



Special Rapporteur on the Promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Fabián Salvioli

Preliminary Observations. Visit to Armenia (16 to 24 November 2023)

Yerevan, 24 November 2023

From 16 to 24 November 2023, I conducted an official visit to Armenia. I would like to thank the authorities in Armenia for their openness and cooperation during the realization of the visit. I would also like to thank the United Nations presence in the country for supporting my team before and during the visit. I visited Yerevan, Syunik region, Jermuk and Yeghegis and had the opportunity to make field visits to refugee camps, conflict sites, and memorials of past human rights violations. I met with victims and survivors, representatives from civil society, international organizations and the diplomatic community, journalists and academic experts.

The purpose of the visit was to assess the measures in the areas of truth, justice, reparation, memorialization and guarantees of non-recurrence that have been adopted by the authorities in Armenia to address the legacy of serious violations of human rights committed in situations of conflict, autocracy or state repression, seeking to have a broad view of the various initiatives taken, identify good practices, gaps and shortcomings, and formulate recommendations in that regard.

During the visit, I met with representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Security Council, the National Security Service, the Ministry of Internal Affairs, the Ministry of Defence, the Working Group of the Interagency Commission on Issues of Prisoners of Wars, Hostages and Missing Persons, the Central Electoral Commission, the Ministry of Education, Science, Culture and Sport, the Ministry of Labour and Social Affairs, the Ministry of Health, the RA Representative on International Legal Issues, the Prosecutor's General Office, the Constitutional Court, the Supreme Judicial Council, the National Assembly's Standing Committee on Protection of Human Rights and Public Affairs, the Standing Committee on Defence and Security, and the Standing Committee on Labour and Social Affairs, as well as the Human Rights Defender.

Armenian society has endured serious human rights violations in the Twentieth Century, including Genocide during World War I; deportation, purge and repression under Soviet rule; crimes under international law in the context of the conflict in Nagorno-Karabakh; as well as arbitrary detention and excessive use of force during manifestations, suspicious deaths in the armed forces, and torture by law-enforcement since 1991 onwards. Large-scale violations of property rights and electoral rights were also endured in the latter period. Post-authoritarianism and post-autocratic processes and processes to address the conflict must be accompanied by measures in the fields of truth seeking, criminal accountability, reparations, memorialization, and institutional and legal reforms to address the legacy of those violations, prevent their recurrence and lay the foundations of a democratic and peaceful future. During my visit, I have assessed the progress made in these five areas of transitional justice. I will share my preliminary observations in this regard and provide recommendations for the way forward. A detailed report of my visit will be presented to the United Nations Human Rights Council in September 2024.

Truth-seeking

Armenia has lagged behind in its efforts to establish specialized autonomous truth-seeking mechanisms to investigate and record the systemic human rights violations suffered during those turbulent years. Truth seeking

mechanisms have not been established to study the violations endured during soviet rule, some episodes of the conflict, and some of the state abuses carried out since 1991 onwards. Some investigations about the conflict and about state abuses were carried out by the National Assembly.

In 2009, the “*1st March Commission*” was created in the National Assembly to investigate the human rights violations (including killings, excessive use of force, and arbitrary detention and criminalization of hundreds of protesters) committed after protests against electoral fraud on 1st and 2nd March of 2008. The commission submitted a report with its conclusions to the Assembly. However, it did not identify responsibilities for the killings of 10 persons during the events. With regards to the conflict, the National Assembly formed commissions of inquiry to investigate the events of the 4-day war in April 2016 and the 44-day war in 2020. The work and findings of the former is partially confidential, and the latter is still ongoing.

In 2018, the Government adopted the Judicial and Legal Reform Strategy and its Action Plan 2019-2023, in which it prescribed the establishment of an independent Fact-Finding commission to look into human rights violations committed between 1991 and 2018, a period described by many interlocutors as autocratic. This commission was foreseen as the only transitional justice measure in the strategy. The commission was expected to investigate the systemic violations committed during this period, such as expropriations “in the national interest” (carried out since 2000s onwards), death of soldiers outside of conflict or combat, electoral rights violations or fraud, and political persecutions. The Legal and Judicial Reform Strategy and Action Plan for 2022-2026 reiterated the commitment to establish this Commission; however, a bill reportedly drafted by the Government in 2023 appears to have substantially downgraded this transitional justice mechanism by proposing instead the creation of an expert group ascribed to the Public Council of Armenia, an institution with reported unclear mandate, insufficient powers, and volunteer membership.

The search for missing persons from the conflict in Nagorno-Karabakh, which totals 5000 people across the different stages of the conflict, has not been sufficiently addressed in past decades. Having lost access to these territories after the recent developments of 2020 and 2023, this pursuit has regrettably become more unattainable for Armenian authorities. The passage of time is also hampering access to witness testimonies and information about the burial sites of missing persons who have lost their lives. Cooperation between Armenian and Azerbaijani counterparts in this regard has been deficient and must be urgently scaled up.

Justice

In 2022, a reform was adopted to the Criminal Code of Armenia to bring the list of international crimes contained therein -including war crimes, crimes against humanity, genocide, and torture- in line with international standards. The reform also established the prohibition of application of amnesties and statutes of limitations for these crimes. In October 2023, Armenia ratified the Rome Statute of the International Criminal Court, which will enter into force in February 2024. I commend the Government of Armenia for this crucial legislative progress.

Notwithstanding this improvement, criminal accountability for human rights violations committed by state officials has not been achieved and was insufficiently or rarely pursued. The former Special Investigative Service (SIS), charged with investigating violations committed by public officials, failed to investigate the police violence committed against peaceful protesters and journalists in 2015 and 2016 claiming that they were unable to identify the alleged perpetrators. In 2018, the SIS revived investigations into the 1st March 2008 events, bringing charges against key former officials, which were eventually dismissed by the Criminal Court who found the Criminal Code article on “overthrowing of constitutional order” under which they were being prosecuted, unconstitutional. There hasn’t been effective criminal investigation in many other instances of disproportionate use of force and other abuses in the context of assemblies. Concerningly, current police practices in the context of assemblies reportedly retain similar patterns.

Numerous cases of torture and inhuman or degrading treatment by the police are reported in Armenia¹. Although the crime of torture has been criminalized in 2015, victim’s claims have been dismissed by domestic courts in

¹ <https://www.hrw.org/world-report/2023/country-chapters/armenia#1c2c8f>

application of statutes of limitations, until their application was outlawed in the Criminal Code of 2022. In addition, cases of torture committed before 2015 were criminally prosecuted as "abuse of office", even after the crime of torture had been introduced in the Criminal Code. Civil society reported that despite the legislative progress, criminal investigations of cases of torture are often closed based on findings that no crime was committed or suspended for failure to identify a suspect.² The first conviction on torture charges was reportedly delivered in March 2022.

Several interlocutors have raised concerns about the ongoing cases of non-combat deaths in the armed forces and insufficient accountability therein. The investigation into these violations is ineffective, due to reported resistances in the criminal justice system, where vetting of allegedly corrupt members has not been carried out. A working group formed of government and families' representatives was established in 2020-2021, upon the Prime Minister's initiative, to assess those investigations. The group prepared comprehensive reports on five selected cases where it observed violations of due process. As a result, several criminal cases were reopened but others remain in standstill.

Domestic courts have not upheld the rights of victims of expropriations to reparation. Expropriation cases were routinely subjected to the application of statutes of limitation and victims who submitted claims to Courts, have not received compensation, except in 20 cases in which the European Court of Human Rights had ruled in the victim's favour. In November 2023, the Constitutional Court issued a ruling outlawing the application of statutes of limitations for expropriation cases undertaken between 2001 and 2006, and established that the Parliament could not adopt legislation imposing such limitations for these cases in the future. This is a very welcomed development.

Reparation

In 1994, the Republic of Armenia adopted the Law on the Repressed. The law applied to those who during the former Soviet era, in the Soviet territory, and based on political motives: a) were convicted under certain articles of the 1961 Criminal Code and previous codes, and who later were acquitted; b) were subject to criminal liability in an extrajudicial manner; c) were subjected to unlawful coercive medical measures; d) were deported from the territory of the former USSR or were stripped off citizenship; or e) were deported or subjected to exile as a family member of a victim of repression. The law foresaw reparation to victims, including restoration of citizenship; restoration of titles and degrees; pensions; land property for the purpose of construction of individual dwellings; long-term construction on privileged conditions; fee exemptions related dwelling privatisations; one-time monetary compensation for confiscated property and unpaid salary of the repressed person. Victims of Soviet repression had their status as victims recognised and were afforded reparations under this scheme. A civil society legislative proposal to enlarge this law to victims of repression in democratic times, was never adopted.

The Law of compensation of soldiers and their families (1998) and the Law 245 N (2016) provides reparation to soldiers dead or incapacitated during the conflict. Civilian victims of the conflict and their families receive compensation pursuant to government decrees, according to information provided by the Government. Victims noted insufficient psychosocial support provided by the government. In 2019, a law was adopted to provide compensation to the victims of the 1st March 2008 events whose health or life were affected, and their families. Pecuniary compensation was paid to the victims and eligible family members.

Aside from these laws, Armenia has not adopted specific legislation to provide reparation to other victims of human rights violations. Nonetheless, victims can submit claims pursuant to other existing general norms, such as the Civil Code which provides for the right to compensation for serious human rights violations such as loss of life, torture and the loss of personal freedom, and the Law on Fundamentals of the Administrative Action and Administrative Proceedings, which grants right to compensation to victims of damage caused by administrative

² Ibidem

bodies. However, the timeframe for the submission of victims' claims is limited to 3 years in the former, which restricts victims access to reparation rights and reparation is only pecuniary, not including rehabilitation.

Pursuant to the Government decision "On establishing the procedure and conditions of torture survivors making use of psychological services" adopted in 2017, torture victims have a right to access rehabilitation. The latter includes psychological and legal services free of charge, which is provided by civil society institutions in agreement with the Ministry of Justice.

With regards to measures of satisfaction, the Prime Minister offered apology to the victims of political prosecution and killings of the 1 March events at a public commemoration held in Yerevan in 2019. I did not receive information about other instances of public apologies for past human rights violations committed by State officials.

Memorialization

Yerevan's Tsitsernakaberd Memorial complex is dedicated to "the memory of the 1.5 million Armenians who perished in the first genocide of the 20th century at the hands of the Turkish government"³. The complex is composed of the Genocide Monument, erected in 1967, and the Museum and Institute opened in Tsitsernakaberd established in 1995. In the compound of the complex, civil society has erected memorials to commemorate the victims of pogroms in Baku, Sumgait and Kirovabad and of the conflict in Nagorno-Karabakh, which are duly maintained by the authorities of the complex. The complex is an exemplary model of memorialization efforts which could and should be replicated in other spheres. Armenia commemorates annually the memory of victims of genocide and has recognized victims of genocide elsewhere.

14 June has been declared the day of remembrance of victims of repression. The Cascade Monument to the Victims of Political Repression is dedicated to the Armenian victims of Soviet deportation and murder. It was constructed in the 1980s and opened by the Government in 2008. The monument is maintained by civil society organizations without governmental support and opens once a year, on 14 June, to commemorate the victims of repression. The commemoration is carried out by civil society without Government support or participation. The monument is located in the Yerevan Cascade Complex, and sits next to an obelisk erected in 1967 to commemorate 50 years of Soviet Armenia.

A monument commemorating the victims of the 1st March 2008 events was opened by the Government in 2023, in a ceremony attended by high ranking officials, including the Prime Minister and the President, where they expressed support to victims and their families and noted that election rigging and police violence should never happen again.

A day of missing persons is officially commemorated in Armenia, a monument was erected and official commemorations have been held. Commemorations organized by victims' families on that day have not always been attended by authorities.

The Government informed that school curricula and manuals include education on human rights and peace culture, as well as history education about past serious human rights violations, such as the Armenian Genocide, Stalin's repression, the pogroms in Baku, Sumgait and Kirovabad, and other violations suffered during the conflict in Nagorno-Karabakh. Civil society representatives have observed insufficient education on the violations suffered by Armenians during Soviet rule, except for Stalin's purge and deportation, as well as insufficient information about State abuses committed after 1991. The lack of a comprehensive approach to the violations committed in

³ http://www.genocide-museum.am/eng/Description_and_history.php

the context of Nagorno-Karabakh was also noted. The current Government has pledged to revisit the existing textbook regarding the 1st March events and provide “objective depiction of the events”. However, civil society has expressed concern about possible political manipulation of school texts on this issue.

Given the lack of truth seeking and accountability mechanisms addressing some of these events, which would have been the natural and most adequate source of information for education tools, it is important that history textbooks about past serious human rights violations are formulated or revised based on objective information, which is not permeated by political or other interests.

Guarantees of non-recurrence

Security Sector Reform

I was informed of recent measures adopted by the Government to reform institutions in the security sector, as part of a broad institutional reform package adopted in 2020. The government informed that the security sector reform aims at transforming the police forces from a force focused on defence functions into a prevention-oriented body.⁴ The reform entailed the establishment of a Ministry of Internal Affairs and the transfer of the Police, previously ascribed to the Prime Minister, under its purview. It also comprises the establishment of a new patrol police to maintain civil order and respond to emergencies, and a new National Guard consisting of police forces, security guards and witness protection officers. The former’s newly selected members undergo training and monitoring. In addition, the reform entails the reorganization of the functions and governing model of the criminal and communal police services. Pursuant to the reform, the Committee on Internal Security and Anti-corruption, an internal control body which investigates human rights and discipline violations by police officers and reviews their security cameras, was transferred from the Police to the Ministry of Internal Affairs to improve the check and balances of the police institution. The reform also adopts a police certification process, whereby all police officers must undergo an examination of their knowledge, discipline and behaviour within the next 3 years, as a precondition for staying in the force. The certification will be carried out by an Evaluation Commission comprised of ministerial authorities, parliamentary members and civil society.

Civil society organizations have welcomed the reforms of the police but noted that they mainly entail segmental efforts rather than systemic changes.

With regards to the Penitentiary service, a decree of the Minister of Justice established in 2005 the Public Prison Monitoring Group to provide public oversight of Penitentiary Institutions in Armenia and the protection of rights of prisoners, with representation from civil society and unlimited access to penitentiary institutions.

With regards to the Armed Forces, the law on Disciplinary Code of the RA Armed Forces was adopted in 2012. In 2014 the Government established the Military Investigative Department within Armenia’s Investigative Committee, whose members are appointed by the Prime Minister, with mandate to investigate crimes committed by military personnel. In 2015, the Human Rights and Building Integrity Centre (HRCBI) was established in the Ministry of Defence, introducing a culture anchored on human rights and benevolence. In January 2017, the rapid response service of the Ministry of Defence (hotline), was launched under the authority of the HRBI Centre. The government informed that the Armed Forces were subject to reforms since 2020 to increase transparency, prevent corruption, review tasks and capabilities, and improve democratic oversight.

⁴ <https://uhri.ohchr.org/en/document/c480b852-2b57-4e53-ad7f-a46ec6e3e32d>

Mechanisms to oversee and discuss security sector reforms in consultation with civil society, lawmakers and oversight mechanisms have been established in Parliament and by the Prime Minister, but their work has been affected by political appointments or inactivity.

Despite these incipient reforms, I am concerned about the reported ongoing human rights violations committed by members of Armenia's security and armed forces, including acts of torture, excessive use of force during demonstrations, and suspicious deaths of soldiers outside of combat situations. The lack of investigation and sanction of these alleged violations are not assisting in preventing their recurrence.

Judicial reform

Following independence from the Soviet Union and the adoption of the Constitution of 1995, the first set of judicial and legal reforms were adopted to replace the soviet judicial system with new judicial bodies and legislation. With Armenia's entrance in the Council of Europe in 2001, further legal reforms were adopted to bring the countries judicial system in line with European standards. Technical and financial support was provided by regional and international organizations and donors to this end. Strategies for judicial and legal reforms were adopted for the periods 2009-2011 and 2012-2016 aimed at establishing an efficient judiciary and an independent judicial system.

The Velvet revolution brought about new reforms to the judiciary which was still widely perceived by local and international actors as captive to political interests and corruption, despite earlier reforms. The Strategy for Judicial and Legal Reforms of the Republic of Armenia for 2019-2023, was adopted in 2019 with the stated aim of increasing efficiency in the courts, improving public accountability of the judiciary, and eliminating corruption and patronage. Under this strategy, new Criminal and Criminal Procedure Codes were adopted. In addition, the Government established an integrity checking procedure for the selection and promotion of judges and prosecutors. The Supreme Judicial Council was established in 2019, as a self-governance body aimed at ensuring independence and integrity of judges, as prescribed by the Constitution of 2015. Numerous interlocutors noted that progress stalled after the 2020 conflict in Nagorno-Karabakh. In 2021, the Assembly of the Council of Europe noted a low level of public trust in the judiciary and the perception that it suffers from a significant degree of corruption⁵. A 2022 OECD report noted the lack of a prosecutorial governance body to protect prosecutors' autonomy, the prosecutor's discretion in the selection and promotion of prosecutors without a merits-based criteria, and the allocation of cases to prosecutors by their line managers. It also noted insufficient transparency in operations of the Supreme Judicial Council and the lack of merit-based criteria in the selection of 5 of its members by Parliament.⁶

A judicial and legal reform strategy for 2022-2026 was developed and is yet to be implemented. I will refer to anti-corruption and electoral reform in my final report.

Final observations

The administrations that have governed Armenia since its independence from Soviet rule in 1991, have adopted a series of measures to address the legacy of human rights violations that have been committed or suffered in the context of soviet rule, autocratic governments, and the conflict. Although these measures have not been embedded in a transitional justice process, or officially considered as part of such an agenda, many have been directed at

⁵ <https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf>, p. 4

⁶ <https://www.oecd-ilibrary.org/docserver/e56cfa9-en.pdf?expires=1700584250&id=id&accname=guest&checksum=A4074ABD724A7D7F286F7AB216A5B8FF>, p.6

reverting the heirloom of repressive or autocratic regimes towards democratic consolidation, or at investigating and providing redress for violations suffered by Armenian soldiers or civil society in the conflict.

Progress in the fields of truth-seeking, criminal justice, reparation and memorialization of past human rights violations has been inconsistent. Specialized autonomous truth-seeking initiatives have not been adopted to investigate and record violations endured during soviet rule, some episodes of the conflict, and some of the state abuses carried out since 1991 onwards. However, some investigations about the conflict and about state abuses were carried out by the National Assembly. I call on the authorities to establish an independent mechanism to investigate and record the different instances of human rights violations referred to in this statement, and to make them accessible to current and future generations.

The criminal investigation of numerous instances of excessive use of force, torture, suspicious deaths, and arbitrary detention have been scarce due to lack of political will, ineffective investigations, and the application of statutes of limitations which have now been outlaw for international crimes by domestic legislation. I call on prosecutorial and judicial authorities to urgently step-up efforts to discharge their national and international duty to provide accountability for those human rights violations.

Armenia has not adopted an overarching reparation scheme; however, reparations have been provided to victims of Soviet repression, soldiers dead or incapacitated during the conflict, civilian victims of the conflict, and victims of the 1st March 2008 events, pursuant to legislation or governmental decrees. Other victims of human rights violations have struggled to receive reparations. I call on the authorities to adopt the necessary legislative and administrative measures to ensure that victims of illegal expropriations, state repression and abuse in the context of manifestations, and torture and suspicious deaths in law-enforcement or armed forces are provided with specific legal status as victims of human rights violations and full reparation accordingly. Public apologies for past state abuses have been scarce and must be scaled up.

Memorialization regarding the violations mentioned in this statement is limited, with the notorious exception of the Tsitsernakaberd Memorial complex, and requires increased commitment and resources. History teaching of such violations aimed at fostering critical thinking and a pluralistic understanding of the issues at stake and based on textbooks formulated or revised upon objective academic information, should also be scaled up.

Armenia's process of transition to democracy has gradually been evolving since the adoption of the 1995 constitution onwards. An initial process of State building and reconstruction of structures inherited from soviet times alongside the process of entry into the Council of Europe in 2001, fostered the establishment of emerging democratic processes, institutions, and norms with the support of regional and international organizations and donors. The progress was not linear, and enormous challenges were encountered, such as electoral fraud, insufficient independence of the judiciary, widespread corruption in state institutions, and excessive use of force in security and armed forces. Much of this concerns led to social criticism of state institutions for decades and crystallized in the "Velvet Revolution" of 2018. A new package of reforms was elaborated by the new administration, aimed at improving efficiency, reducing corruption and increasing transparency in the processes and decisions of state institutions. However, progress in this field has eluded, due partially to Covid-19 pandemic and the resurgence of the conflict with Azerbaijan, and partially to insufficient government endeavor to see the changes through.

The establishment of the Supreme Judicial Council and integrity checking procedures for judges, although very important, have not sufficiently shielded the judiciary from political interference, according to numerous accounts. Opacity in appointments and decisions of the Council and the Public Prosecutor's Office is also reported. I call on the relevant authorities to deepen the reform process to ensure the effective independence of these vital institutions from corruption and undue political influence. Democracy and respect for the rule of law cannot be effectively accomplished otherwise. The Government has adopted over the years some sectorial reforms to increase independence and oversight in the police, penitentiary and armed forces. Reforms to the police have been strengthened since 2018 with the adoption of certification processes. However, these changes have been insufficient and failed to curve the patterns of human rights violations perpetrated and insufficiently investigated by these institutions. I call on the authorities to move forward with the reform package of these institutions, to vet

and certificate officials in all forces, and to provide accountability in all instances of abuse in order to stop their recurrence.

My arrival in Armenia has coincided with the forced displacement of 110.000 Armenians from Nagorno-Karabakh as a result of the conflict. I have met with refugees and authorities in receiving communities and in Yerevan, where I observed the pain and urgent needs of the displaced population as well as the immense task carried out by the authorities to address their basic and urgent needs. I wish to take this opportunity to extend my deep solidarity to the refugees from Nagorno-Karabakh, and to commend the authorities for their commitment and expediency in assisting these victims. Essential services, housing and livelihood support is being provided to refugees. However, the passage of time will make this task more challenging. Medium term solutions must be assessed with the support and advice of the international community, as I understand is already the case. Registration mechanisms to ensure unrestricted access to employment and services irrespective of refugees' citizenship status must be facilitated to prevent unexpected obstacles in this regard. Besides these essential needs, refugees have noted the urgent need to ensure preservation and access to documentation and registration papers left in Nagorno-Karabakh, as well as the safeguarding of their cemeteries and cultural heritage in those territories. I call on the parties to peace negotiations and to the members of the international community relevant to this process to consider mechanisms to preserve this material and immaterial heritage and to foresee the implementation of mechanisms of truth (including the facilitation of search of missing persons and fact-finding processes), justice, accountability, return of prisoners of war and displaced persons from the conflict, and reparation of victims, in consultation with the affected populations and victims. Such mechanisms should be established under the auspices of the international community to ensure impartiality and trust from all parties, and to prevent the recurrence of violence. International standards on transitional justice must be reflected in any future agreements.