

# ARMENIA

## Comments on the Initial Report submitted to the United Nations Human Rights Committee

### Introduction

On the eve of a review of Armenia's compliance with the International Covenant on Civil and Political Rights by that treaty's monitoring body, Amnesty International is concerned that Armenia has failed to implement fully its treaty obligations. This review is due to take place at the 64th session of the United Nations (UN) Human Rights Committee, beginning in October this year. The committee will examine Armenia's initial report under the International Covenant on Civil and Political Rights, to which Armenia acceded in 1993.<sup>1</sup> Armenia became a party to a number of important international instruments in the field of human rights soon after achieving independence, and has taken other steps towards building a democratic and civil society. Amnesty International remains concerned, however, that some of the guarantees and laws adopted to protect human rights are not fully implemented or observed. The organization is presenting its own concerns about alleged human rights violations in Armenia to the Human Rights Committee. These concerns are contained in a document issued in January this year (*Armenia: Summary of Amnesty International's concerns*, AI Index: EUR 54/01/98), and in this document which is intended to update information and summarize Amnesty International's recommendations.

### What is the International Covenant on Civil and Political Rights?

The fundamental principles enshrined in the Universal Declaration of Human Rights are given a more precise legal form in two covenants: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. These three instruments (plus the attached protocols) are known as the International Bill on Human Rights. The covenants and the protocols are law: their provisions are binding on the states which have become a party (states parties).

The International Covenant on Civil and Political Rights protects a number of fundamental rights including the right to life; the rights to freedom of conscience, expression, and association; the right to be free from arbitrary arrest or detention; the right to freedom from torture and ill-treatment; and the right to a fair trial.

States parties to the covenant elect the Human Rights Committee. This 18-member body of independent human rights experts monitors compliance by these states with the provisions of the covenant and its protocols. It is this committee which, at its forthcoming Geneva session, will examine Armenia's initial report explaining what the state has done to

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<sup>1</sup> Relevant documentation was received by the UN on 23 June 1993.

implement and strengthen the covenant's provisions.<sup>2</sup> In addition to reviewing the written report, the committee will seek further details from Armenia's representatives at the session before making public its comments and authoritative recommendations.

Attached to the covenant are two optional protocols. The first Optional Protocol establishes a procedure for private individuals to submit complaints to the committee alleging that their rights under the covenant have been violated by the state party. The Second Optional Protocol binds states parties not to carry out executions and to abolish the death penalty. Armenia acceded to the first Optional Protocol in 1993, but has yet to sign or ratify the Second Optional Protocol.

Amnesty International's concerns about Armenia's failure to implement fully its obligations under the International Covenant on Civil and Political Rights are outlined below, under the relevant articles.

### **Article 2 (3) - the right to an effective remedy**

Under Article 2 (3) each state party undertakes to ensure that any person whose rights or freedoms under the covenant are violated shall have an effective remedy, "notwithstanding that the violation has been committed by persons acting in an official capacity".

On 27 April this year President Robert Kocharian, elected the previous month, signed a decree setting up a Human Rights Commission under the President of the Republic of Armenia, to be headed by Paruir Hairikian (a former prisoner of conscience in Soviet times). Amnesty International has written to the new Commission outlining its current concerns in Armenia, and seeking further details on the Commission's remit, if any, to investigate and remedy human rights violations.

Amnesty International has also approached the Commission in connection with a proposal it made to the President in June for establishing the office of an ombudsman in Armenia. Amnesty International noted that the establishment of such an office could form a significant building block of a human rights culture in Armenia, and therefore urged that it be designed with care and consideration - with powers and objectives which are consistent with international standards, as well as the necessary resources and independence to carry out its work. Amnesty International made detailed recommendations, while stressing that the creation of such an office can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. The creation of such an office should also go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection. These initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human

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<sup>2</sup> Armenia's state report is available under UN reference: CCPR/C/92/Add.2.

rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

## **Article 6 - the right to life**

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Article 6 of the International Covenant on Civil and Political Rights proclaims that “Every human being has the inherent right to life”. Article 7 categorically states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Amnesty International believes that the death penalty violates these rights.

Many governments share this view, and have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. The Council of Europe has included a moratorium on executions and moves towards complete abolition among its provisions of entry for states of the former Soviet Union. Over 100 countries in the world today have abolished the death penalty in law or practice, including three countries of the former Soviet Union (Moldova, Georgia and Azerbaijan).

Armenia currently retains the death penalty, with some restrictions on its application,<sup>3</sup> but has taken the first steps along the path of abolition. There has been a slight reduction in the number of peacetime offences carrying the death penalty, to 13<sup>4</sup> (these include two economic offences of bribery and forgery, although Armenian officials report that there have been no death sentences passed for these crimes in the last 15 years). In April last year parliament passed in its first reading a draft new criminal code in which there would be no capital crimes, whether in time of peace or war, and in which the death penalty would be replaced by the maximum punishment of life imprisonment. The system whereby the Supreme Court, which used to act both as the court of first instance and the court of appeal in death penalty cases, has been altered (see below under Article 14). And there have been no executions in Armenia since independence.

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<sup>3</sup> The death penalty may not be passed on anyone under 18 at the time of the offence or when sentence is passed, or on a pregnant woman. In the case of a woman who is pregnant when due for execution, the death sentence must be commuted. The death penalty may also not be imposed on anyone ruled to have been insane when the crime was committed or when judgement was passed. For further information see *Armenia: Time to abolish the death penalty*, AI Index: EUR 54/03/97, April 1997.

<sup>4</sup> These are listed in Armenia’s initial report to the UN Human Rights Committee.

Amnesty International has welcomed all these steps, but is urging swifter progress towards complete abolition. The draft criminal code has still not received final parliamentary approval, and so death sentences continue to be passed. Eight were reported to have been handed down in 1997, and as of the beginning of this year there were at least 25 men on death row.<sup>5</sup> Some of these men have been there for many years, in a state of uncertainty as to their final fate.

Amnesty International has also expressed concern at the possibility of judicial error, linked with allegations of unfair trials and with a number of reports that law enforcement officials have used physical and other means of duress in seeking to obtain confessions in cases where the offence carries a possible death sentence (see below under Article 14).

While greatly welcoming the abolitionist stance of former President Levon Ter-Petrosian, who led Armenia from independence until the beginning of this year and whose office assured Amnesty International that he would not sign any execution warrants while in office, the organization is disappointed that he did not exercise more widely his constitutional power to commute death sentences to periods of imprisonment. Amnesty International has requested information on the number of commutations carried out since independence, but in the absence of an official response there appears to be information on only two such cases.<sup>6</sup>

Amnesty International wrote to Levon Ter-Petrosian's successor, President Kocharian, urging him to continue the moratorium on executions, in the light of parliament's intent to abolish the death penalty through a new criminal code. The organization also urged him to move further than his predecessor, by using his constitutional powers to commute to imprisonment the sentences of all those men currently on death row in Armenia. This would signal Armenia's strong commitment to abolition in advance of steps taken through parliament to enshrine this change in law.

Regarding the death penalty as a whole, Amnesty International is calling on the relevant authorities to:

commute all existing death sentences, as well as any that may be imposed before formal abolition of the death penalty:

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<sup>5</sup> The then Procurator General reported to Amnesty International in November 1997 that there were 24 men under sentence of death at that time. Since then Amnesty International has learned of at least one further death sentence, that passed on Tigran Avetissian the following month.

<sup>6</sup> These were two Azerbaijani citizens named Bakhtiar Khanali olgu Shabiev and Garay Muzafar oglu Nagiev, who were sentenced to death in April 1994 for murdering three Armenians and for attempting to poison a reservoir in Armenia. The two men were handed over to Azerbaijan in May 1995 as part of an exchange of prisoners to mark the first anniversary of the cease-fire in the Karabakh region (see AI Index: EUR 54/03/97).

- , give priority in parliament to the second and any further readings necessary of the draft criminal code, in order that complete abolition of the death penalty may be enshrined in law without further delay;
- , sign the Second Optional Protocol to the International Covenant on Civil and Political Rights. Signing this instrument, the first treaty of worldwide scope aimed at abolition of the death penalty, would confirm Armenia's commitment to abolition.

### **Article 7 - Prohibition of torture or cruel, inhuman or degrading punishment**

Torture and cruel treatment are prohibited under the Armenian Constitution, and evidence obtained through violation of legal proceedings has no legal force. It is also a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions. These provisions are, of course, in addition to the prohibitions of torture contained in the international instruments to which Armenia is party.

Nevertheless, in recent years Amnesty International has received persistent allegations that detainees have been beaten and otherwise ill-treated by law enforcement officials. In some cases it is alleged that the beatings were carried out intentionally to obtain information or a confession, in others the motivation is said to have been intimidation. In some cases it is alleged that the victim died as a result of the beatings received. Amnesty International's concern about these reports has been compounded by the apparent reluctance on the part of the authorities in many cases to conduct prompt and comprehensive investigations, or to initiate proceedings against those alleged to be responsible.

In many instances it has been difficult to corroborate such allegations for a variety of reasons. Many detainees in pre-trial detention, for example, are denied access to family members while the investigation is continuing and have also reported problems in obtaining full and prompt access to a defence lawyer or medical practitioner of their own choice. This reduces the opportunities for an independent examination of alleged injuries. Many detainees are also said to fear reprisals if they make an official complaint, or to have no faith in the commitment of the authorities to conduct an impartial investigation.

Allegations of ill-treatment have been persistent, however, and come from a wide variety of unrelated sources. They have been a subject of concern to the UN Committee against Torture (the body of experts which reviewed Armenia's initial report under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in April 1996), and reiterated by the UN Special Rapporteur on torture, Nigel Rodley, in his general report of January 1997 to the United Nations Commission on Human Rights.<sup>7</sup> This report states *inter alia*:

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<sup>7</sup> UN Doc: E/CN.4/1997/7, 10 January 1997.

“In the light of the information he has received, the Special Rapporteur shares the concern expressed by the Committee against Torture “about the number of allegations it has received with regard to ill-treatment perpetrated by public authorities during arrest and police custody” (A/51/44, para. 95) and shares the Committee’s “doubts about the effectiveness of the provisions for the safeguard of persons in police custody” (para.94). He urges the government to give serious consideration to the Committee’s recommendations (paras. 96-101).”

Examples of alleged torture and ill-treatment in custody are set out in detail in Amnesty International’s January 1998 paper on Armenia (AI Index: EUR 54/01/98). They include one case of a death in custody on which Amnesty International is still awaiting a response to its concerns expressed - that of 17-year-old Manvel Virabyan, who died in April 1997. It has been alleged that the young man died as a result of a severe beating by police, who are also said to have assaulted three other defendants in the same case, including Manvel’s older brother Mamikon Virabyan (the men were said to have been beaten often to the point of unconsciousness, and one was reportedly still passing blood in his urine a month after the alleged attacks). Manvel Virabyan’s family reported that his face was so disfigured when they went to see him in the morgue that they did not recognize him, and that his body also bore signs of other serious wounds. His mother also alleges that she dropped her initial protests over Manvel’s death as a result of intimidation by officials who issued threats against her other son Mamikon.

Most of the alleged assaults described in the previous paper relate to incidents in the custody of law enforcement officials, either immediately after detention or while awaiting trial. However, Amnesty International has also expressed concern about a number of allegations that several opposition journalists, lawyers and members of religious minorities were physically assaulted by persons they strongly believed had links with official structures, and in incidents they feel were not sufficiently rigorously investigated by the police.<sup>8</sup>

Amnesty International has also reported on cases in which there have been allegations of ill-treatment in the army. Several Jehovah’s Witnesses objecting to compulsory military service on conscientious grounds have reported being verbally and physically assaulted. Karen Voskanian, for example, who was taken to Mashtots district conscription office on 8 March this year, was allegedly beaten there after declaring that he was a Jehovah’s Witness, unable to perform military service on religious grounds (see below under Article 18). Others like Andranik Kosian report being beaten at the military units to which they had been forcibly conscripted. He was taken to a military unit in Zod in January this year, where his continued refusal to perform military service is said to have been the cause of severe beatings. The ill-treatment reportedly continued after he had been transferred to the Central Administration of the Military Police, after declaring a protest hunger strike. Other conscripts who have not objected to

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<sup>8</sup> See below under Article 18, and the paper *Armenia: Allegations of ill-treatment: an update*, AI Index: EUR 54/05/95, November 1995.

military service are also said to have been subjected to violence. On 8 August, for example, the head of a local non-governmental organization reported that she had witnessed officers beating two soldiers in the guard room of the Yerevan garrison. Larisa Alaverdian, Executive Director of the Fund against Legal Arbitrariness, said that she had been called to the vicinity by concerned workers of the nearby Garun garment factory, and on arrival observed three officers in uniform beating two soldiers. The soldiers were being made to kneel on the ground and stretch their hands out, and the uniform of one of them had been torn. Larisa Alaverdian reports that one of those carrying out the beating simply shrugged when she made signs to him to stop, and that the violence only ceased after she had telephoned presidential staff and the Ministry of Defence. It was later reported that the two soldiers had been accused of an attempted theft and that the officers, instead of reporting the incident, decided on their own form of punishment. According to Larisa Alaverdian, the Ministry of Defence subsequently reprimanded the three officers, and warned them that they would be discharged if such incidents occurred again.

Brutal hazing of conscripts has been reported under the practice known in Russian as “*dedovshchina*”. This involves at best forcing recruits to perform menial tasks, often outside official duties, and, at worst, can lead to beatings and suicide. Often such activity is alleged to have been with the consent or active participation of army officers, who reportedly condone these practices as a means of maintaining discipline.

Many complain that such abuses are routine and systematic, and that action is rarely taken on complaints. The exceptions are those occasions with particularly tragic outcomes, such as an incident on 11 February this year when a young soldier from a unit stationed near Armavir, to the south-west of Yerevan, shot dead six comrades and then killed himself after enduring prolonged ill-treatment. In the resulting court case which opened on 19 August this year, the prosecution alleged that Private Mkrtych Ohanian had opened fire on his comrades as a result of suffering systematic abuse and violence at their hands, and that commanding officers were aware of what was going on but took no action. On 9 September 1998 Shahumian district court in Yerevan sentenced two privates to nine and 10 years’ imprisonment for the systematic physical abuse of Private Ohanian. In addition five of the unit’s officers - including the commander, Idris Khangaldian, who received a four-year sentence - were convicted of abuse of power and complicity in the ill-treatment.

In other less prominent cases it has been alleged that violence, often with a fatal outcome, has been covered up by army officials who have reported servicemen’s deaths in such instances as suicide. Vartan Harutunian, a member of the Presidential Human Rights Commission, was quoted as saying on 27 August this year that he alone had received 14 appeals from parents who claim their sons were killed in unknown circumstances while performing military service.<sup>9</sup> The parents have accused military commanders and law enforcement officials of hiding the true causes of death behind verdicts of suicide. Another commission member, Greta Mirzoyan, also alleged that corrupt judges and prosecutors have hindered efforts to bring

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<sup>9</sup> Report by RFE/RL’s Armenian service on 27 August 1998.

the military commanders responsible to justice. The commission was due to convene on 10 September 1998 to review proposals recommending specific measures to President Kocharian.

Amnesty International recognizes the problems that may exist within the law enforcement system, for example those caused by lack of funding for professional staff, training and infrastructure, or those caused by a lack of public confidence in the willingness of such a system to address abuses. These problems can never be used as an excuse, however, for torture and deliberate ill-treatment. Amnesty International recommends that the Armenian authorities take the following steps which, as the Human Rights Committee has concluded, are required to fulfill the obligations made under Article 7 of the International Covenant on Civil and Political Rights and are also required by other international standards:

- , criminalize torture as a distinct crime with appropriate punishments under national law, as required by Article 4 of the Convention against Torture;<sup>10</sup>
- , inform all detainees of their rights, including the right to complain to the authorities against ill-treatment;
- , ensure that detainees under interrogation are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and an independent medical practitioner;
- , carry out prompt and impartial investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made (as required by Articles 12 and 13 of the Convention against Torture);
- , as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or who may have been tortured;
- , bring those responsible for torture or ill-treatment of detainees to justice in the courts;

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<sup>10</sup> In his letter received by Amnesty International on 5 November 1997, the Armenian Procurator General stated on this point that the Criminal Code already envisages criminal responsibility for torture under Article 105 (“intentional infliction of severe bodily injuries”), Article 106 (“intentional infliction of less severe bodily injuries”) and Article 110 (“torture”). None of these, however, contains the definition of torture as given under the Convention against Torture, including specific mention of torture as an act carried out “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1 of the Convention against Torture).



- , ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible (as required by Article 14 of the Convention against Torture);
- , ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment (as required by Article 10 of the Convention against Torture);
- , establish an effective system of independent inspection of all places of detention (as required by Principle 29 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment);
- , take steps to address the concerns and all the recommendations of the United Nations Special Rapporteur on Torture and the Committee against Torture.

## **Article 9 - no one shall be subjected to arbitrary arrest or detention**

It has been alleged, by a variety of sources, that military officials involved in conscription have detained family members illegally and arbitrarily, in effect as hostages, in order to force young men liable to call-up to report for conscription. In June last year, for example, the father of a young Jehovah's Witness was reportedly held illegally for over 24 hours by the Shahumyan District Military Registration and Enlistment Office (DMREO) in Yerevan. John Martirosyan had left home shortly before his 18th birthday, fearing forcible conscription, and gave his father a copy of a written statement already presented to the District Military Commissar about how military service was in conflict with his religious beliefs. Two days after John's birthday two men from the DMREO came looking for him at home. His father, Levon Martirosyan, accompanied them back to the DMREO to hand over a further copy of his son's statement. Once there, however, officials reportedly ripped up this statement and ordered Levon to be detained in a solitary confinement cell until his son agreed to present himself there for military service. This was around 7.00am on 23 June 1997.

The following day Levon Martirosyan's wife went to the DMREO to seek an explanation as to why he was being detained, and she was also told that he would be kept until John Martirosyan came to take his place. When she protested that her husband was unwell, having reportedly suffered an attack of radiculitis while detained, and that she was calling an ambulance, the Military Commissar himself was said to have told her that in that case they would detain her instead of her husband. Eventually both parents were allowed to leave the DMREO at around 5.00pm on 24 June.

Such allegations have also been made in cases where there has been no religious motivation on the part of the person sought. In a similar incident later in the year, for example,

two young relatives of men liable for military service were said to have been held illegally, again in Shahumyan DMREO.<sup>11</sup> It is alleged that police from the Shahumyan District Department of Internal Affairs took Georgy Solovikh's 18-year old sister Galina, and Norair Andreasyan's 16-year-old brother Hovhanes, to the recruiting office at 7.00am on 16 December where they were held for a day and a half.

Amnesty International is urging the Armenian authorities to:

- , investigate comprehensively and impartially all allegations that people have been detained illegally and arbitrarily, in effect as a hostage, to force their relatives to report for military service;
- , ensure that anyone found responsible for such acts is brought to justice;
- , ensure that anyone found to have been the victim of arbitrary detention is compensated;
- , ensure that all law enforcement officials and military personnel at conscription offices are aware that arbitrary detention is strictly prohibited under both Armenian and international law, and is a punishable offence.

## **Article 14 - the right to a fair trial**

Amnesty International has been concerned that some legal procedures in Armenia have not appeared to satisfy fully the requirements a fair trial recognized in Article 14 and other international standards, and that some of the procedures already in place have not always been observed.

Amnesty International had expressed concern, for example, over the situation whereby until recently the Supreme Court had acted as both court of first instance and court of appeal in some cases. This violated the provision of Article 14 (5) of the covenant, which guarantees everyone convicted of a crime the right to have the conviction and sentence reviewed by a *higher* tribunal (although decisions of the Supreme Court could be appealed, such appeals were lodged with the Presidium or Plenum of the Supreme Court, that is the same body of people from which the original judges were drawn). In April 1997 the Human Rights Committee, reviewing Georgia's initial report under the International Covenant on Civil and Political Rights, commented on the similar arrangements in that country, also left with its Supreme Court as the court of first instance in some cases following the demise of the Soviet federal system which provided a higher, federal, USSR Supreme Court. The Committee members expressed concern that an

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<sup>11</sup> From Bulletin No. 2 (November-December 1997) of the Armenian Helsinki Committee.

appeal heard by other bodies within the Supreme Court, against a sentence passed by the Supreme Court, did not fully respect the right to have a case reviewed by a higher court.<sup>12</sup>

In July this year the Supreme Court was superseded by an Appeals Court, which will not act as a court of first instance. However, there will still be a transitional period until the new court is fully functional, and until 1 January 1999 it will still carry out some of the functions of the now-disbanded Supreme Court.

In other instances it has been alleged that procedures already in place to protect the right to a fair trial have not been respected. In its report of January this year Amnesty International detailed claims that since 1995 three major groups of political prisoners - over 50 people - had been subjected to unfair trials.<sup>13</sup> Many of the defendants alleged that they were beaten or otherwise ill-treated in order to force them to confess, that their relatives had received similar treatment as a way of exerting pressure, and that statements extracted under duress were not excluded as evidence in court. Some of their lawyers had complained that they were denied access at times to their clients and to materials of the case, and that these and other procedural violations had called into question the fairness of the trials in line with international standards. These claims were especially serious in view of the death sentences handed down on four of the defendants.

Many of those given a custodial sentence at the trials are now at liberty, following the resignation of President Ter-Petrosian earlier this year and the unbanning of the opposition Armenian Revolutionary Federation (ARF). Their releases, however, appeared to be a result of a presidential pardon, for example, or following an appeal hearing at the Supreme Court. To Amnesty International's knowledge the issue of alleged torture or duress to extract confessions, or of claims that other fair trial procedures were violated, did not figure in the judicial decisions to release those convicted or reduce their sentences.

Amnesty International is calling on the Armenian authorities to:

, conduct a full judicial investigation of all such cases in which it has been alleged, for example, that there have been violations of international fair trial standards or that testimony was extracted under physical or psychological duress; exclude such testimony and evidence obtained by such testimony; bring to justice anyone identified as responsible and provide full reparation to the victims.

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<sup>12</sup> *Concluding Observations of the Human Rights Committee*, United Nations reference: CCPR/C/79/Add. 74, paragraph 13, 11 April 1997.

<sup>13</sup> The three main groups of political prisoners were defendants in the so-called "Dro", "Vahan Hovanesian + 30" and "25 September" series of trials. The first two groups consisted of members of the then-banned Armenian Revolutionary Federation (or Dashnak party). The third series of trials was of those accused of taking part in violent disorders which followed disputed presidential elections in September 1996.

## Article 17 - the right to privacy

In accordance with legislation inherited from the Soviet era, sex between consenting adult males is punishable by up to five years' imprisonment, under the first part of Article 116 in the current criminal code (which criminalizes "sodomy", defined as "sexual relations of a man with another man"). Although the new draft criminal code currently under parliamentary consideration is said to abolish this criminalization of homosexual acts between consenting adult males, prosecutions for these offences continue. According to data provided to Amnesty International by the office of the Procurator General in May this year, for example, there have been 21 criminal prosecutions under Article 116, part one since 1993 (including four such prosecutions in 1997, and seven in 1996).<sup>14</sup>

Amnesty International is calling for the repeal of the first part of Article 116, considering that the use of a "sodomy" law to imprison men for same-sex, consensual relations in private is a violation of human rights, including the rights to privacy, to freedom from discrimination, and to freedom of expression and association, protected in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Amnesty International is also urging that the age of consent for heterosexual and homosexual relations is equalized.

Amnesty International's position finds support in the decisions of several inter-governmental human rights mechanisms. In March 1994, for example, the Human Rights Committee found that provisions of the Criminal Code in the Australian State of Tasmania criminalizing consensual homosexual relations in private violated Articles 2 (1) and 17 of the International Covenant on Civil and Political Rights. The European Court of Human Rights has also found that laws criminalizing same-sex sexual relations in the United Kingdom (Northern Ireland), the Republic of Ireland and Cyprus violated the right to privacy enshrined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition the European Commission has ruled, in the case of *Sutherland v. the United Kingdom*, that the unequal age of consent for sexual relations in the United Kingdom violates the rights to privacy and freedom from discrimination guaranteed by the European Convention.

Pending the adoption of the new criminal code Amnesty International is urging the relevant authorities to:

- , release immediately and unconditionally anyone imprisoned for consensual homosexual relations between adult males, and refrain from further criminal prosecutions of men for consenting same-sex relations between adults in private;
- , repeal Article 116, part 1 of the Armenian Criminal Code, which criminalizes consenting sex between adult males;
- , equalize the age of consent for homosexual and heterosexual relations.

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<sup>14</sup> For years further back the statistics given were 5 criminal cases in 1995, two in 1994 and three in 1993.

## **Article 18 - the right to freedom of thought, conscience and religion**

At the time of writing at least six young men remain imprisoned in Armenia because their conscience has led them into conflict with the law that makes military service compulsory for young males, and offers them no civilian alternative.<sup>15</sup> Their stories - including repeat prosecutions for the same offence, and forcible conscription - illustrate how Armenia is not respecting the internationally-recognized right to conscientious objection. Other rights of conscientious objectors are said to have been violated also - see the sections above on torture and arbitrary detention. Amnesty International regards these young men as prisoners of conscience, and is calling for their immediate and unconditional release.

Four of these cases are described in detail in Amnesty International's document issued in January this year.<sup>16</sup> One of the two new cases to have come to light since then is that of Andranik Kosian, a Jehovah's Witness, who was first imprisoned for refusing his call-up papers in March 1997. He was sentenced to 12 months' imprisonment, but released under an amnesty declared the following month. In June 1997 he went to the Vanadzor Department of Internal Affairs to sign a document in connection with his release, but instead was taken by an armed police officer to the District Military and Registration Enlistment Office (DMREO), where he was forcibly conscripted into the army.

Andranik Kosian was then taken to a military unit in Zod. He refused to perform military service, as a result of which he was reportedly subjected to severe beatings. After declaring a protest hunger strike he was transferred to the Central Administration of the Military Police, and was again said to have been subjected to physical violence. He was eventually charged with evading military service (Article 257a of the military section of the criminal code, which carries a maximum of seven years' imprisonment), and as a last resort he fled. Andranik Kosian was arrested on 12 January 1998, and taken to Sovetashen prison.

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<sup>15</sup> This figure may be an understatement. The 1997 annual report of the State Department of the United States of America, for example, reported that as of September that year there were 14 Jehovah's Witnesses in prison, including 4 who had already served sentences of up to three years for refusing military service. At that time seven Jehovah's Witnesses were in pre-trial detention, and seven others were reportedly in hiding to escape prosecution for refusing military service. In September 1998 Jehovah's Witness sources reported that 20 of their members were in hiding to avoid conscription.

<sup>16</sup> Artashes Alekskanyan, on whom Amnesty International had few details at that time, has been released since that paper was written. His case, one of several known to Amnesty International in which the young man concerned had served two terms of imprisonment for his repeat refusal to serve in the army on religious grounds, is described in *Concerns in Europe July - December 1997*, AI Index: EUR 01/01/98.

A similar case is that of Karen Voskanian, who was taken to Mashtots DMREO on 8 March 1998. He was allegedly beaten there after declaring that he was a Jehovah's Witness, unable to perform military service on religious grounds, and then forcibly conscripted into a military unit in Gyumri. There, on 20 June, he refused to take the military oath of allegiance and was also charged under Article 257a. He received a three-year sentence of imprisonment under that article at the beginning of September 1998.

Forcible conscription means that those who continue to object on conscientious grounds fall under military jurisdiction, with a penalty for evading military service under Article 257 which is heavier than that of the civilian offence for refusing call-up papers (under Article 75 of the ordinary section of the criminal code).

The right to conscientious objection is a basic component of the right to freedom of thought, conscience and religion - as articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It has been recognized as such in resolutions and recommendations adopted by the United Nations Commission on Human Rights, the United Nations Human Rights Committee, the Council of Europe and the European Parliament.<sup>17</sup>

These bodies have all urged governments to guarantee that individuals objecting to compulsory military service because of their conscientiously held beliefs are given the opportunity to perform an alternative service. They have stated explicitly in a number of resolutions that this alternative service should be of a genuinely civilian character and of a length which cannot be considered as punitive. They have also recommended that individuals be permitted to register as conscientious objectors at any time before their conscription, after call-up papers have been issued, or during military service. Likewise, the United Nations Commission on Human Rights, the Council of Europe and the European Parliament have emphasized that information about how to seek recognition as a conscientious objector should be readily available to all those facing conscription into the armed forces - as well as to those already conscripted.

Likewise, in November 1997, both the Council of Europe and the European Union reminded participating states in the Organization for Security and Co-operation in Europe (OSCE) - including Armenia - at the OSCE's Human Dimension Implementation Meeting in Warsaw that recognition of the right to conscientious objection to military service is an important part of the Organization's commitment to upholding freedom of thought, conscience and religion for all people living in the OSCE region.

Amnesty International considers a conscientious objector to be any person liable to conscription for military service who refuses to perform armed service for reasons of conscience or profound conviction. Their profound conviction may arise from religious, ethical,

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<sup>17</sup> For further information on the issue of conscientious objection in general see *Out of the margins: The right to conscientious objection to military service in Europe*, AI Index: EUR 01/02/97, April 1997.

moral, humanitarian, philosophical, political or similar motives. But regardless of the nature of their objection, the right of such individuals to refuse to carry weapons or to participate in wars or armed conflicts must be guaranteed. This right also extends to those individuals who have already been conscripted into military service, as well as to soldiers serving in professional armies who have developed a conscientious objection after joining the armed forces. Wherever such a person is detained or imprisoned solely because they have been refused their right to register an objection or to perform a genuinely alternative service, Amnesty International will adopt that person as a prisoner of conscience.

Amnesty International does not question the right of governments to conscript individuals into the armed forces, nor does it agree or disagree with the motives of individual conscientious objectors. In keeping with the international standards mentioned above, however, Amnesty International insists that all those liable to conscription are given the opportunity to perform an alternative to armed service on the grounds of their conscience or profound conviction. On this basis, Amnesty International campaigns for the development of law and procedure which make adequate provision for conscientious objectors, and for the release of all those imprisoned solely on those grounds.

Amnesty International is urging the Armenian authorities to:

- , release immediately and unconditionally all those currently imprisoned for their refusal on conscientious grounds to perform military service, and refrain from imprisoning anyone else as a conscientious objector;
- , introduce without delay legislative provisions to ensure that a civilian alternative of non-punitive length is available to all those whose religious, ethical, moral, humanitarian, philosophical, political or other conscientiously-held beliefs preclude them from performing military service;
- È establish independent and impartial decision-making procedures for applying a civilian alternative to military service;
- , ensure, after the introduction of a civilian alternative service, that all relevant persons affected by military service, including those already serving in the army, have information available to them about the right to conscientious objection and how to apply for an alternative service.

There has also been some hostility towards the activities in general of less historically established religious groups and sects in Armenia, whose activities are subject to certain restrictions. The 1991 law “On freedom of conscience and religious organizations” grants special status to the Armenian Apostolic Church, which is recognized as the national church, and also forbids proselytizing and requires all religious denominations and organizations to register with the State Council on Religious Affairs. It was supplemented in 1993 by a Presidential

Decree which enjoins this Council to investigate the activities of the representatives of registered religious organizations and to ban missionaries who engage in activities contrary to their status. In 1997 the law was amended, tightening registration requirements for other denominations by raising from 50 to 200 adult members the minimum number required for registration, and increasing funding restrictions so that foreign-based churches may not be supported by funds from their headquarters outside Armenia.

Particular problems appear to be experienced by Jehovah's Witnesses, who have been denied registration by the Council of Religious Affairs, owing to their position on compulsory military service. A religious organization refused registration cannot publish a newspaper or magazine, rent a meeting place, have its own program on television or radio, or officially sponsor the visas of visitors. A large quantity of Jehovah's Witness literature was reportedly seized in April last year, on the grounds that it could not be imported legally in the absence of registration. In addition, recently Bishop Parget Martirosian of the Armenian Apostolic Church was quoted as condemning the missionary activity of the Jehovah's Witnesses, referring to them as "a totalitarian sect" which posed "the most horrible threats to our people, our state, our faith".<sup>18</sup>

Members of other sects have indicated, however, that their situation has improved over that in April 1995 when a number of religious minorities reported a wave of attacks on their members and/or premises. It was alleged that in many cases the police appeared extremely reluctant to pursue any rigorous enquiries in order to identify the perpetrators, who in some cases were said to be members of the paramilitary Yerkrpah organization with close links to the Ministry of Defence.<sup>19</sup> A member of the Hare Krishna movement, for example, told Amnesty International delegates in October 1995 how he and his fellow devotees had been assaulted in their temple in a private house in Yerevan on 18 April that year. He described how a group of some 20 to 25 men, some in non-specific military fatigues, burst in and proceeded to beat those present, who included four women. Eleven men were hit with iron bars, and all subsequently received hospital treatment. The attackers, who also stole valuable items and smashed others that were left, were said to have stated openly that they were acting on orders from the Ministry of Defence.

The devotee who met Amnesty International delegates explained that he had gone to the Arapkir district police station before receiving medical treatment in order to request assistance against the attackers, but that officers there told him they were short-staffed and asked him to come back later. At this stage he was still bleeding from a head wound, which required six stitches at the hospital. He described how a concerted investigation had begun only some two to three weeks after the event, and how the case had been passed between various departments without result. He claimed an investigator had told him that it was common

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<sup>18</sup> Noyan Tapan, 17 August 1998.

<sup>19</sup> See for example *Armenia: Allegations of ill-treatment: an update*, AI Index: EUR 54/05/95, November 1995.



knowledge that the Ministry of Defence had been involved, and so the perpetrators of the attack would not be brought to justice.

Amnesty International expressed concern about such reports alleging the collusion of official structures in either the commission of the attacks, or in ensuring that any investigations were not sufficiently rigorous, prompt and impartial. Amnesty International urged the authorities to take all necessary steps to ensure that competent officials conducted such investigations, with the results made public and any perpetrators of ill-treatment identified and brought to justice. Officials have not informed Amnesty International of any prosecutions resulting from the April 1995 attacks.