

Mandates of 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

REFERENCE:
UA AZE 4/2020

11 December 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/20, 45/3 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **torture and ill-treatment of prisoners of war and cases of enforced disappearance during the armed conflict in and around the Nagorno-Karabakh conflict zone**. We also call on your Excellency's Government to honour the ceasefire agreement to ensure lasting peace, including by **returning captives and bodies of the dead to their respective countries of origin and to their families**.

Concerns regarding the hostilities was the subject of a previous Special Procedures communication (AZE 2/2020). We thank your Excellency's Government for its responses.

According to the information received:

On 27 September 2020, large-scale military hostilities broke out along the Line of Contact in and around the Nagorno-Karabakh conflict zone. During the ensuing 44 days of armed conflict both sides have targeted, caused damage, injured, wounded, maimed, ill-treated and killed number of people. As a result both sides have recorded a number of casualties, persons who have been held captive and missing.

It is reported that the villages of Davit Bek, Sugovushan, Talish community, and the cities and towns of Stepanakert/Khankendi, Askeran, Martakert/Aghdara, Martuni/Khojavand, Hadrut, Shusha, Lachin, and Kalbajar

were targeted. Alleged use of cluster munitions and missiles specifically LAR 160, 'Smerch' and 'Grad' multiple rocket launchers, unmanned aerial vehicles were reportedly used in the attacks and hostilities, a consequence of which was not only significant destruction, but also contamination of settlements with unexploded ordnance, posing additional risks for the civilian population.

Throughout the hostilities, a number of persons are reported to have been taken captive by both sides. According to information made available, a number of human rights violations against captives and wounded captured were recorded on video showing acts of humiliation and ill-treatment such as kneeling and chanting, crawling, mutilations, handcuffed naked with sacks on the heads of prisoners, physical assault, verbal abuse, executions and deliberate killings with gunshots and beheadings, including civilians, persons with disability, and military personnel, ill-treatment of dead bodies by Azerbaijani forces against Armenians.

According to the ceasefire agreement of 9 November 2020 signed by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation, an exchange of prisoners of war, hostages and other detained persons and bodies of the dead should be carried out and be facilitated by the International Committee of the Red Cross (ICRC). It is reported that on 4 December 2020, lists of prisoners of war were submitted to the ICRC and a process of verification is allegedly underway.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern at allegations of the extrajudicial killings, enforced disappearances and acts of torture and other cruel, inhuman or degrading treatment or punishment of civilians and persons deprived of their liberty or otherwise "*hors de combat*" in the recent hostilities in and around Nagorno-Karabakh. Should the facts alleged above be confirmed, they would amount to a violation of the right of every individual to life, liberty and security and the freedom from torture as set out in articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Azerbaijan is party, and articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which your Excellency's Government is also a state party.

We would like to draw the attention of your Excellency's Government to article 2(2) of the CAT, which provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Furthermore, we recall paragraph 5 of Human Rights Council Resolution 16/23, which "emphasizes that acts of torture are serious violations of international human rights law and humanitarian law and can constitute crimes against humanity and, when committed in a situation of armed conflict, war crimes, and that the perpetrators thereof are liable to prosecution and punishment."

We further underline that article 6 of the ICCPR continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable and that states must investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards. Furthermore, relatives of individuals deprived of their life by the State must be able to receive the remains, if they so wish (Human Rights Committee, General Comment 36).

In this connection, we would like to refer your Excellency's Government to article 8 of the Universal Declaration of Human Rights, article 2 paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR), articles 1, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, as well as article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), , and articles 68 and 75 of the Rome Statute of the International Criminal Court to which your Excellency's Government is a party. These legal provisions all provide for a right to a remedy for victims of serious human rights violations, including gender-related violence and sexual violence.

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11, 12, and 13, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; for accurate information on the detention of persons and their place of detention to be made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

We appeal to your Excellency's Government to take all necessary measures to adhere to the provisions of the ceasefire agreement, including the prompt release of captives and guaranteed safe return, as well as to facilitate the urgent return of bodies to their families. We remind your Excellency's Government of Azerbaijan's obligations under both international human rights law and international humanitarian law to effectively, promptly, thoroughly and impartially investigate reported / documented alleged violations, and to hold accountable those responsible.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
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.
3. Please provide information on the measures taken to inform families of 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. If no measures have been put into effect to that end, please explain how this is consistent with humanitarian obligations undertaken by Azerbaijan to stop and prevent enforced disappearances.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to consistent allegations of 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 Azerbaijan.
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 and extrajudicial killings. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Azerbaijan.

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 responsible of 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.

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.

We would like to inform your Excellency's Government that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on extrajudicial, summary or arbitrary executions have written a similar letter to the Government of Armenia.

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

Nils Melzer

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

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions