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9 November 2020

Dr. Chris M. A. Kwaja,  
Chair of the Working Group on the use of mercenaries

Dear Dr. Kwaja,

In response to the joint communication of 6 November 2020 addressed to H.E. Mr. Jeyhun Bayramov, Minister for Foreign Affairs of the Republic of Azerbaijan, I would like to draw your attention to the following.

**The substantial response of the Government of the Republic of Azerbaijan to the allegations reflected in the joint communication will be provided in due course.** Meanwhile, taking into account politically sensitive nature of the issues raised in the communication, we are writing to highlight some procedural matters with regard to the communication and request your urgent clarification in this regard.

In the communication we have not find any reference to an issue relevant to the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Since the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council adopted by the HRC resolution 5/2 of 18 June 2017 clearly demands observance of the terms of the mandate by the mandate holders indicating that *“It is incumbent on the mandate-holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate or the mandate of the Council itself”* we are surprised to see the SR on the promotion and protection of the right to freedom of opinion and expression signing the abovementioned communication and, we request the Secretariat, the Coordination Committee of Special Procedures and the SR on the right to freedom of opinion and expression to clarify this issue.

According to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council (hereafter the Code of Conduct) adopted by its resolution 5/2 of 18 June 2007, while discharging their mandate, Mandate-holders shall act in an independent capacity, and exercise their functions in accordance with their mandate, through **a professional, impartial assessment of facts** based on internationally recognized human rights standards, and free from any kind of **extraneous influence**,

incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, for any reason whatsoever, the notion of independence being linked to the status of mandate-holders, and to their freedom to assess the human rights questions that they are called upon to examine under their mandate.

They shall *always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that they have duly cross-checked to the best extent possible.* Furthermore, in accordance with the Manual of Operations of the Special Procedures of the Human Rights Council (hereafter the Manual of Operations) “*Because of the sensitivity of many of the issues that arise mandate-holders should be guided in their information-gathering activities by the principles of discretion, transparency, impartiality, and even-handedness. They should rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up. Appropriate opportunities should be provided for Government representatives to comment on allegations made against them and for those alleging violations to comment on Governmental responses thereto”.*

While the rules demand duly cross-checking of information received by Mandate-holders, in the communication we have received **there is not any single indication that that even credibility of the source of information and/or the allegations has been simply checked.** In this regard, we kindly request to be provided with information on any steps taken to seek to establish facts.

If the letter of communication is aimed at seeking to establish facts as it is indicated in the 17<sup>th</sup> paragraph of the communication, then it must be recalled that according to the Manual of Operations “Communications do **not imply any kind of value judgment** on the part of the Special Procedure concerned and are **thus not per se accusatory.** Their main purpose is to **obtain clarification** in response to allegations of violations and to promote measures designed to protect human rights.”

In the communication, while it is indicated that the Mandate-Holders do not wish to prejudge the accuracy of the allegations, the following sentences do not seem to be in line with either the stated aim nor with the above highlighted paragraphs of the Code of Conduct and the Manual of Operations. **It is unacceptable that the following sentences in the communication are clearly accusatory and presenting the baseless allegations as verified facts:**

- “...we are gravely concerned about the use of mercenaries and related actors by your Excellency’s Government, notably the impact on the hostilities in and around the Nagorno-Karabakh conflict zone.”

- “We are seriously concerned at the violations against civilians resulting in serious injuries, maiming and loss of life which may amount to torture and other cruel, inhuman or degrading treatment or punishment, in contravention with international humanitarian law and international human rights law.”
- “Furthermore, the deployment of the Syrian fighters appears to have contributed to the rapid escalation and intensification of hostilities, in turn resulting in civilian harm and suffering.”
- “We are also concerned that those deployed to Azerbaijan are affiliated with armed groups and individuals that, in some cases, have been accused of war crimes and serious human rights abuses during the conflict in Syria, thus seemingly perpetuating a cycle of impunity and risking further abuses of international law.”
- “Furthermore, the lack of transparency concerning the command and control exercised over the fighters in question raises serious concerns about accountability and impunity, as well as questions about respect for relevant international law.”
- “We express our additional concern at the transfer of foreign mercenaries to and from a conflict zone in the current context of the Covid-19 pandemic.”
- “Furthermore, the transfer of mercenaries and the continuation of hostilities disregard the health and safety of the civilian populations, and their access to healthcare.”

Furthermore, in accordance with the Code of Conduct, the Mandate-holders shall *“take into account in a comprehensive and timely manner, in particular information provided by the State concerned on situations relevant to their mandate; While expressing their considered views, particularly in their public statements concerning allegations of human rights violations, also indicate fairly what responses were given by the concerned State”*. According to the Manual of Operations *“In general, mandate holders should engage in a dialogue with the Government through the communications procedure before resorting to a press release or other public statement.”*

We would like to highlight that **the same allegation has been extensively used by Armenia, an aggressor state that has occupied 20 percent of internationally recognized territories of Azerbaijan** and has conducted ethnic cleansing and other documented war crimes in those territories in blatant violation of the norms and principles of international law and the UN Charter, in order to divert attention of international community from its acts of aggression against Azerbaijan (for further

information the Note Verbale of the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva sent to the Office of the United Nations High Commissioner for Human Rights in conjunction with the statement of the UN High Commissioner for Human Rights of 2 November 2020 on the Nagorno-Karabakh conflict is attached).

In this regard, it is surprising and disappointing that in spite of the explicit lack of any credible evidences and the highly political and sensitive nature of the allegation, in the communication it is indicated that the Mandate-holders may publicly express their concerns in the near future on the issue without receiving substantial responses of Azerbaijan.

We believe that this kind of approach would be incompatible with the Code of Conduct, Manual of Operations, mandate of the mandate holders and the principles of cooperation and genuine dialogue, impartiality and objectivity and such a statement would only serve to the political purposes of the abovementioned aggressor state and its supporters.

Therefore, we urge the Mandate-holders to refrain from any hasty public statement on the matter that is being purposefully pushed into the international agenda. Moreover, since the current communication will be made public via communications reporting website in accordance with the relevant practice, we urge the Mandate-holders to modify the current communication by removing the language that prejudices the accuracy of the allegations to make the communication in line with the Code of Conduct and Manual of Operation.

Sincerely yours,



Ambassador Vaqif Sadiqov

Enclosure: 4 pages