221(2000) of the PACE, Armenia undertook a wide range of obligations, including (in 2002) ratifying the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Armenia acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1993, and in 2006 ratified the Optional Protocol to the UNCAT. In 2008, within the framework of the National Preventive Mechanism for the prevention of torture, a Human Rights Defender was appointed by law.

Since ratifying these documents, steps have been taken to fulfill their international obligations, including reforms to the penitentiary system. Control over the penitentiary system was transferred from the police to the Ministry of Justice, which saw a significant reduction in incidences of torture and ill-treatment. Steps were also taken to rebuild and renovate penitentiary institutions, and, recently, cooperation was established between the police and the Chamber of Advocates to guarantee the prompt involvement of defense attorneys in criminal cases.

Despite these positive achievements, serious problems persist which prevent the full and effective implementation of the relevant treaties in Armenia, in particular with respect to compliance with the prohibition of torture.

Compliance with the UNCAT definition of torture:

The Criminal Code (CC) provides no specific provision on 'torture' as recognised and defined by Article 1(1) of the UNCAT.¹ Article 119 of the CC fails to correctly define torture, calling it any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. However, if the act intentionally inflicts life-threatening injuries, it will fall under other Articles of the CC. The *corpus delicti* of torture - the elements of coercive, punitive or discriminatory purpose, and the official capacity of the perpetrator, are entirely omitted. Article 119 is applicable in the context of relations between two people, without the involvement of State agents. In fact, the perpetrators of this crime frequently avoid criminal prosecution through amnesty or pardon.

Article 341(2) of the CC is more specific and provides that a judge, prosecutor, investigator or body of inquest, who uses torture or other violence to compel a witness, suspect, accused or victim to testify or compels an expert to issue a false opinion, is punishable by three to eight years imprisonment. This article criminalises torture as instances of coercion to give testimony or bear false witness, but only when testimony is given for the purpose of a trial, and it does not cover acts of torture by public officials in other contexts, such as in penitentiary institutions or the armed forces.

Adequacy of preventative measures (police, penitentiary system and army):

After a crime is reported to the police, they can conduct an investiga-

tion before the criminal case officially opens. In these situations, people can be summoned before the police without being designated any formal status (e.g. suspect, defendant or witness). At this stage, there is no right to notify a relative, or have access to an attorney or doctor. These rights can only be enjoyed once the protocol on arrest is drawn up. According to Article 131.1(1) of the Criminal Procedure Code (CPC), the protocol on arrest should be drawn up within three hours of bringing the suspect before the investigating authority. However, in practice, this period often significantly exceeds three hours. This 'unofficial' period of questioning is clearly open to abuse and liable to be used for eliciting confessions and/or collecting evidence before the apprehended person is formally declared a criminal suspect and informed of their rights.

Effectiveness of investigations into torture allegations:

The independence and effectiveness of investigations into allegations of torture are compromised as the police themselves lead such investigations. A Special Investigation Service was established in 2007 to investigate cases involving alleged abuse by public officials. However, in practice, they become involved only after the criminal case is officially opened. Before that, the police are responsible for verifying the grounds for instituting a criminal case. Consequently, allegations of torture rely on being investigated by the very entity to which the perpetrators of torture themselves belong. The ineffectiveness of investigations into allega-

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tions of ill-treatment is illustrated in the recent landmark case of *Virabyan v Armenia* (No. 40094/05) 02.10.12 in which, for the first time, Armenia was held accountable for torture in police custody under Article 3 (substantive and procedural) ECHR.

Examination of torture allegations by the courts and assessing the admissibility of 'tainted' evidence:

While international law and national legislation place a strong obligation on State authorities to investigate allegations of torture, this obligation is not always met. Judges also have an obligation to assess the admissibility of evidence. Armenian law clearly prohibits the use of evidence obtained through the use of torture, coercion or fraud, as a result of a violation of the rights of the suspect or the accused, or procedural violations.² However, in practice, judges largely ignore or deny motions of the defence to exclude evidence they claim to be inadmissible. Moreover, domestic judges are often more inclined to rely on the pre-trial testimonies of the defendants and witnesses, rather than oral testimonies given in court, especially if they contradict one another.³

Conditions of detention and treatment in custody:

Overcrowding in penitentiary institutions causing inhuman and degrading conditions is a serious problem in Armenia. The Court has held that severe overcrowding and denial of basic needs (such as beds and sufficient food) during a 10 day period in detention amounted to degrading treatment contrary to Article 3.⁴ In *Harutyunyan v Armenia* (No. 36549/03) 28.06.07, the Court found a violation of Article 3 due to inadequate medical care in the detention facility and the degrading and unnecessary use of a metal cage during the appeal hearing. Overcrowding is the result of shortsighted policies such as the usage of detention as a measure of restraint, the limited application of alternative sentences, the limited application of release on parole, and shortcomings in the system of conditional release or early release on compassionate grounds. In particular, due to the multiplicity of decision-making bodies⁵ and an absence of clear and accessible procedures, the process of decision-making in prisoners' cases suffers from undue delays and decisions on prisoners' release frequently lack justification.

Torture, particularly by the police during interrogations, remains a critical issue in Armenia. The current legislative framework which criminal-

ises torture is inadequate. A lack of prompt legal and medical assistance to victims undermines efforts to prevent torture. Serious shortcomings in investigative methods and the lack of an independent investigative body contribute to an overall environment of impunity. The excessive use of custodial measures and the malfunctioning of the system of early release on parole and compassionate release causes overcrowding in the penitentiary system, resulting in degrading conditions under Article 3. Furthermore, domestic courts are not sufficiently rigorous in conducting proper assessments into the admissibility of evidence obtained under torture.

1 "[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

2 Article 11 (7) of the CPC, Article 4 (3) of the CPC.

3 Court Monitoring Report on Military Crimes, "Protection of Rights without Borders" NGO, 2012

4 *Mkhitarian v Armenia* (No. 22390/05); *Tadevosyan v Armenia* (No. 41698/04); *Kirakosyan v Armenia* (No.31237/03) all 02.12.08.

5 Administrative Commission, Independent Commission, the Court.