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## **Information on the List of Issues for Armenia for Consideration by the Human Rights Committee at its 129th Session (29 June - 24 July 2020)**

### **Introduction**

1. We present the following submission in advance of the 129th session of the Human Rights Committee ('the Committee'), taking place between 29 June - 24 July 2020, for consideration of the List of Issues on Armenia's third periodic report for review. Equality Now, Sexual Assault Crisis Centre and the Armavir Development Centre NGO are writing to express our concerns about sexual violence laws and procedures in Armenia that deny justice to survivors, as well as attacks against women human rights defenders, which constitute violations of Armenia's obligations under the International Covenant on Civil and Political Rights (ICCPR). We recommend questions to be put before Armenia by the Committee and the legal and practice change required to ensure that perpetrators of sexual violence are brought to justice and that survivors access justice.

### **Information about the authors of the submission**

2. Equality Now is an international human rights organisation with the mission to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now has offices in London, New York, Nairobi and Beirut, as well as consultants based in various parts of the world. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work. This submission is in reference to Equality Now's 2019 report, "Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia"<sup>1</sup> which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.

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<sup>1</sup> [https://www.equalitynow.org/roadblocks\\_to\\_justice](https://www.equalitynow.org/roadblocks_to_justice)

3. The Sexual Assault Crisis Centre (SACC) is a feminist, non-profit, civil society organisation established in 2008 with the aim of preventing and combating sexual violence, providing direct support and assistance to women and girls who have survived sexual violence, as well as working for the protection of sexual rights. The SACC provides psychological and legal counselling to the survivors of sexual violence, both face to face and through our 24/7 hot-line service. The SAAC works with the law enforcement agencies in Armenia to promote a more gender sensitive approach and supports women to access justice for sexual violence. In 2013, the SACC also promoted legislative changes on sexual violence in the Criminal Code.

4. The Armavir Development Centre NGO (ADC) is a non-profit, civil society organisation established in 2005. The mission of ADC is collaboration for socio-economic progress, which aims to promote the collaboration of public, private and business sectors of the Armavir region in Armenia. To implement its mission effectively, the organisation has adopted the following strategic directions of its activity: Improvement and consolidation of democratic system; Support of civil society; Sustain social and economic development. ADC advocates for the rural population, and implements human rights protection projects, community development projects, youth, disabled children and women projects, and has also implemented women's rights, domestic violence, awareness-raising and advocacy projects aimed at decreasing violence against women.

5. The legal provisions and practices detailed in this submission highlight the failure of the State to comply with its obligations under Article 2 (non-discrimination), Article 3 (equality for men and women) Article 7 (prohibition of inhuman treatment), Article 19 (freedom of expression) and Article 26 (equality before the law).

6. We reiterate the Concluding Observations on the second periodic report of Armenia<sup>2</sup> and underline, in particular, the recommendations urging the government of Armenia to adopt legislation criminalising all forms of domestic violence and ensure the protection of human rights defenders from threats and attacks. The Committee has not made any specific recommendations on sexual violence. With this submission, we urge the Committee to encourage Armenia to report on laws and practices on sexual violence and bring them in compliance with the above requirements of ICCPR.

### ***Definitions of sexual violence crimes enabling impunity for perpetrators***

7. Armenia's Criminal Code provides inadequate and limited definitions of sexual violence crimes leaving many of the coerced and non-consensual acts of a sexual character without a criminal classification. According to Article 138 of the Criminal Code, rape is defined as sexual intercourse of a man with a woman against her will with the use of violence or of a threat or with the use of the helpless state of the victim. Rape therefore is defined and understood as penile-vaginal penetration (with the use of violence, threat of violence, or abuse of the victim's "helpless state") and the victim can only be female.

8. A violent action of a sexual nature, as defined in Article 139, criminalises actions of a sexual character that fall outside Article 138 (rape), including homosexual actions against the will of the victim with the use of violence or with a threat or with the use of the helpless state of the victim. Here the victim can be a male, as well as a female, who is subjected to sexual violence in any form other than penile-vaginal penetration. The crime of compulsion to engage in sexual intercourse (Article 140) involves any of the above acts of rape and assault of a sexual nature but when they are committed using blackmail, threatening the destruction of property or with the dependence of the victim. This latter crime has been classified as a

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fC%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fC%2f2&Lang=en)

less serious offence than rape or sexual assault, where the punishment is up to 3 years of imprisonment with an added term of 5 to 12 years if the offences were committed against a person who was under the age of 16, while the punishment for violations under Article 139 is imprisonment between 3 and 6 years, with an added term of 8 to 15 years if the offences were committed against a person who was under the age of 14.

9. The problem with the above definitions is that they fail to recognise many acts of sexual violence as crimes or leave them without an adequate punishment that is commensurate with the gravity of the crime. These definitions do not include all forms of non-consensual sexual acts and rely on violence, threats of violence and abuse of the victim's 'helpless state' as the constituent elements of rape, rather than on the lack of consent and a wide range of coercive circumstances. This in practice means that the prosecution of rape is overwhelmingly limited to situations where the victim has physical evidence of injuries and can prove physical resistance to sexual intercourse. When such evidence cannot be secured, or when sexual violence was committed without using physical force, there is very little chance that the perpetrator will be brought to justice.

10. In addition to the problems in the law, the authors of this submission highlight that law enforcement bodies fail to properly implement the existing legislation and meet the standards that are already envisaged by the law. Law enforcement authorities do not have a full understanding of the circumstances in which sexual violence can be committed. In addition, when a woman suffers a number of violent crimes, including sexual violence, oftentimes sexual violence is overlooked and not even recorded by the authorities (particularly in cases of domestic violence) while only the other crimes are investigated.

11. In addition, the lack of consent-based definitions of sexual violence crimes leave many coerced sexual acts unpunished. An example of this is a case which was adjudicated by the Criminal Appellate Court in 2018 involving a man who had kidnapped his ex-wife using a weapon and raped her. He was convicted only for kidnapping and not rape as the court claimed that despite the fact that there was sexual intercourse, she didn't ask for help from the staff of the hotel, 'agreed' to sleep in the same bed as her ex-husband and did not report the rape as soon as it happened. There was no appreciation that the circumstances in which sexual intercourse took place prevented her ability to provide voluntary, genuine and willing consent. The "helpless state of the victim" is included in the law as an alternative element to the requirement for additional violence on the part of the perpetrator, but in practice "helpless state" is not applicable in the situations described above.

### ***Prevalence of serious violations of women's rights in Armenia***

12. Patriarchal and rigid social norms, justified by traditions, and stereotypical perceptions regarding masculinity, femininity, gender equality, sexuality, relationships with family members including children, division of household tasks as well as the justifiability of violence against women, intimate partner violence and peer violence, continue to remain prevalent in Armenian society. In 2016, according to statistics collated by the UNFPA, it was found that 22.4% of women across Armenia were subjected to physical violence, while 45.9% of women with male partners were subjected to psychological abuse. 19.5% of women with a male partner stated that their partner had forbidden them to work or earn money in any way. 7.6% of men surveyed said that they had forced sexual relations with a woman or a girl.

13. Since 2009, the SACC has provided services to 88 survivors of sexual violence in Armenia, of which 94% were females and 6% males. 60% of all cases were rape survivors, while the remaining 40% identified themselves as victims of other forms of sexual violence. From 2016-18, the SAAC provided psychological, social and legal services to 37 survivors (34 females and 3 males), of which 54% were adults

and 46% were girls. In the 46% of cases involving minors, all survivors had known the accused person previously, including fathers, step-fathers, neighbours, brothers etc. In these cases, the abuser had gained the trust of the child and abused her. The youngest survivor was 5 years old. During 2016-18, only 61% of the cases that the SAAC dealt with were reported to the police and most of these are still at trial stage.

14. Moreover, according to state statistics in 2017, 102 cases were registered under Articles 138-142 of the Criminal Code by the police, while 161 cases had been registered with the Investigation Service. The Investigation Service explained that the police are generally not involved in the cases and usually refer sexual violence cases to them. After the case has been assessed by the investigation office, they then determine whether to report the case to the police. As there is no strict obligation, the investigation office does not usually report back to the police and each body maintains its own database where cases are recorded. This results in a discrepancy in the recorded numbers in each database, meaning that the State does not have accurate and desegregated statistics of reported sexual violence crimes, which hinders the implementation of comprehensive and evidence-based crime prevention efforts.

### *Practices which enable impunity for perpetrators of sexual violence crimes*

15. Gender stereotyping, secondary victimisation, victim-blaming and disbelief in survivors' testimonies are serious problems when it comes to investigation and prosecution of sexual violence. The authors of this submission underline that it is a common perception in Armenian society, shared by law enforcement, that a woman should appear to look 'clever, obedient, wise, and virtuous' if she wishes to avoid being subjected to sexual violence. While domestic violence is more commonly recognised in society and by the authorities as being unacceptable, when it comes to sexual violence, it has been much more challenging to counter rhetoric that places responsibility for the sexual abuse on the victim who is often accused of instigating or provoking the sexual violence. Law enforcement bodies and the judiciary often ask a victim about what clothes she wore at the time of the attack, her behaviour and even her hairstyle and make-up, or confront them with victim-blaming questions. One of the reasons for employing such practices is an incorrect underlying assumption that false accusations are common, when in reality they are rare and in fact, women seldom come forward to talk about and report sexual violence. In addition, there are many myths about "typical behaviour", such as if the survivor fails to show heightened emotions when she reports rape then she cannot be a real victim, while in fact the trauma can render her emotionally numb. Such disbelief in the victims' testimonies or statements throughout the process has been reported in many cases and this serves to subject the victim to trauma, re-victimisation, thereby effectively denying her justice and creating mistrust towards the justice system.

16. Gender stereotypes, lengthy and traumatising procedures, discriminatory attitudes towards victims of sexual violence in society as well as by law enforcement bodies, victim blaming and disbelief in victims' testimonies also strongly contribute to the reason women are often unwilling to report cases of sexual violence to the police. An example of this is a 26 year old survivor of sexual violence, who recently reported to the SACC that she was afraid to report her case of rape because she feared the police would ask her how she provoked the man to rape her and feared her parents would find out about the case and blame her.

17. Burdensome evidence requirements and secondary victimisation throughout the legal proceedings further deny justice to survivors. A big challenge detected by specialist service providers is the lack of a victim-centred and gender-sensitive approach by law enforcement bodies with respect to sexual violence. Many legal procedures, such as intrusive interviewing practices of survivors, organising a confrontation between the survivor and the accused, and detrimental and inadequate forensic examinations are routinely performed. These fail to take into consideration the psychological state and needs of the survivor and result in secondary victimisation. It is currently a common practice that a survivor could be interviewed six or more times, forced to confront the accused, or their former partners or neighbours are asked about their moral reputation and character. As reported to the SACC in 2016, a 34 year old survivor of rape claimed she was interviewed seven times by three different investigators. Throughout her experience of being

interviewed, she expressed that she was made to feel as though she had been the one at fault as the investigators were arguing with all her statements and told her that they would prove she was a liar as she was trying to make an innocent man seem guilty. Another example of 2014 involves a 21 year old woman who was raped in the pub by a stranger. She had gone to the police, but the officer told her she was drunk and asked if her boyfriend knew about what had happened. This questioning stopped her from making an official complaint to the police and she left.

18. Investigative ‘experiments’ are systematically conducted, where the victim has to enact the incident of the crime which involves visiting the crime scene, recalling the facts (or the victim reads aloud the statement given previously to the investigators) and photos of the victim are often taken while she points at various specific locations she had been taken to when the crime was being committed. The practice of ‘confrontation’ takes place during the investigation of the crime where the investigator or a prosecutor makes the victim and the defendant ‘confront’ each other face-to-face, asking questions with the purpose of eliciting ‘true information’. This disregards the trauma and feelings of insecurity, fear and discomfort the victim may be experiencing.

19. During the investigation process, law enforcement commonly assesses the sexual history of the survivor and interviews former partners of the survivor during the case. The SACC has found that the use of the survivor’s sexual history plays into stereotypes and victim-blaming, where male aggression and sexual violence are normalised. Survivors as a result are discredited and considered to have a ‘bad moral character’ and are shamed if they had previously engaged in sexual activity.

20. Virginity testing, “a gynaecological examination conducted under the belief that it determines whether a woman or girl has had vaginal intercourse”, has been denounced by international agencies, such as the World Health Organisation, for being a harmful practice. The SACC has found that in its experience, if a report of rape or attempted rape has been made to the police, the police will refer the case to a forensic specialist who will request a detailed description of the victim’s hymen and vagina. This humiliating and disempowering practice applies to women even if they have said that they are not a virgin or have given birth. There is no information as to whether this practice is applied in all reported cases but is a typical practice in the cases that the SACC have worked on. In one case in 2016, a 34-year-old woman reported a case of rape by her colleague and was referred to the forensic services where a male doctor undertook a virginity test even though she had told him she had a child.

21. When a report of sexual violence has been made to the authorities, all relevant forensic examinations are carried out by the state-authorized forensic service which is based in Yerevan with branches in regional centres. It is not possible for this evidence to be collected at a hospital. This severely impacts women who do not immediately report rape or survivors who live in rural areas who are encumbered by the challenging public infrastructure and may not be able or cannot afford to take a day off to travel to the regional centre.

22. Women with disabilities, ethnic minority women, women in prostitution and other vulnerable women face particular challenges and intersecting forms of discrimination in accessing justice for sexual violence.

23. Even though Armenian legislation provides for mandatory (ex officio) prosecution of sexual violence crimes, when the victim is “persuaded” or forced into reconciliation with the perpetrator, or when “circumstances change” as a result of marriage, there is a risk that the investigation in such cases is discontinued. This is done in cases of statutory rape or non-aggravated depraved actions as they are considered less serious offences and the authorities claim that “no signs of crime” could be found.

24. In addition, survivors of sexual violence often confront barriers in accessing necessary medical services and support. According to an Order of the Ministry of Health of 28 August 2013, in cases involving

ambulance doctors, where there is a suspicion of violence, the medical professional has the obligation to inform law enforcement. For other medical professionals, mandatory reporting is not prescribed by law. However, some medical professionals are afraid of being accused of hiding such information and prefer to report all the crimes they are aware of. Some victims of sexual violence have refrained from seeking medical assistance because of the fear that the crime would be reported and of subsequent repercussions with the police. In addition, there are examples where those who have sought medical support were turned down by doctors who do not want to deal with law enforcement. This was true for a 36 year old survivor in 2017, who had been raped by her former boyfriend and his two friends and who had sustained other injuries in the attack. She reported to the SACC that she went the next day to her gynaecologist. When she informed the doctor what had happened and that she did not feel emotionally ready to report the case at this point, she was told by the doctor that as this was a case of rape, she didn't want to have any problems with the police and told the survivor to go to another doctor. Such additional challenges faced by survivors who fear dealing with law enforcement as they are treated with a lack of respect and gender sensitivity further compound their precarious situation and prevent them from accessing necessary medical support.

### ***Further harm to adolescent girl survivors of sexual violence***

25. Forced marriage and bride kidnappings are still not uncommon in Armenia and these practices are seen to affect girls and women predominantly from the Yazidi community, particularly those living in the regions of Armavir and Aragatsotn. These practices disproportionately affect adolescent girls and give rise to sexual violence offences. Through community outreach projects, the Armavir Development Centre determined that parents in this community held the belief that early marriages and leaving school are an integral part of Yazidi tradition. It was seen within the focus groups that girls would marry at around the ages of 13 and 14 and then leave school. In some communities, parents shared their concerns that while they wanted their daughters to continue their education, they also feared that they would be kidnapped for marriage on their way to school. They expressed that this was common in Yazidi culture and it is usual that families will not report these cases to the police for fear of embarrassment. As a result, they would take the girls out of school and keep them at their house in order to “protect” them. As these cases are not reported to the authorities, it is not possible to determine how prevalent forced marriage and bride kidnappings are among this community and in Armenia more broadly.

26. Forced marriage and bride kidnappings are not explicitly criminalised by the Criminal Code of Armenia, although they can be prosecuted under other existing provisions. Bride kidnapping, for example, can be prosecuted under Article 131 of the Criminal Code, which is the general crime of abduction, deprivation of liberty (Article 133) and/or rape, depending on the circumstances of the case. Failing to treat these two crimes in a distinct manner leads to a lack of disaggregated statistics about the prevalence of these violations as they are counted together with the other crimes that are committed under the same articles. In such situations, it is also more likely for the investigative authorities not to treat these crimes as a matter of concern, thereby conducting the investigation and prosecution without a gendered lens, which negatively impacts access to justice.

### ***Attacks on women human rights defenders***

27. Since the adoption of the Law on Provision on Equal Rights and Equal Opportunities of Women and Men in 2013, an aggressive campaign against the concept of “gender” began. Women’s rights organisations have found themselves under constant pressure by certain groups who oppose gender equality and women’s rights. There has been an organised ‘witch hunt’ against women’s rights defenders, with social media posts and media attacks inciting violence and harassment against them. This made the work of the SACC extremely challenging and it was unable to properly carry out its responsibilities in providing for psychological, legal and advocacy support to victims of sexual violence as its hotline had also been

under attack. While there has been support from the Minister of Labour and Social Affairs, who condemned the hooliganism and expressed support for the work of the SACC, the police has refused to show the same support. The reluctance of the police to address these types of attack of human rights defenders demonstrates the lack of importance they placed on condemning such violations of human rights against women who advocate for gender equality.

***Suggested Questions to be Asked to Armenia and Recommendations:***

We would respectfully urge the Committee to ask the following questions to Armenia and recommend as follows with regard to violations of the ICCPR addressed in this letter:

- a) What measures has Armenia undertaken to amend its criminal law provisions and introduce a consent-based definition of rape and other forms of sexual violence and introduce sanctions based on the gravity of the crime?**

We submit that Articles 138, 139 and 140 of the Criminal Code should be amended to ensure that the definitions of sexual violence crimes are in compliance with CEDAW and the Istanbul Convention and cover all forms of sexual acts committed without the victim's voluntary, genuine and willing consent, and include a wide range of coercive circumstances. We urge the Committee to develop these standards and find that definitions of rape and other sexual violence crimes which are not in line with international law, will also be in violation of Articles 2 and 7 of the ICCPR.

- b) What measures has Armenia undertaken to ensure forced marriages, bride kidnappings and marital rape are criminalised in accordance with international human rights standards?**

We submit that forced marriages, as well as bride kidnappings and marital rape, should be explicitly criminalised according to the Istanbul Convention and disaggregated statistics should be collected on these crimes. We urge the Committee to develop its jurisprudence for Articles 7 and 24 of the ICCPR and call on states to ensure forced marriages, bride kidnappings and marital rape are criminalised.

- c) What measures has Armenia taken to make sure that sexual violence investigations and trials are conducted in compliance with human rights standards?**

We submit that Armenia needs to adopt a specific, gender-sensitive methodology for investigating sexual violence and ensure that investigators, prosecutors and judges are trained; that sanctions to perpetrators are deterrent and that effective remedies are provided for survivors. We urge the Committee to develop its jurisprudence with respect to Articles 2, 3 and 7 of the ICCPR to ensure that sexual violence investigations and trials are conducted in accordance with international human rights standards.

**d) What measures has Armenia taken to raise public awareness of the unacceptability of sexual violence under any circumstances?**

We submit that Armenia needs to ensure awareness raising campaigns, including among law-enforcement, about the criminal nature of all forms of sexual violence (including marital rape and statutory rape) and that violence is not justified in any circumstances. We urge the Committee to develop its jurisprudence under Articles 2, 3 and 7 of the ICCPR to ensure that states undertake public awareness to raise awareness of the unacceptability of all forms of sexual violence.

**e) What measures has Armenia taken to abolish burdensome evidence requirements to prove sexual violence?**

We submit that burdensome evidence requirements to prove sexual violence and investigative practices that contribute to secondary victimisation of women (such as mandatory virginity tests and examining prior sexual history of the victim) and that are not absolutely necessary for establishing the facts of the case should be abolished. We urge the Committee to develop its jurisprudence with respect to Articles 2, 3 and 7 of the ICCPR to ensure that burdensome evidence requirements are abolished for sexual violence crimes, in accordance with international human rights standards.

**f) What measures has Armenia taken to ensure that women and girl survivors of sexual violence who belong to vulnerable groups (including women with disabilities, ethnic minorities, women in prostitution, LBT) are protected from intersecting forms of discrimination?**

We submit that women and girl survivors of sexual violence who belong to vulnerable groups, including women with disabilities, ethnic minorities, women in prostitution, LBT, should not be additionally discriminated against and that existing procedures ensure the equal access to justice of all women, in accordance with Articles 2 and 3 of the ICCPR.

**g) What measures has Armenia undertaken to protect human rights defenders against hate speech and have law enforcement agencies been trained to investigate cases of hate speech against women's rights defenders?**

We submit that Armenia should fully protect human rights defenders against hate speech, including sexist hate speech, as well as develop programmes to train law enforcement agencies to properly investigate and prosecute cases of threats, harassment and violence towards women's rights defenders, in order to ensure compliance with Article 19 of the ICCPR.