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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Fourth periodic reports of States parties due in 2016

Armenia*, **

[Date received: 24 June 2015]

* The third periodic report of Armenia is contained in document CAT/C/ARM/3; it was considered by the Committee at its 1064th and 1067th meetings, held on 10 and 11 May 2012 (CAT/C/SR.1064 and 1067). For its consideration, see the Committee's concluding observations (CAT/C/ARM/CO/3).

** The present document is being issued without formal editing.

Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/ARM/QPR/4)

Criminalisation of torture

Reply to the issues raised in paragraph 1 (a)

1. In order to prevent further similar violations, structural legislative reforms have been undertaken to bring national legislation in line with the international best practice. Taking into account that national legislation criminalizing torture does not include crimes committed by public officials, as well as it lacks the purposive element recognised in the UNCAT, the Article defining torture was totally changed and brought in conformity with the requirements of Article 1 of the UNCAT by the Law on Making Amendments and Supplements to the Criminal Code and on Making Amendment to the Criminal Procedure Code of the Republic of Armenia which was adopted on 8th of June 2015 by the Parliament.

2. In addition, it ensures that all public officials engaged in conduct constituting torture are charged accordingly, and that the penalty for this crime reflects the gravity of the act of torture as required by Article 4 of the UNCAT. The amended article imposes suitable penalty for such acts, which is in conformity with the international best practice. Moreover, in contrast with the existing legislation, which stipulates the private criminal prosecution for cases of torture where the sole ground for the initiation of criminal proceedings in such cases is the victim's complaint, the Law on Making Amendment to the Criminal Procedure Code considers it as a subject of public criminal prosecution, which is initiated by a decision of the supervising Prosecutor. Moreover, according to the new amendments the acts of torture by private actors should also be subjected to public prosecution. This can be considered as an additional guarantee for ensuring the initiation of criminal proceedings in each such case.

3. It is worth to inform that the Law on Making Amendments and Supplements to the Criminal Code and Making Amendment to the Criminal Procedure Code is a brand new package of amendments, which in contrary to the previous Draft submitted to the National Assembly in 2012, more thoroughly and comprehensively covers both international best practice and theory. In order to increase co-operation with national human rights institutions, as well as to ensure that they have been provided with an opportunity to scrutinize the legislative reforms public discussions of the new package of amendments have been organized. Discussions were held in the Public Council at the Ministry of Justice comprised of NGOs and media representatives. Several suggestions were made during these discussions that were taken into due consideration by the Government while presenting the package to the National Assembly. They welcomed the amendments and provided positive feedback.

4. As to the issue of inclusion of any related legislative reforms to the National Strategy of Human Rights Protection and its Action Plan it is worth to mention that it is a living document subject to systematic revisions and amendments. With the aim to expand the scope, the National Human Rights Action Plan (NHRAP) is in its second phase of development intending to revise the results of the first phase, to eliminate possible shortcomings as well as to include new legislative and practical reforms.

Reply to the issues raised in paragraph 1 (b)

5. In order to take more effective measures to prevent torture and to avoid impunity, as well as to ensure that the application of criminal law in respect of all acts of torture is unlimited in time, a new legislative package is in the process of consideration and development. Within this package it is planned to discuss the possibility of excluding the pardon, amnesty and statute of limitation for the torture cases.

Reply to the issues raised in paragraph 2 of the list of issues

Updated information on the status of amendments

6. See information given in relation to paragraph 1 (a) of the list of issues.

7. As to the information on Draft of the new Criminal Procedure Code, from January 2012 to July 2013 detailed discussions were held at the Standing Committee on State and Legal Affairs where the whole Code was discussed article by article. Out of about 500 suggestions 300 were incorporated into the text, the rest are set to be discussed during plenary sessions.

Reply to the issues raised in paragraph 3 of the list of issues

Allegations of torture and ill-treatment and its effective investigation

Reply to the issues raised in paragraph 3 (a)

8. Concerning the issue of possible referral of ill-treatment cases by the Prosecutor's office to the Police, it should be stressed the following: (i) due to legislative reforms, the Police does not conduct preliminary investigation anymore; (ii) criminal procedure legislation strictly defines and separates the functions of the bodies authorised to conduct investigation of, inter alia, torture cases; (iii) according to Article 190 of the Criminal Procedure Code, the cases of torture committed by public officials are investigated by the Investigative Committee of the Republic of Armenia; the similar cases committed by high-ranking officials and persons performing special state service in relation to their official position are conducted by the investigators of Special Investigation Service. Thus, current legislation and practice fully solves jurisdictional issue in question.

Reply to the issues raised in paragraph 3 (b)

9. Comprehensive steps are taken to increase the effectiveness of investigation and punishment of those who are involved in torture cases. In this context, highlighting the importance of introducing an adequate complaint mechanism against possible abuses and pressures towards persons subjected to torture, the Draft of the new Criminal Procedure Code provides that immediately after bringing before the inquiry body a protocol should be filed which, among the others, includes information on the injuries (if any) visible on the body or on the clothes of the arrested person, and his noticeable physical and mental state (Article 109). Moreover Draft strictly stipulates that if in the presence of evident bodily harm the court finds that the accused was denied requisite medical care or the investigator failed to present the court reasonable justification as to the causes of the harm, the court will reach the conclusion that grave violations of law were committed when arresting the person, which is the ground for rejection of the motion to apply detention as a preventive measure (Article 295).

Reply to the issues raised in paragraph 3 (c)

10. In comparison with the Draft of the new Criminal Procedure Code the current legislation provides that the initiation of official criminal investigation is connected to the decision of investigator or the body of inquiry. Before the adoption of the decision on initiation of criminal proceeding there is so called pre-investigative stage to prepare materials for initiation. However this procedure has been changed and preparatory stage is no more envisaged. As to the Draft new regulation, the report on prima-facie crime is a ground for criminal proceedings without any other formal stage. This reform will strengthen the human rights protection mechanisms in the system of criminal proceedings.

11. Article 179 of the Draft of the new Criminal Procedure Code provides that whenever a report of a prima-facie crime is received from any source envisaged by Article 174 of this Code, the prosecutor or investigator shall immediately prepare a protocol on initiating criminal proceedings. Thus, it can be concluded that the investigative bodies would be under the obligation to start official proceedings each time they receive the report of a prima-facie crime (without preparatory stage).

Reply to the issues raised in paragraph 3 (d)

12. The issue raised in paragraph 3 (d), according to which detainee has only one week to appeal a decision of dismissal of a case in the preliminary, pre-investigation stage is completely solved by the decision of the Constitutional Court . In that decision the court found this provision unconstitutional and declared that the general rule of appeal (1 month period) should be applied to all cases. Thus, it gives an opportunity to a detainee to have adequate time and facility (including possibility to fully benefit from legal assistance) for preparation of his appeal.

Reply to the issues raised in paragraph 3 (e)

13. See information given in relation to paragraph 12 (d) of the list of issues.

Reply to the issues raised in paragraph 5 of the list of issues

Fundamental Legal Safeguards

Reply to the issues raised in paragraph 5 (a)

14. The Draft of the new Criminal Procedure Code, in particular Article 110 is a step forward to ensure minimum procedural rights to the persons deprived of liberty. It is worth to mention that the minimum rights of the arrested person stipulated by Article 110, inter alia, can be considered as a fundamental safeguard against any form of ill-treatment. Moreover, the minimum rights prescribed in this article are in total conformity with UNCAT, SPT and CPT standards. One of the aims of this article is to create a clear system of mechanisms and procedures through which allegations, indications and evidence of ill-treatment can be communicated. In particular, the rights to have the fact of one's detention notified to a third party, to have an access to a lawyer, and a doctor (as well as to invite a doctor of his choice) are crucial for gathering of evidence and communication of information related to torture. These rights are applied from the very outset of factual deprivation of liberty and can secure the evidence concerning the incident. Any evidential deficiency in that respect can undermine the ability of conducting thorough, comprehensive and objective investigation.

15. Moreover, according to the existing case-law of the Court of Cassation , made on 18/12/2009, a person, from the moment of entry into the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings and before acquiring a legal status of arrested or detained person, acquires a preliminary status of a "brought" person and shall be granted the minimum rights which are as follows: to know the reason for depriving him/her of liberty; to inform a third person about his whereabouts; to invite an attorney; to remain silent. As an additional guarantee, the case-law establishes that, after 4 hours of factual deprivation of liberty, in case if the person is not informed that an arrest record in his respect has been drawn, from that very moment, he/she automatically acquires the legal status of an arrested person, and thus, shall be granted all the rights and guaranties of the arrested person provided by the law.

Reply to the issues raised in paragraph 5 (b)

16. Within the framework of NHRAP (point 112) the necessity to study the international practice of police records keeping and electronic protocols of detention was clearly defined. The Ministry of Justice is currently cooperating with the United Nations Development Programme (UNDP) to obtain support for comprehensive study on this issue as well as to initiate further legislative changes.

Reply to the issues raised in paragraph 5 (c)

17. Criminal legislation provides clear guarantees to ensure that maximum period for keeping a person under arrest is respected. Among the others Article 137 of the Criminal Procedure Code stipulates that the initial arrest cannot last longer than 72 hours. Moreover, the Constitution guarantees that in case if the maximum period has expired and the court has not adopted a decision to detain a person an arrestee should be immediately released.

18. As to the mechanisms of ensuring that the arrested person is promptly brought before a judge the Draft of the new Criminal Procedure Code divides the three-day time limit into two parts. Article 109 (7) clearly states that arrest period may not last longer than 72 hours. However, the accusation must be filed against the arrested person, and the accused shall be taken to court for solving the issue of applying a preventive measure in respect of him, not later than within 60 hours of his arrest. Thus, this provision ensures that the court will have at least 12 hours in its disposal to solve the issue in question. In case the person is brought to the court in violation of the time limit and the court has no opportunity to properly examine the motion to apply detention as a preventive measure, the court (based on Article 295) will reach the conclusion that grave violations of law were committed when arresting the person, which is the ground for rejection of the motion.

Reply to the issues raised in paragraph 5 (d)

19. The study of the international experience of audio-visual recording of interrogations and submission of a proposal regarding the appropriateness of introducing such system is approved by the NHRAP (point 36). In this framework the Ministry of Justice is in close cooperation with the UNDP and a joint project proposal was submitted to the Government. However the proper implementation of the project needs allocation of additional funds.

Reply to the issues raised in paragraph 5 (e)

20. In order to raise the effectiveness of free legal aid the funding allocated to the Chamber of Advocates Public Defender's Office has been significantly increased. During 2011-2012 152 million Armenian drams were transferred from the State budget. Based on the Law on 2015 State Budget this amount was considerably increased up to 290 million. Thus, the dynamic increase of funding can be recorded during the years of 2011-2015.

21. Special attention is given to increase the accessibility and the quality of free legal aid provided by Public Defender's Office in the regions. For that purpose both in Yerevan and in the regions the Public Defender's Office was provided with technically equipped office areas. Educational component is in the spotlight of state authorities. In this framework all public defenders are systematically trained in the Advocates school.

Reply to the issues raised in paragraph 5 (f)

22. In the view of providing strong guarantees against any arbitrary waiver of a defender, special procedure is stipulated by the Draft of the new Criminal Procedure Code (Article 47) based on which waiver of a defender shall be accepted by the Body Conducting the Criminal Proceedings only if the accused has made the statement thereon at his own initiative, voluntarily, and in the presence of the Defender participating in the proceedings.

The accused statement about waiving a defender shall be documented in a protocol compiled by the body conducting the criminal proceedings. The accused who has waived a defender shall have the right at any time to demand engagement of a new defender.

Reply to the issues raised in paragraph 5 (g)

23. See paragraph 4.

Reply to the issues raised in paragraph 6 of the list of issues

Independence of the judiciary

24. The relevant legislation covering the procedure for testing and appointing candidates for judges is revised and adopted to allow their selection and nomination by the Council of Justice based on objective and transparent process, including use of computerized procedure. The procedure for testing candidates for judges is revised based on the amendment made to the Judicial Code (Article 23). The decisions made by the Commission on Evaluation of Testing Results may be subject to appeal to the Appeal Commission. Computerized system for the Evaluation of Judges is applicable only to quantitative criteria (Article 96.2 para 2 of the Judicial Code). The Assessment report on the 1st installment of Sector Policy Support Programme 2014 (EU budget support project entitled "Support to Justice Reforms in Armenia — Phase II") states that testing and nomination/appointment of candidates for judges as well as evaluation and promotion of judges is fully in compliance with EU/international standards. Precise role and functions of the Justice Council are streamlined by the Judicial Code which is also in line with the final report of EU-CoE EJREPC joint project. In this context it is worth to mention that the procedure of interviews at the Justice Council is clearly regulated by the Judicial Code. The objective standards and definite procedure for the selection of judges is envisaged. The clarification of the tasks, topic and procedure for the interview with judge candidates in the Justice Council derives directly from the objectivity requirements to the selection process.

25. The existing Criminal Code defines criminal liability against judges for adopting an unjust judgments or other judicial act (Article 352). As an additional guarantee for protection of judicial independence as well as against undue interferences, this article does not give rise to criminal liability for the improper interpretation of law, assessment of facts or weighing of evidence carried out by judges to determine cases. The only ground that gives raise to criminal liability is the case of malice. The above mentioned threshold corresponds to the international best practice (for example, Canada and Germany have identical definitions) as well as to the Council of Europe recommendations in the mentioned field (for example, Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibility).

Reply to the issues raised in paragraph 7 of the list of issues

Corruption

26. "The 2012-2016 strategic programme for legal and judicial reforms in the Republic of Armenia and the list of measures deriving from the programme" was approved by the Executive Order of the President of the Republic of Armenia N NK 96-A in June 2012. In the scope of this programme a number of measures are previewed which are directed to the improvement of the judicial system, functioning of the prosecutor's office, public notary and register management systems. This programme also includes anti-corruption measures. Besides, the Ministry of Justice together with the European Union and the Council of Europe is realizing a new project, named "Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia". A new anti-corruption programme

concerning the fight against corruption in the Judicial System has been drafted. This programme is based on the Anti-corruption concept approved by the Government on 10 April 2014.

27. Number of trainings are organised on anti-corruption issues. For instance, with the support of OSCE country office the Justice Academy held training course "the Improvement of Communication Skills between the Public Servants of the Prosecution System and Citizens, and the Enforcement of Public Servants' code of ethics", which resulted in the publication of the homonymous guide in 2013 distributed to all state servants of the prosecution system. A training course "Professional Ethics for Prosecutors" was organized for the attendees included in the list of candidates for prosecutors, who had passed vocational training in the "Justice Academy" SNCO in 2014, during which the persons included in the list of candidates for prosecutors had an opportunity to get familiar with the Code of Conduct of Prosecutors and international development of rules of ethics.

28. Professional educational programmes on RA anticorruption policy for judges' candidates and prosecutors' candidates form part of the Justice Academy's 2014 educational programme. In particular, these courses include the following topics: (i) basics of RA legal and judicial reforms, (ii) Professional ethics of judges (iii) professional ethics of prosecutors.

29. It should be also mentioned that professional educational programme 2015 covers the issues of corruption cases in the public service, status of fight against such cases, the legal and institutional frameworks of anticorruption struggle, measures undertaken by the state and other concerned parties.

30. Concerning the anticorruption measures in the penitentiary system, it should be mentioned that the penitentiary reforms envisage the introduction of e-penitentiary system aimed aid at reducing corruption risks.

31. The Ministry of Justice and its Penitentiary Service are taking constant measures to enhance transparency of the Service. In particular, web-site of the Penitentiary Service at www.ced.am has been launched at the beginning of October 2014. This web site gives broad opportunities to prisoners, their relatives and all interested people to get useful and necessary information about prisoners' rights; the relevant legal acts, all information about the penitentiary entities.

32. Moreover, a free of charge 24/7 hot line at +37410442273 has been launched within the Penitentiary Service. There is also a free of charge voice portal at +37460743333 that provides useful and necessary information on prisoners' and their relatives' rights and duties, as well as established procedures.

33. On 12 May 2015 the launching meeting of Fight against corruption and fostering good governance/Fight against money laundering programme in scope of Programmatic Cooperation Framework was held in Strasbourg. The future goals and working programme was discussed. The implementation of this program will have significant impact on corruption reduction in judicial and correctional systems.

Reply to the issues raised in paragraph 8 of the list of issues

Violence against women, including trafficking

Reply to the issues raised in paragraph 8 (a)

34. Armenian authorities strengthen their efforts to prevent, combat and punish violence against women and children by systematically conducting trainings for all public officials and organising awareness-raising events for private persons. All acts of psychological,

physical and sexual violence are criminalized under existing Criminal Code. The established offences are applicable irrespective of the nature of the relationship between victim and perpetrator. The Law on Making Amendments and Supplements to the Criminal Code criminalizes acts of torture among private actors (acts of infliction of severe physical/psychological pain and suffering). In this context the mentioned article can be considered as an effective tool against acts of domestic violence. As an additional mechanism for prevention and punishment of acts of violence the Law on Making Amendment to the Criminal Procedure Code stipulates that the investigation of mentioned offence is triggered by public criminal prosecution not dependent upon a report or complaint filed by a victim. This provision is in total conformity with the international best practice and ECHR judgments (among the others, Case of *Opuz v. Turkey*, no. 33401/02).

Reply to the issues raised in paragraph 10 of the list of issues

Safeguards against torture in extradition/Non-refoulement

Reply to the issues raised in paragraph 10 (a)

35. Non-refoulement principle is applicable in all circumstances, regardless of the nature of the activities the person concerned may have been engaged in, or their immigration status, and relates not only to the country to which the person faces immediate return but extends to any other country where he runs a risk of being expelled or returned.

36. After the receipt of the request for extradition, state authorities require the requesting party to provide written statement, among the others, on the following guarantees: (i) the person will not be subjected to torture or inhuman or degrading treatment or punishment; (ii) the requesting State is not intended to prosecute the person on political grounds; (iii) the person will not be prosecuted in relation to race, religion, nationality or political opinion; (iv) the requesting State gives assurance that the death-penalty will not be carried out; (v) the person will be prosecuted only for the crime for which his extradition is requested, and will not be sent, transferred or extradited to a third State without the consent of the authorized body of the State addressed.

Reply to the issues raised in paragraph 10 (b)

37. It should be informed that the extradition does not take place between the Police of the Republic of Armenia and Russian Federation as the competent authorities of extradition in pre-trial proceedings is the General Prosecutor's office of the RA, and in judicial proceedings — the Ministry of Justice of RA. The task of the Police during the extradition is to accompany the offender to the Police of the requesting authority after the request for extradition has been satisfied by the competent authorities. In the Republic of Armenia the competent authority for extradition during pre-trial proceedings is General Prosecutor's Office and during judicial proceedings — RA Ministry of Justice.

38. The following reflects the information regarding extraditions carried out during judicial proceedings between the Republic of Armenia and the Russian Federation. In 2013, 3 persons were extradited to Armenia and 2 persons — to the Russian Federation. In 2014, 1 person was extradited by the Armenian authorities and 1 person by the Russian Federation. In 2015, the Republic of Armenia extradited 1 person to Russia. Armenian authorities requested extradition of 2 persons but no decision has been made by Russian authorities in this respect yet.

Reply to the issues raised in paragraph 12 of the list of issues

Trainings for public officials

Reply to the issues raised in paragraph 12 (a)

39. Continuous assistance to the law-enforcement agencies by organization of periodic professional trainings and seminars is carried out by state authorities aimed at preparing adequately trained and proficient team in the respective field. Taking into account the UNCAT and CPT recommendations greater emphasis is given to the organisation of proper trainings organized for police staff. The Police Headquarter gives periodic assistance to the staff of the RA Police System, by providing practical and methodological guidelines in respect of the implementation of the UNCAT and CPT standards and recommendations.

40. In that respect the specific Order No.20 of the Head of the Police of the Republic of Armenia, dated on 27 November 2013, "On Ensuring the Application of Legal Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment" has been also included in the respective training curricula of the Police Academy. In addition to this, for example, in 2013 and 2014 consultation workshops were organized. The heads of subordinate headquarters and operative divisions, as well as the officers of detention facilities participated. Methodological guidelines and Q&A Handbooks were provided to the subordinate headquarters containing legal acts regulating the activity of detention facilities. Furthermore, for the purposes of improvement of the academic knowledge in that field, relevant materials are included in both the academic and professional training curriculum of the Police Academy. Moreover a separate required subject on UNCAT and CPT standards which is in the process of development is included in the curricula of Police Academy.

41. Education and trainings concerning the relevant case-law of the ECHR are also included as a component of the common core curriculum provided to judges, prosecutors, police, prison and detention facilities staff, civil servants, advocates in the Police Academy, the Civil Servant training courses, as well as the Justice Academy of Armenia.

Reply to the issues raised in paragraph 13 of the list of issues

Conditions of detention

Reply to the issues raised in paragraph 13 (a)

42. The improvement of material conditions of places of deprivation of liberty is in the spotlight of Armenian authorities. Since 2004 a new legal framework regarding to imprisonment has been put in place. In particular, pursuant to Order no. NK-328-NG of the President of the Republic of Armenia dated on 28 December 2004 a large scale refurbishment programme had been initiated in all police holding areas. It should be mentioned that in its 2007 report, the CPT noted and welcomed these changes. The process has involved the adoption of a Penitentiary Code on 24 December 2004, which, among the others, introduced a minimum standard of 4 m² of living space per prisoner, which also applies to remand prisoners further to a 2005 amendment to the Law on the Treatment of Arrestees and Detainees (see, CPT/Inf (2007) 47, 28, 29, 34).

43. Over the last few years, State has adopted police detention facilities renovation programme. According to this programme, cells had been renovated and generally offered good material conditions of detention. In particular, based on the CPT 2011 report, cells were of an adequate size (e.g. single cells measured at least 6 m² and double-occupancy cells measured from 9 to 13.5 m²) and properly equipped (e.g. beds, table, stools, sink). Arrested persons were provided with proper bedding for overnight stays, had ready access

to a toilet, could take a shower at regular intervals and were provided with basic personal hygiene items. Further, all police detention facilities had outdoor exercise yards (measuring from 32 to 80 m² and including a sheltered area) and detained persons interviewed confirmed that they were allowed access to them every day. In several establishments visited, reading material and radio receivers were also made available to detainees (see, CPT/Inf (2011) 24 § 39). As regards food, three meals a day, including one warm meal, shall be provided under the domestic legislation.

44. Particular attention is paid to the sanitary conditions of detention facilities. According to 183 of "Internal Regulations of the RA Police Detention Facilities" adopted by the Government Decree No. 574-N of 5 June 2008, wet cleaning is carried out in solitary and other cells of the detention facilities every day by using disinfectants. In all the cells and solitaries of the detention facilities main cleaning is carried out not later than once a month. Pursuant to the requirements of § 185 of the same regulations, Medical Facility of the RA Police and the State Sanitary Controlling Bodies exercise systemic supervision over the proper conduct of the mentioned obligations of administrations of detention facilities.

45. The Armenian authorities are implementing the project Penitentiary reform — Strengthening the health care and human rights protection in prisons in Armenia aimed at improving the capacity of the penitentiary staff of applying the relevant European prison standards. It is envisaged that upon completion of the mentioned project the legal and institutional framework of healthcare in prisons will be brought in line with European standards, the material conditions of penitentiary institutions' healthcare units will be upgraded with new equipment and medical and non-medical prison staff will be trained on the European prison healthcare standards, human rights and medical ethics. As a result, during their incarceration inmates will have access to requisite medical care which will not only preserve but, when needed, will also enhance their physical and mental health status and thus will facilitate their reintegration to the society.

46. Memorandum of Cooperation (Memorandum) between the Ministry of Justice and Yerevan State Medical University has been signed on 27 January 2015. In line with European Prison Rules order that "medical services in prison shall be organized in close relationship with the general health administration of the community the Memorandum prioritizes the necessity of properly organizing medical aid and services in penitentiary institutions. It also acknowledges the significance of provision of health care services by specially trained and independent from the prison medical and nursing staff professionals. In the framework of implementing the Memorandum, it is envisaged to establish clinical units for prison (penitentiary) medicine or related professions in "Hospital for Convicts". The clinical units will pursue the aim of preparing appropriate medical professionals and organizing their practical work with the detained persons and convicts. The trainees studying in mentioned clinical units will be certified to work in healthcare units of the penitentiary institutions and provide counselling and practical assistance to patients undergoing complicated treatment in penitentiary institutions. The Memorandum, in cooperation with the appropriate representatives of the RA Ministry of Justice, also envisages elaborating and introducing a course on prison (penitentiary) medicine which will be taught in the Yerevan State Medical University. The course, among the others, will be focused on issues of diagnosing and treating the illnesses which are common problem in penitentiary institutions.

47. In line with the detention condition improvement policy and in order to reduce overcrowding, the construction of a new prison, "Armavir" penitentiary institution for 1,200 inmates was initiated. The construction of the first block for 400 inmates (currently 200 inmates serve their sentence in "Armavir"), including the premises for the healthcare services and visiting areas, is completed, the cells are equipped and furnished. There is a shower area in each cell. It is worth to mention that the construction of the second block for

another 400 inmates will be completed by the end of the year and the third block for 400 inmates (including the capacity for 160 life-sentenced prisoners) — in the beginning of next year. Thus, the issue of overcrowding in prisons shall be deemed solved. It has also to be noted that this new prison is equipped with new medical equipment which will satisfy the qualitative requirements for provision of requisite medical assistance to inmates.

48. Measures have been taken to increase co-operation with national human rights institutions to monitor the effectiveness of the fulfilment of the State obligations in that field. In that respect it is worth mentioning that, during the last few years, steps have been taken to set up a National Preventive Mechanism (NPM), in order to comply with obligations under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2008, this task was assigned to the Office of the Human Rights Defender. Starting from 2012, civil society representatives have been involved in the work of the NPM, in particular through the establishment of a Council for the Prevention of Torture adjacent to the Human Rights Defender. In its 2014 Interim Report it has been highlighted by the NPM that as a result of constructive collaboration and cooperation with the Police of the Republic of Armenia specific issues needing concrete solutions have been solved. There is also effective co-operation between the NPM and the Penitentiary system. In that respect, state authorities are of the view that the engagement of the national human rights institutions compliments the system of oversight.

Reply to the issues raised in paragraph 13 (b)

49. In supplement to the structural changes presented in paragraphs 30-36, rudimentary legislative reforms are also undertaken to improve penitentiary system. An important step can be considered the initiation of the Draft Law on Making Amendments and Supplements to the Penitentiary Code. In addition to the existing legislation stipulating correction and encouragement of the law-abiding behavior as the ultimate goal of the execution of the sentence, the Draft Law goes further by prescribing that the ultimate objective of the execution of sentence is to prepare prisoners for release and to their integration into the society after release. The approach reflected in the mentioned provisions is, inter alia, in line with the Recommendation Rec (2003)23 on "Management by prison administration of life sentence and other long-term prisoners" and Recommendation Rec (2003)22 on conditional release (parole). During the drafting process the ECHR case law was also taken into due consideration (among the others, *Vinter and others v. United Kingdom*, no. 66069/09, 130/10 and 3896/10, ECHR judgment, 9 July 2013).

50. According to the above mentioned ultimate objective, consideration has been given to the diversity of personal characteristics to be found among prisoners, and account taken of them to make individual plans for the implementation of the sentence (individualization principle). Thus, individual sentence planning should start following the entry into the prison and be reviewed at regular intervals and modified if necessary (considering the risks and needs assessment). For the achievement of this objective one of the major purposes of the sentence planning should be to provide a purposeful use of time. This means, a range of suitable occupations, such as occupation of educational, physical or cultural nature should be provided. This will depend on the physical and intellectual capacities of the individual prisoner.

51. According to the regulations of Draft Law on Making Amendments and Supplements to the Penitentiary Code, the limitations posed to the life-sentenced and long-term prisoners in respect of the right to visits are abolished. The objective of the proposed amendment is to provide equal attitude to the life-sentenced as to the other prisoners with regard to the right to visits, to prevent the breakdown of family ties, as well as to provide a possibility of periodic contact with the outside world. Accordingly, visits should be allowed

with the maximum possible frequency. As a result, a right of short-term visits of 4 hours at least once a month, as well as a long-term visit with the possibility to live together for 3 days once in 2 months shall be provided to the prisoners. In addition to the provision prescribing the possibility of same visit entitlements to all sentenced prisoners, particular efforts have been made to abolish the segregation on sole ground of the sentence (non-segregation principle) for granting various forms of short-term leaves to life-sentenced and long-term prisoners.

52. The Draft Law on Making Amendments and Supplements to the Penitentiary Code considering the requirement of striking balance between the objectives of ensuring security on the one hand, and, non-segregation principle, on the other hand, provides that the segregation of life-sentenced prisoners should not be based on the sole ground of their sentence. This means that issue in question is factually solved by the provisions of the mentioned law.

53. As to the both UNCAT and CPT recommendations to put an immediate end to the practice of routinely handcuffing life-sentenced prisoners within the prison perimeter, a special Instruction dated on 31 October 2014 issued by the Head of Criminal Executive Department was circulated among the penitentiary establishments' administrations, stipulating, among the others, that handcuffing or ankle-cuffing of prisoners outside their cells should be an exceptional measure, based on individual risk assessment. Furthermore, a protocol shall be drawn on each case of use of handcuffs and/or ankle-cuffs.

54. Special attention is paid to the issue of improvement of the situation of prisoners sentenced to life imprisonment (especially in Kentron and Nubarashen prisons in Yerevan). In relation to the requested information on functioning of three disciplinary cells at Nubarashen Prison, it should be asserted that they have been closed.

55. Practical measures are taken to improve the quality of medical assistance provided to life-sentenced prisoners, especially those with mental health needs. According to the updated information received by state authorities these prisoners have been subjected to permanent medical supervision of specialized doctors. Based on the outcome of the forensic expertise, one of the prisoners was found partially incapable and is currently held at the forensic ward of Nubarashen Psychiatric Centre (civil hospital) under the permanent medical supervision of specialized doctors.

Reply to the issues raised in paragraph 13 (c)

56. In practice in those cases when prisoners are subjected to unequal treatment based on perceived sexual orientation or nationality the administration of detention facility takes adequate steps to prevent and to punish those responsible. The new legislative reforms in penitentiary system (the Concept paper of the new Penitentiary Code is sent for international expertise) will create special mechanisms to solve this issue.

Reply to the issues raised in paragraph 13 (e)

57. See paragraphs 33 and 34.

Reply to the issues raised in paragraph 13 (f)

58. During the drafting process of the Law on Making Amendments and Supplements to the Penitentiary Code and, specifically, of the regulations on alternative punishment and conditional release periodic meetings have been organized with the civil society institutions aimed at cooperation and collaborative solution making. All their comments and recommendations have been taken into consideration for the revision of the Law on Making Amendments and Supplements to the Penitentiary Code. Furthermore, a Public Council,

mainly composed of NGOs at the Ministry of Justice, has been established which also discussed and made its proposals on the issue of conditional release.

59. For prevention of unreasonable restrictions on the right to liberty Draft of the new Criminal Procedure Code provides a flexible system of the new alternative preventive measures and the norms ensuring their application (house arrest, administrative supervision, bail, prohibition of absence, suspension of office, guarantee, educational supervision and military supervision). These measures can be applied both separately and jointly.

60. The Draft of the new Criminal Procedure Code stipulates that the detention can be applied only in case the application of alternative preventive measures is impossible or insufficient for preventing the illegal conduct of the accused. Based on the ECHR case law, as well as the jurisprudence of the Court of Cassation, the mentioned Draft clarifies the grounds of the detention, the role of the court in the process of its application.

61. The Draft of the new Criminal Procedure Code has set higher threshold for prolonging the term of detention. In each and every case the investigating body should justify before the Court that due diligence has been conducted and there is necessity to continue the criminal prosecution.

62. At the same time, the Draft of the new Criminal Code (the Concept Paper was approved by the Government on 4 June 2015) considers an imprisonment as an exceptional sentence applicable only in cases where other forms of punishment cannot reach the purposes of the punishment. The mentioned Draft Code is supplemented by a range of new non-custodial penalties (restriction of rights, deprivation of parental rights, and expulsion of foreign citizen or stateless person from the territory of the Republic of Armenia).

63. Guided by the international best practice on conditional release, in order to reduce the harmful effects of imprisonment and to promote the resettlement under conditions that seek to guarantee safety of the outside community, the requirements of the conditional release available for the life-sentenced prisoners have been reviewed under the Draft Law on Making Amendments and Supplements to the Penitentiary Code. These amendments are aimed at assisting the prisoners to make a transition from life in prison to a law-abiding life in the community through post-release supervision, as well as contributing to public safety and the crime rate reduction in the community. Thus, according to the proposed regulation the issue existing under the current legislation will be solved, as the progressive movement through the prison system from more to less restrictive conditions and, the possibility to spend the final phase under open conditions, if the legislative requirements are met, will be provided.

64. The procedure for granting conditional release is planned to be changed. According to the Draft Law on Making Amendments and Supplements to the Penitentiary Code, the independent committee, which, upon the current legislation is the sole body deciding on the question of granting the conditional release, will seize to exist. This is aimed at elimination of sole decision making competence without further possibility of appeal, which increases possible corruption risks. In contrast to the existing regulations, the mentioned Draft provides that commission of the institution executing the sentence (the commission) will provide its reasoned decision on conditional release. Finally, this process will be subject to judicial review.

65. It is worth to highlight that additional guaranties are stipulated by the Draft Law on Making Amendments and Supplements to the Penitentiary Code for the prisoners seeking the conditional release: (i) the prisoner shall, on mandatory basis, participate in the hearing of the commission on the issue of parole or replacement of the remainder of the sentence with a reduced sentence; (ii) the prisoner can request the participation of an advocate, as well as an interpreter during the hearing; (iii) the prisoner can provide explanations and relevant documents; (iv) the prisoner can express his position regarding the issue in

question; (v) the copy of the reasoned decision of the commission shall be handed over to the prisoner; (vi) the prisoner can appeal to the superior body or to the court the decision of the commission.

66. The mentioned amendments are aimed at ensuring that: the question of conditional release of the prisoner is heard by the body having power to order his release; the process is based on accessible and foreseeable standards and procedure prescribed by law; the adversarial proceedings are guaranteed during the judicial hearings; the decision made by the commission is reasoned, with the possibility of appeal, in case the prisoner disagrees with it.

67. On 30 April 2015 the Government of the Republic of Armenia has approved the Concept Paper of the Probation Service. The regulations on Probations Service are currently in drafting process. The probation service, among the others, aims to reduce the reoffending by establishing positive relationships with offenders in order to supervise, guide and assist them and to promote their successful social inclusion, as well as to contribute to community safety and the fair administration of justice. It will also reduce overcrowding.

Reply to the issues raised in paragraph 13 (g)

68. As measures to establish a confidential system for receiving and processing complaints regarding torture or ill-treatment in all places of deprivation of liberty can be considered the Article 152 of existing Criminal Procedure Code stipulating that the prosecutor, as well as the investigator upon the prosecutor's consent, is entitled to suspend from the office the public servant who is suspected in or accused of committing a crime if there are sufficient grounds to believe that he will hinder the investigation of the case during the pre-trial proceedings or the trial. The period of suspension can be terminated upon the court's, prosecutor's or investigator's decision when the suspension is no longer necessary. Moreover, the NHRAP envisage more specific mechanisms to ensure that the public officials potentially linked to the acts of torture, inhuman or degrading treatment or punishment for the period of investigation are suspended from the office.

Reply to the issues raised in paragraph 14 of the list of issues

Juvenile Justice

Reply to the issues raised in paragraph 14 (a) and (b)

69. In the Draft of the new Criminal Procedure Code a separate chapter regulates the criminal procedure attributed to minors and particularly proceedings concerning persons that have not reached the age of 18. A lot of changes have been made in this area in comparison with the current legislation. In particular, Article 419 states that the participation of a defender in proceedings related to a crime attributed to a minor shall be mandatory from the moment of arresting such person and presenting the accusation to him. Besides, in proceedings related to a crime attributed to a minor, the participation of a representative shall be mandatory as well.

70. Another range of changes relates to the provisions regarding arrest or detention of minors. Article 421 of the mentioned Draft provides that while applying detention, house arrest, or administrative supervision in respect of arrested minors, he should be brought before the court within 48 hours from the moment of arrest. If the arrested minor is not detained by court's decision within 12 hours after bringing the minor before the court, then it is a ground for immediate release. In any case, the duration of detention or house arrest applied in respect of a minor during the pre-trial proceedings may not exceed one month.

The total duration of detention applied in respect of a minor during the pre-trial proceedings is also regulated. There are also changes regarding Educational Coercive Measures.

71. A bulk of changes has been made in provisions concerning the questioning of an accused. In particular an accused minor shall be questioned with the participation of a defender and a psychologist as well as his representative. Furthermore, the Draft provides a lot of peculiarities regarding the court proceedings related to a crime attributed to a minor. In particular, in proceedings related to a crime attributed to a minor, the court sessions shall be held in camera. Public hearing may be conducted only by petition of the accused who is a minor or of his defender or representative, unless it would harm the interests of the minor. Legal reforms related to the juvenile crime are also conducted within the scope of the Draft of the new Criminal Code. The Concept tends to expand the practice of applying the enforced disciplinary measures against juveniles. The Concept finds necessary to limit the possibility of sentencing the minors to imprisonment.

72. In order to increase awareness-raising and professional competence of public officials there are also special courses regarding the juvenile justice held in Justice Academy, Law Institute of the Ministry of Justice and in the School of Advocates.

Reply to the issues raised in paragraph 14 (e)

73. Besides the above mentioned a complex of measures are taken towards the development of a juvenile justice system which include: (i) establishment of a special working-group on children's access to justice — Council on children in contact with the law under the coordination of the Ministry of Justice, (ii) development of action plan on establishing a database on children in conflict with the law and child victims and witnesses of crime, (iii) capacity building and adoption guidelines for investigation bodies and specialists for working with children in contact with the law.

74. The Ministry of Justice has taken efforts to reorganize and establish Offenders rehabilitation center at the Ministry of Justice. By the Government decree of 847-N, 14 August 2014, the center was authorized to work and implement social rehabilitation programmes, and re-entry activities for the juvenile offenders which include, psychical development and sport programmes, psychological support, social work support, educational affairs and other re-entry and integrative measures. Within this services art classes, social and psychological help and counseling are organized for the juvenile offenders in "Abovyan" detention facility.

Reply to the issues raised in paragraph 18 of the list of issues

Complaints, reprisals and protection of victims, witnesses and human rights defenders

Reply to the issues raised in paragraph 18 (a)

75. In order to establish mechanism to facilitate the submission of complaints by victims and witnesses of torture and ill-treatment to public authorities and to ensure in practice that complainants are protected against any ill-treatment or intimidation, the NHRAP specifically underlines the importance of: (i) envisaging legislative regulation on proportionate compensation and rehabilitation for damages caused by tortures, in accordance with Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (point 33); (ii) studying the international best practice of creating an independent mechanism for acceptance of complaints regarding tortures and other forms of ill-treatment in places of imprisonment and assurance of further process and submission of a proposal.

Reply to the issues raised in paragraph 19 of the list of issues

Redress, including compensation and rehabilitation

76. Following the amendments to the RA Civil Code in 2014, the institute of non-pecuniary damages has been introduced into Armenian legal system. Article 162.1 of the Civil Code stipulates that the person has the right to seek compensation through the court for non-pecuniary damage caused to him or her, if it is approved by the judicial act that his or her rights, guaranteed, among the others, by Article 3 of the European Convention of Human Rights, have been violated as a result of a decision, action or omission of a state body or an official. Moreover, Article 1087.2 of the Civil Code stipulates that non-pecuniary damage shall be subject to compensation regardless of the guilt of the official at the time of causing the damage.

77. As of November 2014, the persons subjected to torture have the right to claim compensation for non-pecuniary damages. Although the existing legislation stipulates amounts which can be provided as a compensation for non-pecuniary damage, domestic courts have certain margin of appreciation. According to the Civil Code of the Republic of Armenia the court shall determine the amount of compensation of non-pecuniary damage in accordance with the principle of reasonableness, equitableness and proportionality. When determining the amount of non-pecuniary damage, the court shall consider the nature, degree and duration of physical and psychological suffering, the consequences of the damage caused, the presence of guilt at the time of causing the damage, personal features of the person who has suffered the non-pecuniary damage, as well as other relevant circumstances.

78. There are strong legislative guarantees giving a possibility to the victims of torture to receive fair and adequate compensation for non-pecuniary damage caused. In addition, the Ministry of Justice developed a new Draft Law on Making Changes and Amendments to the RA Civil Code and submitted it to the Government for approval. This Draft is, inter alia, aimed at expanding the scope of fundamental rights for breach of which compensation for non-pecuniary damages can be claimed, as well as at increasing the amounts of compensation for non-pecuniary damages.

Reply to the issues raised in paragraph 21 of the list of issues

Coerced Confessions

Reply to the issues raised in paragraph 21 (a) and (b)

79. In the framework of criminal justice reforms special attention is paid to the issue of bringing national legislation in line with Article 15 of the Convention. Relevant provisions of the Draft of the new Criminal Procedure Code stipulate that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. In particular relevant article clearly prohibits obtaining information from a person by means of violence, threats, deceit, infringements of his rights, and other unlawful actions. Further, it provides that data obtained in violation of law shall be recognized as impermissible and may not be used as evidence. Moreover, Law on Making Amendments and Supplements to the Criminal Code criminalizes acts of torture, inter alia, aimed to obtain confessions.

Reply to the issues raised in paragraph 22 of the list of issues

Alternative Service

80. As of May 2, 2013 the RA Law on "Alternative Service" has been amended. Current legislation clearly distinguishes between "alternative military" and "alternative civilian" services. Accordingly, "alternative military service" may be performed by those citizens to whose religious beliefs are contrary to carry, keep or use arms. As to those citizens, to whose religious beliefs is contrary to do military service at all, can perform alternative civilian service. It has to be highlighted that in the process of legislative amendments Armenian authorities consulted with the Venice Commission. The Venice Commission's opinion was taken into due consideration in the preparation of the final draft which, in addition to the above-mentioned, included the following amendments: (i) the alternative civilian service shall be organized and overseen by relevant Government Agencies. Military control over the alternative civilian service is not permitted; (ii) the Republican Commission on Alternative Service (hereinafter, the Commission) is a permanently functioning body that deals with citizens' applications. The Commission is comprised of one representative from each Government Agency in charge of territorial administration, health, labour and social issues, education and science, police and defence , as well as one representative from the unit of the Government Staff coordinating national minorities and religious affairs; (iii) the Commission holds special sessions which the applicants have the right to take part to. If necessary, theologians, psychologists or other specialists may be invited to participate in the session. The Commission takes decisions by voting; (iv) the decisions of the Commission are subject to judicial review, according to the RA Constitution and the Law on Fundamentals of Administrative Action and Administrative Proceedings; (v) the term for alternative military service has been reduced from 36 months to 30 months; and for alternative civilian service — from 42 months to 36 months.

81. It has to be highlighted that the case law of the European Committee of Social Rights on Article 1§2 of the Social Charter was taken into account while deciding on new duration of alternative service.

82. To remedy the situation of those conscientious objectors, who have been subjected to criminal responsibility prior of the entry into force of the RA Law on "Alternative Service" changes have been introduced to the Law on Implementation of the Criminal Code of Armenia (entered into force on 8 June 2013). According to the amended law: (i) a person serving a sentence or being tried for his conscientious objection and religious beliefs would be released, if he applied for alternative service to the respective government body, before 1 August 2013. Thereafter, the latter should take a decision on whether or not to send the person concerned to alternative service; (ii) both pre-trial and trial proceedings will be terminated if a person applies for alternative service to the respective government body in accordance with the procedure prescribed by the law, and if the respective government body decides to send him to alternative service; (iii) the criminal record of the person concerned should be deleted; (iv) the term of alternative service will be reduced by the period of actual service of the sentence or the period of deprivation of liberty during criminal prosecution (Art.19§1 of the Law).

83. It should be noted that the new system has been positively received and welcomed by the press release of the Christian Religious Organization of Jehovah's Witnesses in the Republic of Armenia in October 2013.

84. In addition, having regarded the measures undertaken by Armenian authorities to put an end to violations of the right to freedom of religion of conscientious objectors, to remedy the consequences thereof, as well as general measures to raise the quality of existing law, the Council of Europe Committee of Ministers closed the examination of the Bayatyan group of cases on November 19, 2014.

Reply to the issues raised in paragraph 25 of the list of issues

General information on other measures and developments relating to implementation of the Convention in the State Party

85. Amendments made to the RA Constitution on 27 November 2005 served as a starting point for the implementation of the second phase of judicial and legal reforms in Armenia. This process involved consequent large-scale legislative and practical reforms. A number of legislative measures were adopted in view of putting the national legislation in line with the international standards in the fields of respect for human rights, democracy and the rule of law.

86. The NHRAP represents an important step and serves as a strategic paper for coordination of actions by state authorities to discharge their duties in a manner consistent with their commitment to fulfil the respective international obligations.

87. In this framework rudimentary reforms in the field of criminal justice are initiated. A series of significant amendments to the existing RA Criminal Code have been effectuated and pursuant to the RA President's Decree of 30 June 2012, No. NK-96-A, on Approving the 2012-2016 Strategic Programme of Legal and Judicial Reforms in the Republic of Armenia and the List of Measures Deriving from the Programme, the process of developing the new draft Criminal Code has been launched. Furthermore, the new draft Criminal Procedure Code is finalized and is already on the RA Parliament's agenda. It is worth to mention that the new draft Criminal Procedure Code seeks to promote many internationally recognized principles concerning the investigation mechanisms and observance of human rights in the course of criminal proceedings.

88. The Armenian Government has taken constant steps towards strengthening the effectiveness of legal assistance. As it was mentioned above special attention is given to increase the accessibility and the quality of free legal aid provided by Public Defender's Office in the regions. For that purpose both in Yerevan and in the regions the Public Defender's Office was provided with technically equipped office areas. Furthermore, for the purpose of ensuring proper access to lawyer a package of legal amendments were drafted aimed to provide possibility for the lawyer to enter detention facilities during non-working hours and days.

89. For the complete harmonization of the mentioned criminal justice reforms large scale amendments to the existing penitentiary legislation are initiated. Currently, the new draft Penitentiary Code is in the drafting process. Its ultimate goal is to ensure that the existing penitentiary legislation is in conformity with UNCAT and CPT standards and developments. Another major step in the field of penitentiary reforms is the full implementation of Probation Service which is currently on the agenda of the Government.

90. The existence of effective remedies under the domestic legislation capable of providing adequate and sufficient redress to those whose fundamental right have been violated has always been in the spotlight of Armenian authorities. In this context the introduction of legislative regulation and mechanisms for compensation of non-pecuniary damages was a remarkable step forward for giving possibility to the victims of torture to receive fair and adequate compensation for damage caused.

91. In the light of above mentioned and in line with foregoing, it has to be emphasized that adoption of legislation and the functioning of institutions to meet the requirements of a democratic society respectful of human rights is a long-term process that requires continued commitment and renewal. It is important to note in this context the Armenian authorities expressed their interest in continuing co-operation with the relevant international organisations of the field for further effective implementation of recommendations and standards.