

Mandates of the 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; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/9, 43/4 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the use of Syrian fighters to take part in military operations in the Nagorno-Karabakh conflict in support of your Excellency's Government armed forces, thus effectively using mercenaries in an armed conflict, as well as the human rights impact of this practice.**

According to the information received:

The Armed Forces of the Republic of Azerbaijan are allegedly relying on the support of Syrian fighters to shore up and sustain their military capacities and capabilities in and around the Nagorno-Karabakh conflict zone. Reportedly, these fighters are linked to armed factions affiliated primarily with the "Syrian National Army" (SNA), which operates in north Syria near the Turkish border. Their recruitment, payment and transfer to Azerbaijan has reportedly been undertaken by Turkey.

Reports indicate that as of late August 2020, Syrian fighters have allegedly been recruited to take part in the ongoing hostilities in the Nagorno-Karabakh conflict in support of your Excellency's Government armed forces. The Syrian fighters are allegedly issued with uniforms of the Azerbaijani border control force and related identification documents in Turkey.

Between 20 and 25 September 2020, an estimated 1,500 to 2,000 fighters are believed to have been deployed to Azerbaijan, with thousands more currently under recruitment. Fighters are reportedly transferred to Baku on military and commercial flights from Turkey. After reaching Azerbaijan, some of the Syrian fighters are reportedly deployed to specific areas on the frontline along the line of contact in the Nagorno-Karabakh conflict zone, while others are kept in the rear. Reports suggest that several of the fighters have been killed during the hostilities or after having been captured. Some of their bodies have been repatriated via Turkey to Syria and handed over to their families.

The fighters appear to be motivated to deploy to Azerbaijan primarily by comparatively high wages, given the dire economic situation in Syria. Allegedly, Syrian fighters are offered a monthly remuneration of up to 2,500 US dollars, which is significantly higher than available wages in the Syrian Arab Republic, and compensation in case of serious injury. Furthermore, in case of death, their relatives are promised financial compensation as well as the prospect of obtaining Turkish nationality.

Some of the Syrian fighters are reportedly members of armed factions allegedly responsible for war crimes and serious human rights abuses during the conflict in Syria, such as recruitment of children, imposition of severe restrictions on women's rights in areas controlled by some of the groups, and extrajudicial killings. The fighters reportedly received some sort of military training either by the armed group that recruited them in Syria, or by Turkey prior to being deployed to Azerbaijan.

The deployment of large numbers of fighters from Syria has reportedly contributed to the rapid escalation and intensification of hostilities, with dramatic consequences for the civilian population, including reported loss of civilian lives and injuries, as well as damage to civilian property and infrastructure.

Moreover, according to various United Nations entities and other sources, since the resumption of hostilities on 27 September 2020, there has been a mounting number of civilian fatalities and serious injuries including children on both sides. Incidents involving journalists and media personnel have also been reported. A large number of houses, schools, hospitals and other civilian objects and infrastructure have been seriously damaged or destroyed, the vast majority located in the Nagorno-Karabakh conflict zone.¹

On 2 November 2020, the High Commissioner for Human Rights expressed alarm about the continuing indiscriminate attacks in populated areas in and around the Nagorno-Karabakh conflict zone, including through the use of cluster munitions, and warned they may amount to war crimes.²

While we do not wish to prejudge the accuracy of these allegations, 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.

We note that the way in which the Syrian fighters are allegedly being recruited, transported and used in the Nagorno-Karabakh conflict appears consistent with the definition of a mercenary, as set out by relevant international legal instruments,

¹ See <https://www.unocha.org/story/daily-noon-briefing-highlights-nagorno-karabakh-syria-yemen>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26365&LangID=E>, and <https://www.unicef.org/eca/press-releases/unicef-statement-nagorno-karabakh-conflict-0>.

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>.

including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries to which Azerbaijan is a party. In this context, we wish to express concern that the above-mentioned allegations contravene obligations undertaken by Azerbaijan as party to the International Convention.

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. During armed conflicts, mercenaries and mercenary-related actors are obliged, as are all other members of State armed forces or non-State armed groups party to a conflict, to respect the applicable rules of international humanitarian law, in particular the norms related to the treatment of persons and the conduct of hostilities. This includes the prohibition of murder and torture. Customary international humanitarian law further requires all parties to a conflict to respect the principle of distinction and proportionality in their military operations. In general, the deployment of mercenaries and mercenary-related actors may also threaten numerous human rights, including, inter alia: the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and freedom from arbitrary arrest and detention.

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. The conflicts in Syria and in Nagorno-Karabakh leave local communities severely ill-prepared to face the 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. In this context, we are alarmed by the continuing escalation of violence in and around the Nagorno-Karabakh zone of conflict, contrary to the call by the United Nations Secretary-General to all parties to respect the latest humanitarian ceasefire agreement.³

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and international humanitarian law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

³ See <https://www.un.org/sg/en/content/sg/statement/2020-10-18/statement-attributable-the-spokesman-for-the-secretary-general-the-situation-between-armenia-and-azerbaijan>.

2. Please provide detailed information on the Syrian fighters deployed in support of your Excellency's Government armed forces, including their number, precise roles, nature of activities, and respective numbers of such personnel who have been killed, injured or taken into custody by enemy forces in and around the Nagorno-Karabakh conflict zone.
3. Please explain the command and control structure over the Syrian fighters deployed in support of your Excellency's Government armed forces, including any measures in place to hold these fighters accountable for violations of international humanitarian law and international human rights law, including specific examples.
4. Please clarify the respective roles of and agreements between your Excellency's Government and the Government of Turkey in recruiting, financing, transporting and using Syrian fighters in the hostilities in and around the Nagorno-Karabakh conflict zone.
5. Please explain how the use of Syrian fighters in and around the Nagorno-Karabakh conflict zone is compatible with international legal obligations of your Excellency's Government, including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Please also share information on the applicable domestic regulatory and accountability frameworks concerning mercenaries, mercenary-related actors and private military and security companies, including specific examples where available.
6. Please indicate what measures your Excellency's Government has taken, or is considering taking, to prevent and protect civilians against human rights violations and abuses in the context of the deployment of Syrian fighters in and around the Nagorno-Karabakh conflict zone, particularly in the current context of the Covid-19 outbreak.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that a copy of this letter has been sent to the Government of the Syrian Arabic Republic for information and that a letter expressing similar concerns was sent to the Government of Turkey.

Please accept, Excellency, the assurances of our highest consideration.

Chris Kwaja

Chair-Rapporteur of the 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

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law and international humanitarian law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to recall that your Excellency's Government is a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which it acceded on 4 December 1997. Article 5 of this Convention prohibits State parties to recruit, use, finance or train mercenaries and shall make offences related to mercenarism punishable by appropriate penalties. The Convention also contains provisions outlining the responsibility of States to cooperate in preventing mercenary offences (article 6) and implementing the Convention (article 7); to take adequate measures to establish jurisdiction over mercenary offences committed in its territory (article 9(1)(a)) and to either extradite or prosecute those suspected of mercenary offences found on the territory of the State (articles 9, 10 and 12).

This Convention defines a mercenary in article 1 through several cumulative criteria, including, inter alia: 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.

We wish to further recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict. In its General Comments 31 (CCPR/C/21/Rev.1/Add.13, para 11) and 36 (CCPR/C/GC/36, para 64), the Human Rights Committee has affirmed the applicability of the ICCPR and international human rights law more generally to situations of armed conflict.

During armed conflicts, mercenaries and mercenary-related actors are obliged, as are all other members of State armed forces or non-State armed groups party to the conflict, to respect the applicable rules of international humanitarian law, in particular the norms related to the treatment of persons and the conduct of hostilities. This includes the prohibition of murder, torture and the taking of hostages. Customary international humanitarian law requires all parties to a conflict to respect the principle of distinction and proportionality in their military operations and prohibits attacks whose primary purpose is to spread terror.

In particular, States have an obligation to respect and ensure respect of the Geneva Conventions as provided by their common article 1. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties. As is the case with all members of State armed forces, mercenaries are bound by norms of international law. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in article 7 of the ICCPR, acceded by your Excellency's Government on 13 August 1992 and articles 2 and 16 of the Convention against Torture (CAT), acceded on 16 August 1996, is also included in article 3 common to the Geneva

Conventions, which the International Court of Justice has held to reflect a general principle of law, namely “elementary considerations of humanity” (*Nicaragua v. United States of America*, ICJ Reports 1986, pp. 14).

Similarly, States have positive obligations to protect and fulfil human rights. In this respect, we would like to recall that it is now widely accepted that States’ obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para. 8). This was reaffirmed by the Human Rights Committee specifically with respect to the right to life in its General Comment No. 36 (CCPR/C/GC/36, para 21).

Furthermore, in its General Comment No. 36, the Human Rights Committee further recalled that States have a due diligence obligation to take adequate preventive measures in order to protect individuals against reasonably foreseen threats to life originating from private persons and entities whose conduct is not attributable to the State (CCPR/C/GC/36, para 21). This includes taking adequate measures to “prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as [...] private security firms” (Ibid). States are further required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences (CCPR/C/GC/36, para 15).

The preventive obligations of States with respect to the right to life are synergetic with the obligation States have to respect and ensure respect of the Geneva Conventions as provided by their common article 1. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties.

Finally, both international humanitarian law and international human rights law require States to take appropriate measures to bring perpetrators of alleged violations to justice and to provide effective remedies to victims. The right to an effective remedy is also enshrined in the UDHR (article 8), the ICCPR (article 2(3)) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II).