



**ALTERNATIVE REPORT  
TO THE COMMITTEE AGAINST TORTURE  
IN CONNECTION WITH THE FOURTH PERIODIC  
REPORT OF THE REPUBLIC OF ARMENIA**

**Prepared by Civil Society Institute (Yerevan, Armenia)**

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## **1. Executive Summary**

1.1. In the reporting period the Armenian Government has undertaken some steps to comply with the commitments under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), including amending legislation, introducing policies and establishing new bodies. However, in general there are a number of serious flaws both in law and practice which do not allow to tackle torture and ill-treatment effectively.

1.2. Till July 2015, torture was not properly criminalized as the definition of torture used in the Criminal Code was not in compliance with the Convention definition. Because of erroneous definition, crimes falling within the ambit of the Convention were qualified and investigated under other articles of the Criminal Code, which did not allow the problem to be effectively tackled. In July 2015 amendments to the Criminal Code aimed at ensuring compliance with the definition in Art. 1 of CAT entered into force.

1.3. Shortcomings in criminalization of torture allow perpetrators of torture to escape criminal liability or punishment through amnesty or pardon, or other forms of release from criminal liability.

1.4. Alleged victims of torture and ill-treatment complaint mainly about being subjected to violence or threats of violence by police officers with the aim of extracting confessions. It is noteworthy that such complaints were lodged not only by the suspected, accused persons or defendants but also by witnesses involved in the proceedings.

1.5. Despite the change of policy by the Special Investigation Service (SIS) in 2014 where criminal investigations are instituted based on allegations in comparison to previously used preliminary inquiries system, very rarely a criminal case has reached court and very few perpetrators are held accountable with most of them being released from serving actual punishment.

1.6. In Armenia till 1 November 2014 victims of torture were deprived of a possibility to seek compensation for non-pecuniary damage in domestic courts as the Armenian law did not envisage such mechanism. In 2014 the Civil Code was amended to introduce the right to seek compensation for non-pecuniary damage. The provisions in question were amended in December 2015 again to improve the proposed mechanism. However, no lawsuits have been filed to benefit from this right yet.

1.7. No state-run rehabilitation services exist for victims of torture.

1.8. In 2016 a number of incidents were registered where foreigners were expelled from Armenia without having access to legal safeguards and official procedures were not followed.

1.9. The practice of discriminatory treatment of Muslim asylum seekers and no due regard to the principle of non-refoulement when considering their claims and rejecting them raises particular concerns.

1.10. Asylum seekers are penalized for crossing border illegally and are detained for months in violation of Art. 31 of the Convention relating to the Status of Refugees of 1951 (Refugee Convention).

1.11. In December 2014 a new prison "Armavir" was opened, however it has not solved the problem with overcrowding in prisons. The systems of early conditional release and compassionate release have not been reformed.

1.12. In light of lack of effective and independent complaints mechanism inmates continue to resort to hunger strikes, self-harm and suicide.

1.13. The criminal subculture continue to strongly prevail in prisons. members of particular vulnerable groups, including sexual minorities, are singled out and subject to violence and degrading treatment. No effective measures have been undertaken by the Government to address this problem.

1.14. Access to healthcare and medical assistance remains one of the most pressing issues. Despite some steps undertaken by the Government, including Council of Europe implemented project aimed at enhancing healthcare in prisons, no noticeable progress has been made. Inmates have to pay for the overwhelming majority of medical services and are strongly encouraged to rely on family support in

terms of obtaining medication prescribed by doctors. No proper attention is paid by medical personnel to drug-users who are recently detained and go through drug withdrawal symptoms.

1.15. Prison food remains in general of poor quality; no diet food on the ground of health condition or culture/religion is available.

1.16. Domestic violence remains a serious issue. Despite of awareness raising campaign by civil society, gender stereotypes remain strong and women and at times children are subjected to abuse.

1.17 The Armenian Government has not introduced State-funded shelters for victims of domestic violence, including ensuring access to safe emergency accommodation and to professional medical and psychological assistance;

1.18. No juvenile justice system has been established. There are no specialized juvenile division or jurisdiction with judges and other judicial staff having professional competence to deal with juvenile cases. No specialized staff exists at the probation Service.

1.19. No progress has been made in investigation of the deaths of Levon Ghulyan, Vahan Khalafyan, and 10 people who died on March 1 during the clashes during post-electoral protests.

1.20. Police resort to disproportionate force when dispersing peaceful assemblies. Participants of the recent assemblies in Yerevan, especially those who took part in the protests in July, alleged ill-treatment.

1.21. Journalists and activists are being targeted and no effective investigation is ensured.

**Civil Society Institute (CSI)** is a human rights non-governmental organization, founded in 1998 and located in Yerevan, Armenia. CSI seeks to assist and promote the establishment of a free and democratic society in Armenia. Since 2001 CSI has been working to combat torture, including by means of monitoring places of detention, reporting on torture cases, capacity building and raising public awareness.

In 2005 Civil Society Institute implemented a campaign advocating for the signature and ratification of the Optional Protocol to the UN Convention against Torture (OPCAT). The campaign resulted in Armenia's accession to the Protocol in 2006.

Since its establishment, CSI has been working on civil society development, penal system reform, human rights advocacy and awareness, peace-building and conflict resolution, freedom of information and anti-corruption, and political advocacy and lobbying.

CSI is a member organization of the International Federation for Human Rights (FIDH). CSI is a member to the Public Monitoring Group exercising supervision over penitentiary institutions in Armenia.

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## **2. Introduction**

2.1. This report is submitted to the Committee against Torture (“the Committee”) with a view to provide additional information for its consideration of Armenia’s fourth periodic report. This report is expected to enhance the Committee’s ability to assess the Government’s performance in implementing the UN CAT.

2.2. This report addresses such thematic areas as defining and criminalising torture, access to effective remedy, tackling impunity and ensuring accountability, access to redress, the situation in prisons, non-refoulement and treatment of asylum seekers, domestic violence, etc.

## **3. General Background**

3.1. Armenia acceded to the UNCAT on 13 September 1993. Upon accession to the Convention, the Government failed to make a declaration under Articles 21 and 22, thus denying the competence of the Committee to receive and consider individual complaints.

3.2. In 2012 Armenia's third periodic review was considered by CAT. A number of recommendations related to the prevention of torture and ill-treatment were also received by Armenia as a result of its second cycle of the Universal Periodic Review in February 2015.<sup>1</sup>

3.3. In December 2015 amendments to the Constitution were adopted as a result of Referendum. The amended Constitution included a number of provisions related to prevention and prohibition of torture. Art. 26 of the Constitution prohibits torture, inhumane or degrading treatment or punishment. Art. 55 sets explicit ban to extradite or handover anyone to a foreign state if there is a real threat that he/she would be subjected to a death penalty, torture, inhuman or degrading treatment in that state. Art. 62 of the amended Constitution stipulates the right to seek redress for unlawful actions/omission of the state or municipal bodies. Art. 62 of the amended Constitution stipulates the right to seek redress for unlawful actions/omission of the state or municipal bodies.

3.4. Art. 81 of the Constitution of 2015 provides that when interpreting provisions of the Constitution related to the fundamental rights and freedoms the practice of the international human rights treaty-bodies.

3.5. The National Strategy for Legal and Judicial reforms was adopted for 2012-2016, it included a number of issues relevant to this submission, including tackling overcrowding, amending legislation, etc.

3.6. New prison "Armavir" with the capacity to accommodate over 1200 inmates was open in December 2014. With this measure the Armenian Government aimed to tackle overcrowding problem.

3.7. In June 2016 Law on Probation Service entered into force and as of September 2016 the new Service formally started functioning. Its creation, among other goals, is expected to contribute to wider use of alternation methods and sanctions, and decrease of overcrowding in prisons.

## **4. Defining and criminalising torture (Article 1 and 4 UNCAT)**

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<sup>1</sup> Report of the working group available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/18/PDF/G1507618.pdf?OpenElement>

4.1. Till July 2015 torture in the Armenian Criminal Code was not properly criminalized. Some provisions of the Criminal Code contained a number of provisions criminalizing acts of violence both by public officials and civilians which reflected to a certain extent elements of the definition of torture as defined in the Convention. Because of erroneous definition, crimes falling within the ambit of the Convention are qualified and investigated under other articles of the Criminal Code, which does not allow the problem to be effectively tackled.

4.2. The Criminal Code contained Art. 119 under the heading "torture", which was not in compliance with the Art. 1 of CAT. As it was reported by CSI and FIDH in their previous submission for 2012 review,<sup>2</sup> Art. 119 of the Criminal Code stated that torture was any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, unless it has led to the consequences specified in Articles 112 and 113 of the Criminal Code (harm of utmost or medium gravity intentionally caused to a person's health). Consequently, if an act caused harm of utmost or medium gravity to someone's health, it fell outside the definition of torture and could only be prosecuted under other articles (Art. 112, Art. 113). An act of torture was punishable by imprisonment for up to three years, and in aggravated circumstances by imprisonment for a term of three to seven years.

4.3. "Torture", as defined by the Criminal Code prior to amendments, was considered to be a crime of medium gravity in that Code. The *corpus delicti* of torture as prescribed by Article 119 of the Criminal Code did not include elements of specific purpose or specific actors.

4.4. The regime for opening a criminal case under Art. 119 was private complaint based prosecution which means that the victim's complaint is required to institute criminal case. In the event of reconciliation between the victim and the perpetrator (suspect, accused or defendant) in such circumstances, the criminal case is closed.

4.5. Article 119 was also applied in the context of horizontal relations between two civilians, without any involvement by state agents. In practice, most of cases instituted under Art. 119 related to domestic violence.

4.6. An analysis of court practice demonstrates that prior to July 2015 in the absence of a proper *corpus delicti* for the crime of torture in Armenia public officials - perpetrators of acts defined as torture under the Convention were prosecuted instead for abuse, exceeding their powers or causing medium gravity harm to a person's health. In consequence, the monitoring of fight against torture was difficult, and statistics on torture distorted.

4.7. When violence was allegedly sustained by law-enforcement of other public officials, Art. 309 - abuse of official powers - was applied. It criminalizes abuse of official powers coupled with violence, use of arms or special means. The sanction for such act is imprisonment from two to six years and deprivation of the right to occupy certain posts and engage in certain activities for up to three years. In case grave consequences were inflicted, the punishment was from six to ten years of imprisonment.

4.8. Another Article of the Criminal Code - 341(2) criminalises the use of torture to obtain a testimony during trial by a judge, prosecutor, investigator or person carrying out an inquest, who use torture or other violence to compel a witness, suspect, accused, person on trial or victim to testify, or to compel an expert to issue a false opinion, or a translator to provide an incorrect translation, is punishable with three to eight years imprisonment. This article criminalises as torture instances of coercion to give testimony or bear false witness *only during a trial*. It does not therefore criminalise torture in the sense of that word under the Convention, where it is perpetrated by or at the instigation of a public official in numerous other spheres, such as in penitentiary institutions, in the armed forces, etc. Between 2012 and June 2016 no cases under Article 341 were examined by the court.

4.9. In May 2015 the Armenian Parliament adopted Law on amendments to the Criminal Code proposed by the Ministry of Justice (MoJ). In July 2015 Art. 309.1 - Torture entered into force. The same law also amended Art. 119 and clearly distinguished between torture and other forms of ill-treatment perpetrated by public officials and civilians.

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<sup>2</sup> Report available at <http://www.hra.am/i/up/CSI-FIDH%20Alternative%20Report-CAT48%20ArmeniaENG.pdf>

4.10. The disposition of Art. 309.1 is a copy-paste of the definition of torture under Art. 1 of CAT. It envisaged sanction from four to eight years of imprisonment with a ban to occupy certain positions or engage in certain activities for three years, and from seven to ten years of imprisonment for a qualified act.

4.11 However, no amendments were made to ensure that statute of limitations is not applicable to the crime of torture.

4.12. Since Art. 309.1 was introduced, in July-December 2015 SIS instituted 75 criminal cases into allegations of torture, 40 were discontinued, in case of 30 the investigation continued in 2016, investigation only into one case was completed and it was sent to court. In January-June 2016 SIS launched investigations into 37 allegations of torture, 21 criminal cases were discontinued, only one investigation was completed and sent to court.

## **5. Fighting impunity and ensuring accountability**

5.1. The Special Investigation Service (SIS) - specialized body which is tasked to investigate crimes committed by public officials, including torture, In 2014 the SIS has reconsidered its procedures on investigation of allegations of torture. Previously, allegations were investigated in the frames of preliminary inquiry which did not allow ensuring effective investigation. The vast majority of allegations of torture were dismissed at that stage. As of 2014, criminal cases are initiated in relation to the vast majority of allegations in an attempt to ensure objective, independent and thorough investigation. However, the practice demonstrates that most of the criminal investigations are discontinued on the ground of lack of corpus delicti. Very few of the criminal cases reach court for trial. The perpetrators of torture continue to escape criminal liability. As a result, the actual number of criminal cases instituted under Art. 309 has significantly increased. However, the number of criminal cases with completed investigation, trials and convictions remains low.

5.2. Notably, in 2013 the SIS investigated 19 criminal cases in regard to allegations of ill-treatment by public officials. In 2 cases concerning three persons charged under Article 309 (2) of the ACC the indictment was sent to the court. In 10 cases the prosecution was discontinued on the ground of lack of corpus delicti or absence of crime.

5.3. The most worrying situations of dropping the charges against perpetrators of torture occur when it is done on the ground of “change of the situation”. This means that if the police officers in question quit their job in police, the investigation discontinues under the justification that the person in question is not able to do harm anymore. However, in such a case nothing prevents them from rejoining police shortly. Such practice was observed and documented in the reporting period. Thus, the case of Arthur Mkrtchyan is a glaring example of such vicious practice. He performed as the superior officer of the Kentronakan (Central) police station of Yerevan, who instructed his subordinates to extract confession, including by resorting to violence, and detain the suspect unlawfully for over a day without registration of arrest. In course of the investigation he pleaded guilty, admitted the fact of committing crimes, regretted it, pointed out that he had no criminal record and is accused of crimes of medium gravity for the first time, had already quit police, hence he stopped posing a threat to society, as he was no longer a public official and could not commit a similar crime, is not compromised, did not object and, taking all mentioned into account he asked not to prosecute him on the ground of “change of the situation”. The investigator decided to manage the case right that way, i.e. not to prosecute him on the ground of “change of the situation”. Not long after that, only a couple of weeks later, Mkrtchyan assumed a new post in police, simply in different police station.<sup>3</sup>

5.4. On 3 December 2013, just 2 weeks after the decision to discontinue prosecution was made, the

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<sup>3</sup> More details at CSI's report on Torture in Armenia in 2013-2014: situation analysis, available at <http://www.hra.am/i/up/torturereport2601eng.pdf>



victim of torture challenged the decision of the investigator not to prosecute Arthur Mkrtchyan to the Prosecutor’s Office. R.H., the victim, informed that the police officer in question managed to rejoin the police and reminded that the prosecution against him was discontinued on the ground that Mkrtchyan did not serve in police anymore. The Prosecutor General replied as follows: it was only important that Mkrtchyan had quit the police 2 weeks prior to the moment when the investigator made the decision. However, “what Mkrtchyan does and where he works after the decision came into force, even if he rejoined police, this issue cannot be a subject of the investigation in question or serve as a ground to quash the decision of the investigator, because if Mkrtchyan meets the requirements of the Armenian Law on the Service in Police he can again join police.”<sup>4</sup>

5.5. Only in 2013 in one case 8 police officers who had exceeded their official powers were fired while the investigation was ongoing. In light of that, the SIS decided to discontinue prosecution against them on the ground of “change of the situation.” Given that charges were dropped against the above-mentioned police officers, the SIS suspended investigation into allegation of ill-treatment in general on that incident on the ground that “the alleged perpetrator has not been identified.”

5.6. The Law on Police Service does not prohibit to re-join police if there was not guilty verdict, even if the criminal investigation was discontinued on not-acquitting grounds, like in the cases *supra*. This means that even if a police officer pleaded guilty in committing a crime, but because of the gaps in law managed to get away with it by simply resigning, he can re-join police service.

5.7. According to the data provided by the SIS, in January-June 2014 it received 51 complaints regarding unlawful detention and *de facto* deprivation of liberty in police stations and other institutions, subjecting to torture and other cruel, inhuman and degrading treatment by police officers, as well as other human rights violations by public officials. In 35 instances the criminal investigations were initiated under Article 309 and Article 309 (2) (4 and 31 respectively). Investigation was completed only in one case with an indictment in relation to three persons (one of them was held in custody) and was sent to the court. In 15 out of 51 cases the investigation was discontinued on the ground of lack of *corpus delicti* or absence of the crime, whereas investigation into one case was suspended on the ground that “the alleged perpetrator has not been identified.”

**Table 1. Statistical data on complaints received and criminal cases initiated in 2012-2016 (Art. 309)**

Year	Com-plaints received	Investigated-criminal cases	Discontinued/suspended cases	Cases sent to the court	Persons indicted	Refusals to initiate criminal investigation
2012	43 <sup>i</sup>	2	1	-	-	34
2013	114 <sup>ii</sup>	27 <sup>iii</sup>	19 <sup>iv</sup>	2	3	85
2014 January- June	51	51 <sup>v</sup>	16	1	3	16

<sup>i</sup> 7 preliminary inquiries were not completed.

<sup>ii</sup> 2 preliminary inquiries were not completed.

<sup>iii</sup> 6 criminal investigations were not completed.

<sup>iv</sup> Including 8 criminal cases received from other law-enforcement agencies. In all these cases the SIS decided not to prosecute the suspected persons.

<sup>v</sup> Only 35 criminal cases were initiated in January-June 2014.

<sup>4</sup> Letter of the Prosecutor General No 34-35-13 as of 09 December 2013.

5.8. According to the official data, in 2012 the courts received 4 criminal cases with charges under Article 309, and all four cases were decided on the merits. In 2013 Armenian courts heard 4 criminal cases where defendants were charged with crimes under Article 309, and in three cases the judgments were pronounced. In the first half of 2014 the trials of 2 cases in relations to crimes under Article 309 have commenced and none has been finished yet. No one has been convicted under article 309 in January-June 2014.<sup>5</sup> In 2012-2014 there has been no trials involving charges under Article 341 of the Criminal Code. The analysis of the above-mentioned data shows that not all criminal investigations under Article 309 were conducted by the SIS. This circumstance also throws a shadow on the independence and effectiveness of the pre-trial investigation performed.

5.9. SIS publicly reports on instituted cases but it fails to report regularly on the outcome of the investigations<sup>6</sup>. To remind, the UN CAT in the Concluding Observations on Armenia stated that it was necessary not only to report publicly on instituting investigations into allegations of torture but also on the outcomes of such prosecutions.<sup>7</sup>

5.10. Overall, the Armenian authorities continue to fail to conduct prompt, impartial and effective investigation of torture complaints committed by police, especially committed in the context of dispersing peaceful assemblies and summoning people to police stations afterwards.

5.11. In very rare instances when a criminal case against perpetrators of torture reaches court, perpetrators are able to avoid real punishment as amnesties and pardons are applied to them. Thus, On 11 October 2013, the Court of First Instance of Kentron and Nork Marash Administrative Districts, chaired by Judge Mnatsakan Martirosyan, sentenced two operative officers of Central Police Division of the Yerevan Police Department Artak Barseghyan and Khachik Bakhbudaryan to 3 years of imprisonment for subjecting R.H. to ill-treatment with the aim to extort confession. They were charged with committing crimes envisioned by Article 309 (2) (abuse of official powers coupled with the use of violence) and Article 314 (official fraud) of the Criminal Code. Immediately after delivering the guilty verdict, the Court applied the Decision Announcing Amnesty in relation to the 22nd Anniversary of the Independence of the Republic of Armenia, and released the defendants from the courtroom. This was welcomed by the audience - supporters and fellow police officers with ovation.

5.12. CSI expressed its deep concerns in writing in regard to this shameful practice of releasing police officers-perpetrators of torture from serving punishment by granting amnesty to the Prosecutor General,<sup>8</sup> the judicial authorities and to the members of the parliament who approved the decision on amnesty. Despite that, the Court of Appeal upheld the judgment of the first instance court, including application of amnesty. It was a clear indication of unwillingness to punish perpetrators of torture in reality. Granting amnesty for a crime of torture to operative police officers Barseghyan and Bakhbudaryan is not the first case. No commitment has been expressed by the Armenian authorities to ensure that in the future amnesties and pardons are not applied to torture perpetrators.

5.13. CSI observed that information in the registries of Police Temporary Detention Facility and penitentiary institutions, where bodily injuries of the same persons at the same period were documented, differ from and sometimes even contradict each other. At the same time it should be noted that in 2014-2016 a number of medical personnel from detention facilities underwent training on Istanbul protocol organized by civil society organizations. However, in light of absence of a

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<sup>5</sup> The statistical data is available at [www.court.am](http://www.court.am) web page.

<sup>6</sup> See news items at [www. http://www.ccc.am/en/](http://www.ccc.am/en/). Examples of news items may be found in CSI report on the Torture in Armenia in 2013-2014: Situation analysis, available at <http://www.hra.am/i/up/torturereport2601eng.pdf>

<sup>7</sup> UN CAT, Concluding observations on Armenia, para.8.

<sup>8</sup> See more at CSI's position paper 'Torture perpetrators shall not be granted amnesty' available at <http://www.hra.am/en/position/2013/10/15/torture>

unified standard form, the thoroughness of documentation and description also differs from one detention facility to another, there is no one standard, it is left at the discretion of medical staff of every detention facility. Shortcomings in documentation of bodily injuries significantly affects further investigation of torture allegations.

5.14. It is observed that in all instances a police or national security officer accompanying the detainee is present during the process of identification and documentation of bodily harm. This jeopardizes confidentiality of the procedure and prevents the detainees from speaking out about the actual circumstances of sustaining injuries.

5.15. It is noteworthy that in the beginning of 2014 the SIS developed an analytical guide on “Organization and Carrying out Investigation on Torture Cases.” The guide addresses such issues as investigation of facts of torture, the analysis of the case-law of the ECtHR in relation to Article 3 of the ECHR and the Court of Cassation of Armenia as well as requirements of the European Committee for the Prevention of Torture in regard to investigation of torture cases.

## **6. Access to redress and rehabilitation**

6.1. In Armenia till 1 November 2014 victims of torture were deprived of a possibility to seek compensation for non-pecuniary damage in domestic courts as the Armenian law did not envisage such mechanism. In 2012 at least in two cases before the European Court of Human Rights, Armenia was criticised for lack of possibility for victims of human rights violations to seek redress for non-pecuniary damage.<sup>9</sup>

6.2. In November 2013, the Constitutional Court of Armenia ruled unconstitutional para. 2 of Article 17 of the Armenian Civil Code, as it did not envisage non-pecuniary damage and did not provide a possibility to seek compensation for such damage. The Civil Code includes provisions on the possibility to seek protection of honor, dignity and business reputation (article 1087.1), which, nevertheless, only partially reflect the concept of non-pecuniary damage.

6.3. To comply with the ruling of the Constitutional Court, the MoJ drafted legislative amendments to the Civil Code which were approved by the National Assembly in May 2014. The amendments introducing an institute of non-pecuniary damage in Armenia entered into force as of 1 November 2014. The amendments which are envisaged in Article 162.1 of the Civil Code define non-pecuniary damage as “physical or mental suffering which resulted from a decision, act or omission which violates an inherent non-monetary or guaranteed by law non-material value or personal non-material right of a person.”

6.4. According to the Art. 162.1 of the Civil Code in the wording of November 2014, in order a person to be eligible to seek compensation for non-pecuniary damage in a court, first the fact of a violation of the rights of the person concerned guaranteed by Article 2 (the right to life), Article 3 (the prohibition of torture) or Article 5 (the right to liberty) of the ECHR caused by a decision, act or omission of a public body or public official should be established in a court. In addition, a convicted person who was later acquitted when conditions of Article 3 of Protocol 7 to the ECHR are met also has a right to seek compensation for unfair conviction in a court.

6.5. So, from the above-mentioned it follows that the law is applicable to the following situations:

- 1) unlawful deprivation of life of a person or subjecting a person to torture by a state body,
- 2) failure to conduct effective investigation into death or allegation of torture as a result of state body’s or public official’s decision, act or omission,

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<sup>9</sup> See, Case of Khachatryan and Others v. Armenia, ECtHR Judgment, 27 November 2012, paras.158-159; Case of Poghosyan and Baghdasaryan v. Armenia, ECtHR Judgment, 12 June 2012, paras.47-48.

- 3) unlawful deprivation of liberty of a person,
- 4) acquittal of a convicted person as a result of new or newly obtained evidence (except for cases when conviction was a fault in a whole or in part of the convicted person in question, for example as a result of the latter's self-incriminating confession).

6.6. Article 1087.2 of the Civil Code established the procedure for providing compensation for non-pecuniary damage. The non-pecuniary damage is paid on the state budget. The amount of the compensation to be paid is decided by a court on the basis of principles of the reasonableness, equitableness and proportionality and taking into account the nature of the physical or mental suffering, its degree and duration, effects of the caused suffering, presence of a fault when causing damage, personal characteristics of the person who suffered damage as well as other relevant circumstances. It is important to stress that non-pecuniary damage is to be paid regardless of material damage to be compensated and existence of a public official's fault in causing damage to the person in question.

6.7. The initial text of the same provision stipulated that in case of a violation of the right to life or prohibition of torture guaranteed by Article 2 and 3 of the ECHR respectively the amount of compensation cannot exceed 1000 times of the minimal wage, i.e. 1 000 000 Armenian drams at the moment (less than two thousand EUR). The law envisages an exception in regard to the maximum amount of compensation for exceptional cases when caused damage led to grave consequences. The law set out a deadline for a person whose above-mentioned rights have been violated to apply to a court seeking compensation, i.e. within 6 months after the judgment which confirms the fact of violations of the right in question enters into force.

6.8. The wording used in the amendments raised concerns. First, taking into account the existing definition of torture in the Armenian law prior to July 2015, and confusion related to the application of the term, it was unclear who was entitled to apply to the Armenian courts to seek compensation. The law required that first domestic courts should establish the fact of a violation of the right guaranteed by Article 3 of the Convention but it was unclear how it should be implemented, whether the Armenian courts were supposed to explicitly state in the judgment that exceeding official powers coupled with the use of violence was not only a violation of Article 309 (2) of the Criminal Code but it also constituted a violation of Article 3 of the ECHR or not. After the Criminal Code was amended in July 2015, the last issue became less compelling.

6.9. In December 2015 the provision on non-pecuniary damages was amended and it was a very positive move. The list of rights violating which may give rise to seeking non-pecuniary compensation was expanded and now includes: the right to life, the right to be free from torture, inhuman or degrading treatment or punishment, the right to personal liberty and security, the right to a fair trial, the right to a family life and private life, the freedom of conscience, religion and belief, freedom of expression, freedom of peaceful assemblies and association, the right to effective remedy, and the right to property.<sup>10</sup>

6.10 As a result of amendments in December 2015, the maximum compensation for violations of Art. 3 of the Convention was set up as 3 000 000 AMD (around 5 550 EUR).

6.11 However, according to the statistics provided by the Judicial Department, no lawsuits have been filed to seek compensation of non-pecuniary damages on the basis of the above-mentioned procedure.

6.12. No state-run rehabilitation services exist for victims of torture.

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<sup>10</sup> Art. 162.1, 1087.2 of the Civil Code as amended on *21.12.15 Հ Օ-184-Ն*, available at [www.arlis.am](http://www.arlis.am)

## **7. Non-refoulement and treatment of asylum seekers**

7.1. In December 2015 amendments to the Constitution were adopted as a result of Referendum. The amended Constitution included a number of provisions related to prevention and prohibition of torture. Art. 26 of the Constitution prohibits torture, inhumane or degrading treatment or punishment. Art. 55 sets explicit ban to extradite or handover anyone to a foreign state if there is a real threat that he/she would be subjected to a death penalty, torture, inhuman or degrading treatment in that state.

7.2. However, despite introducing stronger safeguards in law, in practice the Armenian Government uses unlawful methods to expel foreigners from the territory or fail to ensure access to court and effective remedy with all procedural safeguards when deporting/expelling foreigners.

7.3. On 1 January 2016 it became known that a Bahraini national Fadel Radhi after landing at the airport in Yerevan was detained as there was a request from Bahraini government via Interpol. It appeared that he was sentenced to seven years imprisonment on the charges of attempted murder, illegal circulation of explosives, damage to public and private property, mass disorder and terrorism following his active role in the mass protests that erupted in the country in 2011.<sup>11</sup> The Armenian court ruled to detain him for 30 days pending extradition and in the meantime expecting the Bahraini authorities to provide more justification for extradition request. When 30 days of detention expired, the Prosecutor did not apply to the court for extension. The Bahraini man was supposed to be released from prison. However, his lawyers who were expecting him at the gates of the prison on January 30, were not able to meet him. According to the version, provided by prison administration of "Nubarashen" pre-trial detention facility in Yerevan, Radhi was released a little bit earlier than the time lawyers were told, and "his friends" picked him up and drove in unknown direction. According to this lawyer, later it became known that Radhi was taken to the airport by men in plainclothes, threatened to be sent to Bahrain and eventually he was sent to Iran. For hours he was de facto detained and denied access to phone and his lawyer. Armenian authorities stated that Radhi left the country voluntarily.<sup>12</sup>

7.4. This is not the only incident of such behaviour of the Armenian authorities. In September 2016 it became known that allegedly on 26 August 2016 a significant group of Taiwanese (78) were deported from Armenia to China upon the latter's request.<sup>13</sup> All attempts to receive official confirmation and inquire about the status of these people and whether before deporting them, they were provided legal safeguards and the principle of non-refoulement as enshrined in the Armenian Constitution was respected, failed. They were not officially detained, neither they were brought before the court, the right to be heard was not ensured and national procedures for deportation were not followed. Police of Armenia stated that they were not involved in the operation whereas other law-enforcement agencies did not deny the above-mentioned.

7.5. In general, such practice of secret, not transparent procedures, expulsion from territory where there is a risk of being subjected to torture and ill-treatment raises serious concerns and shall be prohibited.

7.6. As a result of instability and armed conflicts in the broader region, Armenia witnessed increase in refugees and asylum seekers, coming mostly from Iraq and Syria. Whereas the overwhelming majority of refugees from Syria and Iraq are of Armenian descent, a part of refugees are Yazidis and Arab Muslims.

7.7. According to the Armenian Law on Refugees and Asylum, refugee definition includes not only those who are refugees according to the UN Conventions related to the status of refugees, but also those fleeing armed conflicts, situation of generalized violence, large-scale human rights violations,

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<sup>11</sup> See more at <http://www.civilnet.am/news/2016/01/08/bahraini-activist-detained-armenia/284552>

<sup>12</sup> 'Armenia NSS says Bahrain citizen voluntarily went to Iran', <http://news.am/eng/news/313043.html>

<sup>13</sup> 'Armenia: 78 Taiwanese Among 129 Deported to China for Fraud', <http://hetq.am/eng/news/70567/armenia-78-taiwanese-among-129-deported-to-china-for-fraud.html>

etc.<sup>14</sup> Vast majority of refugees coming from Syria and Iraq were granted asylum because of the armed conflict and generalized violence in their respective countries.

7.8. Armenia created very favourable conditions for ethnic Armenian Syrians, it accepted a group of Yazidis, however in the recent period the Armenian Government, more specifically the State Migration Service denies asylum requests of Muslim applicants. In 2016 11 Iraqis were denied asylum - half of all rejected applications, and only 1 asylum seeker was recognized as a refugee. To compare, in 2015 41 asylum seeker was granted asylum and recognized a refugee, and 7 - were not.<sup>15</sup> This means that not having a lawful ground to stay, they are supposed to leave the country and may be refouled to the country of origin where they might be subject to torture and ill-treatment. In spite of the a mandatory requirement to consider the principle of non-refoulement when reviewing asylum applications, SMS fails to do that and simply formally indicates in the decisions that there is no risk of persecution and non-refoulement is not applicable, even though the country of origin information and accounts of applicants state otherwise. Unlike Muslim applicants, ethnic Armenians from the same part of the country are granted asylum. There is a clear pattern of discriminatory treatment, as a result of which asylum seekers may face torture and ill-treatment at the countries of their origin.

7.9. Asylum seekers are penalized for crossing border illegally and are detained for months in violation of Art. 31 of the Refugee Convention.

## 8. Domestic violence

8.1. Domestic violence remains a serious issue. Despite of awareness raising campaign by civil society, gender stereotypes remain strong and women and at times children are subjected to abuse.

8.2. The Armenian Government has not introduced State-funded shelters for victims of domestic violence, including ensuring access to safe emergency accommodation and to professional medical and psychological assistance;

## 9. Prison conditions and treatment

### Overcrowding

9.1 In December 2014 a new prison "Armavir" was opened with the capacity to accommodate slightly over 1200 inmates. It was supposed to tackle the issue of overcrowding in prisons. However, to-date only half of its capacity is being used. In general, conditions there are closer to the international standards, however some issues of concern were identified in course of monitoring.

9.2. There is no proper ventilation system in place at "Armavir", and due to its location, in summer the temperature goes beyond +40C.

9.3. Armenia continues to use penitentiary institutions of barrack type, a remnant of the Soviet era, despite the fact that the national legislation envisages only cell-type system. In some prisons up to 45 inmates are supposed to share a dormitory, whereas according to the Armenian legislation, the minimum standard is 4sq.m. per person in a cell with no more than 6 inmates.<sup>16</sup>

9.4. Despite of some measures undertaken to tackle overcrowding, including a large amnesty in 2013, some penitentiary institutions remain largely overcrowded. Thus, as a result of monitoring, it was observed that in "Nubarashen" penitentiary institution located in Yerevan - the largest pre-trial detention facility in Armenia - in some cells inmates continue to sleep on the floor or benches as in cells of 32-34 sq.m. including toilet 14 inmates are kept. The overall capacity of "Nubarashen" is 820 inmates, whereas in 2014 there were 993, in 2015 - 1055, 2016 - 942 inmates.

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<sup>14</sup> Art. 6, Law on Refugees and Asylum, available at [www.arlis.am](http://www.arlis.am)

<sup>15</sup> Official statistics available at [http://www.smsmta.am/?menu\\_id=151](http://www.smsmta.am/?menu_id=151)

<sup>16</sup> See Art. 104-106 of the Penitentiary Code of Armenia, available at [www.arlis.am](http://www.arlis.am)

- 9.5. The situation with overcrowding in "Vardashen" penitentiary also remains alarming.
- 9.6. The most serious overcrowding is pertinent to pre-trial detention facilities. This is a result of overuse of custodial measures of restraint and ineffective use of alternatives to detention.
- 9.7. In 2016 a Probation Service was established and it formally started operating in September 2016. It is expected that it will contribute to promotion of the use of alternative sanctions and measures and focus more on rehabilitation of offenders. However, at the moment there are significant gaps both in law and practice as well as budget constraints which put the efficiency of the service in question.
- 9.8. The system of early conditional release has not been subjected to reform. As a result, less than 5% of inmates eligible for release in parole benefit from it. The rest are denied without grounded decisions. Moreover, in light of lack of state-run rehabilitation programmes for inmates, the decision making becomes arbitrary as no proper risk and needs assessment is made. The decisions of parole board - Independent Commission remain to be not subject to appeal.
- 9.9. Though the number of prisoners suffering from serious illness, who were released on compassionate release in the recent two years slightly increased, overall the mechanism continues to be ineffective. This results in death in custody for incurable illnesses or some inmates are released a week before they die. In 2011-2016 160 inmates died because of health problems: 57 died of cardiovascular diseases, 43 of general intoxication, etc.
- 9.10. The situation in prisons exacerbates because of prevailing criminal sub-culture which has strong norms and castes; it uses extortion from inmates as a way to maintain itself. At times inmates are put under such conditions that they have to call the families, beg for money to pay otherwise threatening to commit a suicide. No effective measures have been undertaken by the Armenian government to tackle criminal subculture and the practice described above.
- 9.11. As a result of criminal subculture inmates belonging to sexual minorities or those equated to them in accordance to these informal rules are singled out, face discrimination, are subjected to violence, including sexual.
- 9.12. In light of lack of effective and independent complaint mechanism in prisons inmates continue to resort to hunger-strikes and self-harm practices as a sign of protest.
- 9.13. According to the Penitentiary Department, in 2011-2016 at least 22 inmates committed suicide.
- 9.14. The quality of served food in general remains low. There is no possibility for a diet food based on cultural or religious needs either health condition.
- 9.15. It is noteworthy that in the reporting period the Armenian Government reconsidered security and isolation regime of lifers who served over 20 years.
- 9.16. Police Monitoring Group continues not to have access to any police station. Moreover, the access of Prison Monitoring Group has been recently restricted and they are denied access to inmates in regard to whom a ban on external communication is applied. It appeared that in politically sensitive cases such blunt ban was imposed without any distinction.

## Healthcare

- 9.17. Access to healthcare and medical assistance remains one of the most pressing issues. Despite some steps undertaken by the government, including Council of Europe implemented project aimed at enhancing healthcare in prisons, no noticeable progress has been made. Inmates have to pay for the overwhelming majority of medical services and are strongly encouraged to rely of family support in terms of obtaining medication prescribed by doctors.
- 9.18. No proper attention is paid by medical personnel to drug-users who are recently detained and go through drug withdrawal symptoms.

## 10. Juvenile Justice

- 10.1. No juvenile justice system has been established. There are no specialized juvenile division or jurisdiction with judges and other judicial staff having professional competence to deal with juvenile cases. No specialized staff exists at the probation

Service.

10.2. It is noteworthy that the number of juveniles in detention has significantly dropped and is on average 10 juveniles in total for the entire country at the same time in prison and pre-trial detention facility all together.

## **11. Investigations**

11.1. No progress has been made in the investigations into the deaths of Levon Gulyan and Vahan Khalafyan.

11.2. No progress has been made in investigation of 10 deaths on 1 March occurred during the clashes between police and protesters following the February 2008 elections.

## **12. Violence against journalists**

12.1. On 29 July the police acted with the worst cruelty, and this time the violence was directed at the journalists working in the scene. At least ten journalists suffered burns, beatings and injuries and destruction of their equipment from unidentified plainclothes persons who deliberately targeted media representatives at Sari Tagh neighborhood.

12.2. A journalist and camera man of A1+ opposition channel also claimed that they were taken outside of their vehicles, beaten, and also had their press badges violently torn off.

The director of RFE/RL's Armenian broadcasting service reported that non-uniformed police officers targeted and attacked the Radio Liberty's three journalists with batons, destroyed their equipment and took their press badges, effectively forcing them to stop a live broadcast from the scene.

12.3. The attacked journalists complained about further official misconduct and obstruction of justice, such as refusals to recognize them as victims and initiate respective criminal proceedings.

On September 13, Deputy Attorney General Arthur Davtyan promised that the Prosecutor General's Office of Armenia will take steps to punish the perpetrators of organized aggression against journalists. As of Mid-October, only one criminal case "obstructing journalists' work" has been initiated and investigated. The charges were brought against seven citizens, there is no information on the progress of the case from the official sources. Controversial criminal charges against those allegedly affiliated with those, stormed the Police regiment.

12.4. Journalists were also attacked during protests in June 2015 also known as "Electric Yerevan". Though formally investigations were launched, no perpetrator has been held accountable.

## **13. Peaceful Assemblies and Crowd Control**

13.1. Activists taking part in protests are being attacked in street by men in plain clothes, no effective investigation takes place. Such practice is considered a way to silence activists.

13.2. Yet another reaffirmation of the serious concerns of CSI about the state of affairs in this area was the way how state authorities managed the latest hostage crisis and civil society unrest in the capital of Yerevan on 17-31 July 2016. The situation exposed the profound crisis stemming from the non-transparent, insufficient and inefficient management of the State by the Armenia authorities in recent years.

13.3. Early on the morning of 17 July 2016, a group of armed men later became known as "Sasna Tsrer" stormed a patrol service police regiment in Yerevan, taking 9 persons hostage and calling for "regime change". Immediately, dozens of people, whom police considered to be affiliated or supporting the opposition political movement the armed group aligned itself, have been apprehended by Armenia's police and security forces from both their homes and from the streets, including with the use of force, without being properly informed of neither the reasons for their detention nor



charges against them.<sup>17</sup> Many of the detainees were kept in unauthorized locations, such as gym at one of the police units. According to information available to CSI, minors were among those detained.

13.4. The detainees have reportedly had no opportunity to inform their close relatives about the place and details of detention. They have been deprived of the right to legal aid and lawyers were not granted access to the police stations. While most of the detainees have been released later, their detention without charge was longer than that prescribed by the law. Dozens were kept for hours without food in a gym situated on the premises of police force. A number of detainees stated that they were subjected to violence by policemen.<sup>18</sup> The same pattern of conduct was maintained throughout of the crisis.

13.5. A number of people, affiliated with the radical opposition party the armed group also belongs to, were arrested and charged with aiding and abetting the armed group for calling members of the armed group and expressing support or giving information on the current situation. To date dozens of persons are facing charges linked to the head cases of hostage taking, illegal possession of arms and illegal occupation of buildings, facilities, means of transportation or communication. The detention motions generally coincide in wording, not individualized, the judiciary fails to secure independent review over the lawfulness of the detention by simply authorizing all requests for detention lodged by the investigators without assessing the grounds.

13.6. Moreover, investigators also bluntly use such measure in relation to detainees as ban on any interaction with the outside world, except with the lawyer. Those restrictions are also blank, not grounded and indefinite. This means that family members and even members of the Prison Monitoring Group (composed of human rights organizations and effectively functioning since 2005) are not permitted to communicate with the detainee or visit them in detention, even with a sole aim to check their conditions or allegations of torture and mistreatment. As of mid-October the “temporary measure” is still in force. By the court’s ruling, the detention period of those, affiliated with the armed group, was extended by 2 months with the use of the same technical wording, without giving solid grounds on the necessity of such measure. These measures seriously impede the work of preventive mechanisms and civil society control over the cases with the highest risk of the practice of torture and cruel, inhuman or degrading treatment or punishment.

13.7. Despite various documentary evidence of abuses by police throughout 17-31 July, no effective measures were taken to ensure accountability of police and bring those responsible to justice. Moreover, in his speech on 1 August incumbent Armenian president Sargsyan expressed gratitude to police and security forces and praised them for work in the recent two weeks. This was perceived by public as a carte blanche to future conduct and assurances of no prosecution for previous abuses. The president apologies to journalists assaulted on 29 July but not to other peaceful protesters who sustained serious injuries as a result of police action.

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<sup>17</sup> 'Yerevan Police Detain Some Twenty Individuals in Liberty Square', <http://hetq.am/eng/news/69202/yerevan-police-detain-some-twenty-individuals-in-liberty-square.html>

<sup>18</sup> 'Yerevan Police Release 100 Detained Citizens, Says Yerevan Lawyer; Traces Remain', <http://hetq.am/eng/news/69219/yerevan-police-release-100-detained-citizens-says-yerevan-lawyer-traces-remain.html>

## **Recommendations**

### **Fighting impunity**

- To ensure prompt, thorough, impartial and independent investigations into all incidents of torture and ill-treatment. In particular, bring those responsible for the deaths of Vahan Khalafyan, Levon Gulyan, those killed on 1 March 2008 to justice.
- Take effective measures to ensure that journalists, human rights defenders and activists are not targeted, investigate all instances of attacks against them and hold those responsible accountable.
- To provide in law that torture perpetrators are not granted amnesty, pardon or subject to any other forms of release from criminal liability in line with the principles and norms of international law, including the provision, that crime of torture is not subject of statutes of limitations.
- Ensure in law, that police officers and other state agents in relation to whom an investigation into torture offences is started are suspended from service during the whole period of investigation.
- To exclude the loopholes in the legal practice, that allow state agents to evade justice, due to the “change of situation” or any other reasoning.
- To provide in law a requirement that persons who committed or instigated to commit acts of torture are banned from rejoining service in police, if they were convicted for it or released from criminal liability on non-exculpatory grounds.
- To put an end to the practice of arbitrary arrests and unlawful detentions coupled with unlawful use of force. Bring those responsible to justice.
- Put into place measures to prevent abuses of the right to peaceful assembly, such as investigation by law-enforcement agencies of the violations and prompt identification and prosecution of persons found responsible and the compensation for victims whose rights were infringed as a result of the illegal violent activities of the police.

### **Documentation**

- Introduce regulations that will unify procedures for detailed and equal standards of documentation of bodily harm, both in police detention facilities and penitentiary institutions
- To provide regular training to the medical staff of the Police Temporary Detention Facilities and Penitentiary Institutions on proper documentation of bodily injuries and application of Istanbul protocol.
- Ensure that the penitentiary institutions do not perform examination by medical personnel of the newly arrived detainees in the presence of accompanying police officers. ”

### **Access to redress**

- To amend the Civil Code of Armenia to ensure the safeguards of fair and adequate compensation for torture victims by eliminating the maximum amount of 3.000.000 AMD for non-pecuniary damage.

- Victims of torture and ill-treatment should receive reparations and restitution in line with international standards and should not be reliant on the perpetrators being tried and convicted in criminal proceedings.
- Ensure existence and access to state-run rehabilitation services to victims of torture and ill-treatment

### **Non-refoulement**

- Ensure legal safeguards to foreigners who are subject to expulsion.
- Ensure respect of Armenia's non-refoulement obligations under article 3 of the Convention, including compliance with normal procedures for extradition and the right to appeal the issuance of an extradition or expulsion warrant.
- Ensure fair consideration of asylum request and pay due attention to the principle of non-refoulement in asylum procedures.

### **Safeguards**

- Ensure that all individuals deprived of their liberty have prompt and unimpeded access to a lawyer of their choice; that they may, on their request, contact a family member or a member of the Prison Monitoring Group and this right is not unnecessarily restricted by a blank prohibition of any interaction with the outside world.
- Ensure that the law enforcement bodies act in accordance with all the existing safeguards, including maintaining proper detention registers, the time limits established by legislation on criminal procedure, the use of strictly defined places of detention. Ensure officials register the exact date, time and place of detention of all persons deprived of their liberty, and particularly that the time of de facto apprehension is accurately recorded to ensure that the first unrecorded hours of unacknowledged detention between the arrest and delivery to a police station cannot be used by law enforcement officials to obtain confessions by means of torture.
- Ensure adequate protection to the victims of domestic violence, including the adoption of specific legislative and other measures to prevent domestic violence. Ensure that all women in need have access to adequate medical, social and legal services and temporary state-run accommodation.
- Consider taking measures to ensure the videotaping of all interrogations in police stations and detention facilities as a preventive measure.
- Ensure unhindered independent, effective and regular monitoring and inspections of all places of detention without prior notice by the civil control organization, e.g. Prison Monitoring Group, Police Monitoring Group, and make sure that such organizations are able to carry out independent, unannounced monitoring of all places of deprivation of liberty, in accordance with their standard operating procedures.
- To ensure that the curriculum of the torture prevention programmes delivered at the Police Academy are developed and taught by independent experts with human rights education.
- To report publicly on the outcomes of investigations and prosecutions into torture allegations.
- Bring law and practice in compliance with Art. 31 of the Convention relating to the Status of Refugees of 1951 to ensure that asylum seekers are not penalized for illegal entry to the territory.

### **Overcrowding and prison conditions**

- Promote use of alternative measures and sanctions and use detention only as a measure of restraint
- Introduce more alternative sanctions.
- Ensure support to the newly established probation service both in terms of staff capacity and budget. Introduce wide range of rehabilitation services for probationers.
- Ensure that all motions requesting pre-trial detention are grounded
- Tackle overcrowding in prisons and ensure at least 4 sq.m. per person
- Shut down barrack system prisons
- Introduce diet food for those inmates who need it on the ground of health condition, culture and religion.
- Take effective measures to tackle criminal subculture in prisons.
- Combat practice of degrading treatment and violence towards the singled out groups in prisons.
- Ensure confidentiality of inmates' complaints and correspondence in general.
- Reform the system of early conditional release and compassionate release to make it effective, predictable and decisions grounded and subject to appeal.
- Ensure provision of quality medical care and free of charge medication when envisaged by law.
- Set up and expand rehabilitation services for prisoners, including access to psychological assistance.
- Increase number of medical personnel in prisons

### **Juvenile Justice**

- Ensure that there are specially trained judges, prosecutors, lawyers, investigators and probation officers to work with juveniles.