

Mandate of the Special Rapporteur in the field of cultural rights

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(Please use this reference in your reply)

29 October 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur in the field of cultural rights, pursuant to Human Rights Council resolution 46/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **alleged destruction of and damage to many cultural heritage sites and objects of religious, historical and cultural importance in the Nagorno-Karabakh region and surrounding regions** to the extent that it seriously impacts the human rights, and cultural rights of significant numbers of people.

According to the information received:

It has been reported that during and after the conflict occurring between 27 September and 10 November, 2020, which ended pursuant to the tripartite 2020 Nagorno-Karabakh ceasefire agreement, signed by Armenia, Azerbaijan and the Russian Federation, significant damage and destruction has been done to cultural heritage within the Nagorno-Karabakh region.¹ According to information received by my mandate, during the conflict, significant damage was caused to both Christian and Muslim religious sites. These sites included the Holy Savior Cathedral and the Gohar Aga Mosque in Shusha, the demolition of the Armenian Holy Mother of God Church (Zoravor Surb Astvatsatsin Church) near the town of Jebrail following the ceasefire, as well as damage to, or destruction of, smaller mosques, churches, museums, graveyards and khachkars.

I have also received information that following the 10 November ceasefire, Azerbaijan authorities have reported that numerous cultural buildings and sites, including libraries, schools, museums, mosques and other cultural buildings have been found, and have been found to have been, destroyed, damaged or desecrated in the Nagorno-Karabakh region, including prior to the present conflict.

The ceasefire is being monitored by the Russian Federation, who has taken responsibility for protecting some cultural sites. It is reported that the Azerbaijan government has pledged to protect all religious sites, and preserve access to these sites for all, but I have also received numerous reports of persons being denied such access such as to Dadivank Monastery (Khudavang Monastery). It is reported that territory now controlled by Azerbaijan includes at least 161 Armenian churches; no less than 591 khachkars; and the archaeological sites of Tigranakert, the Azokh Paleolithic cave, the Nor Karmiravan tombs, Mirik and Keren. In addition, eight state museums and two private museums, with collectively approximately 19,000 exhibits, are in territory which is now controlled by Azerbaijan. However, I recognize that

¹ Reference is also made to communications ARM 1/2021 and AZE 1/2021.

counts may vary, and that additional fact-finding may be required to establish complete numbers and inventories.

It is alleged that in the city of Shusha, the sculpture garden of Shushi Fine Arts Museum has been destroyed, along with the Armenian cemetery there, by Azerbaijani forces. It is further reported that road construction in areas controlled by Azerbaijan are damaging cultural heritage sites, including the Aygek Mosque and historic bridges, and that some cemeteries near road construction sites are being destroyed. Concerns have also been raised that development projects carried out subsequent to the conflict, in the areas of Nagorno-Karabakh under the control of the authorities of Azerbaijan, some of which may be related to post-conflict reconstruction, may also be having a negative impact on a range of cultural heritage sites.

It has also been reported that cultural artifacts, including bells and Christian art from the Dadivank monastery, have been removed from the Nagorno-Karabakh region by persons formerly living in the region who moved to Armenia.

It is reported that Armenian Christian cultural heritage, including churches, graves and cultural artifacts located in Nagorno-Karabakh and surrounding areas is sometimes being publicly described as “Caucasian Albanian” in origin, including by Azerbaijan authorities, which may be a way to try to erase its connections to the Armenian Church, and culture. Similarly, the Govhar Agha Upper Mosque restored in Shusha by Karabakh authorities has been referred to as Persian, and allegedly Armenian markings were removed during the restoration.

I express grave concern at the extent of the reported destruction of historic, religious and cultural heritage sites in the Nagorno-Karabakh region and surrounding regions, in violation of international human rights standards and international humanitarian law. Recognizing the grave harm that may be done to the multi-ethnic and multi-religious societies in both Armenia and Azerbaijan, I am deeply concerned at the reports of ongoing destruction of cultural heritage. These destructions have and will prevent both Armenians and Azerbaijanis from exercising their human right to access and enjoy cultural heritage, including the cultural heritage of others, and undermine the enjoyment of many other human rights, including freedom of religion or belief, and the right to education, including related to learning history and the histories of others.

I am also very concerned about conflicting nationalist accounts of heritage destruction, including from officials, and including on social media, which only express concern about selected acts by one side rather than the totality of destruction to the cultural heritage of the region as a whole, which is part of the cultural heritage of all humankind, or the need to ensure its protection. Moreover, allegations related to cultural heritage also appear to have been used to justify the conflict in certain circumstances, and indeed to justify acts of removal of heritage, and all of this raises further serious human rights concerns. Cultural heritage is a precious cultural resource vital to the enjoyment of cultural rights and other human rights by all. It is neither a weapon nor a target. It should build bridges not walls.

It is of ongoing concern that one year since hostilities began, reports of damage, destruction, and threats of the same continue to be received and there appears to have been no significant effort to comprehensively survey such damage and destruction, to hold perpetrators accountable or to bring them to justice in accordance with international standards. Both sides seem to ignore and deny the claims of others. Absent strong leadership from Armenian, Azerbaijani and international actors, the ongoing destruction of cultural heritage may continue, and attitudes resulting from it will increase the difficulty of diverse peoples being able to live in harmony in the region and enjoy their human rights without discrimination. While I wish to express my concerns in an inclusive way, I also recognize that currently the Azerbaijani and international actors have particular obligations to take active steps to protect heritage in the relevant areas. These obligations arise from their respective control and presence in Nagorno-Karabakh and other areas that came under Azerbaijani control following the 2020 conflict, where significant heritage sites of particular importance for Armenians and others are located. I also note the particular obligation of the Armenian authorities to investigate allegations about, as well as to protect and disclose any heritage objects that were allegedly removed from these areas before and during the conflict.

It is essential to foster concern for the cultural heritage of all, and to bring together technical experts from different groups to jointly document all cultural heritage losses, to work to prevent any further losses, to cooperate to restore cultural heritage in consultation with all those affected by its destruction, so that the right to access and enjoy heritage of all facilitates the achievement of comprehensive truth and reconciliation, rather than thwarting it. As I noted in the past in my report on my mission to Serbia and Kosovo, “There is also a need for mutual acknowledgment of the harm that has been done in the past by attacking heritage related to various groups and the suffering this has caused. [Both sides] must recognize that they have been both victims of the destruction of cultural heritage and its perpetrators, and transcend simplistic victim narratives which overlook the violations of the cultural rights and the suffering of others. Lasting peace and reconciliation require no less”² That report further noted that “The Special Rapporteur heard in the voices of victims of and eyewitnesses to such acts, and those of groups particularly affected, the same shock, pain and loss. I deplore all these destructions of cultural heritage, which constitute violations of the right to access and enjoy cultural heritage. No act of destruction of cultural heritage justifies another. All necessary steps must be taken to prevent any repetition and to hold perpetrators accountable, in accordance with international norms.”³

A model which may assist in creating a relevant mechanism to address these concerns may be found in the work of the bicomunal Technical Committee on Cultural Heritage, established by Greek Cypriot and Turkish Cypriot leaders in 2008. This committee is composed of an equal number of experts from each community, and has established itself as independent, acceptable to all parties, and technically capable of protecting and rehabilitating cultural heritage which was damaged in the past. Over a period of 12 years it has successfully restored and conserved more than 70 monuments of historical, archaeological, religious and societal importance.

It is of the utmost importance to establish the truth about all allegations of the destruction of and damage to the cultural heritage of all, and to facilitate cooperation

² A/HRC/37/55/Add.1, para. 71.

³ Id., para. 72.

in reconstruction, in consultation with those with close relationships to that heritage. There is a pressing need for a mechanism to be established for doing so. Such efforts should include the involvement of international experts to ensure their impartiality and work in accordance with technical and human rights standards. Relevant international experts and bodies seeking access to investigate the range of claims should be invited and given unfettered access to the necessary locations as they determine them.

One purpose of the destructions may have been to deprive diverse displaced people of anything to which they could return, as well as to erase the history of their presence and claim a monopoly or monolithic identity in particular locales. It will be important to give diverse displaced people an opportunity to re-establish relationships with their places of origin or, indeed, to return to their former homes.

I deplore the high level of politicization of cultural heritage issues. This instrumentalizes cultural heritage, undermines its protection and heightens the risks to it, produces monolithic discourses not appropriate in diverse societies and impedes implementation of a wide range of human and cultural rights for all. Hence, both Governments must depoliticize these issues and de-link cultural heritage matters from nationalistic agendas.

Destructions have created huge impediments to the exercise of the right to access and enjoy cultural heritage, and jeopardize the rights of future generations. Some of the heritage sites can no longer serve as sources of knowledge and mutual understanding, as places to conduct rituals and cultural practices and as venues for social interaction or friendship-building across groups, irrespective of affiliation.

While I do not wish to prejudge the accuracy of the allegations cited above, I wish to appeal to your Excellency's Government to seek urgent clarification on the information drawn to our attention.

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

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 explain the circumstances surrounding the destruction of and damage to all sites of religious, historical and cultural significance in the Nagorno-Karabakh region and surrounding regions, and whether and how the uses of force resulting in such outcomes were compatible with the human rights and international humanitarian law standards mentioned in the Annex.
3. Please explain how your Excellency's Government is taking measures to protect cultural heritage in the areas under your Government's

control. What actions are being taken to protect the integrity of, and access to, cultural and religious sites for all?

4. Please explain what measures are being taken to inventory and safeguard cultural heritage which has been removed from the Nagorno-Karabakh region so that a just resolution to this question can be found in the future.
5. Please indicate steps that will be taken to investigate, if possible jointly, all allegations of the destruction, damage or removal of cultural heritage of importance to all in the region, to create a complete record of these destructions and removals, and to hold perpetrators on all sides accountable in accordance with international law.
6. Please explain what measures are being taken to ensure that an inclusive approach is being employed to preserve the cultural heritage of all, and to restore damaged cultural heritage according to international standards and in consultation with those with close connections to that heritage, including diverse displaced people and relevant cultural and religious institutions.
7. Please indicate whether you would agree to missions by international experts, such as my successor, and UNESCO and other relevant international experts on cultural heritage and related human rights to the region to investigate allegations and make recommendations on accountability, restoration and reparation. Please indicate what access they might be given to do their work. Moreover, please indicate your willingness to consider a possible joint expert initiative or mechanism in this regard.

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

While awaiting a reply, I 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.

Please be informed that a letter on the same issues has been sent to the government of Armenia.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

Annex

Reference to international human rights law and international humanitarian law

In connection with above alleged facts and concerns, I would like to stress that, as stated by the Human Rights Council in resolution 9/9, both international human rights law and international humanitarian law apply to situations of armed conflict and provide complementary and mutually reinforcing protection. All human rights require protection equally and the protection provided by human rights law continues in armed conflicts, taking into account when international humanitarian law applies as *lex specialis*. Effective measures to guarantee and monitor the implementation of human rights should be taken with respect to civilian populations in situations of armed conflict and effective protection against violations of their human rights should be provided, in accordance with international human rights law and applicable international humanitarian law. I would also like to recall that international human rights are subject only to derogations taken in accordance with international human rights law. The International Covenant on Economic, Social and Cultural Rights does not contain an article on possible derogations from State obligations similar to article 4 of the International Covenant on Civil and Political Rights.⁴ This means that even during a crisis State parties must guarantee the cultural rights set out in article 15 of the International Covenant on Economic, Social and Cultural Rights.

Therefore, I wish first to start by referring your Excellency's Government' to article 27 of the Universal Declaration of Human Rights (UDHR) which protects the right of everyone to take part in cultural life and Article 15 of the International Covenant on Economic, Social and Cultural Rights to which all of your states are parties which guarantees the right of everyone to take part in cultural life, without discrimination. The right of access to and enjoyment of all forms of cultural heritage is guaranteed by these provisions of international law and others, including the International Covenant on Civil and Political Rights, deriving its legal basis, in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. Other human rights must also be taken into consideration, in particular the rights to freedom of expression, freedom of thought, conscience and religion, the right to education, the economic rights of the many people who earn a living through tourism related to such heritage and the right to development. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange elements of and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes. (A/71/317, para. 14, A/HRC/17/38 and Corr.1, paras. 78-79).

The Committee on Economic, Social and Cultural Rights has explained that States' obligations to respect and protect freedoms, cultural heritage and diversity are interconnected and the obligation to ensure the right to participate in cultural life under article 15 of the International Covenant on Economic, Social and Cultural

⁴ A/HRC/44/39, paras. 9-12, A/71/317, paras. 59-62.

Rights includes the obligation to respect and protect cultural heritage (general comment No. 21, para. 50). In its resolution 6/1 on the protection of cultural rights and property in situations of armed conflict, the Human Rights Council reaffirmed that the destruction of or any other form of damage to cultural property may impair the enjoyment of cultural rights, in particular under article 15 of the International Covenant on Economic, Social and Cultural Rights

In General Comment Number 21, the Committee on Economic, Social and Cultural Rights recalled that States have the obligation to respect and protect cultural heritage in all its forms, in times of war and peace. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

The obligation to preserve and safeguard cultural heritage was also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy heritage, “whether or not it is inscribed on a list maintained by UNESCO or another international organization” (Section VI). The UNESCO Declaration also stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage.

Furthermore, I would like to draw your attention to the principles enshrined in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. In accordance with Article 4 of the Convention, States parties must respect cultural property situated within their own territory as well as within the territory of other States parties by refraining from any use of the property and its immediate surroundings which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property (paragraph 1). States shall also refrain from any act directed by way of reprisals against cultural property (paragraph 4).

The Hague Convention also specifies that the obligations mentioned in article 4 paragraph 1 may be waived only in cases where military necessity imperatively requires such a waiver (article 4, paragraph 2). In addition, article 6 a) and b) of the 1999 Second Protocol to the Hague Convention narrows the military necessity waiver, which may only be invoked to direct an act of hostility against cultural property or to use cultural property for military action when and for as long as: 1) the cultural property in question has, by its function, been made into a military objective; and (2) there is no feasible alternative to obtain a similar military advantage to that offered by attacking that objective. Furthermore, the Second Protocol further requires that the existence of such necessity be established at a certain level of command and that in case of an attack, an effective advance warning be given whenever circumstances permit (article 6 (c) and (d)).

In her 2016 report to the General Assembly on destruction of cultural heritage, the Special Rapporteur in the field of cultural rights recommended that all states should:

- take all steps necessary to facilitate prosecution of those responsible for intentional destruction of cultural heritage, looting and illicit trafficking in cultural objects at the national or the international level, in accordance with relevant international standards; and to this end, collect and preserve evidence needed for such prosecution;
- promote truth processes, involving all relevant stakeholders, to determine the history of, and enable fact-finding with regard to, the destruction of the cultural heritage of all; and include cultural heritage and cultural rights in any transitional justice or truth and reconciliation processes...;
- before proceeding with any form of reconstruction or long-term preservation efforts, conduct thorough consultations among local, national and international stakeholders, including technical experts and relevant populations, taking into consideration the need to memorialize conflicts within the context of cultural heritage sites;
- recognize the role that cultural rights and cultural heritage preservation can play in the integration and rehabilitation of refugees and displaced persons after trauma, and in giving refugees a place to which to return, as well as their importance in post-conflict stabilization and reconciliation; and ensure the cultural rights of refugees and displaced persons, including women, and especially those from locations where cultural heritage has been destroyed, including their right to take part in cultural life and to enjoy their intangible cultural heritage; and
- recognize that parties to conflicts as well as international and national criminal courts should interpret narrowly any military necessity exception to the ban on targeting cultural property, taking into consideration the impact on cultural rights; and should subject to close scrutiny all military decisions resulting in the destruction of or damage to cultural heritage, while acknowledging that public accountability for those decisions is essential (A/71/317, Paras. 78 (e), (f), (h), (i) and (j).