



**DETENTION PROCEDURE
ASSESSMENT TOOL**

FOR

ARMENIA

April 2010

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Introduction

In many countries, overreliance on detention is a major problem both at pretrial and dispositional stages of criminal proceedings. International standards strongly encourage the imposition of non-custodial measures during investigation and trial and at sentencing, and hold that deprivation of liberty should be imposed only when non-custodial measures would not suffice. The overuse of detention is often a symptom of a dysfunctional criminal justice system that may lack protection for the rights of criminal defendants and the institutional capacity to impose, implement, and monitor non-custodial measures and sanctions. It is also often a cause of human rights violations and societal problems associated with an overtaxed detention system, such as overcrowding; mistreatment of detainees; inhumane detention conditions; failure to rehabilitate offenders leading to increased recidivism; and the imposition of the social stigma associated with having been imprisoned on an ever-increasing part of the population. Overuse of pretrial detention and incarceration at sentencing are equally problematic and both must be addressed in order to create effective and lasting criminal justice system reform.

Drawing on the American Bar Association Rule of Law Initiative's (ABA ROLI's) 20 years of experience providing technical legal assistance to promote the rule of law in more than 70 countries worldwide, and in the framework of ABA ROLI's seven other legal assessment tools, ABA ROLI has developed the *Detention Procedure Assessment Tool* (DPAT) to evaluate the use of detention in criminal cases at both the pretrial and sentencing stages.

ABA ROLI's assessment tools were designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the assessment tool results to design more effective programs related to improving the quality of the legal system. Third, the assessment tools also provide donor organizations, policymakers, NGOs and international organizations with hard-to-find information on the structure, nature, and status of the legal system in assessed countries. Fourth, the assessment tools contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, assessment tool results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of the legal system in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally-established standards for the rule of law.

Scope of the Assessment

In implementing criminal law reform programs, ABA ROLI was struck that, while many academics, governmental institutions, and non-governmental organizations had heavily documented and evaluated issues of prisoners' rights, including issues such as overcrowding, mistreatment, detention conditions, rehabilitation, and social stigma, no organization or study had sought to directly address the legislative and structural causes of these problems. In developing the DPAT methodology, ABA ROLI aimed to evaluate the procedural and legislative framework that contributes to the overuse of detention and incarceration, as well as the actual practices of criminal justice sector actors charged with implementing detention procedure and legislation. It is ABA ROLI's belief that, by promoting the rule of law through transparent and effective procedural reforms, a country is likely to improve the human rights situation in its detention facilities. ABA ROLI will implement the DPAT in countries where the government, civil society, or other local institutions have identified problems arising from overreliance on detention and incarceration, with the goal of identifying the reasons for this overreliance and providing a blueprint for reform.

* ABA ROLI has implemented more than 65 assessments in over 20 countries, including initial and updated volumes of the Judicial Reform Index, Legal Profession Reform Index, Legal Education Reform Index, Prosecutorial Reform Index, Human Trafficking Assessment Tool, ICCPR Index, and CEDAW Assessment Tool, in addition to numerous legislative assessments.



The DPAT report's 27 factors are arranged in seven sections, five of which—Imposition of Detention at the Pretrial Stage, Mechanisms for Challenging Pretrial Detention, Imposition of a Sentence of Incarceration, Mechanisms for Challenging a Sentence of Incarceration, and Parole and Early Release—are arranged chronologically and deal with specific procedural stages, and two of which—Considerations at All Stages of Detention and Detention Practices—address overarching issues present at every stage of detention. The DPAT addresses procedures and practices from the moment an individual is deprived of liberty until he is returned to full liberty, including arrest or apprehension; detention prior to court review; detention during investigation; detention during trial; sentencing; alternatives to pretrial detention; alternative sentences; appeals of pretrial detention and sentencing; extraordinary remedies for unlawful detention; executive clemency; parole; and procedures within detention facilities or prisons. The DPAT also looks at overarching issues including due process guarantees; consistency and fairness; institutional resources; external and undue influence; victim involvement; and special considerations for juveniles.

The DPAT methodology considers the roles played by all actors and institutions involved in criminal detention, including police, investigators, prosecutors, judges, defense advocates, court personnel, corrections staff, parole board members, defendants, detainees, prisoners, victims, witnesses, and, when applicable, others. It covers both detention arising from lawful processes, such as the court-supervised arrest of a criminal suspect by a state actor, and unlawful processes, such as forced disappearance or apprehension of a suspect without judicial supervision.

Methodology

The DPAT draws heavily on the structure and process employed for ABA ROLI's seven other legal assessment tools, but unlike other assessment tools, the DPAT methodology focuses narrowly on procedural aspects of criminal detention and should not be viewed as an overarching assessment of the criminal justice sector or of criminal justice actors and institutions.

In developing the DPAT methodology, ABA ROLI relied on many international and regional legal instruments pertaining to criminal procedure, prisoners' and detainees' rights, juvenile justice, sentencing, and alternatives to detention. These included major international human rights treaties as well as regional conventions from the European, Inter-American, and African human rights systems; guidelines, rules, declarations, and best practices developed by the United Nations, regional intergovernmental bodies, bar associations, and civil society organizations; jurisprudence from international, regional, and domestic judicial or quasi-judicial bodies; and books and manuals by academic or civil society experts. The DPAT examines both the *de jure* legislative and procedural framework for detention, and the *de facto* practices under which detention is imposed and implemented. The DPAT assessment draws on international and regional laws, norms, and best practices concerning pretrial detention and sentencing, evaluating a country's detention regime vis-à-vis 27 factors reflecting distinct critical issues and stages of the detention process.

The DPAT report will be presented in a standardized format for each country assessment, allowing readers to compare and contrast performance of different countries in different areas as well as—as follow-up assessments are implemented—within a given country over time. Each DPAT report includes an introduction to the DPAT methodology and assessment process; background on the country's history and legal system; and an executive summary of DPAT findings. Each of the 27 factors is introduced with a short summary of the internationally-accepted standards pertaining to that factor. The DPAT assessment is qualitative, not quantitative, and each factor will be assigned a correlation of positive, negative, or neutral, indicating the country's progress in meeting internationally-accepted standards. Each factor will include a brief conclusion of the country's situation with respect to the factor, followed by in-depth analysis summarizing the

de jure and *de facto* situation detailing the various issues affecting that factor in the country. The DPAT presents a neutral and apolitical evaluation of a country's detention procedures, legal framework, and practices and does not make specific recommendations for reform, but rather provides an analysis of the issues surrounding pretrial detention and incarceration, highlighting both strengths and weaknesses of a country's detention regime.

Information used in the DPAT analysis is gathered during a two- to three-week assessment process during which a neutral, independent assessor or assessors conduct a series of key stakeholder interviews in the country being assessed. Interviewees include approximately 50 judges, defense advocates, prosecutors, justice ministry or other governmental representatives, corrections officials, police, investigators, former or current detainees or prisoners, civil society representatives, and other interested parties from throughout the country. Prior to the assessment process, ABA ROLI's in-country staff conducts *de jure* and secondary source research, providing the assessor with all pertinent legislation, regulations, court decisions, and reports and articles, as well as relevant data and statistics. Following the assessment, the assessor drafts the DPAT country report. The report is edited by ABA ROLI staff and "peer reviewed" by experts and key stakeholders in country prior to being published in English and local languages.

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Assessment Team

The Armenia DPAT 2010 field assessment was conducted by Mary Greer, ABA ROLI Senior Criminal Law Advisor, and Jessie Tannenbaum, ABA ROLI Legal Analyst, who also served as overall project coordinators. Other members of the assessment team included ABA ROLI Armenia Criminal Law Program Staff Attorneys Sarah Shirazyan and Hasmik Hakobyan, Legal Specialist Keith Peterson, and translator/interpreter Alenush Kirakosyan. The assessment team received strong support from ABA ROLI staff in Yerevan, including Armenia Country Director Gregg Halstead, Administrative Coordinator Satenik (Zara) Soghomonyan, and Driver Sergo Harutyunyan; Europe and Eurasia Division staff in Washington, including Director Donna Wright, Deputy Director Julie Garuccio, Program Manager Irina Parshikova, Program Officers Danny Adams and Kristi Kontak, and Program Associate Cameron Platt; and Research and Assessments Office staff including Legal Analyst Jim Wormington and Intern Katherine Stehle. Director of Research and Assessments Simon Conté served as editor of the DPAT report.

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interviews conducted in Armenia in February 2010 and relevant materials reviewed through April 2010. Records of relevant authorities and a confidential list of interviewees are on file with ABA ROLI. ABA ROLI greatly appreciates the time and assistance rendered by those who were interviewed for this assessment.

Definitions

Detention procedure varies greatly by country, and terminology used in one country may have a different meaning elsewhere. Therefore, it is crucial to define the terminology used in the DPAT and use each term with precision. Unless otherwise noted in the body of the assessment report, the terminology listed below should be considered to be strictly defined as follows:

Alternative Sentence: Any non-incarcerative sanction imposed on an individual convicted of a criminal offense.

Alternatives to Pretrial Detention: Any non-custodial measure intended to ensure that an individual accused of a crime appears for further legal proceedings.

Appeal: Review of a decision made by a judicial authority by a higher judicial authority.

Apprehension: The taking into custody of a person suspected of a crime.

Arrest: The taking into custody of a person suspected of a crime.

Arrestee: Any individual who has been apprehended or arrested by a state actor on suspicion of a crime, but whose detention has not yet been imposed by a judicial authority.

Clemency: Any act of the executive branch of government leading to a lessening of criminal sanctions against an offender.

Competent Authority: A state-established entity with jurisdiction over a particular area of law or procedure.

Confinement: The physical deprivation of liberty in a state-controlled detention institution.

Convict: Any individual who has been convicted of a crime and is currently subject to a sanction for his offense.

Conviction: The finding of a judicial authority that a defendant is guilty of a crime.

Counsel: Any advocate or attorney representing the interests of a detainee, prisoner, or defendant.

Custody: Any deprivation of liberty of an individual by a state actor, either exclusively in a state-controlled detention institution or with partial liberty (*e.g.*, house arrest or work release).

Defendant: Any individual who has been charged with a crime who has not been convicted or whose appeal is pending.

Deprivation of Liberty: Any restriction on an individual's physical freedom such that he is not permitted to leave the area in which he is held, with or without formal legal or judicial supervision and regardless of whether the individual is detained in accordance with legally-established procedures.

Detainee: Any individual subject to detention who has not been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense, including persons who have been deprived of liberty without formal legal or judicial supervision.



Detention: The holding of an individual in state custody or by a state actor at any stage in the criminal process, with or without formal legal or judicial supervision and regardless of whether the individual is detained in accordance with legally-established procedures.

Detention Facility: Any facility in which individual are detained by state actors or under state authority, regardless of whether they have been formally arrested or convicted of a crime.

Disposition: The final resolution of a criminal case.

Extraordinary Remedy: Any legal remedy designed to obtain review of the lawfulness of detention, incarceration, or other deprivation of liberty, before a judicial authority competent to order the release of the detained person.

Imprisonment: The detention of an individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Incarceration: The detention of an individual who has been convicted of a crime and sentenced to the deprivation of liberty as a sanction for his offense.

Inmate: An individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Judicial Authority: A judge, magistrate, or other legally-established arbiter of criminal proceedings.

Non-incarcerative: Any sanction or measure pertaining to individuals convicted of a crime other than the full and absolute deprivation of their liberty in a state-controlled detention institution.

Offender: Any individual who has been convicted of a crime and is currently subject to a sanction for his offense.

Parole: Any procedure allowing the release under state supervision of an offender who has not served his full sentence of incarceration.

Penitentiary: A residential facility housing individuals who have been convicted of crimes.

Pretrial Detention: Detention of an individual whose detention has been ordered by a judicial authority, but has not yet been convicted of a crime. This includes detention during the individual's trial or other preconviction adjudicative process.

Prison: A residential facility housing individuals who have been convicted of crimes.

Prisoner: An individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Probation: Any procedure allowing an individual convicted of a crime to remain at liberty subject to state supervision.

Sentence: A sanction imposed on an individual convicted of a criminal offense.

State Actor: Any functionary or agent of the government with a role in the criminal justice sector, regardless of whether he acts within his official capacity or in accordance with the law.

State-Controlled Detention Institution: Any facility used to house or shelter individuals subject to state-imposed detention, whether directly managed by state actors or managed by private actors under state contract.

Suspect: Any individual suspected by police or other investigative actors of having committed a crime, regardless of whether he has been formally identified as or notified that he is a suspect.

Victim: Any individual directly adversely affected by a crime.

Witness: Any individual who has observed the commission of a crime or who is requested by police or other investigative actors to give information regarding the commission of a crime, but has not been formally identified as a suspect.

List of Acronyms

ABA	American Bar Association
ABA ROLI	American Bar Association Rule of Law Initiative
AMD	Armenian Dram
ASU	Alternative Sentencing Unit of the CED
CED	Criminal Execution Department of the MOJ
COJ	Council of Justice
CPA	Confinement Place for Arrestees
ECHR	European Court of Human Rights
IPC	Independent Parole Commission
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
ODIHR	Office for Democratic Institutions and Human Rights of the OSCE
OPDAT	Office of Overseas Prosecutorial Development, Assistance, and Training of the United States Department of Justice
OSCE	Organization for Security and Co-operation in Europe
PDO	Public Defender's Office
RA	Republic of Armenia
SIS	Special Investigative Service
SSR	Soviet Socialist Republic
USAID	United States Agency for International Development
USD	United States Dollars

Executive Summary

Brief Overview of the Results

The pilot Detention Procedure Assessment Tool (DPAT) for Armenia reflects a period of significant social and legislative change related to the criminal justice system, which in less than 20 years has been transformed from the Soviet model to a system based on judicial independence and human rights. There have been substantial legal reforms affecting criminal detention procedure and practices, not the least of which are Armenia's 2002 ratification of the European Convention on Human Rights and the 2005 adoption of amendments to the Constitution strengthening the independence of the judiciary. The 2004 establishment of the Public Defender's Office and the 2008 adoption of a case precedent system have further served to protect the rights of defendants in criminal cases.

Notwithstanding the considerable will for reform and substantial steps that have already been taken, Armenia continues to face serious obstacles to a functional, transparent criminal justice system that comports with international standards. Detention continues to be imposed far too frequently, both at pretrial and dispositional stages of proceedings. A lack of resources complicates efforts to reduce the imposition of detention, as there are inadequate funds, personnel, and infrastructure to implement alternative measures. External and undue influence, in particular executive branch influence on the judiciary, continues to be a major challenge.

In 2010, 15 factors receive a neutral correlation, indicating that the factor analysis identified both positive and negative practices, while 12 factors receive a negative correlation, indicating that the analysis for that factor overwhelmingly identified practices out of line with internationally-accepted standards. The lack of positive correlations should not be taken to mean that there are no good practices occurring in Armenia's criminal detention regime; to the contrary, even many factors receiving a negative correlation demonstrate a positive trend toward reform. Overall, the 2010 DPAT for Armenia reveals a system that has made substantial inroads toward effective and lasting criminal justice system reform, but still has significant room for further progress.

Positive Aspects Identified in the 2010 DPAT for Armenia

- The 2008 Judicial Code established a ***stare decisis model doctrine*** similar to a case precedent system. This doctrine makes European Court of Human Rights and Armenian Court of Cassation judgments binding on lower courts considering similar cases. Although this system is fairly new, all indications are that courts and advocates are already using precedent to support the protection of defendants' rights. Continuing education of judges, prosecutors, and advocates on the ECHR and increased availability of ECHR decisions in the Armenian language would further support this important reform.
- Established in 2004, the ***Public Defender's Office strengthens access to justice through the delivery of legal services to the poor*** throughout Armenia at the state's expense. Although poor infrastructure and a lack of resources sometimes prevent public defenders from discharging their duties effectively, public defenders provide zealous assistance to their clients and are a crucial buttress for defendants' due process rights.
- Armenian ***courts have taken an active role in protecting the rights of defendants and victims***. The Court of Cassation has recognized that victims have the right to a fair trial to remedy violations of their rights, and has given victims the right to object to speedy proceedings, which may result in a reduced sentence for the offender without a full examination of the evidence. The Court of Cassation has also affirmed that a person detained without being formally arrested is entitled to the rights guaranteed by the European Convention on Human

Rights, and held that the presumption of innocence bars courts from considering the defendant's possible culpability when deciding on pretrial detention.

- Overall, interviews conducted by the assessment team revealed an **overwhelming will for reform**. Actors throughout the criminal detention system were aware of the challenges they faced, and indicated a strong desire to improve the system in order to protect defendants' rights, the rights of society, and the interests of victims. This strong will for reform was the impetus behind those reforms that have already been made, and will surely lead to further strengthening of the criminal detention regime.

Challenges Identified in the 2010 DPAT for Armenia

- A **lack of adequate financial, infrastructure, and personnel resources** throughout the criminal justice system leads to inefficiency and the disregard of defendants' rights and is easily the greatest challenge facing the Armenian criminal detention system. Without sufficient resources, interviewees reported that it is impossible to resolve cases based on the gathering and analysis of relevant evidence rather than reliance on confessions, which are often coerced; to adequately supervise defendants out on bail or offenders on probation or parole; to provide social services for juvenile offenders; or to provide a zealous defense. While Armenia generally has an adequate legislative framework for criminal detention, this lack of resources prevents the legislative vision from being put into practice.
- **Undue influence from both within and outside the criminal justice system** negatively impacts criminal justice actors' ability to fairly, transparently, and effectively address decisions on detention and sentencing. Executive branch interference in judicial actions, undue pressure on victims and witnesses, and politically-motivated decisions in corruption cases were identified as major problems.
- Armenia **lacks a comprehensive system for juvenile justice**, including in the areas of detention and sentencing. The number of juveniles detained in Armenia has increased significantly, and the strong social stigma against former juvenile prisoners negatively affects them into adulthood while recidivism is common among juveniles who have spent time in prison. There is a lack of realistic alternatives to detention, and interviewees frequently expressed that insufficient resources are dedicated to prevention and rehabilitation.
- **Serious violations of legal procedure frequently occur during initial deprivation of liberty**. Adequate procedures for the protection of suspects' rights at the time of apprehension are enshrined in law, but loopholes and a lack of knowledge allow these procedures to be almost universally disregarded. It is reportedly common for individuals to be detained without status and beyond the time permitted by law. Meanwhile, **coercion of victims and witnesses**, who are often requested to make statements at the police station without being advised of their rights, is a serious issue during the inquiry and investigation stages.
- An **insufficient framework for the implementation and supervision of alternatives to detention** is a major problem at all stages of criminal justice. Social services for juvenile offenders or juveniles at risk of offending were identified as a major factor contributing to the increasing rate of juvenile detention. Bail is rarely even requested due to unaffordably high bail amounts set by law, an issue that also presents a challenge to courts considering the imposition of a fine in lieu of imprisonment. The Alternative Sentencing Unit, charged with supervising offenders on probation as well as parole, is understaffed and lacks resources to adequately carry out its duties.
- The **Independent Parole Commissions** (IPCs), established in 2006 to serve as intermediary bodies that must approve the prison administration's recommendation for parole before a court can consider whether to grant parole, **fail to operate in a transparent and impartial manner**.

The IPCs are blamed for the low incidence of parole, and the independence of the commissions is questioned as the vast majority of the members are reportedly senior-level executive branch and law enforcement officials. Both prison administrations and the courts, however, are perceived to be fair and objective when considering parole.

- An overarching concern is the ***sense that the imposition of detention is a foregone conclusion***. Interviewees repeatedly cited the Soviet legacy of a mentality that favors detaining suspects and defendants and incarcerating the convicted. Judges, investigators, and prosecutors alike fear being perceived as soft on crime or, worse, as corrupt, and are thus hesitant to act in the interests of the defendant.

Armenia Background

Historical and Political Context

Armenia is a republic located in the south Caucasus region, surrounded by Georgia to the north, Azerbaijan to the east and south, Iran to the south, and Turkey to the west. The population of Armenia is estimated to be 2,966,802 and nearly 97.9% of the population are ethnic Armenians who are at least nominally affiliated with the Armenian Apostolic Church. The largest minority groups of the country are Yezidis and Russians. CENTRAL INTELLIGENCE AGENCY WORLD FACTBOOK: ARMENIA (*updated Jun. 24, 2010*), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/am.html>.

The first Armenian state was founded in 190 BC, and within a century its borders included virtually the entire Caucasus and extended from the Caspian to the Mediterranean Seas. It became part of the Roman Empire in 55 BC, and adopted Christianity as a state religion in the early 4th century AD. Over the next 17 centuries, Armenia was conquered and governed by various empires, including Persians, Turks, and Russians. In the 16th century, Ottoman Turkey seized western Armenia, and a century later Persia took control of eastern Armenia. In the 19th century, eastern Armenia became part of the Russian Empire. The area formerly known as western Armenia was absorbed into modern-day Turkey in 1923, following the deportation of approximately 500,000 and massacre of 1,500,000 Armenians during World War I. See National Academy of Sciences of the Republic of Armenia, the Armenian Genocide Museum-Institute, *Armenian Genocide*, available at http://www.genocide-museum.am/eng/armenian_genocide.php. Eastern Armenia declared its independence in 1918, but was taken control of by Soviet forces in 1920 and incorporated into the Trans-Caucasian Soviet Socialist Republic [hereinafter SSR]. In 1936, Armenia became the Armenian SSR. When the Soviet Union collapsed in 1991, Armenia held a referendum in which its citizens voted overwhelmingly for independence. It officially declared its independence on September 21, 1991, and has been a republic ever since.

Armenia and its neighbor, Azerbaijan, have long contested control of the predominantly Armenian-occupied region of Nagorno-Karabakh, which the Soviet Union assigned to Azerbaijan in the 1920s. The dispute escalated after independence, leading to a war that lasted until a cease fire was agreed to in 1994, with Armenia in control of the region. Despite the cease fire, tensions continue to exist and skirmishes occasionally break out between the two warring parties.

With its dependence on outside sources for energy supplies and many of its raw materials, Armenia's geographic isolation has seriously hampered its economic progress. The cost and consequences of conflicts with neighboring countries, coupled with the loss of markets following the breakup of the Soviet Union and a devastating 1988 earthquake, evidence of which remains visible today, have left Armenia economically fragile. The widespread poverty and lack of government resources that result from these circumstances, as well as the legacy of seven decades of communist domination, contribute greatly to the challenges facing Armenia's judiciary and legal sector reform.

Legal Context

The collapse of the Soviet Union triggered the process of democratization and legal reform in the Republic of Armenia. After declaring its independence in 1991, Armenia adopted its Constitution through a public referendum. CONSTITUTION OF THE REPUBLIC OF ARMENIA, (*adopted July 5, 1995, as amended November 27, 2005 through a national referendum*) [hereinafter CONST.]. The Constitution laid down the constitutional order of the country, the principle of separation of powers into legislative, executive, and judicial branches, the supremacy of law and a recognized multi-party system. It created a three-tiered structure of courts with general jurisdiction and a separate Constitutional Court with the exclusive power to administer constitutional justice and resolve disputes over the constitutionality of laws. *Id.* arts. 91–93.

The legislative power is vested in a unicameral **National Assembly**, consisting of 131 deputies elected for five-year terms. *Id.* art. 63. The National Assembly adopts most laws and resolutions, including those which had been vetoed by the President of Armenia, and may similarly override presidential vetoes with a simple majority. *Id.* art. 71. A majority of the total number of deputies is required, however, to adopt a resolution of no confidence in the Government, which must be introduced by the President or at least one third of the total number of deputies. *Id.* art. 84. The National Assembly must vote on the program of a newly formed Government within five days after its submission. If it fails to approve the program twice in two months, the President must dissolve the National Assembly. The President may also dissolve the National Assembly on the recommendation of its chairman or of the Prime Minister if it fails to pass a law deemed urgent by a Government decision within three months, or if it fails either to meet or to adopt a resolution on issues under debate for more than three months during a regular session. *Id.* art. 74. In addition to adopting laws, the National Assembly has authority, on the recommendation of the President, to ratify, suspend, or denounce international treaties; declare war and proclaim peace; and declare amnesty. *Id.* art. 81. It also appoints five of the nine members of the Constitutional Court, on the recommendation of the chairman of the National Assembly. The National Assembly also elects two legal scholars to the Council of Justice [hereinafter COJ]. *Id.* art. 83.

The **President of Armenia** is the head of state, *id.* art. 49, and shares executive power with the Government. The President is elected by popular vote for a five-year term, and is limited to two consecutive terms. *Id.* art. 50. The President may issue orders and decrees consistent with the Constitution and laws of Armenia. *Id.* art. 56. Within 21 days after receiving a law passed by the National Assembly, the President must either sign and promulgate the law or return it with objections and recommendations. If the National Assembly passes a law again after the President returns it, the President must sign and promulgate the law within five days. The President appoints the Prime Minister and, on the Prime Minister's recommendation, appoints and dismisses members of the Government. The President's powers with respect to the judiciary include appointing and dismissing judges of the courts of general jurisdiction, courts of appeal, and the Court of Cassation, as well as four members of the Constitutional Court. *Id.* art. 55.

The **Government** consists of the Prime Minister, Deputy Prime Minister, and other ministers. *Id.* art. 85. Within 20 days after appointment of its members, the Government must submit its program for approval to the National Assembly. *Id.* arts. 89, 74. The Government has authority over all matters of public administration not entrusted to other state or local self-government bodies. In addition, the Government is responsible for developing and implementing the domestic policy of Armenia and, jointly with the President, its foreign policy. The Government may adopt decisions to ensure implementation of the Constitution, international treaties, laws, or presidential decrees. *Id.* art. 89. The President may suspend a Government decision for up to one month and request that the Constitutional Court determine whether it complies with the Constitution and laws. *Id.* art. 86.

Courts of general jurisdiction have first instance jurisdiction over all non-administrative cases. JUDICIAL CODE OF THE REPUBLIC OF ARMENIA art. 22 (*adopted* Jan. 1, 2008). Armenia has two courts of appeal, the **Criminal Court of Appeal** and the **Civil Court of Appeal**, which hear appeals from courts of general jurisdiction. Located in Yerevan, each court of appeal has 16 judges, including a chairman. *Id.* art. 41. Appeals against a judgment on the merits are heard by a three-judge panel, but appeals against other decisions are heard by a single judge. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA art. 387 (*adopted* Jan. 12, 1999, *as amended* May 25, 2006) [hereinafter CRIM. PROC. CODE].

The **Administrative Court** has first instance jurisdiction over cases specified in the Administrative Procedure Code, including jurisdiction over disputes involving administrative and normative acts, and actions or failures to act by state bodies, local governmental bodies, and their respective officials. *Id.* art. 35. Although based in Yerevan, the Court has other seats in the *marzes* (regions). It consists of 16 judges (including a chairman), 6 of which are based in the *marzes*. *Id.* art. 37.

The ***Court of Cassation*** is the highest court in Armenia, except for matters of constitutional justice. CONST. art. 92. It is responsible for ensuring the uniform implementation of the law and facilitating the development of the law. The Court of Cassation reviews judgments of the courts of appeal and the Administrative Court if it concludes that its decision would be of material significance in the uniform application of the law; the lower court's judgment conflicts with earlier decisions of the Court of Cassation; or the lower court made a *prima facie* judicial error that resulted or may result in grave consequences. JUDICIAL CODE art. 50. The Court of Cassation is divided into two Chambers: the Civil and Administrative Chamber and the Criminal Chamber. Located in Yerevan, the Court consists of a Chairman, two Chamber Chairmen, and two judges in each Chamber. *Id.* art. 52. A panel composed of the Chairman and judges of the relevant Chamber determines the admissibility of cassation complaints, *id.* art. 53, and the entire Court *en banc* examines all cassation complaints determined to be admissible. *Id.* art. 54. Judgments of the Court of Cassation are final and not subject to appeal

The ***Constitutional Court*** is responsible for the administration of constitutional justice. CONST. art. 93. Located in Yerevan, it has nine judges who are referred to as "members." *Id.* art. 99. The Court's authority extends beyond merely determining the constitutionality of legislation and includes functions with important political implications. These additional functions include, *inter alia*, determining whether international treaties comply with the Constitution before they are ratified; resolving disputes relating to referenda or presidential and parliamentary elections; declaring whether there are insurmountable obstacles to the election of a presidential candidate; concluding whether there are grounds for impeaching the President or whether the President is incapable of performing his duties; concluding whether there are grounds for dismissing a community head; and deciding whether to suspend or prohibit the activities of a political party, as prescribed by law. *Id.* art. 100.

Armenia's ***administrative subdivisions*** consist of 10 regions (*marzes*) and less than 1,000 communities, including the capital, Yerevan, which is further divided into 12 administrative districts.

Armenia's legal system is based on the civil law tradition. The hierarchy of domestic legal sources is as follows: the Constitution, whose norms apply directly; laws, which must conform to the Constitution and come into force after publication in the OFFICIAL BULLETIN; and other normative legal acts, which must conform to the Constitution and the laws and which come into force when officially published as prescribed by law. Once ratified or approved, international treaties become part of Armenia's legal system. No treaty can be ratified unless it complies with the Constitution. Once a treaty comes into force, its provisions take precedence over conflicting provisions of domestic laws. In 2002, Armenia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter EUROPEAN CONVENTION], and the judgments of the European Court of Human Rights [hereinafter ECHR] have begun to play an increasing role in the Armenian system of justice. Since the 2008 adoption of the Judicial Code, a form of *stare decisis* has been established in the Armenian legal system; judicial acts of the Cassation Court or ECHR are binding on Armenian courts in the examination of cases with identical or similar factual circumstances, unless the court can make a solid argument that the reasoning is not applicable to the case at hand. JUDICIAL CODE art. 15.

Structure of the Criminal Justice System

Actors and Institutions

In the beginning of the 20th century the first Republic of Armenia (1918–1920) was created and introduced a ***judicial system*** modeled on the Russian Empire's court system. An important feature of this system was the attachment of the prosecution service to the judiciary. After the Soviet takeover in 1920, the Armenian judicial system's structure was identical to that of the other SSRs. The Police and Office of the Prosecutor were charged with the duty to investigate and prosecute

crimes. Courts of first instance, known as “national courts,” had the responsibility of hearing criminal cases and the Supreme Court had the authority to review cases adjudicated by the lower courts and to act as a first instance court by hearing cases involving grave crimes. The Ministry of the Interior exercised control over the prisons.

Armenia’s 1995 Constitution introduced a three-tiered structure of courts of general jurisdiction, as well as a separate Constitutional Court with exclusive jurisdiction over determining the constitutionality of laws which began functioning, in 1996. The Court of Cassation began functioning in 1998, and two courts of appeal were established a year later. On November 8, 1996, the President promulgated a decree on judicial reform. During 1998, the Republic of Armenia [hereinafter RA] National Assembly passed a number of the laws relating to the courts, judges, prosecutors, advocates, arbitration, and the implementation of judicial acts. The Civil, Civil Procedure, and Criminal Procedure Codes of the Republic of Armenia came into force January 12, 1999. In accordance with the new legislation, a new judicial system was formed and started to function; instead of the previous two-tiered judicial system consisting of people’s courts and the Supreme Court, a three-tiered judicial system was founded, consisting of the courts of first instance, courts of appeal and a Court of Cassation. (JUDICIARY OF THE REPUBLIC OF ARMENIA, <http://www.court.am/?l=en>).

The collapse of the Soviet Union and introduction of new criminal (2003) and criminal procedure (1998) codes radically altered the criminal justice system in Armenia. One of the core changes in the 2003 Criminal Code was the introduction of a system of alternative sanctions and the abolition of death penalty, which had been authorized by the Soviet Criminal Code. Additionally, according to the 1998 Criminal Procedure Code all limitations of constitutional rights became subject to judicial control, such that only judges, not prosecutors, were authorized to impose measures such as detention or restricting detainees’ correspondence.

A second phase of judicial reform began with amendment of the Constitution by a national referendum on November 27, 2005. Among other things, the amendments were intended to reduce the dominant role of the presidency and increase the independence of the judiciary. To implement these changes, in February 2007 the National Assembly passed the Judicial Code, which applies to all courts in Armenia except the Constitutional Court. The Judicial Code, which became fully effective on January 1, 2008, consolidated and amended prior laws on the judiciary and reorganized the structure of the courts. In addition, the Judicial Code introduced a doctrine analogous to case precedent in common law systems. This “*stare decisis* model doctrine” has two aspects. First, it recognizes the right of parties to argue that the reasoning in a final judgment of an Armenian court in an earlier case with identical or similar factual circumstances applies to a later case. JUDICIAL CODE art. 15(3). Second, it makes the reasoning in a judgment of the Court of Cassation or the ECHR binding in other cases with identical or similar factual circumstances, unless the court can demonstrate that the reasoning does not in fact apply to the factual circumstances at hand. *Id.* art. 15(4).

To further the independence and professionalism of the judiciary, as well as provide more efficient case management, a system of specialized courts came into existence in 2008, including criminal and civil courts and a distinct Administrative Court. Due to a lack of resources, however, the judiciary was unable to successfully administer the specialized courts, and thus reverted to its original and current three-tiered system: courts of general jurisdiction, courts of appeal, and the Court of Cassation.

The **defense** of the accused in criminal cases as an entrepreneurial activity in Armenia is exercised only by advocates who are members of the professional union of advocates formally known as the Chamber of Advocates of the Republic of Armenia. An advocate must have received higher education in the law and must have obtained an advocate’s license from the Chamber of Advocates.

The state has delegated the provision of free legal assistance to the Chamber of Advocates. The

Public Defender's Office [hereinafter PDO] has been created as a subunit under the supervision of the Chamber to provide free legal services in criminal cases. It is a unified institution dedicated to strengthening access to justice through the delivery of high-quality legal services to the poor throughout Armenia at the state's expense. The PDO is headed by a Chief Public Defender and staffed by public defenders who are also licensed advocates working with the PDO under an employment contract. As members of the Chamber of Advocates, the public defenders are subject to the same ethical rules that apply to all advocates. Public defenders' monthly salary is equal to that of a prosecutor of Yerevan City Community. LAW ON ADVOCACY OF THE REPUBLIC OF ARMENIA art. 45 (*adopted* Dec. 14, 2004) [hereinafter LAW ON ADVOCACY]. The PDO provides free legal assistance to indigent people in criminal cases and also in limited classes of civil cases. Free legal services can also be provided at the discretion of an advocate in private practice, although the Law on Advocacy does not encourage *pro bono* representation and there is no tradition of advocates providing *pro bono* services in Armenia.

The **investigation and prosecution** of crimes are carried out by bodies of inquiry, investigators, and prosecutors. The bodies of inquiry, the investigator, and the prosecutor are obligated to institute a criminal case when elements of a crime are discovered and to take all measures envisaged by law to solve the case and determine who is responsible. CRIM. PROC. CODE art. 27, *see also* art. 34.

The **bodies of inquiry** gather preliminary information and evidence about an alleged crime and issue a decision on whether criminal proceedings should be initiated. *Id.* arts. 57, 180–185. The inquiry phase may extend no more than 10 days after a case has been initiated, at which time the body of inquiry forwards the case to investigators. *Id.* art. 188, *see also* art. 57. Bodies of inquiry dealing with crimes committed by civilians are composed mainly of police, although specialized investigative units exist to deal with specific crimes, such as tax, customs, or national security crimes, while military units and police deal with military crimes. *Id.* art. 56.

The **investigator** is a state official, who is authorized to conduct a preliminary investigation of a criminal case within the limits of his competence. *Id.* art. 55. He is authorized to prepare materials of the alleged crime and either maintains the investigation of the case on his own or forwards it to another investigator or body of inquiry. The investigator is also entitled to reject the institution of proceedings in the criminal case. Once the investigator has accepted the criminal case, he leads the course of the investigation, makes necessary decisions, conducts investigatory and other procedural actions, and bears responsibility for the lawful and timely implementation of investigatory and other procedural actions. *Id.*

The **prosecutor** plays a central role within the criminal justice system of Armenia. The prosecutor is a state official, who, within the limits of his competence and at all stages of the criminal procedure, conducts the criminal prosecution, supervises the legitimacy of the preliminary investigation and inquiry, carries out the prosecution of a case in court, and appeals or defends against appeals of verdicts and other court decisions. When exercising his powers the prosecutor is independent and is governed only by the law. *Id.* art. 52.

The Office of the Prosecutor is centralized and headed by the Prosecutor General, who exercises overall control of the system. LAW ON PROSECUTION OF THE REPUBLIC OF ARMENIA, art. 1 (*adopted* Jan. 22, 2007) [hereinafter LAW ON PROSECUTION]. The prosecutorial system comprises the office of the Prosecutor General and the respective structural units of the Yerevan city and district prosecutors' offices, as well as regional offices and central military prosecutor's office and garrison military prosecutor's offices. *Id.* art. 8. The Military Prosecutor of Armenia is in charge of the central military prosecutor's office and garrison military prosecutor's offices within the prosecutor's offices and is Deputy Prosecutor General *ex officio*. *Id.* art. 19. The Prosecutor's Office is authorized to initiate criminal prosecutions, as prescribed by law; exercise control over the legality of preliminary investigations and inquiries; support the prosecution of criminal cases in court; present suits protecting the state's interests to the court; appeal decisions of the court; and supervise the implementation of punishment and other enforcement measures. *Id.* art. 4, *see also* CONST. art.

103. In 2007, a newly established Special Investigative Service [hereinafter SIS] assumed responsibility for the investigation of crimes committed by high ranking public officials. LAW ON SPECIAL INVESTIGATION SERVICE PROSECUTION art. 2 (*adopted* November 28, 2007). The SIS is in charge of investigating crimes committed by high ranking public officials of the judicial, executive, and legislative branch and crimes relating to elections. The legality of those investigations is directly supervised by the Prosecutor General and his designees. *Id.* art. 2.

The **Penitentiary Service** of Armenia was within the Ministry of Internal Affairs before 2005, when, within the broader commitment of Armenia's accession to the Council of Europe, the penitentiary service was moved to the Ministry of Justice [hereinafter MOJ]. LAW ON THE LEGAL STATUS OF THE PENITENTIARY SERVICE OF THE REPUBLIC OF ARMENIA, art. 2 (*adopted* Jul. 26, 2001). Currently, it is a separate structural subdivision of the MOJ. LAW ON PENITENTIARY SERVICE OF THE REPUBLIC OF ARMENIA, art. 2 (*adopted* Jul. 8, 2005) [hereinafter PENITENTIARY SVC. LAW]. The Penitentiary Service comprises 13 penitentiary institutions. There are four levels of correctional institutions in Armenia, in addition to medical correctional institutions: open, where prisoners have the greatest freedom of movement; semi-open; semi-closed; and closed, where prisoners are generally isolated in shared cells. PENITENTIARY CODE OF THE REPUBLIC OF ARMENIA arts. 99, 103–106 (*adopted* December 24, 2004) [hereinafter PENITENTIARY CODE]. Individuals are assigned to the different levels of correctional institutions based on the seriousness of the offense committed and may be transferred based on their behavior. The central body of the penitentiary system of Armenia is the **Criminal Execution Department** [hereinafter CED] of the MOJ. PENITENTIARY SVC. LAW art. 6.

The **Alternative Sentencing Unit** [hereinafter ASU] is a body within the Criminal Execution Department. It has territorial sub-units operating in regions and provinces of the City of Yerevan. Currently, it has 7 regional departments in the communities of Yerevan and 10 departments in the *marzes*. This division administers non-custodial types of punishments, carries out supervision over deferral of execution of punishment, grants conditional application of punishment, as well as carries out supervision over persons released on parole. *Id.* art. 6

Processes

Currently, Armenia's Criminal Code authorizes the following **penalties**: a fine; prohibition to hold certain posts or practice certain professions; public work; deprivation of special titles or military ranks, categories, degrees or qualification class; confiscation of property; arrest;¹ service in disciplinary battalion; imprisonment; or life sentence. CRIMINAL CODE OF THE REPUBLIC OF ARMENIA arts. 49, 51–60 (*adopted* Apr. 19, 2003) [hereinafter CRIM. CODE].

The Criminal Code also introduced four **categories of crimes** within the Armenian criminal justice system based on the nature of the crime and the degree of danger to society posed by each crime: minor, medium gravity, grave, and very grave crimes. *Id.* art. 19. Minor crimes are willful acts for which the Criminal Code provides a maximum punishment of no more than two years of imprisonment or a non-custodial type of punishment, or negligent acts for which the punishment shall not exceed three years of imprisonment. Medium gravity crimes are willful acts for which the Criminal Code provides a maximum punishment of no more than five years of imprisonment, or negligent acts for which the punishment shall not exceed ten years of imprisonment. Grave crimes are willful acts for which the Criminal Code provides a maximum punishment of no more than ten years of imprisonment. Very grave crimes are willful acts for which the Criminal Code provides a maximum imprisonment of more than ten years or life imprisonment. *Id.*

¹ The term arrest is used in two contexts in Armenia. As a preventive measure, it refers to the formal taking into custody of a person suspected of a crime based upon a formal protocol drawn up within 3 hours of the suspect's apprehension. See Factors 7 and 8 below. As a penalty, it refers to a sentence of incarceration of fifteen days to three months, imposed only for minor and medium gravity crimes. CRIM. CODE art. 57(1). Imprisonment refers to a sentence of incarceration of three months to fifteen years (with a maximum twenty years in aggregated sentences). *Id.* art. 59.

Criminal detention begins with **apprehension** of a suspect. CRIM. PROC. CODE art. 128. Within 3 hours of apprehension, the suspect is formally placed under **arrest** and may be held as an arrestee for no more than 72 hours. *Id.* arts. 129, 130. Within 72 hours, the prosecutor must decide whether to charge the arrestee, and a court must hold a hearing on **pretrial detention**, and may decide to detain the defendant, detain him but allow him to post bail, or reject the motion on detention and release him. *Id.* arts. 137, 285. Upon conviction, the defendant may be sentenced to **incarceration** or **alternative sanctions**, including fines, probation, public work (*i.e.*, community service), confiscation of property, deprivation of titles, or prohibition on practicing a profession, may be imposed. CRIM. CODE art. 49. The ASU supervises offenders subject to alternative sanctions.

Offenders sentenced to incarceration may be released early on **parole**. *Id.* art. 76(1). The case of an offender eligible for parole must be reviewed by an internal body within the prison once he has served the portion of his term specified by law, and if the internal body decides to recommend parole, their recommendation must be approved by a regional Independent Parole Commission [hereinafter IPC], whose approval must then be reviewed and approved by the competent court. PENITENTIARY CODE art. 115. The ASU also supervises parolees.

Armenia lacks a special and separate judicial structure to administer **juvenile justice**. The Criminal and Criminal Procedure Codes of Armenia envisage special rules for treating juveniles, however, offenses committed both by juveniles and adults are handled within the same justice system.

Armenia DPAT 2010 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI emphasizes that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis.

I. Considerations at All Stages of Detention

Factor 1: Due Process

Persons who have been deprived of liberty, including persons who have been remanded into custody, are entitled to full due process rights, including a right to review by a competent tribunal, a right to counsel, and a right to participate effectively in their own defense.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
The rights to review by a competent tribunal, to counsel, and to participate effectively in one's own defense are enshrined in Armenian law. In practice, logistical issues sometimes prevent effective assistance by public defenders, and the right to review and participation are often <i>pro forma</i> with little practical effect on what many believe to be foregone conclusions on the imposition of detention.	

Analysis/Background:

The due process rights of persons deprived of liberty are enshrined in the RA Constitution. CONST. art. 16. In Armenia, everyone has the right to liberty and security, and a person may be deprived of liberty only according to procedure provided by law in specifically enumerated cases, including as a sentence upon conviction of a crime imposed by a competent court; when reasonable suspicion exists of commission of a crime; when it is necessary to detain a person to prevent the commission of a crime or to prevent his escape after committing a crime; and to establish educational supervision over a minor or to ensure his appearance before a competent body. Anyone who is deprived of liberty must immediately be informed of the reasons for his detention in a language he understands and an indictment should also be brought against him in a language he understands. The detainee has a right to immediately notify a person of his choosing, and must be released if a court has not made a decision to impose detention within 72 hours. No one may be deprived of liberty for failing to fulfill civil or legal obligations, and no one may be subjected to a search other than according to the procedure prescribed by law. *Id.*

The procedure for deprivation of liberty is set forth in the Criminal Procedure Code, which sets forth due process guarantees that apply at all stages of proceedings, from the first court appearance until the final disposition of the final appeal. Detention is only permitted upon the order of a court. CRIM. PROC. CODE art. 11. Any individual who is apprehended on suspicion of a crime must be formally arrested within 3 hours of apprehension. A court must review his detention and determine whether to impose pretrial detention within 72 hours. *Id.* arts. 129–131.1, art. 11, *see also* Factors 7–8 below. Pretrial detention is reviewed by the court, upon the prosecution's motion to extend detention, every two months until the beginning of the trial, and the defendant may request review of his detention during trial. *Id.* art. 138; *see also* Factors 9–10 below. Anyone who is detained must be informed of the reasons for his detention and the nature of the accusations against him, and the bodies of inquiry, investigator, prosecution, or court must order the release of a person who is illegally detained. *Id.* art. 11. Prior to charging, the arrestee is designated a "suspect" and after charging he is known as the "accused."

All persons are entitled to equal protection under the law. *Id.* art. 8. Everyone has a right to legal assistance during criminal proceedings, and the competent body in charge of the proceedings, which may include the police or inquiry body at the pre-arrest stage, the investigator at the arrest stage, or the court once the suspect has been charged, is responsible for ensuring that the suspect or accused receive legal assistance. The prosecution may not prevent the suspect's counsel from attending the interrogation of his client. The body in charge of criminal proceedings also is entitled to provide the suspect or accused with free legal assistance if he is unable to pay. *Id.* art. 10.

Everyone has the right to a fair trial with the presumption of innocence, generally held in public. All criminal cases must be tried by an independent and impartial court; the judge, prosecutor, investigators, and body of inquiry officers are prohibited from participating in a case in which they have a direct or indirect interest in the outcome; the prosecution must ensure a full and objective investigation of the case, including both incriminating and exculpatory evidence and aggravating or mitigating circumstances; and the court must thoroughly examine all evidence of innocence. *Id.* art. 17. Every person suspected of a crime is to be presumed innocent until proven guilty by reliable evidence and convicted, with any doubts interpreted in favor of the defendant, and the suspect or accused is not obligated to prove his innocence. *Id.* art. 18. Trials may be held *in camera* upon the court's decision and only to protect public order, public morals, state security, the private life of the parties, or the interests of justice, but the verdict and final disposition must be announced publicly. *Id.* art. 16.

Every suspect and accused person has the right to a defense and against self-incrimination. The body in charge of criminal proceedings must explain the rights of the suspect or accused and ensure that he is able to defend himself and that his legal representative takes part in the case. The suspect or accused is entitled to represent himself or be represented by an advocate. The suspect or accused cannot be forced to testify or provide any assistance to the prosecution. *Id.* art. 19. No one can be obligated to incriminate himself, his spouse, or his close relatives. *Id.* art. 20. Equality of arms between the prosecution and defense is protected by law, and both parties have the right to participate at both the trial and appellate stages while only the appellant has a right to be present if a case is brought before the Court of Cassation. *Id.* art. 23.

The Court of Cassation, in a 2009 case, affirmed that the rights guaranteed by the European Convention and the RA Constitution apply to persons who have been apprehended even prior to formal arrest, including the right to know that he is being apprehended and the reason for which he was apprehended, the right to counsel, and the right to remain silent. *Case of Gagik Mikayelyan* § 1, no. EADD/0085/06/09 (Dec. 18, 2009). However, there is a legal loophole at the inquiry stage that allows police to interrogate individuals without giving them the status of a suspect and, frequently, without the participation of counsel. See Factor 7 below for a detailed discussion of this loophole. Reportedly, denial of the right to counsel of persons not under formal arrest is a widespread and frequent problem affecting due process. Persons called in to give a statement without the status of suspect frequently fail to request or bring counsel, either because they are unaware (and not informed) that they have the right to pursuant to Criminal Procedure Code article 86(10) or because they fear that they will look guilty if they bring counsel. Moreover, many investigators and even some public defenders were unaware that the right to counsel of a person identified as a suspect attaches at the moment of apprehension, which may be extremely detrimental to defendants as it is common practice to conduct interrogations during the time period between apprehension and formal arrest.

In practice, advocates reported that the right to counsel is generally respected from the moment of formal arrest, if not always from the moment of apprehension. Suspects who are unable to afford counsel may request that the investigator refer them to a public defender, a procedure which appears rife for abuse but in practice is reported to work well. Upon the suspect's request, the investigator must make a written decision on involving a public defender and file an application with the Public Defender's Office. In practice, public defenders report that they are normally notified immediately upon a suspect's request, and had not heard of a suspect being denied a public

defender—although one public defender pointed out that the public defenders would never find out if a suspect's request had been denied. Many interviewees mentioned that inability to pay is the only criterion for receiving a public defender and that, as many Armenians are indigent, this criterion is easily met.

Public defenders also frequently complained that a lack of resources affects their ability to provide effective assistance to their clients. The public defenders' offices are understaffed, and it is reportedly common for one public defender to have 10 or more active cases at once, often with hearings scheduled at the same time or with clients detained in geographically distant facilities requiring visits on the same day. The situation is particularly acute in the regions, where some public defenders reportedly have over 200 cases that have reached a final disposition with grounds for appeal, but have not been appealed due to the public defender's workload. According to statistics provided by the RA Public Defender's Office for the first term of 2010, the 17 public defenders in Yerevan had 529 cases, with 323 involving 333 defendants (11 of whom were juveniles) reaching a final disposition. In the *marzes* for the same period, the 19 public defenders (who are divided among the 10 regions, with approximately 2 public defenders per region) had a combined total of 765 cases, of which 606 involving 736 defendants (98 of whom were juveniles) reached a final disposition. In Meghri region, there are reportedly no public defenders or private advocates at all, and cases must be taken on by a public defender from a different region. There were also reports of investigators in the regions deciding not to involve a particular public defender because that public defender is perceived as too assertive in advocating for his client.

There were also reports of the initial detention hearing being held without the defense counsel present and the court then refusing to hold a second hearing with counsel present until the initial two-month detention term had run, as well as of hearings being held without the defendant himself present. Some judges pointed out that they must make a decision on detention before the time period permitted by law lapses, even if the time period includes a weekend or holiday or if the defense advocate is not available.

Defense advocates also pointed out that they do not have access to the case file until the investigation is completed, a process that can take up to a year if the accused is in pretrial detention and can go on indefinitely otherwise. This makes it difficult for them to challenge the request for pretrial detention. Reportedly, both the requests for pretrial detention and the decision imposing it are frequently poorly reasoned and substantiated, making it difficult to substantiate an appeal. Defense advocates also noted that the sentence is handed down at the same time as the verdict, such that there is no opportunity to make separate arguments for a lenient or non-incarcerative sentence. See Factors 14–15 below.

The MOJ typically only translates those ECHR cases in which Armenia is a party, reportedly due to a lack of funding for translation. This makes it impossible for judges and advocates who do not speak English, French, or the other unofficial languages that ECHR cases are translated to access ECHR jurisprudence, which is given precedential value under Armenian law and therefore can be crucial to the disposition of cases. However, there have been efforts made by organizations, including the United States Department of Justice Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) and ABA ROLI to educate the judiciary and other legal professionals regarding ECHR case precedent, with extensive discussion of article five (Right to Liberty and Security of Person) of the Convention. The Chamber of Advocates is in the process of developing a website which will include ECHR cases in the Russian language, and the judges' association is reported to be making efforts to translate relevant ECHR decisions.

Interviewees also reported that courts frequently do not comply with due process standards in politically sensitive cases, which is supported by the findings of international observers. In particular, Armenian legal professionals and international observers alike raised questions regarding the independence of the Armenian judiciary from executive and legislative interference. One recent and high-profile illustration of this issue occurred with the cases arising from the March 1, 2008, political unrest, when police cracked down on the relatively non-violent civil unrest that

followed the disputed presidential election held on February 19, 2008. A number of civilian deaths resulted from the crackdown, and a number of opposition leaders and other citizens were detained for protracted periods. The handling of the criminal cases that arose from the events of March 1, 2008, presented a significant challenge to the Armenian Judiciary. All together, the courts heard over 100 cases, including several high-profile cases involving ex-high ranking Armenian officials. These cases were seen by much of the legal and international communities as show trials, in which the executive branch attempted to prove that the civil disturbances and ensuing violence were criminally and not politically motivated. The opposition activists were charged with usurping state power and organizing civil unrest. The case was closely followed domestically and internationally by the Organization for Security and Co-operation in Europe [hereinafter OSCE] Office for Democratic Institutions and Human Rights [hereinafter ODIHR]. Direct pressure on the judiciary was combined with legislative interference by expediting amendments to Armenia's Criminal Code to secure an outcome that would reflect positively on the executive branch.

The judiciary's ability to protect the due process rights enshrined in law was called into question following the March 1 cases. ODIHR observed that the handling of these cases did not comply with basic fair trial standards, including, but not limited to, the presumption of innocence, equality of arms, adversarial nature of the proceedings, the impartiality and integrity of judges, the use of evidence obtained through torture and ill-treatment, pressure on witnesses, as well as the right to an effective self-defense. In its trial monitoring report, ODIHR expressed its concern regarding the implementation of the right to liberty in Armenia, with specific reference to custody decisions not being supported by proper reasoning and not addressing the facts presented in every case. According to ODIHR, the use of pretrial detention has become the default rule, rather than the exception as required by international standards, and alternative measures have rarely been used. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, FINAL REPORT TRIAL MONITORING PROJECT IN ARMENIA 6 (APRIL 2008 – JULY 2009) [hereinafter OSCE/ODIHR TRIAL MONITORING REPORT].²

In addition to the March 1 cases, interviewees cited other examples of executive branch influence, including the use of the criminal justice system as a political tool. Several interviewees cited cases in which advocates representing clients in human rights cases were threatened with prosecution or actually arrested on what interviewees believed were unsubstantiated or trumped up charges, in order to intimidate them into dropping their human rights advocacy.

Reportedly, judges fear being sanctioned or removed from their positions for issuing the “wrong” decision or verdict in political cases, a situation which prevents them from giving careful consideration to the case. Many interviewees reported that, in practice although not in law, the judicial discipline process is controlled by the prosecution. Although, by law, judges cannot be reprimanded or removed, except upon the Council of Justice's decision or recommendation, JUDICIAL CODE art. 153(1), it is widely perceived that the executive branch exerts significant control over this process and that judges will be reprimanded or removed for failing to side with the prosecution in politically motivated cases. Some went so far as to suggest that judges could face retaliation for ruling against the prosecution at all. However, other interviewees, including judges,

² The OSCE/ODIHR Trial Monitoring Report made extensive findings concerning many of the issues analyzed in this DPAT report, specifically with regard to the 93 cases arising out of the March 1, 2008, unrest. Although this DPAT report has a much broader reach than the OSCE/ODIHR report (the 93 monitored cases constituted about 3.6% of the annual number of criminal cases), it merits noting that ODIHR found repeated and serious violations related to the rights to liberty, the right to a public hearing, the presumption of innocence, equality of arms, adversarial proceedings and reliance on police evidence, the right not to be compelled to testify and the exclusion of unlawfully obtained evidence, the right to defend oneself, accelerated proceedings, contempt of court, and impartiality of judges during the 93 cases, which took place between April 2008 and July 2009. See OSCE/ODIHR TRIAL MONITORING REPORT Executive Summary. This assessment found that many of ODIHR's conclusions are also present throughout the pretrial detention system as a whole.

disagreed with this assessment, pointing out cases in which courts had ruled for the defense without facing repercussions, even in politically sensitive cases.

Many interviewees believed that alternative measures are rare because actors at all stages of the process fear being punished if a defendant flees or re-offends, so investigators, prosecutors, and judges do not seriously consider the option of alternative measures or substantiate the decision to impose detention. However, other interviewees disagreed, and some investigators were quick to point out cases in which they had not requested pretrial detention. Interviewees pointed out that a lack of resources to supervise persons subject to alternative measures presented a greater obstacle to the consideration of alternative measures than a fear of retaliation if the individual flees.

Perhaps the most commonly cited issue affecting due process is the overwhelming sense that the imposition of detention is a foregone conclusion. Interviewees repeatedly cited the Soviet legacy of a mentality that favors detaining suspects and accused and incarcerating the convicted. Investigators and prosecutors reportedly nearly always request detention, and it is granted in the overwhelming majority of cases. See Factors 7–9, 15–16 below. It is widely perceived that courts cooperate with the prosecution due to political pressures, and that there is very little defense advocates can do to make an effective case for their clients' liberty.

Factor 2: Consistency and Fairness

The circumstances in which deprivation of liberty occurs and the procedures under which it is authorized are established in law. Discretionary decisions relating to deprivation of liberty are made by comparing the facts of the case to established criteria.

Conclusion	Correlation: Neutral
Although equal protection is enshrined in Armenian law and legally-established procedures exist at all stages of the criminal detention process, in practice, decisions relating to deprivation of liberty are rarely well substantiated and individualized. Discretionary decisions are often perceived to be influenced by outside pressures rather than the facts of the case.	

Analysis/Background:

As discussed throughout this report, legal provisions exist to guide police, investigators, prosecutors, and judges at all stages of the criminal detention process. However, it is widely reported and statistically documented that the vast majority of cases result in detention at all stages, including apprehension, formal arrest, pretrial detention, and sentencing, and these decisions are affirmed on appeal. See Factors 7–10, 15–16 below. Detention is consistently requested by investigators and prosecutors and consistently granted by judges, seemingly without regard for any unique facts of the case. Reportedly, investigators and prosecutors rarely provide reasoning substantiating their request for formal arrest or pretrial detention. See Factors 8, 9 below. Pretrial detention decisions are made in closed, confidential hearings. Judges reportedly do not provide an explanation for their decisions on pretrial detention, and advocates cited cases in which the judge imposed pretrial detention even though the investigator presented no reasons for the request, and also cited cases in which the judge order pretrial detention for reasons not permitted by law. See *id.*

A lack of fairness and consistency was also reported at the sentencing and parole stages. The guilt and sentencing determinations are made at the same time, such that advocates are not able to argue for leniency once their client has been convicted. As with pretrial detention, interviewees reported that sentencing decisions are not well substantiated and imprisonment seems to be the default. See Factors 15–16 below. Parole decisions, which usually deny parole, are perceived to be

influenced by the executive branch, and explanations for the decision are not given. See Factor 25 below.

Outside pressures were perceived to influence detention decisions at all stages. See Factor 4 below. Reportedly, investigators, prosecutors, and judges fear even the perception that they are corrupt, and thus choose to impose detention upon defendants lest they be accused of taking a bribe. Many interviewees cited the legacy of the Soviet era as a major reason behind the lack of individualized treatment of cases; as in the Soviet era, many criminal justice actors still see detention as the default measure or sentence and do not see a reason to consider alternatives. A lack of resources also contributes to the lack of individualized reasoning, as the justice system lacks the infrastructure to adequately supervise persons on bail, probation, community service, or parole, while many suspects and offenders lack the means to pay bail or fines. Less restrictive preventive measures such as electronic monitoring are also unavailable in Armenia. See Factor 3 below.

Interviewees also identified a lack of consistency in sentencing as a major problem. Interviewees contended that often, the length of a sentence does not correspond to the severity of a crime, while similarly situated defendants often do not receive similar sentences. See Factor 15 below. Many interviewees advocated for the adoption of sentencing guidelines, or at least legislative amendments to lessen the span of years in each range of punishment, in order to remedy these issues.

On a more positive note, several interviewees noted that judges are aware of the lack of consistency in legal rulings and hold internal seminars to discuss legal issues and then often come forth with a unified interpretation and/or application of a certain principle.

Factor 3: Resources

Adequate resources, whether financial, infrastructure, personnel, or other, are allotted to both individuals and institutions involved in detention and sentencing, including alternatives thereto.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>A lack of adequate financial resources within all bodies involved in criminal detention leads to insufficient personnel and infrastructure, resulting in inefficiency at the investigative stages, inadequate supervision of probationers and parolees, and ineffective representation of indigent defendants.</p>	

Analysis/Background:

In Armenia, the judicial budget is set by the RA Judicial Department and included in the State Budget, with the approval of the Government or, in the case of disapproval, by the National Assembly. JUDICIAL CODE art. 64. The budget for the Prosecution is included as a separate line in the State Budget. LAW ON PROS. art. 63. The Public Defender's Office is also financed from the State Budget of the Republic of Armenia. The amount of money allocated to the Chamber of Advocates for the salary of a public defender is to be equal to that of a Yerevan City prosecutor. LAW ON ADVOCACY art. 45. The independence of the courts is guaranteed by the Constitution and the laws of the Republic of Armenia. CONST art. 94. Appointments of judges and prosecutors are administered by the Judicial Council, *id.* art. 95, *see also* JUDICIAL CODE arts. 117, 136–138, which is chaired by the chairman of the Court of Cassation. *id.* art. 94.1 The Prosecution Qualification Committee coordinates the nomination and promotion of prosecutors. LAW ON PROS. arts. 34, 35.

Article 7 of the state budget for the year 2010 below sets forth the monetary allocations for public order, security, and judicial activities in Armenia:

PUBLIC ORDER, SECURITY, AND JUDICIARY BUDGET 2010³

Category	Subcategory	AMD	USD Equivalent
Public Order and Security	Police	22,966,922,700	60,122,834
	National Security	11,787,457,300	30,857,218
	Total	34,754,380,000	90,980,052
Judiciary and Legal Service	Courts	9,234,755,700	24,174,753
	Legal Service ⁴	308,366,600	807,242
	Total	9,543,122,300	24,981,996
Prosecution	Prosecution	2,692,175,700	7,047,580
Detention Facilities	Detention Facilities	5,229,727,000	13,690,385
Rescue Service	Rescue Service	4,413,812,100	11,554,482
TOTAL		56,633,217,100	148,254,495

Source: THE LAW ON THE STATE BUDGET OF THE REPUBLIC OF ARMENIA, art. 7 (*adopted* Dec.10, 2009).

Reportedly, all of the bodies involved in criminal procedure are chronically underfunded, resulting in challenges at all stages of the criminal detention and sentencing process. The Public Defender’s Office, in particular, continues to be challenged by a lack of consistent financial support from the Armenian government, resulting in chronic understaffing and unrealistic workloads. The PDO is funded by the same budget and out of the same account that funds the Chamber of Advocates. The PDO receives 30% of the Chamber’s funding and remains dependent on the Chamber for the actual dispersal of funds, which must cover all of its expenses, including salaries and social security. See LAW ON ADVOCACY art. 45. One interviewee pointed out that the state, as the public defenders’ employer, should be responsible for paying social security in addition to the budget rather than requiring the PDO to pay social security out of its budget.

The problems facing the PDO are especially acute in the regions, where some public defenders are funded to work only part time despite overwhelming caseloads. In Shirak region, for example, the staff of the Public Defender’s Office lack both personnel and transportation resources to travel the 40 kilometers to the detention facility to meet with clients on a regular basis; the capital city of Gyumri lacks even a short-term detention facility to detain arrestees for 72 hours. Other regions face similar problems. Interviewees reported that the general lack of adequate resources greatly impacts a defender’s ability to meaningfully engage in proactive representation at the earliest stages, especially when the client is initially apprehended or detained. This is especially problematic since most accused seem to be detained as a matter of course, and the only recourse is to successfully appeal after a detention hearing is held. See Factors 8–10 below. It is not unusual for one public defender to have multiple court hearings scheduled all at same time, often in different locations.

Public defenders, particularly in the regions, also lack adequate offices and equipment; in Yerevan, all 17 of the public defenders share one large room, and their computers and other equipment were paid for with donations or private funds rather than by the state budget. Lack of adequate heat, desks, and other office equipment presents a serious problem for PDOs in the regions.

³ In this report, Armenian Drams [hereinafter AMD] are converted to United States Dollars [hereinafter USD] at the average rate of conversion at the time the DPAT interviews were conducted (AMD 382 = USD 1).

⁴ Includes the Human Rights Defender (AMD 155,933,600, or USD 408,203) and the Public Defender’s Office (AMD 152,433,000, or USD 399,039).

There are a total of 36 public defenders in Armenia, with 17 located in Yerevan. According to statistics provided by the RA Public Defender's Office for the first term of 2010, public defenders in Yerevan had 529 cases while public defenders in the *marzes* had a combined total of 765 cases. There is currently a proposal to increase the number of public defenders in Yerevan by five and an overall request to increase the total number of public defenders in Armenia. In the regions resource issues are even more acute—some public defenders reported having 200 or more cases that have not been appealed because of time constraints and high caseloads. In the far southern region of Meghri, there are no public defenders or private defense advocates at all, necessitating that advocates from other regions travel there to represent clients. Also of concern are recent proposals to add civil cases to the existing duties of public defenders. Since resource issues are so acute, many feel that these additional duties should be added to the PDO's workload only after adequate resources are allocated to permit the competent handling of these new responsibilities.

Resources also affect the ability of state agents to fulfill their mandates. There is a lack of experienced, seasoned investigators in Armenia, reportedly resulting from the RA Police taking over primary investigatory responsibility from the Prosecutor's Office several years ago. THE LAW OF THE REPUBLIC OF ARMENIA ON POLICE arts. 10, 11 (adopted June 30, 2002, effective January 1, 2003); *see also* CRIM. PROC. CODE art. 55. Interviewees reported that this leads to an overdependence on the use of detention as a means of extracting confessions and corroborating witness statements, instead of a strategic, methodical approach to conducting a comprehensive investigation, including forensic analysis, and, when possible, finishing the investigation before seeking the arrest of the suspect. For example, it was reported that there are 37 investigators in Lori region, but only 5 of the 37 have more than 5 years' experience, with 32 having less than 2½ years of experience. Interviewees also reported that a lack of technology leads to delays in the investigative process, as investigators lack even basic forensics equipment and must rely on expert analysts in Yerevan, which can lead to months of pretrial delay. *See* Factor 9 below.

The distance to detention facilities also creates difficulties for investigators working in the regions. For example, the Gyumri police are challenged by 40-kilometer distance to the Shirak region detention facility, and are reportedly constructing a detention center for arrestees in Gyumri. In Lori region, interviewees reported that it is difficult for both prosecutors and investigators to spare personnel to travel to detention hearings, especially appeals held in Yerevan, which require a full day for the round trip; this problem is reportedly common to all the regions.

Although a legislative framework for probation and parole exists on paper, in practice, those on probation and parole are effectively unsupervised, with most only being required to check in with existing staff members within the ASU. While rehabilitation and reintegration, as set forth in Armenian law, *see* CRIM. CODE art. 48.2, are admirable goals, they are not being effectively pursued in practice. Interviewees stated that this lack of meaningful supervision does little to either assist and guide the probationer or protect and make whole the victim.

A lack of personnel and infrastructure also affects justice for juvenile offenders. While there are special provisions of the law that apply to juvenile offenders, there is no structural or operational separation between the adult and juvenile criminal justice systems in Armenia. There are no official juvenile officer positions created and funded by the Armenian government. In many jurisdictions there are individuals within investigative units or police departments who do take responsibility for informally supervising juveniles who commit minor offenses. *See also* Factor 6 below.

Factor 4: External and Undue Influence

Actors in the criminal justice system, including police, investigators, and prosecutors; defense counsel; judges and court personnel; and corrections staff, pursue their functions free from undue influence.

Conclusion

Correlation: Negative

Armenia has adopted an anti-corruption strategy, and the government has made a variety of efforts for anti-corruption reform. However, both external and internal influences continue to negatively impact criminal justice actors' ability to fairly, transparently, and effectively address decisions on detention and sentencing. Executive branch interference in judicial actions, undue pressure on victims and witnesses, and politically-motivated decisions in corruption cases were identified as major problems.

Analysis/Background:

While there is no overarching definition of corruption, Armenian law has criminalized many acts of corruption involving state officials and actors within the justice sector, including the giving or receiving of a bribe, CRIM. CODE arts. 311, 312; the abuse of or exceeding one's official authority or duties, *id.* arts. 308, 309; threats or use of violence to an employee of institutions executing punishment or detention, *id.* art. 319; obstruction of justice and investigations, *id.* art. 332; subjecting an obviously innocent person to criminal liability, *id.* art. 336; bribing or forcing someone to make false testimony, or a false conclusion, or incorrect translation, *id.* art. 340; forcing someone to give a false testimony, *id.* art. 341; threat or violence to a judge, prosecutor, an investigator, person in charge of inquiry, defense lawyer, expert, court marshal or their relatives, in relation to preliminary investigation or administration of justice, *id.* art. 347; obviously illegal detention or arrest, *id.* art. 348; illegal exemption from criminal liability, *id.* art. 351; and adoption of an obviously unjust court sentence, verdict, or other court act, *id.* art. 352. The options for punishment for these offenses includes a fine, arrest, imprisonment or the deprivation of the right to hold certain posts or practice certain activities, and the range of actual sentence varies.

In April 2008, the National Assembly approved the program of the newly-elected government recognizing the fight against corruption as one of the most important components of state policy. THE REPUBLIC OF ARMENIA ANTI-CORRUPTION STRATEGY AND ITS IMPLEMENTATION ACTION PLAN FOR 2009–2012 no. 4 (2009) [hereinafter RA ANTI-CORRUPTION STRATEGY]. Taking effect in 2009, this is Armenia's third multi-year anti-corruption strategy, identifying the three most prevalent forms of corruption as identified by World Bank and Transparency International studies, all of which affect detention procedure: transactional, or corruption aimed at speeding up processes and official procedures; administrative, which takes place when existing norms are violated or applied selectively; and political, when public policy is made to serve private interests. *Id.* nos. 9, 16, 12. The strategy, which also details major areas of corruption within the public sector, highlights several issues relevant to criminal detention, emphasizing not only sanctions for corruption but also corruption in the criminal process itself. It states that "a consistent fight against corruption in the area of justice should cover also the next phase, *i.e.*, the phase of execution of sentences. At the same time, a reduction of corruption risks in investigative bodies could not lead to positive results unless it is coupled with combating corruption in places of detention. In this regard, reducing corruption risks in the criminal-executive service, which performs these functions, is a separate area in the fight." *Id.* no. 176. Also highlighted are issues involving the lack of adequate and transparent procedures for the seizure and confiscation of proceeds received as a result of corruption, and the management of those proceeds once confiscated, in the few instances where such confiscation proceedings are attempted. It is noted in the action plan that most countries turn confiscated property over to the state and use it to compensate for the damages caused by the crime or other programs. *Id.* no. 103.

Despite the relatively new anti-corruption strategy, corruption remains common in Armenia. A 2009 corruption survey of households reflected that more than half of respondents perceive corruption as a fact of everyday life in Armenia. MOBILIZING ACTION AGAINST CORRUPTION, Quarterly Newsletter Vol. 3, Issue 2 (Jan. 1–Mar. 31, 2010). Almost as many people as in 2008 thought that the level of corruption in the country has not changed over the last year, and healthcare, education, judiciary, prosecution, and electoral commissions are still considered to be the five most corrupt sectors. The survey showed that the general public felt corruption had worsened in the last twelve months. The electoral system, the penitentiary service, and the judiciary were perceived by business leaders to be the most corrupt public offices, and corruption was perceived to be most severe amongst high ranking officials. *Id.*; see also RA ANTI-CORRUPTION STRATEGY nos. 12–15 (*citing* the World Bank Institute and RA Human Rights Defender).

It is a common perception that, as stated by a much-respected advocate, “[y]ou cannot survive in Armenia without corruption.” Interviewees believed that there are several reasons for this, particularly that the same people comprise the political and the business elite in Armenia, creating a circle of mutually-dependent protection. It is reportedly common for businessmen or their family members to accept positions as public servants, including in the criminal justice system, because those positions preserve the political connections they need to protect their business interests.

Actors within the criminal justice system fear even the perception of corruption, and they widely believe that the public will suspect them of corruption if they do not request or order pretrial detention or incarcerative sentences. Investigators request pretrial detention as a matter of course even in cases where it is not merited, preferring that the judges be blamed if a suspect is not detained. See Factor 9 below. It appears, however, that active bribery among the judiciary is now much less common than the use of soft and political influence. Many advocates expressed a paramount concern regarding the impartiality of judges, at all stages. It is widely perceived that judges only conduct a *pro forma* review of detention requests and do not substantiate their decisions or treat each case uniquely. See *id.* *Ex parte* communications between judges, prosecutors, and investigators are reportedly common, and the professional relationship between judges and advocates is often precarious. Many advocates believe that the judges have a pro-prosecution bias, and reported that many judges were in the KGB or held other prosecutorial or government positions within the Armenian SSR.⁵ Many interviewees believed that judges risk political retaliation if they do not treat well-connected suspects leniently, while at the same time they risk retaliation for lenient treatment toward suspects in political cases. Reportedly, judges have been disciplined or dismissed for either acquitting or convicting the “wrong” suspects; some interviewees also reported that judges fear granting bail because they might be disciplined if the suspect flees, although no interviewees were aware of a situation in which this had actually happened. Others asserted that new or inexperienced judges might fear retaliation for making a mistake, but that tenured judges who have earned credibility can and do make unpopular decisions without concern.

Interviewees also reported concerns regarding the application of international jurisprudence in pretrial detention proceedings. Although ECHR judgments have precedential value, interviewees reported that courts cite the European Convention only to justify the imposition of pretrial detention, ignoring decisions that would support imposition of alternative measures. See JUDICIAL CODE art. 15. Interviewees identified the lack of availability of ECHR decisions translated into Armenian and a lack of judicial training on the ECHR as contributing to this problem, and several organizations are making efforts to address these issues. See Factor 1 above.

Also in its anti-corruption strategy and implementation action plan, the RA government outlined issues of improper influence of the judiciary, but puts the onus on the judges to report such attempts to influence them to the RA Council of Court Presidents ethics committee or face disciplinary proceedings, instead of confronting those attempting to exert the influence. However,

⁵ The KGB files in Armenia have not been opened, so it is impossible to determine with certainty how many, if any, current judges and other criminal justice actors were in the KGB.

the Anti-Corruption Strategy also acknowledges that disciplinary proceedings are not a significant deterrent and the ethics committee has no mechanisms to identify cases of judges who fail to report such interference. RA ANTI-CORRUPTION STRATEGY no. 172. The anti-corruption strategy and implementation action plan also addresses systemic infrastructure issues within the judiciary and identifies possible solutions. *Id.* no. 168.

The prosecutorial system itself is widely considered to be an extension of the political system and not independent. Reportedly, prosecutors have refused to initiate corruption inquiries even when credible, documented allegations are brought by respected journalists or civil society organizations, and even in cases where the corrupt activities were admitted to by the imputed officials. Prosecutors are perceived to be blind to corruption by high-ranking officials, focusing on those without political connections while strategizing on how to avoid charging well-connected persons.

Generally there is inadequate protection of witnesses and undue pressure placed on them. In practice, police will often contact a targeted suspect but identify them as a witness, or not give them any status at all, during the inquest stage. The individual is then invited to answer questions at the police station, and interviewees reported that individuals in this position are afraid they will be arrested if they decline, but also often find themselves pressured, coerced, or even physically harmed if they do go to the police station. See Factor 7 below. A very public example of pressure on witnesses involved Mariam Sukhudyán, a leader of the environmental protection group SOS Teghut, who reported criminal behavior and sexual abuse of students at the Nubarashen School. It was widely reported in the media, however, that the school director allegedly had political connections, so the prosecutor filed criminal charges against Sukhudyán instead of the alleged abuser. Other witnesses were kept over three hours without charges ever being filed, and were threatened and coerced to testify against her. See CIVIL SOCIETY INSTITUTE, *Time to Open the Doors of that Rotten System* (Nov. 24, 2009), available at <http://www.hra.am/en/point-of-view/2009/11/24/activist>. Eventually, after considerable media coverage, state prosecutors dropped the charges against Ms. Sukhudyán and charged the alleged abuser. See CIVIL SOCIETY INSTITUTE, *Criminal Case against Sukhudyán is Closed* (Mar. 11, 2010), available at <http://www.hra.am/en/events/2010/03/11/mari>.⁶

Almost without exception the general consensus is that the independent parole commissions are arbitrarily refusing to grant parole to deserving applicants. Any criteria which may be used by the IPC in making its decisions is neither public nor transparent and the members are politically well-connected and perceived to be influenced by the executive branch, making the term “independent” seem a misnomer. See also Factors 24 and 25, below.

⁶ The teacher accused of abuse was convicted on May 24, 2010, after the completion of research for this report. See RA Criminal Court of Appeal, *Case of Levon Avagyan*, no. N-EED/0045/01/10 (Aug. 4, 2010). The perpetrator was initially sentenced to only two years’ incarceration, but the Court of Appeals increased the sentence to three years, based upon the level of danger to the public presented by his crimes. *Id.* Ms. Sukhudyán received significant positive attention from the press and civil society for her role in reporting the crime. Some pointed to this case as an indication that alleged political connections are no longer sufficient to protect offenders from prosecution, while others believed that the special circumstances of the case—a crime against children and the significant media attention—were the driving factors behind the prosecution.

Factor 5: Victim Involvement

Victims are kept adequately informed of the progress and outcome of detention and sentencing decisions. The impact on victims of the offense and the detainee’s release are considered when making decisions regarding detention and sentencing.

Conclusion	Correlation: Neutral
<p>The rights and participation of victims in decisions involving detention and sentencing are not sufficiently and clearly set forth in law and inadequate measures exist to protect victims’ physical safety when defendants are released on bail or alternative sentences. Victims reportedly face pressure and coercion during the inquiry and investigation stages. The courts often take into account the interests of victims during sentencing and parole decisions; however, victims are frequently excluded from court decisions regarding pretrial detention.</p>	

Analysis/Background:

Someone to whom moral, physical or proprietary damage has been caused directly by a deed forbidden by Criminal Code or damage which could have been caused if the deed was committed, as determined by the body of inquiry, the investigator, the prosecutor or by the court, is deemed to be “injured” or “aggrieved” under Armenian law. CRIM. PROC. CODE art. 58. The rights afforded to those injured or aggrieved, within the context of criminal investigations and proceedings, include to receive information from the investigation, the resulting protocol and indictment, and to provide input or feedback; to participate in sessions of the court of the first instance and review court; to appeal the actions of the body of inquiry, the investigator, prosecutor, the court, including the verdict and other final court decision; and to receive compensation for damages and expenses incurred. *Id.* art. 59. A victim can also petition for civil remedies to obtain restitution as part of the judgment. *Id.* art. 61. During a trial a judge can impose measures to prevent a defendant or his associates from harassing a victim or witness. *Id.* arts. 98, 99.

While the Criminal Procedure Code seems to allow the court to involve a victim (or his attorney) in decisions regarding pretrial detention even though the hearing is closed, *id.* art. 59.8, the court does not always do so. The practical issue is often just locating and notifying the victim within the 72 hours permitted by law to make a decision on pretrial detention. In one case a judge delayed a hearing until 2:00 a.m. so the victim could attend because the victim was needed to identify the defendant, and in another instance to inquire whether the defendant was a flight risk. It seems there are either inadequate measures available to the court, or problems with actual implementation of procedures, to ensure the protection of a victim pending the completion of the investigation and trial, much less keep the victim updated. Civil protective orders are not provided for in Armenian law. Many interviewees believed that prohibiting a defendant released on bail from contacting the victim(s) may violate article 25 of the Constitution guaranteeing freedom of movement, and interviewees reported that judges do not consider imposing such restrictions.

Victim and witness coercion is an issue during the inquiry and investigation stages. Victims may be invited to the police station to make a statement as part of an investigation or inquiry, and they reportedly often fear being declared suspects if they fail to cooperate. See Factor 7 below. Interviewees reported incidents of physical force being used against victims in order to obtain statements against a suspect. Moreover, interviewees reported that investigations or charges are dropped when and if parties reconcile, generally only in cases of minor or medium gravity crimes; although in many cases this reconciliation is genuine, in other cases victims may be pressured into claiming to have reconciled in order to allow the case to be dropped.

Currently, 28 criminal offenses can only be initiated if done so by the victim under a procedure for private prosecution, including some cases involving domestic violence, which is not specifically

criminalized under Armenian law. *See id.* art. 183. In cases of private prosecution, victims often face the criminal justice system without representation. Victims can reportedly encounter coercion or physical violence if the defendant is politically connected or has ties to the prosecutor, and they then often decide not to pursue private prosecution. The draft law on advocacy under consideration mandates that the PDO represent victims in addition to criminal defendants. This has the potential to create serious conflicts of interest.

In a recent decision, the Court of Appeals recognized victims' right to provide input on whether to implement speedy proceedings, a procedure in which a defendant agrees to forgo a full trial and examination of the evidence against him and receives only 2/3 of the sentence normally applicable for the offense. CRIM. PROC. CODE art. 375¹–375⁴. This procedure is fairly common, particularly in cases involving grave crimes and in the *marzes*. Generally, when speedy proceedings are applied the court does not examine the evidence in the case or review whether the charging decision was correctly made. Victims previously did not have any input into whether speedy proceedings would be applied, even though they could result in both the defendant being charged with a lesser crime than what the victim believed was supported by the facts and in the defendant receiving 2/3 of the usual sentence upon conviction. In March 2010, the Court of Cassation held that the victim has a right to a fair trial to restore the rights violated by the perpetrator of the crime, as guaranteed by article 19 of the RA Constitution. Accordingly, the court ruled that the prosecutor should take into consideration the victim's position on whether to apply speedy proceedings, and that the judge must be advised of the victim's position prior to deciding to apply speedy proceedings. *Case of Tigran Qamalyan*, no. ESHD/0097/01/09 (Mar. 26, 2010). The court may reject the defendant's motion for speedy proceedings if the victim objects, and, in that case, the judge must issue a decision reasoning why the victim's interests would be endangered as a result of speedy proceedings. Moreover, in cases where the victim has not been fully compensated for damages or disagrees with the stated facts of the case, the victim's opposition to speedy proceedings should be dispositive. *Id.*⁷

Some judges indicated that they seek input from the victim during sentencing, especially when probation is being considered, even though this is not always legally mandated. A defendant offering medical or other assistance to the aggrieved immediately after the crime, providing voluntary compensation for damage inflicted as a result of the crime, or other actions by the defendant aimed at the mitigation of damage caused to the aggrieved are to be considered as mitigating factors during sentencing. *Id.* art. 62(10). If the victim is not present the judge may continue or adjourn a sentencing hearing until a victim is present. If the accused is convicted of a crime against a particular person, the courts reportedly take the position they cannot prohibit the offender from contacting the victim, since the Constitution does not allow restriction on freedom of movement. CONST. art. 25. However, other interviewees pointed out that under article 43 of the Constitution, freedom of movement can be restricted to protect public security, public order, and the rights of others, and thus it should be constitutionally allowable to prohibit contact with the victim.

Advocates, however, indicated that courts do not consider victims at all when making sentencing decisions. One example shared with the assessment team involved a case in which a defendant convicted of murder received a low sentence, which the victim's mother was too afraid to appeal because of threatened or feared retribution against her surviving son. Victims are also reportedly not consulted in judgments involving alternative sentencing, which can act to re-victimize the victim or negatively impact their rights and that of their families

Victims have no input in decisions by the IPC; however, victims may be invited to appear at a court hearing following the IPC's recommendation to grant parole or commutation although this is not mandatory. Likewise, there are no legislative mandates to notify or seek opinions from victims in applications for pardon or amnesty.

⁷ This decision has already been applied by the trial court and affirmed by the RA Criminal Court of Appeals in the Avagyan case, discussed in Factor 4 above.

Factor 6: Special Considerations for Juveniles

The criminal justice system upholds the unique rights and safety needs of juveniles and promotes their physical and mental well-being, with alternatives to detention or imprisonment given priority consideration.

Conclusion	Correlation: Negative
<p>Armenia lacks a comprehensive, overarching system to address juvenile justice issues, including in the areas of detention and sentencing.</p>	

Analysis/Background:

In Armenia, juveniles aged 16 and over at the time of committing a crime are subject to criminal liability for the offense. Juveniles aged 14–16 are subject to criminal liability only for crimes of a more severe nature, including murder, rape, robbery, kidnapping, and violent sexual actions. CRIM. CODE art. 24(1)–(2). If an individual is under the age of 16 when a crime is committed, his legal representative (either a parent or state guardian) must be present with him during the investigation proceedings, CRIM. PROC. CODE art. 441, and he can be arrested only when the crime is of medium gravity, grave, or very grave. *Id.* art. 442. The administrative body managing the site of arrest and/or detention must notify the parents or close relatives of the arrest or detention. LAW ON TREATMENT OF ARRESTEES AND DETAINEES art. 32 (*adopted* February 06, 2002, *as amended* November 15, 2006). In addition to determining the actual age of the juvenile, Armenian law mandates that the circumstances surrounding the health, level of development and general upbringing of the juvenile be considered. *Id.* art. 440. Juvenile defendants must be represented by defense counsel. *Id.* art. 69(5).

The Armenian Criminal Code sets forth discrete sentencing options for juveniles: a fine, public work, arrest, or imprisonment. CRIM. CODE art. 86. A sentence of arrest (*i.e.*, incarceration for a term of 15 days to 3 months) can only be imposed on a juvenile who has reached the age of 16 years by the time he is sentenced. *Id.* art. 88. Sentences of imprisonment (*i.e.*, incarceration for 3 months to 15 years) vary with the gravity of the crime: for minor crimes, a prison term up to 1 year may be imposed; for medium gravity, a prison term up to 3 years; and for grave or very grave crimes, a term of up to 7 years if committed by a juvenile under 16 years of age, or up to 10 years if committed between the age of 16 and 18. *Id.* art. 89. When sentencing a juvenile, Armenian law mandates that the Court consider his living and family conditions; the mental, physical health, general development, and personality of the juvenile; and the influence of other persons. *Id.* art. 90(1). If a juvenile under 16 years of age is sentenced for more than one medium gravity, grave, or very grave crime, the total sentence cannot exceed 7 years. *Id.* art. 90(2). Likewise, if a juvenile 16 to 18 years of age is sentenced for more than one medium gravity, grave or very grave crimes, the total sentence can not exceed 10 years. *Id.* art. 90(3). Finally, in no circumstances can the accumulation of sentences exceed 12 years. *Id.* art. 90(4). There can be no life sentence imposed on juveniles who are under the age of 18 at the time when the crime was committed. *Id.* art. 60.2. Juveniles serving prison sentences can be considered for parole if they have served no less than one quarter of the punishment assigned for a minor or medium gravity crime; no less than one third of the punishment assigned for a grave crime; or no less than half of the punishment assigned for a very grave crime. *Id.* art. 94.

When a juvenile has committed a minor or medium gravity crime for the first time, he can be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced disciplinary measures. These measures are: a warning; placing the juvenile under the supervision of his parents, persons replacing his parents, local self-government bodies, or competent bodies supervising the juveniles behavior for up to 6 months; imposing the obligation to mitigate the inflicted damage, within a deadline established by the court; the imposition of

restrictions on leisure time or other special conditions, for up to 6 months. *Id.* art. 91. Special conditions imposed may include prohibitions regarding visiting certain places, traveling without authorization, or driving; or requirements to return to school or employment. *Id.* art. 92(4). If the juvenile fails to comply with these measures, he may be subject to criminal liability by the court. *Id.* art. 91(5). A juvenile who has committed a minor or medium gravity crime may also be exempted from punishment, if the court finds that the purpose of the punishment might be satisfied by placing the juvenile in a specialized educational and disciplinary or medical and disciplinary institution for a term up to three years. *Id.* art. 93.

When a juvenile has successfully satisfied a non-incarcerative punishment his record is considered quashed. *Id.* art. 96(1). For juveniles under the age of 18 serving prison sentences, the deadlines for quashing the criminal records are one year for a medium gravity crime; three years for a grave crime; and five years for a very grave crime. *Id.* art 96(2).

When the court concludes that a juvenile under the age of 16 at the time the crime was committed can be corrected without using criminal punishment, the juvenile can be exempted from punishment. CRIM. PROC. CODE art. 443. Armenian law provides that if an individual is underage when committing a crime, that fact shall be considered as a mitigating factor in determining sentencing. CRIM. CODE art. 62.1(2). With adult offenders, public work (*i.e.*, community service) can be imposed in certain instances for individuals who are 16 or older at the time of sentencing. *Id.* art. 54(4). Adults who were sentenced as juveniles may remain in a juvenile facility while between the ages of 18–21. PENITENTIARY CODE art. 68 (1). Juvenile prisoners must be held separately from adults. *Id.* Improved material and living conditions must be created in places of arrest and detention for arrested or detained juveniles, including facilities for physical exercise. LAW ON TREATMENT OF ARRESTEES AND DETAINEES, art. 27.

According to unpublished crime statistics provided by the RA Police, the most common crime committed by juveniles is theft, constituting 77% of juvenile cases in 2008. Meanwhile, in 2009, 7.7% of juvenile cases involved robbery; 8.8% involved assault; 3.6% involved hooliganism; and 0.8% involved sexual crimes.

In practice, while a comprehensive system of juvenile justice has not yet been established in Armenia, some improvements and corrective measures have been implemented, while others remain aspirational. Most of those interviewed stated it would be beneficial to have specialized judges for juveniles. One investigative head said that when a juvenile is involved, he assigns the investigation to a more senior investigator, and he is trying to obtain specialized training in this area for some of his investigators. Several prosecutors in the regions have proactively focused on juvenile issues by setting up interdisciplinary community-based groups (comprising representatives from the police, mayors office, non-governmental organizations [hereinafter NGOs], schools, churches, prosecutors, social/psychiatric services, sports officials, *etc.*) to study juvenile crimes and identify strategies for prevention. One such prosecutor stated that in every juvenile case he speaks to the offender to understand his motivations and individual social situation. He meets with parents, school representatives, and other relevant actors. He stated that twice a year the results of information gathered about juvenile crimes, including outlines of preventive steps, are published by media outlets. He stated this has resulted in a decrease in juvenile crime. Also, four times per month he visits schools to explain the nature and consequences of criminal acts, including sexual acts. He reported some of these visits last up to four hours. He stated that the personal policy of the RA Prosecutor General is to save juveniles from engaging in criminal behavior. Another prosecutor stated he prefers not to be severe with juveniles, but wants to eliminate causes of criminality, since discussions and prevention strategies are more efficient than deprivation of liberty. He stated that the Prosecutor General set up juvenile crime working groups involving police, prosecutor, school directors, teachers, and others.

One judge interviewee indicated that he most frequently sees juvenile cases involving robbery and hooliganism, but also some sexual crimes as well. He stated there was an increase in theft by juveniles, which is likely related to the socio-economic condition of juveniles. While he was not sure

of the effectiveness of community commissions, he did feel that juveniles should generally be treated more leniently, with each age range treated uniquely as well as by type of offense (e.g., marijuana possession should be treated differently than opium possession). He feels that juveniles in the 14–16 age category are still very much children. Most importantly, the judge stated there must be community-based activities for teenagers and young adults to participate in.

Interviewees, including former juvenile offenders, gave very positive feedback regarding the community justice centers. These centers are daytime facilities, with most juveniles (usually first time offenders or delinquents) being referred by police, parents, or teachers. The centers provide much-needed guidance and support for juveniles, and are an effective alternative to incarceration or simple probation. The centers are run by an NGO funded by the United States Agency for International Development (USAID). The continued existence of the centers is in question, however, because the government has thus far failed to fund them and funding from outside sources will not continue indefinitely.

In the area of juvenile detention, several issues of concern were reported to the assessment team. There were reports that investigators occasionally lie or impersonate defense attorneys to encourage juveniles to sign confessions or admissions. There were also allegations of torture to force juveniles to confess or incriminate others, including while they were being held incommunicado in police station during investigation. In September 2009, a 16-year-old juvenile was reportedly subjected to electric shocks. One interviewee stated that juveniles are often too afraid to stand up for their rights. Another interviewee who had conducted a survey of juveniles in detention stated that some juveniles reported never seeing their appointed public defender or only seeing him once, and also complained that judges did whatever the prosecutors wanted. That interviewee reported occasional violations of the 72-hour period to impose pretrial detention, but did not believe this to be the norm or widespread. It was estimated that the average length of detention pending disposition is 2–7 months overall. In Gyumri in Shirak *marze*, it was reported that detention is used as a last resort after considering the social environment of the juvenile, and only for the more severe crimes. In 2009, out of 39 total juvenile cases in Gyumri, only 2 (a violent robbery by 2 defendants, each being 17 years old) were detained pretrial; at the time of interviews for this assessment, they were still in detention awaiting trial. It was also reported that a judge cited ECHR jurisprudence in allowing bail for a juvenile accused of a grave crime.

In 2009 the number of juveniles detained in Armenia doubled, according to statistics supplied by the MOJ. Juveniles are detained at the Abovian Center outside Yerevan. At the time of this assessment, there were 16 juveniles in pretrial detention and 29 juveniles incarcerated at Abovian. Juveniles are kept in the same conditions as adults during pretrial detention, spending 22 hours per day in their cell and only one hour of exercise in an outdoor, roofless cell. Women and juveniles are detained in different cells during pretrial detention. The prison complex has two completely different buildings for women and juveniles sentenced to incarceration. Juveniles are allowed to use the exercise equipment, treadmills, and bikes donated by OSCE. In 2009, two juveniles participated in distance learning while detained at Abovian, and attended college upon release. First-time offenders are supposed to be separated from repeat offenders. The current administration at Abovian could only recall one female juvenile who served a term of incarceration there, and, due to the lack of separate facilities for girls, she was confined in the facility for adult women and shared a dormitory with adult women. Administrators pointed out that the only other option would have been to effectively place her in solitary confinement, as there were no other female juveniles confined at Abovian.

Courts have few sentencing options when dealing with juveniles. It seems that most courts try not to order imprisonment as a punishment for juveniles. In the past, social advocates from a juvenile's hometown appeared in court with the juvenile. Now a court is on its own to gather information about the juvenile, though sometimes courts are offered testimony from school officials and others regarding the "social conditions" of the juvenile. One judge was involved in the past in community-based hearings to address juvenile issues which also focused on prevention of crime. He stated crime rates are increasing and police are proud of their arrest numbers, but they should be doing

more to prevent juvenile crime. Practically, the courts rarely apply a fine because juveniles usually lack the ability to pay. If a fine is ordered, it is at a lower rate. If a juvenile cannot pay, payment may be suspended until he reaches adulthood. If the juvenile defendant begins his compulsory military service, payment may be suspended until discharge, or it can be amended to a punishment for community service post-discharge. However, community service, commonly called public work, is an alternative only for juveniles between the ages of 16 and 18. CRIM. CODE. art. 54(4).

In the few instances where probation is imposed, since there are no specialized juvenile officers, juveniles are often actually supervised by police even though supervision falls under the mandate of the ASU, housed within the MOJ. One practical problem is that juveniles on probation are unable to move or travel because they have to check in regularly with agency supervising them. If a juvenile is sentenced to an alternative sentence, no one actively works with him to prevent reoffending. It was reported that recidivism by juvenile offenders is fairly high. In the Shirak region, community commissions, one in the police department and one within the municipal government (which includes the secretary of the municipality, police officer who heads juvenile department and a psychologist), reportedly work with juvenile offenders to prevent recidivism. The commissions deal with both charged and uncharged juveniles, whose families are often dysfunctional and fatherless due to economic conditions (many men seek work abroad). Courts often hand over supervision of a juvenile offender to his parents, local self-governing bodies, or other competent bodies (including teachers). In these situations, there are strong attempts to try to involve the minor in community life through cultural, educational, and athletic events. A judge used the example of a juvenile first offender stealing cigarettes. He can be supervised by “community councils” or a school official since police do not have supervisory functions (though the police would be notified of any issues). Juveniles still in school are usually supervised by police representatives or their parents, or will do some sort of community service supervised by teachers.

The social stigma of actually serving time is even worse on juvenile offenders than on adults, especially in smaller communities, and they can continue to be stigmatized through adulthood. According to one judge interviewee, the biggest challenge with juveniles is that the sanctions are too strictly defined and are too harsh. He reported that the only case in which he sentenced a juvenile to imprisonment was when the juvenile was convicted of hooliganism and attempted murder, which carried an eight-year minimum sentence. If the juvenile reaches adulthood before the end of his sentence he is then transferred to an adult facility. If he is sent to an adult facility, he can be isolated from the general population, but this generally creates greater challenges for rehabilitation. There are no rehabilitation centers for convicted juveniles.

A majority of juveniles in prison are reportedly paroled, and a prison social worker helps them with this process. One interviewee, who had worked on a survey of juvenile detainees, reported that most juveniles felt their verdicts were fair (*i.e.*, they admitted that were guilty) but the sentences were not. This interviewee believed that sentencing juveniles to prison causes them to become involved in the prison culture, contributing to recidivism.

The only operational special educational facility (which is not part of the justice system, but run by the Ministry of Education), is located in the Yerevan area. However, admission to the facility requires parental consent, and, as indicated by school staff, parents and family members are often an integral part of the juvenile’s problems. The majority of students are referred there by a court but have not been convicted of a crime. The school is a residential, rehabilitative educational and vocational institution, and juveniles are sent there to complete their education. There is typically no court supervision and the school does not expel students. The NGO World Vision became the biggest financial supporter of the school in 2004 and helped with general training, setting up a system to formally credential the academic side of the institution, and certifying its staff (social workers, psychologists, trainers, and nonprofessional staff). At the time of this assessment, there were 72 boys and girls residing at the school, ranging in age from 10 to over 18 (residents are allowed to stay after they reach the age of 18 if they still need to finish schooling). In addition to educational opportunities, full-time services include medical (one full time doctor and four nurses) and psycho-social resources (four social workers and two psychologists). Each year approximately

30 students graduate or return home. Residents are from all over Armenia, but most are from the Yerevan area and some have siblings with them. All students have an individual development plan reviewed every 6 months. Home visits are strongly encouraged whenever circumstances permit since the overall goal of the program is rehabilitation and reintegration into home and community life.

The biggest issue currently facing the special educational facility is that referrals to the school now require parental consent, a limitation which sometimes does not serve the best interests of the child. The director of the school indicated this may soon be changed. The school used to receive juveniles through court orders, but this is no longer the procedure. The school now receives referrals from community care commissions or police juvenile units, especially for juveniles who steal or are behaviorally aggressive (and who are often the most difficult to deal with). If students are sent back into an unhealthy or unsafe home environment, the school tries to liaise with community-based resources or juvenile police commissions to help ensure their safety. Since education in Armenia is mandatory until age 16, parents cannot reassume custody unless they secure an educational transfer back to their local school. The school also provides a variety of other services such as securing birth certificates or identification cards, even for family members of the students. Some students graduate and are conscripted directly into the army.

II. Imposition of Detention at the Pretrial Stage

Factor 7: Initial Deprivation of Liberty

The taking into custody of a person suspected of a crime is based upon an arrest warrant issued by a detached and neutral judicial officer, except in extraordinary circumstances where obtaining an arrest warrant is not feasible and there are reasonable grounds to believe the arrestee has committed an offense. Arrests are made for the purpose of bringing the arrestee before a competent legal authority, and due consideration is given to alternatives to arrest.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Although adequate procedures for the apprehension of suspects are enshrined in law, in practice, loopholes exist allowing these procedures to be almost universally disregarded. Many legal professionals appear to be unaware of the proper procedures for apprehension, including the rights of persons who have been apprehended or are suspected of a crime. Failure to give legal status to persons taken into police custody is widespread,</p>	

Analysis/Background:

In Armenia, an individual may be apprehended and detained in order to prevent him from committing a crime or from fleeing after the commission of a crime or to deliver him to the competent investigative or adjudicative body. CRIM. PROC. CODE art. 128(1). Apprehension may be carried out only when an individual is caught in the act of committing a crime or immediately thereafter, or on the order of the body of criminal prosecution.⁸ *Id.* art. 128(3). A person may be apprehended by police, investigators, or prosecutors without the order of a the body of criminal prosecution when he is caught *in flagrante delicto*; when he is identified by an eyewitness; when "obvious" evidence of a crime is found on his person or belongings or in his residence or vehicle; or when there are grounds to suspect a person who has tried to flee the crime scene or who does not have a permanent residence, resides in another area, or whose identity is not established. *Id.* art. 129. A person may also be apprehended based on a warrant issued by the body of criminal prosecution, and the police, investigator, or prosecutor must immediately inform the body that issued the warrant when the suspect has been apprehended. *Id.* art. 130.

When an individual is apprehended, the body of criminal prosecution must draw up a formal arrest protocol within three hours of having an apprehended suspect brought before it. The arrest protocol notifies the suspect of his rights and specifies the crimes of which he is suspected. The body of inquiry or the investigator must notify the prosecutor in writing within 12 hours of drawing up the arrest protocol. *Id.* art. 131.1.

The Court of Cassation held in *Mikayelyan* that a person who has been taken into custody has the rights guaranteed by the European Convention and the RA Constitution, including the right to be informed that he is being detained and of the reason for his detention, the right to counsel, and the right to remain silent, even prior to the drawing up of the arrest protocol. *Case of Gagik Mikayelyan* § 1, *citing* EUROPEAN CONVENTION art. 6. Moreover, if the arrest protocol is not drawn up during the three hours permitted by law, the court stated that the individual should nevertheless be considered to have been arrested and he has the right to be set free after 72 hours if a court has not ordered his detention. *Id.* § 2. However, it is not clear to what extent the *Mikayelyan* case is being followed by lower courts and bodies of criminal prosecution throughout the country.

⁸ The body of criminal prosecution is defined to include the investigator, prosecutor, or body of inquiry.

An individual may submit a complaint against an illegitimate or ungrounded decision or action of a body of criminal prosecution to a court, including a complaint regarding illegal apprehension. CRIM. PROC. CODE art. 290. However, in practice, the lawfulness of apprehension generally remains outside of judicial control. The court has 10 days to review a complaint filed under article 290, which far exceeds the time for which an apprehended individual would be held without being arrested and charged. Once the individual has been charged, advocates generally consider that filing an article 290 complaint would be moot as the charge would be perceived to justify the apprehension and, even if the complaint were found to be justified, this finding would not lead to the liberation of the defendant or the dismissal of charges. Moreover, when deciding whether to impose pretrial detention, courts frequently fail to review the factual basis for apprehension. Therefore, there are no effective remedies available if the legally-mandated procedures for apprehension are not followed, although failure to follow procedure could theoretically lead to discipline against the police, investigator, or prosecutor. See Factor 9 below.

Many legal professionals are unclear on the *de jure* requirements for apprehension, with one defense advocate believing that investigators had 24 hours to issue the arrest protocol and notify the prosecutor, while another defense advocate was unaware that individuals detained without status had the right to counsel. There is a widespread belief among investigators, and even among some public defenders, that the right to counsel does not attach until the three-hour window for issuing the arrest protocol has run, while in fact the right exists from the moment of apprehension of a suspect. See CRIM. PROC. CODE art. 19; see also *Case of Gagik Mikayelyan*. Prosecutors reported that they are prohibited by law from participating in investigative actions or even visiting the crime scene. CRIM. PROC. CODE art 53 (*as amended* Nov. 28, 2007). It is also reportedly common that individuals apprehended pursuant to a warrant will be taken directly to pretrial detention without immediate notification to the body that issued the warrant.

It is reportedly common for police and investigators to disregard the *de jure* requirements for apprehension of suspects. Police are said to frequently fail to record the time at which a suspect was apprehended, such that it cannot be proven whether he was detained more than three hours before being formally arrested. Physical coercion against suspects and others detained by the police is also reported to be commonplace, as is the denial of medical care as a way to coerce them to make statements. The SIS, charged with investigating alleged crimes committed by police, is perceived to be ineffective at best and, at worst, engages in cover-ups of illegal police activity. In April 2010, Vahan Khalafyan died under mysterious circumstances while detained by police; police contend he committed suicide but have also admitted beating him, and witnesses to the events abruptly left the country before being called to testify. See RADIO FREE EUROPE/RADIO LIBERTY, *Armenian Police Seek Witnesses to Man's Death in Detention*, May 7, 2010.⁹

At the inquiry stage, it is common practice throughout the country to invite individuals to the police station to provide an explanation as part of an investigation or inquiry without informing them that they are suspected of a crime or giving the formal status of suspect, such that the requirement to draw up a formal arrest protocol or notify them of their rights is not invoked. People are reportedly unaware that they may decline such an invitation, or fear that they will be named as suspects if they decline. Coercion of individuals invited to provide an explanation is also reportedly widespread, and persons identified as witness or victims fear being declared suspects if they do not cooperate. Although witnesses have the right to counsel, CRIM. PROC. CODE art. 86(10), they rarely invoke this right, reportedly both because many are unaware of the right and because those who are aware fear that they will look guilty if they are accompanied by a lawyer. Investigators and police, on the other hand, lamented that the Armenian mentality is such that witnesses and victims do not want to cooperate with investigations, and that they sometimes have to resort to “persuasive measures” to encourage cooperation.

⁹ The SIS concluded that Mr. Khalafyan stabbed himself to death after enduring torture at the hands of police. In July 2010, police officers were brought up on charges of mistreating Mr. Khalafyan. See Radio Free Europe/Radio Liberty, *Armenian Policemen on Trial in Custody Death*, Jul. 6, 2010.

Factor 8: Detention Prior to Initial Review

Following initial deprivation of liberty, an arrestee is brought promptly before a judicial authority to determine whether detention should continue. Prior to being brought before the judicial authority, an arrestee has the right to be notified of the nature of the charges or accusations against him, as well as of his right to counsel, against self-incrimination, and to notify family members or, in the case of a foreign national, his consulate, of his arrest.

Conclusion

Correlation: Neutral

Upon formal arrest, arrestees must be informed of their rights and of the charges against them. Arrestees must be charged or released and acquitted within 72 hours of apprehension. These guidelines are generally followed in practice, but some believe that the 72-hour deadline for completion of the charging process leads to hasty and poorly-substantiated requests for charges and pretrial detention, while others felt that police and investigators are too quick to apprehend a suspect and should wait to make an arrest until they are able to substantiate the charges.

Analysis/Background:

Detention following apprehension and issuance of the arrest protocol, called “arrest”¹⁰ in Armenian law, of suspects caught *in flagrante delicto* as well as of suspects captured following a search is carried out at Confinement Places of Arrestees [hereinafter CPAs], which are located within police stations in the regions and in a central facility in Yerevan. CRIM. PROC. CODE arts. 129, 130. The body of criminal prosecution must draw up a formal arrest protocol notifying the arrestee of his rights, including the rights to counsel, to a defense, to know the charges against him, against self-incrimination, to file motions and participate in proceedings against him, and to compensation for damages caused unlawfully by the body conducting the trial, and specifying the crimes of which he is suspected within three hours. *Id.* art. 131.1; *see also* art. 63. The investigator or the body of inquiry must notify the prosecutor in writing within 12 hours of drawing up the arrest protocol. *Id.*

By law, arrest may last no more than 72 hours after apprehension of the suspect, even if the arrest protocol is not properly drawn up within 3 hours of apprehension. *Id.* arts. 129, 130; *see also Case of Gagik Mikayelyan*, § 2. If the suspect has not been charged within 72 hours, he must be released and may not be apprehended again for the same alleged crime. *Id.* art. 132. If charged, a suspect may not continue to be held at a CPA unless his transfer to a detention facility is impossible due to a lack of transportation means, an issue which, in practice, is not unusual. *Id.* art. 137(2).

INCIDENCE OF ARREST IN ARMENIA, 2008–2009

Category	2008	2009
Number of Defendants in New Criminal Cases	2,790	3,375
Number of Arrestees	2,032	2,544
Percent of Defendants Subjected to Arrest	72.8%	75.4%

Source: RA Police Main Criminal Investigation Department

Judges and investigators alike complained that the 72-hour time-frame for charging a suspect is too short, noting that it includes weekends and holidays and that the final charging and pretrial

¹⁰ The term arrest is used in two contexts in Armenia. As a preventive measure, it refers to the formal taking into custody of a person suspected of a crime based upon a formal protocol drawn up within 3 hours of the suspect’s apprehension. As a penalty, it refers to a sentence of incarceration of fifteen days to three months, imposed only for minor and medium gravity crimes. CRIM. CODE art. 57(1).

detention decision must be made within this timeframe. One judge pointed out that if he continues a hearing in order to request more evidence or time to decide on pretrial detention, he must make sure that he does not continue it beyond the 72 hours, particularly since if the suspect is released due to the expiration of the 72-hour period he cannot be charged again based on the same suspicion. Human rights and defense practitioners noted that the charging documents and requests for pretrial detention are often shoddy, lacking substantiation and legal reasoning for the request. Investigators maintained that the 72-hour deadline does not allow them to substantiate the charges, noting in particular that requests for expert analysis can take months, running well into the pretrial detention period. *See* Factor 9 below. Investigators stated that they would prefer to have a longer time period for arrest or at least to have the option to release arrestees while deciding whether to charge them, but the current law prevents them from doing so. On the other hand, some interviewees felt that investigators are too quick to apprehend a suspect and that they should wait to make an arrest until they are certain to be able to substantiate the charges. Reportedly, investigators rely almost entirely on confessions and testimony to substantiate charges, and many interviewees felt that this contributed to what they considered the widespread practice of coercion and violence against arrestees.

Interviewees agreed that the 72-hour timeframe is usually respected in practice, although as a result charging decisions may be hastily made. However, it is reportedly common for police to fail to record the time at which a suspect was apprehended. Although the Court of Cassation in *Mikayelyan* held that, even in the absence of a formal arrest protocol, a suspect held in custody for more than 3 hours should be deemed arrested and must be released or brought before a court within 72 hours of his apprehension, if the police do not record the time at which the suspect was taken into custody it may be impossible to determine when the 72-hour timeframe has expired.

As with many other procedural violations discussed throughout this report, interviewees reported that no remedies are available under Armenian law to an arrestee who is detained beyond 72 hours without charges, notwithstanding the requirement for an effective remedy under article 13 of the European Convention on Human Rights. One former detainee stated that it had not even occurred to him to challenge his case based on his unlawfully long arrest period. Reportedly, some judges will admonish investigators or ask their supervisors to discipline them for unlawfully extending the arrest period, but this practice does not appear to be widespread nor does it provide a remedy for the detainee. If an arrestee is ultimately acquitted, he has the right to sue for damages due to mistake or malfeasance, CRIM. PROC. CODE art. 66, 67, but in practice interviewees were aware of only one case in which a suit had been successfully brought, with the plaintiff recovering damages for lost income during a sentence of incarceration that was later found to be based on a coerced confession. *See* ECHR, Statement of Facts, *Armen Poghosyan and Anahit Baghdasaryan v. Armenia*, no. 22999/06 (pending).

Defense advocates reported that the right to counsel was generally respected, and that even though the investigators make the decision to grant an arrestee's request for a public defender (*see* Factor 1 above), they could not recall a case where an arrestee was denied counsel. However, defense advocates noted that the prevalence of unsubstantiated charging documents and requests for pretrial detention makes it very difficult for them to effectively advocate for their clients' interests.

Factor 9: Oversight of Initial and Investigative Detention

A judicial authority determines whether detention should continue pending trial. A full record of the circumstances of detention is taken and made available to the arrestee, his counsel, and the competent authorities. A competent authority adequately supervises the detention practices of actors in the criminal justice system.

Conclusion

Correlation: Neutral

Courts must decide whether to impose pretrial detention within 72 hours of apprehension and detention must be ended or extended after two months with a maximum detention of one year before the beginning of trial. Courts are increasingly reviewing the factual basis for and legality of arrest and protecting the rights of arrestees under the RA Constitution and the European Convention. Nevertheless, pretrial detention is imposed in the overwhelming majority of cases, and decisions are not well substantiated. Bail and other non-custodial preventive measures are available, but in practice are rarely imposed.

Analysis/Background:

Before the 72-hour timeframe for arrest has run, the investigator or prosecutor must bring the defendant to the competent court, which decides whether to impose pretrial detention. The decision to file charges is made by the prosecutor or investigator with no legislatively-required judicial review of the adequacy of the factual basis of the charges, although courts are required to review the factual basis for the detention request pursuant to the Court of Cassation's decision in the *Case of Aslan Avetisyan*, no. AMVD/0022/06/08 (Oct. 31, 2008). Moreover, although the Court of Cassation stated that a violation of the arrest procedure (including time requirements) is not a reason to reject a motion for pretrial detention, the court also stated that the lawfulness of arrest cannot fall beyond the court's supervision and violations of the arrest procedure should lead to legal consequences. *Case of Gagik Mikayelyan* § 3. It remains to be seen how the *Mikayelyan* decision will be implemented by the lower courts and the bodies of criminal prosecution.

The Court of Cassation has also held that it is not mandatory that a defendant be apprehended and arrested prior to appearing in court for a pretrial detention hearing; the defendant may appear voluntarily. *Case of Tigran Vahadryan* § 26, no. LD/0197/06/08, (Dec. 26, 2008). The court stated that the presence of the defendant at the hearing is the fundamental guarantee of the lawfulness of detention. *Id.* If a defendant is at large and subject to a warrant, he must be brought before the court within 72 hours after being taken into custody and has the right to challenge the preventive measure imposed on him, pursuant to article 5(3) of the European Convention. *Id.* § 34, *citing* ECHR, *Ladent v. Poland*, application no. 11036/03 (Mar. 18, 2008), *Garabayev v. Russia*, application no. 38411/02 (Jun. 7, 2007), *McKay v. United Kingdom*, application no. 543/03 (Mar. 10, 2006).

Pretrial detention may be imposed as a preventive measure by a court upon request of the body of criminal prosecution and only when an individual is suspected of a crime carrying a sentence of more than one year, and when the prosecutor, investigators, or body of inquiry suspect that he might flee, obstruct the investigation, or commit further crimes. CRIM. PROC. CODE art. 134, 135. If pretrial detention is imposed, the court may substitute detention with bail upon the defense's request, by the motion of the investigator or a prosecutor or by its own initiative. *Id.* arts. 134(4), 136. The hearing in which charges and pretrial detention are decided is not open to the public, nor are records of the proceeding subject to public review or scrutiny. JUDICIAL CODE art. 20; CRIM. PROC. CODE arts. 280, 283 (1), 288(3). The court must announce its decision in the presence of the suspect or accused and provide him with a copy of the decision. CRIM. PROC. CODE art. 136(3).

Pretrial detention prior to the beginning of trial (which includes release on bail, as bail is only a substitute once pretrial detention has been imposed) may initially last two months prior to the beginning of trial, which may be extended by the court in two-month increments up to 6 months or 12 months for grave or very grave crimes, counted from the moment of apprehension or, if the accused appeared voluntarily and was not apprehended, from the moment the court issued the pretrial detention order. *Id.* art. 138. The investigator or body of inquiry must request that the court move to extend detention no more than 10 days before the expiration of the two months, and the court must make its decision at least 5 days before the expiration of the previous detention term. *Id.* art. 139. Although recent case precedent requires that prosecutors reason their request for extending detention, in practice, this is not followed and it has not been enshrined in law. *See Case of Aslan Avetisyan*. If the detention term expires and has not been renewed, or if the maximum detention period expires, the detention facility administration must release the defendant. CRIM. PROC. CODE art. 142(3).

The Court of Cassation has stipulated that pretrial detention is a preventive measure meant to ensure the appearance of the accused and, therefore, the decision on pretrial detention may not include a discussion of the culpability of the accused or be based upon a conclusion that the case against him is well-founded. *Case of Tigran Vahadryan* §§ 41, 44, 45. Basing the decision on pretrial detention on the conclusion that the accused is culpable violates the presumption of innocence. *Id.* § 41.

Bail is legislatively allowed only in cases of alleged minor and medium gravity crimes, and may be denied if the identity of the accused has not been established, if the accused does not have a permanent residence, or if the accused has attempted to flee. Bail may not be less than 200 times the minimum salary for minor crimes, or 500 times the minimum salary for medium gravity crimes.¹¹ Once bail has been posted, the court will order the accused's release. Bail may be rescinded and the accused taken back to detention if he violates restrictions imposed upon him by the court. *Id.* art. 143. ECHR and Armenian jurisprudence holds that the gravity of the crime alone is not a valid reason for disallowing bail; Armenian judges, investigators, and prosecutors are aware of this principle, but Armenian courts have not consistently applied it in practice and many interviewees indicated that they disagreed with the rule. *See, e.g.,* ECHR, *Caballero v. the United Kingdom*, application no. 32819/96 (Feb. 8, 2000); *S.B.C. v. the United Kingdom*, application no. 39360/98, (Jun. 19, 2001); RA Court of Cassation, *Case of Taron Hakobyan*, no. VB-115/07 (Jul. 13, 2007) and *Case of Aslan Avetisyan*.

In lieu of pretrial detention, the body responsible for the criminal proceedings may impose other preventive measures. These include releasing the defendant on his signed promise not to leave a defined area, releasing the defendant on the personal guarantee of "trustworthy persons," releasing the defendant on the guarantee of a "trustworthy legal entity," releasing a minor under the supervision of his guardian, or releasing a service member under supervision of his commander. CRIM. PROC. CODE arts. 134(2), 144–149. Pretrial detention, as a preventive measure, may be imposed only when the defendant is suspected of a crime carrying a sentence of more than one year of imprisonment, and when the court determines that he might flee, obstruct the investigation, or commit further crimes. *Id.* art. 135. The court must take into account the nature and degree of the suspected crime and the suspect's personal characteristics. *Id.* The court must substantiate its decision to impose pretrial detention. *Id.* art. 136. If a defendant is released after the expiration of his detention term, or if the court selects a different preventive measure, he may not be detained again based on the same charges. *Id.* art. 142(4).

In practice, pretrial detention is imposed very frequently for all but minor crimes, and other preventive measures are rarely considered. Interviewees unanimously reported that investigators

¹¹ The minimum wage set for the purpose of calculating bail and other legal acts is AMD 1,000 (USD 2.60), so minimum bail for minor crimes is AMD 200,000 (USD 523.90) and AMD 500,000 (USD 1309.76) for medium gravity crimes. *See* REPUBLIC OF ARMENIA LAW ON THE MINIMUM MONTHLY WAGE art. 3 (*adopted* Jan. 1, 2004).

almost always request pretrial detention and prosecutors almost always request that it be extended. Investigators and prosecutors suggested that they would like to have more options, but fear being accused of corruption or of being soft on crime if they do not request pretrial detention. Defense advocates and members of the human rights community complained that the motions for pretrial detention and extension of detention are rarely substantiated and are essentially copied and pasted into the judge's order. Judges rarely deny motions for pretrial detention, and bail is rarely requested or granted as a substitute for pretrial detention.

INCIDENCE OF PRETRIAL DETENTION AND BAIL IN ARMENIA, 2007–2009

Category	2007	2008	2009
New Criminal Cases Filed (Number of Defendants) ¹²	1,807 (2,327)	2,145 (2,790)	2,604 (3,375)
Pretrial Detention Requests Considered by Courts ¹³	2,849	2,915	3,572
Pretrial Detention Requests Granted (Percentage)	2,780 (97.6%)	2,726 (93.5%)	3,362 (94.1%)
Bail Requests Considered by Court (Percentage of cases where substitution of detention with bail was requested)	81 (2.9%)	443 (16.2%)	484 (14.4%)
Bail Requests Granted (Percentage of requests granted)	62 (76.5%)	151 (34.1%)	186 (38.4%)

Source: RA Police Main Criminal Investigation Department; RA Judicial Department.

Among defendants represented by the PDO during the first term of 2010, detention was the most common form of precautionary measure imposed on adults in Yerevan, while it was less common for juveniles and in the *marzes*.¹⁴

INCIDENCE OF PRETRIAL DETENTION AMONG DEFENDANTS REPRESENTED BY THE PDO FIRST TERM OF 2010

	Yerevan Adults	Yerevan Juveniles	Marzes Adults	Marzes Juveniles
Pretrial Detention Imposed (Bail allowed)	50 (7)	1	74 (9)	8
Alternative Measure Imposed	21	3	104	47

Source: RA Public Defender's Office.

Interviewees commented that bail is rarely even requested because the minimum bail levels are too high for most defendants to afford. Some interviewees emphasized that pretrial detention must be imposed before bail can even be considered, but when imposing pretrial detention the court first makes a finding that detention is necessary, so it is counterintuitive to then allow bail. Reportedly, courts rarely consider other preventive measures because they fear being perceived as corrupt. Some interviewees reported that bribery and corruption has declined under the current administration as President Sargsyan, who took office in 2008, has spoken out widely against corruption; however, interviewees also reported that judges and prosecutors now greatly fear being accused of corruption and thus are less likely to take actions that could be perceived as favoring

¹² Includes only criminal cases involving police, excluding tax and other specialized cases.

¹³ More than one pretrial detention request may be filed per case. Statistics are not available on the number of cases in which pretrial detention is requested.

¹⁴ Information on the type of crime the defendants were charged with was not provided.

defendants. However, as shown in the table above, the percentage of pretrial detention requests granted has not varied greatly since 2007; the percentage of cases in which bail was granted did decline significantly from 2007 to 2008 but increased in absolute numbers. Other interviewees believed that the low incidence of bail or preventive measures is a legacy of the Soviet era, when bail did not exist and many current judges served as prosecutors.

Many interviewees lamented judges' lack of rigor in considering requests for pretrial detention, giving multiple examples of cases in which judges purportedly imposed pretrial detention even though the investigator presented no reasons for the request. Advocates also cited cases in which the judge ordered pretrial detention based upon reasons other than those allowed by Article 143 of the Criminal Procedure Code. Advocates stated that requests for extension of pretrial detention beyond the initial two-month period are often based on a delay in obtaining simple expert analysis of evidence, and investigators concurred that this is a problem, stating that it can take months to obtain very simple analysis. Some advocates reported that, although the defendant has the right to appear at hearings, in practice it is not unusual for a pretrial detention hearing to take place without the defendant present; some interviewees cited the strict time deadlines as a reason and claimed that this only happens when there are difficulties in transporting the defendant from the detention facility, for example on a weekend.

Many interviewees complained that holding pretrial detention proceedings in secret prevents the substantiation of such allegations, and the poorly-reasoned decisions do not provide enough information to substantiate alleged misconduct or launch a complaint. The OSCE/ODIHR trial monitoring report also noted a lack of transparency inherent in pretrial detention decisions being made in closed hearings. OSCE/ODIHR TRIAL MONITORING REPORT 21.

Factor 10: Detention During the Adjudicative Process

Pretrial detention is used only when necessary in the interests of justice and after consideration of other options for ensuring the accused's appearance at trial. Individuals detained during the adjudicative process are tried within a reasonable time or released pending trial. Reasons are given for judicial decisions resulting in or continuing detention.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>The detention of persons detained during the pretrial stage is almost universally continued during the adjudicative process. Defendants may be detained indefinitely once the trial has formally begun.</p>	

Analysis/Background:

In Armenia, the pretrial stage of a case, discussed in Factor 9 above, is considered to last from the time criminal prosecution is initiated until the investigation has concluded and trial may begin or the body of criminal prosecution decides to dismiss the case. As discussed above, detention is reviewed on a bimonthly basis and may be extended for up to one year prior to the beginning of trial (6 months in the case of minor or medium gravity crimes). If the defendant is not detained or on bail, the duration of the investigative stage is limited only by the relevant statute of limitations for the alleged crime. Reportedly, if pretrial detention has been imposed but the investigation is not complete, courts will allow the trial to begin and then continue the trial or proceed very slowly while the investigating body continues to gather evidence, rather than release the defendant.

There are few legal requirements for detention during trial. There is no time limit on the duration of a trial or on detention during trial. Once trial has begun, a defendant may move the court to change the preventive measure imposed against him, challenging both the legality and the expediency of

the measure. CRIM. PROC. CODE. arts. 102, 312. In practice, defendants who were subjected to pretrial detention in the investigative stage appear to always continue to be detained during the adjudicative process; interviewees could not recall a case in which this did not happen. There is no automatic review of detention during trial, and although defense advocates can challenge the continued detention, courts are said to ignore these challenges. Trials are often carried out in stages and last longer than many interviewees perceived necessary. Some interviewees believed that the practice of giving a defendant only one day of credit against a prison sentence for every day spent in detention during trial contributes to overpopulation in Armenian prisons; prior to being amended in 2006, the Criminal Code allowed three days of credit for every one day served in pretrial detention. See CRIM. CODE art. 69(3). Some interviewees again cited the legacy of the Soviet era as a reason for the high incidence of detention during the adjudicative process, stating that it is part of the judicial and prosecutorial culture to detain persons accused of crimes.

III. Mechanisms for Challenging Pretrial Detention

Factor 11: Extraordinary Remedies

Legal mechanisms are available for a person who has been deprived of liberty prior to conviction of a crime, including a person who has been remanded into custody, to speedily challenge the lawfulness of his confinement before a judicial authority competent to order his release.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
No extraordinary remedies exist in Armenian law, but interviewees believe that the ordinary remedies provide sufficient review of the lawfulness of detention. Notably, no remedies exist for unlawfully detained individuals to vindicate their rights.	

Analysis/Background:

There are no extraordinary remedies available under Armenian law to challenge unlawful confinement prior to conviction of a crime. However, interviewees generally agreed that adequate ordinary measures exist to ensure that persons deprived of liberty at the pretrial stage will be able to challenge the lawfulness of detention, including the 72-hour limit on arrest, the two-month review of pretrial detention, and the right to move the court to impose a non-custodial preventive measure. See Factors 7–10 above. Defendants may file a complaint regarding illegitimate and ungrounded decisions and actions of the prosecutor, investigator, or inquiry body to the court, which must consider the complaint within 10 days of receipt. CRIM. PROC. CODE art. 290. However, upon finding the complaint is grounded, the court may only issue a ruling on the responsibility of the body in charge of criminal proceedings to eliminate the actions or decisions which violated the defendant's rights; no damages or proactive remedies are guaranteed. *Id.* Although the Court of Cassation has held that, if a person who has been apprehended is not formally arrested within the three-hour period required by law, he is nevertheless deemed to be arrested and may only be detained for 72 hours without a court order, a violation of the arrest procedure is not a reason to reject a request for detention but rather may lead to legal consequences for the individual who violated the procedure. *Case of Gagik Mikayelyan* §§ 2, 3.

Interviewees consistently noted that no remedies exist for the defendant when procedural requirements are not followed; judges may admonish the actor who violated procedure or request that his supervisor discipline him, but there is no path for a detainee to seek vindication of his rights unless he is acquitted and can show actual (*i.e.*, pecuniary, including lost wages, court fees, attorney fees, *etc.*) damages caused by mistake or malfeasance, in which case he may file a civil suit. See CRIM. PROC. CODE arts. 66, 67. Reportedly, courts tend to convict presumably innocent defendants and impose non-custodial sentences in order to avoid the possibility of such a suit.

The RA Constitution provides for the right to recover damages in cases where an individual is illegally deprived of liberty or subjected to search and the European Convention on Human Rights provides a right to compensation for individuals arrested or detained in contravention of the rights enumerated under article 5, but these requirements have not been implemented in Armenian law. See CONST. art. 16; EUROPEAN CONVENTION art. 5. One interviewee reported that the Court of Appeals had remanded a case with orders to exclude evidence gathered during an illegal search; however, other interviewees had not heard of such a case and ODIHR reported that judges largely ignore motions to exclude illegally-obtained evidence. OSCE/ODIHR TRIAL MONITORING REPORT 59.

Although interviewees generally agreed that sufficient ordinary measures exist, many interviewees also referred to situations where individuals have been detained incommunicado and without status in police stations prior to formal arrest. No remedies exist to force an investigation or compel the

police to produce the detained individual. However, interviewees did not believe that lengthy unlawful detention was common and did not see a need for such remedies to be developed.

Factor 12: Appeal of a Decision Imposing Pretrial Detention

Detainees have the right to have a decision imposing pretrial detention reviewed by a higher tribunal.

Conclusion

Correlation: Neutral

Arrestees have the right to challenge arrest, and both the prosecution and defense may appeal a decision on preventive measures. In practice, it is widely believed that the courts favor the prosecution on appeal.

Analysis/Background:

The decision to impose preventive measures may be appealed to the prosecutor and the prosecutor's decision, to the respective chief prosecutor. CRIM. PROC. CODE art. 63(17), 150. Once a preventive measure has been imposed by a court, the court's decision may be appealed to the Court of Appeals by either the defense or prosecution. *Id.* art. 150.

Interviewees reported that the prosecution always appeals a denial of pretrial detention or the substitution of bail, while it is less common for the defense to appeal when pretrial detention is opposed. Public defenders reported that they always appeal a denial of bail, as the decisions are rarely substantiated, but their appeals are almost never granted. Some defense advocates stated that the poor reasoning of lower court decisions imposing pretrial detention makes it difficult for them to adequately advocate for their clients on appeal. One interviewee claimed that the appellate courts essentially act as an assistant to the prosecution, always reversing a lower court's granting of bail. However, although statistics are not available, one appellate judge stated that about 65% of prosecutorial appeals are denied in his court. According to statistics provided by the PDO, during the first term of 2010, public defenders in Yerevan appealed 15 decisions to impose pretrial detention involving 18 defendants (4 of whom were juveniles); three of those appeals were granted. In the *marzes*, public defenders appealed 22 decisions to impose pretrial detention involving 26 defendants (including 3 juveniles); three were granted.

Although defendants should be immediately released if a request for pretrial detention is denied or if bail is substituted, several interviewees reported that defendants are almost always unlawfully detained while the prosecution appeals. A recent case decided by the ECHR illustrates this problem. *See Asatryan v. Armenia*, no. 24173/06 (Feb. 9, 2010). The ECHR found a violation of Article 5(1)(c) of the European Convention on Human Rights because a criminal defendant was not immediately released after her detention was denied by the first instance court. Instead, the defendant was held after the expiration of her detention order pending consideration of her detention by an appellate court, which the next day reversed the decision of the first instance court and ordered her detention to continue. However, other interviewees did not believe that unlawful detention during a prosecutorial appeal was a widespread problem, both because prosecutorial appeals are rare as courts rarely rule for the defense and because this would constitute a crime pursuant to Criminal Code articles 348 and 353. The Cassation Court is reportedly trying, through its jurisprudence, to encourage lower courts to allow bail more frequently. *See RA Court of Cassation, Case of Taron Hakobyan and Case of Aslan Avetisyan*, in Factor 9 above. Interviewees again cited the Soviet legacy and the continuing mentality in favor of detention as a reason for overwhelming prosecutorial success on appeal.

Interviewees in the regions on both the prosecution and defense side also mentioned that a lack of resources can make it difficult to pursue appeals, as the appellate courts are located in Yerevan. An investigator, prosecutor, or public defender will have to spend the day traveling for a hearing, which may be problematic due to insufficient staffing at their respective institutions and low funds for transportation-related expenses. Detention facilities are responsible for transporting the detainee to the hearing, which is problematic for the same reasons.

Factor 13: Guaranteed Periodic Review of Detention

Decisions imposing pretrial detention are periodically reviewed by a judicial authority.

Conclusion	Correlation: Negative
<p>Periodic review of detention is required by law only prior to the beginning of trial. In practice, once granted, the review of detention is perfunctory and pretrial detention is almost always extended upon request. Once the trial has begun, the defendant has the right to appeal his detention, but there is no automatic review.</p>	

Analysis/Background:

Guaranteed periodic review of detention exists at the investigative stage only. At that stage, pretrial detention may only be imposed in two-month increments; if the investigator or body of inquiry finds it necessary for detention to be extended, they must so move no more than 10 days before the expiration of the two-month term, which must rule no more than 5 days before the expiration of the term. CRIM. PROC. CODE art. 138, 139(1). If the defense attorney needs time to familiarize himself with the case materials, the prosecutor or investigator, with the prosecutor’s consent, can submit the request to the court only 5 days before the expiration of the detention term. *Id.* If the detention term expires and has not been renewed, or if the maximum detention period expires, the detention facility administration must automatically release the defendant. *Id.* art. 142(4). Reportedly, courts frequently decline to review pretrial detention upon the defendant’s motion, preferring to wait until the two-month increment has lapsed and automatic review is required.

In practice, once granted, pretrial detention is almost universally extended upon the investigator’s or body of inquiry’s request with little analysis or substantiation of either the request or the court’s order. Reportedly, although the defendant has a right to appear pursuant to Criminal Procedure Code article 136(3), it is not unheard of for the decision to extend detention to be made in his absence; some interviewees cited the strict time deadlines as a reason and claimed that this only happens when there are difficulties in transporting the defendant from the detention facility, for example on a weekend. Investigators and prosecutors also reported that undue delays in obtaining expert analysis often cause them to request extension of pretrial detention.

Once the trial has begun, there is no guaranteed review of detention. During trial, a defendant may appeal the preventive measure imposed against him, challenging both the legality and the expediency of the measure. *See* CRIM. PROC. CODE arts. 103, 287. In practice, if detention was imposed at the investigative stage, it is almost always continued during trial. Moreover, although by law the investigative stage must conclude before the trial begins, it is reportedly common practice for the court to begin the trial when the maximum term of pretrial detention expires so as to avoid releasing the defendant even if, in fact, the body of criminal prosecution is continuing to investigate the case. This practice also has the effect of avoiding required review of detention.

IV. Imposition of a Sentence of Incarceration

Factor 14: Procedures at the Penalty Phase

Persons convicted of a crime are sentenced by a judge and have the opportunity to present additional evidence and arguments regarding sentencing. In determining the sentence, the judge takes account of relevant information on the convicted person's background as well as the nature of his crime. Sentences are imposed in open court with the convicted person present and the judge clearly states the reasons for and terms of the sentence.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>The court's verdict sets forth the charges on which a defendant is convicted and the facts and law in support thereof. However, the court determines sentence without hearing additional and separate evidence or arguments from the offender or any independently gathered data regarding relevant social information on the offender, past or other current offenses, or mental health and addiction issues.</p>	

Analysis/Background:

Armenian criminal procedure does not provide for a penalty phase separate from the guilt determination phase. Instead, evidence and oral arguments concerning guilt and penalty are heard simultaneously. The court then retires to a deliberations room and considers first whether the accused is guilty of the crime charged and then, without hearing further argument from the accused, the appropriate penalty. CRIM. PROC. CODE art. 359 and 360. During its deliberations, the court can reopen trial proceedings if it finds that it cannot resolve a relevant issue without hearing further evidence. CRIM. PROC. CODE art. 363. To determine the penalty, the court addresses the following issues:

- whether it is proven that there are extenuating or aggravating circumstances;
- whether the offender is liable to punishment for the committed crime;
- what punishment must be given specifically to the offender;
- whether the offender must undergo the punishment;
- whether property damage inflicted must be compensated;
- whether medical treatment for alcoholism or drug addiction should be applied; and
- the type of correctional or disciplinary institution, with the appropriate regime, where the offender must undergo punishment in the form of imprisonment.

CRIM. PROC. CODE art. 360.

Having resolved the above issues, the court compiles a written verdict, containing a record of its conclusions in a set format, *see id.* art. 369–372, before announcing it to the court. *Id.* art. 373. The judgment shall, in clear and understandable language, indicate the time and place of adoption of the verdict; the name of the court, court composition, court session secretary, the prosecutor, the defense counsel, the civil claimant, the civil defendant, and their representatives; the defendant's name, surname, date of birth and birthplace, marital status, place of work, occupation, education, and other data related to the defendant relevant to the case; and the criminal law upon which the charges were brought for the defendant. *Id.* arts. 369, 370. The substantive part of the court's decision sets forth the accusation; the court's conclusion vis-à-vis the circumstances of the case, whether the accusations were proven and substantiate the defendant's guilt; and the proofs on which the court bases its conclusions. *Id.* art. 371. The concluding part of the judgment sets forth the court's actual rulings and the procedure for appeal. *Id.* art 372.

A defendant held in detention is released if, in its verdict, the court acquits the defendant, postpones the execution of the verdict, convicts the defendant without yet imposing a punishment, places the defendant on probation, imposes a non-incarcerative punishment, or if the sentence imposed does not exceed the term served by the defendant under pretrial detention. *Id.* art. 374.

Interviewees confirmed that, in practice, the court, having determined the defendant’s guilt, does not hear separate evidence relating to the penalty. This places the accused and his advocate in a precarious strategic position: if an accused addresses the court on the appropriate penalty prior to a finding of guilt, the court could consider this as a tacit admission of guilt. However, if an accused does not address the appropriate penalty and is found guilty the court will decide on penalty without hearing his arguments concerning punishment. Some interviewees did not believe that this posed a significant problem for an accused, noting that an accused or his advocate could offer precedents concerning the appropriate sentence. JUDICIAL CODE art. 15.3.

Factor 15: Factors Considered in Imposing a Penalty

Deprivation of liberty is regarded as a sanction of last resort. The sentencing authority takes into account the rehabilitation of the offender, the protection of society, the interests of the victim, the time the offender spent on remand, and any aggravating or mitigating factors in imposing a penalty. Similarly situated defendants receive similar sanctions.

Conclusion	Correlation: Negative
<p>Armenian law requires that individuals be deprived of liberty only where necessary and provides judges with well-structured criteria to apply when sentencing. However, imprisonment is frequently imposed, which many interviewees believed is due to historic practice and a lack of realistic alternatives to incarceration.</p>	

Analysis/Background:

Armenia’s Criminal Code states that the purpose of punishment is to restore social justice, to correct the offender, and to prevent crimes. CRIM. CODE art. 48.1. The code specifies a sentencing range for each criminal offense. *Id.* SPECIAL PART. Murder, for example, is punishable by imprisonment for between 6 and 12 years, unless one or more listed aggravating factors is present, when the possible sentence increases to 8–15 years *Id.* art. 104. The appropriate punishment is determined within this sentencing range taking into account a number of general principles. *Id.* art. 61.1. These principles include the nature of the crime, the social danger presented by the crime, the characteristics of the offender, and circumstances mitigating or aggravating the liability or the punishment. *Id.* art. 61.2. While victim input regarding sentencing is not required by legislation or the constitution it does, in practice, occur on occasion, as described in factor 5 above.

Armenia’s Criminal Code specifies a number of mitigating and aggravating features that should be considered by a sentencing court. Mitigating circumstances to be considered by the court include the defendant’s committing a minor or medium gravity offense for the first time and under accidental circumstances; being underage or pregnant when committing the crime; caring for a child under 14 at the time of sentencing; committing a crime because of difficult living conditions or out of compassion; providing assistance in solving the crime or locating other perpetrators; and other circumstances not specifically listed that the court wishes to take into account. *Id.* art. 62. Aggravating circumstances include, and are limited to, the defendant’s committing repeat offenses; committing the crime as part of a criminal association or by taking a particularly active role; committing a crime in violation of a military or professional oath; targeting victims who suffer from mental disability, are intoxicated, are pregnant, are minors or persons dependant on the perpetrator

(including one's spouse or close relative), with ethnic, racial or religious motives, or with particular cruelty; or committing the crime while under the influence of drugs or alcohol. *Id.* art. 63.

Prior convictions for specified crimes may also serve as aggravating factors leading to an increased penalty for a subsequent conviction for the same or certain other crimes, in particular crimes against property. *See id.* arts. 175–182. A Cassation Court judge brought a case involving this issue of “double conviction,” or the use of prior convictions as an aggravating circumstance leading to an increased penalty for a new conviction, to the RA Constitutional Court, which may provide some clarity on the use of aggravating circumstances.¹⁵ The question to be presented is whether a prior conviction can be used as an aggravating factor to give extra time on a second offense (even if second offense is a lesser crime) if a convict reoffends after serving his time.

In determining sentence, the court must impose the most lenient sentence that is consistent with the purposes of punishment. *Id.* art. 61.3. Time spent in pretrial detention prior to trial is deducted from sentences of imprisonment and from sentences involving community service. *Id.* art. 69. The court may impose a more lenient sentence than even the minimum sentence specified where there are exceptional circumstances relating to motive and purpose of the crime and the behavior of the accused when committing the crime and afterwards which reduce the extent of danger of the crime for the society, as well as if a member of the group that committed the crime actively assists in solving the crime. *Id.* art. 64. However, this provision is infrequently applied in practice. According to statistics provided by the PDO, during the first term of 2010, a more lenient sentence was assigned pursuant to article 64 of the Criminal Code in 9 of the 323 completed cases (2.8%) in Yerevan; 8 of these cases involved adult defendants and 1 involved a juvenile defendant. In the *marzes*, a more lenient sentence was given in 4 of the 606 completed cases (0.7%); three of those cases involved juvenile defendants and 1 involved an adult defendant.

Imprisonment remains the most frequently used sanction in Armenia. Interviewees said that judges do consider alternative sentencing when possible and appropriate, but there remains a lack of effective means to actually impose and monitor alternative dispositions (a point discussed further in factor 16 below).

Without more clear guidelines for the judiciary, the lack of predictability and consistency of judges in imposing sentences was brought up as an issue, especially by advocates. The specific impact that each mitigating and aggravating factor has on the imposition of punishment or how much weight the judges should attach to each factor is not clear. The judges interviewed did not feel that the lack of legislative guidance was a problem, however, stating that each case is treated uniquely.

Several interviewees mentioned the need to reduce as much as possible the difference between the minimum and maximum length of time to be considered for incarceration under each crime. This would not only tighten the range of punishment, but also lessen the degree of judicial discretion. There were also suggestions for mandatory minimums for certain crimes, especially when the offender has prior convictions, and more legislative clarity on the use of mitigating and aggravating circumstances, especially to more effectively target organized crime. Similarly situated defendants should, in practice, be treated similarly by judges, on a more consistent basis. One advocate encouraged stronger sanctions related to crimes against an individual, especially vis-à-vis the ECHR and other justice systems. He cited the example of murder, which, he stated, is punished by 25–30 years of imprisonment in Germany or France, but substantially less in Armenia. *See id.* art. 104. “Lecherous acts” with a juvenile are punished by a fine or by up to 2 years of imprisonment; this is not considered a grave crime, and it is not illegal to aid or fail to report such a crime. *See id.* art. 142. It was also pointed out that the punishments in cases of perjury, pressure on witnesses, and other crimes against justice should be strengthened and related directly to the range

¹⁵ In May 2010, after research was completed for this report, the RA Constitutional Court ruled that the so-called double conviction provisions are in compliance with the RA Constitution. *See In re. Constitutionality of Articles 177.3(3) and 258(1) of the RA Criminal Code*, case no. SDO-882 (May 11, 2010).

of punishments provided in the underlying crimes. There also is definite widespread opinion that the actual range and number of years allowed under the Criminal Code often does not correspond to the gravity of the offense. In a recent high profile case involving a former teacher at Yerevan's Nubarashen School, Levon Avagyan pleaded guilty to committing "obscene acts against minors" along with violence and intimidation, yet prosecutors are only seeking an 18-month prison sentence. See Radio Free Europe/Radio Liberty, *Former Armenian Teacher Pleads Guilty in Sex Abuse Trial* (May 13, 2010); see Factor 4, footnote 7 above for discussion of the disposition of this case.

Another issue highlighted was that sometimes the amount assessed for administrative penalties exceed the amount of fines that the legislature foresees for actual crimes. The ECHR has found that administrative tax fines are the equivalent of a criminal punishment. *Paykar Yev Haghtanak Ltd. v. Armenia*, no. 21638/03 (Dec. 20, 2007). In some cases, drug use or possession could lead to an administrative fine, but in other cases, suspects are charged criminally, increasing the likelihood of imprisonment. One advocate interviewed complained that not only are fines often high in tax evasion cases, but the amounts imposed are unpredictable.¹⁶

Interviewees noted that the decision to charge a suspect with a particular crime when a different charge could also apply affects the sentence. In particular, interviewees reported that about 20–25 women (about 14%) at Abovian Detention Center/Prison, the only facility at which women are detained, are currently detained or imprisoned for trafficking. Interviewees expressed concern about the incidence of arrest of women for trafficking, as they believed that the background facts often seemed to more accurately support a lesser conviction for pimping, and may reflect of a lack of effort by criminal justice actors to investigate the actual leaders of organized crime operations and by prosecutors to accurately initiate charges reflecting actual criminal culpability. Concerns were also raised that trafficking victims may also be charged as traffickers upon their return to Armenia. Interviewees believed this situation reflects the pressure on law enforcement officials to aggressively pursue trafficking cases, while fearing retaliation for prosecuting politically-connected traffickers.

In minor crimes, an accused can be exempted from liability if he reconciles with the victim or mitigates the damages caused. CRIM. CODE art. 73. Also, in any cases where private prosecution is allowed, the reconciliation of the parties leads to the dismissal of charges. CRIM. PROC. CODE art. 36. In cases of minor or medium gravity crimes an accused can be exempted from liability upon a change of situation. *Id.* art. 74. There is also confusion around the issue of exemption from liability related to both a lack of precision in the legislation and lack of consistency in implementation. "Reconciliation" is not defined in Armenian criminal law, nor is there any indication as to who makes such a determination. There is particularly no guidance in situations when the victim is a juvenile, suffers from a mental disease, or is deceased, or when there are multiple defendants and the victim only reconciles with one. It is also unclear what constitutes a "change in situation;" one interviewee illustrated this lack of clarity with the example of someone who commits the crime of abandoning his military post, and absconds, but reappears five years later as a respectable citizen.

¹⁶ In June 2010, the Human Rights Defender filed a case with the Constitutional Court addressing this matter, arguing that the uncertainty of administrative tax fines conflicts with the RA Constitution.

Factor 16: Alternatives to Immediate Incarceration

There exist a range of non-incarcerative measures prescribed by law and imposed based on an assessment of established criteria concerning the nature and gravity of the offense, the personality and background of the offender, the purposes of sentencing, and the interests of victims.

Conclusion

Correlation: Negative

While a number of non-custodial sentencing options are provided for in law, they are not, in practice, viewed or applied as realistic alternatives.

Analysis/Background:

Armenia's Criminal Code specifies the types of punishments that a court can impose. CRIM. CODE art. 49. Punishments are either "basic" or "supplementary." *Id.* art. 50. Only one basic punishment can be assigned for each crime. *Id.* art. 50(4). One or more supplementary punishments can be added to a basic punishment, although only where permitted in the Criminal Code. *Id.* The most important basic non-incarcerative punishments are fines and public work. Where the court determines that imprisonment is the appropriate basic punishment for an offense, the court can still decide not to apply imprisonment but to impose a period of probation on the offender, requiring the offender to fulfill a number of conditions. *Id.* art. 70.

A fine can be imposed for minor and medium gravity crimes if listed as a sentencing option for that offense in the Criminal Code. *Id.* art. 51(1). Fines vary between 30 and 3,000 times the minimum salary (AMD 30,000 to 3,000,000, or USD 78.53 to 7,853.40), although more precise limits are specified for each offense. *Id.* art. 51(1), SPECIAL PART. The amount of a fine is determined according to the gravity of the crime and the property status of the convicted person. *Id.* art. 51(2). The court may give the offender up to one year to pay the fine and may order a specific timeline for payments in installments. *Id.* art. 51(3), (4). Where an offender has been kept in detention prior to being sentenced, the court can reduce the level of the fine to take into account this time in detention. *Id.* art. 69(5). If the offender cannot pay all or part of the fine, the court substitutes public work as the appropriate punishment with each minimum salary equivalent to five hours of public work (the substituted punishment must be a minimum of 270 hours and a maximum of 2200 hours). *Id.* art. 51. Fines can be imposed against minors if the minor has individual income or property that can be confiscated. *Id.* art. 87(1). However, fines against minors are limited to between 10 to 500 times the minimum salary (AMD 10,000 to 500,000, or USD 26.18 to 1,308.90). *Id.* art. 87.2.

Fines are the most frequently used alternative to immediate incarceration. However, a court's ability to impose fines is limited by economic factors as many offenders are too poor to pay, even if allowed to do so in installments. Courts can also replace an unpaid fine with the responsibility to perform public work, at a rate of AMD 1,000 (USD 2.61) for every 5 hours of work. *Id.* art. 51(4). This is often not an effective option, since the court cannot also impose public work against certain categories of persons such as minors or pensioners, and in some circumstances, interviewees indicated that converting a fine to public work is not enough of a penalty.

Public work is the execution of free, socially useful work by the offender as designated by the court at the place determined by an authorized body. *Id.* art. 54(1). Public work, which can range from 270–2,200 hours, can be imposed on persons who have been convicted of minor or medium gravity crimes and sentenced to a maximum of 2 years of imprisonment, and only when requested by the defendant. *Id.* arts. 54(2), 54(3). Public work cannot be imposed against "first- or second-degree" disabled persons, those under 16 at the time of sentencing, pension-age persons, pregnant women, and drafted servicemen. *Id.* art. 54(4). If an offender refuses to perform public work, the court replaces the unperformed part of the public work with imprisonment, with one day imposed for

every 3 hours of public work remaining. *Id.* art. 54(5). A court's powers to impose public work as an alternative to immediate incarceration is severely limited by a general lack of employment in Armenia, coupled with a lack of public work opportunities, and a lack of willingness among offenders to perform them. There is also a lack of well developed organization and enforcement mechanisms, as discussed in Factor 17 below.

Armenian law also provides for the deprivation of right to hold certain posts or practice certain professions. A court can, as a basic punishment, prohibit an offender from holding certain posts or practicing certain professions (this can also be imposed as a supplementary punishment). *Id.* art. 50(1), (2). The prohibition can last for between two and seven years for crimes committed willfully and one to five years for crimes committed through negligence. Where this sanction is imposed as a supplement to other basic punishments, the prohibition can last for one to three years. *Id.* art. 52(2). The court can apply this sanction whenever, based on the nature of a crime committed while the offender held a particular post or practiced a certain profession, the court does not find it possible for him to hold that post or practice that profession. *Id.* art. 52(2). The CED is responsible for enforcing this mandate and notifying the defendant's employer or professional association. PENITENTIARY CODE arts. 27–29. Armenian law is silent as to the sanction for a violation of this prohibition.

Armenia law permits exemption from criminal liability for an accused who has committed for the first time a minor or medium gravity crime if, after committing the crime, he surrendered, assisted in solving the crime of his own accord, compensated, or mitigated the inflicted damage in some other way. CRIM. PROC. CODE art. 72. A defendant who committed a minor crime can be exempted from criminal liability, if he reconciles with the aggrieved or mitigates or compensates the inflicted damage in some other way. *Id.* art. 73; *see also* art 36. A minor who has committed, for the first time, a minor or medium gravity crime can be exempted from criminal liability by the court, if the court finds that his correction is possible by applying enforced disciplinary measures such as a warning; placing him under the supervision of his parents, legal guardian, or competent body; requiring him to mitigate the damage caused; or restricting his activities. *Id.* art. 91(1).

Where the court determines that imprisonment is the appropriate basic punishment for an offense, the court can still decide not to apply this punishment but to instead impose a period of probation on the offender, requiring the offender to fulfill a number of conditions, CRIM. CODE art. 70. The period of probation can last for between 1–5 years. *Id.* art. 70(3). The court can impose any conditions on the accused that will promote his correction, including that he notify the authorities of a change of residence; receive treatment for alcohol or drug addiction or venereal disease, or make maintenance payments to his family. *Id.* art. 70(5). To impose a period of probation, the court must find that the correction of the offender is possible without serving his sentence, taking into account the offender's personal characteristics and liability, mitigating and aggravating circumstances, and whether the offender, if so ordered by the court, has compensated the victim for damages. *Id.* arts. 70(1), (2).

In practice, interviewees stated that probation is not imposed for grave or very grave crimes and, even for lesser crimes, is not a common disposition. Defense advocates indicated it was rare for a client to receive probation and that this usually only occurs when the prosecution has a special bias in favor the accused, or when the accused can leverage political connections. Probation is more common for juveniles than for adults. In Lori region, the PDO reported that its clients have only received probation in two cases; however, according to statistics provided by the PDO, probation does appear to be more common in the *marzes* than in Yerevan.

**INCIDENCE OF PROBATION AMONG DEFENDANTS REPRESENTED BY THE PDO
FIRST TERM OF 2010**

	Cases Reaching Final Disposition (Number of Defendants)	Cases Where Probation Granted	Total Defendants Receiving Probation	Adult Defendants Receiving Probation	Juvenile Defendants Receiving Probation
Yerevan	323 (333)	16 (4.9%)	23 (6.9%)	17 (5.2%)	6 (54.5%)
Marzes	606 (736)	86 (14.2%)	107 (14.5%)	73 (11.4%)	34 (34.7%)

Source: RA Public Defenders Office.

Several defense advocates indicated that probation is often imposed in order to satisfy both the prosecution and the defendant, who can walk away and not risk the uncertainty of appeal, including in cases where the defendant is perceived to be innocent but the prosecutor fears a lawsuit if he is acquitted. It acts, however, to discourage appeals on convictions, since the Cassation Court is reportedly often more punitive in the instances it accepts appeals in criminal cases.

When asked why probation was used so rarely, interviewees stated that problems in enforcement and supervision of conditions, related to the lack of resources for the ASU to supervise offenders on probation, deter judges from imposing probation. See Factor 17 below. Also, when an offender is drug or alcohol dependent, there are few options for treatment during probation and there remains a significant social stigma attached to seeking treatment for drug or alcohol abuse. Where probation is considered, one interviewee stated that the court takes into account the character of the person, family situation, professional status, health, victim’s opinion including possible reconciliation, and past criminal history.

Factor 17: Implementation and Monitoring of Non-Incarcerative Dispositions

Non-incarcerative dispositions are effectively implemented and monitored by supervisory authorities established in law. The sentencing authority is notified of significant failures to comply with the conditions of non-incarcerative dispositions.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Though the Armenian legal system is attempting to effectively implement procedures associated with alternative dispositions, there is a lack of adequate resources allotted to further these efforts.	

Analysis/Background:

When an offender receives a conditional non-incarcerative disposition, including probation, supervision of the offender is undertaken by the Alternative Sentencing Unit of the CED located in the region of the defendant’s residence. Within three days of receiving the judgment or the decision of the court, the ASU officer prepares a personal file for the offender. The personal file includes information about the offender’s personality, residence, and employment, as well as other information relevant for the execution of the sentence. GOVERNMENT OF THE REPUBLIC OF ARMENIA DECISION NO. 1561-N OF OCTOBER 26, 2006, ON APPROVING THE RULES OF OPERATION FOR TERRITORIAL BODIES OF THE DEPARTMENT OF EXECUTION OF ALTERNATIVE PUNISHMENTS UNDER THE PENITENTIARY ADMINISTRATION OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA arts. 48 and 49 [hereinafter ALTERNATIVE PUNISHMENT DECREE]. Within three days after registering the defendant, ASU officers send notification to the police. *Id.* art. 54.

If the offender personally appears at the ASU, an officer completes a registration card and explains the offender's rights and obligations, the liability imposed in case he violates his obligations, and the duty to appear at the ASU for registration for at least once a month. The offender must sign the notice of rights and obligations. If the offender does not appear at the ASU within 7 days, a notification letter is sent. *Id.* art. 50.

Offenders pay fines into a bank account and the court is notified when they are paid. CRIM. PROC. CODE art. 428 (3). The payment of fines is supervised by the CED. When an offender is more than 7 days late to pay a fine, the CED notifies the court. ALTERNATIVE PUNISHMENT DECREE art. 50; *see also* PENITENTIARY CODE art. 26. The court may then give the offender more time to pay or replace the fine with a sentence of public work or of imprisonment. PENITENTIARY CODE art. 26

When public work is imposed as a sentence, the offender's case is assigned to the CED territorial subunit located in the jurisdiction of his residence, and a representative from the CED manages his or her file. ALTERNATIVE PUNISHMENT DECREE arts. 48, 49. To obtain work opportunities for offenders, the MOJ contracts with non-commercial entities, such as a school or parks department. The contract specifies who will supervise offenders as they undertake their work. The CED tries to match the skill set of each offender with the appropriate type of public work, taking into account the nature and gravity of the crime.

When imposing a sentence of probation, the court states whether it is necessary to establish supervision over the offender and who in particular is responsible for that supervision. CRIM. CODE art. 362. When special conditions are imposed, the ASU officer sends information on offenders required to complete treatment for alcoholism, drug addiction, intoxication, or venereal diseases to the competent health body. If other duties are imposed, the ASU officer sends information to the appropriate bodies. ALTERNATIVE PUNISHMENT DECREE art. 52. The officer may visit relevant institutions in order to monitor the offender's compliance, and in the case of probation, the ASU officers have the right to visit the offender's place of residence or workplace, and to require the offender to submit monthly certifications given to him by the facilities where he fulfills the condition of his probation. *Id.* art. 55.

If the offender fails to appear before the ASU after proper notification or violates the order of the court, including the terms of his probation after proper notification, the ASU officer summons the offender to the ASU within 10 days by sending a notice. If there are no excusable reasons for the violations, the offender may be warned in writing that the officer may apply to quash the court's order. The offender must sign the warning. *Id.* art. 56; *see also* PENITENTIARY CODE art. 132. In the event the ASU finds it necessary to tighten the supervision over the offender's conduct, the head of the ASU files a motion to the court requesting that additional duties or restrictions be imposed. ALTERNATIVE PUNISHMENT DECREE art. 57; *see also* PENITENTIARY CODE art. 132.

If the offender fails to appear before the ASU two or more times, the ASU's motion to quash the conditional non-imposition of the sentence and execute the punishment set by the court judgment shall include facts setting forth the failure to appear, including the written warning. Letters of reference from the offender's workplace, school, or residence explaining the defendant's circumstances and personal characteristics can also be enclosed in the motion. ALTERNATIVE PUNISHMENT DECREE art. 58. If, during the probation period, the offender willfully evades the conditions imposed by the court or commits a minor or negligent crime, the court will consider the nullification of conditional punishment. CRIM. CODE art. 70(6). If the offender commits a further medium gravity, grave, or very grave crime, or if the court decides to cancel a period of probation because of commission of a minor or negligent crime, the offender is required to serve the sentence of imprisonment suspended during the period of probation in addition to part or all of the sentence for the new offense. *Id.* arts. 70(7), 67(1).

When the offender has successfully completed probation, the ASU officer gives the offender a certificate of release from sentence and informs the police. Upon release from the sentence

imposed by the court judgment the offender's personal file is archived. ALTERNATIVE PUNISHMENT DECREE arts. 58, 59.

As mentioned, implementation of many of the above dispositions is relegated to the ASU. Reportedly, this unit has an extremely small staff and only has a one-room office in the CED. There is one prosecutor in Yerevan assigned to work with the CED. While the CED has 13 total execution centers, only 4 are outside Yerevan.

The state of the ASU is severely detrimental to the effectiveness of monitoring and implementation of alternative measures, since the few staff members assigned to the unit are overworked. Most interviewees agreed that the level of supervision of offenders on probation is not as strict as it should be. An advocate stated there was really no meaningful supervision of probationers, as usually courts do not impose any obligations on offenders beyond appearing when asked and signing in at the CED office. Typically, it was reported that the offender is required to sign in with a CED caseworker at least once per month. It was reported that some police departments play a role in supervising probationers and employ a "personal card system" whereby they note new administrative or criminal violations committed by an offender. One prosecutor believed there needs to be stricter and more active supervision to prevent recidivism. This is especially true in the case of juveniles who often have "social problems" at home and may commit serious crimes. Closer and more effective supervision of younger offenders could prevent further criminal problems. According to the ASU, there were 2,026 individuals on probation in 2009, and, of that number, 36 committed new crimes and were then sent to prison to serve their sentences. No statistics were available reflecting the total number of probation violations that did not result in the offender's being sent to prison.

Factor 18: Revocation of Non-Incarcerative Dispositions

Non-incarcerative dispositions are only revoked and replaced by incarceration by the sentencing authority for significant violations, in the absence of suitable alternatives, and after affording the offender his due process rights.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Insufficient resources are allocated to effectively supervise individuals sentenced to non-incarcerative measures, and there is a lack of specific procedures to address violations. Minimal safeguards exist to protect the rights of offenders facing revocation of non-incarcerative dispositions.	

Analysis/Background:

Armenia's Criminal Code provides for specific sanctions for non-compliance with the non-incarcerative dispositions discussed above. In the case of fines, the Criminal Code states that if the offender cannot pay all or part of the fine, the court substitutes public work as the appropriate punishment with each minimum salary equivalent to five hours of public work (the substituted punishment must be a minimum of 270 hours and a maximum of 2,200 hours). CRIM. CODE. art. 51(4). If an offender refuses to perform public work, the court replaces the unperformed part of the public work with imprisonment, with one day of imprisonment for every 3 hours of public work remaining. *Id.* art. 54(5). For sentences of probation, if the offender willfully evades the conditions imposed by the court or commits a minor or negligent crime, the court will consider revoking the probation. *Id.* art. 70(6). If the offender commits a further medium gravity or grave crime, or if the court decides to cancel probation because of the commission of a minor or negligent crime, the offender is required to serve both the sentence of imprisonment that was not applied during his period of probation in addition to part or all of sentence for the new offense. *Id.* arts. 70(7), 67(1).

The offender's rights are protected while the court decision is being implemented. When the court discusses the issues related to the implementation of its decision, the offender is entitled to participate in the court session and to testify, present evidence, initiate petitions and challenges, to familiarize himself with all materials of the case, and to appeal the court's actions and decisions. CRIM. PROC. CODE art. 429. Issues concerning the reduction or termination of probation are resolved by the court with jurisdiction over the area of the offender's residence. *Id.* art. 437. Issues concerning the execution of court decisions are considered by the court in a court session with the participation of the offender and his lawyer. The consideration of the case begins with the announcement of the petition by the chairman, after which the court examines the evidence and hears the statements of persons present at the court session. The last to take the floor is the offender or his lawyer. After that, the court retreats to the deliberations room to make a decision. *Id.* art. 438.

It is not clear, however, what procedures are actually followed concerning breaches of non-incarcerative dispositions, especially involving the right to counsel. It is not even clear whether courts actually hold hearings to address violations of the conditions of non-incarcerative dispositions, although when asked this question in relation to a specific case, one judge responded, "yes, we have had a hearing." Public defenders do not typically appear at such a hearing, though they indicated that if the court or defendant so requested, they would appear.

When asked how quickly the courts revoke the option of performing public work and impose imprisonment, an interviewee estimated this occurred 50% of the time. Likewise, it was reported that if an offender violates his probation multiple times, without committing a criminal offense, the CED representative usually moves for revocation and imposition of imprisonment.

While interviewees presumed that general legislative provisions regarding sentencing apply during this phase, it was unclear what factors the judges actually consider, especially when possibly ordering an offender originally given a non-incarcerative disposition to serve a prison sentence. Several judges indicated they try to use imprisonment as a last resort, considering the gravity of the crime and the nature of the violations.

V. Mechanisms for Challenging a Sentence of Incarceration

Factor 19: Extraordinary Remedies

Legal mechanisms are available for a person sentenced to incarceration or otherwise deprived of liberty following conviction of a crime to challenge the lawfulness of his confinement before a judicial authority, either within the conviction and appeals process itself or as a separate legal action.

Conclusion	Correlation: Neutral
<p>Armenia currently lacks consistent constitutional or legislative provisions setting forth any extraordinary remedies. However, offenders may be exempted from punishment in specified circumstances.</p>	

Analysis/Background:

There are no extraordinary remedies available under Armenian law to challenge unlawful confinement after conviction for a crime. An individual sentenced to imprisonment or disciplinary battalion may be released on parole upon a court's finding that it is not necessary to his correction to serve the remaining part of his sentence. CRIM. CODE art. 76(1). The court, upon the petition of the body in charge of the execution of the punishment, may parole the defendant or substitute the unserved part of the sentence with a less severe punishment. CRIM. PROC. CODE art. 434. The defendant, his lawyer, or legal representative may also apply. *Id.* If the defendant develops a chronic medical condition, based on the conclusion of a medical commission, the court, upon the penitentiary's petition, may exempt the defendant from serving the remainder of his sentence. *Id.* art. 432. If the defendant recovers, he may have to complete his sentence. CRIM. CODE art. 79. If a defendant develops a severe disease after committing a crime or after the issuance of a sentence, which prevents him from serving the sentence, the court may exempt him from serving the sentence, after taking into account the gravity of the committed crime, the personality of the convict, the nature of the disease, and other circumstances. *Id.*

Pregnant women or persons with children under three years of age not sentenced to more than five years for a grave or very grave crime can be exempted from punishment. Alternatively, the punishment can be postponed by the court until the child reaches the age of three. CRIM. CODE art. 78.

A defendant convicted of a grave or medium gravity crime can be exempted from punishment, if serving the punishment may cause severe consequences for the defendant or his family, as a result of fire, manmade or natural disaster, the severe illness or death of the only capable member of the family, or other extraordinary circumstances. CRIM. CODE art. 80.

The court can also delay the actual serving of the sentence if the CED, the defendant, or his lawyer or legal representative submits a petition requesting such delay. The court can rescind the order for delay upon the CED's petition. CRIM. PROC. CODE art. 433.

Factor 20: Appeal of a Sentence of Incarceration

Persons sentenced to incarceration have a right to review of the factual and legal basis for the imposition of a sentence, including the revocation of non-incarcerative measures, before a higher judicial body.

Conclusion	Correlation: Neutral
Although the right to appeal exists in law, strictly legal appellate procedures are not followed consistently by all courts.	

Analysis/Background:

Within one month after publication of the verdict, the defendant may appeal his sentence to request review of the adequacy of the factual circumstances supporting his conviction, as well as the application of criminal and procedural law thereto. CRIM. PROC CODE arts. 376, 379, 386. The one-month time limit also applies when a defendant's non-incarcerative punishment is revoked, and a sentence of confinement is imposed. *Id.* The appeals court may also review the specific provision under which the defendant was charged. *Id.* art. 397. In extraordinary circumstances, the appeals court may also consider new evidence. *Id.* arts. 381(6), 382(3), 385, 391. The appeals court may turn down or change the verdict of the trial court when the factual circumstances upon which the trial court grounded its verdict do not correspond to those examined by the appeals court, there has been an incorrect application of criminal law or a procedural error, or the punishment given does not correspond to the severity of the crime and the defendant's characteristics and personal circumstances. *Id.* art. 395. In the event that the appeals court concludes there has been an incorrect application of criminal law, it may apply a stricter law or order a more severe punishment. *Id.* art. 397. The appeals court may also reduce the punishment assessed after considering the severity of the crime and the defendant's personality. *Id.* art. 399. The verdict of the appellate court comes into force one month after it is announced. No later than 3 days after the verdict is announced, the appellate court is obliged to send the decision to the defendant/acquitted, the defense advocate or legal representatives, the prosecutor, and the victim and his representatives, and to the civil plaintiff and civil respondent and their representatives if they participated in the appellate trial. *Id.* art. 402. An appeal to the Court of Cassation may be initiated by the advocate for the defendant when there has been a breach of procedural or substantial rights or when new circumstances have emerged affecting the outcome of the case. *Id.* art. 406. If the judgment of the appeals courts results in the acquittal of the defendant or otherwise ends his punishment, the defendant is immediately released. *Id.* art. 427.3.

It should be noted that the prosecution may also appeal sentences perceived as too lenient, as well as acquittal verdicts. See LAW ON PROSECUTION art. 28.

A court of appeals judge stated that most appeals address the severity (or lack thereof) of the sentence or the actual provision under which the defendant was charged. It was also reported that the appellate courts were fairly lenient regarding what types of claims may to be heard, and do not typically reject applications which may not strictly follow legal requirements. According to statistics provided by the Public Defender's Office, in the *marzes*, public defenders initiated 25 appeals in the appeals court during the first term of 2010, with 5 being granted. During the same period, the PDO in Yerevan initiated 50 appeals with 11 being granted, and also initiated 22 appeals before the Court of Cassation, where 2 were granted.

Factor 21: Executive Clemency

Persons convicted of a crime have the opportunity to request clemency, pardon, amnesty, or commutation of sentence. Executive clemency is not used as a substitute for parole, probation, or other alternatives to confinement.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
There exists a lack of transparent, publically known procedures and considerations followed by the executive and the legislature with regard to pardon or amnesty applications.	

Analysis/Background:

The President of Armenia has constitutional authority to grant a pardon to convicted individuals. CONST art. 55.17; *see also* CRIM. CODE art. 83. The President may choose to give the offender a partial waiver of the main or supplementary sentence, replace the unserved portion of the punishment with a milder one, cancel the conviction, or, for those who have already completed their sentences, issue a waiver for any further pecuniary damages imposed as a result of the punishment. PRESIDENT'S DECREE ON THE PROCEDURE OF DISCUSSING THE PARDON APPLICATIONS, no. NH-183-N (*adopted* Nov. 19, 2003) [hereinafter PARDON DECREE]. An act of amnesty may be adopted by the legislature serving to completely or partially exempt the defendant from the basic as well as from the supplementary punishment. Any unserved part of the punishment may be replaced with a softer punishment, or the criminal record can be expunged. CRIM. CODE art. 82.

The Pardon Decree states that the President should give due regard to the nature of the committed crime, the degree of its public danger, the individual characteristics of the convict, his/her attitude towards work, his/her family conditions, the social status of convict's family and other circumstances worth consideration. In practice, however, there are few restrictions or limits placed on the executive regarding pardons, especially in terms or relevant factors to be considered, including the gravity of the crime being considered for pardon, the criminal history of the applicant, or the opinions of the victims. It is used most often when dealing with younger or elderly defendants.

The Pardon Decree sets forth the following procedure: defendants who have been previously granted parole, amnesty or pardon or whose unserved punishment has been replaced with a milder one, and have committed intentional crimes prior to conviction's expiration or cancelation, can receive a pardon only in very extraordinary circumstances. The applications for pardon are referred to the President's office by the administration of the respective penitentiary institution. The latter attaches necessary documentation about the convict's personal characterization and other necessary data to the pardon requests. The requests are reviewed by the Pardon Commission within the President's office. The commission is formed by the President and the decisions are passed by the majority of the commission members' votes. Pardon requests of defendants sentenced to life imprisonment are forwarded to the Chairman of the Court of Cassation and the Minister of the Justice for their review and recommendations; within two weeks, they provide their analysis of the circumstances in which the convict committed the crime, data about the offender's individual characteristics, and their recommendations. Pardon requests may also be referred to the Office of the Prosecutor, the National Security Service, or the RA Justice Council for their opinion. The pardon requests, together with the commission's suggestions, are forwarded to the President for his consideration. The President publishes lists setting forth all applications considered, whether denied or granted. If the pardon request is denied and there are no new circumstances, the same request can be referred to the President no earlier than after 6 months after the denial (no earlier than one year if the subject matter of the pardon request involved grave or very grave crimes). The President's decision to grant pardon is subject to immediate execution. The Department for Issues

of Pardon, Nationality, and Awards within the President's office is in charge of supervising the proper implementation of the Pardon Decree.

In addition to executive clemency, a person may be exempted from criminal liability by an act of amnesty adopted by the legislature. *See* CRIM. CODE art. 82. In cases of pardon or amnesty, the individual may be exempted from punishment, have his punishment replaced with a lighter one, or have his criminal record expunged. *See id.* arts. 82, 83. The latter can reportedly be problematic, however, in instances when the same individual reoffends, and the original conviction is not allowed to be considered in addressing or enhancing the second offense, including being used as an aggravating factor in the second instance for charging and/or sentencing. *See* CRIM. CODE art 84.

VI. Detention Practices

Factor 22: Procedures During Confinement

Different categories of persons deprived of liberty are kept in separate institutions or parts thereof. Solitary confinement is forbidden or its use is extremely limited.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>At the post-conviction stage, different categories of prisoners are generally separated according to law and the use of solitary confinement and other harsh measures is limited. At the arrest and pretrial stages, proper confinement procedures are enshrined in law but are generally not followed.</p>	

Analysis/Background:

The stated aim of prison regulations is to ensure conditions conducive to prisoners' dignity, minimize the psychological impact of imprisonment, secure contact with prisoners' families and the outside world, and support prisoners in developing skills beneficial to his life after release. PENITENTIARY CODE art. 70(2). The main requirements of the regulations are to ensure isolation of convicts from society and, as prescribed by law, other prisoners; to ensure that each prisoner properly fulfills his responsibilities; to adapt conditions for each prisoner in light of his personality, behavior, and the degree of danger posed by his crime; and to supervise prisoners so as to prevent the commission of new crimes. *Id.* art. 70(3). In addition to the regulations set forth in the Penitentiary Code, penitentiaries must develop their own internal bylaws prescribing the procedure for admitting prisoners; the rules for prisoner conduct; items that prisoners are prohibited from possessing; the procedure for searches and seizures; visit, telephone, and correspondence procedures; and prisoners' daily routine. *Id.* art. 72(1). The bylaws must be publicly posted within the correctional institution, and prisoners may request and obtain additional information on the bylaws. *Id.* art 72(2).

There are five types of penitentiaries in the Republic of Armenia: open correctional institutions, semi-open correctional institutions, semi-closed correctional institutions, closed correctional institutions, and medical correctional institutions. *Id.* art. 99. A placement committee established within the MOJ's CED determines in what type of facility an offender will be housed on based upon the type of crime, with persons convicted of negligent crimes serving their sentences in open institutions; first-time, intentional minor, medium gravity, or grave crimes in semi-open institutions; first-time very grave crimes with a sentence of less than 10 years or dangerous repeat offenders in semi-closed; and very grave crimes with a sentence of more than 10 years or very dangerous repeat offenders in closed institutions. *Id.* art. 100(2). Prisoners needing medical care are assigned to medical correctional institutions. *Id.* Prisoners at open correctional institutions live in a residential setting, have freedom of movement within the facility, and may receive permission to leave the facility; prisoners in semi-open institutions live in a residential setting and have freedom of movement within the facility during the day; prisoners in a semi-closed institution are held in shared cells and have freedom of movement for at least three hours during the day within limited boundaries; and prisoners in closed correctional institutions are held in shared, isolated cells and may be confined to a cell alone at the discretion of the head of the institution. *Id.* arts. 103–106.

The placement committee may move prisoners, including juvenile prisoners, to correctional institutions with a lower level of isolation based upon good behavior and the proportion of the sentence served in the current facility. *Id.* art. 102(1). Likewise, the committee may move prisoners, including juvenile prisoners, to correctional institutions with a higher level of isolation based upon negative behavior or upon the prisoner's request (for instance, due to security concerns), except that adults convicted of a negligent crime may not be moved to a semi-closed or closed institution

and juveniles convicted of a negligent crime may not be moved to any higher level of isolation. *Id.* art. 102(2). Different levels of correctional institutions generally exist within the same penitentiary complex, such that being moved to a different level of isolation does not generally entail being transferred to a different facility.

Different classes of prisoners must be held separately, including men and women; juveniles and adults, except that adults who were sentenced as juveniles may remain in a juvenile facility while between the ages of 18–21; first-time and repeat offenders, except for first-time offenders convicted of very grave crimes; prisoners with contagious and dangerous diseases; prisoners facing threats to their life or health; prisoners convicted of negligent and intentional crimes; and prisoners serving life sentences. *Id.* art. 68(1). Prisoners may participate in social, psychological, legal, employment, educational, cultural, or sport activities within the same institution with other prisoners from whom they would normally be held separately. *Id.* art. 68(3). Prisoners may be transferred to another penitentiary in extraordinary circumstances, including due to illness or personal security concerns. *Id.* art. 69.

Prisoners may be punished by transfer to a higher-level institution for intentional misconduct including threats against the correctional institution administration, disobedience or disrespect, organizing or participating in riots, or committing two or more breaches of penitentiary procedure within one year provided he was fined for each breach. *Id.* art. 96(1). Prisoners may be punished within the penitentiary by transfer to a solitary punishment cell for a specified period. Punishments must correspond to the gravity and nature of the misconduct, be handed down within no more than 15 days of the discovery of the misconduct, and be stated in writing. Prisoners with children housed within the penitentiary complex, breastfeeding mothers, pregnant women, and women who have recently given birth may not be transferred to a punishment cell. *Id.* art. 97. While in a punishment cell, prisoners may not have visits except as prescribed by law, use the telephone, receive correspondence, or access media, but they are entitled to purchase food and essentials and to one hour of exercise per day. *Id.* art. 98. Prisoners held in punishment cells must be under medical supervision and their punishment may be terminated upon medical advice. *Id.*

Some rights of prisoners, including the rights to visits and correspondence may be suspended in emergency situations declared by the head of the authorized state body in cases of natural disasters, military activity, riots or mass disorder, emergencies within the penitentiary, or imminent threat of attack on the penitentiary. *Id.* art. 71(1), (3). Emergency situations may be declared for up to 30 days and extended for up to 30 additional days, except in the case of epidemiological threats where they may be extended until the threat has passed. *Id.* art. 71(2). The prison administration may undertake measures to restrict the rights of prisoners in the case of imminent threat to the life and health of prisoners, and must provide immediate notice to the Head of the Central Authority of the Penitentiary Service and the head of the authorized state body. *Id.* art. 71(4). The prison administration must immediately notify the prisoners when an emergency situation is declared. *Id.* art. 71(5).

Reportedly, the confinement procedures set forth by law are generally followed within Armenian penitentiaries, although overcrowding has sometimes led to different categories of prisoners being detained together.¹⁷ Moreover, there are reports of prisoners being denied necessary medical care; some perceive that medical care is denied in retaliation against political prisoners or offenders whose victims have political connections. See, e.g., RADIO FREE EUROPE/RADIO LIBERTY, *Armenia Fined by European Court for 'Inhuman' Treatment of Prisoner* (Jun. 16, 2010).

¹⁷ For a detailed evaluation of conditions in Armenian detention facilities, which is beyond the scope of this report, see GROUP OF PUBLIC OBSERVERS CONDUCTING PUBLIC MONITORING OF PENITENTIARY INSTITUTIONS AND BODIES OF THE MOJ OF THE REPUBLIC OF ARMENIA, PENITENTIARY SYSTEM OF THE MOJ OF THE REPUBLIC OF ARMENIA IN 2008 REPORT (2009) [hereinafter PENITENTIARY SYSTEM 2008 REPORT].

The situation is more problematic at the arrest and pretrial stages. Upon apprehension, individuals may be held up to three hours by police while an arrest protocol is drawn up. CRIM. PROC. CODE art. 131.1 Arrest of suspects caught *in flagrante delicto* as well as of suspects captured following a search is carried out at Confinement Places for Arrestees. CRIM. PROC. CODE art. 133. In Yerevan, there is one central CPA, while in the *marzes* CPAs are located within the police station. By law, arrest may last no more than 72 hours after apprehension of the suspect. CRIM. PROC. CODE arts. 129, 130; *see also* Factor 7 above. Arrestees are subject to a sanitary examination, fingerprinting, photographing, and search, and a doctor must be called if the arrestee shows signs of injury or disease or if he complains about his health. The arrestee may select his own doctor, and the medical exam must be conducted out of earshot of CPA officers. INTERNAL RULES FOR CONFINEMENT PLACES FOR ARRESTEES FUNCTIONING UNDER THE POLICE OF THE REPUBLIC OF ARMENIA paras. 12, 13, 15–17 [hereinafter CPA RULES]. Arrestees are entitled to meet with counsel without restrictions on the length or number of meetings and out of earshot of CPA officers, *id.* para. 53, and also to meet with close family members upon the family member's request, *id.* paras. 52–58. The prosecutor, investigator, or court may order the CPA to detain arrestees suspected of involvement in the same or related crimes separately. CRIM. PROC. CODE. art. 137(3).

Once a suspect has been charged, he is transferred to a detention facility. Pretrial detainees may be confined in a detention facility for two months prior to the beginning of trial, which may be extended up to 6 months or 12 months for grave or very grave crimes. CRIM. PROC. CODE art. 138; *see also* Factor 8 above. There is no legal limit on the length of detention during a trial. In practice, pretrial detention is carried out in separate sections of penitentiaries and the same procedures that the penitentiary follows with respect to convicts are followed for pretrial detainees. The detention facility is responsible for providing security for pretrial detainees; promptly delivering case documents to them; allowing the detainee to meet with counsel confidentially and without limitations as to the length or number of meetings; transporting the detainee to court proceedings; and to immediately release detainees who are unlawfully detained, have posted bail, or whose detention term expires. *Id.* art. 141.

In practice, proper procedures are not generally followed at CPAs. It is reportedly common to hold an individual without giving him the formal status of suspect in order to avoid beginning the 72-hour arrest period and its accompanying legal requirements. Physical coercion against persons detained at CPAs is also reported to be commonplace, as is the denial of medical care as a way to coerce them to make statements. The SIS is perceived to be ineffective at best and, at worst, engaged in cover-ups of illegal police activity.

Pretrial detention facilities are reportedly often unable to follow procedures due to conditions such as overcrowding or lack of resources. Interviewees in the regions particularly cited difficulties in transporting detainees to court, due to the high cost of gas, limited personnel to accompany detainees, and the distance between detention facilities and the courts. Interviewees reported that it is common for pretrial detention facility administration and staff to become involved in the case on the side of the prosecution, encouraging the detainee to confess to crimes, using statements he makes to medical or psychological staff against him, reading his confidential correspondence, and even eavesdropping on meetings with his advocate. In practice, pretrial detainees are segregated from convicted prisoners, although they are often held within the same facility, and different categories of pretrial detainees are held in separate facilities.

Factor 23: Mechanisms for Complaints

Mechanisms exist for persons deprived of liberty to seek remedies for mistreatment and other abuses, both within the institution where they are confined and through the judicial system.

Conclusion	Correlation: Negative
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No effective remedies exist under Armenian law for mistreatment and other violations during detention or imprisonment. Individual detention facilities generally have their own established complaint procedures, which are not always used by detainees or followed by staff. Procedures during arrest are not followed, and a police unit dedicated to investigating mistreatment is reportedly ineffective.

Analysis/Background:

The prosecutor's office is charged with supervising sentences and monitoring the observance of laws in CPAs and detention facilities. LAW ON TREATMENT OF ARRESTEES AND DETAINEES art. 46, LAW ON THE PROSECUTION art. 4. However, individuals seeking vindication for mistreatment and other legal violations during detention or imprisonment are unlikely to find remedies under Armenian law. No legal remedies exist for detainees or prisoners to sue for violations of their rights, and advocates report having to resort to suits under the Convention against Torture, European Convention on Human Rights, or other international agreements. An exception is that, by law, if an individual is acquitted, he theoretically has the right to sue for damages due to mistake or malfeasance, CRIM. PROC. CODE arts. 66, 67, but interviewees were only aware of one case where an acquitted person successfully recovered damages. See Factors 8, 11 above. In this noted case, a prosecutor allegedly gave an innocent man who had been unlawfully detained and forced to confess a copy of *The Count of Monte Cristo*, the classic Alexandre Dumas novel about the revenge of a man wrongfully imprisoned for murder, stating that this was his "compensation."¹⁸ He later recovered damages for lost wages during his incarceration.

CPA officers are required to collect complaints, requests, and recommendations from arrestees and forward them to the bodies to which they are addressed or, if addressed to the CPA, report them to the local police head. CPA RULES paras. 46–48. The CPA must cover the cost of mailing the complaint, request, or recommendation if the arrestee does not have adequate means. *Id.* para. 51. Retaliation against arrestees who file complaints, requests, or recommendations is prohibited. *Id.* para. 52. In practice, however, these procedures are almost universally disregarded. The SIS is dedicated to investigating mistreatment by state actors, but in practice, interviewees reported that this unit is not used to investigate mistreatment so much as to cover it up. One detention facility administrator stated that the physical condition of incoming detainees is documented upon their arrival, so that the detention facility staff will not be accused of being responsible for mistreatment that occurred in the police station or CPA.

¹⁸ According to the statement of facts in his pending ECHR case, the individual involved, Armen Poghosyan, had been convicted of rape and murder in 1998, but his conviction was quashed by the Court of Cassation in 2004. The investigator and police officers were charged, and two officers were convicted in Lori Regional Court, for unlawfully detaining Mr. Poghosyan and ill treating him, forcing him to confess. The court applied amnesty so that the convicted officers did not have to serve their sentences. Mr. Poghosyan did pursue a civil claim and was awarded AMD 6,250,000 (USD 16,361) for lost income for the period of October 11, 1998, and April 17, 2004, while he was detained. His case is currently pending before the ECHR. See Statement of Facts, *Armen Poghosyan and Anahit Baghdasaryan v. Armenia*, no. 22999/06 (pending).

Similarly, pretrial detention facility administrators are required to register detainees' complaints and statements and forward them to the court, prosecutor, investigator, or inquiry body immediately, but no later than within 12 hours and without examining or censoring them. CRIM. PROC. CODE art. 141. Reportedly, mistreatment during arrest and initial detention is common, while mistreatment during pretrial detention and incarceration is less common. However, observers have noted that detainees and prisoners are reluctant to make complaints or report the use of violence against them or other prisoners, and, although staff are required to report use of force to the prosecutor's office, penitentiary staff often fail to properly document the use of force while penitentiary medical staff also fail to document prisoner injuries. PENITENTIARY SYSTEM 2008 REPORT 8.

Penitentiaries generally establish their own mechanisms for complaints as part of the bylaws discussed in Factor 22 above. Generally, prisoners may complain directly to the head of the detention facility, who will decide if and how to remedy the alleged situation. No independent body exists to investigate allegations of detention facility staff mistreatment of detainees.

Torture, defined as willfully causing strong pain or bodily or mental suffering to a person, is illegal in Armenia. See CRIM. CODE art. 119, CRIM. PROC. CODE art. 11(7). Interviewees were aware of only one case in state actors had been prosecuted for actions amounting to torture, in a case in which military police officers were convicted of abuse of power for beating a suspect and two witnesses to a homicide in order to force them to make statements. *Misha Harutyunyan v. Armenia*, application no. 36549/03 (Jun. 28, 2007). Interviewees noted that the Criminal Code's definition of torture appears not to comply with the Convention against Torture, as it is not specific to state actors, it does not include cover-ups or failure to report torture, and it is only a medium gravity crime. It is also illegal to force a suspect, witness, victim, or other party to give testimony, including by extortion or physical violence, but this would result in a criminal penalty for the actor who forced the individual to testify while no remedy is available to the defendant. See CRIM. CODE art. 341. Some interviewees reported that judges have occasionally refused to admit evidence gathered by force, as required by article 105 of the Criminal Procedure Code, which prohibits the admission of such evidence; however, most judges routinely refuse to exclude such evidence.

VII. Parole and Early Release

Factor 24: Structure of the Parole System

A legal framework for conditional release or parole exists, including mechanisms for the supervision of parolees, and is used to move incarcerated persons to a noncustodial environment at the earliest possible stage.

Conclusion	Correlation: Negative
<p>The structure of the Armenian parole system was modified in 2006 with the creation of independent parole commissions, without the approval of which requests for parole cannot be presented to the competent court even when the prison administration has recommended it. Since the creation of the IPCs, parole has reportedly been granted infrequently, leading to higher prison populations and related problems. Many observers believe the intent of the IPCs is to reduce parole. Mechanisms exist for the supervision of parolees.</p>	

Analysis/Background:

An individual sentenced to imprisonment, public work, corrective labor, or disciplinary battalion may be released on parole upon a court's finding that it is not necessary to his correction to serve the remaining part of his sentence. CRIM. CODE art. 76(1); CRIM. PROC. CODE art. 434. The individual may also be exempted from any supplementary punishment, such as fines, prohibition on practicing a profession, deprivation of titles, or confiscation of property. CRIM. CODE art. 76(1), *see also* art. 50. The Armenian parole system underwent significant changes beginning in 2006, when the President issued a decree creating independent parole commissions. DECREE OF THE PRESIDENT OF THE REPUBLIC OF ARMENIA ON ESTABLISHING THE RULES FOR FORMATION AND ACTIVITIES OF INDEPENDENT COMMISSIONS ON PAROLE AND REPLACEMENT OF THE REMAINING PART OF THE SENTENCE WITH A Milder ONE, no. PD-163-N (*adopted* Jul. 31, 2006) [hereinafter Parole Decree]. There are currently three IPCs, serving distinct geographical areas, each with 8 members appointed by the President. The terms of the current members will expire in June 2010 and new members can be appointed by the President. The IPCs report directly to the President.

When a prisoner has completed the legally-prescribed minimum portion of his sentence, the administration of the penitentiary where he is serving his sentence must first review the possibility of releasing him on parole or substituting the remainder of his sentence with a lighter penalty. PENITENTIARY CODE art. 115(1). If the prison administration determines that the prisoner should be paroled, they then refer their decision to the IPC for approval. If the IPC approves, the prison administration then submits an application to the local court with jurisdiction over the area where the prison is located (which may not be the court that originally adjudicated the criminal case against the prisoner) accompanied by the prisoner's file, and that court may approve or deny parole. *Id.* art. 115(1)–(2). The IPC's decision is only referred to a court in the event that the IPC recommends parole. The IPC votes in private and does not give reasons for its decision.

The law provides for the supervision of parolees in accordance with procedure defined by the government. PENITENTIARY CODE art. 120. Supervision of parolees is carried out by the Alternative Sentencing Unit of the MOJ's Criminal Execution Department. *Id.*

The creation of the IPCs is widely perceived to have led to a number of problems in the Armenian penitentiary system. Although statistics are not available comparing the incidence of parole prior to the creation of the IPC to current parole statistics, observers report that, since the IPCs began functioning, fewer people have been released on parole and thus the prison population has grown. Prisons reportedly lack resources to manage the increased number of prisoners, and prisoners have reportedly become more aggressive and less compliant with disciplinary rules as they no

longer see a possibility of early release based on good behavior. Reportedly, the IPCs were created in order to reduce the number of prisoners released on parole, although interviewees were not aware of any specific incidents of abuse that may have led to the policy decision to reduce parole. Frequently, interviewees stated that “independent” parole commission is a misnomer; one interviewee even mentioned a situation where a defense advocate who is a member of an IPC actually participated in the parole decision for his own client. Reportedly, the vast majority of the members are senior-level executive branch and law enforcement officials with very few having a background in human rights or criminal defense, and all three IPCs are headed by police officials. It is widely perceived that the purpose of the IPCs is to block parole and that the composition of the IPCs stacks the deck against the prisoners.

Factor 25: Decision to Grant or Deny Parole

Decisions granting or denying parole, as well as imposing or modifying conditions and measures attached to it, are made by authorities established by law in accordance with procedural safeguards.

Conclusion	Correlation: Negative
<p>Consideration of parole by the prison administration is automatic, as is reconsideration following the IPC’s denial of parole. There are no legally-established criteria for the IPC’s decision to recommend or deny parole. The IPC’s decisions are not transparent, and serious doubts exist as to their objectivity. In cases where the IPC’s recommendation for parole is referred to a court, the courts are generally perceived to be fair and thorough in making the ultimate decision to grant or deny parole.</p>	

Analysis/Background:

As discussed above, the decision to grant or deny parole is made by a multi-step process, and parole may only be granted where there is unanimity among the prison administration, IPC, and competent court, whereas it can be denied by the decision any of those three institutions. If the IPC does not approve the prison administration’s recommendation to grant parole, the prison administration reconsiders the case after three months, PENITENTIARY CODE art. 115(3); if the prisoner was serving a life sentence, the prison administration waits a year and a half to reconsider. *Id.* art. 116(2). If the IPC approves but the court denies parole, the case may not be referred to the court again for six months or, in the case of a life sentence, three years. *Id.* arts. 115(3), 116(2). A prisoner may file a court appeal of the prison administration’s decision not to refer his case to the IPC. *Id.* art. 115(4). In 2008, the Constitutional Court ruled unconstitutional the provision of the Penitentiary Code stating that the IPC’s decisions are not appealable unless they violate the law or the Parole Decree. *Case of Ashot Harutyunyan*, no. SDV-733 (Feb. 5, 2008); *see also* PENITENTIARY CODE art. 115(4). However, as offenders are generally not represented by counsel during consideration of parole, it is unclear whether they are aware of this right, and since reasons are not given for the IPC’s decision, it would be difficult to substantiate an appeal. The IPC members vote in private, not even disclosing their votes to one another, and the IPCs do not provide reasoning for their decisions. Prosecutors may and do appeal the court’s decision to grant parole, LAW ON PROSECUTION art. 28; although permitted to appeal, CRIM. PROC. CODE art. 429(3), it is unclear whether a prisoner has ever appealed a court’s denial of parole.

The prison administration’s consideration of parole is automatic when the prisoner has served the minimum portion of his sentence as prescribed by the relevant law, as is the reconsideration after a set time following denial by the IPC. PENITENTIARY CODE art. 115(1), (3), art. 116(2). If the prison administration denies parole, it may reconsider its decision after three months. GOVERNMENT DECREE ON THE PROCEDURE OF CONSIDERATION OF ISSUES ON SUBMITTING A MOTION ON EARLY

CONDITIONAL RELEASE FROM THE SENTENCE OR SUBSTITUTION OF THE REMAINING PORTION OF THE SENTENCE WITH A LIGHTER SENTENCE OF A CONVICTS BY THE SENTENCE EXECUTING INSTITUTION, no. 1304-N (*adopted* Aug. 24, 2006). There is no mechanism by which a prisoner may request consideration of his case outside of the automatic review. One interviewee complained that the previous Criminal Procedure Code allowed defense advocates to move for parole, but this is no longer possible in the current system. There is no guarantee of counsel during the parole consideration process, although prisoners are not prevented from seeking counsel. Interviewees reported that it was practically unheard of for prisoners to be represented and that consideration of parole is mostly done in private based upon the prisoner’s written file, such that there would be no role for an advocate.

There are established criteria that the prison administration should consider in determining whether to recommend parole, which are set forth in a reference letter prepared by a special unit within the penitentiary. The primary criterion is the prisoner’s behavior during his sentence, but the letter should also contain background information including information on prior convictions, work and educational history, health, family background, possible social situation upon release, and restitution paid to victims. *Republic of Armenia Government Decision no. 44-N of May 30, 2008 on Approving the Policy of Structural Units Implementing Social, Psychological and Legal Activities with Detainees and Convicts*, para. 48–49. Upon deciding to recommend parole, the prison administration forwards the reference letter to the IPC. Parole Decree art. 7. A subcommittee of the IPC will review the prisoner’s file and meet with the prisoner, and may also meet with the prison administration. *Id.* There are no legally-established guidelines for the IPC’s decision.

CONSIDERATION OF PAROLE IN ARMENIA, 2008–2009

Year	Cases considered by prison admin.	Cases considered by IPCs	Cases referred to courts	Percent of all cases ultimately heard by courts
2008	3,289	1,798 (54.7%)	586 (32.6%)	17.8%
2009 (through October 1)	2,617	1,334 (50.9%)	483 (36.2%)	18.4%

Source: MOJ.

Reportedly, the courts deny about 15–20% of cases where the IPC has recommended parole, such that, in total, an estimated 85% of eligible prisoners are denied parole.

Interviewees reported that both the prison administration and the courts are generally fair and thorough in making their decisions. Many interviewees cited a lack of transparency and objectivity in the IPC’s decisions, emphasizing that the secret voting procedure and lack of reasoning for decisions make it impossible to ascertain the level of consideration and deliberation given to each case. Some IPC members stated that they are fair and objective and deliberate fully. However, some interviewees from institutions represented in the IPC membership stated that they had withdrawn or considered withdrawing their representative because they perceived that the IPCs were biased and not objective. One representative of the human rights community emphasized his belief, however, that the old system where the prison administration referred cases directly to the courts was equally biased, but in favor of parole rather than against it.

Factor 26: Implementation and Monitoring of Parole

Parole is effectively implemented and monitored by competent agencies specified in law with the nature, duration, and intensity of supervision adaptable to each individual case. Parolees are notified of the conditions of parole and the consequences of noncompliance. Monitoring agencies notify the competent authority of significant failures to comply with the conditions of parole.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Although Armenian law provides for the supervision of parolees with conditions adaptable to each individual case, in practice, effective supervision of parolees is non-existent.	

Analysis/Background:

The Penitentiary Code provides for the supervision of parolees in accordance with procedures defined by the government. PENITENTIARY CODE art. 120. Supervision of parolees is carried out by the Alternative Sentencing Unit of the MOJ's Criminal Execution Department. *Id.* Courts may impose obligations upon a prisoner when releasing him on parole, including restrictions on changing his residence, ordering him to undergo treatment for addictions, ordering him to provide financial support for his family, or other duties upon motion of the supervising body. CRIM. CODE arts. 76(2), 70(5). As parole is infrequently granted, supervision of parolees is mostly *ad hoc*. Supervision generally takes the form of requiring the parolee to report to the ASU and sign in on a regularly-scheduled basis, but no further measures, such as counseling, community service, or behavioral monitoring are taken to assist in reintegrating the parolee into society. Interviewees reported that this is largely due to a lack of resources to supervise parolees, and that community service in particular cannot be imposed on parolees, as there are not enough jobs available for non-offenders in need of paid work.

Factor 27: Revocation of Parole

Parole is only revoked by the competent authority in the absence of suitable alternatives and only while affording the convicted person procedural safeguards.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Parole may be revoked upon the motion of the supervisory body when a parolee commits a new crime before the expiration of the original term of his sentence or fails to comply with the obligations imposed on him by the court that granted his parole. Parole is revoked by the competent court at a hearing at with the ordinary due process guarantees.	

Analysis/Background:

Parole may be revoked upon the motion of the supervisory body when a parolee commits a new crime before the expiration of the original term of his sentence or willfully fails to comply with the obligations imposed on him by the court that granted his parole. CRIM. CODE art. 76(6). If the parolee willfully fails to comply with the parole obligations imposed by the court, the court that granted parole, upon the ASU's motion, terminates parole and requires the parolee to serve the rest of his sentence. *Id.* art. 76(6(1)); *see also* CRIM. PROC. CODE art. 437(1). If the parolee is convicted of a negligent crime, the court may, but is not required to, revoke parole. *Id.* art. 76(6(2)). If the parolee has been convicted of a willful crime or if the court decides to revoke parole following a

negligent crime, the court must impose the new sentence consecutive to the previous sentence with the total term of imprisonment not to exceed 20 years. CRIM. CODE art. 76(6(3)), art. 67. In cases where a parolee is alleged to have committed a new crime, revocation of parole is decided by the trial court for the new crime, not necessarily the court which initially imposed parole, and the parole is revoked at the same time as the imposition of the new sentence. *Id.* arts. 67, 76. The granting of parole by a first instance court may also be reversed by an appellate court upon the prosecution's appeal and an offender who has already been set at liberty may be required to return to prison upon reversal.

In practice, the system for revocation of parole is perceived to be fair on paper. However, interviewees cited concerns about corruption and transparency within the court system, noting that the same concerns that lead to the high incidence of detention, incarceration, and denial of parole also create conditions ripe for abuse regarding revocation of parole. In one noted incident in 2009, a businessman, Ashot Harutyunyan,¹⁹ died after having his parole reversed by an appellate court; his attorney contended that the court sent him back to prison because the judge had ties to a former business associate of Mr. Harutyunyan. See RADIO FREE EUROPE/RADIO LIBERTY, *Armenia Fined by European Court for 'Inhuman' Treatment of Prisoner* (Jun. 16, 2010). Although this contention has not been substantiated, it reflects the widespread perception that the parole system in Armenia is broken.

¹⁹ The same Mr. Harutyunyan was the party in the case discussed in Factor 25 above.

