*"COMMITMENT TO CONSTRUCTIVE DIALOGUE" PROJECT*




"ARMENIAN LAWYERS' ASSOCIATION" NGO

# APPLICABILITY OF THE MECHANISMS OF TRANSITIONAL JUSTICE IN THE REPUBLIC OF ARMENIA IN THE LIGHT OF INTERNATIONAL EXPERIENCE

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The "Armenian Lawyers' Association" NGO has been implementing human rights activities and promoting reform in various public spheres since its inception, initiated the development and publication of this report.

The main objective of the report is to present the essence of transitional justice, its applicability in Armenia, the existing international experience, tools, mechanisms and institutes with successful and unsuccessful examples in different countries, as well as to identify in comparative and analytical ways the most effective applicable models with minimal risks in case of implementation of transitional justice in Armenia.

The research in this report has been implemented within the framework of the **"Commitment to Constructive Dialogue"** project, which is implemented with the financial support of the European Union by a consortium of civil society organizations, which are the "Armenian Lawyers' Association" NGO, Agora Central Europe o.p.s (an NGO from the Czech Republic), the "Armenian Center for Democratic Education-CIVITAS" NGO, the "International Center for Human Development" Public Organization, the "SME Cooperation Association" NGO and the Union of Communities of Armenia. The contents of this report are the sole responsibility of the "Armenian Lawyers Association" NGO and can under no circumstances be regarded as reflecting the position of the European Union.

# INTRODUCTION

The results of the referendum on independence of Armenia on 21 September, 1991 testified that the society was aimed at rejecting the policy of the former Soviet government and building an independent state based on democratic values that would provide general welfare and civic solidarity.

The public aspiration and expectation that existed in the period of independence was later fixed by the Constitution adopted on 5 July, 1995 by setting up the Republic of Armenia as a sovereign, democratic, and social state governed by the rule of law.

The history of the Republic of Armenia proves that over the past 25 years no fundamental reforms have been carried out in the public life which would be aimed at the general welfare and civic solidarity atmosphere, the respect and protection of democratic values by everyone and establishing the rule of law in the country. During that period, more emphasis was placed on establishing a legal system that guarantees basic human rights and the possible legal access to justice rather than on implementation of deep and tangible reforms in various spheres of public life. At the same time, the question arises as whether only a change in legal norms will lead to tangible economic, social, legal or political changes. The answer is not unequivocal, but the indicators in Armenia prove that it is not enough to fix the rights and freedoms of individuals only by legal norms. It is necessary to envisage such legal mechanisms and guarantees in the domestic legal system that will exclude any cases of human rights violations. Meanwhile, mass violations of human rights have taken place since Armenia's independence. These violations have been recorded in a number of international and national reports, which have always reflected the massive human rights violations registered as a result of legal, political and socio-economic processes in Armenia's public life. The study of these facts proves that a number of characteristics of the concept of "torn society" can be relevant to the Armenian society as well, and they can, as such, be the result of not only military confrontations, but also the negative factors in public life under quasi-democracy.

Massive intolerance to negative phenomena in social life resulted in the non-violent, velvet revolution in March-April 2018.

It should be noted that along with the recent political developments within the country, the ruling political force in the post-revolutionary period demonstrated political will and through its pre-electoral program during the parliamentary election, envisaged introducing a transitional justice system in the country, expecting to exclude the possibility of repetition of human rights violations in the future, the corrupt and monopolized economic environment, and as a result restoring public confidence in justice and judicial power and establish an atmosphere of social solidarity in the country..

This report answers the following questions:

- What is transitional justice and what are the mechanisms for its application?
- What prerequisites are needed for the application of transitional justice mechanisms in the country?
- Is there a need to introduce a system of mechanisms for implementing transitional justice in Armenia taking into consideration the economic, social, political and legal processes that have taken place since the independence of the country?

Further, the successful and failed examples of international experience were studied and then recommendations on mechanisms for the application of transitional justice in Armenia based on them are presented.

In addition, the studied internationally recognized experience proves that the efforts to apply transitional justice in the country are largely unsuccessful if it has been realized without a clear and sincere willingness to form a transitional justice system, without informing the public in advance, without involving the stakeholders, as well as without wide public awareness of the mechanisms to be applied. The "Armenian Lawyers Association" NGO, realizing the need to carry out fundamental reforms in the legal system of the country; the importance of having an independent judicial system; the imperative to launch an institutional anti-corruption campaign; as well as the commitment of the political authorities to implement radical reforms in Armenia in the post-revolutionary period; has initiated the preparation of this report. The report is aimed at presenting the international experience of implementation of transitional justice to broad layers of the society and public authorities, its practical applicability in the RA and, in the case of implementation of transitional justice in Armenia to present an the applicable effective model of minimal risks.

## EXECUTIVE SUMMARY

Within the framework of the "Commitments to Constructive Dialogue" Project funded by the European Union, the "Armenian Lawyers' Association" NGO initiated the development and publication of the report entitled "Applicability of the Mechanisms of Transitional Justice in the Republic of Armenia in the Light of International Experience". The report presents the essence of transitional justice, the mechanisms of implementation and the need to introduce them in the RA in the light of international experience. The report also presents successful and failed practices of transitional justice in different countries, from which Armenia can learn from before the adoption of final political decision on implementation of transitional justice. The report presents the best international practices of transitional justice based on the United Nations "Guidelines on Transitional Justice". Accordingly, the report presents the following four key mechanisms for the implementation of transitional justice:

- Implementation of criminal justice;
- Truth Seeking process;
- Reparation Programs;
- Institutional reforms.

### Implementation of Criminal Justice

Implementation of criminal justice is one of the most important mechanisms for the implementation of transitional justice. Germany and Japan were among the first countries which implemented the transitional justice and where international criminal tribunals were established.[1]Later this practice was widespread in Yugoslavia and Rwanda, where international tribunals were also established.[2]

In addition to international tribunals, the creation of hybrid courts is also recognized, the best examples of which are in Cambodia and Sierra Leone.[3]

The international community, recognising the importance of international courts and tribunals, in 1998, signed the Statute of the International Criminal Court in Rome, on the basis of which the

[1]See: The Influence of the Nuremberg Trial on International Criminal Law, available at: https://www.roberthjackson.org:

[2]See: The Future of International Criminal Justice, Philippe Sands, Cambridge University Press, 2003, page 31:

[3]See: White, Jamison G., Nowhere to run, Nowhere to hide: Augusto Pinochet, Universal Jurisdiction, the ICC, and a Wake-up Call for the Former Heads of State, 1999 and Scharf, Michael P., Results of the Rome Conference for an International Court, 1998:

International Criminal Court was established.[4]It officially started to operate in 2002 when 60 states ratified the Statute of the Court. In addition to international tribunals, the states which implement transitional justice, in some cases also administer justice in their own domestic courts.

It should be noted that international courts and tribunals subject to criminal liability not the states, but the individuals who are charged with committing offenses that jeopardize the safety of entire humanity.

### Truth Seeking Process

The truth seeking processes help to collect facts and assist law enforcement agencies to investigate previously committed crimes and to disclose the historical truth about them. The truth seeking process is primarily carried out by truth and reconciliation commissions as a means of restorative justice. It should be noted that more than 30 such structures have already been established in different countries of the world.

The advantage of having such structures is that they conduct fact-finding activities on human rights violations, keep records of the obtained evidence, reveal the guilty ones, offer compensation methods to survivors, and initiate implementation of institutional reforms. These structures can also serve as a platform for obtaining information from the victims on violations of their rights, to voice the truth, and to provide opportunity to the public to take decisions for solution of the previously arisen problems through public debates.

### Reparation Programs

Reparations are classified based on a number of criteria. They can be monetary and non-monetary reparations. Reparation programs include: restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition.

***Examples of restitution include***: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property and so on. It is also important to recover the stolen assets from the state and use them for social purposes, in the social sphere, in education, health care and other areas, especially at the expense of funds created by the state for this purpose.

***Compensation*** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation. The damage giving rise to compensation may result from

[4]See: The Future of International Criminal Justice, Philippe Sands, Cambridge University Press, 2003, page 31:

physical or mental harm; lost opportunities, including employment, education and social benefits. Financial compensations can be both individual and collective targeted to any particular group. Compensation methods are: one-time compensation, the appointment of pensions, the definition of certain guarantees, etc.

***Rehabilitation*** includes medical and psychological care, as well as legal and social services.

***Satisfaction*** includes a broad range of measures, including verification of the facts and full and public disclosure of the truth (which is carried out as a separate mechanism through truth commissions); an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim (which is implemented as a separate mechanism through criminal justice), the search for the disappeared, and human rights training and the use of symbolic measures.

***Guarantees of non-repetition*** comprise broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services and exclude previously committed violations of human rights.

### Institutional Reforms

Institutional reforms are being carried out to ensure guarantees so that crimes committed in the past do not recur. When talking about institutional reforms, we mainly mean lustration (purification) and vetting (filtering politicians). Parallel with institutional reforms, the efforts of civil society organizations and individuals are also of great importance in the implementation of effective transitional justice. The term *Lustration* derives from the Latin *lustratio* (*Lustra* - purification through sacrifice), which in the transitional justice literature, refers to a means by which some countries deal with a legacy of human rights abuses: through the mass disqualification of those associated with the abuses under the prior regime. It is expected that the lustration provides legitimacy to the new government, bluntly separating its activities from those of the previous, criminal or illegal government.

*Vetting* (filtering of public and political figures) is a process during which investigations are being carried out to determine whether the public officials who are charged with human rights violations, corruption and other crimes, have abused their official position when carrying out their activity. The official of police, penitentiary institutions, national security services, army, military and court may be the targets of vetting. Practice shows that vetting can also be carried out in the civil service system.

**Possibility to Introduce the Mechanisms of Transitional Justice in the Republic of Armenia**

The proposals in the report were presented taking into account the velvet revolution in the country, as well as the political will of the ruling political force in the post-revolutionary period to introduce the mechanisms of transitional justice that would exclude the risks of having a corrupt and monopolized economic environment, and restore trust towards justice and judicial power

## CHAPTER 1. TRANSITIONAL JUSTICE: GENERAL DESCRIPTION AND MECHANISMS

### 1.1 What is transitional justice?

In the term ***transitional "justice"*** the word ***"justice"*** is taken in quotation marks to avoid confusion, as the word is not used in the same sense as the word ***"justice"*** referred to in Article 162 of the Constitution. The word *"transitional* "first of all emphasizes the transition from non-democratic, authoritarian ruling to democratic system. The word *"justice"* here has a broader meaning than the same word as provided in the above-mentioned article of the "Constitution", because in a narrower sense, justice is exercised exclusively by courts, and as such, justice exercised by courts cannot be "transitional". Here it will be more correct to understand *"justice"* as an activity aimed at restoring justice during the transition from non-democratic governance to a democratic system both, through the application of classical justice by the courts, as well as by other means established by law. This process is justified by the fact that:

- The democratic government should evaluate the former in order to ensure that current and future authorities will not repeat the governance style of the former authorities.
- There is a social recovery, solidarity is established, and there is a hope of going forward.
- Confidence in state institutions is restored[5]

It should be noted that transitional justice is a system of change, an ideology, which provides opportunities for the countries with weakly developed, repressive, military, corrupt, economic, social, legal, and political aspects, and having governments to become democratic countries that are guarantor of fundamental human rights and freedoms rather than a state which merely fix those principles legislatively. At the same time, transitional justice is also a set of mechanisms, with the complex

[5]The above definition has been provided by Arman Zrvandyan, an international expert on transitional justice, on his Facebook page. See - the following link: https://www.facebook.com/zet.arman/posts/10156032465163208:

application of which it is possible to carry out unbiased justice, reveal the truth, restore the infringed rights of victims, and create an atmosphere of social solidarity and peace.

The origins of the transitional justice field can be traced back to the post-World War II period in Europe with the establishment of the International Military Tribunal at Nuremberg and the various de-Nazification programs in Germany and the trials of Japanese soldiers at the Tokyo Tribunal. It is most commonly found further in the late 1980s and early 1990s South America and Eastern Europe.

### 1.2 What are the mechanisms of transitional justice?

Transitional justice mechanisms can be implemented by various methods, however, based on studies of transitional justice, they must be implemented through four key mechanisms:

1) **Criminal Justice (including the creation of Ad hoc and Hybrid Criminal Courts and adoption of Draft Laws on Amnesty);**
2) **Truth Seeking Processes (creation of truth commissions);**
3) **Reparation Programs (including memory preservation efforts: memorials, and commemorations),**[6]
4) **Institutional reforms, including lustration and vetting.**

According to some classifications, **gender justice** is also considered as a unique tool for transitional justice, but this is not the subject of this research. In addition, part of the institutional reforms is **social activism**, that is, the efforts made by civil society to implement transitional justice in the country. In this report, public activism is considered as a mechanism supporting institutional reforms.

#### 1.2.1 Criminal Justice

Implementation of criminal justice involves **the examination of international crimes in pre-trial and judicial proceedings**. These international crimes are: genocide, crimes against humanity, war crimes and aggression. Implementation of criminal justice promotes to strengthening the principle of the rule of

[6]The use of symbolic measures in this report, monuments, remembrance measures, etc., is seen as a tool for compensation for transitional justice, whereas in some sources they are presented paralleled with truth commissions or compensations.

law by criminal prosecution of the offenders, through which the practice of eliminating the atmosphere of impunity is being formed.[7]

Criminal justice has been implemented in the following three ways:

- **Through Ad hoc International Criminal Tribunals and Hybrid Courts,**
- **Through the International Criminal Court (ICC) with Universal Jurisdiction.**
- **Through the domestic judicial system**

*The first examples* ***of Ad Hoc International Criminal Tribunals are the creation of the*** **International Military Tribunal at Nuremberg (IMT) in Germany** by France, the Soviet Union, the United Kingdom, and the United States; the creation of the **Military Tribunal for the Far East (IMTFE) in Tokyo, Japan** by the order of the US Army General Douglas MacArthur. They are followed **by the International Criminal Tribunal for the former Yugoslavia (ICTY)** and its sister court **The International Criminal Tribunal for the Rwanda (ICTR)** created by the UN Security Council.

The aforesaid are followed by **hybrid courts** created in the following countries: **Special Court for Sierra Leon (SCSL), Special Panels of the Dili District Court, also called the East Timor Tribunal, Extraordinary Chambers in the Courts of Cambodia` Khmer Rouge Tribunal, The Court of Bosnia and Herzegovina, War Crimes Chamber, Regulation 64 Panels in the Courts of Kosovo**. As well as **Special Tribunal for Lebanon (STL)** and **Extraordinary African Chambers** those were created in the last decade. These courts are composed of both local and foreign judges. The purpose of such courts is to administer justice, for which judicial system of the given country is not ready because of lack of political will or potential. In addition, the objective of hybrid courts is to develop and strengthen the internal capacity of the state's judicial system through the transfer of international legal experience and skills.

As international practice shows, the model of ad hoc and hybrid tribunals is approved when domestic courts are unable to conduct an impartial investigation. Despite the fact that the ad hoc and hybrid criminal tribunals are quite effective, it should be stated that they can be quite expensive. Moreover, it is almost impossible for these courts to call to responsibility all perpetrators. Therefore, when applying to such courts, it is necessary to take into account the expectations of the society and possible outcomes that can be obtained from similar courts.

**The International Criminal Court** was established on the basis of the Rome Statute, which was adopted in 1998. It is the first permanent international criminal court established to end impunity for international offenders. It has been established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the

[7]See article by International Center for Transitional Justice under the following link: https://www.ictj.org/our-work/transitional-justice-issues/criminal-justice:

crime of genocide, crimes against humanity, war crimes and the crime of aggression, when States do not have the opportunity or do not wish to do so.[8]

Frequently, the implementation process of criminal justice is combined with **the adoption of amnesty legislation**, which mainly extends to persons who were previously unlawfully convicted, such as political prisoners.

### 1.2.2 Truth-seeking processes

Truth-seeking processes help societies investigate past crimes and prevent their repetition in the future. They are mostly implemented by **the truth and reconciliation commissions** as means of restorative justice. It should be noted that more than 30 such structures were established in **Argentina, Bangladesh, Bolivia, Brazil, Chad, Colombia, the Democratic Republic of the Congo, Chile, Czech Republic, Ecuador, El Salvador, Fiji, Gambia, Germany, Ghana, Haiti, Kenya, Liberia, Mauritius Islands, Peru, Morocco, Nepal, Nigeria, Panama, Paraguay, Poland, the Philippines, Guatemala, Rwanda, Sierra Leone, Solomon Islands, South Africa, South Korea, Sri Lanka, East Timor, Togo, Tunisia, Uganda, Ukraine, Uruguay, the US and Yugoslavia.[9]The South-African Truth and Reconciliation Commission** is mentioned as the best example of international experience.

The truth-seeking issues from the **Right to the truth,** according to which" *Any person who has suffered atrocities has the unalienable right to know who is responsible; any family whose members have disappeared has the basic right discover their fate and whereabouts; every society where these crimes have taken place have the right to learn their history without lies or denial."*[10]:The Truth Commissions in the UN report are described as: *"Truth commissions are official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years.*[11]The advantage of having such structures is that truth commissions have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.

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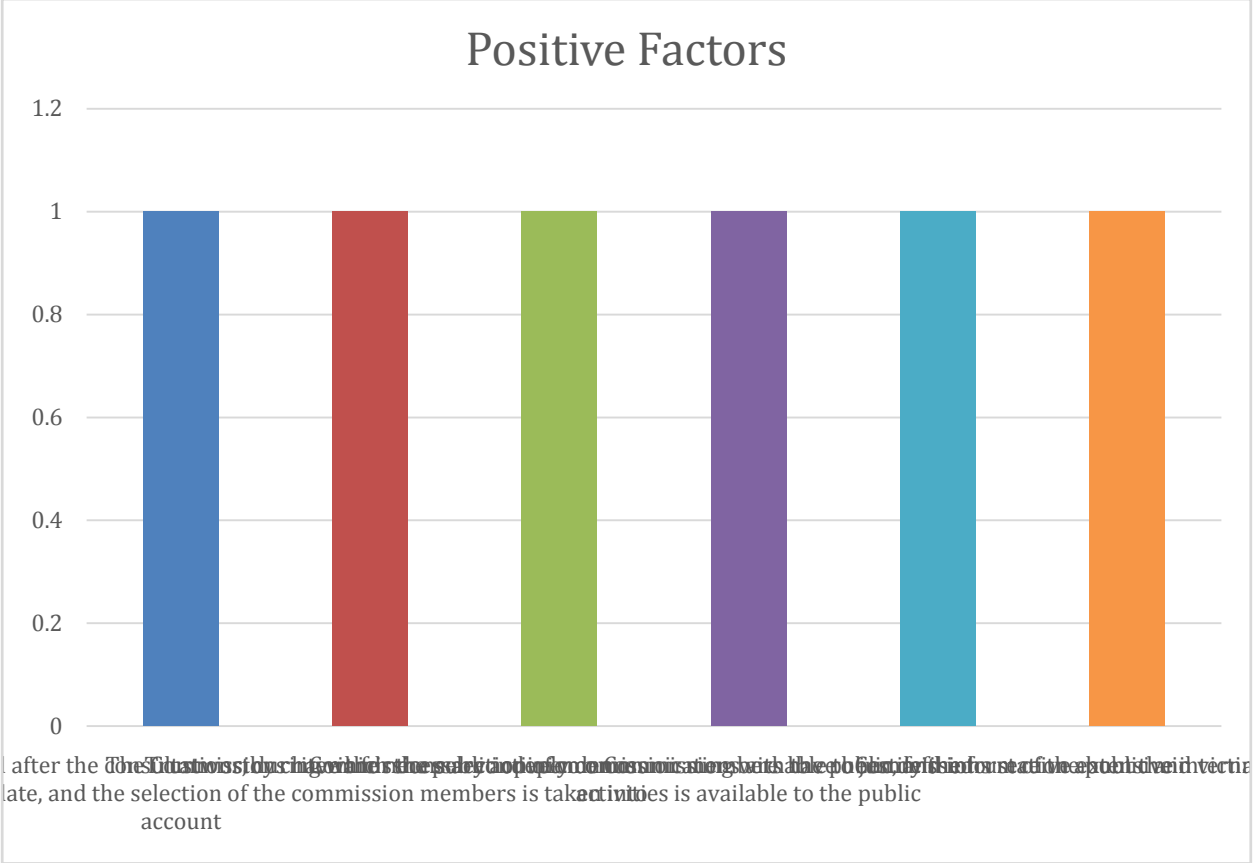
[8]See at: Understanding the International Criminal Court www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf, page 3:

[9]Information on Truth Commissions is available through this link: https://www.britannica.com/topic/truth-commission:

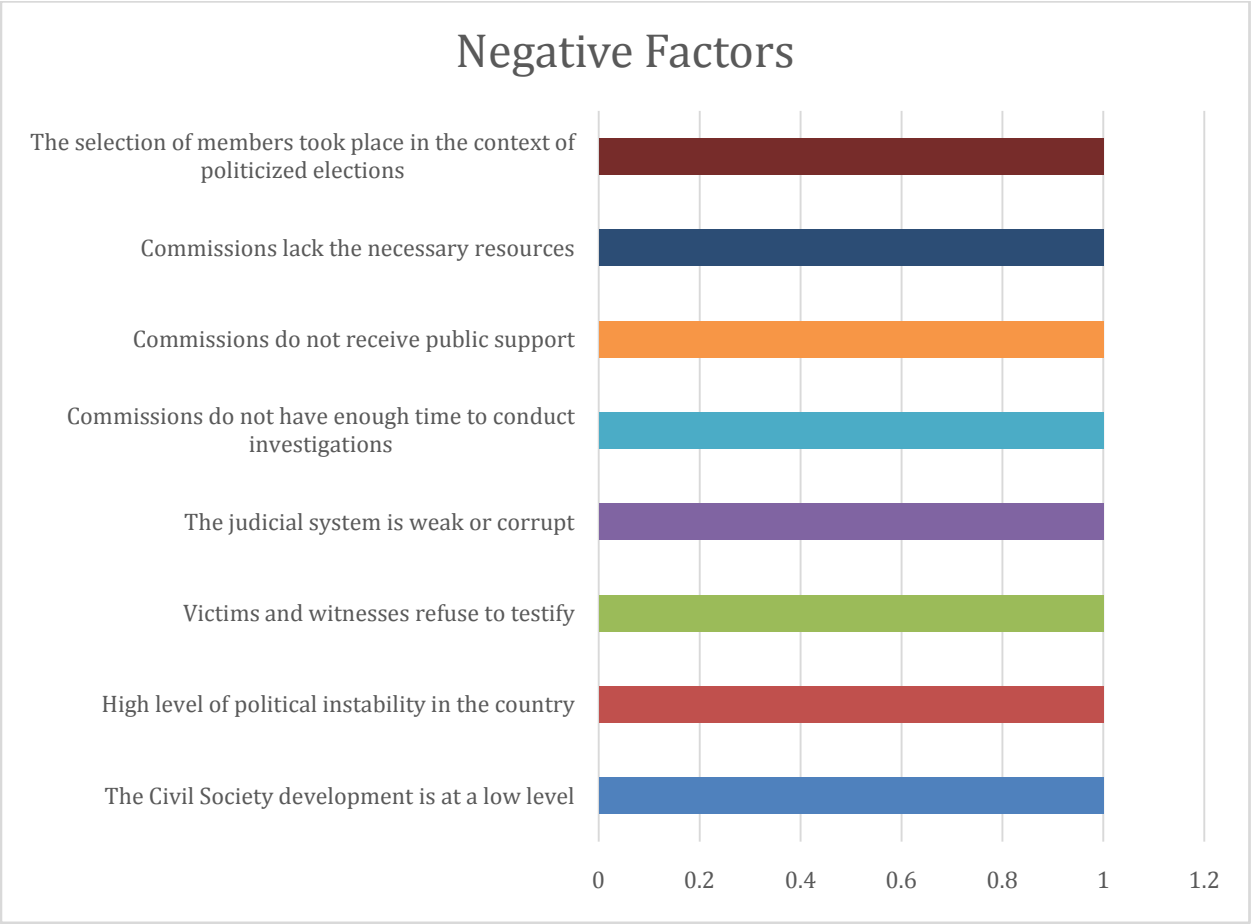
[10]The analysis of the International Center for Transitional Justice, follow the link: https://www.ictj.org/gallery-items/right-truth:

[11]"The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General", United Nations Security Council, 23 August 2004, page 17, see at: https://www.un.org/ruleoflaw/files/2004%20report.pdf

The UN report also touched upon the positive and negative factors that could have an impact on the activities of truth commissions. In this regard, the negative factors should be considered as risky and avoid them in case of establishing similar commissions in Armenia.[12]




[12]Ibid




### 1.2.3 Reparation Programs

Reparations are classified based on a number of criteria. They can be monetary and non-monetary reparations. Reparation programs include:

- **Restitution,**
- **Compensation,**
- **Rehabilitation,**
- **Satisfaction,**
- **Guarantees of non-repetition.**[13]

[13]The report of the UN High Commissioner for Human Rights: http://www.reparationlaw.com/reparations/what_is_reparation_law.php#one:

***Examples of restitution include***: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property and so on. It is also important to recover the stolen assets from the state and use them for social purposes, in the social sphere, in education, health care and other areas and so on. It is also important **to recover the stolen assets from the state and use them for social purposes, in the social sphere, in education, health care and other areas, especially at the expense of funds created by the state for this purpose.**

***Compensation*** is the financial compensation which should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation. The damage giving rise to compensation may result from physical or mental harm; lost opportunities, including employment, education and social benefits. Financial compensations can be both individual and collective targeted to any particular group. Compensation methods are: one-time compensation, the appointment of pensions, the definition of certain guarantees, etc. Financial compensations can be both **individual** and **collective** targeted to a particular group.[14]Compensation methods are: **lump-sum compensation, granting pensions, definition of certain guarantees and so on.**

***Rehabilitation*** includes medical and psychological care, as well as legal and social services.

***Satisfaction*** includes a broad range of measures, including verification of the facts and full and public disclosure of the truth (which is carried out as a separate mechanism through truth commissions); an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim (which is implemented as a separate mechanism through criminal justice), the search for the disappeared, and human rights training and ***the use of symbolic measures.*** The latter, as mentioned above, is often classified as an individual tool of transitional justice, but in accordance with the fundamental principles of compensation and restitution, they are ***classified as a type of compensation.***

The use of symbolic measures implies steps to be taken to preserve public memory and prevent future repetitions and may be expressed as follows:

- **Public apologies,**
- **Memorials, and commemorations,**
- **Construction of obelisks and museums; organisation of exhibitions.**

For example, the European Parliament resolution on European Conscience and Totalitarianism proclaimed 23 August as **European Day of Remembrance for Victims of Stalinism and Nazism.[15]The Museum of Memory and Human Rights built in Chile** is often pointed out as the best practice.[16]

[14]"Reparations in Theory and Practice, International Center for Transitional Justice", https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf:

[15]See: European Parliament resolution on European conscience and totalitarianism, adopted on 2 April, 2009.

***Guarantees of non-repetition*** is a process carried out parallel with institutional reforms, which as a rule is implemented in the military and security forces, the judiciary, public services, judicial acts compulsory enforcement authorities and other state bodies.

At the same time, it should be noted that the provision of compensation may be caused by the limited state budget resources, as well as definition of a specific circle of compensation recipients, as well as in the process of determining the final criteria for compensation.

### 1.2.4 Institutional Reforms

Institutional reforms are being carried out to ensure guarantees so that crimes committed in the past do not recur. When talking about institutional reforms, we mainly mean **lustration** and **vetting**. In this report, efforts by civil society organizations and individuals to implement transitional justice are viewed as a mechanism supporting institutional reforms.

The term **Lustration**[17]derives from the Latin *lustratio* (*Lustra* - purification through sacrifice), which in the transitional justice literature, refers to a means by which some countries deal with a legacy of human rights abuses through the mass disqualification of those associated with the abuses of the fundamental human rights and freedoms and dealt with corruption under the prior regime, and creates legislative barriers for such persons to hold offices in state bodies.[18]It is expected that the lustration provides legitimacy to the new government, bluntly separating its activities from those of the previous, criminal or illegal government.[19]

Lustration is not a new phenomenon. "Stalin's cleansing", denazification in Western Europe, "Khrushchev's de-Stalinization" are worth mentioning. Lustration also had "decisive forms" in the late 20th and early 21st centuries **in post-communist countries in Eastern and Central Europe** (e.g. **Germany, Poland, Czech Republic, Hungary, Romania, Albania, Lithuania, Latvia, Estonia, Ukraine, Georgia**) keeping away from the state service, the law enforcement agencies and the educational system the persons associated with the former Soviet regime, state, party officials, and intelligence agents.[20]

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[16]See at: https://www.ictj.org/gallery-items/memory

[17]The words 'political purification, declassification, and disclosure" are used for Armenian translation of the word 'lustration'. Some media outlets used the word'մաքրազերծել' (makrazertsel). This option, however, is wrong, because it means removing purity.

[18]See at: "Люстрация как основание ограничения избирательного права", Ларин, Александр Александрович, Теория и практика общественного развития 4 (2014) "Lustration as a basis for restricting the right to vote", Larin, Alexander Alexandrovich, Theory and Practice of Social Development 4 (2014).

[19]See at: «Lustration», Eric Brahm, Beyond Intractability.org, June2004.

[20]See at: Люстрация в Центральной и Восточной Европе, Бойцова В., Бойцова Л. «Правозащитник» № 3, 1999Lustration in Central and Eastern Europe, V. Boytsova, L. Boytsova. "Human Rights Defender" No. 3, 1999, Roman David, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic

**In Ukraine** in addition to the above actions, lustration also was applied to those civil servants who have been working for more than a year during the reign of former Ukrainian President Viktor Yanukovych in the period of 25 February 2010 through 25 February 2014 (Ukrainian Revolution in 2014) and did not "resign on their own consent": these civil servants were dismissed from state and public offices through lustration.[21]

In mid-June 2017, one of the influential political forces in **Georgia**, the Labour Party, announced about the decision to implement lustration in the country, compiling a "black list" of MPs elected by majority system and then to send it to the world financial institutions. It was about MPs who have been involved in politics and business for the last 25 years and have used their mandates for taking money from the budget.[22]

**Vetting**[23]is a process during which investigations are being carried out to determine whether the public officials have abused their official position when carrying out their activity. The main purpose of the vetting is to clear the public administration system from public officials who have demonstrated unlawful behaviour. The official of police, penitentiary institutions, national security services, army, military and court and others may be the targets of vetting.[24] Practice shows that vetting can also be carried out in **the civil service system**. The following circumstances must be considered when performing a vetting:

- Providing information to persons under investigation and opportunity to respond to allegations,
- Prohibition of dismissal of the persons under investigation in connection with the expression of political and party positions,
- The administrative or quasi-judicial nature of the authority implementing vetting,
- Public awareness of the vetting authority, from the very first days of its creation.[25]
- Transparency and accountability of the vetting authority,
- The independence of the vetting authority and the criteria for the recruitment of employees and the competition procedure,

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and Poland (1989—2001), *Law & Social Inquiry* 28(2):pages 387-439, (2003), http://sites.google.com/site/roman328/home/LSIpaper.pdf?attredirects=0:

[21]See at: "Lustration law faces sabotage, legal hurdles". Kyiv Post, 23October, 2014.

[22] See at: "Labourites will make a blacklist of majoritarian MPs" Norik Gasparyan, 15/06/2017. "Alik" online media.

[23]The Armenian translation of the term vetting does not exist, but in terms of content it refers to the purge of politicians (including the officials in the systems of police, penitentiary institutions, national security services, army, military and judiciary).

[24]See the report of the International Center for Justice at:https://www.ictj.org/sites/default/files/ICTJ_Book_JusticeMosaics_2017.pdf, pages 14-15:

[2525]See the report of the International Center for Justice at:https://www.ictj.org/sites/default/files/ICTJ_Book_JusticeMosaics_2017.pdf, pages 54-55.

- Adoption of internal procedures that will enable the vetting body to collect information from civil society,
- Definition of criteria for decision-making,
- Ensuring participation of media and civil society,
- Implementation of control over the organizations and departments on which work the largest number of complaints have been received,
- Preliminary publication of accurate list of public servants,
- Ensuring effective public communication,,
- Regular reporting to the public and to the National Assembly,
- Highly professional preparedness, impartiality and honesty of the vetting authority's employees.

While speaking about institutional reforms, it is also necessary to address **social activism**. In particular, in a number of countries, NGOs have played a major role in the implementation of transitional justice in truth-seeking and the application of other mechanisms. For example, in **Tunisia**, non-governmental organizations have established a coalition to support transitional justice, which has assisted the government in elaborating and implementing the "Transitional Justice Act", providing expert support and implementing public monitoring. In addition, civil society organizations have conducted public outreach campaigns on transitional justice, raising public awareness of the process.

International practice also shows that for the formation of an effective transitional justice system, obvious and sincere readiness about which the public notified in advance is important. Otherwise, efforts to implement transitional justice will hardly be successful, and international assistance cannot be effective either.

## CHAPTER 2. PRECONDITIONS FOR THE APPLICATION OF TRANSITIONAL JUSTICE IN THE CONTEXT OF ECONOMIC AND SOCIAL, LEGAL AND POLITICAL FACTORS

A legitimate question arises as in the context of what preconditions or circumstances can it be spoken **about the necessity of using transitional justice mechanisms**. The United Nations (hereinafter referred to as the UN) describes the countries in need of transitional justice as **"war-torn societies"**, where large-scale crimes have taken place and as a result there are victims. According to the UN description in such countries:

- State institutions are in paralyzed state,
- State resources are largely destroyed as a result of massive, unlawful acts of previous regimes,
- There is social stratification,
- State security is in collapsed state,
- lack of political will for reform,
- lack of institutional independence within the justice sector,
- The main levers of executive power are working towards targeted individuals and their economies,
- Lack of public confidence in Government,
- Lack of official respect for human rights.[26]

The above UN criteria allow you to ask an important question. "**Is Armenia "a state with a war-torn society?**"

Despite the unsettled conflict in Artsakh, it is more of an external challenge and transitional justice is not part of this.

As to the existence or absence of a civil war in the country, it should be stated that the 1 March, 2008 clashes[27], in Armenia after the 2008 presidential elections, in fact, were manifestations of civil disobedience, which lasted short and did not turn into a civil war. And the Velvet Revolution, which took place in April 2018, also became remarkable for its peaceful nature. Consequently, with the combination of the aforementioned factors, we can state that **the Republic of Armenia is not a country of a "war-torn society"**.

However, another question arises, as "Whether only the warring state can have a "**war-torn society**"?" To answer this question, it is necessary to refer to the UN description characterizing the term

[26]See: UN Security Council: "The rule of law and transitional justice in conflict and post-conflict societies" Report of the Secretary General no. S2004/616, dated 23 August,2004 (the "UN report"), page3.

[27]The video prepared by "Lragir" daily is available at: https://www.youtube.com/watch?time_continue=2&v=nuHUQ3K7Bxs:

"country with war-torn society". Although the factor of war is of no significance in case of Armenia, the factors listed below prove that the society can be described by the definition "torn".

## 2.1. Armenia in the period from the independence to the velvet revolution

### 2.1.1 Legal and political factors: general background

Since independence, a number of laws were adopted in Armenia and international commitments were undertaken to protect human rights. However, the events of March 2008, the unlawful and violent acts against people during peaceful demonstrations, manifestations of nepotism and patronage in the judiciary, violations in penitentiary institutions, electoral fraud, high level of corruption, and a number of other processes prove that cases of violations of human rights and freedoms had massive and repetitive nature.

Thus, according to the 7-point regression scale of "**Nations in Transit**", according to which **Freedom House** assesses democracy, Armenia recorded 4.92 points in 2003 and 5.43 in 2018. The following factors were used for the calculation of the points: state democratic governance, local self-governance, electoral processes, independent media, civil society, independence of the judiciary and corruption.[28] In addition, another category of **Freedom House**, "**Freedom in the World**", classifies countries in 7-point regression scale according to political rights (electoral process, political pluralism, participation and functioning of government) and civil liberties (freedom of expression and belief, associational and organisational rights, rule of law, personal autonomy and individual rights. Here Armenia recorded 4.5 points both in 1992 and in 2017, which is equivalent to the "**Partially Free**" indicator.[29]

**According to the "Political Transformation" indicator of the "Bertelsmann Stiftung's Transformation Index"**, countries are classified at 5 degrees, from democracy in consolidation to hard-line autocracy. From 2006 to 2018, Armenia is ranked at the 4th level as **moderateautocracy**.[30]In addition, according to another recently developed by Bertelsmann Stiftung the "**Governance Index**",

[28]Fried House "Nations in Transit" reports of 2003and 2018, are available at: https://freedomhouse.org/report/nations-transit/2003/armenia, https://freedomhouse.org/report/nations-transit/2018/armenia:

[29]"Freedom in the World Index", Freedom House, 1992, 2017, See at: https://freedomhouse.org/report/freedom-world/2018/armenia:

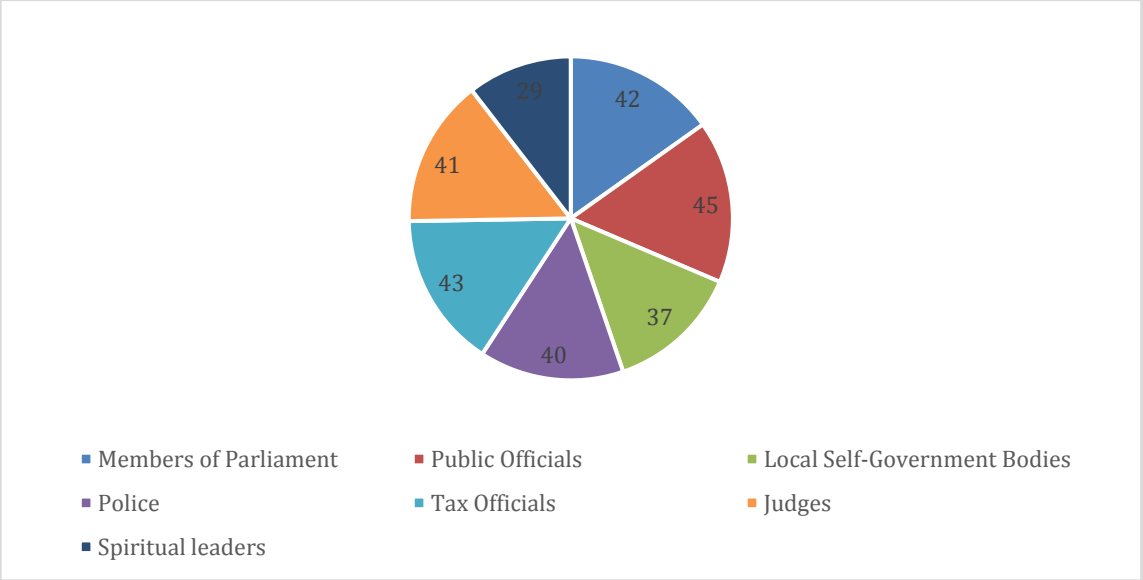
[30]"The Transformation Index", Bertelsmann Stiftung, See at: https://www.bti-project.org/en/data/rankings/status-index/:

which ranks the countries by 5 degrees, according to their leadership's political management, from "very good" till "failed" according to reduction scale. In 2017 Armenia was classified into 4th grade as weak:[31]

There is a high level of corruption in almost all spheres in Armenia. Thus, according to **Transparency International's "Corruption Perceptions Index"**, a 100-point progressive scale, Armenia's points were 34 in 2012 and 35 in 2017. As a result, Armenia ranks 105th and 107th respectively among 180 countries. In addition, according to the same organization's "**Global Corruption Barometer**" which studies the public's attitude towards corruption and the degree of their involvement with corruption phenomena, Armenia has one of the worst results among 42 countries in Europe and East Asia matching the "High Risk" indicator. It should also be added that the answer to the question within the scope of the "Global Corruption Barometer, "*How much are they involved in corruption*?" had the result shown in Figure 1.

**Figure 1**

**https://www.transparency.org/news/feature/corruption_perceptions_index_2017**




*In response to the question "How effective are the steps taken by the authorities to reduce the level of corruption?"* **65%** of the respondents rated it **ineffective** or **very ineffective;** with that indicators Armenia **ranks 116th** out of **118** countries. **63% of the respondents considered ineffective or very ineffective** the involvement of ordinary citizens in the fight against corruption to change anything. Armenia ranks 81st in 81 countries in the readiness of the respondents to report and acceptability to report corruption[32]

[31]"Governance Index', Bertelsmann Stiftung, See at:https://www.bti-project.org/en/data/rankings/governance-index/:

[32](Global Corruption Barometer, Transparency International, 2016:

Additionally, it is worth mentioning that the cornerstone problem is the return of stolen assets, because as a result of the existing financial analysis it becomes clear that in 2003-2012, the volume of illegal financial flows from Armenia amounted to 7 billion 499 million USD.[33]

### a) Political Rights: electoral process

All the elections in Armenia since the 1995 parliamentary elections were coupled with massive violations. Reports and statements made at a number of international and national levels testify that. Particularly, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) has monitored almost all the elections in Armenia. Below are presented the quotes from the reports on the elections held in Armenia during the reign of three different authorities. The first quotation refers to 1996 September 22 presidential elections:

*"These discrepancies between the number of voters who signed and received ballot papers and the number of voter coupons in the official results, along with the breaches in the law cited throughout this report, can only contribute to a lack of confidence in the integrity of the overall election process. The results of the first round of balloting could even be questioned until a thorough review and assessment of the irregularities and discrepancies is conducted. Despite some encouraging signs of improvement in the electoral law and administration, the number and frequency of the breaches in the election law clearly overshadows them."*[34]

Electoral frauds occurred during the elections on 19 February, 2008 as well: *"This displayed an insufficient regard for standards essential to democratic elections and devalued the overall election process. In particular, the vote count demonstrated deficiencies of accountability and transparency, and complaints and appeals procedures were not fully effective. The CEC and the National Council for Television and Radio (NCTR) did not ensure that media met its obligations, and media bias was evident. However, intimidation and attempts to manipulate the process were evident in some areas, and the authorities did not adequately address these issues as they emerged on or after Election Day. Some Precinct Election Commissions (PECs) were unwilling to register formal complaints. The vote count was assessed as 'bad' or 'very bad' in some 16 per cent of polling stations observed. Observers witnessed inconsistencies in determining valid votes, unwillingness to show marked ballots, attributing votes for*

[33]"Illegal financial flows from developing countries" 2003-2012», Dev Kar and Joseph Spanjers, Global Financial Integrity, December, 2014, available at:` https://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf .

[34]Final Report, Presidential Elections, 22 September 1996, Presidential Election, OSCE/ODIHR (Office for Democratic Institutions and Human Rights), 24 October, 1996, See at:https://www.osce.org/odihr/elections/armenia/14149?download=true:

*one candidate to another, signing protocols before completing the vote count, signing blank protocols, changing data entered in protocols, and failure to display protocols publicly as required by law."*[35]

The picture is negative even during the parliamentary elections on 2 April, 2017: *"Despite welcomed reforms of the legal framework and the introduction of new technologies to reduce the incidents of electoral irregularities, the elections were tainted by credible information about vote-buying, and pressure on civil servants and employees of private companies. This contributed to an overall lack of public confidence and trust in the elections. Election Day was generally calm and peaceful but marked by organizational problems and undue interference in the process, mostly by party representatives.*

*"The Prosecutor General set up a working group to investigate allegations of election-related offences. Before Election Day, the working group identified some 220 cases related to vote-buying and obstruction of voting rights, predominantly from media sources. Of these, 58 cases, including 38 about vote-buying, were referred for investigation to the police. All these cases were dismissed due to lack of evidence. Additionally, the Ombudsperson reviewed 148 allegations mostly related to campaign violations, received via its hotline, in writing, and from media publications, and referred 5 cases to the law enforcement bodies, which in most cases found no sufficient evidence to proceed."*»[36]

*"The polling station staff should ensure that the ballot boxes are empty and sealed before the voting, and all unused ballots are recorded and stored in a safe place during their transportation and storage".*[37] *These and some other international requirements have been violated*[38]

It should be noted that election frauds were recorded not only at the state level, but also in the elections of local self-governing bodies. In that connection, the Congress of Local and Regional Authorities of the Council of Europe presented reports on the Yerevan City Council and other community council elections, in particular: *"However, the overall atmosphere of "controlled voting" as evidenced by allegation of widespread vote-buying and misuse of administrative resources as well as by the presence of groups of people loitering around polling stations on Election Day calls for further democratic consolidation. These issues need to be seriously addressed by the authorities, which should increase their capacity to investigate and sanction violations of the electoral legislation in a timely and*

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[35]OSCE/ODIHR Election Observation Mission Final Report, 19 February2008, OSCE/ODIHR (Office for Democratic Institutions and Human Rights), Warsaw, 30 May, 2008թ.https://www.osce.org/hy/odihr/elections/armenia/32115?download=true:

[36]Election Observation Mission Final Report, 2 April 2017, OSCE/ODIHR (Office for Democratic Institutions and Human Rights), Warsaw, 10 July, 2017, Available at:https://www.osce.org/hy/odihr/elections/armenia/333491?download=true:

[37]OSCE/ODIHR, 2010, 73, Venice Commission, 2002, Explanatory Report, paragraph 33.

[38]Final Report on 2012 Parliamentary Elections; available at: https://www.osce.org/hy/odihr/elections/90333?download=true, pages 3, 7:

*proportionate manner in order to increase the general trust in elections and in local authorities in general."*[39]

**b) Violations of civil rights**

Many international and national entities also identified mass human rights violations, restrictions on freedom of assembly, arbitrary imprisonment, torture, threats against journalists and human rights defenders.

Thus, in 2012 the **UN Human Rights Committee** registered the following violations on the events of March 1st:

*«5. The Committee is concerned about information questioning the vigilance of the national human rights institution in monitoring, promoting and protecting human rights.*

*12. The Committee is concerned about the excessive use of force by the police during the events of 1 March 2008.*

*13. The Committee is concerned about the lack of accountability of law enforcement officers in case of excessive use of force.*

*15. The Committee is concerned about deaths in the Armenian Armed Forces under non-combat conditions and about the alleged practice of mistreatment of conscripts by officers.*

*19. The Committee is concerned about cases of detention and that detainees are not fully informed of their fundamental rights from the outset of their deprivation of liberty. The Committee also regrets that detainees are frequently deprived of timely access to a lawyer and a medical doctor, of their right to notify a person of their choice, and that they are not brought promptly before a judge.*

*21. The Committee is concerned about the lack of independence of the judiciary. In particular, the Committee is concerned about the appointment mechanism for judges that exposes them to political pressure.*

*22. The Committee is concerned at allegations of persistent corruption among all branches of State institutions, especially the police and the judiciary "…" and the resulting lack of public trust in the administration of justice.*

*26. The Committee is concerned about information received on threats and attacks on journalists and human rights defenders."* [40]

[39]See at: "Information report on the elections to the Council of Elders of the City of Yerevan, Armenia (14 May 2017)", The Congress of Local and Regional Authorities, CoE, CPL33(2017)04, 20 September 2017.

[40]See Report of the UN Human Rights Committee at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ARM/CO/2&Lang=En:

On 23 December **2010,Special Rapporteur on the Situation of Human Rights Defenders on the issue of** March 1'st events has emphasized the following: *"The events of March 2008 have contributed to a very politicized environment in Armenia, preventing constructive cooperation between the authorities, the Ombudsperson and human rights defenders. Other challenges include restrictions on freedom of association, impediments to the freedom of assembly, restrictions on the freedom of expression and impunity for abuses against human rights defenders.*[41]

Moreover, **UN Human Rights Council's Working Group on Arbitrary Detention** has also recorded a number of violations in its **Report** published in 2010 "93. Problems of deprivation of liberty in Armenia are linked to the lack of independence of its magistrates and judges and the lack of impartiality of its prosecutors. Many judges fear that they would face retribution should they return an acquittal on sensitive cases. No judge has ever been prosecuted for having illegally deprived a person of her or his liberty. However, there are judges who have been prosecuted for having ordered a person's release. Judges are clearly perceived as being under the influence of prosecutors. 96. The Working Group notes with great concern that judges, magistrates and law enforcement agents are widely perceived to be weak and face corruption, and that the independence of the judges and magistrates has been consistently questioned by citizens, civil society and international organizations.*97. Violations of the right to a fair trial seem to be systematic and have distorted the role of judges and magistrates as impartial arbiters. Public confidence in the administration of justice seems to be very low. The Working Group would like reiterate the importance as fundamental entitlements of persons who are deprived of their liberty of ensuring the adversarial nature of trials, the principle of equality of arms, respect for the presumption of innocence, the right to defence and the right to be free from torture and ill-treatment. Laws and practices need to ensure that these rights are safeguarded.95. The Working Group is concerned, however, by the endemic practices carried out by institutions such as the Army, the Police, National Security services and border control personnel that are gross violations of human rights. The recurrent use of the force and ill-treatment of arrested and detained persons and prisoners should be expressly prohibited. Most instances of abuse of detainees occur in police stations. The Working Group also calls on the Government to abide by its obligations under various human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ensure that its citizens are rigorously protected against such treatment when investigated, arrested or

[41] See Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Human Rights Council, 23 December 2010 at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/179/19/PDF/G1017919.pdf?OpenElement, page 2, para 1.

*detained. Impunity should effectively be prevented and punished by the establishment and implementation of the necessary laws"*[42]

The **UN Committee against Torture** has also expressed worries in its Report published in 2017. *"The Committee is concerned at consistent reports of excessive use of force against protesters, including during the so-called Electric Yerevan protests of June 2015, when police used water cannons to disperse the demonstration and illegally detained 237 protesters. It is also concerned at the reported use of excessive force by law enforcement officials during the demonstrations of 17 to 31 July 2016, following the attack on a patrol service police regiment in Yerevan by a group of armed men, as well as the mass arrests and alleged arbitrary detention based on administrative procedure, ill-treatment and denial of fundamental legal guarantees, such as access to lawyers and doctors, notification of detention and violation of the three-day time limit for transferring persons deprived of liberty from a police station to a detention facility (arts. 12, 13 and 16)"*[43]

It becomes clear from the analysis of the RA-related first and last publications of the "Freedom of the Press" report published by **Freedom House** in 2017 that in 2002 and 2017 Armenia respectively received 60 and 63 scores on a 0-100 scale, which corresponds to the 3rd most negative indicator in country classification: **Not free.**[44]

According to the 2017 annual report of the Committee to Protect Freedom of Speech "**On the State of Freedom of Speech and Violations of the Rights of Journalists and Mass Media Outlets in Armenia,"** *"Of the 29 cases of violence and obstacles recorded during 2017 National Assembly and Yerevan City Council elections and the preceding campaigns, criminal cases have been initiated only on 7 of them, 5 of them have been dropped based on the formal justification of "absence of corpus delicti," and only 2 of them reached the court. The same inefficient and formal approach is also noticed in the pre-investigation of two criminal cases related to large-scale violence against journalists, that is, the events that took place on 23 June 2015 on Baghramyan Avenue of Yerevan (#Electric Yerevan) and those of the eve of 30 July 2016 on Khorenatsi Street and in Sari Tagh of Yerevan. The number of charges filed in the scope of these cases (21 affected journalists and cameraman in 4 charges, 21 affected ones in 9 charges*

[42] See Report of the UN Human Rights Council's Working Group on Arbitrary Detentionathttps://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/108/49/PDF/G1110849.pdf?OpenElement, para 93-98:
[43]Concluding observations, UN, Committee against Torture, 2017, CAT/C/ARM/CO/4, para 20., available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/ARM/CO/4&Lang=En
[44]"Freedom in the Press Index", Freedom House, 2002, 2017, available at: https://freedomhouse.org/report/freedom-press/2017/armenia.

*correspondingly) speak about the fact that the measures taken are not adequate to the volume of violence against mass media representatives on those days."*[45]

The N 1609 resolution adopted of the **Council of Europe Parliamentary Assembly** titled **"The Functioning of Democratic Institutions in Armenia"** also touches on the situation of the field of mass media: *"Even though there is a pluralistic and independent print media, the current level of control by the authorities of the electronic media and their regulatory bodies, as well as the absence of a truly independent and pluralist public broadcaster, impede the creation of a pluralistic media environment and further exacerbate the lack of public trust in the political system."*[46]

*In the case of Meltex Ltd and Mesrop Movsesyan v. the Republic of Armenia (the "A1+" Case) the European Court of Human Rights it was decided that the right of the TV company to spread information and ideas was violated.*[47]

The Committee to Protect Journalists[48], Article 19, Civic solidarity platform[49], etc. have also voiced about restrictions in journalists' activities. The Human Rights Watch[50], Amnesty International[51], U.S. Department of State, Democracy, Bureau of Democracy, Human Rights and Labour[52], the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe[53], RA Human Rights Defender's Office[54] and other institutions have constantly raised their voice both on journalists' issues and human rights violations in the country.

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[45]2017 annual report of the Committee to Protect Freedom of Speech "On the State of Freedom of Speech and Violations of the Rights of Journalists and Mass Media Outlets in Armenia, the entire article is available at: https://www.aravot.am/2018/01/18/931908/.

[46]N 1609 resolution adopted of the Council of Europe Parliamentary Assembly titled "The Functioning of Democratic Institutions in Armenia," 2008, paragraph 6.5, see at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17643&lang=en

[47]Case of *Meltex Ltd and Mesrop Movsesyan v. Armenia*, ECHR, 17 June, 2008, Application no. 32283/04.

[48]Committee to Protect Journalists, article available at: https://cpj.org/europe/armenia/.

[49] Civic solidarity platform, article available at: http://civicsolidarity.org/page/about-us.

[50] Human Rights Watch, article available at:https://www.hrw.org/world-report/2018/country-chapters/armenia:

[51]Analysis of Amnesty International available at: https://www.amnesty.org/en/countries/europe-and-central-asia/armenia/report-armenia/.

[52] "Reports on Human Rights Practices, Armenia, Bureau of democracy, human rights and labour", U.S. Department of State, available at: https://www.state.gov/documents/organization/277381.pdfhttps://www.state.gov/documents/organization/186536.pdf.

[53]"Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)", Council of Europe, Strasbourg, 22 November 2016, CPT/Inf (2016) 31, available at:https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-armen-3.

### 2.1.2 Economic and Social Factors

According to the data of the World Bank and the RA Statistical Committee, during the 26 years of independence (1991-2016) the average level of unemployment in Armenia was 21,7%. The highest unemployment indicator was 35,9% in 2001, and the lowest was 16,2% in 2013. During the past 5 years, Armenia had the highest unemployment rates among CIS member states.[55]

In the meantime, according to some reports, unemployment rates have been growing increasingly over the past years. It is also mentioned that the main consequence of the socio-economic state of the republic is emigration. In 2011-2015, the permanent population of Armenia decreased by 22□8thousands, according to the official statistics. In this period, on the average, 40 thousand RA citizens left the country every year and never came back.[56]

Apart from that, there is quite high **non-formal or hidden employment** in the country, which is directly connected with high rates of shadow economy. In this case, the income part of the RA state budget does not increase, which is why it is impossible to also ensure expenditure growth, which has a significant meaning in terms of solving the social issues existing in the country.[57]

Even though free economic market lifestyle has been introduced in the RA after the independence, but in reality entrepreneurs encountered a number of problems: high rates of corruption in tax and customs agencies, unhealthy economic competition conditioned by monopolistic and dominant positions.

Thus, according to the **Global Competitiveness** index of the World Economic Forum, Armenia came 70th among 135 countries in 2017, scoring 59.9 points on a progressive 100-point scale, and in 2009 it came 93rd among 134 countries. Although in general Armenia is not is in a bad position in the mentioned

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[54]RA Human Rights Defender's Extraordinary Public Report on Presidential Elections of 19 February 2008 and Post-Election Developments available at: http://www.ombuds.am/publications/special_reports.html?page=3.

[55] International Labour Organization, ILOSTAT database, available at: https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=AM, RA Statistical Committee, Eurasian Economic Union Statistics Department.

[56]Economic Situation in Armenia: Opportunities and Challenges, Compass Centre, Armenia, February 2017, available at: http://library.fes.de/pdf-files/bueros/georgien/13247.pdf.

[57]See details at: https://ampop.am/unemployment-in-armenia/.

rating classification, the report indicates corruption as the biggest obstacle hindering business; it is then followed by funding availability and tax regulations.[58]

The analyses of the **2013 Business Environment and Enterprise Performance Survey** carried out by the World Bank and the European Bank for Reconstruction and Development shows the following *"The main challenges faced by companies are the availability of financing, tax administration and political instability. The number of monopolies in Armenian economy is higher, then in other countries in the region. The level of concentration in markets is high, and in a contrast with the average of 6 per cent in other countries of the region – the monopolies in Armenian markets constitute 19 per cent. Furthermore, 60 per cent of markets included in the survey have an oligapolic or monopolic structure.[59]*

**According to the Economic Transformation index of the Bertelsmann Transformation Index,** countries are categorized in 5 classes, from developed market economy to rudimentary market economy. It becomes clear from analyzing the publications pertaining to from 2006 to 2018 the RA that Armenia was classified in the 3th state as a market economy with functional flaws[60].

In the **Ease of Doing Business score** ranking by **World Bank Group,** Armenia was the 46th among 190 countries in2006 and 41st in 2019. Although Armenia has scored high in such areas as creation of business, property registration and agreement application, yet it lags behind in terms of the scores in the fields of construction permissions, bankruptcy recognition and electricity.[61]

It becomes clear from the analysis of the first and last (2004 and 2016) publications pertaining to the RA of the **World Economic Freedom ranking** of the Canadian **think tank Fraser Institute,** which takes into account tax rates, inflation rates, the independence degree of the judicial authorities, import expenses

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[58] Global Competitiveness Report 2008-2009, KLAUS SCHWAB, World Economic Forum, MICHAEL E. PORTER, Harvard University, Geneva, Switzerland 2008, available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2008-09.pdf, Global Competitiveness Report 2018, KLAUS SCHWAB, World Economic Forum, available at: http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf.

[59] *Armenia - BEEPS at a glance 2013 (Armenian).* BEEPS at a glance. Kisunko, Gregory; Ponomaryov, Branco Leonidov. 2014. Washington World Bank Group available at: http://documents.worldbank.org/curated/en/699591468218377943/Armenia-BEEPS-at-a-glance-2013, https://168.am/2013/11/27/303897.html.

[60] "The Transformation Index", Bertelsmann Stiftung, available at: https://www.bti-project.org/en/data/rankings/status-index/.

[61] "Doing Business 2019", A World Bank Group Flagship Report, available at:http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf

and regulated prices, that Armenia landed the **36th** position among the respective **130 countries** and the **29th position among 162 countries.**[62]

According to the Washington **think tank Heritage Foundation and the Wall Street Journal Index of Economic Freedom**, which is based on the following 4 groups of factors: Rule of Law, Government Size (tax burden, etc.), Regulatory Efficiency and Open Markets, countries are categorized in 5 groups, from "free" to "repressed." In 1996 Armenia was classified as "repressed" and in 2018 as "moderately free" (3rd degree)[63].

**We can conclude** by saying that the constantly falsified elections[64],systemic corruption as a mass phenomenon on political, educational, administrative levels[65], failed attempts to build a democratic society, the selective manner of justice administration, and failure to form independent judiciary, absence of minimal living conditions to ensure a person's dignified existence[66], absence of political will to implement reforms, lack of respect for human rights, unlawful use of funds as a result of illicit enrichment and illegal withdrawal of assets from the country, have caused the society to lose trust for the state political authorities.

**Following the above-mentioned, we can state that currently there are a number of features of the concept of a "torn society" in the public life of Armenia; as such, they are not a consequence of war but the above-mentioned negative factors in public life, and in this sense the situation in the country can correspond to the characteristic features of the UN "state with a torn society."**

[62] "Economic Freedom of the World", Fraser Institute, Canada, https://www.fraserinstitute.org/economic-freedom/map?geozone=world&year=2016&page=map:

[63]See Index of Economic Freedom, Heritage Foundation, Wall Street Journal, available at: https://www.heritage.org/index/heatmap:

[64]Details at: https://www.a1plus.am/18755.html, http://iravaban.net/27067.html, http://iravaban.net/203364.html, http://iravaban.net/201783.html, http://iravaban.net/201784.html, http://iravaban.net/175593.html, http://iravaban.net/161016.html.

[65] See at: http://iravaban.net/89615.html, https://transparency.am/hy/priorities/anti-corruption.
"Overview of Corruption and Anti-Corruption in Armenia/ Transparency International, authors", Wickberg S., V. Hoktanyan, 2013, https://transparency.am/storage/overview-of-corruption-in-armenia-en.pdf, pages 8-9, "Essence of Corruption in the RA, Its Public Perceptions and Impact on Human Development", A. Tadevosyan, Yerevan, 2009, available in Armenian at: http://goo.gl/h4iP1B, pages 12-13, "Student's Perception of Corruption in the HEI System", L. Aslanyan, K. Gyumjibashyan, A. Grigoryan, S. Khachatryan, A. Hasasyan, Yerevan, 2010, available in Armenian at: http://goo.gl/ZRQszz, pages 12-13.

[66]See at: https://www.armstat.am/file/article/poverty_2017_a_2.pdf, - Poverty indicators at: https://ampop.am/en/poverty-in-armenia/.

## 2.2. The Velvet Revolution: Preconditions to Apply and Attempts to Manifest Transitional Justice in the RA

The Velvet Revolution was accompanied by demonstrations with non-violent, peaceful actions, marches, mass manifestations of civil disobedience in Armenia, one of the first outstanding political results of which was the resignation of Prime Minister Serzh Sargsyan on 23 April 2018, and the second thing was that on 8 May 2018 the National Assembly elected "people's candidate" Nikol Pashinyan as RA Prime Minister. At the first stage of the revolution (13 April-8 May 2018), the protest actions were aimed at terminating the third term of RA Prime Minister Serzh Sargsyan's tenure, which failed at the beginning of that stage, in the first ten days. The movement began with the "My Step" and "Reject Serzh" initiatives. After Serzh Sargsyan's resignation the demand of the demonstrations and other protest actions was deprivation of the Republican Party of Armenia from power and Nikol Pashinyan's election as Prime Minister.

The public, including the field of media and non-governmental organisations, will have a great role in the efficient implementation of transitional justice in Armenia in this period, actively cooperating with the authorities, as a result of the great political will displayed by the latter. This process certainly implies organisation of large-scale public awareness campaigns on the awaited reforms. At the same time, based on the international experience, we need to state that implementation of transitional justice must not be belated. In case it starts, it must follow the Velvet Revolution that took place in the country. It should be stated that in the period of the revolutionary movement and post-revolution events in Armenia both mass media and civil society institutes operatively informed the public. That is, there are some preconditions in the RA for considering the possibility of introducing such transitional justice mechanisms that would exclude the risks of creating a corruption and monopolized economic environment, will minimise the shadow turnover, will contribute to the formation of an independent judiciary and rule of law, returning stolen assets to the RA, in order to solve the problems in the priority state sectors of defense, the social sector, sectors of health, culture, and education.

On the other hand, it is necessary to highlight that implementation of drastic changes can also have grave consequences on the organic activities of state agencies. Transitional justice is what balances the existence of all the institutes created for justice[67].

[67]The analysis of the International Center for Transitional Justice is available at: https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf.

It is worth mentioning that in the history of the newly independent Armenia some components of transitional justice have also been used before but the name of that institution had not been put into circulation. In 1994, the RA Supreme Council adopted the Law on the Repressed which foresaw certain reparations for the persons who underwent political persecution in the years of the Soviet Union. Below is presented the possibility of introducing the four main mechanisms of transitional justice in the RA.

### 2.2.1 Criminal Justice

It is worth noting that one of the first steps of the new RA authorities to implement transitional justice is the amnesty carried out by the RA National Assembly on the 2800th anniversary of the establishment of Erebuni-Yerevan and the 100th anniversary of independence declaration by the first republic of Armenia. The amnesty was spread on 6500 beneficiaries.[68]

The scope of application of amnesty is noted in Article 2 of the Law on **Announcing Amnesty on Criminal Cases Related to the 2800th Anniversary of the Establishment of Erebuni-Yerevan and the 100th Anniversary of Independence Declaration by the First Republic of Armenia.** Thus, as a result of announcing amnesty, the persons who had been sentenced to imprisonment for a maximum of four years were exempted from serving their sentence, the persons whose sentence had not been applied conditionally, or whose sentence serving was postponed, persons who had received punishment not linked to deprivation of liberty. Announcement of amnesty resulted in the release from punishment of the following persons sentenced to a maximum of six years in prison:

1) first or second group persons with disabilities,
2) women pregnant on the day the law entered into force,
3) persons having three or more juvenile children on the day the law entered into force,
4) persons having up to three-year-old children on the day the law entered into force,
5) persons older than 60.

As a result of amnesty, the persons who committed crimes on 17-31 July 2016 in the territory of the Patrol Service Police Regiment of the Republic of Armenia, those complicit with the latter, those who made an attempt to commit crime or prepared a crime for that purpose, who committed crimes related to them in the neighbouring areas, as well as those accused of organising mass disorders on 24 April

[68] Available at: https://www.panorama.am/am/news/2018/11/05/%D5%B0%D5%A1%D5%B4%D5%A1%D5%B6%D5%A5%D6%80%D5%B8%D6%82%D5%B4-%D6%85%D6%80%D5%A5%D5%B6%D6%84/2028943

2015, were also released from punishment. The law sets a ban to initiate criminal prosecution on the mentioned persons, in case of the initiated criminal prosecution terminate the criminal prosecution or release them from punishment, if the victims who were taken hostage and (or) suffered physical damage do not object against it.

This paragraph does not spread on the deeds committed during these events that directly caused human death[69].

The law on announcing amnesty is the first step in launching the process of implementing transitional justice.

### 2.2.2 Truth Seeking Process

**A)** At the beginning of1990s, a **Commission for Justifying Repression Victims and Discussing Applications to Receive Reparation** was created in the RA Chief Prosecutor's Office. It demanded from the USSR State Security Committee, the Ministry of Internal Affairs and other agencies (including union agencies) the archived cases and prepared a **conclusion** based on the study results which were regarded as an already sufficient legal basis for considering the person justified.

**B) March 1st Commission** was created in the RA National Assembly. However, in its 138-page conclusion submitted to the RA National Assembly in 2009, it did not answer the question who were really responsible for the killings of 10 persons during March 1st events[70].

**C)** It was written in 2017 pre-election programme of the YELK alliance: "**Creation of a truth commission which will investigate all the big politically important cases of the Third republic** (**27 October, 1 March, seizure of the Patrol Service Police Regiment, political killings**), the verdicts made on those cases and other decisions made in criminal proceedings and will submit to the parliament recommendations whose implementation must contribute to the establishment of public solidarity[71].

### 2.2.3 Reparation Programmes

**A) The RA Law on the Repressed** adopted in 1994 **still has force.** According to its article 1, "Repressed is the former USSR citizen, a person without citizenship or a foreign citizen, who constantly lives in the

[69]See at: Law on Announcing Amnesty on Criminal Cases Related to the 2800th Anniversary of the Establishment of Erebuni-Yerevan and the 100th Anniversary of Independence Declaration by the First Republic of Armenia, Law ՀՕ-414-Ն, adopted at 01.11.2018, available at https://www.arlis.am/DocumentView.aspx?DocID=126291:

[70]Information available at: https://www.azatutyun.am/a/1823954.html.

[71]Available at: https://brightarmenia.am/gallery/files/693%20YELQ%20dashinki%20cragir.pdf.

Republic of Armenia and who, during the former Soviet era (starting from 29 November 1920), in the Soviet territory, based on political motives,

*a) was convicted based on articles 65, 67, 69 of the previous edition of the 1961 Armenian SSR Criminal Code, as well as article 206/1 or the similar articles of the 1927Armenian SSR Criminal Code or the respective articles of the criminal codes of other former USSR republics, other articles for suppressing or limiting political dissent; and was absolved afterwards;*

*b) was brought to criminal responsibility in extra-court order;*

*c) was illegally subjected to compulsory medical measures;*

*d) was deported from the former USSR territory or was deprived of citizenship;*

*e) was exiled or deported as a repressed person's family member*[72].

In the above-mentioned law, a number of types of reparation have been foreseen for the repressed, including, including:

- Restoration of citizenship,
- Restoration of military, scientific and other titles and degrees;
- Allocation of pensions;
- Land allocation with property rights, with the purpose of individual apartment construction; it is also allocated to the first-in-line heir of the repressed person in case of his/her death;
- Allocation of a long-term loan to carry out construction on privileged conditions; it is also allocated to the first-in-line heir of the repressed person in case of the latter being dead, and the funds foreseen for it is defined in the RA state budget as a separate line;
- Exemption from the fee charged for formulating the documents related to the privatisation of the apartments in the RA state and public apartment fund;
- Provision of an additional certificate during privatisation of state enterprise and unfinished construction objects;
- Provision of one-time monetary compensation for the confiscated property of the repressed person during, the fine paid by him/her or the salary not paid during serving sentence in the amount of twelve times the minimal salary defined in the RA legislation.

**B)** Lena Nazaryan and Alen Simonyan, deputies from the YELK faction of the RA National Assembly, came up with legislative initiatives RA:

[72]RA Law on the Repressed Persons, adopted by the RA Supreme Council on 14.06.1994, ՀՕ-1062-I, Article 1

- **The first one concerns reparations to the families of the victims deceased during the bloody clashes of 1-2 March 2008;**
- **The second one foresees to provide a reparation to the families of the policemen deceased during the seizure of the Patrol Service Police Regiment in July 2016.**

### 2.2.4 Lustration

**A)** After the weakening (1988-1989) and the collapse (1990-1991) of the Communist Regime there have been attempts to carry out lustration in Armenia. It is remarkable that in 2016, in particular, the "Zharangutyun" ("Heritage") faction of the RA National Assembly submitted the **RA Draft Law on Declassification**[73]for being discussed and approved by the NA. The author of the draft was Deputy Zaruhi Postanjyan, and its goal was to declassify the persons who explicitly or secretly worked or cooperated with the USSR State Security Committee, as well as agencies that carry out intelligence, counter-intelligence, and operational intelligence activities or the special services of other countries, before the Independence Referendum of Armenia of 21 September 1991. However, this draft proposed by the "Zharangutyun" parliamentary faction caused the heated criticism of the RA ruling political forces and even a big part of the scientific elite.

## 2.3 Recommendations Aimed at the Possible Application of Transitional Justice in the RA

In case of implementing transitional justice in the Republic of Armenia, it must stem from the domestic environment of Armenia. Transitional justice is a means to reach the goals defined in the Constitution which cannot be reached through other conventional systems, and its application scope must be clearly outlined in the scope of the opportunities given by the Constitution and the state's convention obligations. When applying the mechanisms of transitional justice, it is necessary that a practice of active use of ECHR advice.

### 2.3.1. Application Period

1991-2018 should be defined as the period of applying transitional justice prior to the Velvet Revolution period.

### 2.3.2. The Scope of Cases for Application

[73]Information available at: http://www.parliament.am/drafts.php?sel=showdraft&DraftID=8355&Reading=0.

It is necessary that the following be included in the cases subject to applying transitional justice:

A) cases on corruption crimes on funds stolen from the society and the state, including those concerning the alienation of people's property for the needs of the society and the state, based on the justification of dominant public interest,
B) cases on mass electoral violations during nationwide elections and referenda, their derivative cases, e.g., March 1st2008;
C) cases on encroachments of the right to life and the right to be free from torture.

### 2.3.3. Application Mechanisms:

#### a) Criminal Justice

1. Criminal justice must be administered in the RA exclusively through the existing system of justice and the applied transitional justice mechanisms must not be alternative to the existing system but have a complementary and supportive function.
2. It is necessary that the expediency of creating specialised courts be discussed (for example, Specialised Court to Investigate Corruption Crimes which will investigate the corruption cases on the funds stolen from the society and the state, as well as the expediency of creating an independent universal anti-corruption agency (with the functions to carry out operational intelligence, investigation, and pre-investigation).
3. It is necessary to discuss application of amnesty of capital through adoption of law (plea bargaining) and proposal of a deal on a domestic level to the persons illicitly enriched as a result of corruption crimes, guided by both legal and political processes.
4. It is necessary that the legal grounds for revising (ended, suspended) criminal cases and initiating new criminal cases be defined.
5. It is necessary that after the introduction of transitional justice mechanisms a discussion starts on the question of spreading amnesty on the representatives of the former authorities who were convicted in the scope of transitional justice.

#### b) Truth Seeking Process:

1. To discuss the expediency of adopting an RA Law on the Truth and Reconciliation Commission (Commission) which will register the cases corresponding to the period of time and scope of cases suggested in this report, will reveal the reality and discover the truth exclusively through documentation. As a result, it will publish both sectoral and final reports, will recommend

mechanisms for provision of reparations, and will embark on establishing solidarity through the reconciliation of offenders and the victims, contributing to forming an atmosphere of pubic solidarity in the country.

2. Envisage in the law clear integrity criteria for the election of commission members, fixing the principles of competition and participation and ensuring public solidarity, transparency and accountability in that process.
3. Create a public monitoring agency by the law, composed of specialised CSOs and independent experts, which will carry out the pubic monitoring of the entire period of the Commission activities, including the process of Commission opening, implementation of activities, decision making and summarising activities.
4. In order to guarantee the activities of the Commission, starting from the stage of elaborating the Law, take measures in cooperation with international organisations to provide the Commission with the means necessary for its activities, including through the engagement of human (expert) and financial resources.

**c) Reparation Programmes:**

1. Envisage grounds for receiving reparations by the law, including a clear scope of victims, including individuals and groups.
2. Depending on the victims' target groups, envisage reparation programmes which will include:
    - Restoration of the status quo (initial state): restoration of the right to individual freedom, immunity of private and family life, honour and good reputation, citizenship rights and other rights, return to own place of residence, resumed work, property return;
    - Compensation: financial or equivalent material compensations;
    - Rehabilitation: opportunity to make use of free medical, psychological, and other rehabilitation services.
3. Consider provision of reparations as complex measures and allocate funds in a separate line of the annual RA state budget to provide reparation to the mentioned persons or groups, also taking into account the possibility of allocating funds from the state budget of the given year.
4. Apply symbolistic measures through ask for public apologies, setting out memorial days, building memorials and a museum, organising exhibitions and through other means.
5. It is also important to return the assets stolen from the state through corruption crimes and use them for socially useful purposes in the social, education, health and other sectors, through the foundations created by the state especially for that purpose.

d)Systemic Reforms:

1. Discuss the expediency of adopting the RA Law on the Vetting Commission in order to carry out a process of removing the officials who displayed dishonest behaviour in the past from the public power (judicial, enforcement agencies, etc.):
    - Define situational approach and integrity as the legal grounds for implementing vetting: (professional competence+ethics+accountability)-corruption, guaranteeing protection of individual rights;
    - According to law, presumption of innocence must be applied during cases investigated by the vetting commission and, correspondingly, the burden of proof must be put on the vetting agency;
    - Envisage by the law clear integrity criteria for the selection of vetting commission members, fixing that the competition and participation principles will be guaranteed in that process and that public solidarity, transparency and accountability will be ensured;
    - Create by law a public monitoring agency, composed of specialised CSOs and independent experts, one that will implement the public monitoring of the entire period of activities of the vetting agency, including the process of its creation, implementation of activities, decision making and summing up activities;
    - In case of creating an independent universal anti-corruption agency, it shall be endowed with the powers of the vetting commission;
2. Implement systemic reforms in the field of justice in the directions of legislation, human resources and others;
3. Implement systemic anti-corruption reforms, create a specialised independent universal anti-corruption agency, which will deal with pre-investigation of corruption cases, corruption prevention, including return of stolen assets, as well as anti-corruption education;
4. Discuss the expediency of becoming a member of the International Criminal Court; this recommendation stems from the international obligations assumed by the RA, in particular, the Republic of Armenia has assumed a commitment in the Comprehensive and Enhanced Partnership Agreement signed between the Republic of Armenia and the European Union to ratify the statute signed in Rome in 1998, thus fixing its membership with the International Criminal Court;
5. Creation of a transitional justice coalition by civil society organisations (CSOs) or creation of a specialised CSO commission within the existing and developed CSO coalition to deal with transitional justice issues. The mentioned Coalition/commission will show support to the

government in the process of administering transitional justice in developing drafts of legal acts to be adopted in the scope of transitional justice, will monitor the activities of truth and vetting agencies and will implement public awareness campaigns on transitional justice.

### 2.3.4. Implementation Process:

A) The RA Government or the RA National Assembly will prepare a draft concept note on implementation of transitional justice in the RA, including the terms of implementation, the terms of application, the scope of cases for application, the application mechanisms, the public oversight mechanisms and the implementation roadmap.
B) Organisation of public, political and professional discussions of the draft concept note, as a result of which a final document will be prepared based on political and public solidarity.
C) The RA Government or the RA National Assembly will approve the concept note of implementing transitional justice in the RA, based on which the RA National Assembly will adopt respective laws stemming from the concept note.
D) Implementation of transitional justice mechanisms and establishment of public solidarity.
E) Monitoring and evaluation.

## ANNEX 2. SUMMARY OF THE CIVIL SOCIETY-GOVERNMENT CONFERENCE ENTITLED "POSSIBILITY OF INTRODUCING MECHANISMS OF TRANSITIONAL JUSTICE IN THE RA IN THE LIGHT OF INTERNATIONAL EXPERIENCE"

In the scope of the "Commitment to Constructive Dialogue" project funded by the European Union, the Armenian Lawyers' Association, in cooperation with the RA Government, organised on 28 November 2018 a Civil Society-Government Conference entitled "Possibility of Introducing Transitional Justice Mechanisms in the RA in the Light of International Experience."

Representatives from the RA Government and state agencies, ambassadors of foreign states in Armenia, representatives from international organisations and civil society organisations, high-ranking officials, lawyers, experts and journalists attended the event.

The agenda questions of the conference were presentation of international experience of transitional justice, thematic discussions on its separate mechanisms, as well as the discussion of recommendations aimed at the introduction of those mechanisms in the RA. During the conference, the recommendations

presented in the report "Possibility of Introducing Mechanisms of Transitional Justice in the RA in the Light of International Experience" written by the "Armenian Lawyers' Association" NGO and edited during the conference discussions, were also discussed and included in this report.

During the thematic discussions of the conference, the invited expert speakers presented separate mechanisms of transitional justice in detail, the positive and negative international experience of their application, and, most importantly, they presented the possibilities of implementing transitional justice in the RA and the recommendations aimed at the introduction of the main mechanisms.

Please find below the summarised presentation of the invited experts' recommendations, according to thematic discussions:

- **Criminal Justice**

**Experts: Vahe Grigoryan, Anna Vardapetyan, Nikolay Baghdasaryan, Narek Yenokyan**

**Moderator: Karen Zadoyan**

1) Transitional justice is materialised in the domestic context and stems from the domestic environment of the given country. It must never cross the line of constitutionality and must not go beyond the international obligations assumed by the country. Transitional justice is a means to reach the goals set out in the Constitution that cannot be achieved through other conventional systems, and its application scope must be outlined within the boundaries of the opportunities presented by the Constitution and the convention obligations of the state.

2) Criminal justice must be administered in the RA exclusively through the system of acting justice and the applied mechanisms of transitional justice must not be alternative to the existing system but have a complementary and supportive function. It is worth mentioning that the participants had different opinions on this stance. In particular, the idea of transitional justice is that domestic law enforcement, judicial and other state agencies are not able to fully implement the powers they were given. In addition, implementation of transitional justice implies introduction of new systems with the participation of a society with a new value system, guaranteeing rule of law, human rights protection and a society free from corruption. Therefore, transitional justice cannot only have a complementary and supportive function.

3) Investigate in the scope of transitional justice some crimes defined by the RA Criminal Code. In particular, the crimes aimed against the constitutional order (e.g., corruption crimes, the March 1st case, cases encroachment on the right to be free from torture, the right to life, as well as the crimes against property).

4) Define the legal grounds for the revision of the (ended, suspended) criminal cases, clarify the scope of the persons competent for presenting those criminal cases in court after revision.

5) During the application of transitional justice it is necessary to first have an understanding of the potential scope of the persons who must be criminally prosecuted.

6) In the event of introducing transitional justice mechanisms, prioritise the necessity for re-opening criminal cases, based on the verdicts made by ECHR.

7) During the application of transitional justice mechanisms, it is necessary that a practice of making active use of ECHR advice be formed.

8) In case of necessity, discuss the expediency of creating specialised courts (for example, creation of the Armenian Human Rights Court, which will have the power to investigate a limited number of cases prescribed by the law, cases that cannot be solved by conventional justice and the law enforcement agencies). It is worth mentioning that the conference participants had different opinions on this stance, too.

9) Discuss the necessity of creating separate specialised units in the agencies administering justice, which will assist in the implementation of criminal justice (e.g., a separate unit to carry out operational intelligence activities on suspended criminal cases).

10) Apply amnesty of capital (plea bargaining) and offer deals to the illicitly enriched persons on a domestic level, guided by both legal and political processes.

- **Truth Seeking Process**

**Experts: Vahe Grigoryan, Zaruhi Mejlumyan, Lusine Nalbandyan**

**Moderator: Syuzanna Soghomonyan**

1) In case of being implemented by any agency, truth seeking shall not go beyond the documentation process. That agency must only have functions to discover and register the reality.

2) More than half of the truth commission must be representatives of the wings of power, and the other part must be civil society representatives, beforehand setting out clear mechanisms and criteria for electing commission members.

3) Experts, foreign judges and investigative journalists must be involved in the work of the commission.

4) It is necessary that an agency be created to deal with revision of completed judicial acts that have entered into force, having a purpose to also research the practices of judicial mistakes.

- **Reparations**

**Experts: Gevorg Danielyan, Karapet Badalyan, Ara Khzmalyan, Mariam Zadoyan**

**Moderator: Carl Ulbricht**

1) Create legislative grounds needed for reparations and implement the respective organisational measures.

2) View the allocation of reparations as measures taken in a complex manner and allocated enough financial means with that purpose.

- **Systemic Reforms**

**Experts: Karen Zadoyan, Artyom Geghamyan, Armen Mazmanyan, Arman Zrvandyan, Artyom Mesropyan**

**Moderator: Marat Atovmyan**

1) Application of lustration tools is currently regarded as risky for when we apply it, we deal with "collective guilt" and "collective responsibility," and the main process is accompanied by mass violations of individual rights. In that sense, application of vetting tools is regarded as less risky as during that process we deal with concrete people and sanctions are applied on them.

2) There is a necessity to apply vetting tools in the RA especially in law enforcement agencies and the judiciary. In particular, when implementing vetting in the judiciary, following these principles is recommended:

- Apply vetting towards the judges who made verdicts that enabled the ECHR to register grave violations of fact checking and application of law, including those concerning March 1st;

- When implementing vetting, judges must present a detailed report on their financial means, property and assets, as well as their sources, implement a check of judges' professional compliance during the vetting process.

3) In the process of implementation of vetting, the responsible agency must be exclusively guided by the proper legal procedures, carrying out situational vetting and guaranteeing protection of personal rights.

4) It is necessary that legislative grounds be created for the activities of the agency implementing vetting.

5) During the investigation of the cases by the vetting agency, presumption of innocence must be applied and, correspondingly, the burden of proof must be put on the vetting agency.

6) Implement systemic anti-corruption reforms, create an independent specialised universal anti-corruption agency which will deal with pre-investigation of corruption cases, corruption prevention, including return of stolen assets, as well as anti-corruption education.

7) Creation of a transitional justice coalition by civil society organisations (CSOs) or form a specialised CSO commission to deal with transitional justice issues inside an existing and developed CSO coalition, in order to ensure support to, public awareness and monitoring of the transitional justice process.

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