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# ARMENIA

## **Torture and ill-treatment: Comments on the second periodic report to the United Nations Committee against Torture**

### **1. Introduction**

In May 2000 the United Nations (UN) Committee against Torture in Geneva was set to examine Armenia's second periodic report about the measures the country has taken to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). Unfortunately, a month prior to this Armenia indicated to the Committee that it would not be attending that session after all.

Amnesty International had prepared this current report on the issue of torture and ill-treatment in the light of the Committee's proposed review, and has decided to issue it regardless as the organization remains concerned that Armenia has failed to implement fully its obligations under the Convention against Torture. There are persistent and worrying allegations, confirmed in at least one case by the Office of the Procurator General, that law enforcement officials have subjected people to torture and ill-treatment as a tool for obtaining confessions and coercing testimony, or for intimidation and extortion. In some cases detainees have reportedly died as a result. 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 comprehensive, impartial proceedings against those alleged to be responsible. Army conscripts are also said to have been subjected to brutal hazing while officers turn a blind eye, and death sentences continue, with over 30 men on death row at the time of writing. This report examines such issues against the background of Armenia's commitments under the Convention against Torture, and concludes with a set of recommendations to the Armenian authorities.

### **2. What is the Convention against Torture?**

The Convention against Torture was adopted by the General Assembly of the United Nations on 10 December 1984. It is an international human rights treaty aimed at protecting all persons against torture and ill-treatment. Governments which ratify the convention, referred to as "States Parties", agree to be legally bound by its provisions and to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. No exceptional circumstances whatsoever may be invoked as a justification for torture.

States Parties to the Convention against Torture also undertake to ensure that all acts of torture as defined within the Convention are offences under their criminal law, punishable by appropriate penalties which take into account the grave nature of the offence. In connection with this States Parties have a duty to instigate prompt and impartial investigations whenever there is reasonable ground to believe an act of torture has taken place, and they are obliged to ensure that any individual who alleges torture has a right to complain, and to have the case heard promptly and impartially.

In addition, the Convention against Torture provides for a system of universal jurisdiction. This means that a State Party is obliged to extradite (to a state which will fairly prosecute) or prosecute itself anyone on its territory alleged to have committed torture, no matter where the torture is said to have taken place. States Parties are not to expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Convention against Torture also obliges States Parties to keep rules and methods of interrogation under systematic review and to prohibit the use of testimony elicited by torture, as well as to provide training and education regarding the prohibition of torture for law enforcement officials and others involved in the custody, interrogation or treatment of any person who is arrested, detained or imprisoned. States Parties to the Convention are also to ensure that a victim of an act of torture obtains redress and has an enforceable right to reparation, including fair and adequate compensation.

Implementation of the Convention against Torture is monitored by a 10-member body of experts known as the Committee against Torture, which is elected by the States Parties to the Convention. This committee examines periodic reports from States Parties about the measures they have taken to implement the Convention. In addition, if the state has agreed to such a procedure, the committee may also examine complaints from individuals who claim they have been tortured or ill-treated by or with the consent or acquiescence of state agents.

Armenia became a party to the Convention against Torture on 13 September 1993, but has yet to agree to the procedure which would allow the Committee against Torture to examine complaints by individuals or other State Parties.<sup>1</sup> The Committee against Torture was set to review Armenia's second periodic report during its forthcoming 24<sup>th</sup> session, held in Geneva in May. The Committee's review will now have to be rescheduled for a later date.

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<sup>1</sup> The relevant documentation was deposited with the United Nations on 13 September 1993, and the Convention entered into force under the terms of the treaty a month later, on 13 October 1993.

## **2.1 UN bodies and allegations of torture in Armenia**

The Committee against Torture examined Armenia's initial report on its implementation of the Convention against Torture on 30 September 1996. The Committee noted positive aspects, such as the integration of prohibitions against torture in the new Armenian Constitution adopted in 1995. However, the Committee expressed concern about allegations of torture by law enforcement officials and recommended, among other things, that the authorities investigate and report back on these allegations.<sup>2</sup> Members of the Committee had raised Amnesty International's reports of such allegations at the session and, although these were denied by the Armenian delegation, the Committee recommended that they receive a report back after a due investigation of the claims.<sup>3</sup>

The concerns of the Committee against Torture about alleged ill-treatment in Armenia were repeated by the UN Special Rapporteur on Torture, Sir Nigel Rodley, in his general report of January 1997 to the United Nations Commission on Human Rights.<sup>4</sup> The report states *inter alia*:

“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/51/144, para.95) and shares the Committee's “doubts about the effectiveness of the provisions for the safeguard of persons in custody” (para. 94). He urges the government to give serious consideration to the Committee's recommendations (paras. 96-101).”

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<sup>2</sup> See *Concluding observations of the Committee against Torture: Armenia*, UN reference: A/51/44, paras. 84-101, 9 July 1996. Other recommendations included that torture be made a special crime in the penal code, and that it be clearly defined, and that measures be taken to guarantee that persons could not be expelled or extradited to other states where they were in danger of being subjected to torture.

<sup>3</sup> UN Press Releases HR/CAT/96/04 and HR/CAT/96/05 of 30 April 1996.

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

The issue of torture was also of concern to the UN Human Rights Committee, which in October 1998 reviewed Armenia's initial report under the International Covenant on Civil and Political Rights and also expressed concerns about torture and ill-treatment by law enforcement officers. The Human Rights Committee recommended, among other things, that Armenia establish a special independent body to investigate complaints of torture and ill-treatment by law enforcement personnel.<sup>5</sup>

Finally, the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions has also raised several cases of deaths in custody with the Armenian authorities.<sup>6</sup>

Amnesty International regrets that the recommendations of these authoritative bodies have yet to be implemented fully.

## **2.2 Armenia's other commitments to prohibit torture**

In tandem with the binding commitments under the Convention against Torture, torture is forbidden under Article 7 of the International Covenant on Civil and Political Rights<sup>7</sup>, to which Armenia became a party on 23 June 1993. The Constitution of Armenia prohibits torture and humiliating treatment, and evidence obtained through violation of legal proceedings has no legal force.<sup>8</sup>

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<sup>5</sup> See UN reference: CCPR/C/79/Add. 100, 18 November 1998. Other recommendations by the Human Rights Committee related to the issue of torture and ill-treatment included that Armenia observe the UN's Standard Minimum Rules for the Treatment of Prisoners, and immediately commute the death sentences of all persons held on death row at that time.

<sup>6</sup> See for example the addendum to the Special Rapporteur's report dated 23 December 1996 to the Commission on Human Rights, UN reference: E/CN.4/1997/60/Add.1, 23 December 1996. The cases raised included those of Rudik Vartanian who died after being beaten by police officers (see *Armenia: Summary of Amnesty International's concerns*, AI Index: EUR 54/01/98, January 1998, and also the Special Rapporteur's report, UN reference: E/CN.4/1999/39/Add.1, dated 6 January 1999), Ardavast Manukian, who died in custody amid allegations of ill-treatment and inadequate medical care, and eight Azerbaijani prisoners of war who died at the Armenian Ministry of Defence prison (see *Amnesty International Reports 1995 and 1996*).

<sup>7</sup> Article 7 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

<sup>8</sup> The Constitution of Armenia was adopted following approval under a referendum held July 1995. Article 19 states: "No one may be subjected to torture and to treatment and punishment that are cruel or degrading to the individual's dignity. No one may be subjected to medical or scientific experimentation without his or her consent." Article 42 specifies that: "Illegally obtained evidence shall not be used."

In addition it is a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions, or to force an accused person or a witness to give false testimony.<sup>9</sup> The criminal code contains other articles punishing torture and forms of ill-treatment (although none at present contains the definition of torture as set out in the Convention against Torture, see section 7.1 below).

In spite of all these provisions, however, local and international non-governmental organizations, including Amnesty International, continue to receive persistent allegations, from a wide variety of different and unconnected sources, that law enforcement officials have engaged in torture and ill-treatment.<sup>10</sup> Concerns expressed by such groups have been echoed by the Presidential Commission on Human Rights, headed by former prisoner of conscience Pariur Airikian. Speaking about its 1999 report on human rights protection in Armenia, approved at a session on 22 February this year, the commission again expressed its concern about physical abuse used against suspects and prisoners.<sup>11</sup>

These concerns have been compounded by allegations that in many cases the response by officials has been at best reluctant, and at worst obstructive or dismissive, leading to a perceived climate of impunity. Concerns about the lack of safeguards to protect people from torture and ill-treatment, and the lack of legal redress for those who allege such abuse, are detailed below.

### 3. Pre-trial detention

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<sup>9</sup> Articles 193 and 198 of the Armenian Criminal Code (a draft new code is currently before parliament).

<sup>10</sup> Among those domestic organizations reporting torture allegations recently have been Mikael Danielian's Helsinki Association of Armenia and the Sakharov Foundation.

<sup>11</sup> *Armenpress* news agency, 23 February 2000. In its previous report dealing with 1998, the commission had also expressed concern about "facts of torture", and recommended that Armenia become a party to Article 22 of the Convention against Torture which would enable the Committee against Torture to consider communications from or on behalf of individuals in Armenia claiming to be victims of torture.

In most of the reports received by Amnesty International relating to people held in custody, the alleged torture or ill-treatment by law enforcement officials is said to have taken place during short periods of custody or arrest, or while people are being detained prior to trial (under pending legal and judicial reforms the system of pre-trial detention, and indeed the whole penitentiary system, is due to be transferred from the Ministry of Internal Affairs to the Ministry of Justice, but this has yet to be implemented at the time of writing).<sup>12</sup> The aims are said to have included forcing a confession or testimony; extracting other information; putting pressure on detainees through ill-treating relatives or friends; or simply extortion - beatings to back up demands for money in exchange for release or the dropping of charges. Allegations of torture and ill-treatment have been made in both criminal and political cases.<sup>13</sup>

### **3.1 Lack of access to the outside world**

The Armenian criminal justice system still uses many codes and procedures inherited from the Soviet system and has tended to follow the latter's emphasis on isolating a suspect prior to trial, using pre-trial detention widely rather than other non-custodial options.

International standards relating to the treatment of people deprived of their liberty stress that those in pre-trial detention should be granted access to people such as their defence lawyer, doctor or dentist, and their family. However, one of Amnesty International's concerns about factors facilitating the possibility of torture and ill-treatment in Armenia is the number of reports alleging that law enforcement officials have obstructed access by some detainees - during the period of maximum vulnerability immediately after detention - to those outside the penal system: family members, independent medical practitioners, and even defence lawyers.

#### **3.1.1 Lack of access by the family**

Anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, their family or friends. This notification is to take place immediately,

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<sup>12</sup> See for example the report by the *Noyan Tapan* news agency of 27 March 2000, quoting Justice Ministry representative Nikolay Arustamian.

<sup>13</sup> Amnesty International opposes the use of torture and cruel, inhuman or degrading treatment in all cases - both criminal and political - without reservation. Amnesty International uses a broad interpretation of the term "political prisoner" so as to cover all cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Governments are, however, obliged to ensure they receive a fair trial in line with international standards.



according to Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>14</sup>

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<sup>14</sup> Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners states: “An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.” Principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also requires that such notification take place.

International standards also stipulate that people held in pre-trial detention are to be given all reasonable facilities to communicate with family and friends and to receive visits from them.<sup>15</sup> In Armenia, however, the investigator in the case has discretion whether or not to grant access to family members. In practice in many cases investigators have reportedly denied such access for long periods while the investigation is under way. To Amnesty International's knowledge, for example, only one of the 18 people currently detained following the armed attack in the Armenian parliament last year has been granted access to family members.

On 27 October 1999 a group of armed men burst into the chamber of the National Assembly (parliament) and opened fire on senior officials. A total of eight men died, including the Prime Minister Vazgen Sarkisian, the Speaker of Parliament Karen Demirchian, and the latter's two deputies. The armed men took hostages, but surrendered the following day. At the time Amnesty International extended its condolences to President Robert Kocharian, and welcomed both his efforts to ensure that the events unfolded without further bloodshed and his public assurances at the time to the armed men that, on surrender, they would face no violence and would be granted a fair trial. In cases of such heightened emotions, the organization stressed, it is especially important that those detained and subsequently charged in connection with the deaths receive a fair trial in accordance with the international standards Armenia has pledged to uphold.

Five men (Nairi Unanian, his brother Karen Unanian, their uncle Vram Galstian, Derenik Bezhdanian and Eduard Grigorian) were arrested at the parliament building following the shootings, and further arrests of alleged accomplices followed. Charges brought are said to include terrorism (Article 61 of the criminal code) and premeditated murder (Article 99 of the criminal code), both of which carry a maximum sentence of death.

Eighteen people are in custody at the time of writing in connection with the events of 27 October. To Amnesty International's knowledge only one has been granted access to his family. He is Vram Galstian, who is said to have been allowed to see his wife after suffering what was described as a nervous collapse after his arrest. The lack of access to all the other defendants is especially worrying given allegations by some of the men that they have been subjected to ill-treatment, and have on occasion been prevented from seeing their lawyers (see below).

### **3.1.2 Difficulties in access by defence lawyers**

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<sup>15</sup> See Rule 92 in the footnote above, and Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states: "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

Under international standards, everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their own choice to protect their rights and to assist in their defence. If the person cannot afford to hire a lawyer, effective, qualified counsel should be assigned. The person must be given adequate time and facilities to communicate with their lawyer. Access to counsel should be immediate.<sup>16</sup>

Although the right to immediate access to a defence lawyer is guaranteed under the Constitution of Armenia<sup>17</sup>, in recent years there have been many reports of lawyers being prevented from seeing their clients, particularly in the initial period after detention.<sup>18</sup>

In the case of those detained after the 27 October shootings, for example, lawyer Anzhela Karapetian complained on 2 February 2000 that she had twice been prevented from seeing her client, former journalist Nairi Badalian who was arrested in November last year. She said access to her client was complicated by the need to obtain permission from various officials, leading to cancellation or postponement of her appointments. She also claimed that appointments were postponed because only one room had been allocated at the prison for that purpose, and so it was often not free (at that point there were 17 people accused, and the room was also said to be used by investigators for interrogations).

In March another person charged in the same case, Arutiun Arutiunian (the Deputy Executive Director of Armenian Television, who was arrested on 5 January), also alleged that he had been prevented from having meetings in private with his defence lawyer.<sup>19</sup>

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<sup>16</sup> See for example Principle 1 of the UN Basic Principles on the Role of Lawyers, and Principle 17 (1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>17</sup> Article 40 of the Constitution states: "Everyone is entitled to receive legal assistance. Legal assistance may be provided free of charge in cases prescribed for by law. Everyone is entitled to legal counsel from the moment he or she is arrested, detained, or charged."

<sup>18</sup> See for example *Armenia: Summary of Amnesty International's concerns* (AI Index: EUR 54/01/98) and *Armenia: Comments on the Initial Report submitted to the United Nations Human Rights Committee* (AI Index: EUR 54/05/98). These documented the many serious allegations that state agents obstructed access by lawyers and family members (and subjected detainees and their relatives to torture and ill-treatment) in a series of major political trials from 1995 to 1997. They included the so-called "Dro" and "Vahan Ovanessian + 30" trials of opposition Dashnak party members (in which four defendants were sentenced to death), and a series of trials following the disputed presidential elections in 1996.

<sup>19</sup> See for example the report by *Noyan Tapan* news agency of 9 March 2000.

### **3.1.3 No access to independent medical practitioners**

Under international standards people held in custody by law enforcement officials have the right to be examined by a doctor and, when necessary, to receive medical treatment.<sup>20</sup>

This right is viewed as a safeguard against torture and ill-treatment, among other things, as well as an integral part of the duty of the authorities to ensure respect for the inherent dignity of the human person. Ensuring that a detainee is entitled to undergo a prompt, impartial, independent and professional medical examination is also one of the ways of ascertaining whether a person has been physically ill-treated in custody.

In Armenia, however, detainees have no right to be attended by their own doctors in pre-trial detention, and, to Amnesty International's knowledge, detainees and their lawyers do not have the right to arrange forensic medical examinations or other expert analyses.<sup>21</sup> Although they can request such examinations if these are thought significant to the case, the decision whether to carry them out rests with the investigator, who has the discretion to decide on what is significant.

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<sup>20</sup> See Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states: "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge." See also Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>21</sup> People in detention who have not been tried may be treated by their own doctor or dentist, if there is reasonable ground for such a request (see Rule 91 of the UN Standard Minimum Rules for the Treatment of Prisoners). If the request is denied, reasons must be given.

The lawyer for one of the accused in the 27 October case, for example, reports that his application for a second medical examination of his client was turned down by investigators in January this year. His client, an independent member of parliament named Musheg Movsisian, was detained on 6 November last year and had his parliamentary immunity against prosecution lifted four days later (in 1998 the authorities in Armenia had extended the time a person may be detained prior to being formally charged from 72 to 96 hours). Musheg Movsisian was charged with complicity in the killings in parliament, and held initially in the investigation prison of the Ministry for National Security in the capital, Yerevan, before being transferred to Yerevan's Nurabashen prison. On 25 December he told a group of visiting parliamentary colleagues that he had been severely beaten while held in Yerevan's Nurabashen prison, including by being hit with batons on the soles of his feet.<sup>22</sup> A few days earlier his lawyer, Kromvel Grigorian, had requested a forensic medical examination. The request was granted on 23 December by the military prosecutor's office, which is in charge of the investigation. The subsequent report was said to have concluded in mid-January that Musheg Movsisian was in good health and showed no signs of ill-treatment. Kromvel Grigorian requested a second examination of his client, however, claiming that the first examination had been incomplete in the absence of necessary specialists. The request was turned down by the head of the investigatory group at the military procuracy.

Musheg Movsisian and another detainee in this case, Arutiun Arutiunian, have further alleged that officials tried to drug them earlier this year as a means of extracting testimony. Arutiun Arutiunian claims that he was given coffee to drink at the Military Procurator's office on 6 March, after which he began to feel dizzy, nauseous, and had problems with his eyesight. He was then questioned and brought printed sheets of paper to sign, which he believes he did not do. He reported that he was still suffering from the symptoms three days later. Officials have denied giving him any psychotropic substances, claiming that the symptoms occurred after Arutiun Arutiunian began to eat and drink again after a hunger strike (Arutiun Arutiunian is said to have staged a hunger strike for around a week in protest at his treatment). Arutiun Arutiunian has further alleged that investigators physically assaulted and verbally abused him in order to obtain testimony incriminating himself, as well as testimony against fellow defendant Aleksan Arutiunian (no relation) and the head of Armenian television Tigran Nagdalian (not currently under arrest). On 22 January, for example, Arutiun Arutiunian alleges that he was taken to four meetings with co-defendant Nairi Unanian, and after each one he was beaten and sworn at by members of the investigatory group and nine other people not connected with it.<sup>23</sup>

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<sup>22</sup> Musheg Movsisian was visited by former political prisoner Vahan Ovanessian, currently chairman of the parliamentary Committee on Defence and Security, and three other members of parliament (see for example reports by RFE/RL's Armenia service on 27 December 1999).

<sup>23</sup> See for example the report by *Noyan Tapan* news agency of 9 March 2000. The meetings,

In connection with these allegations of ill-treatment (and prior allegations that he had been denied access to his defence lawyer), Arutiun Arutiunian lodged a complaint on 8 March against the military procurators in charge of the investigation. The Procurator General of Armenia rejected this complaint on 15 March, for lack of evidence. Amnesty International does not know what medical examinations, if any, were carried out during the course of the Prosecutor General's investigation of these allegations. However, commenting on the decision, a spokesperson for the Procurator General's office is said to have stated that Arutiun Arutiunian had not been visited by any of the prison's medical professionals, or needed medical attention, since his arrest on 5 January this year (in spite, it appears, of him having also staged a hunger strike).<sup>24</sup>

The Procurator General also turned down a complaint by Musheg Movsisian,

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known as "ochnye stavki" in Russian, are confrontations between witnesses whose testimonies disagree.

<sup>24</sup> *Noyan Tapan* news agency, quoted by *Asbarez Online*, 15 March 2000.

who made similar allegations of drugging after those of Arutiun Arutiunian were made public. According to Musheg Movsisian's lawyer, his client was taken from the prison to the military procurator's office on 29 February and, when he asked for some water, was given instead a glass of Pepsi Cola. After drinking it, Musheg Movsisian claimed that he felt dizzy and then passed out. When he regained consciousness he was surrounded by eight to 10 people who began asking him questions regarding the events preceding and following 27 October 1999.<sup>25</sup>

Musheg Movsisian and Arutiun Arutiunian repeated their allegations of ill-treatment to members of the Presidential Commission on Human Rights, who visited the prison in the middle of March this year. Commission members visited two of the other co-defendants at that time - Nairi Unanian and Aleksan Arutiunian - who also alleged that they had been beaten and faced threats and "psychological pressure" from the investigators. Amnesty International does not know if any medical examinations were requested or carried out in connection with these allegations. Speaking in connection with the case on 21 December last year, and specifically in connection with allegations that investigators had exerted physical pressure on Nairi Unanian and others to extract testimony, Armenian President Robert Kocharian was quoted as saying: "I am told they are not subjected to violence. I can't say if I'm 100 per cent certain about that. I want to believe such methods are not used."<sup>26</sup>

Worrying in themselves, these allegations of ill-treatment and duress to extract information are of even greater concern considering that some of the accused in this case face a possible death sentence if convicted.

### **3.2 Reluctance of judges to exclude testimony obtained under duress**

Article 15 of the Convention against Torture states that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings".<sup>27</sup> In a number of political trials, however, there have been allegations that testimony extracted under duress in pre-trial detention was not excluded from evidence against the person allegedly subjected to ill-treatment or duress.

Many such allegations were made in the trials of known or suspected members of the then-opposition Dashnak Party which took place in 1996 and 1997 (the so-called

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<sup>25</sup> *Noyan Tapan* news agency, 9 March 2000.

<sup>26</sup> Radio Free Europe/Radio Liberty, Armenia News Briefs, 21 December 1999.

<sup>27</sup> In prohibiting the use of any statement extracted under torture, Article 15 of the Convention against Torture adds the proviso: "except against a person accused of torture as evidence that the statement was made."

“Dro” and “Vahan Hovanesian + 30” trials). The numerous allegations of torture, ill-treatment and duress, made by prisoners and their relatives during court sessions of these trials, have previously been documented in detail (see for example *Armenia: Summary of Amnesty International’s concerns*, AI Index: EUR 54/01/98, January 1998).

In many of these cases people alleging that they had been tortured or ill-treated by law enforcement officials waited until their first appearance in public, at the beginning of their trials, to make a formal complaint. One of the reasons for this was their hope that the courtroom would provide the opportunity to air such complaints which had been blocked while they awaited trial (for example through lack of access to their families, their lawyers, or their own or an independent medical practitioner whom they trust to provide an impartial assessment of any injuries sustained through alleged torture or ill-treatment).

A further reason why some accused wait until their trial to make public their statements alleging that they have been subjected to torture is their prior lack of access to an independent, external complaints mechanism, and the lack of confidence of victims and lawyers that those officially charged with investigating complaints will act promptly and impartially if allegations of torture are made. Many victims simply do not believe that their complaints will be rigorously, comprehensively and impartially investigated. Others are deterred from lodging complaints by a fear of reprisals, believing that any attempt on their part to bring those responsible to account - or simply to stop the ill-treatment - will only result in greater abuses against them or their relatives. In some such cases people tortured or ill-treated while detained prior to trial have only felt safe enough to make their allegations public when their case comes to trial and they have the opportunity to testify in open court.

For such reasons, in many instances no official complaint may have been lodged at an earlier stage in the proceedings, and no detailed, contemporaneous medical examination may exist which could be used as one of the tools to test and establish such allegations in court. However, people held in pre-trial detention who have been too intimidated to lodge a complaint at the time of their alleged ill-treatment, and who make such claims public only when they finally appear in open court, have often found judges refuse to consider the issue on the grounds that there is no record of complaint or accompanying medical examination dating from the time of the alleged abuse.

The “Dro” and “Vahan Hovanesian + 30” trials have already been mentioned in this connection. Similar allegations were made in a series of trials in 1997 linked with events at the end of September 1996, when opposition protests over disputed presidential elections turned violent, the building of the National Assembly was stormed by a section of the crowd, and the parliamentary speaker and his deputy were among those beaten. Also beaten were a number of opposition politicians, including one, Ruben Akopian, who was assaulted together with three other members of parliament by fellow deputies at a parliamentary session - which was televised and during which the Procurator General of Armenia was present.



Between January and June 1997, 12 people stood trial in six separate hearings, charged with, among other things, “organizing or participating in mass disorders” (Article 74 of the Criminal Code). Many of the accused alleged that they had been beaten in the period immediately after their detention, and in court withdrew their initial testimony on the grounds that it had been extracted under duress.

In the first trial, for example, which began on 6 February 1997 before the Armenian Supreme Court, Abet Petrosian testified that he had been beaten by various officials after his detention, and that threats had been made against his mother and wife to make him confess. He withdrew in court the testimony he had given during pre-trial detention. Abet Petrosian’s four co-defendants made similar claims, with Seyran Massoyan and Mkrtich Meghavorian, for example, testifying that they had written down their testimony at the dictation of the investigators after they had been subjected to physical and psychological duress. The court reportedly did not take these allegations into account, or order any investigation on the grounds that the defendants had not lodged complaints about their treatment while they were held in pre-trial detention, although defendant Argishti Kivirian claimed that he had done so, and Abet Petrosian said that he was unwilling to name those involved in his ill-treatment for fear of reprisals against his family.

All but one of the accused in these trials were convicted, but given suspended sentences or released under an amnesty. Like the “Dro” and “Vahan Hovanesian” trials, many of these proceedings were regarded as politically motivated - with the authorities prosecuting some known or suspected opposition supporters in connection with the attack on the parliamentary speaker and his deputy but, in marked contrast, not taking any steps to institute criminal proceedings against those members of parliament seen on television (indeed, in the presence of the then Procurator General) assaulting their opposition colleagues. Amnesty International is also not aware of any comprehensive and impartial investigations into allegations that law enforcement officials beat or ill-treated a large number of those detained after the September events, even though in some instances the alleged victims gave the name and rank of those they say were responsible.<sup>28</sup>

#### **4. Allegations of ill-treatment post-trial**

In addition to the allegations that people have been subjected to torture and ill-treatment following detention or arrest and in pre-trial detention, Amnesty International has also received reports that people have been subjected to ill-treatment post trial, in the country’s system of corrective labour colonies.

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<sup>28</sup> There were numerous other allegations of procedural violations in these trials, including denial of prompt access to defence lawyers. See *Armenia: Summary of Amnesty International’s concerns*, AI Index: EUR 54/01/98, January 1998.

For example, Amnesty International sought further information on the deaths in custody last year of prisoners Stepan Gevorgian and Oleg Arishin, who died on 15 April and 27 April 1999 respectively, aged around 20. The men had deserted their military unit on 15 January 1998, but were arrested in Yerevan the following day after a failed car theft. Stepan Gevorgian and Oleg Arishin spent some 15 months in Sovetashen investigation-isolation prison in Yerevan, before being sent to corrective labour colony No. 14 at Artik on 2 April 1999 to serve their sentences of eight and five years' imprisonment respectively (they were convicted of robbery and assault, under Article 88 of the Armenian Criminal Code). Oleg Arishin was said by officials to have died as a result of suicide by a drug overdose. Stepan Gevorgian, however, is said to have died after a severe beating, although officials have been unable to identify the perpetrators.

Before the transfer to Artik, unofficial sources reported that Stepan Gevorgian had been visited by his mother who reported that he was looking forward to the more flexible regime of imprisonment at the colony. Two days after his transfer, however, Stepan Gevorgian had reportedly collapsed unconscious and was taken to Artik hospital. Visiting him there, his mother reported that his body, especially his back, bore traces of violent injuries. Stepan Gevorgian was transferred to the Nor Nork Emergency Hospital in Yerevan on 8 April, but died there on 15 April without regaining consciousness. The post mortem recorded the cause of death as fractures of the skull, inflicted with a blunt instrument, which resulted in cranial haemorrhaging.

Responding to Amnesty International's request for further information, the Armenian Procurator General's Office reported that a criminal case had been opened in connection with the death of Stepan Gevorgian, and that the subsequent investigation had been comprehensive and wide-ranging.<sup>29</sup> However, the forensic medical examination was said to have put Stepan Gevorgian's injuries at 12 to 15 days old, which meant that, according to the Procurator General, the assault could have happened either at the Sovetashen investigation-isolation prison, during the transfer, or at the Artik colony. As it was not possible to determine how and when Stepan Gevorgian sustained his fatal injuries, the case into his death was officially closed on 28 August 1999. Unofficial sources have claimed, however, that there were no notations about any health problems suffered by Stepan Gevorgian during medical examinations conducted when he left Sovetashen or on arrival at Artik, which indicated that the injuries had been sustained at the colony.

Oleg Arishin is said to have collapsed unconscious on 16 April at the Artik colony. He was taken to hospital the following day, but died on 27 April. According to the Procurator General, the investigation into his death established that Oleg Arishin had voluntarily consumed a large dose of anti-diabetic tablets.

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<sup>29</sup> On 30 March 2000 Amnesty International received a detailed response from the General Procurator's Office regarding a number of allegations of torture and ill-treatment by law enforcement officials.

## 5. Violence in the army

As in many of the independent republics which emerged from the break-up of the Soviet Union, there have been persistent reports in Armenia of regular and violent hazing of army conscripts performing their compulsory military service in the army.<sup>30</sup>

Brutal hazing of conscripts has been reported under the practice known in Russian as “*dedovshchina*” (\_\_\_\_\_). This involves recruits being forced to perform menial tasks, often outside official duties, and can lead to beatings and suicides. Often such activity is alleged to have taken place with the consent, acquiescence 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 in response to complaints. The exceptions are those occasions with particularly tragic results, such as an incident on 11 February 1998 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 that 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 had been 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. For example Vartan Harutunian, a member of the Presidential Human Rights Commission, was quoted as saying on 27 August 1998 that he alone had received 14 appeals from parents who claim their sons were killed in unknown circumstances while performing military service.<sup>31</sup>

Continuing concerns in this area led to a meeting on 25 February 1999 between a group of mothers whose sons had died as a result of violence in the army and Armenian President Robert Kocharian. The President strongly condemned brutal hazing in the armed forces and pledged greater efforts to combat such crimes. At the same meeting, the Military Procurator of Armenia gave an assurance that many closed cases would be subject to review, and that 80 officers had been prosecuted the previous year for illegal

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<sup>30</sup> Military service is compulsory in Armenia for young men between the ages of 18 and 27. There is no civilian alternative for conscientious objectors.

<sup>31</sup> Report by RFE/RL’s Armenian service on 27 August 1998.

actions. The following month a presidential advisor reported that these prosecutions included 34 convictions for abuse of power and two for causing suicides.

One of the cases about which relatives were unhappy was that of conscript Artak Khachikovich Petrossian, who died while performing military service in 1998. Artak Petrossian was drafted into the army on 13 June 1998 after graduating from Yerevan State University, and was sent to perform his military service at unit No. 43577 based in the village of Chobankar in Armavir region. According to information on the case provided by the Procurator General's Office of Armenia, on 23 July Artak Petrossian was at his post in the canteen when he was subjected to physical abuse by a junior sergeant named David Galechian, who forced Artak Petrossian to recite the oath of allegiance while he punched him and hit him with a belt.<sup>32</sup> At the end of their duty in the canteen this junior officer then told the rest of the soldiers to go to bed but forced Artak Petrossian to remain, systematically beating him and trying to sexually assault him. As a result Artak Petrossian left the unit without permission during the night of 23 to 24 July, and reportedly tried to commit suicide by cutting his veins. He was found on 30 July at a dacha in Nurnus, Kotaik region, and taken by relatives to the police.

On 11 August 1998 Artak Petrossian was sent to continue his military service at military unit No. 32503 based next to the "Erebuni" airport. He served on the fourth floor of the airport building. On 17 August, in circumstances described by the Procurator General as unclear, Artak Petrossian is said to have fallen from the fourth floor balcony. He was taken to the Central Hospital where he died on 24 August, reportedly without regaining consciousness.

Unofficial sources have disputed points of the official account of Artak Petrossian's death, however. They report that on 17 August Artak Petrossian was found injured at the entrance to the airport, said to have been suffering from the effects of a beating, including a broken arm and a fractured skull. Some members of Artak Petrossian's military unit are also said to have alleged that he had been taken to the local army command post two hours before he was found injured at the airport. It was further alleged that Artak Petrossian was conscious when taken to the hospital, but no officials interviewed him before his death, nor did they actually interview medical staff in connection with the death until two months after Artak Petrossian died.

Junior sergeant David Galechian was charged with incitement to suicide (Article 104 of the Armenian Criminal Code), attempted sodomy (Article 15-116 part 2) and abuse of authority (under Article 268 of the military section of the criminal code). Two other soldiers named Grigor Tigranian and Vardan Ovannisian were also charged with abuse of authority (Article 268) and a third, Norayr Meliksetian, was charged with complicity in the offence of abuse of authority (Article 17-268). They were all

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<sup>32</sup> Information in this case was given by the Procurator General of Armenia in his letter to Amnesty International of 30 March 2000.

convicted by a court of first instance in Armavir region on 27 September 1999. David Galechian was sentenced to eight years' imprisonment, and the three other men to three years' imprisonment each. However, Grigor Tigranian, Vardan Ovannisian and Norayr Meliksetian fell under an amnesty declared by the National Assembly on 15 September 1998 to mark the seventh anniversary of Armenia's declaration of independence, and were released from serving their sentence.

Another group which has reported torture and ill-treatment in the army has been the Jehovah's Witnesses in Armenia, whose religious beliefs preclude carrying arms for a secular power or swearing the oath of military allegiance. Several adherents objecting to compulsory military service on conscientious grounds have reported being verbally abused and physically assaulted by military personnel. Some such incidents are reported to have occurred at military conscription offices, for example after a young man has declared his religious allegiance and inability to perform compulsory military service (Jehovah's Witnesses in Armenia have stated that they are willing to perform an alternative, civilian service). Other reports have emerged from army units to which Jehovah's Witnesses have been forcibly conscripted, for example when a young man has refused to don a military uniform.<sup>33</sup> Amnesty International has no information at present on any investigation that may have been initiated into the reports of beating.

One of the most recent reports is that relating to Jehovah's Witness Vitaly Usupov, who refused his call-up papers on religious grounds but was forcibly conscripted into a military unit (in several cases detailed to Amnesty International, young Jehovah's Witnesses have said that they would rather be imprisoned under the criminal procedure for refusing their call-up papers than face forcible conscription, and the ensuing intolerable - and insoluble - conflict with their deeply-held religious beliefs). At the unit Vitaly Usupov continued to refuse to perform military service, and was reportedly beaten by military personnel there in consequence. He was sentenced on 17 March this year to four-and-a-half years' imprisonment, reportedly for "evading military service" under Article 257a of the Armenian Criminal Code.

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<sup>33</sup> For further information on the situation on imprisoned conscientious objectors in Armenia, and allegations that some have been severely beaten and verbally abused, see the Amnesty International report *Armenia: "Respect my human dignity" - Imprisonment of conscientious objectors*, AI Index: EUR 54/06/99, September 1999.

Several Azerbaijani prisoners of war are also said recently to have alleged ill-treatment at the hands of officials from the Ministry of Defence. A group of 10 prisoners was visited on 26 March this year by representatives of non-governmental organizations from Armenia, Azerbaijan and Georgia. Several of the prisoners are said to have told the NGO representatives that they were badly ill-treated for periods of between several days to a month while held at a military police station near Yerevan, before being handed over from the Ministry of Defence to the Ministry of National Security.<sup>34</sup> Since being transferred, however, they reported had no such complaints and were visited regularly by the International Committee of the Red Cross.

## **6. The right to life - application of the death penalty in Armenia**

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 a number of countries of the former Soviet Union (Azerbaijan, Georgia, Moldova, Turkmenistan, Ukraine and the Baltic states).

On 19 March 1997 the National Assembly began discussing a new draft 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. Life imprisonment would not be imposed on women or minors. The draft version was passed in its first reading on 3 April that year, although the issue of abolition caused lively debates. Final parliamentary approval of the draft criminal code has been expected at several stages since then - when addressing the UN Human Rights Committee in October 1998, for example, Armenia's representative stated that abolition of the death

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<sup>34</sup> MPA news agency, Azerbaijan, 6 April 2000.

penalty would come into force as of 1 January 1999 - but at the time of writing the death penalty is still in force, and death sentences continue to be passed. In February this year, there were 32 men on death row in Armenia.<sup>35</sup>

No judicial executions have taken place in Armenia since independence, however, and Amnesty International has welcomed President Kocharian's decision to continue a moratorium on executions in force as a result of the abolitionist stance of his predecessor President Levon Ter-Petrosian. However, the organization still has a number of concerns about the death penalty in Armenia. One of the foremost of these is 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, including in cases where the offence carries a possible death sentence. The "Dro" and "Vahan Hovanesian" trials described above are examples of such allegations. In addition, although there is a *de facto* moratorium on executions, courts have continued to pass death sentences so that the numbers on death row have steadily accumulated. This is due in part to the moratorium but also because, in the absence of any information on pardons, it appears that neither President Ter-Petrosian nor President Kocharian have actually been commuting pending death sentences. This means that some of those currently on death row may have been waiting years without knowing when they may expect their clemency appeals to be heard and in a state of continued uncertainty as to their ultimate fate.

Amnesty International has written to President Kocharian, urging him to continue the moratorium on executions in the light of parliament's intention to abolish the death penalty through a new criminal code. The organization also urged him to use his constitutional powers to commute to terms of 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 eventually taken through parliament to enshrine this change in law.

## **7. Bringing perpetrators to justice - allegations of impunity**

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<sup>35</sup> *Snark* news agency, 21 February 2000, quoting the Armenian Minister of Justice at a press conference. The minister added that he personally supported abolition of the death penalty.

Under Article 4 of the Convention against Torture states have a duty to criminalize all acts of torture, and attempts to commit torture.<sup>36</sup> Article 12 of the Convention against Torture obliges States Parties to ensure a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture or cruel treatment has been committed.<sup>37</sup> Article 13 guarantees those alleging torture the right to complain; to have their case promptly and impartially examined; and to be protected, along with witnesses, against any resulting ill-treatment or intimidation.<sup>38</sup> Article 14 obliges States Parties to grant victims of torture an enforceable right to fair and adequate compensation.<sup>39</sup> Article 16 makes it plain that States Parties should also undertake to prevent other acts of ill-treatment, which do not amount to torture under the convention's definition, when such acts are committed by or with the consent or acquiescence of public officials.<sup>40</sup>

Amnesty International considers that Armenia is failing in these obligations. The organization is concerned that the failure to investigate impartially and thoroughly allegations of ill-treatment and torture, and the failure to bring alleged perpetrators to justice in the course of full and fair proceedings, creates an impression that torture and ill-treatment by law enforcement officials is acceptable conduct, and allows law enforcement officials to engage in such conduct and violate people's human rights with impunity.

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<sup>36</sup> Article 4 states: "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture."

<sup>37</sup> Article 12 states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is any reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

<sup>38</sup> Article 13 states: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

<sup>39</sup> Article 14 states: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

<sup>40</sup> Article 16 states: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."



### **7.1 No specific offence of torture as defined by the Convention against Torture**

A major obstacle in bringing alleged perpetrators to justice is the lack of a specific offence of torture, as defined under Article 1 of the Convention against Torture, in the Criminal Code of the Armenian Republic. The criminalization of torture as defined by the Convention is required by Article 4 of the Convention.

The Convention defines torture in Article 1 as an intentional act which causes severe pain or suffering (whether physical or mental), which is inflicted for a particular purpose such as obtaining information or a confession (the list given is not inclusive), and which is inflicted by, at the instigation of, with the acquiescence of, or with the consent of a public official or someone acting in an official capacity.<sup>41</sup> This definition excludes pain or suffering caused by lawful sanctions, although Amnesty International considers that such sanctions must be lawful under both domestic *and* international law.

While some acts that amount to torture or ill-treatment are currently variously punishable by the Armenian criminal code, none of these contains the definition of torture as set out in Article 1 of the Convention against Torture, or a 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”. Those articles in the current criminal code which do specifically mention crimes involving force by officials, such as “exceeding authority...through use of force” (Article 183, part two, of the criminal code), do not mention the term “torture”, let alone define the unlawful force used as “severe pain or suffering, whether physical or mental”, as set out in the definition in Article 1 of the Convention against Torture.

Although there is currently no criminalization of torture - as defined by the Convention - as a distinct crime, Armenia’s latest periodic report to the Committee against Torture reports that the new criminal code still presently in draft form stipulates that the use of torture is an offence, and establishes a new offence of actions “involving the causing of suffering by means of periodic blows, or other actions involving force”.<sup>42</sup> From the information available in the state’s periodic report,

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<sup>41</sup> Article 1 states: “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

<sup>42</sup> Second periodic report of Armenia to the Committee against Torture, UN ref. CAT/C/43/Add. 3, 13 September 1998, paragraphs 13 and 14.

however, it does not appear that this new offence would specifically mention 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”. Similarly, although the draft criminal code forbids “the use of force by a judge, a procurator, an investigator or a body conducting an initial enquiry in order to obtain testimony from a suspect, an accused person, a defendant, a victim or a witness”, including by “actions involving humiliation or torture”, it is not clear whether torture is specified in full in the terms required by the Convention.<sup>43</sup>

It is also not clear from Armenia’s state report whether the draft criminal code would also criminalize an attempt to commit torture, as required by Article 4 of the Convention against Torture, or whether any officials convicted under the new offences relating to torture would automatically be excluded from release under an amnesty (see Section 7.4 below).

## ***7.2 Failure to investigate torture allegations and prosecute suspected perpetrators***

Even with the legal sanctions available to them in the current criminal code, however, it has been alleged that the authorities in Armenia have, in some instances, been reluctant to open criminal cases where there have been reports of torture and ill-treatment, or, having opened a case, have been reluctant to follow through with comprehensive, impartial investigations and ultimate prosecutions of the suspected perpetrators.

As with the reports of torture and ill-treatment in the army (see section 5 above), it has been claimed that allegations with regard to detainees are often treated in a perfunctory manner by the authorities unless there is a particularly tragic result, or the case has a high profile for some other reason. A criminal case is said to have been opened, for example, in connection with the death in custody last year of a senior military officer. Lieutenant-Colonel Artush Leonovich Ghazarian, the military commissar of Tashir district in the northern Lori region, was beaten so severely by law enforcement officials that he died in custody in the northern city of Vanadzor on 29 September 1999.

Artush Ghazarian was taken into custody at investigation-isolation prison No. 3 in Vanadzor on 17 September, having been charged three days earlier with failure to execute an order and abuse of authority (Articles 247 and 268 respectively of the military section of the Armenian Criminal Code). He is said to have frequently protested his innocence, and broken the internal regulations of prison for which he was placed in its punishment cell. He also declared a protest hunger strike.

The following account of events leading to Artush Ghazarian’s death was given to Amnesty International by the General Procurator’s Office of Armenia, in its detailed letter of 30 March this year.

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<sup>43</sup> Ibid, paragraph 43, referring to Article 328 of the draft Criminal Code.

As a result of the hunger strike and stress Artush Ghazarian's health deteriorated, to the point that on 27 September 1999 a psychiatrist diagnosed reactive depression and stressed that the prisoner needed to be hospitalized. The prison administration ignored this recommendation, and decided to forcibly feed Artush Ghazarian rather than hospitalize him. To this end at around 5pm on 27 September two prison doctors and three other officials (their names were given to Amnesty International by the Procurator General) took Artush Ghazarian from the punishment cell to room No. 1 in the prison, where they laid him on an iron bed with no mattress and tried to force him to eat. To facilitate this forcibly feeding one of the officials, "X", tied Artush Ghazarian to the bed by his hands and feet. When Artush Ghazarian resisted, official "X" assaulted him. The attack appears to have been savage, as it led to Artush Ghazarian suffering bleeding in the brain and "softness" of the brain (encephalomalacia) - the direct cause of death - as well as a broken nose, six broken ribs, a ruptured lung and other injuries. Artush Ghazarian passed out, and died without regaining consciousness at 7pm on 29 September 1999.

On the same day the procurator of Lori region opened a criminal case into the death of Artush Ghazarian, under Article 100 of the criminal code (intentional homicide without aggravating circumstances). On 30 September the Procurator General ordered that the case be transferred to the General Procuracy, and an investigatory group was established.

During the course of their work on this case investigators are said to have uncovered other instances in a period from 1996 to 1999 in which official "X" and others at the Vandazor investigation-isolation prison No. 3 had systematically beaten prisoners and extorted from them or their relatives sums of money, valuables, clothing and food.



At the time of writing official "X" is reported to be in custody, charged with intentional infliction of grave bodily injury (Article 105 of the criminal code), exceeding his authority or official powers (Article 183) and extortion (Article 94). However, the General Procurator's Office did not report on any charge or charges faced by the other officials, including two prison doctors, who were said to have been present during the beating of Artush Ghazarian. Unofficial sources have reported that they were detained initially, but then subsequently released.

There have also been allegations that deaths in custody as a result of torture or ill-treatment have been described as suicide, or arising from natural causes. Amnesty International sought information, for example, on a death in custody last year which was officially reported as suicide by defenestration. The man in question in this case, Eduard Vardanian, is said to have thrown himself from a window of an upper floor of a Ministry of Internal Affairs police station in Abovian, the centre of the Kotaik region, at around 9.40pm on 2 March 1999.

Eduard Vardanian had been called to the police station in Abovian to give evidence as a suspect in a case involving a murder. According to unofficial sources he told his family that he went there on 25 February and was told to return the following day. He did so, and was then apparently taken into custody. His mother reports that when she went to the police station on 1 March, to hand over a parcel for her son and to find out why he was being held, she was told that Eduard Vardanian had been cleared of involvement in the murder but that he had been given five days' administrative detention as of 9am that morning. The official reason given for the detention was that he had twice been summoned to give evidence but had not responded. His mother further reports that she was telephoned at around 9pm on 3 March by someone requesting that she go to the Abovian police station the following morning. When she arrived in the morning of 4 March she was reportedly told by the head of the interrogation department, Levon Ovanisian, that her son had killed a man, confessed everything, thrown himself out of the window and been taken to hospital. When she asked to be taken to the hospital the officer replied that it was too late as her son had already died.

Describing events leading to the death, the General Procurator's Office stated that on 2 March prison officials found a secret note on Eduard Vardanian, addressed to his mother. Following this at around 8.30pm that evening Eduard Vardanian is said to have indicated that he wished to meet with someone senior, as he had important information on the case. At 8.45pm was taken from the prison to the Interior Ministry building, where he had a conversation with the head of the Criminal Investigation Department. At around 9.40pm Eduard Vardanian is said to have suddenly broken the window in the Interior Ministry office, which was on the third floor, and thrown himself out.

Apparently the police officers present were not able to prevent this action, as they had been informed that Eduard Vardanian suffered from tuberculosis and were therefore keeping their distance from him.

According to the General Procurator's Office, Eduard Vardanian sustained serious, multiple injuries as a result of the fall. He was immediately taken to hospital and given medical treatment, but it was not possible to save his life and he died at 4.40am the following day. The Kotaik regional procuracy opened a criminal case on 3 March in connection with the offence of incitement to suicide (Article 104 of the criminal code), and the following day the case was transferred to the Office of the Procurator General. The investigation of the case is said officially to have shown that all injuries sustained by Eduard Vardanian were as a result of his fall, and that no officials had shown violence towards him or incited him to commit suicide. The death was officially recorded as suicide in death certificate No. 2060915/12 issued on 6 March by the chief medical examiner of Kotaik region, A. Minasian, and the criminal case was closed on 3 May 1999 in the absence of a *corpus delicti*.

According to unofficial sources, however, there were traces of cigarette burns on Eduard Vardanian's hands, fuelling allegations by unofficial sources that he had been tortured in custody.

### **7.3 Lack of compensation for victims of torture**

In accordance with Article 14 of the Convention against Torture, Armenia is obliged to ensure that victims of torture obtain redress and have "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". This obligation extends to dependents, if a victim dies as a result of torture.

However, Amnesty International is not aware of any laws or procedures currently in force which would enable victims of torture by state agents, or dependents should the victim have died, to exercise their rights under the provisions of Article 14. Armenia's periodic report, for example, mentions that under Articles 66 and 67 of new Code of Criminal Procedure "a person unlawfully convicted and acquitted is entitled to compensation for unlawful pre-trial detention, remand in custody, prosecution and conviction", but makes no mention of similar compensation for acts of torture by state agents. Similarly, the constitutional provision regarding compensation is also couched in terms relating to legal proceedings, rather than illegal actions in general by state agents.<sup>44</sup>

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<sup>44</sup> Article 40 of the Armenian Constitution states: "Everyone is entitled to receive legal assistance. Legal assistance may be provided free of charge in cases prescribed for by law. Everyone is entitled to legal counsel from the moment he or she is arrested, detained, or charged. Every convicted person is entitled to have his or her conviction reviewed by a higher court, in a manner prescribed by law. Every convicted person is entitled to request a pardon or mitigation of any given punishment. Compensation for the harm caused to the wronged party shall be provided in a manner prescribed by law."

#### **7.4 Amnesty for perpetrators of torture**

With regard to impunity, Amnesty International is also concerned that in some instances officials convicted of offences involving violence may fall under an amnesty. The Armenian Minister of Justice, for example, stated that an amnesty approved by the National Assembly on 15 September 1998, to mark the seventh anniversary of Armenia's declaration of independence, would not cover those convicted of crimes involving violence. However, it is not clear if this provision, and those of amnesties in general, covers all offences by officials which may include the use of force. Three of the soldiers found guilty in connection with the death of Artak Petrosian, for example (see section 5 above), were granted amnesty although they had been convicted under the military section of the criminal code of abusing their authority under an article which mentions "causing substantial harm". It is possible, therefore, that other officials convicted under the ordinary section of the criminal code for "exceeding authority...through use of force" (Article 183, part two, of the criminal code), for example, may also not be excluded automatically from an amnesty.

#### **7.5 Independent supervision of places of detention**

Giving a keynote speech on 27 March this year at a meeting of the Organization on Security and Co-operation in Europe, the UN Special Rapporteur on torture stated that it was not difficult to identify what preventative measures could be taken to make substantial inroads into the bulk of the problem of torture.<sup>45</sup> One was to keep to an absolute minimum the period during which detainees do not have access to the outside world. The other was to ensure independent supervision, by a body having an automatic rights of access to any place of deprivation of liberty, especially police stations, and with the power to report publicly on its findings.

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<sup>45</sup> Keynote speech by Sir Nigel Rodley, UN Special Rapporteur on torture, at an OSCE Supplementary Meeting on Human Rights and Inhuman Treatment, held on 27 March 2000 in the Hofburg, Vienna, Austria.

At present supervision over places of detention in Armenia is exercised by the procuracy, the same body responsible for prosecuting detainees. There are proposals to change this. Armenia's second periodic report mentions a draft new Code for the Execution of Criminal Penalties, which contains a proposal that judicial supervision of institutions enforcing penalties should be enshrined in legislation. The report also refers to the draft new Penal Code, which aims at strengthening the role of the judge and diminishing that of the procurator in relation to surveillance of prison conditions.<sup>46</sup> Both these codes (which also envisage transferring the entire penitentiary system from the current jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice) are still in draft, however, and there have also been no recent moves on another possible route for supervision, that of an ombudsperson for Armenia.<sup>47</sup> Amnesty International is urging the Armenian authorities as a matter of priority to establish an effective system of independent inspection of all places in which people are deprived of their liberty.

## **8. Amnesty International's recommendations**

Torture and ill-treatment of persons under any circumstances are expressly prohibited under the Convention against Torture. Amnesty International recognizes the problems which 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 confidence in the willingness of such a system to address abuses. However, these problems do not excuse or justify torture and ill-treatment. Neither should they be an excuse for delaying the implementation of safeguards and procedural changes which would narrow the potential scope for abuse or for impunity for perpetrators. Amnesty International urges the Armenian authorities to take the following steps to address abuse, in line with the international obligations they have pledged to undertake and uphold:

- ◆ criminalize torture, and any attempt to commit torture, as defined in the Convention against Torture as distinct crimes with appropriate punishments under national law (in line with Article 4 of the Convention against Torture);
- ◆ ensure that all people deprived of their liberty or arrested by law enforcement officials are informed promptly of the charge or charges against them, and that

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<sup>46</sup> Armenia's second periodic report to the Committee against Torture, UN ref. CAT/C/43/Add. 3, paras. 38 and 72, 13 September 1999.

<sup>47</sup> The head of presidential Human Rights Commission, Paruyr Airikian, was quoted on 4 April this year as expressing regret that there had been no further moves to discuss a draft law on an Ombudsperson which his commission had presented to President Robert Kocharian on 18 September 1998.



they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and an independent medical practitioner;

- ◆ ensure that a family member or other appropriate person specified by the detainee is informed promptly about the detention or arrest of a relative, and their whereabouts;
- ◆ ensure that all detainees are medically examined upon deprivation of their liberty, and thereafter as required, or whenever a detainee alleges torture or ill-treatment;
- ◆ ensure that every person deprived of their liberty is informed by the authorities of their rights, including the right to complain to the authorities against ill-treatment;
- ◆ ensure the initiation of prompt, impartial and comprehensive investigations of all complaints of torture or ill-treatment by civilian or military officials, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made (in line with Articles 12, 13 and 16 of the Convention against Torture);
- ◆ ensure that investigations into allegations that a person has been tortured include the prompt, impartial and professional examination of that person by qualified doctors;
- ◆ ensure that no statement extracted as a result of torture or ill-treatment is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;
- ◆ bring those law enforcement officials responsible for torture or ill-treatment to justice in the courts, in the course of proceedings which meet international standards for fairness and which do not carry the death penalty;
- ◆ ensure that every victim of torture has unhindered access to the means of obtaining redress and an enforceable right to reparation including fair and adequate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and that every detained person is informed of this right (in line with Article 14 of the Convention against Torture);
- ◆ establish an effective system of independent inspection of all places in which people are deprived of their liberty;

- ◆ 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, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;
- ◆ make a declaration under Articles 21 and 22 of the Convention against Torture, which would enable the Committee against Torture to consider communications from other States Parties regarding non-fulfilment by Armenia of its treaty obligations, and from or on behalf of individuals in Azerbaijan claiming to be victims of torture.
- ◆ commute all existing death sentences, as well as any that may be imposed before formal abolition of the death penalty:
- ◆ give priority in parliament to 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;
- ◆ ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. Ratifying this instrument, the first treaty of worldwide scope aimed at abolition of the death penalty, would confirm Armenia's commitment to abolition;
- ◆ publicize widely the Concluding Observations of the UN Committee against Torture after it has reviewed Armenia's second report, and implement its recommendations swiftly;
- ◆ ensure that Armenia's next periodic report to the UN Committee against Torture is compiled in consultation with non-governmental organizations, and is made widely and publicly available for comment and discussion before and after it is examined by the Committee against Torture.