



HUMAN RIGHTS DEFENDER OF  
THE REPUBLIC OF ARMENIA



## AD HOC PUBLIC REPORT

COMMITMENTS UNDER THE CONVENTION  
OF THE RIGHTS OF THE CHILD AND ITS PROTOCOLS.  
THE STATE OF FULFILLMENT BY ARMENIA



# **HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA**



## **AD HOC PUBLIC REPORT**

### **ARMENIA: STATUS OF COMMITMENTS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD AND ITS OPTIONAL PROTOCOLS**

YEREVAN 2018



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## INTRODUCTION

Having ratified the United Nations Convention on the Rights of the Child (hereinafter referred to as the Convention), the Republic of Armenia undertook to bring its domestic laws and practices in compliance with the requirements of this international document. Later, the Convention was supplemented by 2 protocols: 1) Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; and 2) Optional Protocol on the Involvement of Children in Armed Conflict. They make an integral part to the Convention and were ratified by the Republic of Armenia. Consequently, implementation of the Protocols also falls within the scope of implementation of the Convention.

The implementation of the Convention and its 2 Protocols by the Member States is supervised by the United Nations Committee on the Rights of the Child (hereinafter also referred to as the Committee).<sup>1</sup> It is an agency comprising 18 experts supervising implementation of the Convention and its Protocols mostly through monitoring. All the Member States are under obligation to submit regular reports on fulfillment of their commitments under the Convention and its Protocols. The Member States

are under obligation to submit their first report within 2 years after joining the Convention and the next periodic reports every 5 years. After reviewing the reports, the Committee submits to the State its Concluding Observations on specific issues and recommendations for their solutions.

The Republic of Armenia submitted its first report in February 1997 on which the Committee made its observations in 2000. Then, in 2003, the Armenian Government submitted its second periodic report and in 2011 its third and fourth periodic reports for 2001-2009 on implementation of the Convention and its 2 Protocols. At its 67<sup>th</sup> session of May 27-June 14, 2013, the Committee approved its Concluding Observations on the provisions of the Convention and its 2 Protocols and touched upon broad issues and made observations and recommendations thereon. The Committee invited the Republic of Armenia to submit its next fifth and sixth joint report by January 22, 2019 and provide information on the implementation of the recommendations covered in the Concluding Observations of 2013.

According to Article 2(3), Constitutional Law on the Human Rights Defender, the Defender monitors the provisions of the United Nations Convention on the

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1 Available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

Rights of the Child adopted on 20 November 1989 as well as protects the rights of the child and prevents their violation. To ensure effective fulfilment of this important mission, the Defender's Office set up the Children's Rights Protection Unit. The Report was prepared within this function of the Defender and makes a key component of the monitoring process. It aims to present the extent to which the Republic of Armenia has already implemented and is currently implementing the recommendations issued in the Committee's Concluding Observations of 2013. Therefore, the Report covers the period of 2013-December 2017 within which the Committee's 3 Concluding Observations were examined, the recommendations were identified and observations were presented on implementation of each of them as well as the Defender's feedback and recommendations on fulfilment by Armenia of its international commitments undertaken before the Convention bodies were presented.

## **METHODOLOGY**

The Report was prepared in the format of the Committee's Concluding Observations and Armenian Government reports. In other words, the Report was prepared by considering thematic directions covering a number of articles of the Convention rather than separate articles of the Convention; this aims to facilitate examination of the Report and comparison of the data and analysis covered therein with the Committee's Concluding Observations and the Armenian Government's reports, including alternative reports submitted by other organizations. Such report format is set by the Committee that proposes specific formats for submitting alternative reports, including format restrictions, for purely practical purposes. Nevertheless, the Report cannot be considered alternative as, first of all, it is quite extensive, whereas the Committee requires that alternative reports comprise about 30 pages. On the other hand, in terms of its content, the Report was prepared in a way to comply with the purpose of alternative reports. In this sense, the Report is divided into the same sections as the Committee's Concluding Observations and Government Reports. Each section or sub-section starts with information

on the Committee's opinion or comment and recommendation (with a relevant link) on the topic in question. Such information is followed by an analysis of the actions and measures taken and assessment of whether the Committee's recommendation was implemented by the Republic of Armenia. Each sub-section or several subsections end in a list of recommendations. This Report covers the period from January 2013 to December 2017.

While preparing the Report, the Report Team first of all examined the Committee's two Concluding Observations on implementation of the Convention and its 2 Protocols, previous reports of the Armenian Government, reports of the competent state authorities and non-governmental organizations, including alternative reports. For instance, the Report Team examined the Child Protection Index by World Vision International, UNICEF Annual Report 2016<sup>2</sup>, Report

on Assessment of the Situation of Asylum Seeking, Refugee, and Displaced Children in Armenia by the United Nations High Commissioner for Refugees (UNHCR) in Armenia,<sup>3</sup> Child Rights Situation Analysis: Armenia by Save the Children<sup>4</sup>, and reports and studies by other organizations.

Along with the aforesaid, the Report Team interviewed relevant independent experts, staff members of the national and community child protection authorities and NGOs, lawyers and judges and examined a number of judicial acts, opinions by the Guardianship and Trusteeship bodies and administrative acts adopted by community authorities. Particular attention was paid to the mass media communications and discussions in social networks. Following its inquiries sent to the competent public authorities, the Report Team received numerous data that were also covered in the Report.

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2 Child Protection Index: Armenia 2016. Available at: <http://mankutyun.am/resursview/18/> Annual report of UNICEF of 2016 is available at: [https://www.unicef.org/about/annualreport/files/Armenia\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Armenia_2016_COAR.pdf)

3 Assessment of the situation of asylum seeking, refugee, and displaced children in Armenia. UNHCR. Report. December 2015 – April 2016. © United Nations Children's Fund. Yerevan 2016. Available at: <https://bit.ly/2sbgCd3>

4 Save the Children, Child Rights Situation Analysis: Armenia, 2015, p. 38, available at: <https://bit.ly/1l1wnh5>

## **ABBREVIATIONS USED IN THE REPORT**

ACG	Active Civic Groups
ADHS	Armenia Demographic and Health Survey
AIDS	Acquired Immune Deficiency Syndrome
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FAR	Fund for Armenian Relief
GC	General Comment
GTB	Guardianship and Trusteeship Body
GTC	Guardianship and Trusteeship Commission
HIV	Human Immunodeficiency Virus
ILO	International Labour Organization
MES	Ministry of Education and Science
MLSA	Ministry of Labour and Social Affairs
NCET	National Centre for Educational Technologies
UN	The United Nations
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WPC	Without parental care



## A. MAIN AREAS OF CONCERN

### 1. COMPREHENSIVE POLICY AND STRATEGY

The Committee notes the adoption of the National Program for the Protection of Children's Rights for 2013-2016 and many other strategies and plans covering different areas of the Convention. However, the Committee regrets that the program and strategies lack adequate financial resources and mostly rely on funding by international organizations. It also regrets that there is no regular assessment of progress under such programs and strategies.

The Committee recommends as follows (Para. 11):

- Provide all the necessary human, technical and financial resources for an effective implementation of the National Programme for the Protection of Children's Rights and other strategies and plans in the area of children's rights;
- Ensure regular assessment of the effectiveness of the National Program and its implementation, as well as of other strategies and plans, in order to avoid any possible overlaps

The **aim** of the 2017-2021 Strategic Program is to secure the rights and interests of children in difficult life situations. That is, the program does not provide comprehensive coverage aimed at the implementation of the rights of all children.

The Strategic Program for the Protection of Children's Rights in Armenia and its Action Plan approved by the RA Government's Protocol Decree № 30 of July 13, 2017 cover a significant number of steps requiring funding from other sources not prohibited by law. Nevertheless, the Strategy does not provide precise budgetary assessment, which does not enable determination of exact measures necessary for the implementation of the strategy. Additionally, it does not specify all the activities in relation to each right, not providing the expenses and activities aimed for all children.

The assessment of the Strategic Program efficiency showed some progress. Particularly, the Strategic Program for 2017-2021 covers a separate section on Program Monitoring and Evaluation. The document specifically reads as follows: "While introducing the strategy, priority attention will be paid to

continuous monitoring and surveillance to evaluate the efficiency of the strategy introduction, specification of any issues that may emerge and their possible solutions. The large-scale assessment of the strategy must be based on a number of sources, such as monitoring and evaluation, alternative researches and official statistical data analysis, with their positive outcomes and lessons learned to be used to ensure evaluation and further development of the effectiveness of the program activities taken within the strategy.” The Program reads that the strategy progress will undergo an interim assessment 2019 and a final assessment in 2021.

## **RECOMMENDATIONS:**

- Formulate the full Strategic Program for the Protection of Children’s Rights in Armenia in compliance with the logic of the Convention on the Rights of the Child;
- Submit the assessment results to the National Commission for the Protection of Children’s Rights and publish them;
- Consider the findings of the interim and final assessments of the Strategic Program when developing the content of the upcoming strategy.

## **2. COORDINATION**

The Committee welcomes the establishment of the National Commission for the Protection of Children’s Rights in 2005 as a coordinating body. However, the Committee regrets that the Commission is not very effective in its coordinating role. It is also concerned that the inter-sectoral coordination among ministries and the agencies at regional and local levels is not adequate.

The Committee recommends as follows (Para. 13):

- Take the necessary measures to provide the National Commission for the Protection of Children’s Rights with the required authority and adequate human, technical and financial resources so that it can effectively coordinate actions for children’s rights among government entities.
- Improve inter-sectoral coordination among ministries, between national level institutions and those at regional and local levels, with particular attention to rural and the more disadvantaged areas

In recent years, the National Commission for the Protection of Children’s Rights has been operating most inefficiently. In fact, no regular sessions are convened. The most recent publication on the Commission’s

website<sup>5</sup> covered the session of January 31, 2013.

The Ministry of Labour and Social Affairs (MLSA) included in the Draft Law of the Republic of Armenia on Making Amendments to the Law of the Republic of Armenia on the Rights of the Child provisions on establishing and operating the National Commission for the Protection of Children's Rights and developing an integral public policy on protection of children's rights and interests, as well as drafted a Draft Republic of Armenia Prime Minister's Decree on Making Changes and Amendments to the Republic of Armenia Prime Minister's Decree № 1295-N of December 28, 2012 that was submitted under the prescribed procedure to the stakeholder agencies and partner NGOs for discussion.

The clarification of the issue by the RA Ministry of Labour and Social Affairs suggests that the National Commission for the Protection of Children was considering setting up a monitoring group under the Commission. Taking into account the fact that the Commission does not fully implement its functions of ensuring the directions and priorities of the public policy for the protection of children's rights and partnership between the private and public sectors and of considering key issues, legislative amendments were

initiated by setting out in the Draft Law of the Republic of Armenia on the Rights of the Child provisions on establishing and operating the National Commission for the Protection of Children's Rights and developing an integral public policy on protection of children's rights and interests.

In regard of the aforesaid, it should be noted that the legal regulations of the above legislative draft actually cover the National Commission's functions aimed at coordinating the activities of the agencies responsible for protection of children's rights, supporting development and implementation of public policy and strategy programs and monitoring the public child protection strategic programs. At the same time, in terms of ensuring complete legal regulations of the issue and their efficient enforcement, the opinion of the Republic of Armenia Rights Defender's Office on the Draft specifically highlighted that the Commission should possess adequate financial and human resources to effectively coordinate the steps aimed at protection of children's rights and improve cooperation at the interdepartmental, regional and local levels by paying special attention to the rural communities considering, among others, the Committee's recommendations on the Commission

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5 [http://www.mlsa.am/?page\\_id=2845](http://www.mlsa.am/?page_id=2845)

within the 2013 Concluding Observations on Armenia of the UN Committee on the Rights of the Child of 2013. Also, it was noted that the Draft covered no provisions on either the agencies at the regional (marz) and community levels, or their activities and powers and it was therefore recommended to lay down provisions on the agencies at the regional (marz) and community levels.

Turning to the Committee's recommendation concerning inter-ministerial coordination of children's rights, it is necessary to mention the creation of the Council on Justice for Children, which is an interdepartmental entity established on the basis of Decree № 633-A by the Minister of Justice, of December 30, 2016. The Council was created in 2015 in the framework of the project "Towards Enhanced Coordination of Children's Access to Justice" implemented by RA Ministry of Justice and UNICEF in Armenia. The Council aims at promoting interdepartmental cooperation, serving as a platform for discussions between various institutions and organizations and submit proposals of draft laws.

Hence, the **Committee's recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Reserve management of the National Commission for the Protection of the Rights of the Child at least to the Deputy Prime Minister;
- To enhance the interdepartmental cooperation, organize the activity of the Commission's Secretariat by the principle of rotation through delegating its powers each year to one of the stakeholder departments responsible for protection of children's rights;
- Set a minimum frequency for the Commission's sessions and assign responsibility for failure to convene and hold sessions in a manner prescribed by law.

## 3. ALLOCATION OF RESOURCES

The Committee is concerned about the significant decrease in budget allocations, in particular in the areas of health and education (from 2.1% in 2007 to 1.5% in 2012 and from 3.2% in 2010 to 2.5% of GDP in 2012 respectively) and regrets the lack of information on a child rights based perspective in the budgeting process.

The Committee recalls its recommendations during its Day of General Discussion in 2007 on "Resources for the Rights of the Child

- Responsibility of States” and based on that.

The Committee recommends as follows (Para 15):

- Increase substantially the allocations in the areas of health and education to adequate levels;
- Establish a budgeting process, which includes child rights perspective and specifies clear allocations to children in the relevant sectors and agencies, including specific indicators and a tracking system; and
- Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the

implementation of the Convention.

Since 2013, the health and education allocations have not shown any significant progress. The health allocations ranged around 1.5% of the GDP and education allocations dropped to 2.34% of the GDP. And the share allocated from the GDP to the MLSA for the improvement of the child’s rights protection system also decreased. The 2018-2020 Medium-Term Public Expenditure Framework<sup>6</sup> envisages reducing by 2020 the share of GDP allocations to health and education to 1.06% and 1.85%, respectively.

*Table 17*

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Health	1.44%	1.61%	1.64%	1.59%	1.55%
Education	2.40%	2.54%	2.40%	2.39%	2.34%
For improvement of the child’s rights protection system	0.0716%	0.0774%	0.0757%	0.697%	0.0649%

General comment № 19 (2016) of the Committee on public budgeting for the realization of children’s rights (Article 4) calls on states to take measures to the maximum of their available resources for the

realization of children’s rights, as well as to secure effective, efficient, fair, transparent and sustainable use of the resources in the budgetary stages of planning, enactment, execution and follow-up. The Strategic Program

<sup>6</sup> Available at: [http://www.minfin.am/en/page/medium-term\\_expenditure\\_framework/](http://www.minfin.am/en/page/medium-term_expenditure_framework/)

<sup>7</sup> The Table relies on the comparison of the public mid-term expenditure frameworks of 2015-2017, 2016-2018, 2017-2019 and 2018-2020, [http://www.minfin.am/en/page/medium-term\\_expenditure\\_framework/](http://www.minfin.am/en/page/medium-term_expenditure_framework/)



for the Protection of Children's Rights in Armenia provides analysis of the budgeting for the realization of children's rights based on the methodology developed by UNICEF and approved by relevant ministries and the Ministry of Finance. The analysis is performed, but there is no undertaking on the side of the Government or the Ministry of Finance to initiate the process. However, though there is transition to program budgeting, which includes child-rights budgeting, concrete methodological instructions are lacking.

In 2019, Armenia will shift to program budgeting; this is essential as such shift will make it possible to put the Child's rights budgeting on a programmatic basis.<sup>8</sup> However, taking into account the statistical data above, we consider **the Committee's recommendations not implemented.**

## RECOMMENDATIONS:

- Increase, year by year, allocations to health, education and improvement of the child's rights protection system;
- Highlight protection of children's rights as an indicator within program budgeting and provide respective methodological instructions;

- Develop analysis methodology of budgeting for the realization of children's rights, thus ensuring transparency of the expenses from the state budget aimed directly or indirectly at children and ensuring the effectiveness, fairness of state budgeting;
- Coordinate the expenses directed at children from all the sectors following a distinct format based on the developed methodology;
- Connect the processes of children budgeting and gender-based budgeting as a step towards the realization of Sustainable Development Goals.

## 4. INDEPENDENT MONITORING

The Committee welcomes the establishment in 2011 of the focal point responsible for monitoring, protecting and promoting the rights of children in the Office of the Human Rights Defender. It is however concerned that the Office lacks capacity and resources to carry out its mandate effectively. It is also concerned that the public, children in particular, do not seem to be aware of the individual complaints mechanism of the Human Rights Defender's Office.

Taking into account the Committee's

<sup>8</sup> Annual Plan of the Government of Armenia of 2017-2022. Available at [http://www.arlis.am/banners/HH\\_kar-cragir.pdf](http://www.arlis.am/banners/HH_kar-cragir.pdf)

general comment No. 2 on the Role of Independent Human Rights Institutions (CRC/GC/2002/2), the Committee recommends as follows (Para. 17):

- take measures to establish a child rights unit at the Office of the Human Rights Defender and provide it with necessary human, technical and financial resources;
- take measures to inform the public, in particular children, of the individual complaints mechanism of the Human Rights Defender's office, via mass media and briefings in schools;
- take the above measures, seek technical cooperation from, among others, the Office of the United Nations High Commissioner for Human Rights and United Nations Children's Fund (UNICEF).

Till June 2013, at the RA Human Rights Defender's Office, protection of children's rights was ensured by

one responsible person who was also engaged with the issues of persons with disabilities and women's issues. Taking into account the Committee's recommendation and in collaboration with the United Nations Children's Fund, the Children's Rights Protection Unit was set up in June 2016 by the Human Rights Defender's decree. The Unit works actively with children, conducts legal analysis and monitoring visits and cooperates with international organizations. Recently, the Human Rights Defender's office launched a website accessible to children ([www.children.ombuds.am](http://www.children.ombuds.am)). The Unit introduces new methods for working with children. As it has already been mentioned, the Human Rights Defender performs the monitoring function under the Convention.

Based on the above, we consider **the Committee's recommendation are implemented.**



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## **B. GENERAL PRINCIPLES**

**(ARTICLES 2, 3, 6 AND 12 OF THE CONVENTION)**

## 1. NON-DISCRIMINATION

The Committee is concerned at the prevalence of discrimination on the basis of gender, particularly sex-selective abortions and skewed sex ratio at birth.

The Committee also remains concerned at the discrimination against categories of children in marginalized and disadvantaged situations, including children with disabilities, children living with HIV, children from poor families, children living in rural areas, children in street situations and children living in institutions

The Committee recommends as follows (Para 19):

- Enforce the RA legislation against discrimination on the basis of gender and take measures to prevent and ban sex-selective abortions.
- Ensure that certain programmes address the situation of discrimination against categories of children in marginalized and disadvantaged situations, including children **with disabilities**, children living with **HIV**, children from **poor** families, children living in **rural** areas, children in **street** situations and children living in **institutions**.

## 1) MEASURES TO PREVENT AND BAN SEX-SELECTIVE ABORTIONS AND ENFORCEMENT OF LAW

According to official statistical data from the National Statistical Service of Armenia, starting from 1991 the country has witnessed skewed sex ratio at birth peaking to 120 boys to 100 girls (the biologically acceptable normal ratio is 102-106 boys to 100 girls). Moreover, this was the sex ratio at birth for the first child in the family, whereas that for the third child in family in 2000 reached 150 boys to 100 girls, and in 2010 - 173 boys to 100 girls. This figure ranges third among the highest ones in the world, surpassed only by China and Azerbaijan. In January 2013, Nils Muižnieks, Council of Europe Commissioner for Human Rights, also expressed concern over the sex imbalance pointing to the persistent problem of sex-selective abortions in Armenia, Georgia, Azerbaijan, Kosovo, Albania and other Eastern European countries and urged governments of those countries to accept national legislation to ban sex-selective abortions.

Starting from the 2000s, the skewed sex ratio at birth began to stabilize and in 2012-2015 it made 114 boys to 100 girls. According to the most recent data from the Ministry of Health, in 2016

the sex ratio was 100 girls to 112 boys and in the 1<sup>st</sup> half of 2017 - 100 girls to 110 boys.<sup>9</sup>

This recent positive trend resulted from the numerous events taken by the legislative authorities, governmental and many non-governmental organizations, with a considerable bulk of their actions funded by international organizations, such as the European Union.

In this context, it should be noted that on the legislative initiative of the Armenian Government (RA Ministry of Health), a legislative reform package was developed and approved by the National Assembly of the Republic of Armenia in 2016. As a result, Article 10 of the RA Law on Reproductive Health and Reproductive Rights (Abortion) was amended (Article 10 as amended by HO-24-N of April 30, 2015 and edited by HO-134-N of June 29, 2016), and for the first time sex-selective abortions were banned by law. Furthermore, a number of guarantees were set to address violations and arbitrariness, such as a series of written procedures for applying for abortion and approving such applications, e.g. prohibition of abortion within pregnancy term of 12-22 weeks without any medical reasons, the requirement to give women some time to make a final decision, or the requirement that abortions may be

performed only in hospital healthcare facilities licensed for obstetric and gynaecological medical examination and services, and other safeguards. Also, the Code on Administrative Offenses also amended to stipulate a number of grounds for imposing administrative sanctions for the failure of physicians to take the necessary measures laid down by law before and after performing an abortion. Based on these legislative amendments, in February 2017, the Government adopted Decree № 180-N on Approving the Procedure and Conditions for Abortion to provide more detailed description of the procedure and conditions for abortion. These acts aimed to prevent and significantly reduce the rate of sex-selective abortions.

The legislative amendments were accompanied by large-scale public awareness campaign to reduce the rate of sex-selective abortions. Thus, with the support of the UN Population Fund, the Program to Prevent Sex-Selective Abortions for 2015-2017 was developed and approved and implemented by the joint Decree of the Minister of Health and the Minister of Labour and Social Affairs of the Republic of Armenia in 2014, a Community of Practice of Local Participation and Non-Discrimination (CoP) was set up resulting in working and start-up meetings in RA regions

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9 Official statement of the Ministry of Health of August 1, 2017, available at: <http://www.moh.am/#1/687>



(marzes) and Yerevan city and CoP advisory work groups. Social ad videos were prepared, and thematic programs were broadcast via the mass media; information, educational and communication materials and posters were developed, and active civic groups (hereinafter referred to as ACG) were set up in communities. Also, workshops were held for prenatal care providers in obstetric hospital facilities on the ethical issues of applying prenatal sex determination technologies, and in collaboration with the United Nations Population Fund, a special guidance manual for gynaecologists and medical personnel conducting ultrasound scanning for prenatal sex determination of the foetus.<sup>10</sup>

**As mentioned above, the trend towards dropping rate of sex imbalance at birth currently observed, is conditioned by the consistent application of the above measures** and given this, we hereby consider **the Committee's recommendations mostly implemented.**

Nevertheless, it is essential to focus on the fact that public awareness campaigns and the above measures were not accompanied by active advocacy for equal rights of women and men in the context of viewing

such abortions as discrimination. Sex-selective abortions were prohibited. However, this process is not easily monitored due to flexibility in counting pregnancy weeks and the developing technologies. It is impossible to have lasting sustainable results by mere prohibitions. Besides, the ratio is still considerably high in Armenia, which as of itself points out that there are sex-selective abortions despite the existing prohibition. We can say that legislation on non-discrimination was forgotten and at some institutions it was even unacceptable to mention about it. It is no coincidence that in the RA law enforcement practice there are very few court rulings under which either the Court or the parties to trial applied the Republic of Armenia Law on Equal Rights of Women and Men. As a rule, the Law is not invoked in the decrees of the Guardianship and Trusteeship bodies either. The programs carried out by the national and community authorities, including community programs mostly feature the issue of sex-selective abortions in the light of life, demography, health, family and childhood protection, rather than gender-based discrimination and a gross violation of the rule of law. Meanwhile, the real reason underlying the current situation is discrimination

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<sup>10</sup> Information on the actions described above was received from RA Minister of Health L. Altunyan's letter addressed to the Human Rights Defender in response of his inquiry N01/18.2/4798-17 of November 22, 2017.

and the stereotypical thinking. We must fight this unacceptable phenomenon primarily in the context of non-discrimination as a fundamental human right.

### **RECOMMENDATION:**

Any program and measure against sex-selective abortions should be presented primarily in the context of gender-based discrimination. To this end, the legislation on non-discrimination and the principles and standards set forth therein should be widely enforced.

## **2) DISCRIMINATION AGAINST CERTAIN CATEGORIES OF CHILDREN IN MARGINALIZED AND DISADVANTAGED SITUATIONS AND MEASURES TO ELIMINATE IT**

Starting from 2013, Armenia has seen positive changes in the system of child care and protection. As a result, cases of discrimination were revealed and reduced, and regulations and practices for children in disadvantaged situations were developed. As mentioned above, the legal framework relating to the rights of the child, with Article 37 of the Constitution 2015 at its core,

undergoes continuously improvement. By its Protocol Decree № 18 of May 12, 2016, the Government approved the Concept for Developing Alternative Care Service System for Children in Difficult Life Situations in Armenia aimed at facilitating fulfilment by Armenia of its commitments under the United Nations Convention on the Rights of the Child, the Revised European Social Charter and other international treaties and excluding removal of a child from their family for financial reasons only. On December 21, 2017, the RA Law on Making Changes and Amendments to the Family Code was fully adopted in the second reading. Currently, the drafting, approval and adoption process of the Draft RA Laws below is under way: RA Law on the Rights of the Child, RA Civil Procedure Code, RA Law on Social Protection of Children without Parental Care, Law on Families with Many Children, RA Law on Protection of the Rights and Social Inclusion of Persons with Disabilities and the RA Law on Social Work. These draft laws provide a broad definition of principles that may serve as effective guarantees for prohibiting discriminatory treatment.

To address the situation of discrimination against children from disadvantaged families, children living in rural areas, children in street situations and children living

in institutions, the National Institute of Labour and Social Research, MLSA, RA conducted trainings on the topics below: Social Inclusion of Children with Disabilities, Prevention of Discrimination against Children and Issues of Begging and Vagrancy among Minors.<sup>11</sup>

In the health sector, community-based rehabilitation centres are promoted and early detection systems for children with disabilities are developed. Starting from 2010, the training facilities of the National Institute of Health, RA Ministry of Health, the National Centre for AIDS Prevention, has been conducted the training course on HIV Infection aimed, among others, at preventing and overcoming by health providers as well any possible social stigma and discrimination against HIV-positive patients. With the support of the United Nations Children's Fund, health providers from all the regions (marzes) of the Republic of Armenia, were trained on the Basics of Counselling on Early Childhood Care and Development during Home Visits, with a section of the training course featuring the activities with children with disabilities or developmental problems and their families.<sup>12</sup>

In the educational sector, introduction

of the inclusive education culture and practices to all the comprehensive schools is currently under way; special schools are gradually reorganized into support centres and their staff members are trained to provide support services. And the sector of social protection witnesses introduction of the institute of case manager, i.e. social worker to provide family-based support. Social workers are trained for the same purpose. In this context, the models of delegated social services introduced into other countries are examined. While such a system is in place in elderly care in Armenia, for instance, caretaking as a social service delegated by the state has serious drawbacks. Night care institutions are reorganized into community support centres for children and families.

A new model for the assessment of disability and provision of services for both adults and children went on trial: it is based on the International Classification of Functioning, Disability and Health (ICF) by the World Health Organization (WHO) and takes into consideration the interrelation between the specific characteristics of a growing child and environmental factors.

The measures above were taken by the national and local authorities and

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11 This information was received from the Ministry of Labour and Social Affairs in response to the Human Rights Defender's inquiry on the activities taken to involve professionals with experience in working with children and trained volunteers in the child protection system on the local/community levels.

12 According to the letter of the Ministry of Health, see Footnote 5.

human rights NGOs (Bridge of Hope, Children's Support Centre of the Fund for Armenian Relief, Aravot, Full Life, Orran, Save the Children, World Vision, etc.) with an active support from international donor organizations (United States Agency for International Development, UNICEF, UNDP, European Union, World Bank, Open Society Foundations).

Despite the measures taken, the children in difficult life situations still face discriminatory treatment as evidenced by the official statistics as well as relevant reports<sup>13</sup> and the Strategy for the Protection of Children's Rights in Armenia for 2017-2021.<sup>14</sup> The above document directly states that *“child services are sometimes accompanied by violations of their rights to protection. Children face discrimination and violence approaches. There are also problems on the way of ensuring their right to participation in the process of ....”*<sup>15</sup> In other words, while the Convention

is based on 4 groups of the rights of the child, namely non-discrimination and equality, best interests of the child, survival and development, and participation and integration, the Program views discrimination as an issue mostly in 2 fields of ensuring the child's right to services and particularly ensuring the right to participation. Children are mostly presented as “subjects of protection” rather than fully-fledged right holders, whereas recognizing children as independent and fully-fledged right holders will help the public authorities and private institutions to focus on their best interests.<sup>16</sup>

The situation above, that is discrimination against children in difficult life situations, is largely conditioned by low awareness and stereotypical perceptions of respect for non-discrimination as a fundamental human right among the public authorities, the public at large as well as professionals with experience of

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13 See “When will I get to go home?” Abuses and Discrimination against Children in Institutions and Lack of Access to Quality Inclusive Education in Armenia, Human Rights Watch, 2017 <https://bit.ly/2ILCpm6>  
Child Protection Index: Armenia, Child Pact, World Vision 2016, <http://mankutyun.am/eng/resursview/18/>  
Assessment of the situation of asylum seeking, refugee, and displaced children in Armenia, UNHCR, 2016 <http://www.unhcr.org/refugees/2016/07/assessment-of-the-situation-of-asylum-seeking-refugee-and-displaced-children-in-armenia.html>

UNICEF Annual Report 2016, [https://www.unicef.org/about/annualreport/files/Armenia\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Armenia_2016_COAR.pdf)  
Annual Report on activities of RA Human Rights Defender and the situation of protection of human rights and fundamental freedoms, <https://bit.ly/2INib3C>, and RA Human Rights Defender's Special Report on Children's Rights at Child Care and Special Educational Institutions: systematic analysis, 2014, <https://bit.ly/2IPlcHn>

14 Strategic Program for the Protection of Children's Rights in Armenia for 2017-2021, RA Government Protocol Decree N 30 of the session of July 13, 2017, <http://www.irtek.am/views/act.aspx?aid=91088&sc=%20>

15 See Para 12, Issues Section, Program.

16 See Committee's General Comment N 13, Section I, Para 3(b). Available at: <https://bit.ly/2LvwMWI>

working with children, as well as by the lack of comprehensive judicial practice and, in general, of any legal practices to firmly establish non-discrimination. It seems enough just to mention that the National concept for developing the alternative care service systems for children in difficult life situations makes no mention of discrimination. The whole concept is presented in terms of providing child care and meeting their needs. While it makes an extensive reference to the need for community-based and family-based services to secure child care, there is no mention that such systems are introduced mostly for the need to exclude any discrimination against children and any discriminatory treatment that lacks objective grounds. Since the legal consciousness of the fact that children have their own rights is low, even the services intended to secure equal rights and opportunities for children in difficult situations, are mostly guided by the needs (as a traditional public opinion), rather than the best interest of the child and **aim to merely meet the child's needs rather than restore their rights.**

According to the UNICEF research, 28 per cent of children are deprived (in two or more dimensions) and live in monetary-poor households. These children are the most vulnerable and

should be prioritized under RA State policy. At the same time, 36 per cent of children are deprived, but do not live in poor households. There is a sharp rural/urban divide in deprivation, and in particular in the utilities dimension. 87 per cent of children living in rural areas are vulnerable due to insufficient water and heating facilities. The second important difference appears in relation to information. 57 per cent of children living in rural areas do not have access to information, while only one in three children living in urban areas have access to information.<sup>17</sup>

Hence, the Committee's recommendations were implemented partially.

## RECOMMENDATIONS:

- Include in the child's rights legislative reform package a provision on non-discrimination and if such provisions are already in place, they should be brought into compliance with the constitutional provision on prohibition of discrimination, especially taking account of the fact that the scope of the features protected through non-discrimination should be set in an open rather than closed exhaustive list.
- Provide trainings on the fundamental

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17 For more details see: [http://www.un.am/up/library/Child\\_poverty\\_Armenia\\_N-MODA\\_Report\\_2016\\_arm.pdf](http://www.un.am/up/library/Child_poverty_Armenia_N-MODA_Report_2016_arm.pdf)



principle of non-discrimination for all the practitioners involved in the child protection system, including lawyers, judges, police officers, community social workers, psychologists, adoptive and foster parents, teachers, health providers and policy makers.

- Develop and carry out temporary affirmative measures for the most vulnerable groups. For instance, develop programs to provide sufficient funding or support and to create favourable conditions to promote and coordinate alternative family-based and community-based care for children with disabilities or older children.
- Prioritize and provide as many resources as possible to the most vulnerable groups of children and their families by targeting wider groups (living in rural areas, families with many children, etc.)

## 2. BEST INTERESTS OF THE CHILD

In its Observations, the Committee notes with concern that while the “legitimate interests of the child” principle was included in the Family Code of 2004, it is not equivalent to “the best interests of the child” in its scope. In addition, the Committee regrets the lack of information on guidelines and procedures to ensure

the best interests of the child in any situation.

The Committee recommends as follows (Para 21):

- Amend its legislation and stipulate therein the principle of the “best interests of the child” (according to the Committee’s General Comment No 14);
- Strengthen efforts to ensure that this right is consistently applied in all legislative, including administrative and judicial proceedings as well as in all policies, programs and projects relevant to and with an impact on children;
- Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area, and to disseminate these to the public, including traditional and religious leaders, courts of law, administrative authorities and legislative bodies.

The studies showed that efforts were made in various areas to **stipulate** the “the best interests of the child” concept and ensure its further regulation.

In this sense, the Committee’s recommendations can be considered to be significantly implemented. However, with regard to **application** of the right, the authorities have not made enough efforts yet particularly to develop the necessary procedures and standards

and disseminate them, among others, through awareness campaigns; as a result, “the best interest of the child” concept was not widely shared in practice in its capacity of a right, except for certain areas. Below, we provide more details on our observations.

## 1) RA CONSTITUTION AND LEGISLATION AMENDMENTS

The Constitutional Amendments of December 6, 2015 stipulated for the first time in a separate Article, namely Article 37, protection of the rights of the child as a constitutional norm. Particularly, Part 2 of the said Article states that in matters concerning the child, primary attention must be given to the interests of the child. According to Part 3 of the said Article, the child’s right to maintain regular personal relations and direct contacts with his/her parents may be restricted only in the cases, where pursuant to a court decision, it is against the interests of the child. These two provisions are set out in Article 3 of the Convention serve as the definition of the “best interest of the child” right at the constitutional level. While the Constitution has no literally mention of “the best” phrase, interpretation of the Constitution in its context and subsequent developments revealed that its authors meant the best interests of the child. Particularly, we

mean that he subsequent legislative reforms, such as revised version of the Family Code of December 2017 and various strategic programs mentioned in different sections of the Report, all use the concept of the best interests of the child. In addition, the RA Constitutional Court revealed the legal and constitutional content of “the best interest of the child” concept within the legislation regulating family relations. In its ruling SDO-919 (ՄԴՈ-919) of October 5, 2010, the RA Constitutional Court, having examined the expression “in the interest of the child” used in Article 53(3), RA Family Code, decided that in case of divorce between parents and no consent on the child’s place of residence, the courts must consider “the best interests of the child” as the superior condition and if the child’s opinion does not coincide with his/her interests, the court must be guided by the child’s interests. **Granting “the best interests of the child” concept a legal and constitutional status attests to the intention to ensure extensive use of this principle and its underlying right both in laws and in practice.** This legal position of the Constitutional Court itself suggests that the ‘interests of the child’ concept in Article 37 of the Constitution should be interpreted as “the best interests of the child” in line with the Convention on the Rights of the Child.

The RA Law on the Rights of the Child and the RA Law on Social Protection of Children without Parental Care define the principle of “legitimate interest of the child”. The same approach is also found in other related laws on protection of children’s rights, such as the RA Law on the Social Protection of Persons with Disabilities in Armenia, etc. Nevertheless, by its material content, the concept of “legitimate interests of the child” is not equivalent to the concept of **“the best interests of the child”** as the first one limits the child’s interests in a particular context by the scope of the law regulating such legal relations. At the same time, these Laws lack even an approximate list of all the conditions (elements) recommended by the Committee’s General Comment № 14 to be considered when interpreting and applying the best interests of the child in line with the Convention. Particularly, the General Comment № 14 recommends taking into account the factual circumstances of a particular case and the following elements that serve the child’s interests: child’s views and personality, family environment and connections; issues related to the child’s safety, care and protection; vulnerability, and rights to health and education. Next, the General Comment suggests striking a mutual balance among all those interests and also

ensure certain procedural safeguards when doing so, e.g. the right of the child to be heard, requirement for acquiring and fixing all the facts and information through persons with the necessary professional capacities, requirements to provide legal representation and make well-grounded decisions and conclusions, securing procedural requirements for appealing and review of rulings and other special procedural safeguards. When determining the interests of the child, many factors can emerge, and it is impossible to provide an exhaustive definition of all of them within the law.

It is essential that the laws on the rights of the child define the concept of the “best interests of the child”, rather than that of “legitimate interests of the child”; this will make it possible to apply all the conditions laid down in the GC. **Consequently, the RA Law on the Rights of the Child and the RA Law on Social Protection of Children without Parental Care do not meet the requirement of the Convention insofar as those laws define the principle of the “legitimate interests of the child” instead of the that of “the best interests of the child”.**

It is welcome that in December 2017 the National Assembly adopted the Law on Making Changes and Amendments to the Family Code which was first of all conditioned by

the 2015 constitutional amendments. Particularly, as mentioned above, the new text of the Constitution provides an extensive regulation of the rights of the child, going as far as the principle of the interests of the child. Also, the amendments and supplements to the Law were mapped out in pursuance of the Strategic Program for the Protection of Children's Rights in Armenia for 2013-2016 and its Action Plan. The Law provides a detailed definition of "the best interests of the child" principle (Article 1(7)) that covers not only a legal definition, but also the elements and factors serving the interest of the child (e.g. the mental and physical needs of the child, the significance of communicating with parents and family members, cultural, linguistic, spiritual or religious ties, etc.). In this regard, it can be noted that the approach set forth in the General Comment N14 was applied. Furthermore, the best interests of the child are also defined in specific legal relations, e.g. within adoption procedure (Article 112), while choosing a foster family (Article 137), arranging care and education of children without parental care (Article 111), etc.

However, it is noteworthy that the Draft Law on Making Amendments to the RA Law on the Rights of the Child provides a **narrow definition** of the

"best interest of the child" principle **that is applicable only to their personal relations with their parents and relations of maintaining direct contacts** (Article 2).

Currently, the National Assembly considers the new Draft Civil Procedure Code.<sup>18</sup> It is essential that the draft defines the best interest of the child principle in family disputes (Article 189) and adoption proceedings (Article 230). However, a question arises: why is this principle defined only for these 2 types of proceedings rather than for any civil proceedings involving a child and determining any issue affecting to the child's interests. The Convention stipulates that *in all actions concerning children*, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3). Discussions with some of the experts involved in developing these legislative amendments revealed that from the very start of mapping out the Draft they aimed to reform the child care mechanisms rather than bringing the Draft in full compliance with the new Constitution.

However, taking account of the above reforms, we consider the **Committee's recommendations have been mostly**

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18 Available at: <http://parliament.am/drafts.php?sel=showdraft&DraftID=46922>

implemented.

## 2) APPLICATION OF “THE BEST INTEREST OF THE CHILD” PRINCIPLE IN TRIAL PROCEEDINGS

As a legal category, “the best interest of the child” principle is gradually extending in the judicial practice, but now it is still too early to talk about its wide application, except for certain areas.

In family relation cases, the judicial practice has shaped a trend towards applying “the best interest of the

child” concept. This is conditioned by the case-law of the RA Cassation Court. In its statement on *Margarit Hovhannisyan’s* civil case № EADD/1513/02/08 of April 1, 2011, the RA Cassation Court noted that in exercising and protecting the rights of the child, the Republic of Armenia **shall be under obligation to be guided solely by the best interest of the child** and provide the child with the care necessary for their well-being.

### Situation 1

In its Ruling on *Ruzanna Torosyan’s* civil case № EAKD/1688/02/08 of July 1, 2011, the Cassation Court referred to “the best interest of the child” concept in the context of the lack of consensus on the child’s living with either of the parents after their divorce. The Court stated that in the absence of consensus, the Court must resolve the issue “*based on the best interests of the child*” and accordingly, when deciding on the place of residents of a child with parents living in different countries, the court must take into account the place of residence of the child previously chosen by the parents, the child’s age, place and educational facility where he/she studies and other circumstances supporting the child’s affiliation with the relevant country and his/her parent living there, as well as the possible negative effects of regularly changing place of residence for child’s mental, spiritual and moral development and upbringing. Based on the above, the Cassation Court ruled that in this case the Court of First Instance might not have decided on the place of resident of the child only based on the need to ensure the right of only one of the parents to engage with the child’s care and upbringing and without taking into account the best interest of the child.

In its statement on *Ani Martirosyan's* civil case № EAKD/0474/02/11 of March 23, 2012, the Cassation Court declared that “when examining any case on concerning the rights of the child, the lower courts must give priority to meeting the interests of the child to the extent possible, **the courts must take into account the child's attachment with each of his/her parents and siblings, the child's age, other moral and personal qualities of the parents, the current relations of the child and each of his/her parent and the possibility of creating conditions for the child's upbringing and development (nature of parents' activity (work), their property and family status, etc.).**”<sup>19</sup>

By its above rulings, the Cassation Court in fact attempted to ensure a uniform application of “the best interest of the child” Convention principal in particular legal relations, i.e. when deciding on the place of residence of the child. This is the very approach that meets the Committee's GC No. 14. This approach of the Cassation Court also arises from the legal standards of the European Court of Human Rights.<sup>20</sup>

The lower courts also developed some judicial practice in interpreting “the best interests of the child” concept,

e.g. practice of applying “the best interests of the child” principle in cases on divorce, imposition of alimony and deciding on the alimony amount, the child's place of residence and procedure for visits). Nevertheless, analysis of judicial acts demonstrates that judges do not apply the principles of General Comment № 14 in a systematic manner, i.e. there is no common judicial practice on how to determine the best interests of the child in the given circumstances. This is due to, among others, the absence of guiding documents or so-called “soft-laws”.

In the administrative justice, the application of “the best interests of the child” principle is most limited and conservative. The studies show that in 2008-2016, this principle was applied to some extent in the administrative proceedings carried out by courts of law in cases related to the acts by administrative agencies or judicial acts of adoption, visits, alimony amount, child care and security. Nevertheless, review of the judicial acts shows that in the administrative justice, “the best interests of the child” principle was applied in a most restricted manner. This situation directly depends on the poorly developed administration of the

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19 See also Save the Children, Child Rights Situation Analysis: Armenia, 2015, p. 38, <https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf>

20 For instance, the best interest's evaluation criteria developed by the ECtHR (See European Court's Judgment on *Y.C. v. United Kingdom* of March 13, 2012, application N 4547/10, Para 103.

acts of the national and local authorities on the rights of the child.

The study of the criminal justice practice shows that “the best interests of the child” principle is not widely applied there. Only a few judicial acts can be considered to address this principle when sentencing a minor but still with narrow interpretation and incomplete application.

### 3) REFLECTION OF “THE BEST INTERESTS OF THE CHILD” PRINCIPLE IN STRATEGIC AND OTHER PROGRAMS

The RA Government Decree on Approving the Concept on Reforming the Procedure for Placing under Guardianship Children in Difficult Life Situations of March 10, 2016 defines “the best interests of the child” principle. Further, the RA Government Decree № 551-N of May 26, 2016 on Approving the Guidance Procedure and Criteria for Provision of Alternative Care to Children in Difficult Life Situations and on Making Changes and Amendments to the RA Government Decree N-1112-N of September 25, 2015, also stipulated the best interest

of the child as a principle. Moreover, the above document excludes any long-term separation of children from their biological family only for unfavourable socio-economic conditions. In addition, children may be separated from their biological family for unfavourable socio-economic conditions only temporarily, if such conditions pose a threat to the child’s life or physical and mental health. In other words, it is based on the best interests of the child.

“The best interests of the child” principle was incorporated into the National Strategic Program for Development of the Rights of the Child. By its Protocol Decree No. 30 of July 13, 2017, the RA Government approved the Strategic Programme for the Protection of Children’s Rights in Armenia for 2017-2021 and its Action Plan”.<sup>21</sup> Along with the key strategic principles of the Programme, including **accessibility** of services provided to children, ensuring **involvement** of children, exclusion of gender-based **discrimination** and other principles, “recognizing the best interests of the child” was first defined as a strategic principle of the Program. As for the previous 3 Programmes, this right

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21 See Para 10(1), Strategic Program for the Protection of Children’s Rights in Armenia for 2017-2021.

was not defined therein.<sup>22</sup> On August 6, 2015 the Strategy on Solving the Problems of Children Involved in Begging and Vagrancy was adopted and the “priority of the interests of the child” also ranges among its key principles.<sup>23</sup>

In 2017, the *Personal Data Protection Agency* of the Ministry of Justice of the Republic of Armenia published Guidelines for the Protection of Children’s Personal Data<sup>24</sup> to ensure a uniform interpretation of the legislation on protection of children’s personal data, improved awareness among children, their parents and data processors of their rights and responsibilities and higher level of children’s personal data protection. The Guidelines presents the principles of children’s personal data protection, the children’s rights in personal data protection and responsibilities of data processors, peculiarities of children’s personal data processing at educational institutions, in the Internet and via the mass media and the grounds and

types of responsibility for violation of children’s personal data protection rights. One of the 5 fundamental principles set out in the Guidelines defines the principle of the best interests of the child.

Before adopting the Guidelines, the Agency also focused on the children’s rights protection issues when making decisions on specific cases. Particularly, on March 21, 2016 the Agency adopted a decision (advisory decision ԱՏՊԻԽ-001/16)<sup>25</sup> on providing personal details data (names, surnames and age of the boarding school students, name of the facilities as well as photos featuring children). The Agency substantiated its decision by the principle of the best interests of the child (accordingly, a person who has not yet reached physical and mental maturity, needs more protection than others) and determined that the publication in question lacked any action required to ensure the best interests of the child as publication of children’s personal details did not

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22 The 1st Strategic Program was adopted by the RA Government’s Decree N 1745-N on Approving the National Program for Protection of Children’s Rights in Armenia for 2004-2015 of December 18, 2003 aiming at developing a 3-stage system for protection of the rights of the child, with community, region (marz) and republican (national) mechanisms: The 2nd Strategic Program was adopted by the Government Decree N 206-N of January 1, 2006 approving the Strategy for the Social Protection Reforms 2006-2010 of Children in Difficult Life Situations. The 3rd Strategic Program was approved by the Government Decree N 1694-N on Approving the Action Plan of the Strategic Program for the Protection of Children’s Rights in Armenia for 2013-2016 of December 27, 2012.

23 RA Government Protocol Decree N 37 of August 6, 2015, <http://www.irtek.am/views/act.aspx?aid=81848> See Section 5, Para 2.

24 Available at: <https://bit.ly/2JaoSDV>

25 Available at: <https://bit.ly/2xhqt66>



aim to promote their social, spiritual and moral well-being or their healthy physical and mental development and protection. The Agency also concludes that the information in question that was published in the Internet and is constantly accessible through search engines in itself contradicts the best interests of the child and can have a very adverse impact on the future developments in the life of those children.

Taking into account the above developments in the judicial precedent and practice, we consider **the Committee's recommendations to be currently being implemented.**

#### **4) DEVELOPING PROCEDURES AND CRITERIA AND SHARING THEM WITH PUBLIC AGENCIES**

While fulfilling their functions and in their resulting opinions (e.g. opinions for making decisions on reducing the obstacles to visits, removing the child from his/her parents or guardians, appointing custodians or guardians and making other decisions on the child's life or health), the Guardianship and Trusteeship bodies usually invoke the "best interests of the child" right and its underlying national and international regulations (including, among others, the Convention on the Rights of the Child and the European Convention

on Human Rights and Fundamental Freedoms. However, the study shows that such references are mostly done in a formal way, without applying the elements set forth in the GC No. 14 that must be used to decide on the scope, availability or absence of the best interests of the child under Article 3 of the Convention. As a result, conclusions oftentimes provide traditional solutions taking into account the interests of the child's parent rather than that of the child.

## Situation 2

Aram (5) and Gayane (9) (*the names are changed*) live in the grandmother's and uncle's home. Their mother died of heart disease. The children still remember how their father often used violence against their mother. Nowadays, the children do not contact their father but he demands that they live with him. He applied to the Guardianship and Trusteeship body in the community which invoked the best interests of the children and decided that they should be temporarily placed in a shelter so that their father had an opportunity to visit them and their relations are restored. Based on such opinion, the administrative agency of the community made a decree on placing children in a shelter so that children might communicate with their father and thereby overcome their depression and restore their relations with their father. The guardianship agency's opinion and the administrative agency's decree contain no analysis on whether shelter was the best environment for the children at the moment in question, as opposed to the family environment in their grandmother's and uncle's place. Moreover, while both the opinion and the decree refer to the best interests of the children and even invoke a Ruling by the European Court of Human Rights, there is no analysis of facts and principles and therefore such references are abstract. Furthermore, the decree was made without seeking the opinion of the children. As the children learnt about the decision to move to the shelter, they cried and said that they did not want to go to the children's home.

In the example above, apart from the fact that in cases of domestic violence, theoretically it is not in the best interests of the child to return (at least for some time) to their biological family, which should be clearly stated, the problem is that the administrative agency did not apply the provisions of the Family Code and the Law on the Rights of the Child clearly defining the priorities of placing children in alternative care and considering

institution as an ultimate resort. The administrative act made no mention of the reasons why placing the children in any other, more favourable family environment was not in their best interests and why the institution was considered as the preferable measure under such circumstances.

Surveys have shown that guardianship agencies and commission members lack relevant qualification and experience, guidance mechanisms

and methodological guidelines, such as guidelines, to determine the best interests of the child under certain circumstances, or the forms and questionnaires required by a guardianship committee member to make research. On January 31, 2017, the Minister of Labour and Social Affairs approved the “Methodological Guidelines for the Activities of the Guardianship and Trusteeship Commissions under the Guardianship and Trusteeship Bodies setting out guidelines for taking a number of actions in terms of children without parental care (WPC), e.g. their identification, registration, placement, guardianship and other functions of the TCAs. Nonetheless, while the guideline states that consideration and decision of any child-related issues must take into account the best interests of the child, it provides no methodological guidelines on how to determine such interest. While the Guardianship and Trusteeship Bodies are consulted, supported and informed of the public child protection policy, legal acts and documents by the Family, Women and Children’s Rights Protection Units of the RA Regional Administration Offices (marzpetaran),<sup>26</sup> at the same time a number of factors affecting the quality

of working activities of guardianship bodies should be taken into account; such agencies usually act within local government authorities on a voluntary basis, lack adequate resources and procedures and therefore the local authorities as a rule use their internal resources to set up such commissions and as a result, such commissions lack trained and qualified child protection specialists.<sup>27</sup>

While, as mentioned above, the civil courts, actively apply “the best interests of the child” principle in their rulings, examination of their judicial acts comes to show that judges do not apply systematically the principles of General Comment № 14; in other words, there is no uniform judicial practice on how to determine the best interests of the child under certain circumstances. Among others, this is caused by the absence of guiding documents or the so-called “soft laws”.

Hence, we consider the **Committee’s Recommendations not implemented, with some exceptions.**

## RECOMMENDATIONS:

- The “legitimate interests of the child” concept in the RA Law on the Rights

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26 Annex 1, Para 5, RA Government Decree N 631-N on Approving the Charter of the Guardianship and Trusteeship Bodies and Annuling RA Government Decree N 164-N of February 24, 2011 dated June 2, 2016.

27 In December 2017 the Human Rights Defender published an ad-hoc report on the Activities of the Guardianship and Trusteeship Bodies and Commissions. Available at: <http://www.ombuds.am/images/Final.pdf>

- of the Child and the RA Law on Social Protection of Children without Parental Care should be replaced with the “best interests of the child” concept and its underlying right;
- The RA Law on the Rights of the Child provides a **narrow definition** of the “best interests of the child” right **by limiting it only to family relations, particularly scope of legal relations of maintaining personal relations and direct contacts with parents.** The “best interests of the child” concept should be defined in a way that it may be applicable to all the relations within the interests of the child.
  - In the new Draft Civil Procedure Code, the “best interests of the child” concept should become applicable to any proceedings involving a child rather than only family disputes (Article 189) and adoption proceedings (Article 230).
  - In the proceedings conducted by the administrative and judicial authorities (civil, administrative or criminal) the “best interests of the child” principle should be applied with the elements covered in the Committee’s General Comment № 14 (Para 52-79). These elements of the General Comment should be covered in the full-time and distance learning juvenile justice curriculum programmes at the Police Academy and the School of

Advocates, as well as in the training courses for social workers, specialists in the field of education and healthcare.

- Methodological guidelines on the application of the “best interests of the child” principle in compliance with the guideline of the General Comment № 14 should be developed for the Guardianship and Trusteeship bodies.
- Ongoing trainings on the “best interests of the child” concept based on the General Comment № 14 should be held for the relevant staff members of the Guardianship and Trusteeship bodies and Family, Women and Children’s Rights Protection Units of the RA Regional Administration Offices, community social workers, case managers and family mediators.

### 3. THE RIGHT OF THE CHILD TO BE HEARD

The Committee notes that the right to be heard is included in a number of laws, but is concerned that children’s views are not taken into account on a regular basis in all matters that affect them. The Committee is also concerned that consent to medical intervention for children under the age of 18 is given only by the child’s representative. The Committee recommends taking

measures to strengthen application of the right of the child to be heard in line with its General Comment 12 to improve it in compliance with Article 12 of the Convention.

The Committee recommends as follows (Para 23):

- Take **legislative and policy** measures in order to promote and facilitate the respect for the views of the child within the **family, schools, care institutions** and **the courts** in all matters affecting him or her;
- Ensure that children's views are taken into account in cases of medical interventions as indicated in the Committee's General Comment No 15.

The studies showed that efficient steps were also been taken to incorporate the rights of the child to be heard in legislation; in this sense, constitutional amendments are noteworthy. Nevertheless, the key approach still persists stating that the right of the child to be heard is restricted to different age limits, and as a result, the Convention's requirement of respect for the child's view irrespective of age limit is not widely practiced yet.

## 1) RA CONSTITUTIONAL AND LEGISLATIVE AMENDMENTS TO RA, DEVELOPING LEGAL PRACTICES AND POLICY-MAKING

Both the “best interests of the child” concept, and the right of the child to be heard gained legal and constitutional status under Article 37 of the Constitution adopted in the referendum of December 6, 2015. According to the Part 1 thereof, *“A child shall have the right to freely express his or her opinion which, in accordance with the age and maturity of the child, shall be taken into consideration in matters concerning him or her.”* This provision directly arises from Article 12 of the Convention and the meaning of the said Article as laid down in Committee's General Comment N<sup>o</sup> 12.<sup>28</sup> In its SDO-919 (Uገገ-919) Ruling above, the Constitutional Court, in its turn, examined the constitutionality of the provision defining the right of the child to be heard under Article 53(3), Family Code in conjunction with the “best interests of the child” concept and decided that if by the court's assessment, the child's view was not in his/her interest, the court was under obligation to be guided by the interests of the child, that is to evaluate the child's opinion in the light of the other

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28 See Para 26-31, General Comment.

factors serving the interests of the child as mentioned in Article 53(3) of the Family Code. In other words, according to the Constitutional Court, the right of the child to be heard in family relations must be guaranteed in all cases, but the decision should be made by giving preference to the child's interests. This constitutional regulation is fully compliant with the subject and purpose of Articles 3 and 12 of the Convention on the Rights of the Child. Moreover, granting the child's right to be heard a legal and constitutional status contributes to its horizontal and vertical application both in law and in practice.

The interpretation of the right of the child to be heard in criminal justice as provided in the Constitutional Court's Ruling SDO-1333 (ՍԴԴ-1333) is quite noteworthy. By invoking Article 37 of the Constitution and Article 3 of the Convention, the Constitutional Court in fact *mutatis mutandis* stated that: *“in law enforcement practices the right of the child to be heard must not be conditioned by any age limit which does not arise from the requirements of Article 37 of the Constitution. Specifically, in the sense of criminal proceedings, the Court stated that the agency responsible for the proceedings is under obligation to ensure that the right of the child to be heard is exercise, regardless of his/her age, as well as take it into account and make*

*in a priority order a decision in the interest of the child.”*

**Consequently, all the legal provisions making the right of the child to be heard dependant on his/her age rather than maturity must be revised.**

The above interpretations of the Constitutional Court may have an essential contribution to respect for the right of the child to be heard in courts of law, as well as other environments, such family, schools and care institutions and setting up relevant legal and public practices. Nevertheless, age limits on the right of the child to be heard still persists in laws. Article 44 of the Family Code of the Republic of Armenia on the one hand defines the right of the child to be heard without any age limitation (Part 1), and on the other hand provides for certain age limitation, i.e. under 10, in certain circumstances (Part 2) *“related to the freedom of conscience, attending certain events, refusing extracurricular education, living with one of the parents, communicating with relatives and in other cases prescribed by law.”* Part 3 of the said Article also provides age limitations stating that *“in the cases provided for by the Code, the Guardianship and Trusteeship body or court of law may make decisions affecting the child aged **ten, only by his/ her consent.**”*

The same approach is also expressed

in Article 57 of the Family Code (Protection of Parental Rights); Part 1(2) thereof states as follows: *“Taking into account the opinion of a child aged **ten**, the court may deny the parents’ claim if it concludes that returning the child to the parents is **not in the child’s interests**.”* Moreover, the grounds for such limitations are sometimes worded in a broad and uncertain way (e.g. *“attending certain events”, “in other cases prescribed by law”, “as prescribed by the Code”*) which brings about an issue of legal uncertainty. Also, regulations of Articles 44 and 57 contradict Articles 3 and 12 of the Convention, defining the right of the child to express his/her views *“in all matters affecting the child”* (Article 12), and condition limitations not by age but the best interest of the child (Article 3(1) stating that *“In all actions concerning children ... the best interests of the child shall be a*

*primary consideration.*” Therefore, the Articles above should be reviewed and brought into compliance with Article 37 of the Constitution and Article 12 of the Convention by lifting age limits.

It is welcome that the RA Law on the Rights of the Child provides no age limits on the right of the child to be heard. Article 10(3) of the Law states that every child has the right to freely express his/her views, receive and impart ideas and information through any communication means.

Generally, the judicial practice of family cases has a developed practice of taking into account the views of the child. In such cases, the views of the child may be decisive for a judge to make a decision in the best interests of the child. Sometimes judges take proactive procedural measures to seek the true views of the child as in many cases close relatives guide children and affect their views.

### Situation 3

Following an application of a guardianship body, the General Jurisdiction Court of Arabkir and Kanaker-Zeytun administrative districts examined a case on restricting father’s parental rights to his 13-year-old daughter. Based on the data received from the Police and based on the information it collected, the guardianship body concluded that the child lived with her father in their private house in an unfavourable environment for the child. While there were no facts about violence used against the girl by her father, the latter, showed a generally suspicious behaviour, often used alcohol used to make parties in their house that were often accompanied by swear words and the house was in an anti-sanitary



situation. The Commission's Opinion mentioned that the girl repeatedly expressed her wish to live with her father and that he treats her well. The girl said the same in the courtroom in response to the judge's question of whether she wanted to live with her father at their home. But the judge noticed in the girl's behaviour lack of the sincerity typical of her age. The judge told everyone to leave the courtroom and then told A. that their conversation would remain secret, only he, she and the court clerk "auntie" would know about it. Then the judge asked the girl to tell him if everything is fine with her and whether her father did not hurt her. At that moment, the girl started to cry and said: *"You all say so, but later dad learns about it and punishes me."* The judge's honest talk inspired confidence into the child and she told the whole truth. By creating a favourable environment and possibility for the child to express her views freely, the judge got valuable information and evidence and made a decision in the best interests of the child. The judge ruled to restrict the father's parental rights and temporarily place the child in the Armenian Relief Fund (FAR) Children Centre.

The Draft Civil Procedure Code of the Republic of Armenia for the first time in civil procedure defines the right of the child to be heard. Article 3 of the Draft provides the grounds for procedural capacity and competence in civil proceedings. According to that provision, in cases prescribed for by law, minors may represent their interests in a court of law, and in cases prescribed by law they have the right to be heard on matters affecting their interests during the proceedings. While it is welcomed that the right of the child to be heard is clearly defined in the general part of the Draft as a fundamental principle of the proceedings, on the other hand, it raises concern that this

right is envisaged to be granted and consequently to be limited as and when prescribed by "law". Such an approach contradicts Article 12 of the Convention stating that the right to be heard must be ensured *"in all the matters affecting the child"* (Part 1) and for this purpose, *"the child shall be provided the opportunity to be heard in any judicial ... proceedings ... either directly, or through a representative or an appropriate body"* (Part 2).

The Family Code of the Republic of Armenia (Article 5) has expanded the right of the child to express his/her own opinion and take into account the views of a child under ten as well in accordance with his/her age and

maturity. The Draft suggests amending and supplementing Article 44 of the Code with the wording below: “1.1. *The child shall have the right to feely express his/her views that shall be taken into account in the matters affecting him/her in accordance with his/her age and maturity. When hearing a child’s view, the competent agency shall involve a child psychologist or educator as well as a social worker.*” A similar amendment has also been proposed to the draft new Criminal Procedure Code suggesting that juvenile accused should be questioned in the presence of not only educator, as it is done now, but a psychologist as well.

**Taking into account the above, we find that considerable part of the Committee’s recommendations has been implemented.**

## RECOMMENDATIONS:

- Within the law enforcement practices, administrative proceedings, criminal, civil or administrative procedures, the persons responsible for enforcement of laws should be guided by the legal position expressed in the Constitutional Court’s Ruling SDO-1333 (УҒН-1333) stating that in such practices one should not attempt to condition the right of the child to be heard by any age limits.
- The same approach should be taken in making any other decisions affecting the interests of children in any other environment, namely family, school and care facilities. An extensive awareness campaign on this Conventional principle should be carried out in the facilities above.
- The age limit of the right of the child to be heard as defined in Article 44(2) and Article 57 should be removed from the RA Family Code. In this sense, Article 10 of the Law on the Rights of the Child is notable as its definition of the child’s right to be heard is not restricted by any age limit.
- The Conventional principles on the rights of the child to be heard and taking their views into account should be included in the juvenile justice curriculum at the Academy of Justice and relevant curriculum of the Chamber of Advocates.
- Awareness campaigns on the right of the child to be heard and its conventional interpretation should be held for the staff members of the Guardianship and Trusteeship bodies and commissions in the communities as well as the Family, Women and Children’s Rights Protection Units of the RA Regional Administration Offices and educators, psychologists, social workers and case managers.

## 2) CHILD'S RIGHT TO BE HEARD IN CASES OF MEDICAL INTERVENTIONS

The Committee has expressed concern that in cases of medical interventions to children under 18, it is only the child's legitimate representative who must give consent; that is, the right of the child under 18 to be heard is not respected. This regulation is set out in Article 8, RA Law on Medical Care and Services to the Population. The Committee has recommended ensuring that the child is given the opportunity to express his/her views in case of medical intervention as set out in Committee's General Comment No. 15 (CRC/C/GC/15).

**This recommendation of the Committee has not been implemented.** As of the date of preparing the Report, Article 8 of the RA Law on Medical Care and Services to the Population is still effective.

## RECOMMENDATIONS:

- The legislators shall remove from Article 8, RA Law on Medical Care and Services age limit, according to which in cases of medical interventions to children under 18, it is only the child's legitimate representative who must give consent.
- A similar amendment and supplement should be made to the RA Law on Advocacy to envisage the right of a child to receive legal advice/counselling without parents' consent, e.g. in cases when the child has suffered domestic violence. Currently, such a right is envisaged only for children without parental care or for other persons considered as such.

## C. VIOLENCE AGAINST CHILDREN

### (ARTICLES 19, 37(A) AND 39 OF THE CONVENTION)

#### 1. ILL-TREATMENT AND CORPORAL PUNISHMENT

The Committee is concerned at the information that children in closed and partially closed institutions, in particular in Vanadzor Children's Home and at the Vanadzor Care and Protection Centre (Boarding school No 1) are subjected to ill-treatment and violence. It is also concerned that although both the Family Code and the Rights of the Child Act of 1996 have provisions against corporal punishment, there is a lack of enforcement mechanisms and the Armenian legislation does not provide sanctions in cases of violation.

The Committee recommends as follows (Para 25):

- Take urgent measures in closed and partially closed institutions, in particular in Vanadzor Children's Home and at the Vanadzor Care and Protection Centre (Boarding school No 1) to investigate the individual cases of violence as well as prosecute and punish perpetrators.

During its visit to 'Pokr Mher' Educational Complex in 2016, the staff of the Human Rights Defender's Office

got information that the administration used to insult the students and threaten them to issue negative references.

Besides, in their private interviews, the students of the educational complex also confirmed that they were slapped for disciplinary offences.

According to the RA MLSA clarification, from 2013 to June 1, 2017 there were 2 cases of violence against children at the institutions. Particularly, in 2014 cases of violence used against children in Byureghavan Child Care and Protection Boarding Institution SNCO were identified. In this regard, criminal proceedings were initiated for the following: during the line-ups of the students initiated by a staff member of the SNCO at the institution and at the other stages of the educational process in 2010-2014, he regularly used violence with a common criminal intent and on various pretexts against more than a dozen of students of the institution described by him as "disruptive" and by doing so, deliberately caused them intense mental suffering.

In the second case, in May 2016, a case of violence used a child was

identified in Kapan children's care and protection boarding institution, but no criminal proceedings were initiated for lack of corpus delicti.

The fairly low rate above is likely to be conditioned at least by the factors below:

1. *Peculiarities of awareness and perception of violence.* the findings of the survey in this sector (carried out through 5 focus groups among educators) suggest that unlike educators in Yerevan, educators in the regions (marzes) are not inclined to consider violence a number of violent acts they do (dragging students' ears, intimidating them through corporal punishment, etc.). Moreover, they consider such definitions to be imposed on our society from abroad and to be contradicting our national mentality. Many of them note that the traditional education and upbringing methods with their punishment system are much more effective than the methods imposed today on the educators.

In this sense, both identifying such cases and the low rate of legal response may be caused by the very perception of violence as such and the indifference to such cases.

2. *The MLSA Monitoring Department lacks both a tool to identify and monitor especially cases of violence,*

*and a clear frequency of applying such a tool.*

3. The databases of both the MLSA, and the National Statistical Service *lack any violence rates, statistics and analyses of such identified cases.*

By its Protocol Decree № 51 of December 4, 2014, the RA Government approved the Concept on Combating Violence against Children in Armenia and the List of Actions of the Concept on Combating Violence against Children in Armenia. The Concept on Combating Violence against Children in Armenia was developed based on the provisions of Article 9, Republic of Armenia Law on the Rights of the Child. The Concept aims to facilitate fulfillment of the commitments Armenia undertook under the UN Convention on the Rights of the Child and the ILO Conventions on the Worst Forms of Child Labour, the Revised European Social Charter and other international treaties of the Republic of Armenia. The Concept is aimed at setting the main directions of the public policy to reduce and prevent violence against children and rehabilitation of children who survived violence and the persons who used violence against them.

The RA Law on Identification and Assistance to Victims of Human Trafficking and Exploitation was adopted on December 17, 2014 and

took effect on June 6, 2015. The definition of trafficking in human beings or exploitation as provided in the Law also includes the recruitment, transportation, transfer, harboring or reception, for the purpose of exploitation of children or persons, who, as a result of mental disorder, are devoid of the ability to fully or partially realize the nature and significance of their acts or to direct these, as well as the exploitation of such persons or putting them into or keeping in a state of exploitation.

RA Government Decree № 1324-Ն of August 5, 2004 provides the adequate child protection standards for child care and protection institutions; accordingly, child care and protection institutions in the Republic of Armenia shall in a manner prescribed by law ensure protection of the children from psychological and physical violence, including sexual exploitation and perversion, ill-treatment, labour exploitation, crimes, neglect and injustice, health-threatening substance and life-threatening conditions.

To prevent domestic violence, on December 17, 2014 the RA National Assembly adopted the RA Law on Social Assistance defining the term “domestic violence”; accordingly, domestic violence shall mean use of physical or sexual or psychological violent actions (violence) by one family

member against another, including a child, or depriving them of economic means. The Law also regulates the relations within social support provision to victims of domestic violence, including children. In 2015, a number of documents ensuring enforcement of the Law were adopted, particularly:

- On September 10, 2015, the RA Government Decree № 1069-N on Determining the List of the Socially Disadvantaged Persons and Persons Ranged into Special Groups Eligible for Housing and the Procedure and Conditions for Provision of Housing was adopted to regulate the relations within provision of accommodation (in form of temporary shelter) to domestic violence survivors, including children as well as relations within settling their social problems.
- On October 20, 2015, the Decree of the RA Minister of Labour and Social Affairs № 144-A/1 on Approving the Criteria for Pre-identification of Domestic Violence Survivors was approved and on December 10, 2015, the Decree of the RA Minister of Labour and Social Affairs № 177-A/1 on Approving Guidance for Domestic Violence Survivors was approved. These documents regulate the process of identifying, guiding and providing social services to domestic violence survivors and provide the agencies responsible

for such identification with relevant methodology.

- On September 10, 2015, the RA Government Decree № 1044-N on Establishing the Interagency Social Partnership Regulation was also approved to regulate the relations between the parties to cooperation within social assistance provision as well as the relations within the rights and responsibilities of the parties in frames of the cooperation, forms and procedures of interdepartmental cooperation, requirements on the volume, terms and form of the information exchanged between the cooperating parties, problematic cases that may indicate that a person is in a difficult life situation or faces such a risk, and relations within monitoring and evaluation procedure. Nevertheless, both the Armenian legislation, and the law enforcement practices have a number of challenges making it impossible to fully protect the child from violence. One of such challenges concerns the types of responsibility and sanctions imposed by the RA Criminal Code in cases of using violence against a child especially by a parent (or a person substituting him/her), that, as a rule, do not always ensure fulfillment of the purpose of punishment and especially the child's further protection in the same family (e.g. if a parent uses physical violence,

he/she is fined as a sanction and the child continues to live with the same parent in the same apartment).

Today, the problem is becoming even more relevant given the scarcity and/or absence of community-based institutions to provide comprehensive services to children and families in our country.

While giving a positive assessment to the fact that criminal proceedings were initiated based on the reports on the cases of beating children and courts issued guilty verdicts, it should be noted that imposition and enforcement of fines as a punishment for beating do not ensure the effective intervention of the state to reduce or eliminate either the social issues of the family, or the psychological implications of violence against a child. Particularly, the judgments fail to provide for any actions necessary to ensure prevention of violence in the family, rehabilitation services for the child victims of violence and correct the behavior of the persons using violence. Moreover, such judgments impose financial liabilities for families that are already in a vulnerable state by further aggravating the current tensions and crisis. In such situations, even multiplication or reduction of the fine amount may not be considered an effective sanction as on the one hand, such a nature of the judgment has a negative impact



on the members of the vulnerable family and particularly on the child, and on the other, it is unable to prevent recurrence of violence. In such cases, both violence survivors, and perpetrators should receive compulsory professional rehabilitation services.

In this regard, the Child Protection Index 2016 by the RA Child Protection Network also shows that the Republic of Armenia takes limited actions to ensure prevention, early detection and reporting of cases of violence against children.

The Armenia Demographic and Health Survey dating back to 2010 suggests that physical violence is used in our country as a method of upbringing against about 40% of children aged 2-14. The data of the same survey for 2015-2016 come to prove that 6% of women aged 15-49 have ever suffered physical violence since the age of 15 and 3% have suffered violence in the past 12 months. At the same time, 1% of women aged 15-49 have ever suffered sexual abuse, and less than 1% have suffered such abuse in the past 12 months.

By its Decree of November 13, 2017, the Government of the Republic of Armenia approved the RA Government legislative initiative on the package of draft Laws of the Republic of Armenia on the Prevention of Domestic Violence, Protection of Domestic

Violence Survivors and Restoration of Family Cohesion and Making Amendments to Other Related Laws. No later than on December 13, 2017, the National Assembly adopted the draft Law in second reading.

Yet, it should be stated that full enforcement of the Law requires adopting a number of statutory legal acts. Furthermore, given that the relevant police unit is granted a number of powers, including the competence to apply protection measures, its staff members need comprehensive and regular training and specialization. At the same time, the Law has not been implemented yet, so it appears difficult to assess its effectiveness in reducing and preventing violence against children.

## RECOMMENDATIONS:

- In compliance with the commitments under the UN Convention on the Rights of the Child, mechanisms to prevent violence against children and rehabilitation services should be envisaged and improved, the RA legislation should provide for compulsory provision of such services to perpetrators and victims of violence;
- Prohibit the use of physical punishment in any situation and provide in legislation enforcement

mechanisms, such as relevant sanctions, including sanctions for violations.

## **2. FREEDOM OF THE CHILD FROM ALL FORMS OF VIOLENCE**

Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299) and invoking General Comment No. 13,

The Committee recommends as follows (Para 26):

- Develop a comprehensive national strategy to prevent and address all forms of violence against children;
- Adopt a national coordinating framework to address all forms of violence against children;
- Adopt legislation to explicitly prohibit all forms of violence against children in all settings; pay particular attention to the gender dimension of violence.

As mentioned above, by its Protocol Decree № 51, back on December 4, 2014 the RA Government approved the Concept on Combating Violence against Children in Armenia. At the same time, it should be noted that in 2016-2017, the RA Government adopted other legal acts and regulations in relation to child protection which to some extent highlight the safeguards to keep children free from violence. Those legal acts are:

- Protocol Decision № 38 of September 29, 2016 on Approving the Annual Program for Children's Rights Protection for 2017 and its Action Plan;
- Protocol Decision № 551-N of May 26, 2016 on Approving the Guidance and Standards for Provision of Alternative Care Services to Children in Difficult Live Situations and Making Changes and Amendments to the RA Government Decree № 1112-N of September 25, 2015;
- Protocol Decision № 9 of March 10, 2016 on Approving the Concept on Reforming the Procedure for Placing under Care Children in Difficult Live Situations;
- Protocol Decree № 18 of May 12, 2016 on Approving the Concept for Developing Alternative Care Service System for Children in Difficult Life Situations in Armenia;
- Protocol Decision № 34 of September 2, 2016 on Approving the Strategy for Children and Adolescent Health Improvement and its Action Plan for 2016-2020;
- RA Government Decree № 381-N of April 2, 2015 on Renaming the Yerevan Child Care and Protection Boarding Institution N2 of the RA MLSA State Non-Commercial Organization and Making Amendment of the RA Government Decree № 890-N of July 26, 2007;

- On July 13, 2017 the RA Government approved the Protocol Decree № 30 on Approving the Strategic Program for the Protection of Children's Rights in Armenia for 2017-2021 and the Action Plan of the Strategic Program for the Protection of Children's Rights in Armenia for 2017-2021;
- On September 28, 2017, the RA Government approved the Protocol Decree № 41 on Approving the Annual Program for Children's Rights Protection for 2018 and its Action Plan.

Along with the above, it should be mentioned that the circulated Draft RA Law on the Rights of the Child envisages in a comprehensive manner the right of the child to protection from violence as well as clear definitions and characteristics of the types of violence against children.

And despite the numerous adopted legal acts and regulations, it should be noted that the efforts to eliminate all forms of violence against children are still slow and not always effective. This was also stated back in 2015 within the Child Protection Index emphasizing on

the one hand the success of the State in setting up relevant commissions, passing legal acts and developing governance mechanisms, and on the other hand - the challenges still persisting in detecting and assessing violence against children on the community level and providing timely and targeted intervention. The situation at educational institutions can be brought as an example. According to surveys, measures taken by teachers towards disobedient students vary from explanatory conversations to psychological pressure, humiliating punishments such as standing in the corner, sweeping, isolation, slaps, hitting, hustling or beating. Physical force is considered as the most ineffective measure. However, considering that complaints are generally considered shameful, slaps and humiliating punishments sometimes turn out efficient and acceptable. Cases of physical abuse among high school students are widespread both in Yerevan and in the regions, and there is a trend for increase in clashes and fights, including fights with the use of cold weapons.

## RECOMMENDATIONS:

- Develop a national support guideline or a uniform guide for child violence survivors to guide both the public authorized agencies (RA Ministry of Labour and Social Affairs, RA Ministry of Education and Science, RA Ministry of Health, RA Police, etc.), and child protection NGOs;
- Develop guidelines/guiding principles for effective detection of violence cases and proper reporting and investigation of such cases;
- Develop a clear guaranteed legal and practical reporting and protection procedures for children so that they can report in person the violence used against them;
- Set legal criteria to assess the likelihood that children are free from violence in foster as well as guardian and adoptive families. Provide special trainings for representatives of governmental and non-governmental organizations responsible;
- In terms of statistical data collection, add an administrative register to ensure collection of the data of child violence survivors with maximum detailed indicators (gender, age, subject of violence, place of violence, type of violence, disability and its type, etc.).

## 3. HARMFUL PRACTICES

The Committee notes with concern that girls in the Yezidi community are often married before the legal age of marriage in a traditional ceremony.

The Committee recommends as follows (Para 28):

- fully enforce the age of marriage set out in law for all forms of marriage;
- develop and undertake comprehensive awareness-raising programs on the negative implications of early marriage for the girl child's rights to health, education and development, targeting in particular parents and community leaders.

In the Republic of Armenia, legal regulation on marriage, as well as the procedure and conditions for registration of marriage are laid down in the RA Constitution and RA Family Code. Hence, according to Article 34, RA Constitution, a woman and a man having attained the marriageable age shall have the right to marry and form a family with free expression of their will. The marriageable age and the procedure for marriage and divorce shall be prescribed by law. According to Article 10, RA Family Code, entering into marriage requires the mutual voluntary consent of a man and a woman and attaining the marital age, except for the cases stated in Part 2

of the Article. A person may also get married at the age of 17 by consent of his/her parents, adoptive parents or guardians. A person may also get married at the age of 16 by consent of his/her parents, adoptive parents or guardians and if the other spouse has attained at least the age of 18.

As for marriages of the female representatives of the Yezidi community, while based on certain socio-ethnic peculiarities, such cases may be found, they are latent in nature, mostly in factual marital relations, without registration with the Civil Acts Registration Service, as defined by the RA legislation. Nevertheless, the regulations of the RA legislation are also applied in formal terms to girls from Yezidi community.

## **RECOMMENDATIONS:**

- Carry out large-scale and accessible awareness campaigns and actions on the requirements of the RA legislation and peculiarities of their enforcement targeting representatives of various socio-ethnic communities or groups;
- To prevent early marriages among adolescents, hold awareness-raising and professional trainings for school students and teaching staff.

## **D. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

**(ARTICLES 5, 18 (PARAS. 1-2), 9-11, 19-21, 25, 27  
(PARA. 4) AND 39 OF THE CONVENTION)**

### **1. FAMILY ENVIRONMENT AND CHILDREN DEPRIVED OF A FAMILY ENVIRONMENT**

The Committee welcomes the three-tier child protection system established on national, regional and local levels, but is concerned that child protection at the local level seems to be carried out to a large extent by volunteers without necessary qualifications and training. The Committee is also concerned that due to economic hardships and inability to cover the costs associated with schooling or the basic needs of children, some families are forced to enrol their children in boarding schools and children's homes.

The Committee recommended as follows (Para 30):

- Take measures to involve in child protection at the local level professionals with experience of working with children;
- Strengthen support to families in situations of vulnerability, in particular, families living in extreme poverty through systematic, long-term policies and programs to ensure access to social services and sustainable income opportunities;
- Prohibit placement of children in care institutions for financial reasons only and use placement only as a last resort in accordance with UN Guidelines for the Alternative Care of Children adopted on 20 November 2009;
- Ensure sufficient alternative family and community based care options for children deprived of family environment;
- Increase support to families in vulnerable situations with universal and targeted services by strengthening their parenting skills, and including them in social assistance programs;
- Ensure that placement in institutional care is used only as a last resort and that adequate safeguards and clear needs-based and best interests of the child criteria are used for determining whether a child should be placed in institutional care; and provide maximum support to the

children who leave care institutions in finding study and/or work opportunities and provide them with adequate accommodation.

As for the situation of discrimination against children from disadvantaged families, children living in rural areas and children in the street and children living in institutions, the National Institute of Labour and Social Research, RA MLSA conducted trainings on the topics below: Social Inclusion of Children with Disabilities, Prevention of Discrimination against Children and Issues of Begging and Vagrancy among Minors attended by professionals from around-the-clock childcare facilities and child day-care facilities as well as from the stakeholder agencies and international and non-governmental organizations offering child protection social services.

In recent years, one of the social protection reforms has been the introduction of integrated social services and social workers' institute aimed at providing targeted support to families, special social groups and individuals in difficult life situations, based on their needs and in the framework of case management. The implemented policy is also accompanied by reforms in the employment sector to provide employment, self-reliance, way-out from the passive social situation and opportunity of full and independent operation in the labour market.

Improving the welfare system to provide higher family living standards ranges among the social assistance programs and aims to assist in improving the living standards of disadvantaged families or preventing its decrease. Such benefits are assigned based on the family vulnerability assessment system as defined by the RA legislation. According to the official information provided by the RA MLSA within this study, the program covers about 14% of the population, including about 24% for children.

To create real opportunities of self-sustainable income generation for socially disadvantaged families and to discourage to the maximum extent the current aspirations for the welfares from the state, the family vulnerability assessment procedure was revised. The new procedure covered to the extent possible assessment of the job market behaviour of economically active persons to promote their desire to engage in work activities. Also, the very fact of presence of a child in a family gained more weight in the vulnerability assessment of families with children as such families are considered more vulnerable to poverty risks.

According to the data provided by the RA MLSA, as of December 2017, the around-the-clock population social protection institutions reporting to the Ministry provide care to 1044 children, including, 632 children in children's



homes, 412 children in boarding schools; including 379 children with at least 1 parent: 222 children in the children's home and 157 children in the boarding school.

The RA Government Decree № 551-N of May 26, 2016 defines the principles and criteria for providing alternative care to children in difficult life situations, including children with disabilities and regulates the relations on guidance for alternative care provision. Below are the principles underlying guidance for child care provision through any type of alternative care:

- Priority of the efforts to ensure a child's care in his/her biological family, viewing alternative care provision as a necessary but imposed measure in the given period of time and placing the child in the population social protection institutions of general or special (specialized) type or boarding care feasibilities for a short term as a last resort only;
- Ensure alternative care based on the child's individual needs and best interests, including the right of the child to be heard;
- Regular monitoring of the alternative child care and ongoing evaluation of the efficiency of the care method selected based on such monitoring by ensuring the right of the child to be heard;
- Exclusion any alternative types of childcare and/or institution care options for financial reasons and/or unfavourable economic situation only;
- Flexibility of decisions on alternative childcare provision that means that such decisions must be reviewed regularly if the main reasons for choosing the particular alternative care type for the child have changed or removed.

The guidance for child care through any type of alternative care is based on the criteria below:

- When making alternative care decisions, taking into account the views of children above 10 as and when prescribed by the RA Family Code and in case of children under 10, take into account their maturity level;
- Involve in the alternative care decision-making social workers, psychologists, social and special educators, lawyers and other specialists engaged in child issues;
- If it appears necessary to remove a child from his/her biological family, ensure the care of children aged 0-3 in substitute families or through any other family-type care;
- In case of separating a child from his/her biological family for unfavourable socio-economic conditions only, the duration of alternative care provision must not exceed 6 months;
- Annual monitoring of the state of the

children placed in boarding childcare facilities as well as population social protection institutions of general and special (specialized) type to assess the possibilities of providing such children with care in substitute families or another alternative family-type care.

- Ensuring alternative child care as close as possible to their community of origin (except for cases of adoption and/or placement under care of relatives to guardians).

In 2008, the Republic of Armenia introduced the foster family institute, one of the alternative forms of child care and protection. 75 children without parental care, including 5 children with disabilities were placed for care in foster families; some of such children were discharged as they reached the age of 18 or reunited with their biological families as of December 21, 2017, 25 children are placed for care in 21 foster families. To ensure essential and systematic progress in this aspect, the Government of the Republic of Armenia approved by its Protocol Decree № 9 of March 10, 2016 the Concept on Reforming the Procedure for Placing under Guardianship Children in Difficult Life Situations.

The RA MLSA submitted recommendation to the RA Ministry of Finance to reduce the funds provided for the Boarding Child Care Services Program as envisaged under the RA

State Budget 2018 to add it to the funds under the Child and Family Support Program.

The choice of the type of care for WPC children is regulated by a number of legal acts. In particular, the RA Family Code defines the protection of the rights of children and the types and priorities of the care selected for them. Hence, Article 111 of the said Code provides that children without parental care shall be placed in **family (adoption)**, under guardianship or in a foster care and if there is no such possibility, they shall be placed in all the other types childcare facilities for children without parental care (educational, medical, population social protection institutions and similar facilities). Other legal acts define the procedures for selecting specific care types.

The RA Government Decree № 1112-N of September 25, 2015 regulates, among others, **adoption of children in population social protection institutions of general and special (specialized) type**.

The RA Government Decree № 459-N of May 8, 2008 regulates, among others, the procedure for placing a child in a foster family and other issues.

Oftentimes, children are placed in institutions on the initiative of their biological parents. For instance, parents temporarily refuse to take care of their child because his/her disability,

social vulnerability of the family as well as migrant work or other reasons; as a result, the child is placed in an institution.

To make the essence of the problem more comprehensible, it is essential first of all to address the legal regulation of abandoning by a parent their child.

Abandoning of their children by parents is regulated by adoption relations. According to Article 118, RA Family Code, a child may be adopted based on his/her parents' written consent. The parents' consent to adoption of their child must be expressed in a notarized application or an application certified by the head of the institution where the child without parental care is placed; parents also may express their consent directly during the adoption proceedings in the courtroom.

Parents may withdraw their consent to adoption of their child by the time the court judgment on his/her adoption takes legal effect. Parents may give consent for adopting their child only after he/she is born.

In this context, Para 16(g), Annex to the RA Government Decree No 1112-N of September 25, 2015 provides that the Guardianship and Trusteeship body shall, among other documents, submit to the Regional Administration Office (marzpetaran) of the Republic of

Armenia (and to Yerevan Municipality in Yerevan city) **the parents' written statement on voluntarily waiving their parental rights and in case of adoption, the written statement of the parents (or the only parent) certified by a notary public.**

Sometimes the care offered by care institutions (food, clothes, bedding, etc.) is often much more preferable than the care provided by parents. Therefore, tempted by the perspective of providing their child with possibly better household conditions, parents waive their parental rights in the presence of a notary public to meet the formal legal requirements, so that their child's WPC status is changed and he/she is eligible to be placed in some care institution. The following practice is also prevalent: the parent does not abandon the child, but the child finds himself/herself in institutions as a child in difficult life situation, as a result of which s/he cannot be adopted, or be placed in a foster family. The parent visits once in six months, thus hindering clarification in the child's condition.

At the same time, the practice has shown that children given the same legal status actually are in very different situations but are all given the WPC status since the law does not stipulate otherwise. Particularly, this concerns the cases when parents do not actually

evade care and upbringing of their child but are unable to provide such care due to social conditions, heavy workload, or for other reasons, and due to the lack of any alternative status and relevant procedures and services, in such cases children are declared WPC and in most cases referred to care institutions.

To sum up the aforesaid, it can be stated that parent's consent may not result also in temporary placement of their child in population social protection institutions of general or special (specialized) type.

The above does not apply to the cases when detected children are temporarily placed in such institutions as prescribed by the RA legislation. For instance, Paragraph 14 of Annex I to the Government Decree № 1112-N of 25 September 2015 stating that in case of identifying a WPC child, the CGB shall, along with other urgent measures, ensure his/her temporary (for a certain period of time) accommodation (including at the relevant population social protection institutions or other round-the-clock full-time care institutions) by **final settlement of the child's placement**.

Article 58 of the RA Family Code provides as follows:

“1. In case of any direct threat to the health and life of a child, the Guardianship and Trusteeship body shall be competent to immediately

take the child from the parents (one of them) or the persons under whose care the child is placed.

2. When removing the child from the family, the Guardianship and Trusteeship body shall be under obligation to **urgently provide the child with temporary accommodation** and bring a claim before a court of law within seven days to deprive the child's parents (one of them) of parental rights or terminate their parental rights.”

Perhaps, it can be considered a positive step that by his Decree № 54-N of May 3, 2016, the Minister of Labour and Social Affairs of the Republic of Armenia approved the form of the opinion on child care provision to be submitted to the MLSA, with a special clause on the expediency of providing childcare of a particular type, and for opinions on placing a child in population social protection institutions – also another clause on providing grounds for impossibility to provide alternative care. Moreover, by its Protocol Decree № 18 of May 12, 2016, the RA Government approved the Concept for Developing Alternative Care Service System for Children in Difficult Life Situations in Armenia aimed at facilitating fulfilment by Armenia of its commitments under the United Nations Convention on the Rights of the Child, the Revised European Social Charter and other

international treaties and excluding removal of a child from their family for financial reasons only.

The Concept envisages taking measures to develop alternative care services (adoption, guardianship and trusteeship, fostering, children's village, child support centre, child medical and social rehabilitation centre) based on the international practices of applying a number of family-based forms of childcare for children in difficult life situations.

However, despite a number of legal regulations in place, in practice, the situation is as follows: a WPC child is identified, the parent does not fully waive their rights and therefore adoption becomes impossible, the foster parent institute is still new and has to undergo some development and be perceived by both the responsible authorities, and the public at large, i.e. citizens (moreover, the annual financing of 25 families as of the date of the Report is unable to address the demand of the children in need for alternative care), the child is not initially placed in an institution in case of available potential guardians, and therefore, the authorities are often have to decide in favour of the institution if the child is already there.

As for returning the child to his/her family from the institution, here again, some problems arise both in terms of legal regulations and t practice.

The RA Government Decree № 1112-N of September 25, 2015 also approved the **procedure for discharging a child from population social protection institutions of general and special (specialized) type; accordingly**, a child under 18 may be discharged from population social protection institutions:

- 1) if he/she is returned to his/her biological family;
- 2) if he/she is adopted;
- 3) if he/she is moved to another population social protection institutions or round-the-clock care facilities or
- 4) if he/she is moved to a foster family or
- 5) if he/she is placed in the family of another person assigned his/her guardian or custodian, or
- 6) in other cases under the Republic of Armenia legislation.

According to Para 63 of the above Procedure, "a child living (placed for care) at a population social protection institution shall be returned to his/her biological family upon the written application of the child's parents (parent) or other adult family member and the opinion issued by the Family, Women and Children's Rights Protection Unit of the RA Regional Administration Office (in case of Yerevan city: Yerevan Municipality) of the place of residence of the family based on a relevant study, with 1 copy of the above documents submitted also to the

competent public authority and the local Guardianship and Trusteeship body in the place of residence of the family.” It follows that discharge of a child from such institutions requires that the grounds below are available at a time:

1. an application of the child’s parents (parent) or other adult family member;
2. opinion issued by the Family, Women and Children’s Rights Protection Unit of the RA

Regional Administration Office (in case of Yerevan city: Yerevan Municipality) of the place of residence of the family based on a relevant study

Paragraph 8(25), Model Charter of the Family, Women and Children’s Rights Protection Unit of the RA Regional Administration Office approved by the Joint Decree the RA Minister of Territorial Administration and Emergency Situations and the RA Minister of Labour and Social Affairs states that in upon an application of the parents (parent) or other adult family member of a child living (placed for care) at a population social protection institution on returning him/her to his/her biological family, the Unit shall issue a relevant opinion (positive or negative) based on a relevant study by submitting one copy of it also to the Ministry and the local Guardianship and Trusteeship Body of the place of

residence of the family.

**Annex 4 to the Decree of the RA Minister of Labour and Social Affairs No 54-N of May 3, 2016 approved the form of the opinion issued for returning a child to his/her biological family from a population social protection institution.**

Based on the review of the above form, it is noteworthy that there are no deadlines for conducting the study and issuing an opinion. The review of the approved opinion form does not clearly identify the option for making a negative opinion, though such an option is provided for. The criteria for issuing an opinion are missing, too.

The invoked legal acts make it obvious that a child is returned to his/her family, if a positive opinion is issued (presumably, at the moment of issuing the opinion, the grounds for separating the child from his/her parents, i.e. restricting parental rights, deprivation of parental rights, etc., have been removed), but issuing a negative opinion may give rise to a number of issues that again lead to clashes between the legal grounds and procedures for separating a child from his/her parents as mentioned in the previous paragraphs.

Since a negative opinion also requires establishing at least restriction on parental rights and this process may not be limited to merely issuing a

negative opinion, it is necessary to set forth the parent's competence to challenge a negative opinion and a challenge procedure. This also needs to be regulated.

## RECOMMENDATIONS:

- Set by law the grounds for ensuring a child's temporary care outside the family, taking into account the practice in place and the necessity of such measure;
- Differentiate the status of such children from that of WPC children;
- Develop alternative services along with ensuring that such children are returned to their family by creating or enhancing possibilities for the child to live in his/her family;
- Review the need for parent's consent for placing the child in temporary care;
- Review the distribution of functions to assess the situation of a WPC child, make studies and needs assessment and clarify the rights and responsibilities of each body, excluding possible overlaps and uncertainties;
- Review the monitoring toolkit used by the MLSA to exclude that the child's temporary stay in an institution exceeds the reasonable term.

## 2. ADOPTION

The Committee welcomed 2010 amendments of the adoption procedure of the Family Code and ratification of The Hague Convention No 33 on Protection of Children and Co-operation in Respect of Inter-country Adoption. However, it is concerned about the shortcomings in their implementation. The Committee is particularly concerned that:

- 1) Monitoring and review of the adoption process are not centralized and are carried out at regional (marz) level by the Family, Women and Child Protection Units, while the decisions are taken by local courts.
- 2) Criteria for selection of adoptive parents are too formal and are based on material conditions of potential parents and not on the parenting skills.
- 3) The respect for privacy of parties involved in the adoption process is used to justify restrictions on monitoring the adoption process.

The Committee recommends as follows (Para 34):

- establish effective mechanisms to implement The Hague Convention No. 33 and the Adoption Act of 2010, in particular:
- Create a centralized system for review of the adoption process;
- Establish clear criteria and

procedures for selection of adoptive parents based not only on the material conditions, but also on other conditions that enable the child to grow up in a healthy and sound environment with responsible parents;

- Provide training and support services for adoptive parents before and following the adoption and establish a system of monitoring each step of the adoption process by an independent body.

### **1) CENTRALIZED SYSTEM FOR REVIEW OF THE ADOPTION PROCESS AND CLEAR CRITERIA FOR SELECTION OF ADOPTIVE PARENTS**

The RA legislation does not provide for any centralized system for review of the adoption process. The Committee is concerned that decisions on confirmation and monitoring of the adoption process are made at regional (marz) level (by family, women and child protection agencies), while the decisions are taken by local general jurisdiction courts. It is recommended to set up a unified system for making and annulling such decisions.

The study of the current situation suggests that the competent policy-making authorities decided to take another path by developing a number

of safeguard systems against violations as well as improving the grounds for selecting adoptive parents. Particularly, the Amendments to the Family Code adopted in December 2017 reformed the institute of adoption. Hence, all the decisions on the care and upbringing of children without parental care are based on securing the best interests of the child and multidisciplinary assessment of his/her needs and must meet the 2 main goals below:

- 1) Provide children without parental care with care and upbringing in family environment and, if impossible, in an environment closest to it;
- 2) Secure necessary conditions for providing them with education, care and upbringing, including social and medical care and services, taking into account the provisions of the RA Law on Social Protection of Children without Parental Care.

The amendment to the Code provides a new definition of the term adoption. Accordingly, adoption is defined as **a judicial act by which the adoptee acquires family ties equivalent to biological ties and as a result of which adopter and adoptee acquire the rights and duties prescribed for parents and children by law. Adoption is based on the best interests of the child, on the basis of comparability of the adopter and adoptee.**



Adoption of a child with a central nervous system, organic and functional disorders, congenital or acquired mental and physical problems is permitted if the adopter possesses the possibility to provide the child with the necessary conditions for their treatment and care.

According to the amendment to the Code, the Guardianship and Trusteeship body is under obligation to examine the current living conditions of the child and those of the persons striving willing to ensure the care and upbringing of the child and submit to the court the act of the examination and the opinion on the essence of the dispute based thereon, and in case of children without parental care – also the opinion on adoption, guardianship or custodianship, foster care or referring the child to population social protection institutions issued to the Guardianship and Trusteeship bodies by a body not incorporated in the office of the public agency authorized by the RA Government in the social support sector and acting outside the governance sector.

**The amendment also reviewed the grounds for annulling adoption based on the best interests of the child.** Particularly, according to the Code, adoption may be annulled if the adopters evade fulfilling the parental duties imposed on them, do not change

their behavior within 6 months after the relevant court judgment on restricting parental rights takes effect, refuses without any reasonable excuse to take back their child from a medical care and service institution, as well as on a number of other grounds in the child's interests.

According to the Code, each of the persons in marriage is registered as adopter. The registration is made in hard-paper and electronic format. An adult willing to adopt a child and registered under the prescribed procedure who took part in preparatory training courses shall be entitled to adopt a child.

To provide a person willing to adopt a child with psychological, pedagogical and legal support, the legislative amendment provides that the authorized public agency must carry out free preparatory trainings. As for foreign nationals, they should take part in such trainings in the Republic of Armenia, if they lack any document certifying their attendance of similar trainings abroad. The amendments to the Code also provide other safeguards to ensure the child's adoption, based on his/her best interests. **An age difference between the adopter and the adoptee** is envisaged. Such age difference must be at least 18 years and no more than 50 years, except for the cases when the child is adopted

by persons with preferential right to adoption.

Summing up the aforesaid, we consider the **Committee's recommendations to have been implemented partially.**

- System of monitoring by an independent body

The legislative amendment envisages **monitoring over the care provided to the adopted child in the adopter's family.** Such monitoring aims to promote the child's integration and well-being as well as prevention of infringement of his/her rights and interests in the adoptive family. The monitoring must be carried out jointly by the custodianship and guardianship body and the Regional Government Office (in case of Yerevan, Yerevan Municipality) and in case of adoptions by foreign nationals and stateless persons as well as Armenian citizens residing abroad, such monitoring must be carried out by the public agency authorized by the Armenian Government and an adoption agency in a foreign country.

The monitoring of the care provided to the adopted child aims to promote his/her integration and well-being as well as prevent infringement of his/her rights and interests in the adoptive family. The Code amended for the above purposes sets a system of post-factum monitoring of adoption

within 3 years following the judicial act on adoption. The law provides the monitoring agency with monitoring powers; for instance, with the owner's consent, a representative of the monitoring agency may access the place of residence of the child, as well as monitor his/her living conditions and the right to freely communicate with the child and the adopter, their close relatives, neighbors, and staff members of the educational institution. At the same time, the law obliges the monitoring agency to ensure the confidentiality of adoption. Penalties are imposed for interfering with the functions of the employees of the monitoring agency.

Taking into account the above, we find that **the Committee's recommendations have been implemented partially.**

## RECOMMENDATIONS:

- Develop a centralized system to confirm the adoption process.
- Set out by a Government decision provisions on establishing a procedure to provide adoptive parents with support and training before adoption.



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## **E. DISABILITY, BASIC HEALTH AND WELFARE**

**(ARTICLES 6, 18 (PARA. 3), 23, 24, 26, 27 (PARAS. 1-3)  
OF THE CONVENTION)**

## 1. CHILDREN WITH DISABILITIES

The Committee welcomes the adoption of the Law on Education of Persons with Special Needs in 2005 and Amendments to the Law on General Education in 2012, both of which provide for the inclusive education for children with special needs. However, the Committee is concerned that:

- (a) The number and proportion of children with disabilities in children's homes are increasing due to lack of family support and alternative family and community based care options;
- (b) Children with disabilities in regions (marzes) do not have access to adequate care and services, especially early detection and rehabilitation services;
- (c) Children with disabilities remain in the care institutions even after they graduate as no other solution is provided to them and children with mental disabilities are often placed in mental health hospitals;
- (d) Despite the increasing trend in inclusive education, a large number of children with disabilities who live in care institutions and rural areas, do not receive formal education;
- (e) Services that are free of charge are of low quality which forces the parents of children with disabilities

to pay additional fees to get, for example, quality prosthesis items or orthopedic shoes.

- (f) Educational institutions and programs shall be in compliance with general design requirements so as to reduce to minimum the number of children with disabilities receiving education at special educational institutions.

The Committee recommends as follows (Para 36):

- Take measures for the deinstitutionalization of children with disabilities and provide them with alternative family and community based care options;
- Allocate adequate human, technical and financial resources for ensuring the availability of early detection and rehabilitation services for children with disabilities, especially for children in the regions (marzes);
- Ensure that children with disabilities receive adequate support even after graduating from the care institutions, and ensure that children with mental disabilities are not placed in mental health institutions but are rather provided with adequate support and a place in the community, as well as ensure the quality and accessibility of the provided services;
- Carry out programs aimed at ensuring for children with disabilities the smooth transition from public/



special educational institutions to independent, community life, including projects related to professional orientation and initial professional education;

- Continue its efforts to include children with disabilities in the mainstream education system, and in doing so, pay particular attention to children with disabilities in care institutions and rural areas;
- Take immediate measures to ensure that service providers do not take fees for services that are free of charge and establish regular control of the quality of services and products provided.

## 1) MEASURES FOR THE DEINSTITUTIONALIZATION OF CHILDREN WITH DISABILITIES

The RA Government Decree № 551-N of May 26, 2016 defines the principles and criteria for providing alternative care to children in difficult life situations, *including children with disabilities* and regulates the relations on guidance for alternative care provision. Such procedure is fully consistent with the basic provisions of the Common European Guidelines on the Transition from Institutional to Community-based Care and the United Nations Guidelines for the Alternative Care of Children.

While the number of children under care in the population social protection institutions of general type continues to drop, it does not generally drop in specialized institutions due to continuous transfer of newborns with health problems from medical facilities to children's homes. This is also conditioned by the fact that it appears almost impossible for children with disabilities to return to their biological families or be transferred to an adoptive family or a foster family. In the past 3 years, 181 children, including 97 children with health problems were transferred to children's homes from maternity hospitals.

Moreover, according to the RA MLSA data, in 2016, Armenian citizens and foreign nationals adopted 65 children, 25 of them, including 3 children with health problems, were adopted by Armenian citizens. Foreign nationals adopted 40 children, including 11 children with disabilities. According to the Ministry's data, Armenian citizens mostly do not adopt children with disabilities or health problems due to the fact that the country does not have enough health services and rehabilitation centres for children with health problems.

Relevant actions were taken to train applicant foster families. Four types of care were set, with one of them, namely, **specialized foster family**

intended for care of children with disabilities, serious health problems, difficulties with upbringing, mental or behavioral disorders and severe stress (trauma) child survivors, as well as underage mothers and their children care.

At the same time, according to Human Rights Watch, the RA Government committed to discharge children from at least 22 children's homes, special schools and boarding schools and transform them into community-based non-residential centres and there are no programs in place to transform the 3 children's houses in the country intended exclusively for children with disabilities. Besides, the Government did not give adequate priority to return of children with disabilities to their families and did not provide for any alternative care options for them.

## **RECOMMENDATIONS:**

- In parallel with the deinstitutionalization process, carry out social support programs for the families of children with disabilities;
- Provide ongoing and advanced professional development programs for biological and specialized foster families;
- Implement projects aimed at enhancing and creating community-based multi-sectoral (healthcare,

educational and social) services especially for children with disabilities or developmental delays who reside in the regions, which will help children remain with their biological families and contribute to the process of deinstitutionalization;

- Implement awareness raising programs in medical institutions for parents about health issues of new-born babies, developmental delays and the efficiency of early interventions.

## **2) ALLOCATION OF HUMAN, TECHNICAL AND FINANCIAL RESOURCES**

The process of transition from institutional care to community care is under way. In frames of such process, the Draft RA Government Decrees on Transformation of the RA MLSA Population Social Protection Institutions (child care boarding institution) into child and family support centres were submitted to the RA Government for approval. The Drafts suggest using the currently available resources to set up child and family support centres in different communities of the regions (marzes) where such institutions are located in line with the needs assessment of such regions, as well as delegate provision of their services to the specialized organizations

functioning in the regions that will provide the children and families in difficult life situations with specialized services, including support to children with disabilities and their families, particularly detection, prevention and early intervention with the health problems of children aged 0-6.

Upon graduation from the round-the-clock child care institutions, children with disabilities reunite with their biological families, if possible, and if impossible, remain under full care of the state and get relevant services in line with the findings of their needs assessment.

### **RECOMMENDATIONS:**

- Allocate financial and technical resources to set up child and family support centres especially in the regions and make them accessible to children with disabilities;
- Foster interdepartmental cooperation to ensure early detection of children with disabilities or developmental delays and to provide the respective services;
- Make efforts to provide more possibilities for the child's reunion with his/her biological family by providing financial, social and professional support to such families.

### **3) EDUCATION OF CHILDREN WITH DISABILITIES LIVING IN CHILD CARE INSTITUTIONS AND RURAL AREAS**

On December 1, 2014, the RA National Assembly adopted the RA Law (HO-200-N) on Making Changes and Amendments to the RA Law on General Education envisaging a transition in the general education system to the universal inclusive education system by using a three-tier child's educational needs response system. As a result of enforcing the Law, children with special educational needs will receive pedagogical and psychological support at level 3 at comprehensive school as well as regional and national pedagogical and psychological support centres. The newly-formed system will make it possible to ensure the education and upbringing of children with special educational needs without separating them from their family by ensuring their comprehensive social development and involving them in the general education institution. The universal inclusive education system will be fully introduced in Armenia by August 1, 2025.

The sector policy is intended to provide enhanced possibilities for children with special educational needs to receive quality basic education by creating inclusive education

opportunities in all the general education schools.

Introduction of the universal inclusive education system will result in the following:

- General education schools will apply a raised financing enrollment scale for children with special educational needs, by the gravity degree of a child's needs.
- Children with special educational needs will receive pedagogical and psychological support at 3 levels: general education school, regional and national pedagogical and psychological support centres.
- A new toolkit will be used to assess and certify the special educational needs for children;
- The staff position of a teacher's assistant will be introduced.
- The reorganization process of special schools in the context of introducing a universal inclusive education system started in 2016 from RA Syunik region (marz). Moreover, reorganization of special schools in each region will be accompanied by:
- training of pedagogical professionals of the newly-formed territorial pedagogical and psychological support centres;
- transfer of students to the general school.

To ensure introduction of the universal inclusive education system as

stipulated in the RA Law on General Education, a number of legal acts were approved. The first step was taking the legal acts below in compliance with the list of actions to ensure the enforcement of the RA Law on Making Changes and Amendments to the RA Law on General Education as approved by the RA Prime Minister's Decree N108-A of February 17, 2015:

- RA Government Decree № 1330-N of November 19, 2015 on Setting the List of Diseases making the Child Eligible for In-house Training and Annuling the RA Government Decree N1506-N of October 26, 2006;
- RA Government Decree N141-Ն of February 16, 2017 on Setting the Raised Financing Enrollment Scale for Children with Special Educational Needs by the Gravity Degree of a Child's Needs, Making Amendments to the RA Government Decree N1365-N of August 25, 2005 and Annuling the Decree N46-N of January 27, 2011;
- RA Government Decree N1047-N of October 13, 2016 on Defining Pedagogical and Psychological Support Services;
- RA Government Decree № 968-N of September 22, 2016 on Approving the Procedure for Financing the Activities of Territorial Pedagogical and Psychological Support Centres;
- RA Government Decree N1058 of



October 13, 2016 on Setting the Model Charters and List of the National and Regional Pedagogical and Psychological Support Centres”.

To regulate the assessment of the special education needs of a child, the documents below were approved as well:

- Decree of the RA Minister of Education and Science N825-N of August 23, 2016 on Approving the Standard Form of the Certificate on Special Education Needs of a Child and Annuling the Decrees of the RA Minister of Education and Science N1281-N of August 6, 2010 and N927-N of November 11, 2009;
- Decree of the RA Minister of Education and Science N1202-A/2 of November 23, 2016 on Approving the Pedagogical and Psychological Assessment Criteria (the new criteria were developed based on the International Classification of Functions, World Health Organization);
- Decree of the RA Minister of Education and Science N370-N of April 13, 2017 on Approving the Procedure for Provision of Pedagogical and Psychological Support Services to Ensure Education.

The transition to the universal inclusive education system has just started and it is still too early to make

any assessments, but yet it gives rise to some concerns. Particularly, children with disabilities studying in comprehensive schools are still separated from the other children. In many schools such children are labelled with the phrase “inclusive children.” While headmasters and teachers are provided with trainings, it is still unclear how efficient they are and how effectively teachers can apply the inclusiveness. Also, much should be done for most effective application of teacher’s assistant staff position.

Also, exercising the right to education gives rise to some issues. In 2016, in their complaint letter addressed to the Defender, a group of parents of the children studying at the Yerevan Special Educational Complex for Children with Hearing Disorders raised that issue that children were not taught at the Complex any other foreign language but Russian. The study of the application revealed that the 2016-2017 academic year model curricula for the general educational institutions offering basic, general, specialized and some special state curricula provided for teaching English, but it was not provided under the model curricula for the Special Educational Complex for Children with Hearing Disorders.

According to Article 24 of the Convention, States Parties recognize the right of persons with disabilities to

education. Also, one of the principles for organizing the educational process for children with special teaching needs is that like others, children with special teaching needs enjoy equal rights to attend a general educational institution of their own choice and study compulsory public curricula. Meanwhile, in regard to the above issue, the Ministry of Education and Science of the Republic of Armenia stated that the 2016-2017 academic year model curricula for the general educational institutions offering general education, basic and special state programs provide for teaching subjects Sign Language and Russian Language, along with the native language (Armenian). They also stated that teaching another foreign language might cause additional learning difficulties and almost insurmountable problems for most children with hearing disorders. At the same time, in terms of the provision that children with special education needs enjoy equal rights like others, they stated that in this case such a right was exercised since the content of the curriculum met the requirements of the RA Law on General Education and the State General Education Standard. According to Article 5(2)(2), RA Law on General Education, the state shall guarantee in general education guarantees of equal opportunities of general education, its

accessibility, continuity, subsequence and conformity with the students' level of development, peculiarities and level of training. Also, according to Clause 13, Part III entitled Key Principles of Setting the List of General Education Curriculum Subjects, Annex 2 entitled Public Criteria of General Education to RA Government Decree № 439-N of April 8, 2010, the 'Foreign Languages' field in the state secondary general education curriculum is represented with 2 languages. The procedure for selecting foreign languages and the order of teaching them by the grades are in the model curriculum. The above Clause also specifies that the list of subjects for the special and specialized general education special and specialized state curricula is developed by the authorized education public agency based on the list of subjects of the general public education curriculum taking into account the peculiarities of the students' development and the professional orientation of the curriculum. At the same time, according to Para 7, Generalized Clarifications of the Curricula of General Education Special Educational Institutions as approved by Annex 3 to the Decree № 670-N of June 27, 2016 of the RA Minister of Education and Science on Approving the 2016-2017 Academic Year Model Curricula for 287 Educational

Institutions Offering General Education, Basic, Specialized and Special State Programs, the procedure for selecting a foreign language is defined in the Procedure for Selecting a Foreign Language, Generalized Clarifications of the Curricula of the Educational Institution (Appendix 1 approved by the Decree above) offering general education basic general state programs. According to the Procedure, 2 foreign languages are taught at the educational institutions offering general education basic general state programs; one of such languages is Russian and the other one may be English, French, German or any other language.

Most of the premises of the educational institutions are not adapted for children with disabilities. The inclusive kindergarten № 92 in Malatia-Sebastia administrative district of Yerevan city has an average of 24 children up to 6 in difficult life situations, including children with severe mental and physical developmental disorders who receive multidisciplinary services. Nonetheless, children with disabilities have no access to pre-school education. According to the data of the National Statistical Service, only 10 out of the 260 out-of-school children in the academic year 2016-2017 were left out of the school system for the reasons of their disability. However, these data require

further adjustment.

**Taking into account the above developments, we consider the Committee's Recommendations to be implemented partially.**

## **RECOMMENDATIONS:**

- In the transition to the universal inclusive system, place the main emphasis on the professional training of teachers. The success of the universal inclusive system is largely dependent on suggesting effective approaches to the teachers.
- Make the premises of the educational institutions accessible to children with disabilities.
- Highlight the need to ensure inclusive education in pre-school education taking into account the effectiveness of early childhood education.
- Consistently implement the requirements of Article 24 of the Convention on the Rights of Persons with Disabilities by providing materials, equipment and means for communication. Specifically, the teaching of blind and/or deaf children should be conducted by the most appropriate means of communication. There shall be teachers within the educational system who can easily communicate in Braille and sign language;
- To ensure inter-sectoral cooperation

between educational institutions, community social support centres and healthcare establishments with a view to developing and implementing individualized support projects for children with disabilities or children in difficult life situations.

#### **4) PROGRAMS IMPLEMENTED FOR CHILDREN WITH DISABILITIES**

Targeted programs are carried out aimed at rehabilitation of persons (children) with disabilities, resolving some of their issues and ensure their social inclusion. In particular, children with disabilities are provided within state targeted programs with prosthodontic and rehabilitation equipment, including upper and lower extremities prostheses, orthoses, corsets, walking aids, crutches, orthopaedic footwear, prosthesis shoes, socks, gloves, eye prosthesis, hearing aids, wheelchairs, etc.

The process of providing prosthodontic and rehabilitation equipment in frames of social services is regularly reformed to fit the needs of the persons in question. Hence, according to the RA Government Decree No 1151-N of September 7, 2017, hearing aids and wheelchairs will be provided based on state certificates. Unlike the bidding procedures that

impose provision of equivalents of a specific type procured in advance from the winning organization, certifications make it possible for the person in question to choose the organization that can provide the adequate equivalent. The process is to be continued.

Highlighting the operation of daycare centres offering social services to persons with disabilities, state support is provided e.g. to “Prkutyun”, “Full Life” and “My Way” NGOs. Provision of care and other social care services at day-care centres not only promotes the social inclusion of children with disabilities, but also settles the issues related to their living in their family and employment of their family members.

In its 4 daycare centres /in Dilijan, Ijevan, Noyemberyan and Berd/, the “Bridge of Hope” NGO provides state support services to 250 children with disabilities and in difficult life situations.

However, services are not accessible especially for children with disabilities from rural areas and regions. Their parents have to spend large amounts of money to take their child to relevant service facilities. There are concerns over the quality of the equipment and devices provided free of charge.

**The Committee’s above recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Exclude provision to children with disabilities low quality or paid services, equipment and supplies. In this respect, it is recommended to develop a **monitoring mechanism, which will enable to determine minimum standards for the quality of services and to assess the quality of services and goods.** Additionally, it will ensure accessibility of information about the scope of the provided and necessary services and the provided paid services;
- Make the services for children with disabilities and in difficult life situations accessible in all the regions;
- Determine minimum standards for services and implement monitoring over the quality of services.

## 2. HEALTH AND HEALTH SERVICES

In its Observations, the Committee welcomes the Obstetric Care State Certificate Program of 2008 and the Child Certificate program introduced in 2011 aimed at improving maternal and child health. It also welcomes the 2011 National Concept and Action Plan for Enrichment of Wheat Flour and National Strategy on Food Security with an action plan for 2010 - 2015.

Nevertheless, in its Observations, the Committee remains concerned that:

- (a) Significant disparities between urban and rural areas in access to health care services exist as some services such as intensive neonatal health care are available only in the capital;
- (b) Despite the achievements in reducing the infant mortality, the neonatal and perinatal mortality rates remain high due to insufficient equipment in neonatal departments and inadequate training of staff.
- (c) Informal (under the table) payments are common especially in hospital settings, which creates obstacles in accessing free medical care;
- (d) There is a lack of qualified medical personnel who are experienced in the provision of Maternal and Child Health services both in terms of preventive health and outreach care as well as those needed to provide curative care in hospitals;
- (e) Despite the significant achievements in the area of nutrition, the problems of malnutrition among women and children still prevail especially in rural areas, and high level of obesity is noted among children under 5 years of age.

The Committee recommends as follows (Para 38):

- Ensure equal access to all health care services, in particular, provide

equitable access to health care during pregnancy, at the delivery, including access to Emergency Obstetric Care and care for the newborn during the neonatal period, and adequate resources to provide emergency services and resuscitations in rural areas;

- Provide health institutions with adequate supplies and equipment, especially in neonatal departments as well as training of staff;
- Eliminate all informal fees for health care services that are free of charge, and set up a confidential system for reporting and action in case of noncompliance;
- Take measures to ensure that all health care personnel responsible for health care for children are well qualified and well trained;
- Continue the implementation of its action plans and strategies aimed at improving the nutritional status of pregnant women, infants, pre-school children and adolescents, especially in rural areas. This includes promoting healthy eating habits and refraining from overconsumption of sugary drinks and “junk food” which is contributing to a growing problem of obesity in children.

## **1) ACCESS TO HEALTH CARE SERVICES IN URBAN AND RURAL AREAS**

The accessibility of health care services differs in urban and rural areas. This is evidenced by a number of studies. Hence, visits were conducted to a number of medical facilities in Armenia under the Public Inquiry into Enjoyment of Sexual and Reproductive Health Rights in Armenia carried out in frames of the United Nations Population Fund Strengthening of Sexual and Reproductive Health Services project in collaboration with Staff of the RA Human Rights Defender.

The public inquiry shows that there are differences in certain health care services in rural and urban areas: some services are not provided in the villages and women have to visit the nearby towns.

In frames of another survey, representatives of a number of medical facilities expressed an opinion that allocation of ambulance stations is not accurate. Furthermore, the survey also raised the issue of the number of brigades available. Some health providers covered by the survey mentioned that each brigade serves an area of 60 km in radius which appeared impossible with the currently available resources; as a result,

ambulance delays may last for 2 or more hours.

Certain steps were taken to address these issues. According to the data of the RA Ministry of Health, in recent years 9 medical institutions in the regions were repaired, mixed (for both adults and children) resuscitation units equipped with modern devices were set up, 3 child resuscitation units of inter-regional (inter-marz) significance were set up and equipped, newborn care and emergency medical care equipment were provided. Moreover, the therapeutic unit of Meghri Medical Centre in Syunik region, RA, built in 2016 contains 10 infant beds. The Medical Centre's intensive resuscitation unit is equipped with child intensive care equipment. According to the Ministry's data, the obstetrics and gynecology units of the above Medical Centre have in place newborn intensive care service equipped with modern devices and particularly a table with heater intended for newborn intensive therapy, newborns artificial ventilation device, a lighting lamp, infusion pumps etc.

Besides, according to the data provided by the Ministry of Health, the newborn emergency care service at Muratsan Medical Centre of YSMU was replenished with 2 reanimobiles and by involving newborn resuscitation specialists, a 24/7 consultation system for all hospitals was introduced. 35

medical institutions in the country were provided with free phone and Internet connection to seek consultation from the 24/7 specialist services based in Muratsan Hospital Complex.

Moreover, the data provided by the Ministry shows that all the units providing newborn care and services in the country were provided with pulse oximeters in order to introduce early detection screening of fetus congenital heart disease at maternity hospitals.

Some actions were also taken by other organizations. According to the Ministry of Health data, World Vision provided necessary equipment for newborn care and intensive care, prenatal care and fetal diagnostics to the medical facilities in Sisian, Goris, Kapan, Gavar, Vardenis and Chambarak. Moreover, VivaCell provided necessary equipment for newborn resuscitation and intensive care to 9 maternity hospitals in regions and 2 maternity hospitals in Yerevan city.

According to the Social Snapshot and Poverty in Armenia, 2016 report, some 36.9% of households having children under the age of 5 took them to polyclinics for regular examination or post-natal consultancy during the month preceding the survey. The reasons for not visiting polyclinics were distributed as follows (relative to responses): services were not needed – 95.7%, poor quality of medical services – 0.6%, healthcare facility

was too far away – 0.5%, services were too expensive – 0.6% and healthcare facility was closed – 0.0%.

As compared with 2012, there was some regress. Unlike 2012, when the quality was considered insufficient by 0.2% of the respondents, in 2016 this rate was 0.6%. In 2012, 0.1% of the respondents considered the services expensive and in 2016, this rate was 0.6%.

Despite the above steps, the disproportionate access to certain medical services in urban and rural communities has not yet received a systematic solution. In their interviews at the preparation stage of the Report, the sector experts mentioned that some institutions with newborn units in the country are ineffective in terms of quality. In particular, experts believe that in villages paediatricians do not regularly visit newborns due to transportation problems. As a result, a local doctor or nurse visits them.

Moreover, some experts also noted that residents of rural areas took their newborns to hospitals in Yerevan without letting know or consulting the local paediatrician while they might consult local paediatricians and transfer the newborn to a hospital in Yerevan for instance with a referral. It turns out that there is also lack of confidence due to which the referral system is not fully in place. The experts also voiced

the issues related to transferring newborns to Yerevan noting that they are transferred by cars or ambulance vehicle due to absence of reanimobiles.

The experts think that the institutions in the regions lack sufficient equipment and specialists for early diagnosing high-risk pregnancy and taking relevant measures.

Based on the above, it can be concluded that access to certain health care services in rural areas is still a problem. **The Committee's recommendation above has been implemented partially.**

## RECOMMENDATIONS:

- Allocate transportation and financial resources to ensure regular visits by paediatricians to villages.
- Equip the regional facilities.
- Improve the efficiency of regional facilities with newborn units.
- Add the number of ambulance brigades and review locality of the station.

## 2) HIGH NEONATAL AND PERINATAL MORTALITY RATES

Since 2011, the hospital and home child mortality rates dropped and the rates of infant mortality (0-1 year-old) and infant mortality (0-5 year-old)



reduced significantly (in 2016, the child mortality rate was 8.8 ‰ as compared to 11.4‰ in 2010). Moreover, in 2013 Armenia first recorded infant mortality rate below 10‰ and therefore ranked among countries with low infant mortality.

Within infant mortality, the early newborn mortality ratio dropped by about 10% and infant mortality for perinatal causes dropped by almost 1/3.

The Strategic Program for the Protection of Children's Rights for 2017-2021 approved by the RA Government's Protocol Decree № 30 of July 13, 2017 provides the targets below:

- a. The newborn (0-28 day-old) mortality ratio will drop by at least 15% (baseline: 6.7 ‰, target:  $\leq 5.5$  ‰).
- b. The ratio of newborns with congenital malformations to the total number of newborns will drop by about 15% (baseline: 1.7 ‰, target:  $\leq 1.5$  ‰).
- c. The infant (0-1 year-old) mortality rate will drop by 20% (baseline: 8.8 ‰, target:  $\leq 7$  ‰).
- d. The infant mortality rate in children under 5 will drop by 20% (baseline: 10.3%, target -  $\leq 8.5$  ‰).
- e. The hospital mortality rate in infants under 1 will drop by 10% (baseline: 1.7%, target: -  $\leq 1.5$ %).
- f. The hospital mortality rate in

children under 14 will drop by 20% (baseline: 0.5%, target:  $\leq 0.4$ %).

The neonatal mortality rate remains high making about 70% of infant mortality. According to the National Statistical Service report on The Demographic Handbook of Armenia 2017, the rate of infant mortality in Armenia in 2016 was 352, of which 249 were neonatal deaths (0-28 days).

According to the National Institute of Health data, in 2016 the early neonatal mortality rate was 177, of which 67 (37.9% of early neonatal deaths) - during the first 24 hours of life after birth.

There are significant differences between urban and rural areas. The infant mortality rate per 1000 live births in Armenia is 8.6. By urban-rural area breakdown, these figures are 7.6 and 1.6, respectively.

The experts voice the need of trainings for specialists, especially in regional medical facilities. According to experts, one of the main issues is that there is no neonatal nurse specialization at the educational institutions and therefore the nurses in sector have general education and are not specialized in these issues. Some regional medical facilities lack neonatologists.

**The Committee's above recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Improve the material and non-material incentive mechanisms for neonatologists and nurses.
- Introduce professional qualification standards for neonatologists and neonatal nurses in line with the international standards.

### 3) INFORMAL (UNDER THE TABLE) PAYMENTS (ESPECIALLY IN HOSPITAL SETTINGS)

According to Article 2, RA Law on Medical Care and Services to Population, primary health care ranges among the basic types of medical care and services as a kind of medical care and services based on free methods and technologies most accessible for everybody. Meanwhile, media publications, field studies and complaints received by the Human Rights Defender's Office come to show that the practices of informal payment for medical services still persist. The problem lies in both lacking public awareness of free services, and the fact that health providers demand a fee for such services.

Hence, a study carried out in 10 regions (marzes) and published in 2017 within Engaged Citizenry for Responsible Governance project

initiated by the Transparency International Anticorruption Centre (TIAC), USAID and Asparez Journalists' Club, showed that many patients were unaware of the free, paid and co-paid services offered by polyclinics. Hence, according to a survey conducted within the study, 22.7% of respondents believe that the services provided by polyclinics and therapist's home visit are "partially paid" services, 4.3% respondents believe that such services are fully paid and the remaining 19% admitted that they were quite unaware of paid and free services. Experts argue that the current situation resulted from failure to take sufficient steps towards information campaigns about free and paid services among the population.

It should be noted that the study also revealed that in many cases those people paid money to health providers on their own initiative and health providers demanded money rarely (only in 4% of cases).

As for polyclinics, the study shows that respondents mostly paid for various medical procedures, diagnostics, consultations and medical examinations. At the same time, in 64% of cases, they paid upon health providers' demand and 36% of cases on their own initiative expecting better quality services.

Moreover, according to the Armenia Demographic and Health Survey

(ADHS) 2015-2016, childbirth-related payments were made in 13% of births. According to a similar survey of 2010, the rate of respondents who paid for medical services rose by about 5% (7.9%). It is noteworthy that such rate rose higher among the respondents from rural areas. As compared to 2010 when such payments were made by 5.8% of women from rural areas, in 2015 this rate rose to 14.1%. Almost all the women paid in cash. 2 of 5 respondent women paid 51.000 AMD and larger amounts.

A number of steps have been taken to ensure provision and access to free health care. Hence, according to the data provided by the RA Ministry of Health, in 2008 Armenia introduced the Obstetric Care State Certificate Program entitling women to free medical care for childbirth. Furthermore, to reduce informal payments and improve child care quality, in 2011 Armenia introduced the Child Certificate program as a logical continuation of the Obstetric Care State Certificate. The certificate system was safeguarded by double increase of budget funds for financing the hospital child care program that reached 6.38 billion AMD in 2011, as compared to 3.16 billion in 2010.

According to the Ministry's data, to prevent any cases of levying or demanding money for health care, all

children aged 0-7 are issued a child health state certificate with information on its reverse side on the scope of the free hospital care and round-the-clock hotline and contacts of the Maternity and Child Health Protection Unit of the RA Ministry of Health to ensure direct communication and prompt solution of issues. The introduction of the Program was monitored through periodic visits by the staff of the RA Ministry of Health and as well as phone calls to the discharged patients and study of the complaints and information provided via the hotline. Moreover, to assess the efficiency of introducing the Program, the American University of Armenia conducted a relevant research. The findings of the preliminary and ongoing (6 months ago) evaluation of the Program come to prove that informal payments dropped by more than 4-5 times. 79% of mothers covered in the survey who made use of the certificates in Yerevan and 91% of them in the regions noted that they were satisfied with the services provided as they enjoyed free medical care.

According to the Ministry's data, in 2013 the RA Ministry of Health and World Vision Armenia carried out an ongoing assessment of the Child Health State Certificate Program. According to the survey, 99% of the respondents noted that at admission to hospital they were aware that hospital

child care for children up to 7 was free; this attests to the high public awareness level. According to most respondents, the source of awareness was the child's state certificate (67.3%), health providers (25.2%), followed by the mass media, posters and relatives: 4.1%, 2.0% and 1.4%, respectively. When asked: "Did you pay any money for hospital treatment of your child (including any "material or in-kind award")?", 22 (14.8%) out of 149 respondents gave a positive answer. Moreover, every second of the respondents who paid, noted that they paid for the medicines and medical supplies bought from other pharmacies by spending on average 12.400 AMD. 36% (8) of the respondents who paid noted that they paid the attending doctor. The average amount of the fees paid to attending doctors was 7.600 AMD.

Despite the above steps, the invoked surveys show that the non-formal payment practices still persist. The summary of study findings comes to show that such payments are made both on the patient's own initiative and in some cases upon request of health providers. In systematic terms, the problem still lies in the low awareness level of free medical care and services. Moreover, there is still no efficient anonymous reporting system in place yet.

**The Committee's above recommendation has been implemented partially.**

## **RECOMMENDATIONS:**

- Exclude informal fees:
  - Continue awareness raising campaigns on free medical care and services targeting health providers and the public at large;
  - Introduce an efficient anonymous reporting system on informal fees.

## **4) MALNUTRITION AMONG WOMEN AND CHILDREN**

The issue of malnutrition among women and children and its implications have been repeatedly discussed and studied by a number of local and international organizations. The problem is considered in the context of both maintaining the health of a particular person, and or its impact on public at large in general. Furthermore, malnutrition may cause some diseases and malnutrition among women especially during pregnancy can also have a negative impact on the fetal development.

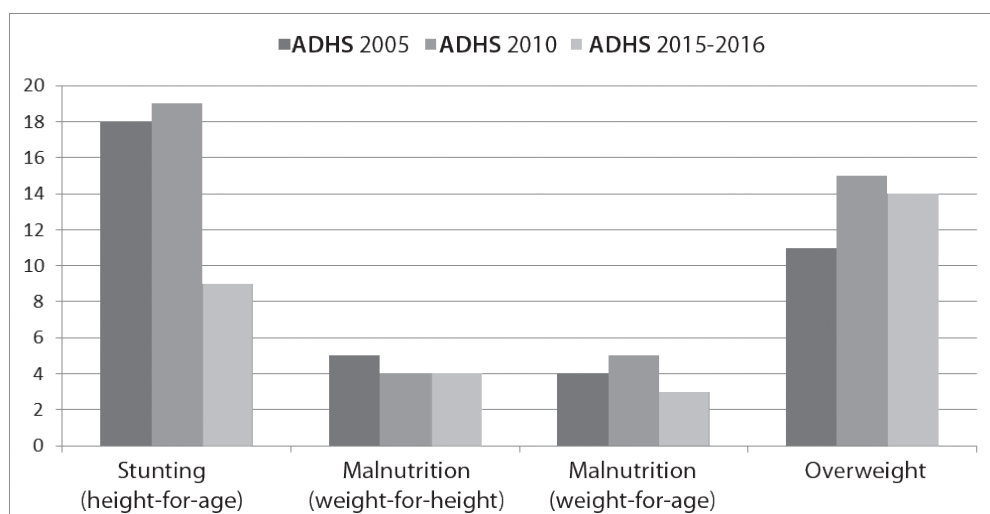
According to data in the Armenia's most recent ADHS 2015-2016, almost all the key indicators of the nutritional status among children of an early age

were improved. Thus, in 2015 stunting, characterizing chronic malnutrition, among children was 9%, as compared to 19% in 2010; the malnutrition (acute malnutrition) rate remained almost the same - 4.2%, while the underweight rate dropped by 2% as compared to 2010 by making 3% in 2015.

However, according to the ADHS

2015-2016 report, 14% of children under 5 face the problem of overweight. 15% of boys and 13% of girls face overweight. In 2005, 11% of children in Armenia faced overweight problem and in 2010 this figure reached 15%. Thus, over the past 5 years the overweight rate remained almost unchanged.

*Table 2. Trends in Nutritional Status of Children under 5, 2005-2016*



Based on the above, the malnutrition issue has not been fully resolved yet, and a number of studies and experts come to prove it. The malnutrition issue may be caused by the socio-economic and financial situation of families, the diet, features of the national cuisine and a number of other factors.<sup>29</sup>

According to some surveys, every one in three children in Armenia is poor and every one in two children is vulnerable to multidimensional poverty,<sup>30</sup> that also affects nutrition. The survey shows that the situation is most controversial for children in rural communities, where their deprivation

<sup>29</sup> Available at: <https://bit.ly/2s8BTnx>

<sup>30</sup> Child Poverty in Armenia, 2016 joint report by UNICEF and RA National Statistical Service, available at: [http://www.un.am/up/library/Child\\_Poverty\\_Armenia\\_N-MODA\\_Report\\_2016\\_eng.pdf](http://www.un.am/up/library/Child_Poverty_Armenia_N-MODA_Report_2016_eng.pdf)

level reaches 82%. Hence, according to the survey, almost one third of children aged 0-5 are deprived in nutrition and this impacts their growth.<sup>31</sup>

Moreover, according to the RA Ministry of Health data of 2016, 19% of children under 5 in Armenia are short (stunted) or regularly malnourished (the height-to-age indicator is low) and 10% are extremely stunted. Study of the indicator by different age groups shows that the highest rate of stunting was recorded among infants of 24-35 month-old (24%) and the lowest rate – among infants of 6-8 month-old (12%). The rate shows not significant differences among female and male children (20% and 19%, respectively). It is more prevalent among children in the rural areas, as compared among their peers from rural areas (20% and 19%, respectively). 5.3% of children under 5 were malnourished (their weight to height is law).<sup>32</sup>

When speaking about malnutrition, the Committee particularly emphasizes the need to reduce overconsumption of sugary drinks and “junk food” as they lead to problems of obesity in children.

Today, a number of schools in Armenia still sell such food despite the fact that it is also prohibited by law. The problem of school food has always

been raised by the Human Rights Defenders but has not received yet any systematically solution. During the interviews with children from various regions of Armenia in 2016-2017, the Defender’s Office staff revealed that their schools still sold sparkling drinks and drinks with high sugar content, chips and other prohibited foods. While the RA Ministry of Education and Science is currently implementing the School Food Program jointly with the UN World Food Program, under which 1-4 grade students are served hot meals at school, the problem is still systemic in nature.

Studies show that while the school model charter makes it possible for the school to coordinate the food provision for its students, many schools note that they are not free in doing so.<sup>33</sup> In some cities/towns, all the schools are forced to sign contracts with the same organization.<sup>34</sup>

Based on the aforesaid, it is noteworthy that some steps have been taken to address the nutrition problem in recent years. As a result, the exclusive breastfeeding indicator was improved by reaching 45% in 2015 as compared to 35% in 2010. The prevalence of anaemia among children in early age dropped and was 17% in

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31 See Ibid.

32 <https://bit.ly/2Lw3Dux>

33 Available at: <https://transparency.am/files/publications/1510654258-0-538483.pdf>

34 See *ibid*.

2015 (as compared to 37% in 2005). At the same time, the indicator is still low as compared to the globally accepted 60%.<sup>35</sup>

According to the Ministry of Health data, the positive trends were greatly promoted by the large-scale advocacy campaigns for mothers in RA regions in recent years as well as program activities aimed at improving the medial practices, within the First 1000 Days Program. A Decree of the RA Minister of Health approved the early childhood nutrition guidelines for the health providers. These guidelines were used to train all the health providers practicing in primary links in the regions. The Decree also approved an awareness raising campaign package for mothers and caregivers. 101 parent education resource centres were set up at the polyclinics and medical outpatient clinics in all the RA regions making it possible to hold counselling and group and individual trainings for parents/caregivers of early-age infants.

According to the Ministry's data, RA budgetary funds were allocated to publication by order of the RA Ministry of Health of Question and Answer" booklets on early-age infant nutrition for mothers and were later distributed to the RA Regional Government Offices and the Municipality of Yerevan to be further

provided to the mothers of newborns registered with the ambulatory polyclinic medical institutions in the country. Allocations from the 2016 budget funds were used to shot and broadcast the documentaries below: Child Malnutrition, Overweight in Children, and Sick Child Nutrition targeting wide TV audiences. Also, 2 more documentaries were shot for health providers on the current issues of early-age child nutrition.

The Decree № 3791-A of December 22, 2016 of the RA Minister of Health approved the Model Policy Promoting Health through Inclusion of Healthy Child Nutrition at Schools and Physical Activity Principles that was submitted to the RA Ministry of Education and Science to be further distributed to general education schools. The guides below were developed and published: Healthy Nutrition for Schoolchildren for educators, Adolescent Health and Take Care of your Child's Health brochure for mothers of schoolchildren.

Currently, in pursuance of Para 3, 2015-2020 Action Plan of the Concept for Improved Child Nutrition approved by the RA Government Protocol Decree N40 of September 25, 2014, efforts are made to set up a work group to analyse the current legislation and develop relevant recommendations to ban non-healthy foods with high content

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35 <https://bit.ly/2ktAEeK>

of fats, trans-fats free sugars and salt at educational institutions, sports and entertainment facilities for children.

Despite the above efforts, healthy nutrition practices are not quite popular in schools and families, as evidenced by the surveys presented in this section. As a result, due to different factors the issue of malnutrition in children and women still remains problematic in the systemic terms.

**The Committee's above recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Enhance collaboration between health and education sectors to provide parents and children with right diet information.
- Enhance monitoring of the school food in terms of its compliance with the standards set by legal acts.

## 3. STANDARD OF LIVING

The Committee regrets that the child poverty rate has increased due to the economic crisis, with children with disabilities being among the hardest hit. The Committee welcomes the existing benefit packages for families with children, but is concerned that

only 54.3% of extremely poor families and 4.1% of poor families benefit on a regular basis, due to the inadequate family benefit formula and lack of awareness of the existing government support.

The Committee recommended as follows (Para. 44):

- Continue and strengthen efforts to combat poverty and to ensure that benefit packages cover all families in vulnerable situations by facilitating their access to State support and raising awareness on the existing benefits.
- Guarantee the right of all children to an adequate standard of living.

According to the report Social Snapshot and Poverty in Armenia, 2016, 2.0% of children under 18 live in extreme poverty and 34.2% - in poverty. At that, extreme poverty and poverty rates in Armenia are 1.8% and 29.4%, respectively. Thus, children are more exposed to both total and extreme poverty risk than the entire population. As of 2016, 24.0% of the households with children below 18 received family benefits, including 34.7% of poor households, 50.3% of extremely poor households, and 18.5% of non-poor households.<sup>36</sup>

According to the data for 2016, 36.1% of girls and 32.4% of boys are poor (comprising 34.2% of all children).

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36 Available at: <http://www.armstat.am/en/?nid=82&id=1988>



Child poverty rates by household location is as follows: the extreme poverty rate among children living in urban areas constituted 2.1% as compared to 1.9% among children living in rural areas.<sup>37</sup>

As compared to 2008, child poverty rates in Armenia are still high. In 2008,

the rate of extremely poor children was 2.0% and in 2016 this rate was - 1.6%. The number of poor children has also grown. As compared to 2008 with poor children rate making 29.8%, in 2016 this rate reached 34.2%.<sup>38</sup>

**The Committee's recommendation was not implemented.**

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37 See *ibid.*

38 See *ibid.*



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## **F. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (ARTICLES 28, 29 AND 31 OF THE CONVENTION)**

## **1. EDUCATION, INCLUDING VOCATIONAL TRAINING AND GUIDANCE**

The Committee welcomes that children belonging to minority groups have access to education and textbooks in their mother tongue. However, the Committee remains concerned that:

- The poor infrastructure for schools, in particular pre-primary schools, including poor heating and poor water and sanitation remain a problem;
- The quality of education remains poor and there is a low demand for professional teachers;
- There is a high number of drop outs from schools after the primary education;
- Study of the dominant religion in the country is a compulsory subject in the curriculum of schools.

The Committee recommends as follows (Para 46):

- Invest in improving the school infrastructure, including access to heating, safe water and sanitation, in particular for buildings of pre-primary schools;
- Allocate adequate human, technical and financial resources for improving teacher training and establish strict qualification requirements for those working as teachers;

- Undertake a study on the root causes of drop outs from schools and provide incentives for children to continue their education in secondary school;
- Revise the curriculum of schools in order to reflect the freedom of religion of all children and eliminate the compulsory subject of the History of Armenian Church from the curriculum.

### **1) IMPROVING THE INFRASTRUCTURES OF PRE-PRIMARY SCHOOLS AND GENERAL EDUCATION INSTITUTIONS**

The poor conditions of the infrastructures for general education institutions as well as pre-primary schools, heating and water and sanitation remain a problem in Armenia. The issue was also constantly voiced in the RA Human Rights Defender's annual reports and communications.

Hence, according to the data provided by the National Statistical Service in its Social Situation in the Republic of Armenia annual report 2017, there has been some progress in improving the infrastructure of schools in Armenia.<sup>39</sup> Particularly, as compared

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39 Available at: <http://www.armstat.am/en/?nid=82&id=1958>

to 2013, when 50% of the 1434 schools in Armenia had sufficient physical conditions<sup>40</sup>, in 2016, 52.8% of the 1432 schools in Armenia had sufficient physical conditions.<sup>41</sup> Hence, almost

half of the schools need current repair or renovation. 71 schools still lack water supply, 141 schools lack sewerage, and 8 schools lack heating.<sup>42</sup>

*Table 3. Physical conditions of school premises*

	Schools with sufficient physical conditions	Schools in need of capital renovation	Schools in need of current repairs	Schools without water supply	Schools without hot water supply	Schools without sewerage	Schools without gas supply	Schools without heating
<b>2013</b>	718 (50%)	491 (34.2%)	225 (15.7%)	91 (6.3%)	1341 (93.5%)	177 (12.3%)	458 (31.9%)	5 (0.3%)
<b>2016</b>	757 (52.8)	428 (30%)	247 (17.2%)	71 (4.9%)	1303 (91%)	141 (9.8%)	416 (29%)	8 (0.5%)

Moreover, according to the 2015-2030 Program for Improvement of General Education School Seismic Safety in the Republic in Armenia approved by the RA Government Decree № 797-N of July 23, 2015, 425 schools in Armenia are in need of seismic safety improvement. Around 60 of those schools are in an emergency state of 3<sup>rd</sup> -4<sup>th</sup> degree.<sup>43</sup>

There were numerous alerts about the poor physical conditions of the

school buildings both by the school staff members, students and their parents. In some cases, parents forbid their children to attend school. Particularly, residents of Jrarbi community of Armavir region went on a strike in protest to the emergency state of the school building and lack of heating.<sup>44</sup> Finally, the heating problem was solved and in the near future it is planned to improve the physical conditions of the building. In 2017, students of the basic school after V. Petrosyan in Ashtarak

40 Available at: <http://www.armstat.am/en/?nid=82&id=1590>

41 Available at: [http://www.armstat.am/file/article/soc\\_2016\\_2.pdf](http://www.armstat.am/file/article/soc_2016_2.pdf)

42 Available at: <http://www.armstat.am/en/?nid=82&id=1958>

43 Available at: <https://www.azatutyun.am/a/27221091.html>

44 Available at: <https://www.youtube.com/watch?v=xNxnHU0tndA>

town, RA Aragatsotn region went on a strike demanding improvement of their school physical conditions. The school building needs capital renovation, repair and reconstruction.<sup>45</sup> Some studies also come to show that the problem of physical conditions of general education institutions is mostly apparent among rural schools.<sup>46</sup>

Apart from problems of general physical conditions of the buildings of general education institutions, a number of schools also face problems with their sanitary situation. The studies show that it is just the schoolchildren who consider this most problematic. Hence, 48% of the respondent children wished to have schools with improved water and sanitary conditions.<sup>47</sup>

Also, the heating of pre-school and schools still remains problematic; this issue was also voiced by the children who visited the Human Rights Defender's Office from a number of RA regions in 2016-2017. The matter is that there is a common practice is to start heating in schools and preschool education institutions on November 15, which is not a mandatory requirement of legislation. Thus, according to the Decree № 12-N of the RA Minister of Health of March 28, 2017 on Approving the 'Requirements

to Educational Institutions Offering General Education Programs' Sanitary Rules and Regulations № 2.2.4-016-17 and on Annulling the Decree № 82 of February 11, 2002 of the RA Minister of Health, when heating the general education institutions based on the climate conditions, a minimum temperature of + 18°C and a maximum temperature of +25°C must be provided in the classroom. The Decree provides no reservation (including restriction) on the time of heating of the general education institutions. As a result, the practices of starting heating on November 15 take no account of the locality of the general education institution (e.g. heating at schools in windy or wet areas should start before November 15) and the climatic conditions of the season in question.

The issue of heating is especially essential for regions: as a result, in some cases pre-school education institutions operate seasonally. Moreover, in some cases the lack of any centralized heating system proves problematic. Particularly, parents of children attending some pre-school education institution in Tavush region are not confident for the safety of their children in the regional kindergartens using electric heaters or wood stoves.<sup>48</sup>

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45 Available at: <https://bit.ly/2J8hEQM>

46 Available at: [http://www.osf.am/wp-content/uploads/2017/09/Educ\\_Equity\\_MainData\\_PPT.pdf](http://www.osf.am/wp-content/uploads/2017/09/Educ_Equity_MainData_PPT.pdf)

47 Available at: <https://bit.ly/2KXn2DG>

48 Available at: <https://bit.ly/2IMDIgm>



The studies also show in terms of school expenses that on average, over 96% of the school budget are allocated to wages, taxes, heating and utility bills. There are almost no funds left for school development. The financing process takes no account of the climate factor and physical conditions of the school buildings.<sup>49</sup>

According to the Ministry's data, the RA Government Decree № 797-N of July 23, 2015 approved the 2015-2030 Program for Improvement of General Education School Seismic Safety in the Republic in Armenia. Under the Program, 377 schools must be strengthened by 2030. To ensure implementation of the Program, the RA Government Decree № 1426-N of December 3, 2015 approved the 2015-2020 Action Plan for of the 2015-2030 Program for Improvement of General Education School Seismic Safety in the Republic in Armenia. According to Parra 1.1 of the Action Plan, the list of 46 priority buildings of the schools to be strengthened and those to be constructed must be approved.

At the same time, the National Centre for Educational Technologies (NCET) of the RA Ministry of Education and Science has launched the [www.emis.am](http://www.emis.am) website, where each school has a passport of its own. The website provides full information about the

physical conditions of the buildings of general education institutions. At the same time, there is no published information on the physical conditions of pre-school education institutions.

However, the data and studies covered in this section come to prove that despite the above steps, the problems related to the infrastructure and particularly the physical conditions of pre-school and general education institution, including the heating have not been solved yet.

**The Committee's above recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Enhance the budget investments to improve the infrastructure of general education and pre-school institutions.
- Strengthen control over the heating of general education institutions to ensure the temperature as provided in the relevant Decree of the RA Minister of Health taking account of the locality of the institution and the climatic conditions of the season in question.
- Develop and make accessible a database on the physical conditions of pre-school education institution.

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49 Available at: <https://transparency.am/files/publications/1510654258-0-538483.pdf>

## 2) QUALITY OF EDUCATION AND DEMAND FOR PROFESSIONAL TEACHERS

There are no reliable indicators of quality of education in Armenia. Armenia has not yet taken part in the PISA and PIRLS international review. In 2015, 4<sup>th</sup>- and 8<sup>th</sup>-grade students from Armenia took part in TIMSS international review in Mathematics and Natural Sciences. The indicators of the participating countries were published in 2016. Armenia's indicators have not been published yet, but the Appraisal and Testing Centre keeps assuring that these data will be published soon. Every year, the Appraisal and Testing Centre conducts a national review to measure schoolchildren's results in some school subject.<sup>50</sup>

Particularly, in 2016 a review in English was conducted among 8<sup>th</sup> grade students.<sup>51</sup> The published results show that the average score of Armenian schoolchildren is 5.2 in the 10-point system.<sup>52</sup>

There is a difference between the scores gained by schoolchildren in big cities and high mountainous rural areas. Particularly, in major cities

this score was 5.5, while in high mountainous rural areas it was 3.<sup>53</sup> However, the National Review does not provide a solid picture of the quality of education as the subject is changed every year and this makes it impossible to monitor the dynamics in any subject for a long term.

Some studies come to confirm the disparities in terms of access to education opportunities in the Armenian general education system for children from rural and urban areas as well as children from socially vulnerable families.<sup>54</sup> The socio-economic status of their families, educational level of their parents and the geographical location of their family's place of residence are essential for schoolchildren's academic achievements, progress in their studies and their further professional orientation and higher education.<sup>55</sup>

Starting from 2013, teachers have seen no significant increase in their salary. As the number of schoolchildren dropped, especially in high schools, the teachers' workload decreased and as a result, their salaries dropped too. According to the report Social Situation in the Republic of Armenia 2016, in 2013 the number of high school

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50 Available at: <http://timssandpirls.bc.edu/timss2015/international-results/timss-2015/about-timss-2015/>

51 Available at: <https://bit.ly/2sa6EbM>

52 See *ibid*.

53 Available at: <https://bit.ly/2sa6EbM>

54 Available at: [http://www.osf.am/wp-content/uploads/2017/09/Educ\\_Equity\\_MainData\\_PPT.pdf](http://www.osf.am/wp-content/uploads/2017/09/Educ_Equity_MainData_PPT.pdf)

55 See *ibid*.

students in Armenia was 43576 and in 2016 it dropped to 27581.<sup>56</sup> According to experts, many schools reduced the award fees for form masters.

The procedure for employing teachers remains problematic. To be hired, candidate teachers take written and verbal examinations. The test questions primarily concern legal knowledge and provide no opportunity to assess the candidates' knowledge and pedagogical qualification.<sup>57</sup>

There are discrepancies between the pedagogical education and the teacher's daily work. The expert surveys with school principals showed that the curriculum programs of teacher-training universities are theoretical and do not promote development of practical skills of future teachers. Currently, teacher-training universities take certain steps to increase the quantity of students' school practice hours.<sup>58</sup>

The survey also revealed some discontent with the teachers' certification procedure. In Armenia, all teachers must attend compulsory certification (attestation) trainings every 5 years.<sup>59</sup> As a result of attestation, teachers may obtain qualification

through a qualification system. There is a 4-level qualification system and if assigned the 1<sup>st</sup>-level qualification, teachers' salary rises by 10% and if assigned the 4<sup>th</sup> one- it rises by 20%, which is a small amount.<sup>60</sup>

**The Committee's above recommendation has been implemented partially.**

## RECOMMENDATIONS:

- Armenia should be more actively involved in the international reviews by taking part in PISA and PIRLS reviews as well.
- To collect more well-grounded data on education quality, annual national reviews in several subjects should be carried out. Moreover, the quality of education in the selected subjects should be monitored for 2-3 years so that such monitoring reveals a certain dynamic in the quality of education.
- Set up close co-operation between teacher-training institutions and schools.
- Developing special programs for graduate teachers to ensure their path from pedagogical education to educational institutions.

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56 Available at: [http://armstat.am/file/article/soc\\_2016\\_2.pdf](http://armstat.am/file/article/soc_2016_2.pdf)

57 Available at: <http://www.arlis.am/DocumentView.aspx?docid=83675>

58 Available at: <https://bit.ly/2INeKNX>

59 Available at, <http://www.arlis.am/DocumentView.aspx?docID=80631>

60 Available at: <http://www.arlis.am/DocumentView.aspx?docID=72774>



- Revise the teacher employment procedure through introducing methods to identify their professional knowledge and skills.
- Increase the award fee for the qualification gained by teachers through the qualification system.
- Introduce material and non-material incentive mechanisms of for teachers.

### **3) PERCENTAGE RATE OF DROP-OUTS FROM SCHOOLS AFTER BASIC EDUCATION**

The issue of detecting the drop-out children, identifying the core reasons for their drop-out and prevent such practices has not received a systematic solution yet. It was also repeatedly voiced in the annual reports and communications of the RA Human Rights Defender.

First of all, the matter is that the law does not define the term of a “drop-out child”; in other words, the law does not stipulate how long a child should miss school to be considered drop-out. Consequently, there is no integral statistics on the number of such children. As a result, for instance, the National Statistical Service in its annual reports on the Social Situation

in Armenia uses the term “a child who abandoned schooling (without completing his/her studies)”.

As a result, statistical data on the drop-outs also show significant differences. Particularly, according to the National Statistical Service Report 2017, rate of drop-outs from school in the academic year 2016-2017 was 260.<sup>61</sup> According to the report on the child labour survey, the rate of drop-outs amounts to around 8 thousand.<sup>62</sup> And the pilot case study by the UNICEF identified 228 drop-out children in Lori region.<sup>63</sup>

The above issues make it difficult to identify the core reasons for drop-outs that would make it possible to assess the clear drop-out causes for each group of children (e.g. vulnerable groups, children with disabilities). In particular, some data attest to the fact that children miss schooling because of their social conditions. Thus, in 2016, 191 cases of school drop-outs due to due to poor social conditions in children’s families were identified.<sup>64</sup> And in some other cases, children dropped out from schooling because of disability. According to the RA National Statistical Service 2016 report on the Social Snapshot and Poverty in Armenia, 16 children dropped out from

61 Available at: [http://armstat.am/file/article/soc\\_2016\\_2.pdf](http://armstat.am/file/article/soc_2016_2.pdf)

62 Available at: [http://armstat.am/file/article/national\\_child\\_labour\\_survey\\_in\\_armenia\\_report\\_-\\_web\\_version.pdf](http://armstat.am/file/article/national_child_labour_survey_in_armenia_report_-_web_version.pdf)

63 Available at: <http://www.unicef.am/uploads/files/docs/OOSC%20Armenia%20Pilot-CaseStudy%20arm1.pdf>

64 Available at: [http://www.armstat.am/file/article/poverty\\_2016a\\_4.pdf](http://www.armstat.am/file/article/poverty_2016a_4.pdf)

schooling for disability reasons early in 2015-2016 academic year in Armenia.<sup>65</sup>

However, sector representatives argue that the number of such children is higher than that published, especially in the regions and rural communities.<sup>66</sup> Identifying the reasons for drop-out is of paramount importance as it will also make it possible to map out clear methods to prevent such practices.

Collection of exact data about the drop-outs from school and identification of such children is also hindered by the fact that the number of children registered with general education institutions may exceed the actual number of children attending such institutions. The United Nations Committee on the Elimination of Discrimination against Women also expressed concern over the issue in its Concluding Observations.<sup>67</sup>

The reason is still that since general education schools are funded per number of students, and therefore teachers often do not objectively register the absences.<sup>68</sup> The same problem also persists in inclusive and special education schools especially given that schools receive 3-4 times

more funding for children with special education needs.<sup>69</sup>

Besides, another problem is that Armenia does not have a functioning system of tracking and referring out-of-school children.<sup>70</sup> This may envisage, for instance, systematic collaboration between educators and social workers.

According to the data provided by the RA Ministry of Education and Science, to settle the current situation, the RA Ministry of Education and Science conducted a study jointly with UNICEF. Based on the analysis of the study findings, the draft RA Government Decree on Identifying and Referring Compulsory Schooling Drop-Outs was developed and further circulated and submitted to the Office of the RA Government. The Procedure defines the term “drop-out” and envisages an electronic accounting system to include all the stakeholder agencies.

Moreover, according to the Ministry data, the RA MES National Centre for Educational Technologies developed Registration of Children Dropped out from Compulsory Schooling subprogram in frames of identifying and referring drop-outs.

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65 See Ibid. [http://www.armstat.am/file/article/poverty\\_2016a\\_4.pdf](http://www.armstat.am/file/article/poverty_2016a_4.pdf)

66 Available at: <http://disabilityinfo.am/12650/>

67 Para 22 and 36, United Nations Committee on the Elimination of Discrimination against Women Concluding observations on the combined fifth and sixth periodic reports of Armenia, November 18, 2016, available at: <http://www.refworld.org/pdfid/583863b34.pdf>

68 Child Rights Situation Analysis: Armenia, available at: <https://bit.ly/1l1wnh5>

69 See *ibid.*

70 Available at: <http://www.unicef.am/en/activities/education>

The subprogram makes it possible to monitor the risks that children already enrolled in school may drop out for various reasons. But identification of initial drop-outs from school of children not enrolled calls for the data of all the children born in relevant years as considering each academic year. It is also planned to implement the subprogram in Lori region in the academic year 2017-2018. Effective implementation of the subprogram and its further coverage of the whole territory of Armenia will be promoted by developing legislative bases for the registration of children dropped out from compulsory education.

However, the problem has not received a final solution yet and the data covered in this section show the legislative gaps in the sector that practically make it impossible to give a comprehensive assessment to the drop-out reasons and take steps to prevent such practices and identify dropped-out children.

**The Committee's above recommendation has been implemented partially.**

## **RECOMMENDATIONS:**

- Stipulate by law who can be considered “drop-out” by providing clear criteria to assess the child’s status.

- Keep unified and separate statistics on the number of drop-outs and the reasons for dropping out from school.
- Accelerate the adoption of a law on approving the procedure for identification and referral of children dropped out from compulsory education.
- Take steps to prevent such cases. Such steps may cover as follows:
  - diversify high school curricula to make the 12-year compulsory education effective;
  - make vocational education more accessible especially in rural areas;
  - support children from socially disadvantaged families in accessing educational institutions far from their place of residence;
  - exclude drop-outs for disability reason by ensuring accessible general education curricula and physical conditions of general education institutions.

## **4) REVISE THE SCHOOL CURRICULUM IN TERMS OF FREEDOM OF RELIGION OF CHILDREN**

Article 4(8), RA Law on General Education provides that religious activity and propaganda at educational institutions are prohibited, unless

otherwise prescribed by law. In Armenia, ‘History of Armenian Church’ course is taught in schools and according to some surveys, teachers sometimes impose some ritual actions, e.g. praying or crossing.<sup>71</sup> And this contradicts the religious beliefs of some people.<sup>72 73</sup>

The secondary education standard is currently revised under the World Bank loan program. Before, the new secondary education standard was expected to be approved in 2016, but it has not been accepted yet. Once that document is adopted, the subject standards should also be revised. Only setting the secondary education standard will clearly show the changes

in ‘History of Armenian Church’ subject.

**The Committee’s above recommendation has not been implemented yet.**

## RECOMMENDATIONS:

- When revising the standard for ‘History of Armenian Church’ subject, emphasize the knowledge component and include more extensive content on other religions.
- Prohibit compulsory actions within the learning process (e.g. prayer, visiting a church).

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71 Available at: <https://rm.coe.int/16807023b8>

72 Available at: <https://bit.ly/2sfFkIn>

73 Available at: <http://armhels.com/wp-content/uploads/2016/01/Ditord-2016-01Armenian.pdf>

## G. OTHER SPECIAL PROTECTION MEASURES

### (ARTICLES 22, 30, 38, 39, 40, 37 (B)-(D), 32- 36 OF THE CONVENTION)

#### 1. UNACCOMPANIED, ASYLUM SEEKING AND REFUGEE CHILDREN

The Committee welcomes the adoption of the 2008 Law on Refugees and Asylum which provides basic safeguards for the protection of unaccompanied refugee and asylum seeking children. However, the Committee regrets that the Law fails to meet minimum social and economic standards prescribed by the 1951 Convention on the Status of Refugees such as access to decent housing, public relief and naturalization. The Committee is also concerned that some refugee parents have been facing problems enrolling their children in schools due to the absence of documents from previous schools and translation of documents into Armenian. The Committee is further concerned that the RA Law on Citizenship has gaps which gives rise to possible statelessness of children of foreign parents or children whose

parents lost Armenian citizenship.

The Committee recommends as follows (Para 48):

- In light of the Committee's General Comment No 6 on the treatment of unaccompanied and separated children outside their countries of origin (CRC/GC/2005/6), amend the Law on Refugees and Asylum Seekers to provide basic safeguards and ensure its effective implementation.
- Ensure that all children regardless of their status have access to education and remove administrative barriers for the enrolment of refugee and asylum seeking children.
- Amend the legislation to ensure that no children under its jurisdiction can become stateless as a result of its regulations and practices.

The issues below are partly covered in RA Human Rights Defender's Ad-Hoc Public Report on Ensuring the Rights of Refugees and Asylum Seekers in the Republic of Armenia published in 2017.<sup>74</sup>

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<sup>74</sup> The Report is available at: <https://bit.ly/2INaHRL>

## **1) AMENDMENT TO THE RA LAW ON REFUGEES AND ASYLUM**

In January 2016, the legislative amendment package approved by the National Assembly on making changes to the RA Law on Refugees and Asylum took effect. It stipulates essentially new (conventional) approaches to define the status of unaccompanied and separated children and the relevant safeguards deriving from such status. First of all, the Law defines the concepts of “asylum seekers and refugees with special needs” (Article 8(1)) covering asylum seeking children or persons with disabilities or pregnant women or single parents with minor children. Also, the Law provides a clear and detailed definition of the concepts “unaccompanied child” and “separated child” that are very close by their content to the wording suggested in the Committee’s General Comment № 6; this suggests that the authors of the Draft used this important document while developing the Draft.

The Law binds the competent public authorities to assist the 2 groups above within their competence in their best interests and binds the authorized agency to assist them with accommodation and care taking account of only of their age, gender and other features but also the “other circumstances in the interest of a

child” and all the rights prescribed for children in the RA law. The Law also binds to accommodate unaccompanied or separated children in temporary accommodation centre on a priority basis taking account of their best interests and consulting their representative (Article 24). As for appointing a guardian or custodian, they must be appointed within seven working days upon receiving a relevant motion from an Authorized Labour and Social Affairs Body or Family, Women and Children’s Rights Protection Units. Safeguards for the 2 groups were especially extended by Article 50 of the Law. Particularly, competent authorities are under obligation to identify within the shortest terms possible the unaccompanied and separated children as groups with special needs and to appoint a representative within asylum procedure who is bounded to properly represent the best interests of such children and ensure that all the actions throughout the asylum procedure are taken in his/her presence. As a general safeguard against arbitrariness, the Law provides that all the officials involved in the protection of unaccompanied and separated children must act in line with the principle of protecting the interests of such children.

The legislative amendments above are welcome. They will promote significantly improved protection of the vulnerable groups. Nevertheless, some problematic

regulations are still practiced and contradict the Convention in their nature and consequences. Such issues are considered below.

Paragraph 31A, GC № 6 provides that a priority system should be created to identify unaccompanied and separated children within general procedures of their initial check-up and registration at border cross-point. The RA Law on Refugees and Asylum defines no such priority procedures or mechanism. The identification procedure is covered within the general administrative proceedings under the jurisdiction of the authorized migration agency, namely the State Migration Service. Neither the border guard unit officers, nor the Passport and Visa Department have any functions here. Article 8(2) of the Law states that asylum-seeker and refugees with special needs and unaccompanied or separated children enjoy the general procedure prescribed by the Law, **unless otherwise provided by the international**

**treaties ratified by the Republic of Armenia.** Meanwhile, the Convention and GC № 6 envisage developing a special procedure based on priority identification of a child as belonging to a vulnerable group. The Committee's general comments are considered the main source of interpretation of the Convention provisions. Therefore, they are binding insofar as the provisions of the Convention are. Therefore, a mechanism should be developed for detecting and identifying such vulnerable groups at border cross-points. The absence of such a mechanism fails to provide effective safeguards against arbitrariness of public agencies. For instance, in the absence of priority mechanisms, a minor asylum seeker may find himself/herself indefinitely in a penitentiary institution under criminal proceedings, completely unaware that he/she has the right to apply for asylum and of all the consequences of such application.

#### **Situation 4**

N.K. is a minor aged 17, born in Afghanistan. He speaks Pashto, one of the 2 national languages of Afghanistan. He was charged for making preliminary arrangements with his acquaintance, an Afghan man and crossing the guarded RA state order without the required documents on July 24, 2017, at about 4-5 am in the administrative territory of the Yeraskh community, RA Ararat region and illegally entering Armenia from the autonomous Nakhijevan region of the Republic of Azerbaijan. As he reached the oval square in Yeraskh village, he was detected by the RA Police officers.

He was charged under Article 329(2), RA Criminal Code for illegally crossing the state border of the Republic of Armenia with another person. Then he was detained and is still in custody selected as a preventive measure against him, first at Nubarashen penitentiary facilities and then at Armavir penitentiary facilities. While he has been imprisoned since July 24, 2017, it was only a month later that he could submit an asylum application to the State Migration Service, whereas he might have done so at the very moment of his arrest by filing an asylum request or applying with the RA Police officers, if the identification priority system was in place. It is noteworthy that he learned of his right to apply for asylum from his cell-mate, rather than any of the competent public authorities, such as border guards or competent authorities that arrested and detained him. Whereas, ideally, the asylum procedure should have started immediately after he informed the border guards of his wish to seek protection in the Republic of Armenia. In addition, the issue of appointing a guardian for the child was still unresolved after 3 months of his detention, whereas he is considered a separated child and relevant services must have settled his guardianship issue within 7 days following August 22. As a minor, he faces lots of deprivations: he is in custody with adults. As he speaks only Pashto, he finds it difficult to communicate with his cell-mates or administration of the penitentiary facilities. He has no news from his family and parents. He has no necessary clothes there and still cannot understand where he is and why he has been arrested. His cell-mate is an adult Turkish national detained for assisting another illegal border crosser. He has no opportunity to contact his family as he needs a phone card to call to Afghanistan /1-minute costing 850 AMD/. According to recent data, he twice attempted to commit suicide in the detention facility.

**For any child accompanied by a refugee or asylum-seeker parent or other legal representative, as well as for any unaccompanied or separated child, the receiving state should carry out a summary assessment of their best interests and make a relevant decision based on such assessment.** Below are the conditions making an integral part of the assessment of the best interests of

a child (before arrival, current situation and in case of expulsion). They include as follows: physical well-being, relevant physical care, safe immediate physical environment, care and upbringing, emotional environment, supportive and exemplary parent, child's interests, future perspectives for care and upbringing, safe physical environment, respect, social environment, education, communication with friends and peers,



community, sustainability, future development perspectives, etc.

As the asylum procedure is carried out by the State Migration Service that is competent to identify unaccompanied and separated children as asylum seekers as well as urgently support them with care, accommodation, guardianship and other urgent matters, it turns out that there is a considerable gap of time from the moment such children appear in the border cross-point and till the Migration Service performs the above functions and this gap may take days or even weeks. For example, according to the Law, unaccompanied or asylum-seeking minors are placed into guardianship/custodianship within seven working days upon receipt of the relevant motion (Article 7). Such a situation does not meet the “promptness” requirement set forth in the Convention considered as an important procedural safeguard against arbitrariness. Accordingly, once such children arrive in the border cross-point, they should receive urgent support in guardianship and custodianship as soon as possible<sup>75</sup> and placed under guardianship or custodianship as promptly as possible.<sup>76</sup> Therefore, the Law should regulate the administrative proceedings so that it becomes possible to meet the

Convention requirements as soon as possible once an asylum claim is filed at the border cross-point since Convention views promptness as an essential procedural safeguard.<sup>77</sup>

Regulation in Article 47(8) of the Law suggests that if requested asylum by an unaccompanied or separated minor, the Migration Service shall support them in appointing a guardian. The meaning of “support” is not quite clear, but the developing practice is that the service assumes guardianship of such children. Such a regulation is inexpedient and causes problems. The Migration Service assumes guardianship of children but it lacks relevant institutional experience and capacities. The minor should be represented by his/her guardian appointed at a meeting of the custodianship and guardianship body, based on an administrative act. The Service may not appoint a representative for the minor, as the guardianship body is a specialized body monitoring the care of the minor and his/her guardian’s actions. Besides, the Service appoints a guardian or a representative only within asylum procedure and after the procedure is over, the child actually has no representative any longer. Moreover, according to the Civil Code, the guardian is bound to live with his/her

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75 Para 33, General Comment N 6:

76 Para 21, General Comment N 6.

77 See Ibid.

dependent, ensure their livelihood and provide them with care and treatment, education and upbringing and protect their rights and interests, rather than merely act as their representative in the asylum procedure. Therefore, it is unreasonable for the migration service that lacks relevant experience to assume guardianship of a child and moreover, such practices may cause many obstacles.

Article 50(4) of the Law provides that the Authorized Migration Agency must take measures to establish the child's identity and nationality, as well as to seek for their parents or other relatives for family reunion, if such search and reunion are in the interests of the child. Pursuant to Para 31B of the GC N6, such actions must be taken promptly, through preliminary interviews and identifying some biodata and social history by qualified professional. Since, as mentioned above, it is the State Migration Service that sets the procedure for establishing a child's identity and his/her identification as a person with special needs, this condition cannot be ensured immediately and promptly as set out in Para 31B of the General Comment, i.e. at the very moment the child appears at the border cross-point or otherwise in the territory of RA under control

of competent public agencies, for instance if he/she is arrested by border guard troops while crossing the border illegally. In fact, the character of the history featured in Situation 1 above did not enjoy any of the above conventional safeguards.

Child's **age assessment** ranges among risky situations. In the event of wrong age assessment or lack of any such assessment, the child may be deprived of both the right to special protection and assistance, and of other, procedural rights prescribed by the CRC, or suffer exploitation and violence. Both the RA Law on Refugees and Asylum and the RA Law on Foreigners do not regulate the cases when documents or information on an unaccompanied refugee or asylum-seeking child's age or their travel documents are missing. When documents or information of a minor's (apparently) age are missing, the competent agency must refer the child to the Child Age Assessment Agency<sup>78</sup> whose conclusion may serve as a basis for determining the child's age and restoring relevant documents. Moreover, in assessing the child's age, the professional agencies should be guided by the assumption that the child should be given the benefit of the doubt; accordingly, if there are reasons

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78 RA Government Decree N 18-N of January 20, 2011 on Approving the Composition and Powers of Child Age Assessment Commission and Amending the RA Government Decree N 995-N of June 23, 2005, <http://www.arlis.am/DocumentView.aspx?DocID=65185>

to assume that a person whose age is unknown is a child, or if a person claims to be a child, the person shall be given the benefit of the doubt and presumed to be a child.<sup>79</sup>

Summing up the above, we consider that **the Committee's recommendations have not been mostly implemented.**

## RECOMMENDATIONS:

- The RA Law on Refugees and Asylum should stipulate a priority mechanism for detecting and identifying unaccompanied and separated children so that such vulnerable groups are not identified under the general procedure prescribed by law.
- The Law should define a system that would make it possible to start regulating issues related to placement, guardianship and custodianship of children once they appear at the border cross-point and their asylum application is registered rather than at the Migration Service after a lengthy period of time.
- The Law should be brought into compliance with the relevant Convention requirement to make it possible to start the actions under Article 50(4) at the moment the child

appears at the border cross-point or otherwise on the RA territory under control of competent public agencies.

- Regulation in Article 47(8) of the Law, stating that the migration service assumes guardianship and custodianship of an unaccompanied or separated minor, should be annulled so that such functions are performed under the general procedure through the guardianship and custodianship bodies; the service lacks relevant professional and institutional capacities to solve this issue in line with the Convention requirements.
- According to the RA Law on Refugees and Asylum, *a separated child* may be accompanied by an adult, whereas Committee's GC N° 6 clearly states that *a separated child may be accompanied by another adult family member*. Failing to specify that the adult must be a family member, this legal wording gives place to wider interpretation. Therefore, **to avoid ambiguous interpretations and ensure uniform application of legal regulation, the above provision should specify that a separated child may be accompanied by another adult family member.** The fact that a child is accompanied by another adult family member, rather

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79 Age Assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration. Council of Europe Children's Rights Division. Report prepared by Daja Wenke. See Para 47. Available at: <https://bit.ly/2LlyolZ>

than an adult (in general) reduces risks of kidnapping or trafficking.

- Taking into account that in case of alternative care, preference should be given to family-based care, e.g. care in foster families, and that institutional care should be arranged in the event when it is impossible or not in the child's interests to arrange family-based care, **Article 24 of the above Law should be revised to be brought into compliance with the Convention on the Rights of the Child and the United Nations Guidelines for the Alternative Care of Children.**<sup>80 81</sup> It is also essential to ensure that by law that the organizations or individuals engaged in care for unaccompanied children have adequate expertise and attend special trainings and their actions are regularly monitored.
- The child age assessment should be regulated by law under the above principles. Neither the RA Law on Refugees and Asylum, nor the RA Law on Foreigners regulate the cases when documents or information on an unaccompanied refugee child or asylum-seeking child or their travel documents are missing.

## 2) ACCESS TO EDUCATION FOR REFUGEE AND ASYLUM SEEKING CHILDREN

Our study shows that placing children with a refugee status and asylum-seeking children in general education schools lead to problems mostly caused by the lack of practice and adequate resources rather than by legislative gap. Particularly, in some cases, headmasters evade adopting foreign children mostly for language barriers and in some cases for integration issues, especially if such children are not Armenians. Generally, there is no special methodology for refugee children in place. Problems also arise when refugee children do not have the necessary documents generally required, e.g. a copy or a certified translation of their birth certificate.

**Therefore, the Committee's recommendations on that part remain unimplemented.**

### RECOMMENDATIONS:

An awareness mechanism for persons with an asylum status should be mapped out to inform them that they are entitled to free legal representation under Article 41(5)(9), RA Law on

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80 United Nations Guidelines for the Alternative Care of Children, Resolution 64/142 adopted by the General Assembly. See particularly Para 111: Available at: <https://uni.cf/2qtPnHU>

81 See Para 111.

Advocacy and in all the cases where headmasters of educational institutions created artificial obstacles to placing children in school, such persons should be informed of the possibility to promptly seek free legal help to challenge in an expedited manner the decisions and actions of the headmasters of educational institutions.

### **3) ENSURE THAT NO CHILD CAN BECOME STATELESS**

The Committee expressed concern that the RA Law on Citizenship has gaps which gives rise to possible statelessness of children of foreign parents or children whose parents lost Armenian citizenship. In this regard, the Committee recommended that the legislation is amended to ensure that no asylum-seeking child can become stateless as a result of its regulations and practices.

According to Article 8(2), RA Law on Citizenship, a person residing in the RA who has no evidence of his/her foreign citizenship is considered a stateless person. In other words, an asylum-seeking child may become a stateless person if they provide no evidence of their citizenship during their asylum proceedings. At the same time, Para 3 of the said Article provides that the Republic of Armenia encourages acquisition of Armenian citizenship

by stateless persons residing in the Republic of Armenia. This definition derives from the UN Convention on the Reduction of Statelessness that became effective for the Republic of Armenia in August 1994. Pursuant to Article 1(1), *“A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: at birth, by operation of law, or upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law.”* According to the letter received from the State Migration Service, the competent migration service identified no data on any children who became stateless as a result of examining application of refugees or asylum seekers. Therefore, in cases a child who enters Armenia seeks asylum or a refugee status, both the law and practice comply with the requirements of the Convention.

As to the cases when a child is born in Armenia, in this regard Article 12 of the Law on Citizenship which regulates such cases was substantially reformed in 2015 and adapted to the requirements of the Convention and the UN Convention on the Reduction of Statelessness above. Before amendment, Article 12 used to stipulate only that a child born in RA to stateless

parents, acquired RA citizenship. The Law did not regulate the cases when, for example, the parents' citizenship was known, but the country of origin did not allow them for various reasons to transfer their citizenship to their child. It turned out that in such cases the child had no opportunity to acquire Armenian citizenship and became a stateless person. On May 7, 2015, Article 12 was significantly amended by Law HO-33-N and defined a number of alternative grounds. Particularly, Part 1 of the Article stipulated that a child born in the Republic of Armenia acquires Armenian citizenship if: 1) the parents are stateless persons; 2) parents' nationality is unknown; 3) parents are citizens of other country (countries) but cannot transmit their citizenship to their child under the laws of their country (countries) of nationality, and other cases common among asylum seekers and refugees. In other words, the Law was brought into compliance with the requirement of Article 7 of the Convention according to which a child is registered immediately after birth and at birth acquires the right to name and **citizenship**. This means that acquisition of citizenship should be considered in the light of law that should be considered in the light of the child's right to the best interests. Moreover, Article 7(1) of the Convention should be

considered under Article 1 of the UN Convention on the Reduction of Statelessness.

Thus, both the law and the practice are consistent with the Convention requirements and the systemic problem pointed out by the Committee in its concluding observations, has been solved. **Hence, the Committee's recommendation has been implemented.**

## 2. ECONOMIC EXPLOITATION, INCLUDING CHILD LABOUR

The Committee is concerned that significant numbers of children, including those below the age of 14, are dropping out of schools to work in informal sectors such as agriculture, car service, construction and gathering of waste metal and family businesses. It is particularly concerned about the increasing number of children involved in begging in the streets and in heavy manual labour (such as labourers and loaders). It is further concerned that labour inspectorates are not effective in controlling child labour.

The Committee recommends as follows (Para 50):

- Ensure that labour legislation and practices comply with Article 32 of the Convention, including effective implementation of existing laws

and strengthen and involve labour inspectorates.

- Establish child labour reporting mechanisms, ensure the prosecution of perpetrators of child exploitation with commensurate sanctions, and in doing so ensure that such reporting mechanisms are known to and accessible by children. The Committee also recommends seeking technical assistance from the International Program on the Elimination of Child Labour of the International Labour Organization in this regard.

## 1) COMPLIANCE OF LABOUR LEGISLATION AND PRACTICES WITH ARTICLE 32 OF THE CONVENTION, INCLUDING EFFECTIVE IMPLEMENTATION OF EXISTING LAWS AND STRENGTHENING AND INVOLVEMENT OF LABOUR INSPECTORATES

According to the National Statistical Service data published in 2016, 4-5% of children in Armenia were involved in labour activity with an absolute majority of boys and agriculture was the main

filed of such activities.<sup>82</sup>

The RA Constitution and legislation define numerous substantive provisions for the *worst forms* of child labour that are consistent with the requirements of Article 32 of the Convention.

Prohibition of **compulsory and forced** labour is prescribed by Article 57 of the Constitution, Article 3 of the Labour Code and Articles 132 and 132.2 of the Criminal Code. Types of **hazardous labour** and activities for children under 18 are set out in many provisions of the RA Labour Code, such as shortened working time (Article 140), inadmissibility of involving children in night work and duty (Articles 148-149), additional breaks for rest (Article 153) and requirements for at least 2 days-off per week, inadmissibility of sending a child alone on a business trip (Article 155), mandatory medical examination at employment (Article 209), ban to involve persons under 18 in labour defined by law as heavy, hazardous, extremely heavy and extremely hazardous and the ban to involve persons under 18 in the other cases prescribed by law (Article 257). The exhaustive list of such labour activities is defined by the relevant Government

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82 Armenia. National Child Labour Survey, 2015 Analytical Report 2015: Republic of Armenia National Statistical Service, Section 2.5.

decree.<sup>83</sup> **Trafficking in children** as a criminal offense is defined in Articles 132 and 132.2, Criminal Code and **sexual exploitation** - in Articles 166, 261-263. **Involving a child in other criminal acts** that may involve criminal activity is punishable under Articles 63, 165, 166.1 and 266.1 of the Criminal Code.

This base of legal regulations provides legal safeguards consistent with Article 32 of the Convention, and it is no coincidence that according to the Child Protection Index published by World Vision International in September 2016,<sup>84</sup> while the efforts of the Republic of Armenia in fulfilling its commitments under Article 32 of the Convention are assessed as the least among nine countries (0.381 score out of a maximum of 1.0 – the worst result as compared to the index among the 9 countries), the measures taken towards legislation and policy were assessed by the highest score - 0.615.

Nevertheless, the Index at the same time suggests an opinion that the RA domestic law is not specific about how the definitions of child labour meet the ILO requirements and in this regard suggested to define the concept of “worst forms of labour” and clearly stipulate within such a concept that any forms of labour hindering a child’s possibility to receive education and damaging his/her physical, mental, moral and social development are prohibited. Additionally, there is also an opinion that the legislation and particularly the Labour Code fails to define the term of forced labour<sup>85</sup> and in this respect there are indicators to identify forced labour.

Further, there is no state labour inspectorate in Armenia that might carry out relevant monitoring and detect cases of illegal child labour in different enterprises. Following the RA Government Decree № 857-N of July 25, 2013,<sup>86</sup> the State Hygiene and Anti-

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83 RA Government Decree N 1698-N of December 2, 2010 on Approving the Lists of Heavy, Hazardous Industries, Labour, Professions and Positions, Particularly Heavy, Particularly Harmful Industries, Labour, Professions and Positions, Making Changes and Amendments to the RA Government Decree N 1599-N of August 11, 2005, Making Amendments in the RA Government Decree N 876-N of June 16, 2006 and Annuling Several RA Government Decrees

84 Child Protection Index: Armenia 2016.. September 2016, Available at: [https://www.unicef.org/about/annualreport/files/Armenia\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Armenia_2016_COAR.pdf)

85 Prohibition of forced labour and exceptions are prescribed by the 2015 Constitutional Amendments (Article 57.5) as well as the RA Labour Code (Article 3.1).

86 RA Government Decree on Making Changes and Amendments to the Government Decree N 1300-N of August 15, 2002, Making Amendments to Decree N 1821-N of November 14, 2002, Making Amendments to Decree N 1319-N of September 30, 2010 and Annuling Decrees N 1146-N of July 29, 2004, N 1893-N of October 6, 2005, N 1724-N of November 25, 2004 and N 1316-N of August 15, 2002. See: <http://www.arlis.am/DocumentView.aspx?DocID=115141>



Epidemiological Inspectorate of the RA Ministry of Health and the RA MLSA State Labour Inspectorate were merged into the State Health Inspectorate under the Office of the RA Ministry of Health; as a result, the State Labour Inspectorate's activity was terminated in December 2014. Meanwhile, back on September 28, 2004, the RA Constitutional Court made a ruling on the case SDO-520 (ՄԴՈ-520) to determine the compliance with the Republic of Armenia Constitution of the commitments under the Convention concerning Labour Inspection in Industry and Commerce signed on July 11, 1947 in Geneva, under which “the Contracting Parties shall undertake to maintain a system of labour inspection in industrial and commercial workplaces to ensure that legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable”.<sup>87</sup> The RA Constitutional Court's ruling clearly mentions introduction of a labour inspectorate system that should not only perform functions to reduce any shortcomings threatening the health or safety of workers while engaged in their work, but also ensure that the conditions of work are protected, e.g. **enforcement of legal regulations** on labour contracts, working day duration, wages

and **child's labour rights**.

As for the Public Health Agency, this agency does perform control over labour relations.

**Hence, taking into account the aforesaid, we consider that the Committee's recommendations have not been implemented.**

## RECOMMENDATIONS:

- The Labour Code should define the concept of “worst forms of child labour” and stipulate in its context that any worst forms of labour that can hinder a child's possibility to receive education and damage his/her physical, mental, moral and social development are prohibited.
- The concept of forced labour and indicators to identify its objective features should be defined by law. Consider criminalization of forced labour even when it is not linked to human trafficking and was committed without trafficking features.
- The terms “homeless, begging and vagrant children” should be defined by law taking account of the provisions of the Committee's GC № 21 (2017) on Children in the Street. This will make it possible to create a legal picture and clearer statistics as well as adopt procedures

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87 Para 2, SDO-520 (ՄԴՈ-520).

and regulations and revise budget allocations and services, provide trainings for specialists /not only for police officers, but also other child protection professionals/, develop more efficient and targeted policy, referral mechanisms and rehabilitation/inclusive programs. Specification of definitions will also make it necessary to update the national database and to carry out new research and studies to solve problems.

## 2) CHILD LABOUR REPORTING MECHANISMS AND SANCTIONS AGAINST PERPETRATORS OF CHILD EXPLOITATION

While according to the new RA Constitutional Law on Human Rights Defender, the Human Rights Defender monitors application of the Convention provisions, this function is restricted to issues of human rights and freedoms violation by the national and local authorities and officials as well as by the agencies fulfilling delegated powers of such authorities<sup>88</sup> and human rights

and freedoms violation by public service organizations.<sup>89</sup> Hence, the Human Rights Defender's Office may not assume the role of a unified and individual agency submitting reports and complaints on child labour.

According to the RA Labour Code, trade unions may also ensure protection of workers' rights and interests and therefore of children's interests in labour relations.<sup>90</sup> However, according to the *Forced Labour and Labour Trafficking in Armenia* study<sup>91</sup> published in 2015, currently the "supervisory function" of the trade unions is merely formal in nature as they have no legal levers to influence on employers' decisions. This situation is caused by a number of factors such as low level of legal awareness among employees, low trade union membership rates, high unemployment rate and other issues related to the mechanisms of signing written labour contracts, indexation of overtime work and setting minimal salaries.<sup>92</sup> Therefore, the trade union system cannot serve as a system of child labour reporting, either.

The child labour reporting and

88 Article 2(3), RA Constitutional Law on Human Rights Defender, adopted on December 16, 2016.

89 See *ibid*, Article 15.

90 Article 21, RA Labour Code, adopted on November 9, 2004, most recently amended on December 16, 2016.

91 *Forced Labour and Labour Trafficking in Armenia: Pilot Study*, Prepared and published with the support of the OSCE Office in Yerevan and with funding from US state Department agencies - the Office to Monitor and Combat Trafficking in Persons and the Bureau of International Narcotics and Law Enforcement. See: <http://www.osce.org/hy/yerevan/212566?download=true>

92 See *ibid*: <http://www.osce.org/hy/yerevan/212566?download=true> , pp: 221-223.

complaint mechanisms might be ensured through a state labour inspectorate that in its capacity of a public agency would be entitled to receive reports and upon examining them impose administrative liability on the employers for involve minors in labour activities in violation of the law. However, as mentioned above, the by the RA Government Decree № 857-N<sup>93</sup>, the State Hygiene and Anti-Epidemiological Inspectorate of the RA Ministry of Health and the RA MLSA State Labour Inspectorate were merged into the State Health Inspectorate under the Office of the RA Ministry of Health; as a result, the State Labour Inspectorate's activity was terminated in December 2014. As for the State Health Agency, it does not control labour relations but only the quality and scope of medical services provided by state funds by medical care and service organizations.

The state control over prevention and elimination of child labour is currently performed only by the police through its regional departments on juvenile cases that perform preventive activities as well as investigate specific cases and in case of available legal and criminal evidence apply to the competent agencies to start criminal prosecution; for instance, they may apply to the General Department of High-Profile

Cases, RA Investigative Committee for investigation of cases on trafficking in children. Such preventive activities by the police units are coordinated by the Department for the Protection of the Rights of Minors and Combating Domestic Violence under the Police General Department for Criminal Investigation.

However, the Police regional divisions on juvenile cases as well as Department for the Protection of the Rights of Minors and Combating Domestic Violence under the Police General Department for Criminal Investigation take measures against child labour only to the extent of elements of crimes (trafficking, coercion, sexual exploitation, etc.) and within preventing activities related to children involved in begging, vagrancy or street trade. The Police has made considerable efforts in both of these directions. Cases of trafficking in children were solved. By decree of the Chief of Police № 3837-A of November 7, 2013, an interdepartmental working group was set up to prevent begging and vagrancy and trafficking issues among minors and to provide awareness campaigns. Some of the begging and vagrant children identified through the police actions are referred by the RA Police Service of Juvenile Cases to the Armenian Relief Fund's Children

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93 Footnote 56.

Centre, where they are provided by the multidisciplinary board with necessary medical, moral, psychological and social assistance. Begging and vagrant juveniles are also referred to community rehabilitation centres in Armenia that conduct long-term preventive activities with both minors, and their parents. Also, petitions on the identified children are submitted to the RA Ministry of Education and Yerevan Municipality to return them to school as well as to the RA Ministry of Labour and Social Affairs, RA Ministry of Health and local authorities of the places of residence of the minors to provide them with assistance.<sup>94</sup> Despite such extensive activities, the police system and in particularly the Department for the Protection of the Rights of Minors and Combating Domestic Violence may not serve as a unified national system to submit child labour complaints as recommended by the Committee.

In 2015, the Government adopted a strategy for Solving the Problems of Children Involved in Begging and Vagrancy<sup>95</sup> that does not provide for a

unified national system of submitting child labour reports and complaints.

Hence, **the Committee's recommendation has not been implemented on the part of setting up a unified national system for child labour control.** There is no **unified national system** for child labour reporting and complaint, nor any child-friendly reporting mechanism. Also, there are no control and monitoring mechanisms for protection of the rights of children involved in the worst forms of labour. Development and introduction of such mechanisms is envisaged in the Strategic Program for the Protection of Children's Rights in Armenia for 2017-2021 and its Action Plan.

As for the Committee's recommendation on ensuring awareness among children of the reporting mechanisms and access to such mechanisms, the studies show that children are generally not aware of reporting mechanisms and have no access to such mechanisms due to their poor awareness.<sup>96</sup> Thanks to the activities of non-governmental

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94 RA Government Protocol Decree N 11 of March 16, 2017 on Approving the National Report of the Republic of Armenia on the Revised European Social Charter (reporting period: 2012-2015), See <http://www.irtek.am/views/act.aspx?aid=89124>

95 RA Government Protocol Decree N 37, August 6, 2015, available at: <http://www.irtek.am/views/act.aspx?aid=81848>

96 Forced Labour and Labour Trafficking in Armenia: Pilot Study, Prepared and published with the support of the OSCE Office in Yerevan and with funding from US state Department agencies - the Office to Monitor and Combat Trafficking in Persons and the Bureau of International Narcotics and Law Enforcement. Yerevan 2015, p. 106. Available at: <http://www.osce.org/hy/yerevan/212566?download=true>

and other organizations, awareness among the children in care and protection institutions of trafficking and exploitation practices is higher than of the worst forms of child labour.<sup>97</sup> The study also mentions that child protection specialists lack of awareness in this field.

## RECOMMENDATIONS:

- A national child labour monitoring system should be set up to be competent to receive complaints, conduct examinations, identify offenders (upon request or on their own initiative), prosecute offenders and carry out public awareness activities;
- To develop the above system, it is recommended to seek technical assistance from the ILO International Program on the Elimination of Child Labour.
- It is essential to empower trade unions to carry out child labour checks.
- After defining by law and other regulatory acts the term of forced labour and force labour indicators, they should be used to develop relevant checklists for checks by inspectors.
- Conduct awareness-raising activities

on worst forms of child work for:

- children in risk groups;
- parents (guardians);
- staff of care and protection institutions;
- staff of child protection agencies, custodianship and guardianship bodies and commissions, Family, Women and Child Issues Units of Regional Government Offices;
- educational institutions;
- staff of integrated social service (social workers and case managers).

## 3. ADMINISTRATION OF JUVENILE JUSTICE

While noting that every court in Armenia has a judge specialized in dealing with cases of children and that issues of children in conflict with the law are regulated in the criminal legislation, the Committee remains concerned that:

- a) There is no holistic juvenile justice system, including juvenile courts and comprehensive law on juvenile justice, with provisions for diversion mechanisms and efficient alternatives to the formal justice system;
- b) Children are detained during the pre-trial investigation for lengthy periods;

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<sup>97</sup> The study also covers examining possible risks of trafficking and exploitation of children in child care and protection and special general education institutions.

- c) Children may be subjected to 5 to 10 days of solitary confinement as a punishment;
- d) The Abovyan penitentiary institution where children are detained lacks basic hygienic supplies and beddings. Children in such institutions are not provided with proper education;
- d) There are no effective rehabilitation and reintegration programmes for children when they leave penitentiary institutions.

The Committee recommends as follows (Para 52):

- Establish a clear timeline for considering the draft RA Criminal Procedure Code, which provides for the establishment of a holistic juvenile justice system, and ensure its full compliance with the Convention, in particular articles 37, 39 and 40, and with other relevant standards.<sup>98</sup>In particular, the Committee recommends:
  - a) Establish a holistic juvenile justice system, including juvenile courts, on the basis of a comprehensive legal framework, as well as diversion measures to prevent children in conflict with the law from entering the formal justice system and

- to develop more alternatives to trial, sentencing and execution of punishment such as community service and mediation between the victim and offender in order to avoid stigmatization and provide for their effective reintegration;
- b) Ensure that the pretrial detention of children is used as a last resort and for the shortest time possible;
- c) Take immediate measures to ban solitary confinement of children, which amounts to inhuman treatment;
- d) Take immediate measures that children in Abovyan and other prisons are provided with all basic supplies, hygienic items and clean beddings and that children in prisons are provided with proper education;
- e) Establish effective rehabilitation and reintegration programs specifically targeting children who leave penitentiary institutions.

No clear timeline for considering the draft RA Criminal Procedure Code has been established yet. According to the official clarification by the RA Ministry of Justice of December 5, 2017, the working group is currently supplementing the draft RA Criminal

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<sup>98</sup> In that regard, the Committee referred to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the Guidelines for Action on Children in the Criminal Justice System, and the Committee's general comment No. 10 (CRC/C/GC/10, 2007).

Procedure Code. Once supplemented, the Draft will be posted on [www.e-draft.am](http://www.e-draft.am) Unified Website for Publication of Draft Legal Acts. As a result, the submitted comments and suggestions will be summed up and the Draft will be submitted to the Office of the RA Government. It follows that there are no clear timelines for holding public discussions on the Draft and submitting it to the National Assembly.

Besides, the issues below may be identified in terms of the Committee's recommendations above.

## **1) ESTABLISHMENT OF A HOLISTIC JUVENILE JUSTICE SYSTEM**

While starting from 2006, judges have been continuously trained and every general jurisdiction court in Armenia has a judge specialized in dealing with cases of children, there is no holistic juvenile justice system in place yet. Moreover, it is not provided by any legal regulation, concept or strategic document. Hence, following on the Constitutional Amendments 2015, the RA National Assembly adopted the draft Republic of Armenia Constitutional Law on the Judicial Code

of the Republic of Armenia.<sup>99</sup> Article 21(3) of the Draft provides that the Supreme Judicial Council may select judges examining certain types of cases (cases of juveniles, return of children illegally transferred to the Republic of Armenia and kept there illegally, etc.) from among judges with civil and criminal specification also examining other cases within relevant specialization.

Despite legislative stipulation of the Supreme Judicial Council's competence to choose judges specialized in dealing with cases of children, the Constitutional Law on Judicial Code of the Republic of Armenia, does not provide for any separate juvenile courts. In other words, such legislative regulations in fact do not provide for any institutional solutions to set up separate juvenile courts; general jurisdiction courts will continue to have specialized judges.

As for extrajudicial procedures, the analysis of the provisions regulating the peculiarities of proceedings on juvenile cases of the RA Criminal Procedure Code shows that juvenile proceedings have no fundamental differences from adult ones. Unlike the existing legislation, the Draft includes specific procedural regulations relating

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<sup>99</sup> Available at: <http://parliament.am/drafts.php?sel=showdraft&DraftID=46919>

The Code enters into force on the day of assumption by the President of the Republic of Armenia of his or her office, except for the provisions on the formation of the Supreme Judicial Council that take effect on the day following the official publication of the Code.

to juvenile proceedings, such as the requirement for expedient proceedings on juvenile cases without unnecessary delays and prohibition to prolong the terms of criminal prosecution against a juvenile in pretrial proceedings, specific rules for juvenile arrest and detention and termination of criminal prosecution by imposing disciplinary or punitive coercive measures.

In terms of introduction of a juvenile justice system, the Committee recommended developing alternatives to trial proceedings and sentence, such as mediation and community service. In this context, it is noteworthy that the current criminal law provides for only coercive measures of disciplinary nature as an alternative to sentence for juvenile offenders. Hence, according to Article 91(2) of the RA Criminal Code, the court may impose on minors the coercive measures of disciplinary nature below: 1) warning; 2) placing for a maximum of 6 months into control of parents or their substitutes or local authorities or competent agency to control convicts' behaviour; 3) obligation to remedy the caused damage within the terms set by the court; 4) restricting the freedom to entertainment and setting special behaviour requirements for a maximum of 6 months. Article 86 of the Criminal Code imposes on juvenile offenders the types of sanctions below:

fines, **community service**, detention, imprisonment for certain time. By virtue of another article, namely Article 54 of the Code, **community service may not be imposed as punishment on juvenile offenders under 16 at the moment of making the judgment**. Therefore, it appears that imposition of community service as an alternative to the state formal legal and criminal response in the sense of the international instruments on juvenile justice is not envisaged by domestic law.

As for the mediation process, it should be noted that Chapter 8 of the RA Law on Probation effective since June 2016 defines the probation service functions in mediation both at the stage of trial proceedings, serving of non-imprisonment sentence and post-sentence stages. However, the legal bases for mediation both at pre-trial, and at trial proceedings are not clear yet; there are no clear mediation proceedings, threshold of professional readiness and scope of functions of mediators in criminal cases as well as content and scope of further work to be done with the victims. In other words, the above regulations of the probation service in mediation may not be viewed as an alternative to formal justice insofar as mediation at the stage of trial proceedings has no legal bases of its own stipulated in the



Criminal Code and Criminal Procedure Code. Besides, the mediation process in the logic under the Committee's recommendation is not ensured by the institute of exempting a person from liability based on mediation with the victim as set by the RA Criminal Code and the RA Criminal Procedure Code. The matter is that according to the Article 73 of the RA Criminal Code, a person who committed a minor offense may be exempted from criminal prosecution if he/she has reconciled with the victim and compensated or otherwise redeemed the damage caused. And by virtue of Article 183 of the Criminal Procedure Code, proceedings on the particular offences listed in the Article are initiated only upon victim's complaint and if the victim reconciles with the suspect or accused, such proceedings shall be terminated. It follows from the cited regulations that first of all, the current procedures for mediation with the victim are applicable to any offender, irrespective of their age and whether they have attained their full age. Also, an offender may be exempted from criminal prosecution through mediation only for certain offences punishable under Criminal Code.

It follows that the current legislation provides only general regulations on

mediation between the offender and the victim, without providing for any specific grounds and conditions for juvenile proceedings.

## **1) PRACTICES OF APPLYING DETENTION AS A PREVENTIVE MEASURE AGAINST CHILDREN**

In 2013 the courts received 35 motions on applying detention as a preventive measure against minors, 31 of which were granted.<sup>100</sup> In 2014 the courts received 21 motions on applying detention as a preventive measure against minors, 16 of which were granted.<sup>101</sup>

According to the data provided by the RA Investigative Committee, from January 1, 2015 to November 2017, courts received 48 motions on applying detention as a preventive measure and granted 47 of them. The average duration of detention of minors under such proceedings is 4.5 months.

It is noteworthy that in the first half of 2013-2017, courts issued the judicial acts below on imposing punishments on juvenile offenders. According to the statistical data submitted by the RA Judicial Department, in 2013, 69 minors were sentenced to imprisonment and the sentence was not conditionally applied to 44 of them.

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100 [http://armstat.am/file/article/sv\\_12\\_14a\\_550.pdf](http://armstat.am/file/article/sv_12_14a_550.pdf)

101 [http://armstat.am/file/article/soc\\_13\\_52-53.pdf](http://armstat.am/file/article/soc_13_52-53.pdf)

In 2014, 62 minors were sentenced to imprisonment and the sentence was not conditionally applied to 37 of them. In 2015, 53 minors were sentenced to imprisonment and the sentence was not conditionally applied to 49 of them. In 2016, 44 minors were sentenced to imprisonment and the sentence was not conditionally applied to 37 of them. In 2017, 19 minors were sentenced to imprisonment and the sentence was not conditionally applied to 18 of them.

The study of the statistical data above results in the conclusions below. First, the practices of granting almost 90% of the detention motions submitted by the preliminary investigation body persist. On the one hand, it can attest to the validity of the motions of the criminal prosecution agency, but on the other hand, the duration of children's detention at the penitentiary facilities are problematic. Second, while the number of detention motions is not high for instance in 2015-2017, the lack of clear criteria for selecting detention as a preventive measure against minors is problematic, including, among others, in assessing the grounds for detention as prescribed by the Criminal Procedure Code. According to Article 135 of the Code, selection of a preventive measure is conditioned by assessment of the possibility and the risk that the person in question may

show a certain behaviour in the future. In this regard, special knowledge (psychology, criminology, social work) and skills to assess such risks are of crucial importance especially in selecting detention as a preventive measure against minors.

There are no specific indicators to assess the grounds for selecting preventive measures against minors.

Also, there is no integral statistics with specific indicators on detention and other preventive measures against minors. For instance, according to official statistical data for 2013, detention motions were filed against 35 minors<sup>102</sup> but in the same year the courts issued guilty verdicts against 69 minors. As a result, there is no clear picture on the ratio of choosing detention as a preventive measure against minors in a particular term to the total number of criminal proceedings and to the alternative preventive measures. Besides, the quantitative difference in the rates of choosing detention as a preventive measure against minors and imprisonment sentences confirmed by the statistical data have led to the judicial practice when detention as a pretrial measure is actually applied more often than imprisonment sentences.

In this regard, the Strategic Program

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102 Data available at: [http://armstat.am/file/article/sv\\_12\\_14a\\_550.pdf](http://armstat.am/file/article/sv_12_14a_550.pdf)

for the Protection of Children 2013-2016, approved by the RA Government Decree back in 2012 highlighted improvement of data collection on children in conflict with the law, mentioning that when collecting data, the public authorities currently possessing such data must be guided by common indicators to ensure data comparability.<sup>103</sup> And Para 104(6) of the Strategy directly provides for “creation of a single database on juvenile crimes and other offenses (taking into account the indicators developed by UNICEF and United Nations Office on Drugs and Crime (UNODC).”

The need for clear indicators in juvenile justice and improved effectiveness of interagency collaboration in juvenile justice was expressly highlighted in the assessment recommendations of UNICEF Assessment Group in 2010. The above Assessment (“Assessment of Juvenile Justice Reform Achievements in Armenia”) notes, among other seven recommendations: “Juvenile justice indicators should be developed and relevant data should be published annually”.<sup>104</sup>

At the same time, the practice of limited application of juvenile detention should be ensured through legislative

stipulation of procedural safeguards.

Thus, the current criminal and judicial legislation does not provide any specific regulations for application of detention against minors as a preventive measure or extension of its terms. Perhaps only Article 442 of the Code stipulates that detention may be applied as a preventive measure against a minor suspect or accused if he/she is charged *with crimes of medium-gravity, grave crimes or crimes of particular gravity*.

Here, it should be noted that solutions in the new draft Criminal Procedure Code provide for relevant legislative safeguards to secure legal grounds for the practice of applying detention against minors in exclusive cases only. Particularly, the draft prescribes a crucial safeguard provision that **any ruling on restricting the liberty of a minor must be made after a detailed consideration of all the circumstances of the proceedings to minimize such restriction**.

Besides, the draft stipulates compulsory conditions for applying or considering alternative preventive measures in case of detention. In particular, **when deciding on applying detention to a minor defendant, the possibility of placing him/her under disciplinary supervision must be**

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103 Para 95, RA Government Decree N1694-N of December 27, 2012 on Approving the Strategic Program for the Protection of Children's Rights in Armenia for 2013-2016 and its Action Plan

104 Assessment of Juvenile Justice Reform Achievements in Armenia, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States January 2010, p. 8.

**considered.** And as for minors charged with minor or medium-gravity offenses, detention may be imposed on them only if they violate the terms of alternative preventive measure imposed on them initially.

In line with the logic of international legal standards, the Draft also stipulates the **general rule of imprisonment as a last resort and for the shortest term possible.**

Unlike the current Criminal Procedure Code, the Draft provides a differentiated approach to determining the maximum terms of detention applicable to minors. Hence, the Draft stipulates that pre-trial detention or pre-trial home detention imposed on a minor may not exceed one month. In the pre-trial proceedings, the total duration of detention imposed on a juvenile cannot exceed:

The total duration of pretrial detention of a minor may not exceed:

- 1) 2 months - for charges with minor to medium-gravity offences;
- 2) 6 months - for charges with grave and particularly grave offences.

Detention imposed on minors charged with particularly grave crimes may be extended in exceptional cases for a maximum of another 2 months.

- Legislative regulations for solitary confinement of minors

Para 95.3 of Council of

Europe Committee of Ministers Recommendation N° CM/Rec (2008)11 on the European Rules for juvenile offenders subject to sanctions or measures bans imposing solitary confinement as a punishment against juvenile offenders. Para 95.4 of the Recommendation stipulates that segregation for disciplinary purposes shall only be imposed in exceptional cases where other sanctions would not be effective. Such segregation shall be for a specified period of time, which shall be as short as possible. The regime during such segregation shall provide appropriate human contact, grant access to reading material and offer at least one hour of outdoor exercise every day if the weather permits. The Recommendation provides for broader rights for juvenile offenders as compared to the European Prison Rules. The Recommendation completely bans isolating juvenile offenders in solitary confinement cells. Solitary confinement cells are considered cells without basic equipment, e.g. bed, or cells with only one bed.<sup>105</sup> It is banned to place juvenile offenders in dark cells or in a cell with inhuman or degrading conditions.<sup>106</sup>

Unlike the Recommendation, the RA domestic law still prescribes the possibility of placing juvenile detainees or convicts to solitary confinement

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105 [https://www.unicef.org/tdad/councilofeuroperec08\(1\).pdf](https://www.unicef.org/tdad/councilofeuroperec08(1).pdf)

106 [https://www.unicef.org/tdad/councilofeuroperec08commentary\(1\).pdf](https://www.unicef.org/tdad/councilofeuroperec08commentary(1).pdf)

cells as a sanction. According to Article 95(1), RA Penitentiary Code, convicts violating the prescribed sentence procedure may be subjected to the sanctions below: reprimand, strict reprimand, **solitary confinement for up to 15 days and for juvenile convicts – for 10 days.** Article 35, RA Law on Holding Detained or and Arrested Persons prescribes that detained persons who violate the internal regulations, fail to perform their duties or perform them in an improper way, may be subject to the sanctions below: reprimand, **solitary confinement for up to 10 days and for juvenile convicts – for 5 days.**

- Detention conditions of minors deprived of liberty

The Annual Report on activity of the Human Rights Defender as National Preventive Mechanism in 2016 recorded the issues below. During the National Preventive Mechanism visit to “Abovyan” penitentiary institution, the building foreseen for juvenile convicts was not exploited. The cells had double-deck beds, whereas Para 85, RA Government Decree No 1543-N of August 3, 2006 prescribes that “Single deck beds shall be placed in cells or accommodations for juvenile detainees or convicts.” Also, the juvenile cells were once used as solitary confinement

cells and the iron beds intended for such cells were still there.

Besides, the juveniles detained at “Abovyan” penitentiary facilities expressed their dissatisfaction with the quality and quantity of the bedding. Thus, during the visit, they noted that the temperature in the cells is low, while they are provided with only one cover-blanket, and an additional one is not being provided based on the clarification that only one blanket has been foreseen per persons. During the visit, 2 of the juvenile convicts had no linen and used to sleep on the mattresses. It should be noted, however, that during repeated visit a few days later it was recorded that they were provided with linen.<sup>107</sup>

- Issues related to occupation and education of juvenile detainees

The issue of schools at some of the RA penitentiary facilities raises concern. Particularly, the National Preventive Mechanism’s study of juvenile education revealed that the school at “Abovyan” penitentiary institution functioned no longer and many of the juvenile detainees have not completed their education.

According to the clarification provided by the RA Ministry of Justice, “Abovyan Special Vocational State College N2” SNCO provided 2 programs: general

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<sup>107</sup> See 2016 Annual Report of the Human Rights Defender and the Annual Report on activities of the National Preventive Mechanism, pp.20-21, 29. <https://bit.ly/2shTQj3>

education and vocational education, but starting from the academic year 2014–2015 the RA Ministry of Education and Science provided 0 place for general education and 10 places for vocational education, particularly computer operation. The claim for 40 vocational education places for the academic year 2016–2017 has remained unanswered so far. All the juvenile detainees are involved in trainings on clay art, woodworking, decorative art, healthy lifestyle and effective communication held by the Centre for Legal Education and Rehabilitation Programs SNCO.

According to the clarification, juvenile convicts and detainees always enjoy their right to outdoor walk where they are provided with training and physical development opportunities.

Meanwhile, the National Preventive Mechanism identified that Abovyan penitentiary institution does not have conditions for exercising gymnastics in juvenile detention facilities. Although there is sport equipment secured in the sports hall of the institution provided for this purpose, those are in bad (damaged) condition..<sup>108</sup>

- Child victims and witnesses of crimes

While noting some measures to protect child victims and witnesses, such as the presence of a legal representative and psychologists during interrogations, the Committee regrets

that the efforts are insufficient and are not properly reflected in the State party's legislation.

The Committee recommends as follows (Para 54):

- ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes are provided with the protection required by the Convention;
- take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20).

Para 51, RA Government Decree № 303 of February 27, 2014 on Approving the Action Plan of the National Strategy for Human Rights Protection states that the Criminal Procedure Code must prescribe a special procedure for confrontation and other investigative actions involving juveniles to, particularly, exclude secondary victimization. Economic and Social Council Resolution 2005/20, states, among other guidelines, that *“... In order to avoid further hardship to the child, interviews should be conducted by trained professionals... all interactions should be conducted in a child-sensitive manner in a suitable environment that accommodates the*

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<sup>108</sup> See *ibid.*, p. 35.

*special needs of the child, according to his or her abilities, age, intellectual maturity...*"<sup>109</sup>

According to Para 31, of the said Resolution 2005/20, the entire juvenile proceedings should be child-sensitive and in this sense, such proceedings should be organized in way that child's contacts with the justice system are minimized as possible. Particularly, the Resolution states that the number of interviews should be limited: *"special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording ... or to ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined (including in court), out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided. Ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by*

*judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts..."*<sup>110</sup>

In this context, it should be mentioned that the Ministry of Justice developed a draft Law on Making Changes and Amendments to the RA Criminal Procedure Code where taking account of the aim of exclude secondary victimization it suggests that the investigative actions of confrontation and identification parade with involvement of a minor under 16 should be compulsorily attended by a pedagogue. The Draft provides that a psychologist possessing relevant qualification and professional expertise should attend interviews of a minor victim or witness within proceedings on crimes of sexual abuse or crimes against sexual freedom, as well as interviews with minors with mental disorders and in case body conducting criminal proceedings believes the presence of psychologist is in the best interests of the minor. Also, the legal representative of a minor witness or victim of crime, a pedagogue or psychologist are entitled to ask the minor questions during the pre-trial proceedings with the investigator's permission.

The Draft also provides for the

109 Paras 13-14, United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, (Resolution 2005/20).

110 <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

possibility of psychologist's attendance of the interviews of the minor witness or victim of crime at the stage of trial examination. This amendment also aims at providing for an additional safeguard to ensure that the minor's involvement in the trial proceedings does not damage his/her interests. Also, at the stage of trial examination, the psychologist may, with the permission of the presiding judge, make objections and comments on the normal course of the questioning.

The Draft suggests substituting in some cases the pedagogue by a psychologist since provision of psychological support to a minor should be reserved to specialists with adequate knowledge and experience who can make a more accurate and multilateral assessment of their specific needs and psychological features.

The Draft also provides for video recording possibilities for interview, confrontation and identification parade involving a juvenile; accordingly, before such actions, the investigator must to seek the opinions of the participants of the questioning on video recording the questioning and then make a decision that should be based in each case on the best interests of the minor. The investigator must also register the opinions of those present on video recording.

To improve the procedural actions

with participation of child victims or witnesses of crime, the RA Ministry of Justice developed, with the support of UNICEF, Handbook on Practical Guidelines for Children's Participation in Judicial Procedures reflecting the international practices as well as practical tips, including psychological advice, on how to behave with children with various statuses, including child victims and witnesses of crimes.

In July 2017, the distance learning program on Protection of Juveniles in Criminal Proceedings was launched. The Program is implemented with the support of the Academy of Justice Department for Distance Learning and Information Technologies and the UNICEF. The Program aims to make the judges and prosecutors familiar with protection of children's rights in Armenia, as well as juvenile justice systems and fundamental principles. The training course will present social rehabilitation opportunities for juvenile offenders, child victims or witnesses of crime or crime and procedures for their protection.

It should be noted that while the legislative amendments aimed to safeguard the rights of the minor victims or witnesses of crime prescribe adequate procedural safeguards, the issue should be resolved not only at the legislative level, but also through organizational and



logistical support. Particularly, it is essential to take practical measures to secure relevant skills meeting the international requirements for the agency responsible for the proceedings to communicate with the minor victim or witness of crime within the criminal proceedings, through continuous training and courses. Also, the issues below should be settled: video recording of testimonies provided by the minor victim or witness of crime, provision of equipped rooms and premises for the minors at the stages of pre-trial and trial proceedings.

## **RECOMMENDATIONS:**

- Ensure efficient juvenile justice mechanisms in the Criminal Procedure Code and other necessary legal acts by providing diversion of criminal cases, new grounds and procedures for examination and suspension of criminal cases (e.g. granting powers to reject materials or suspend the proceedings on the initiative of the investigator or prosecutor, etc.) by keeping minors away from the necessity to pass through all the “channels” of the criminal justice.
- In parallel with legal regulations of the juvenile justice system, ensure introduction of rehabilitation justice components into the legal

practice, especially when juvenile proceedings are suspended by age and other features and grounds at the stage of investigation or preliminary investigation (e.g. symbolic compensation by the minor to the victim and the community; social, psychological and professional training and other rehabilitation programs for the minor, etc.).

- Introduce rehabilitation programs for juvenile offenders in community, set up responsible agencies and organizations and regulate their powers.
- Create an institute for mediation in juvenile affairs.
- Develop uniform criteria for application of detention as a preventive measure against juvenile offenders, highlighting the factors of risk of their potential danger for the community and committing another crime.
- It is necessary to reconsider the judicial and procedural legislation concerning children’s rights from the perspective of access to effective protection mechanisms against violations, absence of which makes the realization of children’s rights impossible;
- Ensure compliance of the Criminal Procedure Code (the Draft) with the requirements of the Resolution 2005/20 and the spirit of the Model Law and Related Commentaries

- adopted on their basis;
- Stipulate by law a ban on disciplinary penalty of applying solitary confinement against minors deprived of liberty.
  - Define certain statistical indicators and standards for keeping juvenile crime statistics by ensuring function separation and life-long training of the agencies responsible for creating and collecting such statistical data.
  - Develop and approve a strategic program to reduce and prevent juvenile crime by using the potential of both governmental and non-governmental organizations.
  - It is necessary to consider the possibility of creating a Children's House /Barnahus/ in Armenia as an important mechanism for the prevention of the child's secondary victimization.

# H. OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

(ARTICLES 3, 4, PARA. 2, 3; 5; 6 AND 7)

## 1. COMPLIANCE OF THE DOMESTIC CRIMINAL LAW WITH THE PROTOCOL AND CREATION OF A UNIFIED DATA COLLECTION SYSTEM

In its Concluding Observations,<sup>111</sup> the Committee stated that while the RA integrated various provision of the Optional Protocol into its Criminal Code, the Committee is concerned that such efforts have focused mostly on trafficking and not on the crimes of sale of children, whereas the elements of crime of trafficking and sale of children are not identical and the Committee recommends defining sale of children with its separate content.

The Committee recommends as follows (Para 9):

- ensure that the definition of sale of children is included in the national legislation separately from the definition of trafficking, as defined in Article 2 of the Optional Protocol:

*“Sale of children means offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labour.”*

- Review the Criminal Code and incorporate in the Code the acts set forth in Article 3 as criminally punishable acts.
- Create a unified data collection system to include data on the offenses set forth in Article 3 of the Protocol.

## 1) DEFINING ELEMENTS OF CRIME OF SALE OF CHILDREN IN RA CRIMINAL CODE

The definition of the elements of crime ‘sale of children’ in the RA Criminal Code does not comply with the Committee’s recommendation. The RA Criminal Code defines sale of children in Article 168 as purchase of

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<sup>111</sup> <https://bit.ly/2xd229K>

a child for the purpose of assuming taking care of him/her or sale of a child for the purpose of passing him/her under the care of the purchaser. Sale of children is also defined in Article 132<sup>2</sup> of the Criminal Code, in the context of trafficking and exploitation of a child or a person deprived of the opportunity to realize the nature or significance of his/her actions or from governing his actions as a result of mental disorder, taking account of the definition of “exploitation” in Article 132(4). The elements of the objective side of this offense do not fully comply with the features laid down in Article 3(1) of the Protocol. Particularly, the Protocol suggests including the concept of sale of children: **offering, delivering or accepting a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labour**. Meanwhile, Articles 132<sup>2</sup> and 168 of the Criminal Code do not stipulate *offering a child* among objective features of the offense. Besides, apart from the purpose of care, sale of children is defined by the elements of crime of trafficking or exploitation, which narrows the scope of the actions of sale of children prescribed by the Convention thus leaving them out of the sphere of criminal law. The

matter is that according to the current legislation, the criminal offense of sale of children for exploitation can be manifested by actions of recruiting, transferring, transporting, hiding or receiving, exploiting, or putting in a situation of exploitation or keeping children, which do not coincide in time and content with the action of offering a child. It turns out that given the current legislative regulations offering a child may be considered at most as an incomplete crime still at the stage of preparation or attempted crime and thus lead to less severe sanction as compared with committed offense.

The solutions provided in the new draft Criminal Code<sup>112</sup> presented for public discussion also do not alleviate the Committee’s concerns that the element of crime of sale of children is provided within the elements of crime of trafficking as well as sale of children under Article 227 with the only difference that the latter points to no purpose as a compulsory crime feature. The expected amendments, insofar as they criminalize the sale of children, irrespective of its purpose, partially ensure the Committee’s recommendations. Nonetheless, neither the current Criminal Code, nor the new draft Criminal Code cover all the actions described in Article 3 of the Protocol.

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112 <https://www.e-draft.am/projects/496/about>

Taking account of the aforementioned, we consider that **the Committee's recommendation has not been implemented, but adoption of the new Criminal Code will provide a partial solution to the Committee's recommendation.**

## **2) STIPULATION OF THE CRIMES UNDER ARTICLE 3 OF THE PROTOCOL IN THE CRIMINAL CODE AND CREATION OF A UNIFIED DATA COLLECTION SYSTEM**

The Committee also expresses concern that the acts below defined in the Protocol are not defined in the Criminal Code as criminally punishable offences and proposes to criminalize them with the contents below:

- (1) Sale of children as improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- 2) offering, obtaining, procuring or providing a child for involving him/her in prostitution;
- 3) Import, export, propagation or possession of child pornography;
- 4) an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

The elements of crime in Para 1 are expressed in Article 169 of the Criminal Code (inclining or coercing

someone to give consent for adoption for mercenary purposes) and while the article does not clearly define the phrase “inclining someone to give consent for adoption” with the content of sale of a child, “mercenary purposes” here can be interpreted in the sense of sale of a child.

Further, Article 132<sup>2</sup>, Criminal Code provides exploitation of child prostitution or recruitment, transfer, transportation, concealment or acquisition, or placing him/her in a situation of prostitution exploitation, i.e. with the content of trafficking. And Article 166 of the Code assigns responsibility for *involvement* by a person above 18, of a child in actions related to *prostitution* or preparing material or items of pornographic nature, *unless the features of crime under Article 132.2 of the Code are missing*. In other words, in the context of the elements of crime, involving a child in prostitution is criminally punishable, which however does not cover the actions of offering, acquiring, purchasing or delivering a child for such purpose. Therefore, **the Committee's recommendation has not been implemented.**

As to the Committee's 3<sup>rd</sup> recommendation, Part 1, Article 263 of the Criminal Code define propagation, advertising, use and preparation of pornographic materials or items, and Part 2 defines presentation

of child pornography through a computer system or keeping and storing child pornography on the computer. The Code **does not define** actions of *importing* and *exporting* child pornography as criminally punishable acts and the actions of offering or possession it, as worded in the Protocol, are covered in the interpretations of the phrases below: “presenting” or “keeping it in a computer or computer data system”. The new draft Criminal Code defines a solution as suggested in the Protocol under Para 2 above. Particularly, pursuant to Article 284(2) of the draft, the acts below are criminally punishable: creation, production, dissemination, realization, export, import, offering, advertising of child pornography or storing it in a computer system or computer data storage system, or in any other way.

This means that **while** the Committee’s recommendation defined in Para 3 **has not been implemented so far**, it will be **considered implemented** by adoption of the new Criminal Code.

With regard to the recommendation in Para 4, it should be noted that **in case of criminalizing the acts mentioned in the special part**, the provisions regulating the institutes of incomplete crime and complicity in the general part of the Criminal Code will

automatically become applicable.

As regards creating a unified crime data collection system as set in Para 3 of the Protocol, currently there is **no such system in place**. The data are collected by a trafficking data collecting system. In 2015, the RA Law on Identification and Support of Victims of Human Trafficking and Exploitation took effect. The Law defines protection safeguards, types, procedure and size of support for victims of trafficking, including child victims, as well as the procedure for collecting, accumulating, managing and exchanging their data and the procedure for using such information for identification of victims of trafficking, including child victims of trafficking. Data coordination is provided by the board on combating trafficking and exploitation.

It should be noted that a system of the data on the above crimes may be created through stipulating its criminal law basis, i.e. through including such actions in the Criminal Code and keeping statistics by separate articles. Therefore, the **Committee’s recommendation has not been implemented** either.

## RECOMMENDATIONS:

- The criminal elements of sale of children should be defined in the Criminal Code by its own content,

separately from elements of crime of trafficking.

- The Criminal Code should also prescribe all the manifestations of child trafficking provided in the Protocol particularly by criminalizing offering of a child.
- Offering, acquiring, purchasing or delivering a child for pornography purposes should be criminalized. This is not fully incorporated in either the current Code, or the draft new Criminal Code. Export and import of child pornography is not included in the legislative wording of the current Law. By adopting the new draft Criminal Code, it will be stipulated directly.

## 2. EXTRATERRITORIAL JURISDICTION AND EXTRADITION

In terms of applying extraterritorial jurisdiction and extraditing offenders as prescribed in the Protocol, the Committee is concerned that the RA Criminal Code sets the requirement of double criminality in all cases of extradition (a person is extradited for acts that are criminally punishable both in RA and in the foreign state requesting extradition of a person).

The Committee recommends as follows (Para. 25):

- take steps to ensure that a double

criminality requirement is not used in cases of extradition for crimes covered by the Protocol when they are committed outside its territory.

The RA Criminal Code provides 3 principles of extraterritorial jurisdiction of the RA: citizenship, universal and real. The study of the regulations in Article 15 of the Code suggests that the double criminality requirement is envisaged in case of applying the principle of citizenship when a crime is committed outside the RA territory by an Armenian citizen or a stateless person permanently residing in Armenia. At the same time, the legislator provides for exceptions from the double criminality requirement under the RA criminal jurisdiction for certain crimes (e.g. corruption crimes, some crimes against peace and human security). Whereas, no such exceptions are envisaged for the crimes listed in the Protocol.

In this connection, it is noteworthy that according to Article 12(2) of the draft new Criminal Code, in cases prescribed by international treaties ratified by the Republic of Armenia, the **issue of criminal liability** of the Armenian citizens, including persons with dual citizenship, as well as stateless persons permanently residing in Armenia, asylum-seekers in Armenia, persons granted asylum in Armenia or persons with a refugee status residing

in Armenia for committing an action under criminal law outside of the territory of the Republic of Armenia **is resolved under the Criminal Code of the Republic of Armenia, regardless of whether such act is considered a crime in the country where it was committed.** It turns out that, in the draft, citizenship principle does not prescribe the double criminality requirement at all. However, given the current legislative regulations, the **Committee's recommendation remains unimplemented.**

### RECOMMENDATION:

- The double criminality condition in the Criminal Code should be removed for the crimes listed in the Protocol. At the same time, this recommendation of the Committee may be considered completely implemented as a result of a complex legislative amendment to criminalization of all the actions envisaged in the Protocol.

### 3. COORDINATION AND EVALUATION

The Committee notes that the Police are the responsible authority for the coordination of the implementation of the Optional Protocol. The Committee,

however, regrets that the Police lack competence to develop policies, monitor and evaluate activities under the Optional Protocol.

The Committee recommends as follows (Para 13):

- Establish a single body that is not only executive, but also responsible for the periodic monitoring and evaluation of measures taken in order to use the results of such evaluation for further strategy and policy development for all areas covered by the Optional Protocol.

The RA Police General Department for Combating Organized Crime has a specialized subdivision, the Anti-Trafficking Unit which, according to the Police Chief's Decree № 890-A of March 22, 2013, coordinates the combat of all the police subdivisions against human trafficking and exploitation as well as related crimes (involving a child in prostitution or preparing materials or items of pornographic nature, purchase of a child for the purpose of assuming taking care of him/her or sale of a child for the purpose of passing him/her under the care of the purchaser, involving another person in prostitution for mercenary purposes, promoting prostitution, disseminating pornographic materials or items).

With regard to the Committee's recommendation to establish a single



body with coordination functions, it should be noted that, according to the official clarification by the Police, no such issue has been ever discussed by the Police.

#### **4. DISSEMINATION AND AWARENESS-RAISING**

The Committee found that sufficient measures were not taken to promote awareness of the Protocol. The initiatives have been limited to prevention of trafficking and child prostitution only and that the other offences under the Protocol have not been sufficiently promoted and disseminated, in particular among implementing agencies, the public at large and children.

The Committee recommends as follows (Para 15):

- Make the Protocol widely known to the public at large, through, inter alia, developing and implementing long-term educational and awareness raising programs, including campaigns, on the preventive measures and harmful effects of all the offences covered therein.

The general education curricula have not been revised yet. According to the data provided by the RA Ministry of Education and Science,

the process is expected to be carried out after approval of the national education order. Nevertheless, the RA Government Protocol Decree of August 31, 2015 approved the Concept for Legal Co-learning, Legal Upbringing and Legal Education System Reorganization which envisages supplementing and updating curricula and standards by the end of 2018. The curricula programs will also cover some provisions on the Protocol in the form of interactive trainings. However, currently no specific trainings on the Protocol are expected yet.

The Association of Audiovisual Journalists NGO<sup>113</sup> is also engaged in preparing social ad videos and various information on the Protocol; by the way, it also receives relevant state financing especially for such purposes. Nevertheless, efforts should be continued to ensure wider awareness.

#### **5. MEASURES ADOPTED TO PREVENT OFFENCES PROHIBITED UNDER THE PROTOCOL**

The Committee notes that the State does not have mechanisms in place to identify, detect and monitor children at risk of becoming victims of the offences under the Protocol, and lacks programs

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<sup>113</sup> <http://antitrafficking.am/>

specifically targeting children living in poverty, unaccompanied children and children leaving care institutions as well as girls from the Yezidi community who are often subjected to early marriages.

The Committee recommended as follows (Para 17):

- establish effective mechanisms to identify, detect and monitor children in vulnerable situations who are at risk of becoming victims of the offences under the Protocol, and establish special programs targeting children living in poverty, unaccompanied children and children out of care institutions as well as girls from the Yezidi community.
- Reconsider its system so that the monitoring of, and visits to, children in vulnerable situations are carried out not by the police, but by specially trained social workers.

No effective steps have been taken so far to identify, detect and monitor children in vulnerable situations who are at risk of becoming victims of the offences under the Protocol. Particularly, there is one common procedure for all the families and children in the community aimed at identification and supporting children in difficult life situations. Moreover, neither the National Strategy for Human Rights Protection, nor the Strategic Program for the Protection of the Rights of the Child in the Republic

of Armenia for 2017-2021 provide any clear directions to introduce effective mechanisms to identify and detect children in vulnerable situations who are at risk of becoming victims of the offences under the Protocol.

The matter is that the mechanisms envisaged by the Law on Social Assistance are ineffective in the sense that they target “alleged” child victims of violence, trafficking and ill-treatment, as defined by law. In other words, the safeguards and regulations of the Law related to provision of assistance do not apply to the children at risk of becoming victims of the offences under the Convention.

As for the solutions in the draft Law on Social Protection of Children without Parental Care submitted for public discussion, it should be noted that the Law extended the content of the concepts “children without parental care” and “persons considered as children without parental care” and regulated the relations of initial, territorial and centralized registration of children without parental care and persons considered as children without parental care. However, the current legislative regulations fail to ensure full-fledged mechanisms to implement the Committee’s recommendation. Therefore, the **Committee’s recommendation has not been implemented.**

## RECOMMENDATION:

- Provide by law mechanisms to identify, detect, monitor and provide social assistance to children in vulnerable situations who are at risk of becoming victims of the offences under the Protocol.

## 6. MEASURES ADOPTED TO PROTECT THE RIGHTS OF CHILD VICTIMS

The Committee notes that in some instances child witnesses and victims were not provided with appropriate protection during trials and that children involved in prostitution were subjected to administrative fines.

The Committee recommends as follows (Para 27):

- Ensure the application of special protection measures in criminal proceedings to all child victims and witnesses up to the age of 18 is considered as mandatory.

Chapter 12 of the current Criminal Procedure Code prescribes protection of persons involved in criminal proceedings or reporting crime. According to Article 98(3) of the Code, once the agency responsible for criminal prosecution learns that the protected person is in need of protection, it decides based on such person's written request or on its own

initiative to take a defence measure to be immediately enforced.

Like the current Code, the draft RA Criminal Procedure Code does not set out any compulsory requirement to take such actions based on the fact that the witness or victim is a minor. Hence, Chapter 9 of the Draft refers to the special protection of the persons involved in criminal proceedings. The Draft stipulates that a person involved in criminal proceedings, as well their family member or other close relative are entitled to special protection, if their life, health or legitimate interests are at risk of a real threat in connection with the proceedings. According to the Draft, special protection measures to be applied must be proportionate to the nature and potential consequences of the threat to the protected person. Where necessary, same person may be entitled to more than one special protection measure.

It turns out that neither the current Criminal Procedure Code, nor the draft Code stipulates the Committee's recommendation. Therefore, the **Committee's recommendation has not been implemented.**

## RECOMMENDATION:

- Prescribe in the Criminal Procedure Code that special protection measures must be compulsorily

applied to minor participants of trial proceedings, along with stipulating relevant obligation of the agency responsible for the proceedings.

## **7. RECOVERY AND REINTEGRATION OF VICTIMS**

The Committee notes that social reintegration and assistance are carried out mainly by non-governmental organizations with little support from the Police and Ministry of Labour and Social Affairs.

The Committee recommends as follows (Para 29):

- Take all necessary measures to ensure that child victims of the offences under the Protocol are provided with appropriate assistance, including for their physical and psychological recovery and full social reintegration through rehabilitation programmes.

In 2015, the RA Law on Identification and Support of Victims of Human Trafficking and Exploitation took effect. The Law defines protection safeguards, as well as types, procedure and size of support for victims of trafficking, including minor victims. The Law provides that support to victims of trafficking, including minor victims, aims to restore the course of their

life deviated due to human trafficking or exploitation and promote their full social reintegration. Support to victims, including juvenile victims, may include as follows: 1) accommodation, 2) in-kind assistance, 3) provision or restoration of necessary documents 4) medical care and services, 5) psychological assistance, 6) counseling assistance, 7) legal aid and various other types of assistance.

Child victims of trafficking or exploitation are provided with basic education by the time the support is terminated. Such education may be provided through both private training, and attending general education or special schools, as expedient. The Law also provides that child victims of trafficking or exploitation have access to support services till they attain full age. Child victims of violence identified by the police are referred to the FAR Children Centre where the multidisciplinary board (psychologist, police officer, educator, social worker) provides them with necessary support both medical, and moral and psychological, and social. If necessary, child victims are also referred to community rehabilitation centres currently operating in the Armenia where after assessment of their state, they receive psychological, pedagogical or other assistance, as necessary. Also, to minimize the risk for minors

to suffer trafficking and exploitation and to prevent their involvement in begging or prostitution, police officers regularly take relevant measures, including inspection visits and hold meetings and discussions at schools to take preventive measures among the minors.

Taking into account the aforesaid, it can be stated that continuous steps are taken to implement the Committee's recommendation that can be considered satisfactory.





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## **I. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT**

On March 21, 2005, the Republic of Armenia ratified the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict which took effect on October 30, 2005.

## 1. PREVENTION

The Committee is concerned that:

- The general school curriculum for the 8<sup>th</sup> grade (14 years old) and above includes a course on “Civil defence”, which involves firearms training;
- The curriculum of the military complex Pokr Mher which allows admission of children as young as 14 years old, also includes firearms training;
- The Monte Melkonyan military school which admits boys at the age of 16 years, many of whom are from care institutions and economically disadvantaged families, teaches compulsory military training with the use of firearms and combat training.

The Committee recommends as follows (Para 11):

- exclude military training from the curriculum of general schools;
- take measures to ban military training with the use of firearms and combat training for children under the age of 18 in military schools;
- establish regular monitoring of military schools to ensure that the school curriculum and the teaching

personnel comply with the Optional Protocol;

- children below the age of 18 years who were admitted to higher military institutes should be exempt from mandatory military service in the event of an outbreak of hostilities and should not be subjected to military discipline and punishment.

In Armenia, educational institutions offering general education programs teach “Basic Military Training and Safe Life” subject. According to the RA Ministry of Education and Science, Basic Military Training and Safe Life classes at the general education institutions are not conducted with the use of firearms. At such classes, training arms are used; their description is provided in Para 2, Procedure on Providing RA General Education Schools and Vocational Colleges with Training Arms and Ammunition”, particularly stating as follows: *“Training arms shall be considered the arms used only in the training process and that cannot fire, unless repaired”*

As for “training with use of firearms” for children under the age of 18, according to the provided information, such trainings are not covered in the curricula of the RA general education institutions.

According to Clause 76, RA Government Decree № 983-N of August 10, 2017 on Establishing

“Military Training College after Monte Melkonyan” Foundation and approving its Charter, *“the time a student studies at the College shall not be considered military service.”* According to Clause 64, Charter of the Foundation, *“up to 30% of the academic hours of the curriculum and course schedule must be distributed between military science, physical training and mountain training programs.”*

As regards Pokr Mher educational complex, it should be noted that following reorganization of the educational complex by the RA Government Decree № 1381-N of December 29, 2016, the High School Educational Program will be carried out by “Monte Melkonyan Military College” public institution. According to the RA Government Decree, Pokr Mher Educational Complex and ‘Aparan Military Training College’ State Non-Commercial Organization were merged and reorganized into Nubarashen Specialized Military Training School reporting to the Ministry of Education and Science of the Republic of Armenia. The subject of the operation Nubarashen Specialized Military Training School State Non-Commercial Organization of Nubarashen Military Specialized School is the *implementation of the basic general education (generalized and specialized for grades 5-9)*, and the purpose is

comprehension by the student of the compulsory minimal content of the general subject and specialized military education programs of the general education public standard, multilateral development of the students, protection of their health, professional orientation, ensuring upbringing of the students in line with the programs as well as the creation of conditions for specialized military education and the provision of care and protection.

As regards the military discipline and punishment of persons up to 18 years of age, it is noteworthy that Article 23(1), RA Law on Disciplinary Code of the Armed Forces of the Republic of Armenia defines the types of disciplinary sanctions, and Article 24 of the said Law provides that the compulsory service rank-and-file and junior lieutenant-colonels may be subjected to **disciplinary sanctions as provided under** Article 23(1)(1-3),(4) (only for rank-and-file), (5-7), (9-11) and cadets of military educational institutions – **also to the sanctions under Para 12**. It follows from the cited regulations that the statutory rules, including disciplinary sanctions are applicable during their studies of persons under the age of 18 who enter the military institution.



## 2. PROHIBITION AND RELATED MATTERS

Article 29, RA Law on the Rights of the Child prohibits *recruitment* of children in hostilities and armed conflict as well as *participation* of children under 15 in hostilities.

However, the Committee is concerned that the Law does not provide sanctions in cases of violation.

The Committee recommends as follows (Para 13, 15):

- amend the Criminal Code to add a provision that explicitly prohibits the recruitment of children under the age of 18 into the armed forces and their use in hostilities by the State armed forces and non-State armed groups.
- take all necessary steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all offences under the Optional Protocol.

The Criminal Code does not stipulate any provision criminalizing the military recruitment or use of children under

the age of 18 by armed forces or non-state armed groups during armed conflicts. The new draft Criminal Code envisages partial implementation of this Recommendation. Particularly, Article 145(3)(5) of the Draft imposes an imprisonment of eight to ten years for drafting to the national armed forces, recruiting or actively using in hostilities **children under 15 years of age** during war or armed conflicts. As for the extraterritorial jurisdiction, this issue will be considered resolved thanks to the regulations of the new draft Criminal Code.<sup>114</sup>

### RECOMMENDATION:

- It is recommended that a separate article in the Criminal Code criminalizes recruitment and using children under 18 years of age during armed conflicts by state armed forces and non-state armed groups and that extraterritorial jurisdiction over such offences is establish.

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114 For more details, see: Subsection Extraterritorial Jurisdiction and Extradition, Section Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.