

# Report of the Human Rights Defender of the Republic of Armenia to the UN Committee on the Rights of the Child



2012

## Acronyms

<b>HRD</b>	<b>The Human Rights Defender of the Republic of Armenia</b>
UN	The United Nations Organization
SCEJA	Service for Compulsory Execution of Judicial Acts of the Republic of Armenia
CWOPC	Child without Parental Care
CSA	Civil Status Acts
SDP	Sustainable Development Program
CRC	Convention on the Rights of the Child
NAP	National Action Plan

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## Introduction

Protection of the rights of the child is one of the most essential challenges faced by modern states. Armenia ratified the Convention on the Rights of the Child in 1992 and adopted a national Law on Children in 1996, domestically enshrining the principles declared in the CRC. Since then, Armenia has ratified a number of other key international instruments, as well, including the two optional protocols to the Convention on the Rights of the Child—the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2005), as well as the International Labour Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2005) and the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (2005), and amended important laws such as family legislation, the labor code, and the criminal code with a view to safeguarding better protection of children from abuse and trafficking.

By ratifying the Convention on the Rights of the Child, the Republic of Armenia recognized that children are a particular vulnerable group by virtue of their age and intellectual and physical development, and are in constant need of support and protection.

This Report was prepared by the Staff of the Human Rights Defender of the Republic of Armenia concerning the implementation by the Republic of Armenia of the provisions of the Convention on the Rights of the Child, and is presented to the UN Committee on the Rights of the Child. The third and fourth regular reports presented by the Government of the Republic of Armenia in February 2010, as well as the shadow report presented by NGOs were taken into consideration in the elaboration of this Report.

The information reported here does not repeat the information presented in the reports by the Government and the NGOs.

# 1. General Measures towards Implementation

## Legislation

The Republic of Armenia has assumed a number of commitments arising out of the Convention, including commitments to reform the legislation of the Republic of Armenia and to harmonize it with the international standards. However, the efforts exerted by the state have not been sufficient for eliminating the problems in the sphere of protection of the rights of the child. To date, there remain gaps in the domestic legislation and the legal practice, which pose obstacles to the protection of the rights of the child in practice. In some cases, for instance, employees of the Service for Compulsory Execution of Judicial Acts of the Republic of Armenia (“SCEJA”) violate the rights of the plaintiff, leading to continued non-execution or inadequate execution of final and lawful judicial acts. The Staff of the Human Rights Defender often receive applications and complaints about situations in which there is a final judgment of court giving one of the parents or a third party the right to care for the child, but the competent agency fails to take measures to execute the judgment. As a result, there is a judgment designating one of the parents as the caretaker, while the child actually continues to leave with the other parent or a third party. There are frequent cases in which such parent or third party pose obstacles to the execution of the judgment. In these cases, the SCEJA cites the reality that the child does not wish to be with the person designated by the judgment as the caretaker, and terminates the proceedings on the basis that it is impossible to execute the judgment.

Another problem is related to the confiscation of alimony, when a judicial act imposes the obligation to pay alimony on a parent, but the latter has no source of income, which again renders the execution of the judgment impossible, and the child is deprived of this vital source of livelihood.

## Recommendations

- ✓ Special training for the SCEJA staff in respect of cases concerning children;
- ✓ Mandatory engagement of a social worker and psychologist in the execution of judgments that concern children; and
- ✓ Creation of a state alimony fund, out of which payments will be made in case the person responsible for paying alimony is insolvent.

## Coordination

During 2005-2006, the Republic of Armenia introduced a three-level system of protection of the child, consisting of the National Committee (the national level), the Regional Divisions for Family and the Protection of Women and Children (the regional level, operating at the regional government level), and the Guardianship and Trusteeship Entities (community mayor) in local self-government bodies, adjunct to which the relevant commissions operate.

The Guardianship and Trusteeship Entities or the committees adjunct to them are the only ones in Armenia that directly engage with the families in the communities in respect of specific

measures to safeguard the rights and interests of the child. According to the By-Laws approved by the Republic of Armenia Government Decree 164-N dated 24 February 2011, the Guardianship and Trusteeship Committee is made up of volunteers, and the engagement of a social worker in its activities is discretionary. Moreover, the state has delegated to these bodies over four dozen functions and tasks that are of critical importance to the welfare of the child and would require highly specialized skills and appropriate resources, even if they were to be performed superficially.

In each case of child guardianship, the guardianship and trusteeship body presents to the court its opinion on the solution of the problem, which should be prepared on the basis of a detailed review of the health and social and moral character of both parents. However, in practice, the councils mostly issue the opinions on the basis of their social experience, the personal opinions of their members, and intuition. Each case requires a highly specialized approach and in-depth analysis of the situation based on not only personal views and beliefs, but also clearly defined criteria and methods for the exercise of functions such as appointing guardians for minors under 14 years of age and citizens recognized as incapable due to mental disorders, as well as appointing trustees for children from between 14 and 18 years of age and citizens recognized as having limited capability, the examination of the life conditions of a person aspiring to bring up the child, presenting to court the examination report and an opinion based on the report concerning the substance of the dispute, and supervision of the foster parents. To this end, it is extremely important to organize professional training for the staff of the guardianship and trusteeship bodies, to raise their awareness to a sufficient degree, and developing a number of skills of interaction with children and parents. The analysis of a number of failed cases of adoption shows that the aforementioned bodies issued their reports only on the basis of the financial situation of the adopting persons, disregarding a number of key psychological circumstances.

It is also necessary to ensure the active participation of the guardianship and trusteeship bodies in the fight against juvenile crime. Their participation should perhaps take the form of social work. As to the shortcomings in the work of the guardianship and trusteeship bodies, they are due to a number of reasons, such as the By-Laws approved by the Republic of Armenia Government Decree 164-N dated 24 February 2011, Paragraph 10 of which provides that the Guardianship and Trusteeship Committee shall operate in accordance with the work regulation approved by the Committee. In other words, the Committee not only is free to determine its organizational structure and engage specialists, but also may act arbitrarily in relation to a number of issues vital to the future of children. Therefore, numerous problems, including violations of children's rights and disrespect of their interests, can be avoided by adopting legislation on these matters, which will regulate, among other things, the rearing of children, visits, their procedures, and the like. The state should ensure coordination of the activities of the bodies responsible for the protection of the rights of children, and take effective measures to transform the formalistic and inadequate performance of functions to effective implementation.

Armenia generally has no official statistics on alternative child care. The procedures of placement in care are not elaborated properly, either: comprehensive evaluation prior to placement in care is not performed, and there is no follow-up supervision. The support provided to children deprived of family care is chosen randomly depending on a decision of the guardianship and trusteeship body, which actually does not have clear criteria for making decisions, and mostly follows subjective factors when making decisions. In practice, there is no supervision after placement in guardianship and trusteeship to check whether guardianship or trusteeship is in the best interests of the child. The number of children in orphanages is currently declining, but it is mostly due not to children's return to families, but rather a mechanical reduction of the number of children due to non-admission of new ones.

A study carried out by the World Vision International charitable organization Armenia country office and 45 non-governmental organizations shows that the mechanisms for identifying the problems of children in difficult situations currently do not exist in Armenia (the Regional Divisions for Family and the Protection of Women and Children, which are called to perform the function of referral, have limited human and material resources), and there are a limited number of institutions for these children, such as night care centers, day centers, care centers, and the like. The other problem is that only day centers are designated for detection, prevention, and early intervention, which results in poor mapping of services. Moreover, the services are disproportionately spread across the territory of Armenia and do not provide nationwide coverage.

## Recommendations

- ✓ Create a network of social workers or other specialists working with children in the communities, with a primary focus on ensuring that social workers and specialists working with children in difficult life situations and their families in each community are given sufficient resources for the most effective performance of their duties;
- ✓ Define the scope of powers of bodies engaged in the protection of the rights of children without parental care, as well as the forms and level of their cooperation for the benefit of consolidating the system, more effectively coordinating their activities, eliminating redundancies, and strengthening the professional resources of each body;
- ✓ Review the definition of “a child without parental care” under the domestic legislation and clearly prescribe the criteria for granting status to children without parental care; and
- ✓ Implement the measures necessary for improving the effectiveness of the activities of guardianship and trusteeship bodies.

## Independent Monitoring Structures

In its Concluding Observations issued in 2004, the Committee on the Rights of the Child recommended to the Republic of Armenia “... to establish either a [Human Rights] Procurator specifically responsible for children’s rights, or a specific section or division within the Office of the Human Rights Procurator responsible for children’s rights.”

In the discussion of the annual state budget for 2012, the Republic of Armenia addressed the aforementioned recommendation by setting aside resources in the state budget for one staff position of a human rights procurator for children in the Office of the Human Rights Defender of the Republic of Armenia. It is reasonably assumed that, with this one staff position, the Human Rights Defender cannot adequately operate as an independent and effective national institution. Paragraph 4 of Article 11 of the Republic of Armenia Law on the Human Rights Defender provides that the Defender has the right to initiate discussions on an issue, especially if there is information about mass violations of human rights and fundamental freedoms, or if it is of extraordinary public significance or is related to the need to protect the interests of persons that are not capable of accessing legal remedies on their own. This power of the Defender can serve as a safeguard for monitoring the protection and realization of children’s rights in alternative care institutions and other institutions for children, while unhindered visits will ensure that the managers and staff of such institutions treat the performance of their duties more diligently. It is

an extensive process that requires human resources for implementation. Strengthening the division for protection of the rights of the child also requires the division to monitor compliance with the Convention on the Rights of the Child, legislative reform initiatives to protect the rights of children, and implementation of the international best practices. Thus, it can be concluded that strengthening the unit for protection of the rights of the child can serve as a safeguard for the Human Rights Defender to perform effectively in this area on the basis of the principles of independence, autonomy, impartiality, transparency, fairness, equality, professionalism, and pluralism. It will be implemented through cooperation between public bodies, the mass media, and civil society, sharing of information and best practices, and support from the relevant international and regional organizations.

### **Recommendations**

✓ Increase the financial resources provided to the unit for the protection of the rights of children in the Office of the Human Rights Defender for the purpose of capacity building of the unit.

### **National Action Plan**

In 2003, the National Action Plan for the Protection of the Rights of Children (to be implemented during 2004-2015) was adopted. The monitoring of the National Action Plan shows that the implementation of measures aimed at deinstitutionalization and establishing a system of foster care families has been slow and contradictory. Research shows that the majority of children with disabilities still does not receive early intervention services and are not engaged in inclusive programs. In virtually half of the regions, the child protection initiatives are not particularly noticeable yet. There is a lack of economic support to vulnerable families, certain weaknesses in child protection policies and long-term strategic planning for the child protection system as a whole, as well as underdeveloped mechanisms of implementation, monitoring, and evaluation. There is a lack of mechanisms for structured collection, documentation, sharing, and dissemination of data on vulnerable children, their families, their economic situation, occupation, and assets needed for and risks to their social, educational, and health development at institutional, community, regional, and national levels. There are also communication and cooperation gaps between various stakeholders such as policy makers, administrative personnel, and providers of services. Awareness, knowledge, and skills related to the protection of children are still poor among Child Protection Divisions in some regions and the leaders of local communities, which slows down the development of effective child protection at the regional level.

### **Recommendations**

✓ Take steps to implement the activities contemplated by the 2004-2015 National Action Plan for the Protection of the Rights of the Child in the Republic of Armenia, which have not been implemented or have not been fully implemented: in particular, the SDP and the NAP should be reviewed and updated in light of the child protection initiatives of the recent years;

✓ Perform oversight so that the services offered are proportionately distributed between the community and regional levels, with clear definition of the conditions of accessing them based on the needs of the children;

- ✓ The state should improve the budgeting process for the social and psychological protection of vulnerable children and their families;
- ✓ The state should develop a phased strategic plan that will ensure the creation of a comprehensive set of services based on the rights of the child for all the vulnerable children in Armenia during the time period outlined in the National Action Plan, and will assume complete responsibility for its implementation.

## 2. Definition of a Child

Under Paragraph 3 of Article 53 of the Family Code of the Republic of Armenia, the place of residence of the child shall be determined based on agreement of the parents if the parents live separately from one another. In case of failure to reach agreement, the dispute between the parents shall be resolved by court in view of the interests of the child and the opinion of the child above 10 years of age. The court shall take into consideration the attachment of the child to each parent and sibling, the child's age, the moral and other personal features of the parents, the relationship between each parent and the child, and the ability to create conditions for the education and development of the child (the nature of the parents' activities (occupation), their material and family situation, and the like).

The Convention on the Rights of the Child contains no recommendations on children under a certain age not being able to file complaints or to claim compensation from courts or other bodies. Any decision to deprive a child of this right should be taken in the context of the general principles, including those of non-discrimination and the best interests of the child. The practice of Armenian courts shows that they never take into consideration the opinion of children under 10 when deciding upon the custody of the child. Whereas, Article 12(2) of the Convention requires the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child. The Convention sets no age limit for this right.

### Recommendations

- ✓ Amend the Family Code of the Republic of Armenia to eliminate the age limit beyond which the court will take into consideration the opinion of the child.

### 3. General Principles

#### Non-Discrimination

Specialists have estimated that, as a consequence of a major gender discrepancy due to selective abortions in Armenia, it will be very difficult for Armenian young men to find partners in just 15 years from now, because there will be many more Armenian young men than women. Research conducted in the framework of the “Strengthening Sexual and Reproductive Health Project” implemented jointly by UNFPA and the Republic of Armenia Ministry of Health Center for Perinatology, Obstetrics and Gynecology has shown that, in the past five years, about 7,200 of the around 900,000 women of reproductive age in Armenia prevented the birth of female children by performing abortion. Abortion is not prohibited in Armenia, but the Republic of Armenia Law on Human Reproductive Health and Reproductive Rights permits it only up to the 12<sup>th</sup> week of pregnancy.

The research was carried out in 2011 in 2,830 households among women of ages 15 to 49, which had ever been pregnant, as well as women that had ever performed abortion. The majority of the survey respondents explained their preference for boys by “the need to carry on the family and bear the name.” Thus, Armenia loses on average about 1,400 girls every year due to sex-selective abortion.

#### Recommendations

- ✓ Study the reasons for selective abortions and take steps to empower women in society and to ensure gender equality; and
- ✓ Amend the relevant legal acts to prohibit telling the sex of the child, unless it is necessary to prevent sex-specific hereditary disease, or tell the sex of the future child during such period of pregnancy when abortion without special medical indication is prohibited.

## 4. Civil Rights and Freedoms

### Birth Registration

It is alarming that there are still cases of failure to record child birth in Armenia. Of course, the number of such cases has declined dramatically over the years, but it still occurs, especially in the remote regions. There are different reasons for not registering birth, including: a) the absence of personal identification documents of the parents and difficulties of obtaining them; b) deliveries at home, which are subsequently not registered, c) inaccessibility of the administrative system; d) the failure of the parents to appreciate the importance of birth registration, and the like. Needless to say, non-registration of child birth not only is illegal, but also deprives the child of the opportunity of being a full citizen and growing up under the protection of the state. These children are deprived of access to health care and a number of other services, attendance to preschool and school institutions, and the right to the freedom of movement. “Freedom” is the key word here: the failure to register child birth contributes to forced movement of children, which increases the risk of the child becoming a victim of trafficking one day.

State registration of birth is regulated by the Republic of Armenia Law on Registration of Civil Status Acts and the Republic of Armenia Minister of Justice Decree 97-N dated 14 May 2007 “On Approving the Instructions related to the Registration of Civil Status Acts.” The analysis of the aforementioned acts shows that the Armenian legislation generally safeguards the state registration of child birth immediately after a child is born. The 8 April 2008 amendment to the Republic of Armenia Law on Stamp Duties eliminated the stamp duty previously collected for state registration of birth. Nevertheless, clear mechanisms should be prescribed in the Armenian legislation for safeguarding the mandatory registration of child birth.

Paragraph 1 of Article 14 of the Republic of Armenia Law on Civil Status Acts lists the grounds of state registration of birth, which are detailed out in Paragraph 2 of the Minister of Justice Decree 97-N dated 14 May 2007 “On Approving the Instructions related to the Registration of Civil Status Acts.” The grounds listed in Paragraph 1 of Article 14 of the Law on Civil Status Acts do not include the ground for state registration of birth stipulated by Paragraph 2 of Decree 97-N, i.e. the notarized contract and the consent of the woman delivering the child in case of registering birth through auxiliary reproductive technologies. Moreover, Paragraph 2 of Article 14 of the Law on Civil Status Acts provides: “If the grounds for state registration of birth prescribed by Paragraph 1 of this Article are absent, state registration of child birth shall be performed on the basis of a final court judgment confirming the fact of the child birth.” It means that, even if the notarized contract and the consent of the woman who delivered the child are present, the state registration of child birth can be performed only on the basis of a final court judgment, because the former are not prescribed in Paragraph 1 of Article 14 of the Law on Civil Status Acts as grounds for state registration of birth.

Armenia lacks consistent statistics on children without birth certificates. As absurd as it may seem, only non-governmental organizations deal with these children.

The survey carried out in the City of Yerevan and the Gegharkunik and Shirak regions during September-December 2009 by the Armenian Relief Society (ARF) with direct financial support of UNICEF Armenia with the aim of identifying cases of children without birth registration

and providing legal assistance to them identified 97 households with a total of 126 children without birth registration. However, the survey generally found 145 such children. It also showed that the highest number of unregistered births was in Yerevan: as strange as it may seem, most of the children lacking birth certificates were those growing up in families, rather than care institutions. 86.8 percent of the identified children lived in families, and only 8.9 percent lived in orphanages, while 4.1 percent attended boarding or special institutions.

The ARF survey also found that the reasons for not registering child birth included not only the financial situation of the parents or lack of awareness about the process, but also the failure of the passport department of the Police to issue visas to delivering mothers without registration at the place of residence or without any place of registration, which deprives them of the possibility to request the Departments for Registration of Civil Status Acts to register the birth of the child and to issue a birth certificate.

## Recommendations

- ✓ Introduce provisions in the Armenian legislation to allow discharging the woman who delivered the child from a medical institution only after presenting the child's birth certificate;
- ✓ Amend the Armenian legislation to require the community mayors to take measures to identify births outside medical institutions (home deliveries) and to facilitate the registration of child birth;
- ✓ In Paragraph 2 of Article 14 of the Law on Registration of Civil Status Acts, add the words "as well as by other legal acts" after the words "by Paragraph 1 of this Article";
- ✓ Improve public awareness of the necessity and importance of registering child birth in accordance with the procedure stipulated by law; and
- ✓ Create a common computer information network for the Departments for Registration of Civil Status Acts to ensure rapid sharing of information and to help improving the efficiency of the Departments.

## 5. Family Environment and Alternative Care

### Alternative Care

In the framework of the child policy reforms in accordance with the Republic of Armenia Government Decree 111-N dated 13 January 2011, reduction of the number of children in orphanages was declared a priority for the Government's activities in 2011. In 2006, the Government adopted a decree approving the "2006-2010 Strategy for Reforms of Social Protection of Children in Difficult Life Situations," which defined a number of key objectives that would be achieved, among others, through the creation of a framework for foster care families. The implementation of the program to introduce the framework for foster care families began in 2006 and 2007, when UNICEF financed the selection of 20 foster care families. As the experience was successful, the Government adopted a decree on 8 May 2008 "On Approving the Procedure of Placing Children in Foster Care Families, the Amount and Payment Procedure of the Monthly Allowance and Remuneration Paid to Foster Care Families for the Education and Care of Each Child, and the Form of the Contract on Placing Children with Foster Care Families for Rearing," which regulated the whole process. However, after the Government took over the process, the number of foster care families did not increase in Armenia. Increased funding is not allocated in the draft of the 2012 state budget.

The Government presently spends about US \$4,000 a year per child in an orphanage, whereas placement of a child in a foster care family would promote the exercise of the child's right to live in a family and will reduce the costs to US \$3,000.<sup>1</sup> Research by UNICEF has shown that the state can save US \$1.8 million a year in case of making a transition to the foster care families program, which can be spent to improve these operations.

The number of children cared for in orphanages for healthy children has declined over the years, but the number of children cared for in specialized orphanages has increased every year due to the insufficient number of appropriate specialized alternative service (day centers, rehabilitation centers, and the like), as well as the higher number of children with health problems in need of state care.

The review of the situation of the rights of children carried out by the Human Rights Defender of the Republic of Armenia in 2011 also showed that no increase in the number of foster care families since 2007: there is some stagnation due to the lack of public awareness and the failure of the state to act, constantly citing the lack of necessary funding, as well as the inefficient use of the resources available.

In Armenia, foster care families are selected in the same way and under the same criteria as those wishing to adopt children: a review of appropriate living conditions and a healthy moral-psychological atmosphere, and social and other conditions. The biological parents of the child do not lose their rights by virtue of the child being in a foster care family, and they may take the child back from the foster care family. Even though such cases may pose psychological problems, foster care families can be an effective tool for safeguarding the child's right to grow up in a family, as was mentioned earlier. Moreover, 80 to 90 percent of the children currently living in orphanages are not available for adoption due to the lack of clarity in their status because of the vagueness of the admission criteria. Foster care families are an alternative for these children. The "Rapid Assessment of Residential Child Care Institutions in the Republic of

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<sup>1</sup> [http://www.unicef.org/armenia/Costing\\_Residential\\_Care\\_Institutions\\_in\\_Armenia\\_report\\_eng.pdf/](http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf/)

Armenia” and the “Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services” studies were carried out with the support of the Ministry of Labor and Social Affairs in a total of 50 institutions. The studies showed that about 80 percent of the around 4,000 children living in care institutions have at least one parent. They end up in the institutions mostly because of social and economic hardships. About 40 percent of the children are children with special needs. The Government, jointly with UNICEF, has implemented a pilot project for introducing foster care since 2004 with a view to reducing the number of children in care institutions. However, the project has not succeeded yet.

According to expert estimates, the average annual cost of keeping a child in an orphanage or other care institution is about US \$3,800 to 4,000, compared to an allocation of only 87,000 drams per child per month under the project, which covers the needs of the child and remuneration of the foster parent. It adds up to 960,000 drams (US \$2,700) per annum. The Government program provides financing for 25 children a year. Currently, there are only 20 foster care families in Armenia, which look after 22 children. The elimination of care institutions is economically justified, because, in case of a foster care family, the money saved on the orphanage will be provided to the foster care families.

The Rapid Assessment of Residential Child Care Institutions in the Republic of Armenia was carried out with the support of the “Harmonic Society” Armenian Association of Social Workers, UNICEF, and the Labor and Social Affairs Ministry of the Republic of Armenia in a total of 50 state and charitable institutions of child care operating in Armenia. Data was collected on the children’s sex, age, health, family conditions, disability, relationship with the family, and the staff of the institutions. The findings mostly call for greater attention on the part of the decision makers and can facilitate the protection of children’s rights with an emphasis on reducing the number of children in institutions as a priority. Of the 3,823 children living in institutions (save for 1,079 that go home every day), 1,675 (44 percent) rarely go home, and no family reunification programs are being developed for them. For over 630 children living in institutions (16 percent of the total number), there is no information on the type of connections with the family. Only 428 of the 1,711 children with confirmed disabilities in care institutions (25 percent) receive disability allowances. About 1,000 children living in special institutions do not have disability status, which either violates their right to receive a disability allowance or means that they should not be in special institutions.

## Recommendations

- ✓ Based on the results and experience of the pilot project in Armenia, make appropriate reallocations in the state budget of the Republic of Armenia and increase the number of foster care families;
- ✓ Expand the alternative services as a ways of reducing the flow of children to orphanages and special educational institutions;
- ✓ Prescribe a specific number of foster care families in each year’s annual budget;
- ✓ Ensure proportionate development of the network of alternative (day) care institutions, taking into consideration the different models and paying attention to a number of issues such as the funding needs and efficiency of such centers, relative to their current level of efficiency; and

- ✓ Taking into consideration the requirements of the UN guidelines, facilitate the dissemination of information on alternative care in society at large, as well as among the decision makers.

## **Adoption**

Adoption is perhaps one of the most important aspects of the child protection system. The Republic of Armenia has implemented some steps in recent years for improving the effectiveness of the system, but they are not sufficient for reaching the necessary results.

There is a National Commission for Child Adoption Matters in the Republic of Armenia, but no legal mechanism exists for ensuring the transparent operation of this body in practice. While the Government of the Republic of Armenia adopted a decree in 2000 approving the bylaws of the National Adoption Commission, the bylaws do not contain the principles for the selection of the Commission members and the frequency of its sessions. Importantly, there are no avenues for appealing against decisions taken by the Commission. The next important issue concerning adoption is the adoption of Armenian children with disabilities by foreigners. There is no practice of adopting children with disabilities in Armenia. A number of studies carried out by non-governmental organizations have shown that families that have adopted children with disabilities in Armenia do not receive any tax privileges from the government, while the pension paid for children with disabilities is negligible and insufficient for meeting even the most basic needs. The international experience shows that, in many other countries, families with children with disabilities enjoy a wide range of privileges, through which the government facilitates the adoption of children with disabilities.

Consulates are responsible for the wellbeing of Armenian children adopted by foreigners. However, the Republic of Armenia Law on the Consular Service requires only recording of adopted Armenian children, but no follow-up oversight duties for the consulates.

## **Recommendations**

- ✓ Introduce provisions necessary for safeguarding the transparency of the National Adoption Commission in its bylaws;
- ✓ Define special privileges for families adopting children with disabilities; and
- ✓ Amend the Republic of Armenia Law on the Consular Service to prescribe the obligation to oversee the family conditions of children placed in adoption.

## 6. Essential Health and Wellbeing Services

### Social Security and Child Care Services and Institutions/Life Standards

The policy aimed at the problems affecting children in difficult life situations remains a priority with a view to strengthening the child care and protection system, reducing the number of children in child care and protection institutions, preventing the institutionalization of children, improving the child care and protection institutions, integrating children in care with society, and creating alternative care services.

Studies have shown that most of the buildings of orphanages and special schools and old and in need of repairs. Some do not even have boilers for heating. Others are overcrowded, too. The Kharberd Special Orphanage, for instance, has 10 to 12 children in rooms designed for six children: due to the lack of free space, the children cannot move around freely, which creates problems, especially for those in wheelchairs. In some cases, due to reasons that are inconceivable, persons remain in those institutions until they are 25 or 30, although the approved regulations provide that, once they turn 18, the persons with mental health issues must be moved to the Vardenis Residential Psychiatric Institution.

The orphanages and other care institutions also lack sufficient specialists to work with children with various problems, which essentially deprives the children of the necessary care and support. The present staff receives no training on the evolving methods of professional practice and their application.

Although the orphanages and other care institutions provide solutions to a number of problems of the children, one cannot claim that the children in these institutions grow up in a healthy environment where their rights are safeguarded. Although they receive a certain standard of boarding, food, residential care, and wellbeing, these are only physical needs, and the exercise of a number of key rights is disregarded.

These children do not grow up in an environment of love, which profoundly undermines their psychological development, leading to an inferiority complex, depriving them of family and parental skills, senses of responsibility and autonomy, often causing them to be labeled by society and resulting in marginalization and stigmatization. Studies have also shown that children in such institutions are six-fold more likely to be abused than children in families.

Obviously, children cannot enjoy protection under such circumstances, and the conditions necessary for the exercise of their rights are not ensured. As to the problems of the existing orphanages and other care institutions, their staff and directors often refer to financial shortages. Despite the financial resources allocated by the government and assistance by various international organizations and benefactors, some institutions lack even the most basic living conditions. The instigation of criminal cases against institution directors in 2009 and 2010 by the Department for Protection of State Interests in the General Prosecution Service of the Republic of Armenia shows that effective measures need to be put in place to fight against corruption and abuse.

According to the program approved under the Republic of Armenia Government Decree 1745-N dated 18 December 2003, three care centers for vagrant and beggar children were going to be built by 2009, in addition to 25 community daycare centers for children by 2015. In response to the inquiry by the Human Rights Defender, the Ministry stated that, as a result of measures

implemented over the years, the problem of vagrant and beggar children lost its relevance, and the Ministry is now focusing its efforts on implementing projects aimed at preventing problems of children at risk. The Ministry described the following situation:

1. As to the three centers for care after vagrant and beggar children, a number of functions were added to the bylaws of the Zatik Orphanage in 2011, according to which the organization now also receives vagrant and beggar children living in Yerevan and provides appropriate services to them; and
2. As to the creation of 25 day centers for children, two have been created, and 14 child development centers currently provide community services jointly with the Bridge of Hope non-governmental organization.

According to the 2011 Social Snapshot and Poverty report produced by the National Statistical Service of the Republic of Armenia, child poverty remains higher than poverty in the rest of the population.

According to official information provided by the National Statistical Service, over 300,000 children (41.4 percent of the total number of children) lived in poverty in 2010, compared to 35.8 percent poverty amongst the whole population of Armenia. 27,000 children (3.7 percent) were extremely poor, relative to 3 percent in the general population.

According to the report, families with four and more children are the poorest: the general level of poverty in such families was about 71 percent, and extreme poverty 26.4 percent.

Children with disabilities are the second most vulnerable group: around 5 percent of these children live in extreme poverty, and 54 percent are poor. Family allowances continue to play an important role in the wellbeing of extremely poor and poor families. Despite the improved targeting of assistance, family allowances are not accessible for all those in dire need thereof. Presently, only 67 percent of the extremely poor families and 26 percent of the poor families regularly receive family allowances, which is still below the 2008 figures.

The report by the National Statistical Service once again confirmed that only 0.1 percent of the GDP will be required to provide family allowances to families in extreme poverty.

## Recommendations

- ✓ Improve the social assistance framework, especially the procedure of providing family allowances and child care benefits;
- ✓ Take appropriate measures for providing social protection safeguards to children in difficult life situations, developing the network of alternative services, and improving the child care and protection institutions;
- ✓ Take measures necessary for the reunification of children cared for in institutions with their biological families;
- ✓ Develop activities to prevent the institutionalization of children at risk of institutionalization;
- ✓ Coordinate the social protection of orphanage alumni, the organization of life on their own, and their integration with society; and
- ✓ Develop a clear policy for provision of social-pedagogical, social-psychological, and practical support to children from 6 to 18 without parental care, children at risk of losing parental care, and children in unfavorable and dangerous living conditions for growth and development.

## 7. Education, Leisure, and Cultural Activities

### The Right to Education and Objectives

The study of problems in the sphere of education shows that most of them can be solved without additional funding from the state budget. This problem issue was addressed by the Human Rights Defender of the Republic of Armenia in his 2011 Annual Report.<sup>2</sup> The problems can be solved through effective administration, organizational activities, legislative reforms, and proper supervision by the Ministry. What is negative is that citizens' complaints and applications, as well as information published in the media about shortcomings in the work of the Ministry of Education and Science are essentially disregarded, i.e. the linkages between the Ministry and civil society are not sufficiently productive.

According to a number of specialists, the textbook competitions for general schools are conducted without fair criteria, which sometimes has caused complex textbooks to be imposed on students. The reason could be the fact that, although the feedback of school principals on textbooks is required, their opinions or recommendations are subsequently not taken into consideration, because the Ministry is not obliged to do so, and the collection of feedback from specialists working in schools is often a formality.

Based on the principle that the quality of education is low where corruption risks are high, the Defender made an inquiry with the Ministry of Education and Science of the Republic of Armenia about the number of cases of extortion or corruption reported in schools and other educational institutions during 2011. The Ministry responded that, in applications sent to the State Education Inspectorate of the Republic of Armenia and reports through the "hotline," applicants referred to 12 cases of illegitimate fundraisers and 11 cases of extortion or corruption. 21 principals were "severely reprimanded" or "reprimanded" in disciplinary proceedings, and one principal was fired. Unlike secondary school, enrollment in high school and higher educational institutions is relatively lower, and the discrepancy in the enrollment figures of the poor and the non-poor is rather significant. High costs related to university education, especially access to them and the low likelihood of earning a good income after graduating are the main reasons that can explain the inability of persons of a certain age from indigent families to enroll in the education system after secondary school and particularly after high school. The state creates the necessary conditions for citizens with special education needs, too, for the purpose of correcting the development anomalies and facilitating social adaptation.

According to the Republic of Armenia Law on Education, the education of children with special education needs may, at the choice of the parents, be performed in general or special institutions under a special curriculum.

The Ministry's strategy in this sphere is aimed at improving the quality of education and care of children in institutions, on the one hand, and establishing alternative services, on the other, in order to allow gradually reducing the number of children in special schools. The reform effort can succeed only in case of structured cooperation between society, the parents, the teachers, and the special rehabilitation and health services. The special pedagogical, social, and psychological services in the general schools and the communities will be expanded for the purpose of creating more favorable conditions for children with special education needs.

### Recommendations

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<sup>2</sup> <http://www.pashtpan.am/library/library/page/101/type/3>

- ✓ Follow up on the eradication of corrupt practices from the whole education system by means of planning anti-corruption activities and effectively implementing them in the following areas: discriminatory and corrupt distribution of state budget resources, competitions with patronage and corrupt practices, illegitimate fundraisers in schools, and the like;
- ✓ Implement urgent and effective measures to improve the quality of textbooks;
- ✓ Review the procedure of “per student” school financing so that schools with fewer students can afford the basic conditions of hygiene, procure the necessary supplies and state-of-the-art laboratory equipment, obtain a computer classroom, and meet other essential needs with the financing allocated to them;
- ✓ Regularly monitor the educational institutions and publicizing the violations found in order to prevent them from reoccurring;
- ✓ Take effective measures to ensure proportionate development of urban and rural general education institutions;
- ✓ Improve the quality and accessibility of pre-school education services with a special focus on increased enrollment of children from socially-vulnerable families in pre-schooling;
- ✓ Expand the opportunities for school-aged children, including children with special education needs, to access high-quality basic education by making inclusive education available in the general schools; and
- ✓ Expand the network of schools providing inclusive education.

### **Education and Professional Training of Juveniles Deprived of Liberty**

The Armenian legislation contains no clear policies or development priorities for institutional approaches to the correction and rehabilitation of juvenile convicts and detainees.

The legal regulation of juvenile education and professional skills, in particular, is either inadequate or flawed. The government policies reflected in the legal acts concerning this sector are too generic, and virtually any regulation concerns convicts or detainees in general, including juveniles and the process of general education. The only apparent exception is the penitentiary legislation and the “Operating Procedure of Structural Units Performing Social, Psychological, and Legal Activities with Detainees and Convicts” as approved under Decree 44-N of the Minister of Justice, which contains some specific provisions or headings on juveniles.

There are no legal acts prescribing specific mechanisms and steps for organizing the education or professional training of juvenile detainees or convicts, for instance. The legislation of the Republic of Armenia contains no consistent strategy on the correction and rehabilitation of juvenile convicts. There are no specific approaches to a comprehensive program of education and professional skills training. Government Decree 1028-N dated 6 September 2007 approved the “Procedures of Distance Learning and External Studies for the Primary Vocational (Crafts) and Secondary Vocational General Curricula.”

The student’s work on his own, without classroom education or laboratory work, is considered a form of education permitted under these procedures. However, another Government decree (1543-N dated 3 August 2006) prohibits external studies for the general education and primary vocational education of juvenile detainees and convicts. There are a number of inconsistencies and omissions in the legislation of the Republic of Armenia: for instance, the Penitentiary Code permits distance learning, but the Government decree has included the telecommunication equipment (including the Internet) in the list of prohibited objects. The Penitentiary Code and the internal regulations of places for holding detainees and correctional institutions fail to clearly distinguish between “vocational education” and “professional training,” which are clearly defined in Article 3 of the Republic of Armenia Law on Primary Vocational (Crafts) and Secondary

Vocational Education. The law does not provide detainees the right to receive vocational education, but Paragraph 112 of the internal regulation of correctional institutions and places for holding detainees provides this possibility if the person pays, or in case of cooperation with certain organizations.

### **Recommendations**

- ✓ Amend Article 80 of the Penitentiary Code of the Republic of Armenia and Chapter 22 of Government Decree 1543-N to distinguish between the requirements of short-term leave for juvenile convicts, including the duration and time periods;
- ✓ Amend Government Decree 1543-N to define the notion of “resocialization,” and prescribe the processes of receiving or continuing education as processes aimed at promoting resocialization;
- ✓ Make appropriate amendments to Paragraph 57 of Chapter 11 of the Procedure approved by Decree 44-N of the Minister of Justice, emphasizing the component of vocational education;
- ✓ Compile and regularly update statistics that will allow evaluating and monitoring results in order to understand the situation and to make appropriate adjustments;
- ✓ Combine education and professional training to the extent possible in order to make smoother the transition from prison to society;
- ✓ Expand the possibilities of distance learning and professional education to the extent possible, using the resources of the Internet and taking into consideration all security concerns;
- ✓ Draft sub-legislation that will directly concern the correction and rehabilitation of juvenile convicts and the creation of safeguards for their reintegration with society by viewing education and professional training as important resources for their correction;
- ✓ Amend the current sub-legislation, including the National Program for Crime Prevention, the National Youth Policy Concept Paper, the Operating Procedure of Structural Units Performing Social, Psychological, and Legal Activities with Detainees and Convicts in order to clearly identify the need to educate juveniles deprived of liberty (including professional education) and to prescribe specific steps and mechanisms for their implementation and the organization of their education.

## 8. Special Protection Measures

### Economic Exploitation

The study carried out by the “Harmonic Society” Armenian Association of Social Workers in 2008 showed that 6.1 percent of the children were working in households with children between ages 7 and 18. However, almost all children are engaged in household work in Armenia. The Armenian legislation permits children above 16 to work; in some cases, even persons above 14 may work with the consent of the parent/guardian. The law prohibits specific conditions harmful for the health of children, and violators face administrative penalties. However, research shows that some children have been employed before even reaching 14, mostly without the consent of the parent or guardian.

Compared with children that do not work, employed children more often miss school for lengthy periods of time or drop out of education altogether, suffer more from trauma, and have fewer opportunities to continue their education. From the standpoint of legislative regulation, one third of the employed children are below the permitted age threshold; therefore, the labor legislation cannot safeguard the protection of working children. The recognition of children’s rights in legislation alone and the protection of working children cannot be effective. Flexible mechanisms of oversight are needed.

### Recommendations

- ✓ Introduce specific measures to prevent child labor in the Sustainable Development Strategy;
- ✓ Create a special unit for child labor in the National Labor Inspectorate, which will discover cases of illegal child labor; and
- ✓ Help the regional employment centers to work with children, too, in the framework of professional orientation and training programs.

### Juvenile Justice

Research in this field has shown that the Republic of Armenia does not have a framework law on juvenile justice. The provisions on the administration of justice are prescribed by the Criminal Code, the Criminal Procedure Code, and other laws and legal acts. Armenia has no special juvenile courts or specialized juvenile judges. Although state officials have insisted that there is an informal practice of certain judges specializing in juvenile cases, and that juvenile cases are mostly assigned to the experienced judges, mostly the court chairmen, it is currently an arbitrary approach.

The prosecution system, too, lacks a specialized unit for the investigation and criminal prosecution of juvenile cases. The Office of the Public Defender currently provides free legal aid to juvenile defendants.

Part 5 of the Criminal Code defines the peculiarities of criminal liability and sentences for juveniles. Articles 85 and 86 of the Code stipulate the types of sentences that may be imposed on juvenile offenders, such as penalties, community works, detention, and imprisonment for a term. The Code also provides exemption of criminal liability, subject to compulsory educational measures. This regulation is rather narrow and inadequate, failing to take into account the

peculiarities of young people and children: juveniles will hardly be able to pay penalties, and their employment may contradict the Labor Code. Thus, the possibilities of imposing alternative sentences on juveniles are fewer than in the case of adults.

The Armenian legislation allows exempting juveniles of criminal liability and imposing compulsory educational measures instead. Article 91 of the Criminal Code provides that a first-time juvenile offender who has committed a non-grave or medium-gravity offence may be exempted of criminal liability by court, if the court finds that his correction is possible through the use of compulsory educational measures.

The presumption of innocence is the most fundamental principle for protecting the rights of juvenile offenders. A juvenile who is accused of violating the criminal legislation shall be given “the benefit of the doubt” and may be found guilty only when the charges are proven beyond reasonable doubt by decision of a judge. Clearly, mistakes occur. Juveniles are drawn into acts that they never intended to commit. They may be influenced to plead guilty of acts that they have not committed. After all, witnesses might confuse the persons accused of committing a crime.

The presumption of innocence is the defense tool in case of groundless charges against the defendant. Although everyone enjoys from the presumption of innocence, the consequences of wrongly charging a juvenile can negatively affect his future development as a person. The bodies conducting criminal proceedings must strictly comply with the presumption of innocence and take into consideration the special status of juveniles when filing charges against them.

According to the CRC, state bodies should provide information about the development conditions of a child in order to actually safeguard respect for the presumption of innocence. Information about the child’s development conditions and circumstances is important for the individual analysis of each accused person, as well as for sentencing if the juvenile is found guilty. Inadequate understanding of the trial and its impact, the fact that the person is not mature and has fears, demonstrative boldness of the defense or other factors may cause the juvenile to act in ways that are not typical of mature individuals and may be misunderstood by the persons administering justice. The Armenian legislation reiterates the guarantees of the presumption of innocence, prohibits placing the burden of proof on the defense, and requires giving the defendant “the benefit of the doubt.”

## Recommendations

- ✓ Minimize excessive use and duration of detention as a preventive measure and of prison sentences, and consider the creation of new alternatives to imprisonment;
- ✓ Establish new legal and court procedures aimed at the constructive integration of juveniles with society, rather than crime-solving and punitive policies;
- ✓ Introduce alternative community measures instead of the formal justice procedures (including mediation and diversion), clarifying the roles of the police, investigators, prosecutors, and courts in this respect;
- ✓ Specialize the judges trying cases of juveniles, as well as prosecutors, investigators, police officers, and members of the staff of the Public Defender dealing with juveniles;
- ✓ Help the Chamber of Advocates to organize special training courses on juvenile justice for practicing private lawyers;
- ✓ Ensure the official introduction of the topics of child rights and best practices in the curriculum of professional education and on-the-job training, and safeguard continued regular training courses; and

✓ Make sure that violations of the presumption of innocence principle by judges lead to: (1) mandatory self-withdrawal of the judge, (2) quashing of the judgment if the judge refuses to withdraw himself from the case, and (3) imposing disciplinary penalties on such judges.