

**GENDER-BASED VIOLENCE AGAINST WOMEN DEPRIVED OF LIBERTY:
EXPLORATION OF THE ISSUE IN THE ARMENIAN CONTEXT**

STUDY

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Executive Summary

The study on "**Gender-based violence against women deprived of liberty: exploration of the issue in the Armenian context**" addresses a wide range of issues on prevention of gender-based violence in the settings of corrections and mental health sectors in Armenia by reviewing the places of deprivation of liberty¹ operating within the mentioned sectors, and more specifically, the penitentiaries and psychiatric institutions (psychiatric organizations).

Gender-based violence is one of the key issues in the human rights protection sphere in Armenia. Local and international human rights organizations, women's rights defenders and activists continuously raise issues of protection of women from gender-based violence. Nonetheless, effective actions to address these issues, including those by the state, have been limited to only addressing detection of domestic violence, its prevention and establishment of liability for domestic violence.

While issues of gender-based violence against women, including sexual assault and sexual harassment in various settings of public life, such as workplaces, educational institutions, public spaces are also raised by various groups of the society, organizations and expert circles, they remain unaddressed by state policies.

Meanwhile, gender-based violence against women deprived of liberty has not yet been formulated in the agendas of the public at large and the state as an issue requiring specific attention.

This exploration is therefore conducted by the Human Rights Research Center to give prominence to the issue and present recommendations of addressing it in the local context.

The *goal* of the study is to explore the issue of gender-based violence against women deprived of liberty and present recommendations of addressing it in the settings of corrections and mental health sectors in Armenia. Qualitative methods of research were applied in conducting the study.

The following *objectives* were set forth in order to reach the research goal:

1. To present the specificities of the issue of gender-based violence against women deprived of liberty, the forms of its manifestation with a view of international and local studies, reports, views and approaches amassed amongst the local expert community and key actors.
2. To present recommendations to address the researched issue based on an analysis of international literature and a comparative study of international human rights standards and national legislation combined with data collected during the research.

¹ For the purpose of this study, the term “deprivation of liberty” is used as in the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, according to which “deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.”

The study is of an exploratory nature. This kind of study is *innovative* in the Armenian context, because it touches upon an issue lacking research and it further presents recommendations on prevention of gender-based violence against women deprived of liberty in the penitentiary and mental health settings.²

The manifestations of violence/gender-based violence in the institutions researched as a part of this study can be categorized into the following types: violence applied by the personnel of the institutions against women deprived of liberty and violence applied by women deprived of liberty towards one another.

International studies and reports adequately raise the issue of gender-based violence against women deprived of liberty, while obligations to address it along with relevant legal standards and norms are enshrined in various international human rights instruments and are reflected in the practice of international treaty bodies.

It is noteworthy that existing studies point to the opacity of the issue and the latent nature of instances of violence. They therefore conclude that reporting and raising alarms on gender-based violence by women deprived of liberty often result in retraumatization, the validity of reporting often being questioned and women risking a high probability of retaliation by abusers. All of this also results in scant documentation of gender-based violence in the places of deprivation of liberty.

Notably, the data collected by this study also *verifies* the hypothesis that gender-based violence is well-disguised in the places of deprivation of liberty. The evidence that the issue continues to be "*hidden*", "*silenced*" and "*neglected*" and hence remains unaddressed by the state is of central importance to this study and is intrinsic for formulation of respective research recommendations in the Armenian context.

The data collected as part of this study attest to the existence of stigma, discrimination, abuse and ill-treatment, sexual and other forms of exploitation of LGBT persons (which includes transgender women) in penitentiary institutions in Armenia. Moreover, the Prison Monitoring Group (Group of Public Monitors Implementing Supervision over the Penitentiary Institutions and Bodies of the Ministry of Justice of RA) has documented that LGBT persons are being subjected to degrading treatment not only by other prisoners, but also by the personnel of penitentiary institutions.

Cases of abuse, discrimination, ill-treatment of the patients are also documented in psychiatric organizations in Armenia.

It is important to highlight that exertion or threat of gender-based violence against women deprived of liberty entails a violation of human rights, while prevention of risks of violence and implementation of protection mechanisms are the international legal obligations of states, including of the Republic of Armenia, which necessitate continuous and in-depth study and effective tackling of the issue.

² The study uses the terms "place of deprivation of liberty" and "institution" interchangeably.

This publication is a first step in conducting such a study. Its prominence can be seen in the visibility it gives to the issue and the attention it seeks to draw from stakeholders, authorized bodies, entities conducting monitoring and oversight in places of deprivation of liberty and from the public at large.

The analysis and research recommendations are developed by human rights expert, researcher Anahit Simonyan, sociologist Shushan Ghahriyan and lawyer Narine Aleksanyan.

Lawyers Hasmik Petrosyan and Anahit Mkrtychyan have also taken part in the research process at its various stages.

The research was conducted through a review of relevant local and international literature, qualitative interviews with experts in the field and key actors³, official inquiries and respective data analysis, review of international norms and standards and parallels with domestic legislation.

The Human Rights Research Center extends gratitude to all experts, representatives of non-governmental organizations and government agencies who have participated in interviews and provided ample data and information, shared their experiences, knowledge, approaches and positions on the issue and its resolution and thus made this research work possible.

The Human Rights Research Center hopes that the findings of the research will frame an understanding of the issue and will create a foundation for further exploring and voicing about it, while the recommendations of this study will contribute to addressing the gender-based violence against women deprived of liberty, including addressing the risks of such violence. The issue must be tackled by the implementation of respective reforms in the penitentiary and mental health sectors, proper fulfilment of the state's obligations of human rights protection, formulation of effective and systemic solutions and adoption of gender-sensitive preventive practices.

The publication is comprised of 5 parts, namely:

- Part 1: Overview of the Research Issue.
- Part 2: Establishment of Legal Liability for Gender-Based Violence in the Context of Deprivation of Liberty and Legal Acknowledgement of the Research Issue.
- Part 3: Exploration of the Research Issue in the Context of Corrections Sector.
- Part 4: Exploration of the Research Issue in the Context of Mental Health Sector.
- Part 5: Addressing the Research Issue by Means of Conduction of External Monitoring and Internal Oversight of the Places of Deprivation of Liberty.

³ For the purpose of this study state decision making bodies and selected institutions (places of deprivation of liberty) are considered as key actors.

The **first part** of the study gives an overview of the issue of gender-based violence against women deprived of liberty.

For that purpose, Part 1 focuses on the terms "gender-based violence" and "places of deprivation of liberty", their definition in international and national contexts. It further elaborates on the manifestations and features of the subject matter of the research and by such outlines the scope of problems and questions which deserve a specific case-by-case review necessary for tackling the issue.

Part 1 is concluded with a set of key observations important for addressing the research issue. The observations include the following:

- The issue of gender-based violence against women deprived of liberty in the Armenian context calls for an overarching tackling approach and deserves attention both by state and non-state actors.
- The data collected during the study suggests that addressing gender-based violence risks is not viewed as a priority among either decision makers or representatives of the selected institutions. This, therefore, poses the risk of continuously neglecting questions related to this issue and disguising it altogether. As a result of the latter, state statistical data on gender-based violence cases in the selected institutions is missing.
- "Gender-based violence" or "gender-based violence against women" are not established terms in the domestic regulations of Armenia. It is necessary to define the term "gender-based violence" in Armenia's legislation in conformity with international standards and notably, with the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). At the same time, "gender-based violence" as a term needs to be integrated in all relevant regulations.
- The issue of gender-based violence against women deprived of liberty must constantly be in the focus of state actors and should be incorporated in sectoral policies as a priority.
- Unlike the reviewed international literature, no studies are available in the Armenian context aimed at directly identifying or researching issues of violence and gender-based violence in places of deprivation of liberty. Only few of the local studies and reports touch upon the issues prevalent in penitentiaries and psychiatric organizations, confirming existence of cases of violence and describing situations ripe with risks of violence, however they are not directly aimed at studying gender-based violence in these institutions.
- It is important for entities conducting external monitoring in selected institutions and non-governmental organizations, as well as experts in selected sectors and researchers to continuously touch upon the issue of gender-based violence against women deprived of liberty, thus increasing its visibility and need to be tackled.
- LGBT persons and specifically transgender women are particularly vulnerable to gender-based violence in penitentiary institutions in Armenia. The data collected as part of this study as well as the documentations of the Prison Monitoring Group from different years attest to the existence of stigma, discrimination, abuse and ill-treatment, sexual and other

forms of exploitation of LGBT persons. As documented by the Prison Monitoring Group LGBT persons are being subjected to degrading treatment not only by other prisoners, but also by the personnel of penitentiary institutions.

- The fact that the Prison Monitoring Group has documented such issues related to the conditions of detention and treatment of LGBT persons', including of transgender women, as ill-treatment, discrimination, sexual abuse, exploitation and harassment towards them means that respective authorities and notably the Ministry of Justice and the Penitentiary Service of the Ministry of Justice are well informed about these issues.
- The only female penitentiary institution in Armenia is "Abovyan" Penitentiary Institution, where the Human Rights Defender (ombudsperson) of Armenia has documented issues posing risks of violence, such as constant and direct surveillance of women detainees and prisoners by male personnel, existence of male staff members among the personnel carrying out checkpoint service.
- The state has to take consistent measures to assess and tackle risks of abuse and discrimination against women detainees and prisoners, including against transgender women, women with disabilities, minor girls. The state has to address these risks, tackle discrimination against and negative attitudes towards these women both in the society and within penitentiary institutions, as well as address the issues of the masculinized dominant environment inherent to penitentiary institutions, deeply rooted gender stereotypes, transphobia, homophobia and prison culture that “sanctions” permissiveness and culture of impunity for acts of violence and abuse against vulnerable groups in penitentiaries.
- In the context of detection of cases of abuse/gender-based violence in selected institutions, as well as for the purpose of reporting and lodging complaints about such cases, awareness-raising among the women deprived of liberty about their rights and complaint mechanisms are important, along with the adoption of gender-sensitive policies by the administrations of these institutions and decision-makers and gender-sensitive training of personnel working with women in corrections and mental health contexts.
- Decision-makers should pay special attention to issues of ethics and conduct by personnel working with women in corrections and mental health contexts.
- Cases of abuse, discrimination, ill-treatment and various other violations of rights are also found in psychiatric organizations in Armenia, as documented by local reports and participants of this research. In light of both international and local developments around prevention of discrimination and violence in the mental health sector and the approach undertaken by the Human Rights Research Center, the imperative of deinstitutionalization of the mental health sector is prioritized in the scope of this study.

Part 2 addresses issues of establishing legal liability for gender-based violence in the context of deprivation of liberty and legally acknowledging the problem. For this purpose, the international legal norms requiring charges for gender-based violence have been studied and issues of setting national sanctions for various manifestations of gender-based violence are discussed. Part 2 also

discusses acknowledgement of the issue in national regulations by reviewing existence of provisions preventing violence and/or gender-based violence in legal acts regulating the operation of selected institutions and relevant policies and strategies. **The recommendations stemming from the analysis in Part 2 are the following:**

1. To criminalize all forms of gender-based violence for which criminal liability is envisioned by international legal norms, specifically the Istanbul Convention, as well as by the practice of UN treaty bodies.
2. To study international best practice and establish relevant sanctions for such manifestations of gender-based violence which do not necessarily entail criminal liability according to international norms.
3. To amend Article 3, Clause 9 of the RA Criminal Code and incorporate sexual, economic and psychological forms of violence in the definition of "violence".
4. To make respective amendments in the RA Criminal Code that specify commission of gender-based offences as a factor aggravating criminal charges.
5. To conduct a needs assessment in bodies conducting preliminary and full investigations on peculiarities of characterization of offences that fall under Article 301.9 of the RA Criminal Code and accordingly conduct capacity-building training courses on the identification of cases of torture on the grounds of gender-based discrimination and characterization of such cases in accordance with Article 301.9 of the Criminal Code.
6. To incorporate the issue of protection of women deprived of liberty in relevant sectoral laws.
7. To recognize violence against women deprived of liberty as an issue and a priority in national strategies on both gender equality and human rights protection.
8. To develop and implement targeted measures of preventing gender-based violence against women in the context of deprivation of liberty (for example, amendments in legal regulations, adoption of effective complaint and reporting mechanisms, gender-sensitization and training of respective personnel, development of guidelines etc.).
9. To Revise the RA Decree N 1225-N of October 23, 2008 and incorporate gender-sensitive indicators in data collection procedures.

Part 3 and 4 are dedicated to the exploration of the research issue in corrections and mental health contexts respectively.

Part 3 discusses the need for legally adopting and practically implementing the key international norms on prevention of gender-based violence in penitentiary institutions. The analysis focuses on the key international documents and norms, specifically the Nelson Mandela Rules (Revised UN Standard Minimum Standard Rules for the Treatment of Prisoners) and the Bangkok Rules (UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders). This part of the study reviews the requirements for penitentiary institutions, placement of detainees into the facility, gender-sensitive assessment of risks and detection of past violence against women

offenders and prisoners, as well as other key norms on the prevention of gender-based violence against women during their imprisonment, conditions of detention and treatment of women offenders and prisoners. **The recommendations stemming from the analysis in Section 3 include the following:**

- 10.** To follow up on the RA Justice Minister's Order N 439-L of September 8, 2021 (on adopting new tools for mental health examination and risk assessment in penitentiary institutions) by conducting a gender-sensitive analysis of the results registered during the pilot phase (specifically, the extent to which the adopted tools ensure the possibility of detecting torture, ill-treatment and various forms of gender-based violence against women). The received information will allow to improve the tools and procedures by aligning them to international standards of gender-sensitive assessment of risks among women in penitentiary facilities.
- 11.** To make the following legal amendments in order to align domestic legislation to international standards of comprehensive gender-sensitive medical examination: a) amend the RA Justice Minister's Order N 163-L of April 21, 2021 to incorporate regulations requiring engagement of personnel of the same gender from the given custodial facility in medical examinations if it is impossible to have it conducted by medical personnel of the same gender; b) make an amendment in Article 21 of the "Law on Treatment of Arrestees and Detainees" and Clause 13 of the Appendix to RA Justice Minister's Order N 825-N of May 26, 2006 by removing the following wording "if the physician performing the medical examination is not requiring the opposite".
- 12.** To take the following practical steps aimed at providing effective and gender-sensitive legal, psycho-social support and counselling to women detainees and prisoners subjected to violence prior to admission to penitentiary facility in accordance with their needs: a) ensure the availability and adequate number of legal, mental health and social work personnel with high qualifications in penitentiary institutions; b) ensure the gender-sensitization of the given personnel, maintenance of ethical conduct in their work and in their treatment of women detainees and prisoners, ensuring exclusion of any form of discriminatory or degrading treatment; c) ensure that the mentioned personnel are equipped with adequate and necessary skills and knowledge for working with women detainees and prisoners who have been subjected to gender-based violence.
- 13.** To conduct a comprehensive assessment of manifestations of discrimination and abuse against LGBT persons and specifically transgender women in prisons, including the risks and needs related to this issue, and to eliminate the culture of impunity for their abuse in penitentiary institutions.
- 14.** To adopt effective mechanisms ensuring dignified and safe conditions of detention and treatment of LGBT persons and specifically transgender women in penitentiary institutions free from discrimination on the basis of their sexual orientation and/or gender identity, free from ill treatment and violence, given the fact that these acts are committed with the knowledge and connivance of prison administrations. In relation to the documented cases,

to ensure fair and effective investigation and criminal prosecution of persons in charge of offences.

15. To conduct a comprehensive study with an aim to compare international best practice on safe placement of LGBT persons, particularly of transgender women in penitentiary institutions, with the practice existing in Armenia. Based on this study and its findings, to adopt such mechanisms of placement of transgender persons that will ensure prevention of risks of violence and discrimination against such persons.
16. To clarify the principle of non-violation of the dignity and honor of persons subjected to strip searches and maintenance of sanitary and hygiene conditions in penitentiary services in the internal regulations of the Penitentiary Service of the Republic of Armenia on detention facilities and correctional institutions in accordance with international standards on permissible and non-permissible forms of body searches. Namely, ban invasive searches.
17. In accordance with international standards, establish special legal regulations for recruiting only women to positions in the administration and escorting and security services of the "Abovyan" Penitentiary Institution.
18. In response to concerns mentioned by experts and given the international standards, to conduct a study on the international best practices of gender-sensitive management of female penitentiary institutions and take measures of adopting such practices in Armenia.
19. To enable effective and working mechanisms of contact with family by women detainees and prisoners which will contribute both to maintaining contact but also overcoming stereotypes about women in prisons.
20. Conduct in-depth and comprehensive review of the curricula of current training courses for penitentiary servants with the view of exploring the reflection of international standards of gender-sensitivity in them. Based on this review, respectively change the current training curricula and adopt new ones that will comply with international standards of gender-sensitive training of penitentiary servants, including with requirements set forth by the Bangkok Rules.

Unlike the review of the penitentiary context, in its review of the mental health context in **Part 4**, the Human Rights Research Center has found it urgent to discuss the issue not in terms of improving the operations of existing psychiatric organizations, but remodeling the entire system of mental health services and duly deinstitutionalizing it by the state⁴. This approach was taken given the cases of violence registered in Armenia's psychiatric organizations, as well as the risk of gender-based violence and the duty of the state to urgently address them. The proposed deinstitutionalization and remodeling of the mental health sector stem from the Convention on the Rights of Persons with Disabilities ratified by the Republic of Armenia.

⁴ At the same time, the research addresses the matters related to the regulation of the operation of Armenia's psychiatric institutions and to the prevention of gender-based violence in the given context under Part 1, Part 2 and Part 5 of this document.

In view of the international standards reviewed in Part 4, the requirements of the Convention on the Rights of Persons with Disability, the practice developed by the Committee on the Rights of Persons with Disabilities (CRPD) and its Concluding Observations on the initial report of Armenia [CRPD/C/ARM/CO/1], as well as analysis of information collected from local sources and by this research, the Human Rights Research Center recommends:

21. To ensure the participation of persons with mental health issues, psycho-social, mental and other disabilities, including women, as well as organizations and bodies representing their rights in all processes related to regulating and making decisions in the mental health sector. These processes may include designing legislative documents, concept notes and strategies.
22. Establish deinstitutionalization as a state policy in the sector of mental health.
23. In compliance with the CRPD's Concluding Observations to Armenia, to revoke the laws and prohibit detention, including involuntary hospitalization and forced institutionalization, as well as non-consensual psychiatric treatment, on the grounds of impairment.
24. To take urgent measures to ensure rapid progress towards deinstitutionalization and implement, without delay, its action plan for deinstitutionalization, including timelines for closing all remaining institutions. Establish all necessary services enabling the effectiveness of this process, as well as to create an environment in the society conducive to overcoming stigma and discrimination against persons with mental health issues, psycho-social, mental and other types of disability, including women, for them to feel safe, protected and included in their communities.
25. In compliance with CRPD's Concluding Observations to Armenia, to take effective legal, policy and practical measures aimed at tackling gender-based violence against women with disabilities (especially those living in closed institutions).
26. To end impunity in psychiatric institutions. In compliance with the Concluding Observations provided by the CRPD, to take legislative and practical measures to protect persons with mental health issues, psycho-social and other disabilities, including women still placed in psychiatric institutions from neglect, violence, compulsion, abuse and exploitation, as well as inhuman or degrading treatment or punishment. To develop effective mechanisms of reporting violence and discrimination in the currently operating institutions. To ensure effective investigation and remedies for reported cases including judicial prosecution and establishment of liability for the abusers.
27. To ensure the gender-sensitivity of the deinstitutionalization process. As part of activities conducted towards deinstitutionalization, address the needs of women with mental health issues, psycho-social, mental and other disabilities, address the risks of discrimination and violence against them. In upcoming sectoral strategies, pay special attention to gender-sensitive mental health care, gender-sensitive approaches applied in providing inpatient and outpatient mental health services and organize gender-sensitive training for all service providers and decision-makers on this matter. To ensure proper implementation of activities aimed at the above-mentioned objectives.

Finally, **Part 5** of the study touches upon protection of the rights of women deprived of liberty from gender-based discrimination and violence by means of external monitoring and internal oversight of the places of deprivation of liberty. This part discusses how monitoring can be conducted in a gender-sensitive manner, which requires corresponding resources, capacity and tools. **The recommendations that are brought about by the analysis of Part 5 are the following:**

- 28.** (to entities conducting monitoring) To adjust monitoring tools to meet criteria of gender-sensitivity which will allow to identify gender-based violence or the risks of such violence in the places of deprivation of liberty.
- 29.** To conduct gender-sensitive training aimed at raising the capacity of the Prison Monitoring Group, the Monitoring Group in Psychiatric Organizations and the personnel of the Human Rights Defender's office. This will allow the respective entities to better identify gender-based violence while conducting external monitoring of selected institutions.
- 30.** To conduct a comprehensive study on all effective procedures of internal oversight in the context of gender-based violence in selected institutions, as well as review their compliance with international standards. Based on the study, discuss conceptual issues and mechanisms of incorporating the international best practice in Armenia and develop relevant legislative initiatives and ensuing regulatory procedures and internal acts.