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ՄՇՏԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑՉՈՒԹՅՈՒՆ
PERMANENT MISSION
OF THE REPUBLIC OF ARMENIA

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The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit hereby the response of the Republic of Armenia to the joint urgent appeal by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions (ref. UA 1/2020).

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Encl.: 76 pages



Geneva, 22 February, 2021

A.Y.

OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
Geneva

Information provided by the Government of the Republic of Armenia
in response to the questions contained in the joint letter UA ARM 1/2020, dated
December 9, 2020, of the UN Special Rapporteur on torture and other cruel,
inhuman or degrading treatment and punishment, the Working Group on
enforced or involuntary disappearances and the Special Rapporteur on
extrajudicial, summary or arbitrary executions

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

On September 27, 2020 Azerbaijan initiated a premeditated aggression of unprecedented scale and intensity along the entire Line of Contact with Nagorno-Karabakh (Artsakh) with the direct political-military support of Turkey, putting under particular risk the security and the right to life of the people of Nagorno-Karabakh¹. Months before the aggression, Turkey-affiliated private contractors had initiated recruitment of foreign terrorist fighters and mercenaries in the

¹ Since the very beginning the Nagorno-Karabakh (NK) conflict has been about fundamental human rights, an inalienable right of Armenians of NK to live freely and peacefully on the land of their ancestors and determine their future based on their right to self-determination. As pointed by [REDACTED], a prominent international lawyer, the former UN Independent Expert on the Promotion of a Democratic and Equitable International Order, “it is not the exercise of self-determination that generates conflict, but the unreasonable denial thereof”.

The Nagorno-Karabakh has been populated by Armenians from the ancient times. The original Armenian name of this land is Artsakh. It has never been part of independent Azerbaijan. Artsakh has been arbitrarily incorporated into the Soviet Azerbaijan by Joseph Stalin’s decision in 1921, as an autonomous region. At that point the Armenians comprised 93 percent of its population. The Nagorno-Karabakh experienced socio-economic and cultural decline for decades, the Armenian population was consistently discriminated and constituted 78 percent of the population in 1989. The Armenians of Nagorno-Karabakh had a clear understanding of the plotted destiny inside Azerbaijan based on the results of the policy geared towards changing the demographic situation in the Armenian-inhabited territories, as it was successfully carried out in Nakhichevan, another Armenian populated autonomous region, where within several decades the number of the Armenian population had been brought to naught.

During Perestroika years, the peaceful demand of NK for self-determination was met by massacres and pogroms of the Armenian population in Sumgait, Baku, Kirovabad (Gyanja), Barda and other cities on the entire territory of Azerbaijan, reminiscent of the massacres of more than 60.000 Armenians in Baku and Shushi in 1918-1920 carried out in parallel with the Armenian Genocide in Ottoman Turkey in 1915–1923. The European Parliament by its Resolution on “The Situation in Soviet Armenia” of July 1988 condemned the violence employed against Armenians in the Azerbaijan SSR and supported their demand for reunification with the Armenian SSR. The call was echoed by numerous other international actors.

These events accelerated the process of exercising the right to self-determination by the people of NK, as their physical safety and security came under imminent threat. On December 10, 1991 through a referendum NK population freely expressed their will for the establishment of the independent Nagorno-Karabakh Republic by 99.89% of votes, which fully complied with both the norms of international law and the letter and spirit of the USSR laws of that time. The policy pursued by Azerbaijani authorities turned into overt aggression and large scale military actions against the Republic of Nagorno-Karabakh, which resulted in tens of thousands of casualties and caused considerable material damage.

Since the NK independence, xenophobia has been raised to the state policy level in the independent Azerbaijan through proclaiming Armenian nation as “the Enemy Number 1” of the Azerbaijani nation. During the 26 years after the ceasefire of 1994, Azerbaijan failed to constructively engage in the substantive negotiations mediated by the OSCE Minsk Group Co-Chairs rejecting any possibility of direct talk to the legitimate representatives of Nagorno-Karabakh.

Turkish-controlled Syrian territories – mostly in Idlib and Aleppo provinces – and transferred them to Azerbaijan in order to fight against the people of Nagorno-Karabakh. As acknowledged by several countries and extensively reported and documented by independent observers and international media thousands of members of Al-Nusra Front, Sultan Murad, Al-Hamza and other Turkish-backed terrorist organizations have been concentrated in Azerbaijan and the Nagorno-Karabakh conflict zone.

Throughout the 44 days of the offensive the Azerbaijani army committed horrendous crimes and atrocities deliberately and systematically targeting civilian infrastructures, including schools, hospitals, maternity wards, markets, roads, communication systems and other facilities, as well as vandalizing and destroying the Armenian historical-cultural and religious heritage on the territory of Nagorno-Karabakh, including churches, cross-stones and various monuments, in a flagrant violation of international human rights and international humanitarian law. The civilian population has come under targeted attack, with women and children killed with explosive weapons and cluster bombs in the civilian areas. This fact was admitted by the Azerbaijani President Aliyev in his interview to the Spanish EFE agency². The aggression resulted in thousands of deaths, including among the civilian population, and left thousands of people with physical disabilities. Tens of thousands have been displaced with their property destroyed or transferred under the Azerbaijani control, and many of them were denied their right to return to their homes in safety in dignity, first and foremost in the towns and villages of the Hadrut and Shushi districts of Nagorno Karabakh occupied by the Azerbaijani Armed Forces.

On October 30, 2020, the Azerbaijani Armed Forces, using incendiary weapons containing, what is most likely, white phosphorus or thermite substances, committed yet another war crime against the people of Nagorno-Karabakh, according to the UN Convention on Certain Conventional Weapons³. Incendiary ammunitions containing white phosphorus or similar igniting agents can cause death or severe harm to human health, as well as irreparable damage to the environment ranging from large-scale forest fires to persistent pollution of air, soil, water and poisoning of flora and fauna. The real threat for the civilians' life and health as a result of the use of such ammunition of mass destruction containing chemical elements against the forests of Artsakh put at risk the peaceful population sheltered in forests, which has also been stated by the Human Rights Ombudsman of Artsakh⁴.

As regards the issue of targeting civilian infrastructure and population, it has to be underlined that the civilian population and settlements of the Republic of Azerbaijan were not intentionally targeted. The targets for the attack were exclusively military facilities located in the vicinity of the settlements, particularly the airports of Kurdamir, Yevlakh, Barda, Dollyar, Ganja, Qabala settlements, the missile and ammunition warehouse, the manpower and the launch sites of long-range rocket launchers, artillery firing positions in locations of concentration, armed forces units in Aghjabedi district, electric storages of "Uragan" and "Smerch" heavy multiple rocket launchers in Mir-Bashir settlement, the locations of military units, military groups of the

² <https://en.president.az/articles/45475>

³ <https://youtu.be/xDrjxpBJhZw>

⁴ (1) Արցախի Մարդու իրավունքների պաշտպան / Artsakh Ombudsman - Posts | Facebook

Azerbaijani Armed Forces, which have directly shelled the settlements and the military units of Nagorno-Karabakh Defense Army. Concerning the allegation contained in the communication on targeting of settlements and civilian infrastructures with a large number of unmanned aerial vehicles (UAV), it has to be noted that neither Nagorno Karabakh Defense Army nor the Armed Forces of the Republic of Armenia possess combat UAVs (especially long-range) and incendiary weapons in its arsenal that could be used to hit civilian objects in the territory of Azerbaijan. At the same time, the facts of deliberate deployment of military units in the immediate vicinity of Azerbaijani settlements and using the civilian population as a human shield by Azerbaijan have to be emphasized. Additionally, it has to be stressed that no objects have been targeted from the territory of the Republic of Armenia.

With regard to mentioning the villages and communities of Shushi and Kovsakan (Zangelan) by the Special Procedures, it has to be noted that those regions as territories of the Republic of Artsakh inhabited by Armenians, were targeted by Turkish-Azerbaijani units and mercenary terrorist armed groups shelling the units of the armed forces of Artsakh and the objects of civilian infrastructure. In this context it has to be stated that throughout the entire period of hostilities, Azerbaijan bombed and shelled not only civilian settlements of Artsakh, including the capital Stepanakert, but also targeted the territory of the Republic of Armenia, particularly settlements in Gegharkunik and Syunik regions (for information on the perpetrators of the crimes refer to the Annex 1).

2. Please provide detailed information about the factual and legal grounds for the continued detention of the prisoners of war after the cessation of hostilities and explain how these measures are consistent with the international human rights obligations.

On November 9, 2020, the joint statement of the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation was signed aimed at the establishment of a ceasefire and the deployment of peacekeepers in Artsakh⁵. Article 8 of the Trilateral statement stipulates the “exchange of prisoners of war, hostages, and other detained persons and dead bodies”. However, in a blatant disregard of the statement, as well as of the fundamental requirements of the Geneva Conventions and its

⁵ The trilateral statement of November 9 should be considered without prejudice to the final political and durable settlement of the Nagorno-Karabakh conflict. It cannot be considered a comprehensive settlement of the Nagorno-Karabakh conflict. All issues concerning the Nagorno-Karabakh peace process are subject to discussion exclusively within the format of the OSCE Minsk Group Co-Chairmanship. The comprehensive resolution of the conflict aimed at achieving lasting and sustainable peace in the region include the issues of:

- Status of Artsakh based on realization of the right to self-determination, security of its people;
- De-occupation by Azerbaijan of the territories of Nagorno-Karabakh;
- Safe and dignified return to their homes of the recently displaced population of Artsakh;
- Preservation of Armenian cultural and religious heritage on the territories that fell under the control of Azerbaijan.

Protocols, Azerbaijan is currently creating artificial impediments to hinder the return of captives and bodies.

The alleged number of persons captivated and still held by Azerbaijan during the war, as well as after the end of hostilities is at least 200, including prisoners of war, civilians, as well as women. The list of captives presented by the Armenian side is based on the information received from videos, testimonies and other sources. Meanwhile, in a total disregard of the international humanitarian law, Azerbaijan does not disclose the true number of Armenians held in captivity and, as of February 19, 2021, confirmed only 73 captives and hostages, 5 of whom are civilians.

It should be noted, that 56 of those 73 persons, confirmed by Azerbaijan, were captivated after the end of the hostilities and the declaration on ceasefire, during the military operation in the direction of the villages of Khtsaberd and Hin Tagher in Nagorno-Karabakh, launched by Azerbaijan on December 11, 2020, in a violation of the Paragraph 1 of the Trilateral Statement of November 9, 2020, stipulating a complete ceasefire and termination of hostilities.

Since the end of hostilities, 43 prisoners of war and 25 civilians have returned from Azerbaijan through the mediation of Russian peacekeepers and 1 civilian - through the mediation of the ICRC.

Armenia closely and constructively cooperates with the International Committee of the Red Cross. Strictly adhering to the agreed principle “all-for-all” on exchange of PoWs, it has already handed over all the Azerbaijani PoWs and even two convicted murderers of the Armenian civilians. The importance of immediate and unconditional return of prisoners of war has been emphasized not only by the Armenian side, but also by the international community⁶. Meanwhile, Azerbaijan, rejecting cooperation with the ICRC, disregards the “all-for-all” principle and conceals the real number of Armenian prisoners of war and civilians taken captive. Moreover, the PoWs captured in Khtsaberd were qualified as “terrorists and saboteurs” by the Azerbaijani President Ilham Aliyev⁷ and criminal cases were initiated against them, which gravely violates the Trilateral Statement, as well as contradicts the provisions of the Third Geneva Convention.

Numerous cases of inhuman and degrading treatment of the Armenian PoWs and civilian captives have also been documented by the Human Rights Defenders of Armenia and Artsakh in their reports (see Annexes 2-5), illustrating the flagrant violation by Azerbaijan of the international humanitarian law norms, including provisions of the Geneva Conventions. With the endorsement of their leadership, the Azerbaijani armed forces widely disseminate videos on social media platforms, demonstrating humiliation, physical abuse, mutilations, beheadings and other inhuman treatment of the Armenian PoWs and civilian detainees not only in blatant infringement of IHL norms but also in rejection of basic values of humanity and morality⁸. One of the most egregious cases is the execution of two Armenians, [REDACTED] and [REDACTED], in the town of Hadrut captured by the Azerbaijani military,

⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26702&LangID=E>
<https://twitter.com/ExtSpoxEU/status/1355075592320901124>

⁷ <https://en.president.az/articles/49933>

⁸ <http://cloud.ombuds.am/index.php/s/Fmi5jWQ9KKriZMF>

committed under the direct leadership and order of the Head of the Intelligence of Nakhichevan Separate Combined Army, [REDACTED]⁹. This case has already been addressed by the UN High Commissioner for Human Rights as a possible war crime.

3. Please provide information on measures taken to inform families or the disappeared about their fate and the exact whereabouts. Please also provide information on the steps taken to return bodies of the deceased to their families with due respect for cultural customs.

The relatives of the servicemen whose whereabouts are unknown, have immediately been interviewed by the Investigative Committee of the Republic of Armenia. Decoding of about 200 telephone numbers were obtained, the received data was operatively transferred to the competent military specialists participating in the search operations. Receptions of the relatives of missing persons were organized on a daily basis and a psychologist was involved in the works with them. The photos of the external examination of the bodies were presented to the relatives. Photos are also provided to the staff of the "Commission on the verification and collection of data of the servicemen captivated during the hostilities or servicemen whose whereabouts is unknown and other persons", dealing with the issues of the unknown missing persons and captives on a daily basis. The officers of the Investigative Committee have been stationed in morgues on a 24-hour basis.

The data of the killed soldiers were sent to the General Department of Health and Social Protection of Servicemen and Veterans for recognizing their parent, spouse or child as a beneficiary of "Soldiers' Insurance Fund" pursuant to the order stipulated by the Law of the Republic of Armenia "On compensation for damages caused to the life or health of servicemen during the defense of the Republic of Armenia".

The Investigative Committee has been constantly cooperating with the staff of the Ministry of Defense of the Republic of Armenia, the National Security Service, the Ministry of Foreign Affairs, the Human Rights Defender's Office, the ICRC Office in Armenia, the Office of the Representative of the Republic of Armenia to the ECHR, and individual human rights defenders. The received information is immediately examined and the results are transferred to the competent body.

According to the information received from Nagorno Karabakh, the authorities duly repatriated all the corpses of slain soldiers of the Azerbaijani Armed Forces from the territories under their control. At the same it has to be stated that in the course of the ongoing search operations new bodies from both sides may be found. Recently, on February 12, due to the cooperative stance of the Nagorno Karabakh authorities 7 remains of the Azerbaijani soldiers killed during the first Artsakh war were handed over to Azerbaijan.

⁹ <https://southfront.org/war-crimes-azerbaijani-troops-tie-with-flags-and-kill-two-captured-armenians/>

4. Please provide details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to consistent allegations of extrajudicial killings, enforced disappearance, torture and/or cruel, inhuman or degrading treatment of persons in custody. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Armenia.

On September 29, 2020, the Investigative Committee of the Republic of Armenia in cooperation with the Nagorno Karabakh relevant authorities initiated a criminal case and during the preliminary investigation a factual evidence has been obtained on the fact that a number of persons, not yet identified, wearing the uniforms of the Defense Army of the Republic of Artsakh, committed grave violations of international humanitarian law, particularly killings, torture and manifestations of inhuman treatment against persons, not yet identified, wearing the uniforms of the armed forces of the Republic of Azerbaijan, supposedly citizens and prisoners of war of the Republic of Azerbaijan, who were deprived of means for protection.

6 criminal cases have been initiated in the Criminal Investigation Department of the Investigation Committee of the Republic of Armenia on the facts of the aforementioned crimes under points 1 and 2 of part 1 of Article 390 (“Serious breach of international humanitarian law during armed conflicts”) of the Criminal Code of the Republic of Armenia. Large-scale investigative and other judicial actions and steps are being taken to identify the alleged perpetrators.

Up today 82 criminal cases have been initiated in connection with the crimes committed by Azerbaijan during the hostilities, 38 of which have been initiated in the Criminal Investigation Department of the Investigation Committee of the Republic of Armenia, 2 - in the Tavush Regional Investigation Department, 6 - in the Noyemberyan Investigation Division of the Tavush Regional Investigation Department, 26 - in the Tavush Investigation Department of the Tavush Regional Investigation Department, 2 - in the Gegharkunik Regional Investigation Department, 4 - in the Ararat Regional Investigation Department, 1 - in the Syunik Regional Investigation Department, 3 - in the subdivisions of the General Military Investigation Department. The criminal cases were initiated under the features of Articles 104, 128, 185, 235, 265, 376, 384, 387, 390, 391, 392 395 of the Criminal Code of the Republic of Armenia.

During the preliminary investigation of the above-mentioned criminal cases, 7 Azerbaijani servicemen were involved as defendants. 103363 persons were recognized as victims (3389 of them - as dead, 9094 - with various degrees of bodily injuries, 90880-forcibly displaced).

In response to the violations committed by Azerbaijan during the war unleashed against the Republic of Artsakh and the Republic of Armenia, on September 27, 2020 the Republic of Armenia initiated an interstate legal process. In particular, The Government of the Republic of Armenia has applied to the European Court of Human Rights with a request of applying

immediate interim measures against Azerbaijan under Rule 39 of the Rules of Court. Granting the request submitted on September 29, 2020, the Court demanded that the parties to the conflict refrain from any actions that could lead to a violation of the civilians' conventional rights.

Taking into account Turkey's active involvement in the unleashed war, on October 4, 2020 the Government of the Republic of Armenia submitted a request of applying immediate interim measure against Turkey under Rule 39, which was granted by the ECHR on October 6, 2020. According to the mentioned decision, the ECHR demanded that all countries directly or indirectly involved in the conflict, including Turkey, refrain from any action that could lead to a violation of the civilians' conventional rights.

Throughout the whole period of hostilities, the ECHR rejected both the Azerbaijani and Turkish legal-diplomatic requests to overturn decisions on the application of Rule 39. However, after the adoption of the Tripartite statement, the decision applied against Turkey was overruled, based on the latter's application, while the decision applied against Azerbaijan in accordance with Rule 39 is still in force.

In continuation of the legal process started on September 27, 2020, on February 1, 2021 the Government of the Republic of Armenia submitted an interstate comprehensive complaint, in defense of the conventional rights violated by Azerbaijan in the territories of Armenia and Artsakh, in particular the right to life, right to be free from torture and ill-treatment, right to freedom and security of person and the right to respect for private and family life, right to property, right to education and other rights.

In addition, in order to protect the rights of prisoners of war and detained civilians, more than two hundred applications for immediate interim measures under Rule 39 of the Rules of Court have been submitted to the ECHR directly, as well as through individual lawyers. In particular, as of February 4, 2021 the ECHR ruled on the application of Rule 39 on 228 persons.

At the same time, it should be emphasized that the ECHR has not made a decision on the application of Rule 39 in relation to any application with the same content submitted by Azerbaijan for the protection of its citizens, taking into account Armenia's proper fulfillment of its obligations and the provision of complete information in due time.

Taking into consideration the fact that the requirements presented by the decisions on the above-mentioned interim measures against Azerbaijan are not regularly fulfilled by Azerbaijan, the ECHR is considering the possibility of transferring the issue of ensuring the fulfillment of the Azerbaijani commitments to the Council of Europe Committee of Ministers.

5. Please provide information on measures adopted by your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Armenia.

On December 29, 2020 the National Assembly of the Republic of Armenia approved the Draft Law of the Republic of Armenia “On making amendments to the Civil Code of the Republic of Armenia”. The proposed regulation reduces the time limit for the judicial recognition of missing servicemen and other civilians (including volunteers participating in the defense of the Republic of Armenia) as missing or dead, i.e in case when no information appears concerning the whereabouts of the serviceman and other civilians within 3 months, an opportunity is given to submit an application for the judicial recognition of the serviceman or civilian as a missing person. Meanwhile, the time limit for recognizing the person as dead by the court has been defined one year instead of two. The law applies to the relations having arisen after September 27, 2020.

On December 29, 2020 the National Assembly also approved the Draft Law “On Making amendments to the Law on compensation for damages caused to the life or health of servicemen during the defense of the Republic of Armenia”, according to which the 6-month period was removed from the regulation of the law, only after the passing of which, according to the previous regulations, the spouse, parent or child of the missing person could apply for compensation. According to the amendment of the law, the mentioned persons can apply to the court to recognize the person as missing or to receive compensation immediately after the judicial act enters into force.

In addition the procedure for forming the Board of Trustees of the Soldiers' Insurance Fund has changed. Persons with at least five years of professional experience in the field of finance and management enjoying public respect and impeccable reputation can be appointed as members of the Board of Trustees. Board members must be apolitical; they must exercise political restraint while carrying out their activities. The new members of the Board of Trustees will be appointed by the Central Bank of Armenia for a term of five years. The change in the order of the Board of Trustees is aimed at making the work of the Board of Trustees more professional and to increase the amount of donations to the Fund.

By decisions of the Government of the Republic of Armenia of December 3, 2020 and December 17, 2020, the measure and procedure for providing social assistance to persons with disabilities and to the families of victim civilians as a result of the hostilities launched by the Republic of Azerbaijan in the Republic of Artsakh on September 27, 2020 were established. The mentioned decisions envisage provision of social assistance to the families of the victim civilians and persons with disabilities, particularly:

- in case of acquiring first group disability - in the amount of 3,000,000 AMD
- in case of acquiring second group disability - in the amount of 2,000,000 AMD
- in case of acquiring third group disability in the amount of 1,000,000 AMD
- in case of acquiring the status of a disabled child - in the amount of 3,000,000 AMD
- in case of the families of the killed civilians - in the amount of 5,000,000 AMD.

ANNEX

During the war unleashed by Azerbaijan and Turkey against Nagorno-Karabakh and Armenia the following officials have played a special role in the targeting of the civilian population and the use of prohibited weapons: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and many

other high-ranking officials.

There is also factual evidence that Syrian mercenaries transferred from Turkey to Azerbaijan were dressed in the uniform of the State Border Service of Azerbaijan, were armed with weapons and military equipment of the State Border Service troops, and with Turkish-made “Cobra” and “Ali Storm” light armored vehicles. The mentioned information may further serve as a reasonable ground for initiating criminal proceedings against the head of the State Border Service of Azerbaijan, [REDACTED] and other high-ranking officials.

The following officials of the Turkish Armed Forces have also actively participated in the process of transferring mercenaries from Turkey to Azerbaijan in an organized manner: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

With the participation of [REDACTED], one of the leaders of Hayat Tahrir al-Sham group, the Turkish National Intelligence Service has recruited volunteers from Idlib and Aleppo for a period of three months in order to send them to Azerbaijan as mercenaries.

Turkey also transferred about 200 Kurdish prisoners from Bil Bil and Sharan regions to Afrin "Kyafar Jan" camp to further use them in military operations of Azerbaijan against Armenian military units.