SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

(In advance of reviewing Armenia's 3rd and 4th periodic reports during 62nd-63rd pre-sessional working group in 8-12 October 2012)

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Partnership for Open Society Initiative[1] presents an overview on key issues of concerns in respect to child rights protection in Armenia. The following report provides country specific information about the general measures, programs and policies, practical implementation of legislation, violence against children, issues defined in OPSC, information on areas of concern not covered or thought to be covered incorrectly.

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[1] The Partnership for Open Society Initiative is a coalition of civil society actors, www.partnership.am

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AN OVERVIEW OF THE SITUATION

During the reporting period, the Republic of Armenia (hereinafter "RA") ratified two optional protocols to the UN Convention. The RA family, criminal and labor codes were also amended. In addition, an extensive legislative database was developed; however, the resolution of some problematic issues was left out. Child rights provisions are scattered all over different pieces of legislation. To date, there has been no initiative to put together a comprehensive law on child rights that would address all major child rights issues and would contain mechanisms to enforce the law.

Upon acceptance of the recommendations by the UN Committee on the Rights of the Child in 2004 the government, supported by international organizations and donor agencies, made some efforts to improve child rights issues, primarily by establishing a three layer child protection system and adopting corresponding legislation. However, the effectiveness of the system has not been proved. Although there are national, regional and local community structures on child protection, the output from the system is very low.

A small number of cases of violence against children receive appropriate solution shedding light on gaps of the system. In particular, cases of violence taking place in closed and semi-closed institutions, wherein the violence is a part of the system, are not raised and appropriately processed, unless it is a severe case of abuse.

The child poverty index (around 41% of Armenian children are considered below poverty line) presented by the RA Ministry of Labor and Social Affairs in their annual presentation also makes a firm argument about the State's inability to address child rights issues appropriately in State policies and budget.

In practice, the government does not have a child rights based approach programming in its cross sectoral programs implementation but rather having fragmented approach. Children have to deal with poverty, neglect, social exclusion, abuse, violence, suicide, exploitation, discrimination, and other ways of maltreatment.

Coordination

A National Committee for Child Protection has been established by the RA Prime Minister's Decree in 2005.[2] As per its charter, the committee has a crucial role in the field of childcare as well as in settling child visitation schedule related disputes between separated parents, property issues, candidacy of guardians and other issues processed through the court. An opinion of the Committee on above mentioned matters based on a thorough review is mandatory. The committees, having a task of independently identifying children left without parental care, facilitating their care, maintaining their register, and collaborating with special schools and institutions in organizing and implementing child care, consider as their job only the processing of applications received, often done only formally. Protection of children's rights under guardianship in practice is not further controlled and no assistance is provided.

Protection of child rights in court, during the interrogation by the representatives of the Guardianship Committees (as a guardian *ad litem*) is specified by law; however, in practice no assistance is provided to children going through these processes. To help the child in such circumstances, the committee representatives, with a few exceptions, are present only formally. The "committee-like" atmosphere of the work is probably justified in case of decision making but for the substantive work or provision of services such structure is incompatible with the functions. The majority of decisions is made after seeing the child/parent only once at best, without any deep and thorough review and further follow up work. The committee makes rough judgments about issues related to families in conflict, children subject to abusive practices or other issues with some deep social substrata due to lack of professional knowledge and skills.

Data collection

After increasing criticism, the RA Ministry of Labor and Social Affairs developed some sample forms and an electronic system to collect data on children with difficult life circumstances. Since 2006 this issue has been handled by regional child protection units though it is impossible to grasp the objective of doing so since the data is only being entered but not processed, analyzed, or used for planning at regional or national level. This database is not linked to any other databases on families. The Ministry does not have the capacity to develop data-

[2] https://www.e-gov.am/decrees/item/930/, the Decision of the RA Prime Minister No. 835-A of 28 October 2005 "On establishing a National Commission for the Protection of Children and approving the Statute and individual composition of the Commission".

driven concept papers and then move on to draft strategic plans or activities. In reality, the data is being collected just for its own sake. There is no coordination of the collected information amongst ministries of education and sciences, labor and social affairs, healthcare and territorial administration.

National plan of action

The 2004–2015 National Programme for the protection of children's rights was approved in 2003.[3] It aimed to ensure the fulfillment of obligations undertaken under the document "Favorable World for Children", by improving the legislative framework for health-care, social security, education, rest, leisure and cultural life, delinquency and justice, as well as monitoring of the program and follow-up measures.

In practice, there has been no solid investment to implement the strategic plan. The implementation of the strategic plan developed by the national committee is based on a fragmented schedule depending on preferences of different international organizations and investments made by them to address specific issues rather than on the pre-approved action plan with appropriate budget allocations. The state does not have a clear action plan for determining when and how the deinstitutionalization of special educational institutions should take place.

Independent monitoring structures

In the process of detection and documentation on abuse and ill-treatment in closed and semi-closed institutions, the existence and unhampered functioning of independent civic monitoring is crucial.
Following notorious cases of abuse in a boarding school for children with mental disabilities,[4] the RA Minister of Education and Science accepted an idea that had been pushed by civil society for a long time, to institute a group.

On March 12, 2010, upon the order[5] of the RA Minister of Education and Science, a public monitoring group was set up with a mandate to monitor special educational institutions of RA Ministry of Education and Science. The Council of the group consists of 15 NGOs.

The first report submitted by the group in February, 2012 had no mention of child rights violation, violence prevention, and protection mechanisms. The report did not reflect the opinion of a number of group members. In reality, the findings were "softened" by some of the group members in order to receive an approval by the Ministry of Education and Science. Conclusions and recommendations presented in the report were about living conditions in the institutions. The RA Minister of Education and Science appreciated and recognized the following as problematic areas in closed and semi-closed institutions: reconstruction of special educational institutions; actions to be taken for medical-psychological assessment and individual education; and medication prescribed for children.[6]

Undoubtedly, insufficient conditions within the dormitories are a legitimate matter of concern. The report falls short in documenting and presentation abuse and ill-treatment practices in closed and semi-closed institutions. To some extent, an incomplete and unsatisfactory performance of some of the group members is a matter of both civic attitude and a lack of professional knowledge and skills in the field monitoring.

Allocation of budgetary resources

There is very little practice of assessing budget or policy impact. Child Rights Governance (CRG), which is interpreted as "All Rights for All Children" is not a reality in Armenia. CRG, that contains a separate section of budget analyses and reallocations per assessed needs of children, is not perceived seriously in the country yet. There are internal procedures within governmental structures that conduct assessment of state spending per sector and report on results, but these reports never contain assessment of spending and its effectiveness from the point of view of child rights or child's best interest.

So far, there has been no action initiated by the government to consult with non-state actors, the public, including children, to assess the effectiveness of public spending on the areas that concern children. Moreover, there have been several cost-effectiveness assessments conducted by international organizations/experts, particularly in the field of child care and specific recommendations have been presented to the government regarding resource reallocations with the emphasis on the ineffectiveness and inefficiency of the current childcare funding, but those recommendations have been left on the paper only. High level of corruption in the country does not allow creating an environment where budget assessments and reallocations consulted by the professionals outside the government (with participation of children) become a reality. Furthermore, in consequence of financial crisis, all social programs payments have frozen and med-term programs have been suspended since 2009.

[3] The RA government decision No. 1745-N of 18 December 2003.
[4] For more details, see "Violence against child" section of this report.
[5] http://www.edu.am/DownloadFile/3890arm-Mshtaditarkum.PDF
[6] The document is available upon request.

Dissemination of the Convention

It has been observed that the reporting process of the CRC has suffered from delays and an unwillingness of the state to submit the country report on time. The National Institute, under the Ministry of Labor and Social Affairs is conducting trainings on child rights issues on the state level. Often, determined by the audience, such trainings turn into simple reading of the Convention's text without any interpretation or connection to practical life. No importance is attached to this issue within liberal arts universities where there are no comprehensive courses included in the curriculum.

All efforts regarding dissemination of the convention as well as efforts to promote child rights on the State agenda have been initiated and implemented by international and local NGOs and donor organizations. In general, state agencies have been cooperative in this regard and have not created major obstacles for the efforts of non-state actors. However, mainly to the efforts promoting protection rights and advocating to struggle against physical and humiliating punishment, the response (especially from some local governors) was not very supportive. Similarly, efforts to promote alternative childcare models have not received much support either.

While it has been easier to reach professionals working with children in education and healthcare, institutions and among the local communities, it has been challenging for non-state parties to involve other groups of professionals, such as judges, lawyers, law enforcement officials.

Armenia's periodic report to the UN Committee on the Rights of the Child is publically available in English only. The RA Ministry of Foreign Affairs explains the unavailability of an Armenian version by the fact that the report has been written in English. While the very fact of the report being drafted in English raises concerns whether the authors had sufficient knowledge of the field and were competent to do the work or simply fulfilled an order.

LEGAL FRAMEWORK ON RIGHTS OF THE CHILD

Realization and implementation of children's rights on a national level remain an issue both in terms of legislation and practice. While there have been attempts to improve the legislation and make it compatible with convention requirements and international legislation on child rights, enforcement is still minimal. On one hand the country possesses legislation that contains vague and ambiguous provisions that can be multiple interpretations, on the other hand none of the laws/codes related to child rights issues provide mechanisms for enforcing the law.

The law on "Child Rights" is declarative and contains no mechanism for relevant actions. As mentioned earlier, child rights provisions are scattered all over different pieces of legislation (Criminal Code, Criminal Procedural Law, Law on Child Rights, etc.). To date, there has been no initiative to put together a comprehensive law on child rights that would address all major child rights issues and would contain mechanisms for enforcement.

Definition of the child

Both national and international[7] legislations define a child as being any human being below the age of 18.[8] The RA Law on the Rights of the Child stipulates that all children, regardless of the child's, parent's or legal representative's (foster parent, guardian or trustee) nationality, race, sex, language, religion, social origin, property or other conditions, education, place of residence, birth circumstances, health status or other circumstances, have equal rights.

The government and its relevant bodies protect the child from any abuse, exploitation, involvement in criminal activities, other violations of his/her rights and lawful interests. The child enjoys a personal inviolability right. If a child is arrested or detained, parents or other legal representatives must be immediately notified.

Despite the fact that the definition of the child in all legal acts is the same, nevertheless, taking into account age-related characteristics, there are some age-based differentiations which could be considered. Age-based traits could be presented based on the branches of law, such as family, criminal, criminal proceedings, labor, etc.

[7] The starting point is Article 1 of the UN Convention stating that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. (http://www2.ohchr.org/english/law/crc.htm)

[8] The Article 6 of the RA Constitution stipulates that the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

Adoption and alternative care

According to Armenian legislation, adoption is the first "preferable" type of alternative care (*Family Code, Article 112.1*), however in reality the procedures of adoption are so complicated that many local families remain in queues for years. The Family Code (*Article 112.4*) states that adoption for citizens of other countries be possible only in the case when the adoption of the child is impossible by a local family. However, in reality Armenian children are adopted from abroad easily and quickly while locals wait endlessly. There have been many informal discussions about bribes required for adoption; unfortunately no one discloses such information officially for a case to be filed.

The only mechanism of monitoring adopted children abroad is via consular office, which, in cases of big countries (Russia, USA, etc.) becomes unrealistic. Local authorities have no mechanism to follow up on adopted children, especially those abroad.

Low level of adoption vs. number of children in institutions is due to a complicated process of status of clarification of institutionalized children. A child can be adopted only after he/she is given corresponding status of "deprived of parental care" (i.e. parents are not alive or have been deprived of parental rights for failing to provide appropriate care to child). However, the main problem in Armenian system is that while the decision about placing a child in institution is made by the community Guardianship/Trusteeship Communities (hereinafter, "G/TC"), the status of the child can be defined only by courts. Most of the time the G/TCs or other child protection system stakeholders do not turn to the courts with the suit to deprive a parent from parental right, thus making the child available for adoption. That is the reason why many children grow up in orphanages though their existing parents may visit them once a year or not at all.

In addition, along with 6 state orphanages and 8 care and protection boarding institutions the state permits operation of 4 benevolent orphanages, which "recruit" even more children from vulnerable families to justify their programs in the country.

The officials claim that the guardianship is traditionally developed in Armenia, therefore the foster care is not supported; the debate between stat and non-state actors is that foster care should be viewed as an alternative to residential care institutions and not to the biological families or guardian families.

The state, however, does not even have any support mechanism for guardianship, nor a regular monitoring for children under guardianship.

As already mentioned, there have been numerous studies proving that the best environment for the child is the family. There have also been analyses of costs of alternative care vs. residential care with solid justifications why the child should not be placed in the institution. However, the responsible officials continue arguing to keep institutions as long as possible.

Legal capacity

Article 24(1) of the RA Civil Code stipulates that full civil capacity is attained at age of 18, while the para. 2 of this Article stipulates that a minor who has reached the age of 16 may be declared to be at full civil capacity if he/she works under a labor contract or conducts entrepreneurial activity with the consent of his/her parents, adoptive parents, or trustee. In this case, the child's capacity is linked to performance of work, which is a socioeconomic issue and should not be linked to a child's capacity; otherwise, a child from a needy family, who works from age 16 to supply his/her and the family needs, is already capable and is not in the same position as his/her peers.

Child labor

The current legal framework is sufficient for regulating child labor issues but its enforcement is not fully addressed. Child labor can be found everywhere (agricultural works, carwash stations and elsewhere) but its detection using legal procedures is complicated since the RA laws on State Labor Inspectorate and on Organizing and Conducting Inspections in the RA have some shortcomings. An employer is notified about the inspection to be carried out at his/her premises 3 business days in advance and has a real opportunity to present counterarguments related to such issues as nonregistered minor employees, inadequacy of their working conditions and other issues, or simply to hide them. Also, labor inspectors do not have an opportunity to quickly respond to detected infringements.

Right to education

Every child has the right to receive an education and choose an educational institution upon his/her, parent's or other legal representative's consent.

While primary and secondary education is accessible for the vast majority of children (over 90%), the preschool education has a limited accessibility to only 25% roughly. Though early childhood development has

been on the state agenda as one of the important issues, there has been no step forward to increase the accessibility to early childhood development centers or preschools.

The financial crisis has affected the right of access to education. The access of education, especially in remote villages, is dramatically and largely inadequate to standards; which makes their chances in getting further education or competitive jobs lower than in the rest of the cities.

General education (1-9 grades) in Armenia is compulsory but the child's right to education is not always guaranteed. In 2005, according to a study done by UNICEF,[9] 18,000 children were out of school; by 2007, that number fell to 7,000. This is in part due to a new law that reduces the number of permissible absentees from 240 to 180 hours. Thus, one can not claim that the decrease in drop-out rates is due to ensuring better access to education.

In 2011, the Armenian Helsinki Committee[10] conducted monitoring on the 'Protection of the Right to Education of Children Staying out of School'[11] showing that the right to education of many children is not exercised since these children do not receive compulsory education. Even public officials are often unaware of these children. Monitoring carried out in 55 communities resulted in identifying 101 children left out of education, while the official data showed that their number is 9. Mainly children from socially vulnerable families remain outside the compulsory education system. They are basically forced to help their parents in supplying the household needs and, as a result, get involved in different works. The problem is rather evident in rural communities where children take part in agricultural and live-stocking works.

The number of children with special educational needs is also large. They remain outside the educational system due to physical inaccessibility or lack of relevant specialists in the school. Many parents also avoid speaking openly about the educational problems of their children, being afraid of societal discriminatory attitudes towards their children. In the Kharberd Orphanage for Children with Special Needs, only 30% of children attend school.

The study findings showed that many children are enrolled in the schools just formally but often miss classes due to several reasons. Schools mainly lack juvenile specialists, psychologists, social workers to work with children and to bring them back to the school.

Schools receive funding per person. School faculties disregard long absences of pupils and automatically grade them, in order to transfer the child to the next grade. If cases of child absences are identified, reporting arrangements to supervisory body are so complicated for the schools that they prefer to address the issue internally. The G/TCs, which should *ex officio* identify cases of the child's rights violations on the community level and protect those rights, do exist formally in this respect.

DISCRIMINATION AGAINST CHILD

Discrimination against child with disabilities

Over 80 inclusive schools officially operate in Armenia. These schools are not actually ready to accept a child with a major disability. The most urgent issues include (but are not limited to):

- lack of physical access for children with mobility impairments,
- lack of facilities for children with visual impairments,
- lack of sign language interpreters,
- lack of relevant professionals,
- stereotypical perceptions towards children with disabilities among parents of non-disabled children and school administrations.

Only a few disability-focused NGOs provide training and support to school administrations, teachers, parents and students. These efforts are not sufficient to dramatically improve the situation. Therefore, the level of inclusion of children with disabilities in mainstream education is extremely low in Armenia.

Discrimination against child living with HIV

Since 1988 to June 31, 2012, the number of children living with HIV infection has reached 24. Although the number is small, the discriminatory attitude towards them is widespread in Armenia. Organizations[12] working with HIV infected people observed that most cases of rights violations towards children living with HIV infection

[9] http://www.unicef.org/ceecis/Armenia_2010.pdf
[10] http://www.armhels.com/index.php?lang=eng
[11] http://www.armhels.com/DownloadFile/515eng-Ditord_4%2859%29_2012.pdf
[12] Real World Real People NGO and Armenian Network of Positive People NGO

related to their right to health and education. Both in health care and educational institutions in case of violations of child rights, parents prefer to change institutions.

Healthcare infringement cases have been recorded both by medical institutions personnel and child's parents. There were cases when medical facilities refused to provide medical treatment to a child living with HIV. The child was isolated unnecessarily during stay; parents and guardians were ignored and mistreated. In all such cases parents preferred to change the healthcare service provider and applied to the National Center for AIDS Prevention, as well as to NGOs working in the field, for assistance.

Usually, individuals impacted by this discriminatory behavior avoid complaining or taking the case to the court for fear of harassment and wide disclosure of their HIV status. There are cases, when parents and guardians violate the child's right to access to healthcare by not following antiretroviral[13] treatment.[14]

In recent years, there have been cases when children living with HIV were excluded from schools and kindergartens because of their HIV status. Also, the rights of children who have HIV negative status but with parents infected with HIV are violated in educational institutions. They are required to bring medical proof that the child is not HIV positive. The latest case of such behavior was recorded in May 2012 in Armavir Region.

Freedom of thought, conscience, and religion

Freedom of religion and conscience is regulated by Article 26 of the RA Constitution[15] and the 1991 Law of the RA on Freedom of Conscience and Religious Organizations.[16] The existing law contradicts the Constitution of the RA as well as international standards in this field. There are inconsistencies within the law.[17] Armenian Apostolic Church enjoys a dominant position among other religious organizations and access to public institutions.

History of the Armenian Church has been taught as a subject in public schools (5-10 grades) since 2002. It is presented as a history subject, but the monitoring of the Collaboration for Democracy Center NGO[18] has revealed that children are made to pray during class.[19] Clergymen often participate in such classes. During classes, pupils are directly taught about ethnic and religious identities as being the synonymous concepts.[20] This subject is mandatory for all pupils, and it is essentially a preaching of one confession[21]. Moreover, the Armenian Apostolic Church prepares, provides financing and publishes the textbooks It is worth noting that, according to the RA Law on Education, general public education in Armenia is supposed to be secular.

The Law on relations between the Republic of Armenia and the Holy Armenian Apostolic Church was adopted in 2007 providing several privileges to the latter, such as budgetary support, the right to take part in drafting school syllabi for the Church history course and in implementation of school curricula in educational institutions.

The Armenian Helsinki Committee conducted a study of child abuse in the schools, where it has identified cases of intolerant treatment of children from families following any other religion or denomination. Parents of the children representing ethnic minorities have also complained about Armenian Church history subject being taught in the state schools, as their children must participate in the Apostolic Church rites performed during the classes.[22]

[13] HIV infection treatment accepted by World Health Organization and National guidelines for HIV infection treatment that requires strict adherence to treatment regime.
[14] Examination and treatment are free of charge.
[15] http://www.parliament.am/parliament.php?id=constitution&lang=eng
[16] http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=eng
[17] So far, there have been three legislative initiatives and the Venice Commission has rendered critical opinions on all three drafts.
[18] http://www.religions.am/eng/
[19] "Issues of religious education in public schools in the Republic of Armenia", Stepan Danielyan, Ara Ghazaryan, Hovhannses Hovhannisyan, Artur Avtandilyan, Collaboration for Democracy Center, Yerevan, 2012
[20] "History of Armenian Church" 10th grade Textbook, National Education Institute, 2005
[21] Introductory paragraph of the 4th grade Textbook, "History of Armenian Church", National Education Institute, 2005
[22] "Human Rights in the regions of Armenia", pg. 60-71, http://www.armhels.com/DownloadFile/504eng-Human_Rights_in_the_Regions_of_Armenia.pdf

ADMINISTRATION OF JUVENILE JUSTICE

There is no special legal framework on juvenile justice. Armenia does not have specialized juvenile justice courts or judges, which hinders administration of juvenile justice. Cases involving juvenile suspects are regulated by the RA Criminal Procedure Code (CPC), Criminal Code (CC) and other laws and regulations. The legal framework for alternative measures of liability of minors is weak and deficient in terms of substituting the operational and non-discriminatory criminal liability with alternative measures. A review of Armenian legislation shows that the law does not necessarily take cognizance to the unique needs of a juvenile and give differentiated regulation. The law does not contain any provision which will require specialization of the judicial panel, bodies of inquest, prosecution, lawyers, dealing with juvenile cases. The CPC of the RA does not provide any safeguards to ensure effective participation of juvenile accused or defendant in criminal proceedings. Although accelerated court proceedings apply to juvenile cases, the permissibility of its application is questionable.

Lack of appropriate assistance

According to Article 69 of the CPC of the RA, the involvement of a defense counsel is mandatory, if the accused is a minor. In pre-trial and trial stages, the child must be assisted by a defense lawyer. According to Article 441 of CPC the legal guardian of a juvenile participates in criminal proceedings. Hence, national legislation requires the mandatory involvement of a defense counsel and a legal guardian in juvenile cases. There is no provision requiring the involvement of pedagogues or social workers during the interrogation and trial of the juvenile defendant. In contrast, interrogation of a minor witness or victim under the age of 16 must be conducted with the participation of a pedagogue and legal counsel (Article 207).

Armenian legislation does not require that the attorneys involved in juvenile cases display not only pure legal knowledge, but also be knowledgeable on children's rights and related issues, adolescent development, de-escalation of emotional arousal. Nor does it require them to have received ongoing and in-depth training and be capable of communicating with children at their level of understanding. From this perspective, it is crucial for attorneys to be supplemented by the services of mental health professionals aiding them with collection of mitigating evidence resolving family conflicts that may be integral to resolution of the case, easing relations with the client and communicating with the child about the case, as well as helping the defendant draw up potential outcomes and structure for resuming a normal life after a case's resolution. However, the legal framework in Armenia is insufficient to allow involvement of other professionals such as social workers or to make compulsory special training of lawyers.

Lack of appropriate alternative measures and diversion

International standards require the adoption of measures for dealing with children in trouble with the law without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected. Armenian legislative framework seems weak and inadequate for operative and non-discriminatory diversion in juvenile cases.

The legislative basis for diversion is not adequate for several reasons;

1. The law does not recognize juvenile defendants as qualitatively different from adults accused of crimes, and so there is no juvenile justice system that pursues a different goal from the standard crime-solving and punishment system for adults.
2. The application of non-penal disciplinary-educational measures is only possible at trial stage, in contravention of one of the primary aims of diversion - to deal with children in conflict with law without resorting to judicial proceedings.
3. In the context of Armenian legislation, complainant-defendant reconciliation (when achieved) might serve as a ground for exception from criminal responsibility without resorting to alternative diverting measures. Therefore, in fact, victim-defendant reconciliation constitutes a formal condition for absolving from criminal responsibility. However, in cases of clear-cut unlawful conduct by the defendant, reconciliation does not in itself address underlying causes of the offense.
4. Exception from criminal responsibility following complainant-defendant reconciliation can be carried out only in petty crimes with respect to both adults and minors. The system as it stands now equates the needs and interests of adults and minors without any specificity of regulation.
5. Referral of cases by police to Children’s Support Centers does not have legal basis in criminal procedural legislation. Although in practice, six Community Justice Centers are operating in Armenia, there is no law which contains specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard in order to protect the child from

discrimination.

6. The list of measures, which can be applied at earlier stages of criminal procedure, is very restrictive. In contrast, in many countries a variety of community-based programs have been developed, such as community service, intensive educational programs, supervision and guidance by, for example, social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of complainants.

Therefore, police and justice professionals generally lack the combination of legal discretion, procedures and services that would allow them to divert children away from the formal criminal justice system. Although some "unprompted" diversion may be taking place, this lacks coherence and legality to help the child avoid coming into conflict with the law again and the safeguards required to discourage corruption. When judicial proceedings are initiated by the competent authority, the juvenile justice system should provide for ample opportunities to deal with children in trouble with the law by using social and/or educational measures It should also strictly limit the use of deprivation of liberty, and in particular, pretrial detention, as measures of last resort.

In Armenian legislation some alternatives to custodial measures do formally exist. According to Article 134 of CPC, the following preventive measures can be applied with respect to the accused: 1) arrest; 2) bail; 3) a written obligation not to leave the jurisdiction; 4) personal voucher; 5) an organization's vouching for the defendant; 6) release to parental supervision; and 7) release to the supervision of commander.

In general, pretrial detention may only be imposed for a crime punishable by more than one year of imprisonment, or if there is sufficient reason to think that the accused may flee justice or commit another offence. Article 442 of the CPC contains *lex specialis* on juveniles, which states that an accused juvenile may be detained only if charged with a crime of medium or more severe gravity. In contrast, under international standards, there can be no restriction of when a non-custodial pre-trial or post-conviction measure can be used– limiting to only those crimes punishable by less than one year is a violation of children's rights on several levels.

Section 5 of the CPC defines the peculiarities of punishment and criminal responsibility.[23] Article 85 and 86 of the CC enumerates the types of punishment applicable to juvenile defendants, which include fines, community work, detention and imprisonment, as well as outlining alternatives in the form of educational coercive measures.[24] This regulation is quite restrictive and inadequately considers the nature of adolescence and childhood: juveniles are rarely able to pay fines, and work could violate the labor code, amounting to narrower options for alternatives for children than those that are available to adults. Armenian legislation permits absolving the juvenile from criminal responsibility or punishment by applying educational measures.

Pursuant to Article 91 of the CC noted above, a minor for the first time accused of a crime of minor or moderate gravity, can be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced educational measures.[25]

[23] Being a minor at the time of the committal of the crime is regarded as a mitigating circumstance under Article 62 of CC.

[24] Fines can be used with respect to a child if the minor has his own income or a property which is subject to confiscation by law. Fines are calculated by reference to a multiple (10 to 500) of the current minimum rate established in the Republic of Armenia by law, at the time of assignment of the punishment (Article 87 of the CC) Detention for the period from 15 days to 3 months, can be only imposed on a minor who has reached the age of 16 years at the moment of sentencing (Article 88 of the CC), A minor can be imprisoned for petty crimes for a term up to a year; for medium-gravity crime a term up to 3 years; for grave or particularly grave crime, committed when under 16 years of age, a term up to 7 years; for grave or particularly grave crime, committed at the age of 16 to 17 years, a term up to 10 years (Article 89 of the CC). When assigning punishment to a minor, his home life and upbringing are taken into account, the degree of mental development, health, other features of personality, as well as the influence of other persons (Article 90 of the CC).

[25] Article 443 of the CPC allows application of educational coercive measures instead of punishment, if the Court reaches the conclusion that the minor can be corrected without a punishment. Article 93 of the CC, specifies that a minor who committed a petty or medium-gravity crime can be exempted from punishment, if the court finds that the purpose of the punishment can be achieved by placing the minor in a specialized educational and disciplinary or medical and disciplinary institution. Assignment to specialized educational and disciplinary or medical and disciplinary institution is imposed for the term of up to three years. However, if the juvenile reaches the age of majority while serving his/ her sentence, he/she must be released from the institution period no further measures are taken after the adult is released.

Other alternatives can also be applied. For instance by virtue of Article 94 of the Criminal Code, the sentence can be suspended and the juvenile can be pre-released, if he/she has already served: 1) no less than one quarter of the punishment assigned for a petty or medium-gravity crime; 2) no less than one third of the punishment assigned for a grave crime; or 3) no less than half of the punishment assigned for a particularly grave crime.

It should be also noted that there are not child-oriented alternatives to pre-trial detention (except for taking into supervision) and sentences. Again, although the periods of detention is defined by Article 138 of CPC, the only peculiarity in ordering detention for juvenile is that detention can be imposed if the juvenile is charged for a medium, grave or particularly grave crime. However, the law does not define shortened detention periods for juveniles.

VIOLENCE AGAINST CHILD

There are a large number of cases and incidents of violence against children, occurring both in the family and within various institutions, such as secondary schools and special schools. Of particular concern is the information on cases of violence against children in closed or partially closed institutions, as the law offers very limited opportunities for monitoring. What little information that does exist is due to special monitoring groups granted with special power/credentials.

In Armenia, there is no standard method for registering cases of violence against children. As a result, it is very difficult to obtain concrete statistical data that can provide valuable insights into the situation. The main issue here lies in the fact that cases of violence are not studied or investigated and as a result, problems are not discovered (except for extremely severe cases). There is no structure in place for revealing such specific crimes. Violence against children has become a normalized practice. As such, often the children do not consider themselves as victims in the first place. Theoretically, slapping and other similar minor forms of physical punishment can be is regarded as permissible by relatively small number of parents. However, in the case of disobedience, many parents still consider beating a child to be a normal way of punishment.

According to the Fund for Armenian Relief statistics of 2009, of the 139 sheltered underage children who eventually appear in Special Child Care Centers, 72 have been victims of physical and psychological abuse, and 12 to sexual abuse. In the first quarter of 2010, from the admitted 35 children, 20 had been abandoned after being exposed to physical abuse, while 6 of them also were sexually abused.

Criminal proceedings are usually not initiated based on facts related to the domestic violence, as it is almost impossible to provide child protection, with the lack of alternative methods for intervention in violence cases, which can provide specialists with the relevant skills and knowledge. In many cases, the specialists working with abused children have to agree with the preconditions of the family as well as with the preferences of the child, given that placing the child in the corresponding institutions may be more traumatic for the child. The child returns home and in a short while later is faced with the same situation.

The results of the Survey on Violence Against Children in Schools, implemented by the Focus Group Discussion and Armenian Helsinki Committee, illustrate that there are many different punishment techniques among teachers, such as marking low grades, asking the child to leave the class room, or slapping and beating the child. In some cases, teachers create an atmosphere of fear through psycological harrasment of the child. Most parents and teachers alike, as well as some students, beleive that these forms of discipline are “a natural response to the behaviour of the child”. Very often, the punishment type depends on the teacher’s bias towards the child, which may be based on circumstances such as whether the child takes private lessons from the teacher, or the social status of the child’s family.

Due to tradition and cultural norms, it’s socially unacceptable to complain about violence and disciplining in schools.[26] Only in a few cases have there been complaints registered with the police, most of which have concluded with the dismissal of the perpetrator from his or her position, and generally in line with their own wishes.

The situation in closed institutions is the most troubling for its fundamental shortcomings in revealing cases of violence, stemming from a more structural failure.

Case 1: In 2008, in a boarding school for children with mental disabilities, volunteers working with the children, learn that four school children were exposed to sexual abuse by their teacher L. Avagyan. The volunteers inform the School Director M. Yengibaryan, along with the mass media, about the incidents. As a result, the Public TV Channel prepare a program about sexual harrasment against children, where they broadcast hidden footage taken by the volunteers where the children discuss the nature of the harrasments. Afterwards, the Erebuni criminal investigation department charged the children involved with libel in accordance with Part 1, Article 135 of the Criminal Code of RA. As a result of legal intervention into the case, the charges against the children were dropped. Instead, a new criminal case was launched against the Mariam Sukhudyan and the other volunteers who had exposed the sexual harrasment in the first place, based on the same article 135 of the RA Criminal Code.

[26] “Survey on Violence Against Children in Schools”, Helsinki Committee of Armenia, Ditord # 39, 2008

This case is included within the scope of OSF-Armenia Strategic Litigation Program. Thanks to comprehensive actions such as the involvement of expert lawers, as well as organizing important events for the public discource (discussions, press conferences, etc.) the charge of libel was removed and the criminal case was amended – by shifting focus onto the teacher, who was the perpetrator of the sexual harrasment.

Sexual harrasment and abuse against children is difficult to discover and convict. The cultural stereotypes about victims of sexual abuse is an undermining factor preventing underage children from exposing the nature of the violence. Furthermore, this stereotype influences the criminal proceedings and taints objective judgements about the behaviour of the underage child.

Information provided on behlaf of the police and other relevant services do not reflect a genuine picture of the sexual abuse against children. As such, most cases remain unreported and undiscovered. There are many known cases on child abuse and sexual harrasment, which have not been given the opportunity to proceed, due to the wishes of the parents, or in some cases, the wishes of the child, in order to not taint the family's reputation within society. As such, they refuse to make a formal complaint, or if a complaint is filed, it is withdrawn shortly afterwards, fearing of the negative effects on the child's social perspective. As a result, sexual violence against children remain unrecognized and unsolved.

Case 1: An employee of the water and sewage company in town Hrazdan, R.Kh., visited Hrazdan dormitory room # 954 and informed N.M. that they have huge debts to pay for water utility bills. At the same time he told N.M. that he wants to marry her daughter, born in 1995. N.M. replied that her daughter is only 12 years old. A few days later, R.Kh. again visited them when the the daugher was also present and using alcohol. Afterwards he stayed the night at their residence, and had sexual contact with the girl with her consent. The deed was punished by monetary penalty.

Case 2: The mother was unable to pay the rent for the house and reached an agreement with the landlord to marry her 12 year-old daughter with him, a 27 year old man, with mental disorders. The child suffered in the new house for almost three years and eventually escaped and informed the police. As a punishment the court ordered a penalty in amount of 100,000 AMD.

Unlawful practices of the police officers against minors

In the period of 2009-2010 the Vanadzor HCA office identified over 15 cases of physical violence, psychological pressure and threatening of citizens by the policemen, with two of the cases involving underage.[27]

The cruel, inhuman and degrading treatment towards the minors, while present in the police departments, was expressed by the following practices:

- interrogation of minors without a legal representatives;
- physical violence or direct threats;
- not providing information to the family members and relatives on current location;

The reports on violent behavior of the police and degrading treatment towards the underage, submitted by the Organization were not sufficiently investigated and no criminal proceedings were further filed.

Cases of ill-treatment of minors in semi-close facilities

In the result of monitoring, implemented by Vanadzor HCA office, at Vanadzor orphanage[28] (2007) and at Vanadzor Care and Protection Center[29] (2009), cases of ill-treatment and violence against children were identified.

1. Orphanage

The personnel at a **Vanadzor orphanage** mistreat the children. Additional issues, related to the legal status, health and rights to education have also been observed since 2007.

[27] "Unlawful Behavior of the Police Employees of Lori Region during the Period of December 2008-December 2010" Report, Case 1, Case 2, http://hcav.am/attachments_/75833_Tortures_report_HCAV.pdf

[28] "Human Rights situation in Lori Region" Report on the results of monitoring in the Mental Health Institution of Lori Region, Vanadzor Nursing Home, Vanadzor Orphanage, pp. 36-60, HCA Vanadzor office, Vanadzor, 2007 http://hcav.am/attachments_/33ead_monitoring_1_eng%5B1%5D.pdf

[29] "Human Rights situation in Lori Regionre" Report, Part 2: "Human Rights in Vanadzor Boarding School N1 for Children Care and Protection", HCA Vanadzor office, Vanadzor, 2009 http://hcav.am/attachments_/01232_zekuyc_2009.07.01%5B1%5D-arm.PDF

The education of children at Vanadzor orphanage is provided by methods that do not adhere to the criteria defined by law. Some instructors practice physical violence against the children. Legally prohibited responsibility assignations were applied in terms of limiting entertainment, deprivation from food, etc. The mechanisms for collection of suggestions and complaints from children were not used. The responsible authorities act insufficiently in defining the legal statuses for the children. The deadlines for the definition of a legal status are not kept by the trustees and the care takers. The lack of a defined legal status does not allow protection of the rights and interests of the orphans when needed, as required by the law of the Republic of Armenia "On Social Protection of Children without Parental Care", it also does not allow residential accommodation (apartments) or higher education for the orphans over age of 18. The children do not get clothes with equal frequency. Sponsorship in provision of clothes to only a part of the children in the same orphanage arouses discriminative attitudes among the children. Given the lack of sufficient funds, the children do not have access to medical treatment, even when necessary. The personal space of the children as well as other possibilities in their personal life is limited. Their phone conversations can be tapped by a phone linked to the same line. The instructors do not consistently follow the education for the orphans of age 7-15. The same instructor can be responsible for the education of all children, but some of them do not have the necessary higher education which negatively impacts the educational advancement of the children.

2. Care and Protection Center

At Vanadzor Care and Protection Center (Boarding School) #1 children are subjected to violence. Problems related to hygiene, clothing and education persist in this facility (as of 2009).

Beating and regular punishments, like standing in the corner, missing the walk out and other events are practiced with the children at the school. The overall housing conditions of the boarding school do not allow organizing the breakfast and dinner for all the children at the same time. Showers are not enough. The washing machines are quite obsolete and very few. The budget of the school is insufficient to buy clothes for all. The homework for different educational subjects is organized in the same room and by the same instructors.

IMPLEMENTATION OF CRC OPSC

Sexual exploitation, sale, trafficking and abduction

The RA legislation does not regulate complex services for the care, rehabilitation and return to society of children subjected to sexual violence or abuse, which would allow for psychological healing and full socialization of the children. The victims of violence are observed by the investigation as carriers of information, and the rehabilitation measures are left to the family members and NGOs.

There is no legal obligation for reporting on cases of violence or abuse of children. The existing legislation does not place any responsibility on non-reporting. Only one provision in the RA Criminal Code envisages responsibility for not reporting on heavy and grave crimes, but some forms of abuse do not fall under the definition of "heavy" or "grave". Adding a mandatory requirement to report on sexual violence against children will play a big role in the identification and further prevention of such crimes. More stringent responsibilities should be defined for professionals, such as the staff of the RA Ministry of Education and Science, social workers, physicians and nurses.

There is no law on the protection of victims or witnesses and no regulation for the protection of underage victims or witnesses, which, if present, would give full guarantees for protection. After the legal reform only one separate chapter was inscribed in the RA Code of Criminal Proceedings. However, it is worth mentioning, that the chapter contains rather general definitions that could be applicable for investigation of any type of crime, without a specification of relations in case of involvement of underage. This assumes that the issue of practicing measures of protection is solved on the basis of a given case, in circumstances when the necessity to protect the underage victims or witnesses because of the vulnerability, is not legally recognized. On the other hand, the law has no special requirements or criteria for assessment of the expediency and correspondence of selecting an exact means of protection for an exact person. It is necessary also to elaborate programs of witness protection, which would include different measures of protection.

No protection of personal life for children that are victims of sexual violence is envisaged in the legislation. A realistic approach to enforcement of protection for the underage victims and witnesses is confidentiality of their personal information, close-door court proceedings and interrogation. A special procedure on investigation of cases of sexual violence against the underage is preferable. It could foresee a requirement to protect the confidentiality of personal information for all the parties involved in a court proceeding, i.e. the justices, prosecutors, detectives, investigating bodies, attorneys, witnesses and the culprits.

Problems exist also on the part of providing proper support to the children who are victims of sexual violence, specifically free of charge legal advice or socio-psychological services. In practice, victims find themselves under pressure, as they are threatened to refrain from testimony.

The State does not regularly train police, lawyers, advocates and judges on child right issues and their sensitivity, therefore the professionals from the legal sections most of the time do not consider the psychological harm they may bring to a child during investigation and trial of cases of sexual abuse. The media, often does not follow professional norms when publishing news about abuse cases, and may either reveal the name of the sexually abused child or a detailed description of the region/village, family of the child, so that everyone immediately recognizes the victim. In such cases the confidentiality that is a guarantee for avoiding continued abuse and trauma is ignored.

Mostly, the victims of crimes of sexual nature appear to be the children of socially vulnerable families, or those whose parents have lower levels of social perception or are divorced. The RA Criminal Code has no proportionate punishment, either. Articles 141 (Forceful Involvement in Sexual Activity of Persons Under the Age of 16) and 142 (Dissolute Actions) of Chapter 18 "On Protection from Crimes Against Sexual Inviolability and Sexual Freedom" of the Criminal Code envisage fines as a sanction (comprising 100-400 minimal salaries) or 2-3 years of imprisonment, at most. The practical experience shows that fines are more often applied. A number of encroachments of sexual nature towards children have been identified, and no proportionate criminal proceedings were filed further on. Below are the most sonorous:

Case 1: In the end of 2008 a group of volunteers visited Nubarashen special school #11, in the framework of a voluntary program implemented by the Armenian office of the UN. The mission identified cases of sexual violence of minors on the part of one of the teachers at the school. After numerous complications (filing of a criminal proceeding against one of volunteers who had identified the crime, change of conviction for several months from "libel" to "perjury" and then to "libel" again), (http://hra.am/en/point-of-view/2009/11/24/activist), finally on the 24th of May 2010, the person committing the crime was confirmed guilty by first instance court of Erebuni and Nubarashen communities of Yerevan, as of paragraphs 1 and 2 of Article 142 of the RA Criminal Code (Dissolute Actions towards the Minors) and sentenced to two years of imprisonment (http://hra.am/hy/events/2010/05/24/trial). After appealing the decision, the RA Court of Appeal partially changed the decision of the First Instance Court extending the imprisonment to three years. (http://old.hetq.am/en/society/nubarashen-school-9/).

Case 2: In 2010-2011 some information was exchanged in the communities of Alaverdi and Akhtala that the owner of a mining plant in Akhtala, Mr. Serob Ter-Poghosyan is in charge of child molestation. After identification of a video material exposing the crime committed by the businessman, a criminal investigation was launched. Several other boys, playing in Akhtala football team, sponsored by this Diaspora Armenian, were also the victims of abuse.

In July 2011, the First Instance Court of Lori Marz started a criminal proceeding against Mr. Ter-Poghosyan with a conviction in sexual harassment of minors (http://www.azatutyun.am/content/news/24229887.html). The court proceedings were held behind closed doors. There were 10 victims in total, who were underage at the time of the sexual misconduct, though at the time of the proceeding a part of them were in legal age already. The parents reported to the investigation that they had been unaware of such facts. On the 17th of November the First Instance Court of Lori Marz sentenced the President and co-owner of Akhtala "Metal Prince LTD" corporation, US citizen Mr. Serob Ter-Poghosyan to 15 years of imprisonment, following the requirements of Articles 139 and 140 of the RA Criminal Code (http://news.am/eng/news/82314.html).

Case 3: Another case of child molestation was identified in February 2012. The Leader (Head) of Hartashen community in the Marz of Syunik, who also worked as a school teacher, was detained in suspicion of violation of article 138 of the RA Criminal Code (Rape of Minors), further convicted in raping one of his female students aged 14 (http://hetq.am/eng/news/11600/gyuxapety-kalanavorvats-e-na-mexadrvum-e-anchapahasin-brnabarelu-mej.html). According to the report submitted by the investigation department in the Marz of Syunik, the investigation is still in process (as of 21.06.2012).

Trafficking of children is regulated under two articles of the RA Criminal Code: article 168 makes criminal the buying of a child with the purpose of taking care or selling the child to a caretaker. Article 132 of the RA Criminal Code defines trafficking[30] or trade of children as selling of boys or girls under the age of 18. The

[30] The main international document on combating trafficking is the 2000 UN Convention "Against Transnational Organized Crime" and its two Optional Protocols "On Smuggling of Migrants by Land Sea and Air" entered into force on the 19th of

children who are victims of trafficking need special protection. Even though article 98[1] of the RA Code of Criminal Proceeding envisages some protection measures, their existence on paper is not enough. Armenia has not yet ratified such crucial documents as the Convention of the League of Nations "On Slavery" and the UN "Supplementary Convention on Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery".

Provisions on protection of children from abuse are inscribed also by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed on 12th of July, 2007, but not yet ratified, which is a necessity now.

Possession of child pornography for personal or third party uses, envisaged as a criminal violation by Article 9 of the Council of Europe Cybercrime Convention[31], is not criminalized in Armenia. The issue requires fulfillment of a legal gap.

There is another draft at the RA National Assembly presently that envisages chemical circumcision, in the framework of forceful medical interventions, for child molesters.

According to Article 7 of Council of Europe Convention[32] (2007) "On Preventive Intervention Programs or Measures", every party concerned with the possibility of committing any crime under this convention shall, if necessary, be able to participate in interventions and measures, aimed at assessment of risk and prevention of the committed crime. Chemical circumcision and other methods are also listed in this part.

Abduction is a crime, inscribed in bullet 4 of paragraph 2 of Article 131 of the RA Criminal Code. The Article does not specify the commitment of the crime by abusing the helpless condition of the victim, which is a probable option in case of children. This gap can result in circumstances when a person carrying a sleeping child away undergoes no responsibility.

Drug abuse

Seizure or unlawful acquisition of narcotic or psychotropic drugs (Article 269) is considered an offense only for a person over the age of 14[33]. This means that children can be considered criminals, but there is no special provision to bring them to responsibility for these crimes.

April 2003), as well as Council of Europe Convention "On Action against Trafficking in Human Beings" (signed into force on February 1, 2008).

[31] In force in the RA since February 1, 2007.

[32] Reminding that Armenia has signed but not ratified the convention.

[33] Illegal turnover of narcotics, psychotropic drugs and their precursors; violation of requirements for production, procurement, maintenance, registration, release, transportation or supply of special substances and substances under control, equipment or tools for production of such drugs; illegal turnover of narcotics and psychotropic drugs without the purpose of selling; illegal preparation, use, forgery of documents or selling of forged documents giving rights to receive narcotics and psychotropic drugs; illegal provision of prescriptions to receive or other documents permitting reception of narcotics and psychotropic drugs; addicting or persuading the use of narcotics and psychotropic drugs; illegal cultivation and growth of plants containing narcotic and psychotropic compounds, influential or toxic substances; organization and maintenance of haunts for use of narcotics and psychotropic drugs.