

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

REFERENCE:
AL TUR 21/2020

6 November 2020

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 involvement of your Excellency's Government in recruiting Syrian fighters to take part in military operations in the Nagorno-Karabakh conflict in support of Azerbaijani armed forces, resulting in the effective use of mercenaries in an armed conflict, as well as the human rights impact of this practice.**

According to the information received:

Since August 2020, Turkey has reportedly been involved in recruiting men through armed groups affiliated primarily with the "Syrian National Army" (SNA) - which operates in north Syria near the Turkish border - for deployment to Azerbaijan in support of the military operations of Azerbaijan in and around the Nagorno-Karabakh conflict zone.

A number of such fighters, including but not limited to members of the Hamza Division, Sultan Murad Division, Al-Amshat Faction and the Sultan Sliman Shah Brigade have allegedly agreed to be transferred to Azerbaijan in support of the Armed Forces of Azerbaijan in return for monetary compensation.

As of late August 2020, at Turkey's request, the commanders of the above-mentioned Syrian armed groups are thought to have started using middle-men to recruit members of such armed groups, as well as new civilian recruits, to be deployed to Azerbaijan. The fighters appear to be motivated to deploy to Azerbaijan primarily by high wages, given the dire economic situation in Syria.

Syrian fighters are allegedly offered a monthly remuneration of up to 2,500 US dollars, which is significantly higher than 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 the prospect of obtaining Turkish nationality. Some of these fighters are members of armed factions allegedly responsible for war crimes and serious human rights abuses, such as

recruitment of children, severe restrictions on women's rights in areas controlled by some of the groups, and extrajudicial killings.

Reportedly, the middle-men charged with identifying potential recruits take a commission on the overall remuneration promised to the fighters, once the latter are recruited and a contract is signed. Turkey allegedly contracts private military and security companies to facilitate the preparation of official and contractual documentation for the fighters, apparently in coordination with the Turkish security services. In some cases, these contracts are allegedly signed on the fighters' behalf by the commanders of the Syrian armed groups. It appears that in such cases, the recruits do not even see the contract and do not know the exact amount they are expected to receive. In cases where the fighters sign contracts directly, they are not given a copy nor are they allowed to take a photo. The real monthly compensation received by the fighters will depend on the percentage taken by middle-men and the number of intermediaries involved. Most recruits seem to be aware of and accept this practice, as it appears to increase their chance to be recruited. Most also seem to know that they will be taking direct part in hostilities and be deployed on the frontline. It is reported that some of the recruits have previously been deployed to fight in Libya.

It is alleged that most fighters receive some sort of military training in Syria prior to being transferred into Turkish territory, including through the Hawar Kilis military crossing while some others undergo such training in Turkey. Fighters are allegedly issued with uniforms of the Azerbaijani border control force and related identification documents, and are required to hand over their mobile phones.

Thereafter, the fighters are transferred to Azerbaijan, some of them on Turkish military planes from Gaziantep to Istanbul, followed by military or commercial flights to Baku. After arriving in Azerbaijan, some of the Syrian fighters are allegedly deployed to specific areas on the frontline, while others are kept in the rear. It is alleged that Turkish military personnel on the ground serve as interpreters between the Azerbaijani armed forces and the Syrian fighters.

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 under recruitment. Several Syrian fighters have reportedly 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 deployment of large numbers of fighters from Syria, who do not know the local language and the reality on the ground, appears to have contributed to the rapid escalation and intensification of violence, 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 6 October 2020, the European Court of Human Rights, following a request for an interim measure concerning the hostilities in the Nagorno-Karabakh conflict zone (application no. 43517/20, *Armenia v. Turkey*) decided to apply Rule 39 of its Rules of Court and called on all States directly or indirectly involved in the conflict, including Turkey, to refrain from actions that would contribute to breaches of the rights of civilians and to respect their obligations under the European Convention on Human Rights.²

Despite a request from Turkey, on 14 October 2020, to lift the interim measure, insofar as it was directed against it, the Court replied that its previous decision was taken on the basis of the evidence then available which indicated that certain Contracting States were directly or indirectly involved in the conflict, including Turkey.³

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.⁴

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned about the recruitment and transfer of fighters from Syria to Azerbaijan, notably the impact on the hostilities in and around the Nagorno-Karabakh conflict zone and in populated areas, 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. Furthermore, their deployment 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.

We remain 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

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 See <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22%3A%5B%22003-6816855-9120472%22%7D>

³ See <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22%3A%5B%22003-6825174-9134722%22%7D>.

⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>.

question raises serious concerns about accountability and impunity, as well as questions about respect for relevant international law.

The alleged deployment of mercenaries to Azerbaijan is all the more concerning given the similar allegations raised earlier this year about the role of Turkey in recruiting, deploying and financing Syrian fighters to take part in the conflict in Libya (see AL TUR 7/2020). We take note of the reply of 17 September 2020 by the Government of Turkey to this communication and regret that the Government did not substantively address the allegations raised.

We are alarmed by the repeated reports about the use by Turkey of Syrian fighters to take part in hostilities in third States, whereby their deployment negatively impacts on peace and security. The systematic and continuous recruitment of these fighters for financial compensation is particularly worrisome given the precarious security and socioeconomic conditions under which they and their families live after nearly a decade of conflict in Syria. The deployment for profit to other conflicts undermines prospects for the reintegration of these fighters into civilian life, while incentivising those who have not taken part in the conflict in Syria to now enlist to fight abroad.

Furthermore, the reported role of Turkish private military and security companies in facilitating the recruitment of Syrian fighters, in alleged coordination with Turkish authorities, is an additional element of concern.

We also express our 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 and around Nagorno-Karabakh leave local communities severely ill-prepared to face the pandemic. The transfer of mercenaries and the continuation of hostilities disregards 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.

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.
2. Please provide detailed information on Turkey's role and the circumstances surrounding the recruitment, financing, transportation and deployment of Syrian fighters to participate in the hostilities in the Nagorno-Karabakh conflict.

3. Please indicate the number of Syrian fighters deployed to support Azerbaijan's armed forces, the names of the Syrian armed groups with which they are affiliated, the nature of their activities in Azerbaijan, and the numbers of Syrian fighters who have been killed, injured or taken into custody by enemy forces in the Nagorno-Karabakh conflict.
4. Please explain the command and control structure over the Syrian fighters deployed in support of Azerbaijani' 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.
5. Please provide information about the role of Turkish private military and security companies in allegedly assisting with the recruitment, financing and transfer of the Syrian fighters through Turkey to Azerbaijan, as well as information on the relationship between such companies and your Excellency's Government.
6. Please indicate whether the above-mentioned allegations have been or are the subject of an investigation and/or prosecution by the relevant Turkish authorities and provide information about their outcomes, including as regards remedies for victims.
7. Please indicate what measures your Excellency's Government has taken, or is considering to take, in order to prevent and protect civilians against human rights violations and abuses in the context of the deployment of Syrian fighters to the Nagorno-Karabakh conflict, particularly in the current context of the Covid-19 pandemic 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 the Republic of Azerbaijan.

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.

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries proscribes the recruitment, use, financing and training of mercenaries. It contains a definition of a mercenary with 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 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 International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 23 September 2003, and international human rights law more generally to situations of armed conflict.

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. Furthermore, 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 and articles 2 and 16 of the Convention against Torture (CAT), ratified by your Excellency's Government on 2 August 1998, 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). It follows that States have the responsibility to take steps to prevent human rights abuses by those providing private military and security services, including by adopting legislative and administrative measures to regulate their actions. 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 Human Rights Committee further established that States must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based in their territory or subject to their jurisdiction, are consistent with the right to life, taking due account of related international standards of corporate responsibility, and of the right of victims to obtain an effective remedy (CCPR/C/GC/36, para 22).

With respect to the possible involvement of private security providers, we would like to recall that the UN Guiding Principles on Business and Human Rights urge authorities to protect against human rights abuse by business enterprises and by adopting appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding Principle 1). States may be in breach of their international human rights obligations if they fail to take such measures. Guiding Principle 6 sets out that States should promote respect for human rights by business enterprises with which they conduct commercial transactions.