

**End-of-mission statement by Ravindran Daniel and Jelena Aparac, members of the
United Nations Working Group, on the use of mercenaries as a means of violating
human rights and impeding the exercise of the right of peoples to self-determination on
their visit to the Republic of Armenia**

Yerevan, February 27th 2023

Ladies and gentlemen,

Introduction

I am speaking to you as Chairperson and member of the United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on the conclusion of our first official visit to the Republic of Armenia, which took place from 20 to February 27. My colleague Dr. Jelena Aparac is also a member of the delegation.

During the past eight days, we have had the opportunity to gather first-hand information on mercenary and mercenary-related activities in all their forms and manifestations, as well as on the activities of private military and security companies and their impact on human rights. We learned about laws and procedures, good practices and challenges in these distinct areas.

We came to Armenia at the invitation of the Government of the Republic of Armenia. The Armenian government officials at all levels demonstrated a spirit of cooperation and engaged with us in an open dialogue on matters related to our mandate.

We are grateful to the Government of Armenia for the invitation to visit the country, and we extend our heartfelt thanks to those who made our visit possible. The cooperation we received demonstrates Armenia's commitment to upholding its human rights standards. We want to express our particular appreciation to the focal point in the Ministry of Foreign Affairs for coordinating our visit and constructive meetings. During our visit, we had fruitful exchanges with numerous senior officials representing different ministries and agencies in Yerevan, including the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Security Council of Armenia, the National Security Service, the Central Bank, the Investigative Committee, the Prosecutor General's Office, the Office of the Human Rights Defender of the Republic of Armenia, the Ministry of Defense, the Ministry of High-Tech Industry and the Ministry of Justice. We thank them all for their openness.

We also had the opportunity to travel to the province of Syunik, where we met with officials of the Syunik Regional Administration, representatives of the Office of the Ombudsperson in Kapan, and representatives of civil society in Goris.

Lastly, we warmly thank the national civil society, non-governmental organizations and legal representatives who met with us. Their cooperation with our mandate before and during the visit provided invaluable information and is a testament to their vital role in monitoring Armenia's human rights obligations.

Our human rights mandate focuses on mercenaries, mercenary-related activities, and private military and security companies. We assess the impact of these actors on human rights. What follows are our preliminary observations on some of the critical legal and policy issues we

observed in Armenia. We will prepare a detailed report examining the issues identified in our present note, including conclusions and recommendations. We will submit our full report to the Human Rights Council in September 2023.

Preliminary observations

Domestic application of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries

We welcome Armenia's ratification of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries in 2020. We also note that Armenia is a party to the Protocol Additional to the Geneva Conventions of August 12 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8 1977, which defines mercenaries in its article 47.

The new Criminal Code of the Republic of Armenia, amended in 2021, contains provisions dealing with mercenaries directly, reflecting the UN Convention on Mercenaries. Article 147 criminalizes the recruiting, training, or financing of a mercenary, using him or her in armed conflicts or military operations, and punishes such acts by imprisonment for five to ten years. Engaging a minor in mercenary activities could result in a twelve-year prison term. Participating in an armed conflict as a mercenary is punishable by a prison term of seven to twelve years.

We are satisfied that Article 147 provides for a definition in compliance with the 1989 Convention, including, among other things: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

The law clearly prohibits Armenian nationals' involvement as mercenaries abroad. The Working Group did not receive any information on such cases.

Armenia stands out in its efforts to integrate the UN Convention on Mercenaries into its domestic legal framework, ensuring sufficient safeguards for investigating and prosecuting such crimes.

The application of law by courts and tribunals

The trial of two Syrian citizens accused of mercenarism

We received information that, in a trial held in Kapan in October 2020, under the new Criminal Code the court convicted two Syrian citizens on charges of international terrorism, a gross violation of international humanitarian law, terrorism and mercenarism, for participating in military operations during the September-November 2020 hostilities. Both men reportedly admitted being mercenaries in testimonies shown on Armenian television in 2021. We note that the court proceedings on May 4, 2021, lasted just a day, and the two appealed against the verdict. The Court of Appeals confirmed the first instance ruling.

The detention conditions of both individuals are being monitored independently and seem to be in line with international standards.

We welcome Armenia's commitment to closing the accountability gap for victims of mercenaries. We are, however, concerned about the apparent opacity of the case, specifically the absence of publicly available information about the trial and judgement. We are also concerned about the extremely short duration of the hearing, apparently of only one day, which doesn't provide for sufficient time to present and examine all the evidence before the court. We want to remind Armenia of its obligations to respect the international norms relating to the right to a fair trial, spelt out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, particularly in articles 9 and 14, in all circumstances.

Private military and security companies (PMSC)

The Working Group defines the term 'private military and security company' (PMSC) as a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities, including services provided on land or at sea.¹

We noted that Armenia, by law, has prohibited private military companies.

The private security industry in Armenia is regulated by the law "on private security activities," which was adopted by the National Assembly on February 9, 2012. This law was subsequently amended in July 2022. It establishes a regulatory framework for the licensing and operating security service providers. The Ministry of Internal Affairs is the competent national authority in charge of implementing and overseeing the law on private security activities. The law provides for licensing private security companies, monitoring their functioning, periodic training of their staff and temporary or permanent revocation of license for violations of the provisions of the law or other relevant Armenian regulations.

The law also sets forth an administrative procedure for licensing and for the authorization of individuals employed by the private security companies to be involved in security activities, including the circumstances in which they can carry and use arms. Furthermore, the law seems to provide a clear delineation of the competencies of the police and private security, respectively; refers to a comprehensive background verification conducted by the police on all private security employees, which not only focuses on criminal record checks; includes provisions on standardized training provided to security personnel and also on the measures undertaken to differentiate these personnel from the police officers.

In addition to the existing monitoring by the police, we strongly recommend a more significant oversight function on private security actions, including establishing an independent mechanism with the participation of members of the civil society to monitor and oversee the private security sector. We further recommend providing training on human rights and gender sensitivity to private security guards.

We note that the Armenian government has recently adopted a set of amendments to the Law on Licensing, aimed at simplifying the licensing procedure for foreign companies in some activity areas, including those involved in private security. In essence, foreign-based companies from specific countries listed by the law would not require a licensing procedure in Armenia if registered in their respective countries. This provision might limit the Armenian police oversight of such companies. In addition, the requirements for foreign-based companies to recruit only Armenian citizens are not explicit and appear to create space for an

¹ See A/HRC/15/25, annexe, part I, art. 2.

accountability gap and, eventually, the immunity of those actors in case of involvement in human rights abuses.

We note that Armenia is not a signatory of the Montreux Document (2009), which reaffirms the existing obligations of States under international law, particularly international humanitarian law (IHL) and human rights law, relating to the activities of private military and security companies. Therefore, we encourage Armenia to consider becoming a member of the Montreux Document, which contains a series of best practices designed to help States take appropriate measures to comply with their obligations under international law in times of conflict.

Private security companies in the context of the extractive industry

We also received information on the extractive industry sites in different regions of Armenia and the operation of private security companies hired by such companies. The Working Group has observed through its work how extractive companies operating globally often have a vital interest in securing their operations by relying on different types of security providers. Although the information received indicates that the police often control incidents of conflicts between local communities and companies. However, we are aware of instances of alleged involvement of private security contractors in dealing with local communities' concerns about the impact of such industries on their livelihood and human rights.

We notably received information on the operation of private security hired by the mining company Lydian in the Amulsar mine and the use of force by the staff of the security company in the context of protests by civilians opposing the exploitation of the mine in 2019. The Working Group learned during the visit about the existing legislation regulating the operation of these actors and commends the Government for the implementation of the current legislative framework in this particular case, which resulted in the security company losing the license to continue carrying out its security-related activities. We take note of the Memorandum of Understanding signed by the Armenian Government on 22 February 2023 with Lydian Armenia and the Eurasian Development Bank on the revival of the Amulsar project.

We want to highlight the lack of information on the private security companies operating in the extractive sites located in the territory of Armenia and consequently express concern about the oversight of these actors and their operations in this context. Furthermore, we would like to note that the provision in the Law on Licensing, allowing foreign companies from particular countries to operate in the country without undertaking the same national licensing process as domestic private security providers, raises our concern due to the possible inadequate oversight of the operation of these companies and impact of their activities.

We urge the Government to take the necessary measures to strengthen the monitoring and oversight of private security companies operating in the extractive sector. Furthermore, we recommend that the Government reflect human rights guarantees into their concession agreements, memoranda of understanding and other similar documents with extractive companies and increase the capacity to monitor private security companies' activities, including foreign companies. Finally, the Government should consider becoming a member of the Voluntary Principles Initiative on Security and Human Rights.

Private security in the context of cyber security

The Working Group was informed that the Government of Armenia has initiated a reform on cyber security and is considering the adoption of a law, which will provide a legal and institutional framework on cyber security. We are pleased to learn that cyber security will be regulated rather than function in a legal vacuum. We understand that the future law will most likely create a possibility for the government to work with private security providers in this context. We urge the Government to consider a human rights and victim centred approach when drafting this law and regulating the role of the private security in cyber operations. Furthermore, the oversight mechanism over these actors should be also adapted to comprise this legislation.

Conclusion

As this Working Group has persistently reported, the recruitment, financing, use and transfer of mercenaries, mercenary-related and private security actors in any context prolongs conflicts, amplifies levels of violence, substantially increases the risk of violations of human rights and international humanitarian law, and undermines peace efforts.

The opacity of mercenary-related activities in the context of armed conflicts often prevents access to justice for the victims and creates an impunity silo for serious human rights abuses. Women and girls are disproportionately affected by violence committed by mercenaries. They are also powerful agents of change and their skills for building peace should be used in every formal peace process. We call on Armenia to ensure the effective participation of women in peace building processes.

Armenia has demonstrated its commitment to investigating and prosecuting human rights violations and abuses and international humanitarian law and related crimes committed by such actors.

The Armenian government's willingness to invite us and its openness demonstrates its commitment to human rights. Our visit provides a solid platform to continue our cooperation to strengthen Armenia's efforts to pursue a human rights approach to deal with mercenaries, mercenary-related actors, and private military and security companies.