

# ARMENIA

## @Comments on the Initial Report submitted to the United Nations Committee against Torture

### *Introduction*

In November 1995 the United Nations (UN) Committee against Torture in Geneva will examine the Initial Report of the Republic of Armenia under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture).

Armenia received international recognition as an independent state following the break-up of the Soviet Union, becoming a member of the United Nations in March 1992. Since that time Armenia has also become party to a number of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol<sup>1</sup>, and the Convention against Torture<sup>2</sup>. Both these treaties prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment, as does the new Armenian Constitution<sup>3</sup>.

However, Amnesty International is still receiving allegations that detainees are being ill-treated. Article 16 of the Convention against Torture prohibits cruel, inhuman and degrading treatment or punishment, and it makes clear that the obligations under articles 10, 11, 12 and 13 also apply to such treatment or punishment.

This brief report examines the issue in the light of existing legislative measures, some of which appear to create conditions for possible ill-treatment, and puts forward Amnesty International's recommendations.

### *The Criminal Code and the Code of Criminal Procedure*

Armenian legislation in many areas is in transition at present, moving from that inherited from the Soviet era towards laws which more closely reflect its obligations and aspirations as an independent state. The Criminal Code and Code of Criminal Procedure currently in force in Armenia are still those adopted while the republic was part of the Soviet Union,

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<sup>1</sup> Armenia acceded to both on 23 June 1993 (date of receipt by United Nations of relevant documents).

<sup>2</sup> Armenia acceded to the Convention against Torture on 13 September 1993.

<sup>3</sup> approved in a popular referendum on 5 July 1995, and entered into force five days later upon publication of the referendum result by the Central Electoral Commission.

although discussions are continuing on drafting new codes to replace them. In some areas intended changes have already been enshrined in the new Constitution, although their actual implementation may have to await relevant enabling legislation. As the codes stand, however, they contain a number of provisions which may not provide detainees with adequate protection against the possibility of ill-treatment in pre-trial detention.

Under the current law, within one day of a person's being taken into custody the investigating authority must inform the Prosecutor's Office of the grounds and reason for detention, and the Prosecutor's Office must rule on the legality of the arrest within 24 hours after that. The new Constitution moves the responsibility for ruling on detention to the courts. However, pending the necessary legislative amendments<sup>4</sup>, detainees themselves currently have no right to appear before a judge to challenge the legality of their detention, nor to appeal against a prosecutor's decision to extend their period of detention. Most detainees are also not permitted to see relatives while the investigation is being conducted. This can mean that the only person outside the prison administration and investigatory organs with access to a detainee, and therefore able to assess their physical well-being, is the defence lawyer. However, many prisoners in pre-trial detention have reported great difficulties in obtaining prompt access to a lawyer.

The current legal situation with regard to prompt access to a defence lawyer remains unclear. On 13 March this year the Prosecutor General is reported to have reaffirmed a provision under the Soviet-era legislation under which defence lawyers are not permitted access to their clients or the materials of the case until the prosecution has completed the investigation and indictment. The new Constitution approved in July this year guarantees access to a defence counsel from the moment of arrest, detention or the presentation of charges (Article 40), but it appears that this provision has yet to take effect. For example the lawyer for Vahan Hovanesian, a member of the opposition Armenian Revolutionary Federation, reported that by mid-September she had still not been able to see her client who was arrested on 29 July in Yervan, the capital of Armenia.

### ***Alleged ill-treatment in pre-trial detention***

Some detainees have alleged beatings and other ill-treatment, as a means of forcing confessions, in the period of pre-trial detention and while denied access to a defence lawyer. Such allegations have been made, for example, by several men among an 11-strong group of political prisoners currently on trial for offences ranging from withholding information to premeditated murder<sup>5</sup>. At least four have repeated that they were denied prompt and regular

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<sup>4</sup> Article 116 of the new Constitution, on transitional provisions, states in subsection 14 that the previous procedure for searches and arrests will continue until criminal legislation is amended in line with the Constitution.

<sup>5</sup> see *Amnesty International - Concerns in Europe: January - June 1995*, AI Index: EUR 01/02/95.

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contact with their lawyers in the months following their arrest in December 1994, and at least three report that they were beaten while in the custody of the State Directorate for National Security in Yerevan.

Ill-treatment is often most likely to happen during the first hours or days of detention, and lack of access to a defence lawyer during this period can remove another potential safeguard against such ill-treatment. Amnesty International is urging the Armenian authorities to ensure that the Convention against Torture is fully respected in this regard. Under Article 11 of the Convention against Torture, for example, the Armenian authorities are legally obliged to "keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction", with a view to preventing any cases of torture or of other forms of cruel, inhuman or degrading treatment or punishment. Furthermore Article 2 places on the authorities a legal obligation to "take effective legislative, administrative, judicial or other measures to prevent acts of torture on any territory under its jurisdiction". The government is also obliged under Article 12 "to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

### ***Procedure for complaints***

Prisoners held in pre-trial detention or serving sentences are entitled to submit complaints about violations of their rights, including allegations of torture and ill-treatment, to the prosecutor's office, the body currently charged with the legal supervision of places of detention. However, unofficial sources report that many alleged victims of beatings do not lodge complaints owing to a fear of reprisals or a lack of faith that any concrete steps will be taken to address the issue. At the time of writing Amnesty International has yet to receive a response to its letters sent to the Prosecutor General of Armenia in May and August this year, raising the organization's concerns about several allegations of beatings and lack of access to a defence lawyer.

### ***The dual role of the prosecutor's office***

The prosecutor's office is still based on the Soviet model, and has what many feel to be conflicting responsibilities: on the one hand it has a supervisory function in ensuring that legality is observed, for example by investigating alleged police abuses, and on the other it is the public prosecution service, working with the police in sanctioning arrest, presiding over the investigation and representing the state in court. Allocation of these functions to separate bodies has been widely advocated in the context of judicial reform in the post-Soviet states, as a way of strengthening the protection of a detainee's rights.

Under the new Constitution the power to sanction arrest has been removed from the prosecutor's office, with Article 18 stating that a person may only be detained by decision of a court, but the previous procedure regarding arrests will continue in the transitional period until the relevant legislation is amended (see footnote 4). Other functions are retained by the prosecutor's office, however, including those of bringing criminal prosecutions and overseeing the legality of the preliminary examination and investigation<sup>6</sup>. These powers are exercised in accordance with legislation currently in effect until a law on the prosecutor's office is adopted<sup>7</sup>.

### ***Abolition of the parliamentary human rights commission***

One further possible avenue for lodging complaints was the parliamentary Commission on Human Rights and Nationalities. The commission was empowered to receive complaints about human rights violations, and to raise issues and seek further information from relevant government or state bodies. The commission was abolished, however, following the election of a new parliament in July 1995 and to Amnesty International's knowledge no similar parliamentary or other entity has been established to take over the commission's functions. Although there had been some discussion about the introduction of a post of Human Rights Ombudsman in the context of a new constitution, the Constitution actually adopted in July this year makes no mention of such an institution<sup>8</sup>.

### ***The death penalty***

Amnesty International regards the death penalty as the ultimate cruel, inhuman and degrading punishment. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

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<sup>6</sup> Under Article 103 of the New Constitution the prosecutor's office also presents the accusation in court, brings actions in court to defend state interests, appeals the judgements, verdicts and rulings of the courts, and oversees the application of punishments and other means of restraint.

<sup>7</sup> Article 116, subsection 12 of the new Constitution

<sup>8</sup> For further information on Amnesty International's recommendations on creating national human rights commissions please see the organization's document *Proposed Standards for National Human Rights Commissions*, AI Index: IOR 40/01/93, January 1993.

The new Armenian Constitution retains the death penalty <sup>9</sup>, and the power to pardon under the new Constitution rests with the President of the Republic (Article 55, subsection 17). The current Armenian President, Levon Ter-Petrosyan, is personally opposed to the death penalty, and his office has assured Amnesty International that no executions have taken place, or will take place, during his term of office. Amnesty International greatly welcomes the President's opposition to executions, but remains concerned that in the absence of information on pardons it appears that he has not actually commuted pending death sentences. This means that those currently on death row in Yerevan (their number was put at 12 in a recent article in the Russian newspaper *Izvestiya* <sup>10</sup>), may have been waiting years without knowing when they may expect their clemency appeals to be heard, or what the outcome may be.

Amnesty International remains concerned that the death penalty remains a lawful form of punishment in Armenia. The organization believes that the failure to incorporate an absolute prohibition of the death penalty into Armenian legislation and the new Constitution may mean that the current policy of not enforcing death sentences could be subject to revision in the event of a change of president.

### **Recommendations**

Amnesty welcomes the provisions of the new Armenian Constitution regarding the right not to be subjected to torture "or cruel treatment" (Article 19) and the non-derogability of this right during a state of emergency or other exceptional circumstances (Article 45). However, Amnesty International remains concerned about continuing allegations of torture and ill-treatment in detention, and about existing legislative measures which appear to facilitate the possibility of ill-treatment. Amnesty International is urging the Armenian authorities to ensure that:

- ◆ all allegations of torture and cruel, inhuman or degrading treatment or punishment are subject to a prompt, comprehensive and impartial investigation;
- ◆ the results of such investigations are made public; anyone found responsible is brought to justice; and adequate compensation provided for any victims identified;
- ◆ detainees under interrogation are informed promptly of the charge or charges against them, that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and a medical practitioner.

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<sup>9</sup> Article 17 reads: "Everyone has the right to life. The death penalty, as an exceptional punishment, can be stipulated by law solely for serious crimes."

<sup>10</sup> article entitled "Long-term residents of death row", *Izvestiya*, 9 September 1995

In the light of proposed new drafts of the Criminal Code and the Code of Criminal Procedure Amnesty International is also urging the authorities to ensure that:

- ◆ all acts of torture, attempts to commit torture and complicity or participation in torture are made offences punishable by an appropriate penalty;
- ◆ any statement obtained under torture is not admissible in court;
- ◆ victims of an act of torture or ill-treatment have an enforceable right to fair and adequate compensation;
- ◆ legislation is amended without delay to ensure that detainees are able to exercise their constitutional right to access to a defence counsel from the moment of arrest, detention or the presentation of charges, whichever is first.

Amnesty International is also calling on the authorities to ensure that:

- ◆ education and information on the prohibition of torture and cruel, inhuman or degrading treatment or punishment is included in the training of law enforcement officials and any other relevant personnel, and that they are issued with clear guidelines that torture and other forms of cruel, inhuman or degrading treatment or punishment are crimes punishable by law.

Finally, with regard to the death penalty, Amnesty International is urging the authorities to:

- ◆ commute all pending death sentences;
- ◆ create an official commission on the death penalty. The experience in other countries has shown that where it is difficult to proceed immediately to a decision on abolition, creating a commission of inquiry may be a useful way of obtaining the facts on which a decision can be based. An official commission can serve to remove the issue of the death penalty from the political and emotional climate which so often surrounds it. The findings of a commission can provide officials, legislators and the public with an objective body of information to guide decisions on the issue.