



Office in Yerevan

Armenian Legislation on Trafficking in Human Beings

Legislative Gap Analysis

Democratization Programme

May 2006

Dear colleagues,

We are pleased to present you the results of the gap analysis on Armenian Anti-Trafficking Legislation.

The OSCE considers trafficking a security issue and views the fight against trafficking in human beings as a priority. Every year hundreds of thousands of women, men and children become victims of this horrendous crime, which attracts more and more sophisticated international criminal organizations due to high profits and relatively low risk.

In the recent years many states, including Armenia, have stepped up their efforts to criminalize trafficking and protect the victims. In Armenia, we have witnessed a significant improvement in the legislation over the past few years. Nevertheless, there is still considerable room for improvement. This analysis aims at mapping the gaps and outlining the main recommendations for further legislative reform efforts.

The gap analysis was conducted in the framework of anti-trafficking activities of the OSCE Office in Yerevan. Anti-trafficking activities have been at the core of the Democratization Programme of the OSCE Office in Yerevan since the establishment of the Office in February 1999.

The OSCE Office in Yerevan would like to thank Hugh Handeyside, the main author of this analysis, and Meline Petrosyan, who has been instrumental in providing access to national legislation, clarifying the concepts, translating and interpreting. We would also like to thank the ODIHR Legislative Support Unit, especially Marta Achler-Szelenbaum and Irina Urumova, for their invaluable comments on earlier drafts of this paper.

We hope that the legislative gap analysis will be useful in planning future strategies and activities in the field of anti-trafficking and criminal justice legislation reform in Armenia.

With best regards,



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Yerevan, May 2006

Executive Summary

1. The modification of Armenia's legal code in accordance with international instruments on trafficking in human beings is an ongoing effort. Although Armenia has embraced in principle the foremost international anti-trafficking conventions, its overall legislative effort to adopt the specific provisions of these conventions has been less focused and lacks the comprehensive, multi-front, human rights-based approach to combating trafficking that the conventions endorse.
2. The legislative definition of trafficking in human beings in Armenia is more expansive than definitions found in international treaties, but it is similar in comprehensiveness and gender-neutrality to its international analogs.
3. The Armenian definition is unclear and redundant in its approach to child trafficking.
4. Notwithstanding the definition of trafficking itself, Armenian law does not yet criminalize various associated processes that constitute important elements in the broader phenomenon of trafficking, such as the knowing use of the services of a trafficking victim or the alteration, concealment, or retention of travel or identity documents for the purpose of facilitating trafficking. Criminalizing such practices can offer powerful tools to law enforcement authorities, as can the ability to hold corporate entities and other legal persons criminally liable for involvement in the trafficking process, another tool that is not yet available in Armenia. Such legal persons, if accountable for their actions in support of trafficking, are likely to police their own activities more rigorously if the potential for criminal liability exists.
5. Punishments for trafficking violations in Armenia are not severe enough to deter those involved in the process from either initial involvement or a return to trafficking after having been prosecuted for previous violations. One indication of this lenience is the fact that trafficking may be sanctioned with a fine, a punishment that international treaties do not contemplate and that many traffickers can easily afford. Similarly, punishments for trafficking under aggravating circumstances are not significantly dissuasive; the minimum penalty is two years of correctional labor, the maximum penalty under the most egregious circumstances is eight years' imprisonment. Other countries commonly punish trafficking under such circumstances with up to twenty year or even life imprisonment. Moreover, while Armenian law appears lenient toward offenders, it still subjects victims of trafficking to prosecution for crimes they may have committed during the process, even under conditions that often amount to duress or compulsion.
6. Perhaps the area in which Armenian law has adapted least to the reality of trafficking is in victim assistance and protection. The current version of the Criminal Procedure Code (CPC) restricts protection only to victims, witnesses involved in the criminal proceeding, and their close relatives, but does not extend protection to other persons associated with the participant in the criminal proceeding. The August 2005 CPC draft amendments do not remedy this. Currently the Criminal Procedure Code requires that authorities respond initially to threats against victims or witnesses with an official warning, a measure that does little to put an end to such threats while



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eroding the security of the victims or witnesses themselves. The August 2005 draft amendments do not contain this.

7. For trafficking victims who do decide to take legal action or testify against offenders, assistance in various forms is critical to ensuring an effective, long-term recovery from the trafficking process. Armenian legislation does not provide such assistance, which should include secure accommodation, medical treatment, and education for children. In fact, some basic assistance measures that were proposed in draft amendments to the CPC have been eliminated from more recent drafts of the amendments.
8. Finally, for some highly transnational crimes such as trafficking, traditional territorially-based jurisdiction may not be sufficient to ensure prosecution of offenders. Armenia has not yet modified its CPC to allow for the possibility of extending jurisdiction for trafficking crimes when they are committed by or against Armenian nationals abroad. Moreover, Armenian legislation does not accommodate the need for repatriation of victims in a way that guarantees they will not be subjected to human rights violations or renewed threats upon return to their countries of origin.

I. Overview: International Instruments and Armenian Legislation

Trafficking in human beings is a persistent global problem that took on particular urgency in the wake of the breakdown of communist regimes in Eastern Europe and Eurasia in the early 1990s. Because of the inherently transnational nature of trafficking, efforts to combat it require international cooperation not only to apprehend perpetrators and protect victims, but also to ensure that the human rights of those affected by the trafficking process are not trampled in the process. To this end, international anti-trafficking efforts continue to evolve to account for the diverse processes that constitute trafficking (including forced labor, sexual exploitation, exploitation of the prostitution of others and trade in human organs), the need for prevention alongside prosecution, and the importance of explicit legislative protection of victims' rights throughout the trafficking process.

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (the Palermo Protocol) represented a significant step in establishing a comprehensive definition of trafficking in human beings and framing it as a human rights violation.¹ Prior to the adoption of the Palermo Protocol in November 2000, no international instrument existed specifically addressing trafficking in human beings, leaving states without a readily available basis on which to harmonize legislation or coordinate law enforcement efforts. At the time of this report, 117 countries have signed the Palermo Protocol and 85 countries have ratified or acceded to it, significantly expanding international cooperation on trafficking in human beings.

The Council of Europe Convention on Action against Trafficking in Human Beings (the CoE Convention) seeks to build on the foundation that the Palermo Protocol established and extend its provisions with regard to victims' rights, international cooperation, and gender equality.² Perhaps more significantly, the CoE Convention establishes a system of accountability via a two-pronged, independent monitoring mechanism that will observe and publicly report on member states' implementation of the Convention. The Council of Europe's Committee of Ministers adopted the Convention on 16 May 2005, when Armenia, along with thirteen other CoE member states, signed it. Although the Convention has not yet been ratified by any CoE states (ten states will have to do so before it enters into force generally), it clearly represents a new international standard in the realm of anti-trafficking, one that Armenia will have to meet if it is to follow through with ratifying the Convention.

Prior to adoption of the Palermo Protocol, Armenian law did not address trafficking in humans directly, and legal remedies to trafficking were subsumed within statutory provisions addressing prostitution (see Annex) or forced labor. Armenia signed the Protocol in November 2001 and signaled a more comprehensive legislative approach to trafficking

¹ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, UN GA Res. 55/25 [hereinafter Palermo Protocol].

² Council of Europe Convention on Action against Trafficking in Human Beings, May 16, 2005, CETS 197 [hereinafter CoE Convention].

through the ratification process. Articles specifically establishing the crime of trafficking were incorporated into the Criminal Code in Summer 2003.³ A year later, the National Assembly adopted amendments to these trafficking provisions that allowed for a more inclusive definition of trafficking (see Annex).⁴ The government is currently considering amendments to articles of the Criminal Procedural Code addressing victim and witness protection that are designed to more adequately address the challenges to prosecution inherent in the crime of trafficking in humans.

Despite these advancements, Armenian legislation does not include various provisions that the international treaties above hold to be critical elements in the fight against trafficking. Most significantly, Armenian law leaves trafficking victims vulnerable to criminal prosecution for offenses they may have committed under duress or misleading circumstances; the punishments for trafficking violations under Armenian law are lenient and raise questions about their deterrent value; and procedural victim or witness protection measures have not evolved in coordination with the portions of the criminal code that address trafficking and other related offences. These gaps between Armenian law and the international instruments will have to be addressed if Armenia is to achieve full compliance with the Palermo Protocol and ratify the CoE Convention.

This analysis is intended to evaluate legislative rather than executive measures. It therefore focuses more heavily on nominal statutory compliance with anti-trafficking treaties to which Armenia is a party than on the implementation of these statutory or treaty measures. To the extent that enforcement of domestic law or international instruments is lacking in Armenia, further inquiry obviously is warranted.

Finally, both the Palermo Protocol and the CoE Convention call for implementation of a series of measures designed to prevent trafficking in humans, discourage the demand for the services of trafficking victims, strengthen border control, and improve the security of travel or identity documents. This report does not focus extensively on these preventive measures.

³ Criminal Code [Crim. Code] Art. 132 (Arm.) (trans. American Bar Association/Central European and Eurasian Law Initiative (ABA/CEELI)).

⁴ The amendments removed the requirement that trafficking occur via threats of force, fraud, or other means associated with exploitation. See *Armenian Legislation* under “Defining Trafficking in Human Beings” below.

II. Defining Trafficking in Human Beings

International Instruments

Both the Palermo Protocol and the CoE Convention embrace a definition of trafficking that is designed to address comprehensively the phenomenon of trafficking at all stages, to transcend the association of trafficking solely with forced prostitution, to be gender-neutral, and to account for the variety of methods through which exploitation may be exercised against victims:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵

Both treaties also include in the definition of trafficking two further provisions intended to establish explicit protections for victims of trafficking. The first guarantees that the purported consent of a trafficking victim to exploitation of the sort detailed above does not constitute a defense to a charge of trafficking.⁶ This is a recognition of both the difficulties inherent in attempting to define what constitutes consent and the fact that many trafficking victims are not fully aware of the fate that awaits them when they voluntarily involve themselves in early stages of the trafficking process.

The second provision creates a lower threshold for trafficking that involves children (anyone under eighteen) by removing the requirement that the means—force, coercion, abduction, fraud, etc.—included in the definition be present when children are trafficked for the purpose of exploitation.⁷ The Convention acknowledges through this lower threshold that trafficking often involves children, many of whom may be exploited without resort to the sort of force, coercion, or fraud that may be necessary to exploit adults.

Armenian Legislation

The definition of trafficking adopted in Armenia after the ratification of the Palermo Protocol generally tracks with that of the international instruments above. Article 132 of the Armenian Criminal Code, originally adopted in August 2003 and amended in June 2004, defines trafficking as “the purchase or sale, recruitment, transportation, transfer, harbouring or receipt of persons, committed for the purpose of exploitation, forced labour or services, slavery or

⁵ Palermo Protocol, Art. 3; CoE Convention, Art. 4.

⁶ Palermo Protocol, Art. 3(b); CoE Convention, Art. 4(b).

⁷ Palermo Protocol, Art. 3(c); CoE Convention, Art. 4(c).

practices similar to slavery, or dependency or taking of organs or tissues of a person.”⁸ Given that this language is nearly identical in several respects to the Palermo Protocol/CoE Convention language, the Armenian provision is similarly comprehensive in terms of the multiple stages of trafficking, the various forms it can take (prostitution, forced labour, organ trafficking, etc.), and gender-neutrality. It also shares with the international conventions the requirement that the trafficking be undertaken with specific intent to exploit the victim (see Annex for full text of original and amended articles).

One significant difference between the Armenian definition of trafficking and that of the international conventions is that the Armenian definition does not require that the trafficking occur via force, coercion, abduction, fraud, deception, or abuse of vulnerability. This lack of a means requirement essentially lowers the threshold for prosecuting trafficking in adults in Armenia to that of trafficking in children under the international conventions, making trafficking easier to prove (because there are fewer required elements) under the Armenian version. The means requirements were removed from the Criminal Code as part of the June 2004 amendments, but it remains unclear how the changes will impact the prosecution of trafficking in Armenia.

Finally, criminal liability for trafficking in children in Armenia is somewhat clouded by the fact that a separate provision, Article 168, criminalizes child trafficking but does not define the offense or indicate how it supplants or interacts with Article 132 (see Annex).⁹ Indeed, the main portion of the Armenian definition of trafficking in Article 132 does not contain any direct mention of children, possibly because that definition does not include the means requirements that the international conventions use to differentiate between children and adults. Rather, Article 132 makes trafficking involving minors an aggravating circumstance. This overall lack of clarity in defining child trafficking extends into the realm of punishment, which is discussed in greater detail below.

Issues with the Armenian Definition of Trafficking in Human Beings

- The definition does not contain a provision removing the consent of the victim as a defense to a trafficking charge, and prosecutor discretion leaves open the possibility that criminal investigations of trafficking will not be pursued or completed.
- The existence of a separate but poorly defined offense for child trafficking detracts from the coherence of the general definition of trafficking in humans.

⁸ Crim. Code, Art. 132.1.

⁹ Ibid., Art. 168.

III. General Measures

International Instruments

The international conventions, particularly the CoE Convention, include several further provisions meant to criminalize other activities associated with trafficking. Some of the measures of the Convention are narrowly tailored to the challenges that trafficking poses, while others involve principles, such as corporate liability or criminalization of inchoate offenses that are common components of most domestic criminal codes.

The first of these measures is the independent criminalization of the use of the services of a trafficking victim, with the knowledge that the person is indeed a victim.¹⁰ This is clearly intended to reduce the demand for such services by creating liability among end-users who might otherwise be able to benefit from the trafficking process without incurring any of its risks. Although this measure is optional—parties to the CoE Convention must only consider criminalizing the use of such services—its adoption is highly advisable as a law enforcement tool, particularly because the convention requires that anyone prosecuted under the offense must have known that the services were rendered by trafficking victims. The explanatory report for the CoE Convention acknowledges that it will often be difficult to prove that the recipient of services knew that the person providing the services was a victim of trafficking. It therefore stipulates that a court may use its discretion in determining whether such knowledge existed based on the facts surrounding the conduct itself.¹¹

A second measure tailored toward phenomena associated with trafficking is the criminalization of acts involving travel or identity documents, obviously an area of fundamental importance to trafficking networks. Article 20 of the CoE Convention criminalizes forging, procuring, retaining, removing, concealing, damaging, or destroying a travel or identity document “intentionally and for the purpose of enabling the trafficking in human beings.”¹² According to the explanatory report, the drafters of the Convention saw criminalizing the retention, removal, or concealment of identity documents as particularly important, given that traffickers routinely use such methods to exert control over victims.¹³ Notably, this article does not criminalize possession of forged or altered documents because doing so would primarily affect the victims of trafficking.¹⁴

Third, the Palermo Protocol and the CoE Convention establish accomplice liability for trafficking in humans, and the CoE Convention extends it to the acts mentioned above involving travel and identity documents.¹⁵ Similarly, both international instruments require liability for attempted trafficking. The CoE Convention includes liability for attempted forgery of travel or identity documents, but not for attempts to procure or alter such

¹⁰ CoE Convention, Art. 19.

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings, Explanatory Report, ¶ 235 [hereinafter CoE Convention Expl. Rep.].

¹² CoE Convention, Art. 20.

¹³ CoE Convention Expl. Rep., ¶ 241.

¹⁴ *Ibid.*, ¶ 240.

¹⁵ Palermo Protocol, Art. 5; CoE Convention, Art. 21.1.

documents (apparently because of conceptual difficulties in defining attempt in the latter categories).

Fourth, the CoE Convention requires state parties to ensure that corporate liability—civil, criminal, or administrative—exists for all of the offenses established under the Convention.¹⁶ Such liability arises when the individual who commits the offense holds a leadership position within the corporation (or “legal person”), and the offense benefits the corporation in question. Alternatively, the Convention creates liability when a failure of supervision within the corporation makes possible any of the offenses established under the Convention. This provision is in keeping with the general trend toward imposing corporate liability for criminal offenses and does not preclude holding individuals themselves liable for violations. A related provision in the Palermo Protocol—more limited in scope—criminalizes “organizing or directing other persons to commit an offence” under the Protocol.¹⁷

Fifth, the CoE Convention requires that sanctions in general be sufficiently dissuasive and proportionate to the crimes established under it. The Convention notes that the range of potential punishments should include imprisonment of natural persons, monetary sanctions for legal persons, confiscation of criminal assets, and closure of premises utilized for trafficking purposes.¹⁸ It leaves the details of these provisions to individual member states, and it does not require that specific penalties be criminal, civil, or administrative.

Sixth, the CoE Convention includes several aggravating circumstances for trafficking violations: when the life of a victim is endangered deliberately or through gross negligence (such as through poor transport conditions), when the offense is committed against a child, when a public official commits the offense in the performance of official duties, and when the offense is committed within the framework of a criminal organization.¹⁹ As with the sanctions mentioned above, the Convention leaves to member states the degree of aggravation for each of these circumstances.

Finally, and perhaps most significantly, the CoE Convention requires that member states provide for the possibility of foregoing criminal penalties against victims of trafficking for unlawful acts committed under compulsion.²⁰ This is a clear recognition that victims are often forced to engage in illegal activity such as prostitution or illegal border crossings, and should not be held liable for such activity when their autonomy has been limited by the perpetrators of trafficking. The explanatory report to the Convention indicates that at a minimum, compulsion of a victim should be presumed when any of the illicit means—force, coercion, abduction, fraud, deception, or abuse of vulnerability—included in the definition of trafficking have been used against a victim.²¹

¹⁶ CoE Convention, Art. 22.

¹⁷ Palermo Protocol, Art. 5.

¹⁸ CoE Convention, Art. 23.

¹⁹ *Ibid.*, Art. 24.

²⁰ *Ibid.*, Art. 26.

²¹ CoE Convention Expl. Rep., ¶ 235.

Armenian Legislation

Armenian anti-trafficking provisions were amended in June 2004 to achieve greater compliance with the Palermo Protocol, but they do not encompass some of the more aggressive measures of the recent CoE Convention outlined in this section. If Armenian law is to be harmonized with the Convention during the ratification process, some significant changes will be necessary.

In particular, the amended Armenian anti-trafficking provisions do not independently criminalize the knowing use of the services of a trafficking victim. To be sure, other portions of the Armenian Criminal Code separately address the crimes that often accompany trafficking, but they do not do so in a way that collectively reduces demand for the services of trafficking victims. For instance, Articles 261 and 262 address involvement in and organization of prostitution, but neither provision criminalizes the knowing use of the services of trafficked prostitutes (see Annex).²² Similarly, Article 133 addresses illegal deprivation of freedom (other than kidnapping), which could include forced labor, but it does not criminalize the knowing use of the services of forced laborers.²³ Law enforcement agencies are therefore left with limited options for combating the various criminal processes that accompany trafficking.

Second, although the Armenian criminal law does criminalize theft or damage to official documents and forgery, sale, or use of forged documents,²⁴ it might be advisable if higher penalties were foreseen for forging, procuring, or retaining travel or identity documents when committed specifically for the purpose of enabling trafficking. Moreover, tailoring the relevant Criminal Code provisions to the trafficking process may be recommended to shift the focus from the use of such documents to the methods—such as retaining or concealing documents—that those responsible for directing the trafficking process often employ. This would remove the brunt of the penalty on the victims of trafficking and provide additional tools to law enforcement authorities in prosecuting traffickers themselves.

The Armenian Criminal Code already includes traditional, inclusive mechanisms addressing the third area above—accomplice liability and attempted crimes.²⁵ However, Armenian law has yet to incorporate any comprehensive criminal penalties in the fourth area, corporate liability. The administrative fines that currently may be applied to legal persons in Armenia do not constitute the kind of deterrent that might force a corporation or an organization to account for criminal activity to which it may be a party. Indeed, the potential for criminal penalties—including severe fines, confiscation of assets and property, or closure of premises—could galvanize preventive action on the part of transportation services, tourist agencies, hotels, or other legal persons commonly associated with the trafficking process.

In terms of proportionality of punishment, Armenian law is quite lenient. Article 132 indicates that the punishment for trafficking in humans (absent aggravating circumstances) is a fine of 300 to 500 times the minimum wage, or correctional labor for up to one year, or arrest for up

²² Crim. Code, Art. 261, 262.

²³ *Ibid.*, Art. 133.

²⁴ Crim. Code, Art. 324, 325.

²⁵ See Crim. Code, Art. 34, 39.

to two months, or imprisonment for one to four years.²⁶ The article offers no indication of how punishments are to be chosen from among the options available, nor are there sentencing guidelines available in Armenia with which to gauge the severity of the conduct. More important, the penalties in general do not have the kind of deterrent effect necessary to impact the trafficking process. The minimum wage for criminal law purposes in Armenia is currently AMD1,000—about USD2.22—meaning that the penalty for trafficking in Armenia could be a fine as low as USD667, an insignificant sum for most traffickers. Other similarly situated countries sanction trafficking at a minimum with imprisonment, recognizing that fines alone may be of little value in disrupting trafficking networks.²⁷ Even the more severe penalties under Armenian law—such as imprisonment for up to four years—likely would not deter traffickers from engaging in trafficking or returning to it after imprisonment if they found the process lucrative enough.

Additionally, Armenian law has not explicitly incorporated the full range of penalties for trafficking violations that the CoE Convention requires. Perhaps the most noteworthy of these penalties is confiscation of assets derived from criminal offenses under the Convention. To be sure, Armenia is a party to the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, and the Armenian Criminal Code includes general property confiscation provisions for grave crimes.²⁸ However, despite the availability of this form of punishment in Armenia, it is not included among the sanctions applicable to a trafficking offense. Given the fact that trafficking qualifies as a form of organized crime and often involves significant profits, asset confiscation can be a powerful tool in undermining the effectiveness of trafficking networks. Confiscated profits could also be channeled into a reparation fund for victim assistance in Armenia, a method that some similarly situated countries have adopted.²⁹

In the sixth area, aggravating circumstances, Armenian legislation is comprehensive but still lenient. Armenian law contains all of the aggravating circumstances envisaged in the international instruments, divided into two tiers. The first tier includes acts committed with prior agreement of more than one person, or with life-threatening violence, or against minors, or via an official post, among others. The second tier creates stiffer penalties for the first tier acts when they are committed by an organized group or result in the death of the victim through negligence.³⁰ In terms of punishment, however, the first tier calls for correctional labor of up to two years or imprisonment for four to seven years, while the second tier requires imprisonment for five to eight years. These penalties are not comparable to other criminal codes, some of which impose life imprisonment for trafficking violations committed under aggravating circumstances.³¹

Finally, and again critically, Armenian law does not include measures explicitly exempting victims of trafficking from punishment for crimes committed under compulsion. Among its general principles of justification, the Armenian Criminal Code does provide for a necessity

²⁶ Crim. Code, Art. 132.

²⁷ See Reference Guide for Anti-Trafficking Legislative Review, OSCE/ODIHR, Sept. 2001, 42-45 [hereinafter Reference Guide].

²⁸ Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, Nov. 8, 1990, CETS 141, Art. 2; Crim. Code, Art. 55.

²⁹ See, e.g., Reference Guide, Kosovo/FRY, 44.

³⁰ Crim. Code, Art. 132.2.

³¹ Reference Guide, 42-45.

defense, but the requirements for this defense are difficult to meet, they are geared toward perpetrators acting in self-defense or defense of others, and they do not offer a solid basis on which to contest prosecution of victims of trafficking.³² Moreover, the code does not include an exemption for crimes committed under duress, which would more adequately address the sort of situation in which most victims of trafficking commit crimes. This leaves victims vulnerable to conviction for various offenses, including the use of forged or altered documents (Article 325), illegal border crossings (Article 329), or participation in a criminal association (Article 223).

In addition, there is a mistake in Art 183 of the current CPC (Initiating a criminal case based only on the injured party's complaint), which still lists Art 132 among those for which a criminal case can be initiated only based on the complaint of the injured party and allows for reconciliation until the court's retreat to the conference room to adopt a judgment.³³ The latest, August 2005, draft amendments to CPC do not remedy this.

Issues with Armenian General Legislative Measures on Trafficking

- Armenian law does not provide for higher penalties when travel or identity document forgery or alteration, or retaining, removing, concealing, damaging or destroying of another person's document has been committed for trafficking purposes.
- Few adequate mechanisms exist within Armenian law for holding corporate entities or organizations liable for trafficking in humans.
- Punishments for trafficking, even in aggravated circumstances, are not severe enough to deter traffickers, and asset confiscation is not available as a law enforcement tool in fighting trafficking.
- Victims of trafficking are vulnerable to prosecution for the crimes they may have committed, even under compulsion.
- There is a mistake in Art 183 of the current CPC, which still lists Art 132 among those for which a criminal case can be initiated only based on the complaint of the injured party.

³² See Crim. Code, Art. 42.

³³ The mistake is likely to be connected to amendments to Crim. Code which led to re-numbering of Articles, without corresponding changes in Crim. Proc. Code.

IV. Victim Protection and Assistance

International Instruments

Maintaining victim confidentiality is critical to effective prosecution of trafficking perpetrators and physical protection of trafficking victims. Similarly, assisting victims in re-assimilating into society is a fundamental part of mitigating the overall damage wrought by trafficking in humans. The Palermo Protocol devotes some attention to victim protection, mostly in terms of assistance and repatriation.³⁴ The CoE Convention goes much further in this arena. One of its primary objectives is to advance a series of concrete protections, often in criminal procedure, that will amount to a comprehensive framework for victim and witness protection during and after the judicial process. This analysis examines those portions of the treaties that require specific legislative action.

One of the initial procedural protections that the CoE Convention advances is to ensure that investigation and prosecution of trafficking violations does not depend on the victim filing a complaint or accusation.³⁵ This provision targets a point of vulnerability in the process of apprehending trafficking violators, who are often able to exert enormous pressure over victims and deter them from approaching authorities. Law enforcement agencies can circumvent these obstacles by initiating investigations and issuing indictments without a criminal complaint from victims.

A second set of procedural measures seeks to guarantee privacy and confidentiality during trial proceedings. The Palermo Protocol requires ratifying states to “protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.”³⁶ The Protocol does not include further detail on the circumstances under which confidentiality would be either justified or obligatory. The CoE Convention is slightly more specific on the matter of victims’ privacy. It calls for personal data on victims to be stored and used according to guidelines established under the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.³⁷ It also distinguishes between the privacy of victims’ lives in general and the confidentiality of court proceedings, noting the importance of protecting both, and requires specific measures to conceal the identities of child victims.³⁸

The third category of procedural measures outlined in the international instruments focuses on physical protection of victims. The Palermo Protocol simply calls for each member state to “endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.”³⁹ As usual, the CoE Convention outlines a more concrete set of steps that parties to the convention are to take in this area, extending protection not only to victims, but also to other witnesses, those who cooperate with law enforcement authorities, and when

³⁴ Palermo Protocol, Art. 6, 8.

³⁵ CoE Convention, Art. 27.

³⁶ Palermo Protocol, Art. 6.1.

³⁷ CoE Convention, Art. 11.1.

³⁸ Ibid., Art. 30; Art. 11.2.

³⁹ Palermo Protocol, Art. 6.5.

necessary, to family members of the aforementioned groups.⁴⁰ Notably, the convention also provides protection for NGO staff or members of other associations who participate in the trial process.⁴¹ The protection afforded them can include anything from physical safeguards and technical security equipment to relocation and even change of identity or workplace. An additional point of particular importance to Armenia is that the Convention encourages state parties to enter into agreements with other states in order to implement these protective measures.⁴²

Finally, the treaties include a series of substantive measures that collectively fall under the category of victim assistance. These measures address the full array of needs that victims often have, along with the conditions—poverty, lack of access to services, and physical vulnerability—that reinforce the cyclical nature of the trafficking phenomenon. Here, the Palermo Protocol only requires that members “consider measures to provide for the physical, psychological, and social recovery of victims.”⁴³ The CoE Convention, on the other hand, mandates that legislatures adopt provisions to aid this sort of recovery, when necessary including secure accommodation, access to medical treatment, interpretation services, counseling, assistance in understanding their rights, and education for children.⁴⁴ The Convention also requires a 30-day recovery and reflection period during which presumed trafficking victims cannot be forcibly expelled, allowing them to make an informed decision about cooperating with authorities and avail themselves of the assistance outlined above.⁴⁵ Lastly, the Convention requires that victims have access to compensation, both from the perpetrators for their injuries and through some form of social assistance that will enable them to secure support during any period of protection and relocation.⁴⁶

Armenian Legislation

The Armenian CPC does not yet contain a set of comprehensive protections for victims of trafficking that would satisfy the requirements of the CoE Convention. Some changes would therefore be necessary were Armenia to ratify the Convention. In recent years various actors have proposed and modified draft amendments to the CPC in this area, but the status of these amendments remains unclear, and it appears that the most recent draft changes may even eliminate important assistance measures that the Convention requires. This section considers Armenian law both as it stands in the CPC and as it would be under the draft amendments.

It is not clear in either the existing CPC provisions or the draft amendments whether protection in general can be extended only when a witness actually gives testimony, or whether it is available to anyone who simply possesses information that could threaten his or her safety.

In the second area, privacy and confidentiality, Armenian law already contains some protections designed to conceal the identity of trafficking victims during criminal proceedings. However, these protections are hampered by the fact that the law requires a

⁴⁰ CoE Convention, Art. 28.

⁴¹ *Ibid.*, Art. 28.4.

⁴² *Ibid.*, Art. 28.5.

⁴³ Palermo Protocol, Art. 6.3.

⁴⁴ CoE Convention, Art. 12.

⁴⁵ *Ibid.*, Art. 13.

⁴⁶ *Ibid.*, Art. 15.

person accused of threatening a witness with violence to be officially warned as an initial step in the protection process.⁴⁷ This requirement does not serve the overall purpose of maintaining the privacy of victims and in fact alerts possible perpetrators to the existence and nature of a complaint against them. The draft amendments to the CPC have dropped the warning requirement, bringing the proposed Armenian provisions closer to those envisaged in the CoE Convention.⁴⁸

It is worth noting that Armenia has not signed or ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the standard by which privacy is maintained under the CoE Convention on Action Against Trafficking in Human Beings. Although ratification of the former treaty is not necessary to become a party to the latter, certain changes to Armenian code (or to the proposed amendments) may be necessary in order to achieve the stricter control that the Convention on Personal Data mandates. Such changes would pertain to the kind of personal data that may be stored, the safeguards that must be used in processing it, and guarantees that the subject of the data can access it under certain conditions.⁴⁹

In the third category, physical protection of victims, both existing Armenian law and the draft amendments include some specific provisions for the physical protection of trafficking victims. The CPC calls for the use of personal escorts, protection of the victim's residence, or temporary relocation to a secure facility.⁵⁰ The draft amendments go much further toward approximating the CoE Convention requirements, calling for the use of special personal protection devices, surveillance and wiretapping, new identification documents and changed appearance, and relocation of residence and workplace.⁵¹ The current version of the CPC restricts protection only to victims, witnesses involved in the criminal proceeding, and their close relatives, but does not extend protection to other persons associated with the participant in the criminal proceeding.

In the final area, victim assistance, Armenian legislation does not offer the sort of broad recovery measures included in the CoE Convention. The current version of the CPC offers no assistance to victims other than that what is inherent in the protection measures it does provide, namely secure facilities or transportation during relocation. Existing portions of the CPC do indicate that plaintiffs have the right to understand the nature of the proceedings and their rights under the system, and that interpreters must be available when necessary during criminal proceedings.⁵²

Interestingly, the draft amendments do not significantly extend the CPC's assistance measures. The draft amendments do not contain any further measures related to medical assistance, counseling, or education for children, nor do they provide for interpretation services or assistance in explaining the legal process to victims outside the courtroom.

⁴⁷ Crim. Proc. Code, Art. 99.

⁴⁸ Draft amendments to Crim. Proc. Code, Art. 98-99.

⁴⁹ See Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Jan. 28, 1981, CETS 108, Art. 5-8.

⁵⁰ Crim. Proc. Code, Art. 99.4.

⁵¹ Draft amendments to Crim. Proc. Code, Art. 98.3-9.

⁵² Crim. Proc. Code, Art. 59.

Issues with Victim Protection and Assistance in Armenia

- The Criminal Procedure Code currently requires an official warning against those who threaten witnesses, a provision that erodes the witnesses' privacy and security.
- Armenia, not having signed the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, does not yet have comprehensive protections in place regarding the types and extent of personal data that may be stored for victim and witness protection.
- The current version of the CPC restricts protection only to victims, witnesses involved in the criminal proceeding, and their close relatives, but does not extend protection to other persons associated with the participant in the criminal proceeding. The August 2005 CPC amendments draft does not remedy this.
- Armenian law does not incorporate any significant victim assistance measures designed to mitigate the individual and societal impacts of trafficking.

V. Jurisdiction and International Cooperation

International Instruments

Traffickers often can take advantage of the limits of national jurisdiction or more relaxed enforcement of trafficking laws in some countries. It is therefore important that legal mechanisms be established to extend jurisdiction for trafficking crimes committed abroad and strengthen international law enforcement cooperation. The CoE Convention includes a noteworthy provision on jurisdiction, requiring each party to adopt the legislative measures necessary to ensure jurisdiction over offenses established under the Convention when they are committed a) on its territory; b) on a ship flying that party's flag; c) on an aircraft registered under that party's laws; d) by one of its nationals if the conduct is a criminal offense in the country where it occurred or if the offense is committed outside the territory of any state; or e) against one of its nationals.⁵³ These last two provisions, which extend jurisdiction beyond the party's territory according to the nationality principle and the passive personality principle, respectively, are unusual in an international treaty and are designed to mitigate the transnational effects of trafficking in humans. The Convention allows parties to make reservations to parts d) and e)—the only reservations permitted under the treaty as a whole—but not to parts a), b), or c).⁵⁴

Both the Palermo Protocol and the CoE Convention also require state parties of which trafficking victims are nationals to facilitate the repatriation of the victims without unreasonable delay, preferably on a voluntary basis.⁵⁵ As this obviously could entail subjecting the victim to renewed risk upon repatriation to the country of origin, the treaties require that the repatriation be accomplished “with due regard to the rights, safety, and dignity of the victim.”⁵⁶ To that end, the CoE Convention also requires parties to establish repatriation programs aimed at avoiding re-victimization, including providing information to repatriated victims on support organizations or structures where they are repatriated.

Armenian Legislation

The CPC already provides for territorial jurisdiction over crimes committed in Armenia and, less explicitly, jurisdiction under the nationality principle for crimes committed by Armenians abroad.⁵⁷ Not surprisingly, the Criminal Code allows for jurisdiction under the passive personality principle only for “grave” or “particularly grave” crimes committed against Armenians abroad.⁵⁸ Although some aggravated instances of trafficking would qualify as

⁵³ CoE Convention, Art. 31.

⁵⁴ CoE Convention, Art. 45.

⁵⁵ See Palermo Protocol, Art. 8; CoE Convention, Art. 16.

⁵⁶ CoE Convention, Art. 16.

⁵⁷ See Crim. Proc. Code, Art. 47-50.

⁵⁸ Crim. Code, Art. 15.3. Grave crimes are willful acts for which the Criminal Code envisages a maximum punishment not exceeding ten years of imprisonment. Particularly grave crimes are willful acts for which the maximum imprisonment is more than ten years or life. Trafficking falls within the lesser “medium-gravity” category, which includes willful acts for which the maximum punishment does not exceed five years of imprisonment, or acts committed through negligence, with a maximum punishment not exceeding ten years of imprisonment.

grave crimes under the Criminal Code, the standard form of the crime would not, and therefore extraterritorial jurisdiction is not available. Armenia either will have to create such jurisdiction for the crime of trafficking upon ratification of the CoE Convention or reserve itself from Article 31(e) of the Convention. It is also worth noting that amending the trafficking statute to create stiffer penalties (see “Armenian Legislation” under “General Measures” above) could automatically establish trafficking as a grave or particularly grave crime, therefore qualifying it for extraterritorial jurisdiction.

Finally, Armenian law does not yet incorporate any provisions for the repatriation of victims of transnational crimes such as trafficking. Despite having well-developed extradition procedures, the CPC is silent on the issue of repatriation, which could mean that trafficking victims face unnecessary barriers in returning to their countries of origin from Armenia (for instance, if they are intercepted while transiting Armenian territory). Lack of formal repatriation provisions also could mean that any trafficking victims who are deported from Armenia to their countries of origin on an ad hoc basis will be vulnerable to prosecution or re-victimization upon arrival there.

Issues with Armenian Legislation on Jurisdiction and International Cooperation

- Armenian criminal law does not extend jurisdiction to trafficking crimes committed against Armenian nationals abroad, a potentially powerful mechanism for prosecuting traffickers.
- Armenian law does not include repatriation measures, hindering international cooperation and possibly exposing trafficking victims to heightened risk of re-victimization.

Annex: Definitions and Statutes Related to Trafficking in Humans in Armenia

Article 3, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime; Article 4, Council of Europe Convention on Action against Trafficking in Human Beings:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 132, Armenian Criminal Code (as originally adopted in April 18, 2003, came into force on August 1, 2003):

1. Recruitment, transportation, transfer, harboring or receipt of persons for the purposes of prostitution or other sexual exploitation; forced labor or services; bringing into slavery or a condition equaling slavery or a dependent condition; as well as taking organs of a person by means of force or threat to use force; kidnapping; fraud; other deception; or by violating the authority or using the vulnerable situation or by paying or bribing in the form of some interest in order to get the approval of the person in charge of a different person is punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for up to 1 year, or arrest for up to 2 months, or imprisonment for the term of 1 to 4 years.
2. The same act committed:
 - 1) by a group of persons with prior agreement;
 - 2) with violence dangerous to life or health, or threat thereof;
 - 3) against a minor;
 - 4) against 2 or more persons;is punished with correctional labor for up to two years, or imprisonment for up to four to seven years.
3. Actions envisaged in parts 1 or 2 of this Article, which
 - 1) were done by an organized group;
 - 2) caused the death of the aggrieved by negligence or other grave consequencesare punished with imprisonment for five to eight years.

Article 132, Armenian Criminal Code (after amendments adopted on June 9, 2004, i.e. the current one):

1. Trade in persons (trafficking), namely the purchase or sale, recruitment, transportation, transfer, harboring or receipt of a person, committed for the purpose of prostitution or other forms of sexual exploitation, forced labor or services, slavery or condition equal to slavery, or dependency or taking of organs or tissues of a person is punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for up to one year, or arrest for up to two months, or imprisonment for the term of one to four years.
2. The same act committed
 - 1) by a group of persons with prior agreement;
 - 2) with violence dangerous to life or health, or threat thereof;
 - 3) against a minor;
 - 4) against two or more persons, or a disabled person;
 - 5) by the use of an official post;
 - 6) by ensuring that the aggrieved illegally crosses a state border or by holding the aggrieved illegally in a foreign state;
 - 7) by abusing the helpless condition of the aggrievedis punished with correctional labor for up to two years, or imprisonment for four to seven years.
3. Actions envisaged in parts 1 or 2 of this Article, which
 - 1) were committed by an organized group;
 - 2) caused the death of the aggrieved by negligence or other grave consequencesare punished with imprisonment for five to eight years.

Article 168, Armenian Criminal Code (active):

Child trafficking is punished with imprisonment for a term of three to seven years.

Article 261, Armenian Criminal Code (as originally adopted in April 18, 2003, came into force on August 1, 2003):

1. Involvement into prostitution, by violence or threat to use violence, by using the dependent position of person, by threat to destroy, damage or steal property, or by threat to disseminate defamatory information about a person or close relatives, or by deception, is punished with a fine in the amount of 200 to 400 minimal salaries, or correctional labor for a term of up to one year, or with arrest for a term of 1-3 months, or with imprisonment for a term of up to two years.
2. The same act committed:
 - 1) With respect to a minor;
 - 2) by an organized groupis punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for a term of up to two years, or with imprisonment for a term of 3-6 years.

Article 261, Armenian Criminal Code (after amendments adopted on June 9, 2004, i.e. the current one):

1. Involvement into prostitution or forcing to continue prostituting is punished with a fine in the amount of 200 to 300 minimal salaries, or correctional labor for a term of up to two years, or with imprisonment for a term of 1-3 years.
2. The same act committed:
 - 1) by violence or threat to use violence;
 - 2) by enabling the aggrieved to cross a state border illegally or keeping the aggrieved illegally in a foreign country;
 - 3) by a group of persons with prior agreement, is punished with imprisonment for a term of 2-6 years.
3. Actions envisaged by parts 1 or 2 of this Article that are committed by an organized group or with respect to a minor, are punished with imprisonment for a term of 3-8 years.

**Article 262, Armenian Criminal Code
(as originally adopted in April 18, 2003, came into force on August 1, 2003):**

Organizing, maintaining dens for prostitution or pimping is punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for a term of up to one year, or with arrest for a term of 1-3 months, or with imprisonment for a term of up to five years.

**Article 262, Armenian Criminal Code
(after amendments adopted on June 9, 2004, i.e. the current one):**

1. Organizational activities aimed at others prostitution, or maintaining dens for prostitution or regularly providing buildings for prostitution is punished with a fine in the amount of 200 to 500 minimal salaries, or correctional labor for a term of up to two years, or with imprisonment for a term of up to four years.
2. The same actions committed through abuse of an official position are punished with imprisonment for a term of 2-6 years.
3. The same actions committed with respect to an obvious minor are punished with imprisonment for a term of 3-10 years.