

STATEMENT

Universal Periodic Review Pre-Session on the Republic of Armenia Geneva, December 11, 2019

Delivered by: Open Society Foundations –Armenia on behalf of Group of Civil Society Organisations

1- Presentation of the Organization

This statement is delivered on behalf of a group of civil organizations with extensive experience in monitoring, documenting and reporting human rights violations in Armenia. These organizations have participated in the UPR processes since 2014 and have submitted reports on Armenia's implementation of the UPR recommendations during the respective half- and full-term cycle.

2- The national consultations for drafting the Joint submission by a Group of Civil Society Organizations

This report has been prepared following broad multi-stage consultations with all the organisations contributing to the joint submission, which is based on the first-hand data collected during their monitoring and fieldwork in human rights protection. Preparation of the report was supported and coordinated by the Open Society Foundations–Armenia.

3. Plan of the statement

The statement addresses the following issues: (1) independence of the judiciary, (2) prevention and effective prosecution of torture and ill-treatment (with the focus on legislative safeguards and situation in the closed institutions).

4. Statement

I. Independence of judiciary

A. Follow-up to the second review

During the previous review, many countries presented both general and specific recommendations regarding strengthening the independence of judiciary in Armenia, including addressing corruption in the system (Netherlands) and supporting civil society court monitoring for these purposes (Sweden).

Dramatic justice deficiencies and systemic human rights violations amid impunity were among the factors, contributing to massive peaceful protests in spring 2018. This movement, later called Velvet Revolution swept aside a corrupt and entrenched government and led to change of power. The early parliamentary elections held in December 2018, recognized as fair and just by both international and local observers, consolidated the gains of the Velvet Revolution.

Yet, despite the above-described changes, the public trust in the justice system is extremely low (the lowest among the branches of power as measured in the recent pole), as the legislative loopholes and bad practices that had accumulated in the course of almost two decades of state capture remain unaddressed at the practice and legislative levels. The very judges, who marred themselves in grave corruption and politically motivated trials, serve today. The law does not ensure the independence of judges, transparency of their appointment and promotion, case assignment mechanism, effective data collection to enable monitoring of court decisions' consistency. Many judges, who acquired huge volumes of property and assets, disproportionate to their salaries, are still unpunished. Five members of Supreme Judicial Council, self-governing judiciary body, are elected by the majority party in the Parliament without an option of getting proposals civil society. This scheme does not guarantee the independence of the judiciary. Moreover, the disciplinary, appointment and dismissal decisions of the Council cannot be appealed, which limits access to justice for judges. Disciplinary decisions are unsubstantiated and, as a rule, made in closed-door sessions of the Council. The law allows the Minister of Justice to launch disciplinary proceedings against judges and request explanation from judges concerning the ongoing cases. The independence and accountability of prosecutorial service are not provided comprehensively by the current legislation and existing practice.

B. New developments since the previous review

Previous multi-year judicial reforms did not contribute to the strengthening of the judiciary. Comprehensive and bold measures are necessary to dismantle the capture of the courts and restore independence of the judiciary. Use of

transitional justice instruments is critical for examine the capture mechanisms and informing the current state efforts to reform the judiciary.

The judicial reform is a priority issue for the incumbent government, as it has recently adopted the National Strategy and Action Plan of Legal and Judicial Reform 2019-2023. The document was developed through multi-stage consultations with civil society experts and aims at restoring trust in the justice system. The Strategy seeks to improve integrity checks for the judges, including through improvement of their asset declarations, extend the authorities of the Supreme Judicial Council and establish a truth commission. A coordination council, comprised of state and CSO representatives, will be established to oversee the strategy implementation. Nevertheless, the strategic documents focus heavily on the judiciary, omitting the needs and problems in the police, and not articulating specific vision for the prosecutorial and investigative service reforms.

C. Recommendations

We therefore urge that the independence and accountability of the judiciary is made a prominent issue in the upcoming UPR, with a priority on the comprehensive vetting of the judges, improving their accountability guarantees and elevating their independence safeguards from external and internal interventions. Thus, we recommend that the Republic of Armenia:

- a. Carry out comprehensive vetting of judges, particularly those in the Supreme Judicial Council and the Constitutional Court, based on law and objective, non-discriminatory criteria;
- b. Adopt Constitutional amendment to introduce more balanced and non-political mechanism for appointment of judges, especially the members of the Constitutional Court, Supreme Judicial Council, heads of courts,
- c. Provide mechanisms for appealing the Supreme Judicial Council's disciplinary, appointment and dismissal decisions, and restrict the Council's discretionary powers.

II. Prevention and prosecution of torture and ill-treatment

A. Follow-up to the second review

A series of recommendations from the previous UPR review cycle related to torture prevention and investigation, including improvement of the legislation in line with the UN Convention against Torture (Serbia) and establishment of a system for the management of complaints of torture and ill-treatment (Belgium). The legislation and its enforcement continue to be problematic in this regard. The Criminal Code was amended to provide the definition of torture in line with UNCAT standards, however, other cruel, inhuman and degrading treatment and punishment are not criminalized. The cases falling under ill-treatment are usually qualified as abuse of power. Until now, no official has been convicted for torture, despite numerous reports about torture happening during arrest and interrogation. The testimony, allegedly obtained through torture, is not rejected immediately from the case materials, but remains until the verdict is published. The state does not provide adequate rehabilitation for torture victims. The law enforcement officers and judges are not using objective standards for documentation and investigation of torture and other ill-treatment cases.

Civil society monitors reported a number of torture and ill-treatment cases in penitentiary institutions, which have not been investigated effectively. LGBTI inmates and other vulnerable groups face isolation and humiliation in prisons. In 2018, 612 cases of self-harming and 430 cases of hunger strike were registered in prisons, which was lower than in 2017. Authorities failed to effectively prevent and investigate suicide and self-harming cases in prison. Penitentiary Monitoring Group has regularly encountered obstacles in visiting certain inmates. Access to healthcare, including psychiatric care is impeded for many prisoners. The methadone substitutional therapy is not accessible for many drug-using prisoners. Moreover, the beneficiaries of this therapy are not eligible for early conditional release.

B. New developments since the second review

The Government has drafted National Strategies and Action Plan for Human rights protection 2020-2022, and Development of Penitentiary and Probation service. These strategies aim to develop the capacities of a number of law enforcement and prisoner personal concerning torture prevention, install audio-video surveillance in police and military police units, develop standard forms of torture documentation based on the Istanbul Protocol guidelines, etc. There are

ongoing efforts to improve the food in prisons, intensity prisoners' contacts with their families, and most importantly, eradicate hierarchical and criminal behaviour in penitentiary institutions.

C. Recommendations

In order to ensure effective investigation and prosecution and restore the rights of torture victims, it is necessary to urge the Government of Armenia to:

- a. Criminalize cruel, inhuman and degrading treatment and punishment in the Criminal Code of Armenia,
- b. Exclude the use of evidence extorted through torture at any stage of proceedings, provide effective mechanisms for review and redress with no statute of limitations,
- c. Include in the Penitentiary Development Strategy the following actions:
 - Transfer the prison healthcare under the Ministry of Health and ensure the quality and accessibility of medical services, including mental healthcare and access to methadone substitutional therapy for prisoners.
 - Undertake legislative and other measures to eradicate the flourishing criminal culture in prisons and the widespread discriminatory policies towards the LGBTI inmates.

Thank you for your attention.