



ARMENIA'S COMMITMENT TO TORTURE PREVENTION

In September 2006, Armenia ratified OPCAT and designated the Human Rights Defender as its National Preventive Mechanism. Additionally, civil society monitors the human rights situation in penitentiary and police detention facilities through independent monitoring boards. Despite these efforts, torture remains a fundamentally unaddressed problem due to inadequate legal protection and lack of political will to initiate and carry out full and impartial investigations against officials. For years, the authorities have failed to ensure a definition of torture in line with international standards so that public officials can no longer avoid prosecution for torture or be sued on charges of mild offenses. Similarly, Armenia's over-reliance on detention¹ contradicts international standards, creates additional risks for torture, and exacerbates prison overcrowding.

Despite its international commitments, Armenia systematically fails to provide safeguards for torture prevention and protection. This publication outlines the main outstanding issues and minimal actions that Armenia needs to take to tackle this endemic problem.

Despite some efforts by the government to address overcrowding, the issue persists and amounts to torture in some penal institutions where inmates take turns to sleep. The data provided² by Penal Department of Ministry of Justice for October 2014 shows that nine of the currently existing 13 prisons are overcrowded. Such overcrowding leads to lack of access to basic conditions and health services and increases corruption in getting these services as a paid privilege rather than a minimum standard³.

Civil society has no access to police interrogation rooms, where torture is allegedly used to coerce self-incriminating evidence. Lack of audio-video recording of the interrogation process also makes nearly impossible to prove that confessions was gathered under duress.

If Armenia is to show political will to address torture practices, the State needs to act urgently and comply with its obligations under international law: duty to enact and enforce legislation criminalizing torture, duty to investigate, and duty to exclude evidence obtained through torture.

DUTY TO ENACT AND ENFORCE LEGISLATION CRIMINALIZING TORTURE

A number of gaps in Armenian legislation create favorable grounds for the use of torture to acquire self-incriminating evidence. The Criminal Code does not guarantee legislative safeguards against torture as torture is not criminalized per the standard of Article 1 of the UN Convention against Torture. This loophole enables officials to avoid prosecution for torture under lesser crimes adding to the existing atmosphere of impunity. The legislation does not stipulate a clear defined threshold between torture and cruel, inhuman, or degrading treatment or punishment. Nor is there any specification of aggravating features of torture, particularly when it comes to minors.

¹ According to data provided by Helsinki Citizens' Assembly-Vanadzor Office

² Data was provided to the Group of Public Observers over Police Facilities

³ According to information of the Public Monitoring Group over Penitentiary Institutions, the detainees are forced to pay 50,000-60,000 Armenian Drams (more than 100 Euros) a month for hospitalization, and an extra 5000 Drams (about 10 Euro) or 10 liters of petrol for the transfer to the hospital.

The government claims that the new Criminal Code will be in line with international standards and will include solutions to the problems mentioned above. According to the 2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia the deadline for elaboration of the Criminal Code is September 2015. However, given the practice of elaboration of the Criminal Procedural Code and other big Codes in Armenia, the development and adoption of the Criminal Code may require more time than it is defined in the Strategic Program. Hence, urgent measures are needed to address this issue within the current legislative framework to prevent further human rights violations.

Recommendations

- Make amendments to the current Criminal Code to ensure that definition of torture is in line with Article 1 of UNCAT;
- Ensure that the new Criminal Code includes torture definition as per UNCAT standard, defines the threshold between torture and cruel, inhuman, or degrading treatment or punishment, and specifies aggravating features of torture;
- Open police investigator's rooms for accountable oversight

DUTY TO INVESTIGATE

Armenia fails to ensure prompt and impartial investigation into torture allegations. The very responsible body, Special Investigation Service (SIS), vested with authority for investigation into torture crimes has questionable independence and limited capacity for such investigation. The service was established as part of a reform aimed at removing investigative functions from the prosecution, in an effort to avoid conflict of interests in investigation of high profile officials. Although these functions were removed *de jure*, the service continues *de facto* to operate under the Prosecutor General's authority/control. Advocates engaged in protecting torture victims flagged a problem with the investigation process. According to their data, when investigating torture allegation, the Special Investigation Service sends information requests on that case to the police, even when there are allegations of use of torture by police investigators.

According to official data, in 2013, the Special Investigative Service investigated 114 cases for excessive official authorities using violence, weapons or special measures. In only 19 of these cases, criminal proceedings were initiated, and 10 of the 19 cases were subsequently dropped

Moreover, loopholes in the legislative framework lead a practice whereby, in torture cases, the burden of proof is put on the victims. This contradicts international best practices. The fact that the legislation does not specify that the burden of proof lies exclusively on the state leads to serious human rights violations and deters torture victims from reporting the damage. It is of utmost importance to put an end to this ambiguity of the law. It will in turn increase the responsibility of the Special Investigation Service for handling torture cases.

Another systemic problem that hinders effective investigation of torture cases is the lack of professional and systematic health records upon detention. Yet civil society monitoring shows alarming statistics of detainees with bodily injuries. The data gathered by the Public Monitoring Group over Police Detention Facilities for January – August 2014 shows that, on average, 17 percent of detainees have a bodily injury upon admittance to the



detention facility. According to the same source, out of 690 detainees only 75 had a lawyer. Such a lack of legal counsel deprives the detainees of one of the most fundamental protections against torture. Given that civil society has no practical access to the investigation rooms and that the SIS does not perform its function as an independent investigation mechanism, torture victims generally do not have the necessary safeguards against torture during the investigation phase.

Armenia is not fulfilling its obligation under UNCAT to ensure prompt and impartial investigation irrespective of a formal complaint from the victim. Even in cases when torture allegations are made in courtroom it does not trigger an effective investigation as such.

Recommendations

- Introduce special procedures for mandatory investigation of torture allegations regardless of whether a formal written complaint is lodged to relevant authorities by victims;
- Ensure that Special Investigation Service of RA really investigates the cases of torture, not involving other investigatory mechanisms, like Police internal investigation
- Amend the Criminal Code to specify that the burden of proof in torture cases is exclusively on the State, and not alleged victim
- Amend the Criminal Procedure Code to stipulate recording of the interrogation process

DUTY TO EXCLUDE EVIDENCE OBTAINED THROUGH TORTURE

The international law stipulates absolute prohibition of use of evidence obtained through torture. A similar provision exists in the Armenian legislation: it prohibits use of such evidence and gives judges the power to order investigation into torture crimes. In practice, judicial dependence and wide discretion in admitting evidence restrains them in fulfilling their preventive role. Often, when an allegation of torture is made in court, the judges do not apply the exclusionary rule as it might be interpreted as going against the prosecution and acknowledgement of the fact (i.e. a crime) of torture. Instead, these judges will rely on the testimony of the prosecution, deem evidence as admissible, and continue the trial without triggering any investigation of torture allegation. In cases when an investigation is triggered, the judge will adjourn the hearing to send the transfer the allegation to the police or more usually - the Special Investigation Service to get their pro-forma "no-crime of torture" estimation and then to go ahead with convicting the defendant based on thus admissible evidence. Such deliberate inaction or a lips service action by the judges, despite ample evidence of torture and ill-treatment, strips of yet another possibility to prevent and prosecute for torture.. Thus, torture victims lost trust in the system and in the perspective of redress, and prefer to remain silent rather than face such inaction.

Recommendation

- Remove the judicial discretion in examination of evidence by introducing a procedure for separate hearing to determine admissibility of evidence

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