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الجمعية العامة



مجلس حقوق الإنسان

الدورة السادسة والأربعون

22 شباط/فبراير - 19 آذار/مارس 2021

البند 4 من جدول الأعمال

حالات حقوق الإنسان التي تتطلب اهتمام المجلس بها

**مذكرة شفوية مؤرخة 19 شباط/فبراير 2021 موجهة من البعثة الدائمة
لأرمينيا لدى مكتب الأمم المتحدة في جنيف إلى مفوضية الأمم المتحدة
السامية لحقوق الإنسان**

تود البعثة الدائمة لجمهورية أرمينيا لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف أن تحيل طيه مذكرة بشأن انتهاكات أذربيجان المستمرة لحقوق المحتجزين من المقاتلين والمدنيين ذوي أصل أرمني (انظر المرفق).

وترجو البعثة الدائمة لأرمينيا أن تعمم مفوضية الأمم المتحدة السامية لحقوق الإنسان هذه المذكرة الشفوية ومرفقها* باعتبارهما وثيقة من وثائق مجلس حقوق الإنسان، في إطار البند 4 من جدول الأعمال.

* استُسخِ المرفق كما ورد، وباللغة التي قُدم بها فقط.



Annex to the note verbale dated 19 February 2021 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Aide Mémoire dated 16 February 2021 on Azerbaijan's continued violations of the rights of the detained combatants and civilians of Armenian origin

One of the provisions of the November 9, 2020 ceasefire statement¹ that put an end to the military hostilities in Nagorno-Karabakh has stipulated the exchange of prisoners of war, hostages and other detained persons, and repatriation of dead bodies. The initial exchange of Prisoners of War (PoWs) took place in December 2020. However, Azerbaijan has failed to fulfill the commitment to return all PoWs and civilian detainees and it continues to keep a number of them in captivity. Moreover, Azerbaijan continued to capture and abduct Armenians – both combatants and civilians – after the ceasefire statement was released.

The exact number of the detained combatants and civilians of the Armenian origin is difficult to establish since Azerbaijan has rejected all calls to cooperate and has not shared a complete list of the captives of Armenian origin under its custody through the International Committee of the Red Cross (ICRC). According to the estimates of the Armenian human rights defenders, their number most probably counts in hundreds.

The Spokesperson of the External Action Service of the European Union², the Chair of the Delegation for relations with the South Caucasus of the European Parliament³ have recently joined their voices to those who demanded the release of the detained combatants and civilians of the Armenian origin. European Parliament resolution of 20 January 2021 on the implementation of the Common Security and Defence Policy welcomed cessation of hostilities in Nagorno Karabakh and insisted on the need to proceed without delay with the exchange of prisoners⁴. The UN Human Rights experts also urged⁵ for a prompt release of Prisoners of War and other captives from the recent Nagorno-Karabakh conflict.

One of them is Ms. Maral Najarian, a Lebanese Armenian, a mother of two, who fled Beirut after explosion, lived in Nagorno-Karabakh before the war erupted, and went back after the ceasefire to collect her belongings⁶. Then she went missing, and it took more than a month since her disappearance for the authorities in Baku to confirm to the European Court of Human Rights that she was in the custody in Azerbaijan. The official Baku, nevertheless, allowed the ICRC representatives to visit her only in February – three months after her detention.

The Armenian side handed over all of the Azerbaijani prisoners in its custody (including the two men convicted in 2014 in a duly held process on homicide charges) in what was supposed to be an “all-for-all” exchange. Recently, the Armenian side also returned the two Azerbaijani servicemen, who were detained a day before for violating the border.

Azerbaijani penitentiary system has long been recognized for its malpractices of torture, cruel and inhumane treatment of detainees, which was testified by several international reports, including by the UN Working Group on Arbitrary Detention on its mission to Azerbaijan in

¹ <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>.

² <https://twitter.com/ExtSpoxEU/status/1355075592320901124?s=08>.

³ https://www.europarl.europa.eu/cmsdata/227678/20210202_KALJURAND%20KOVATCHEV%20ZOVKO_Joint%20statement_NK%20conflict%20settlement.pdf.

⁴ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0013_EN.html.

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26702&LangID=E>.

⁶ <https://hetq.am/en/article/126701>.

May 2016⁷ and Concluding observations on the fourth periodic report of Azerbaijan of the UN Committee Against Torture⁸.

Needless to say, given the atmosphere of the overwhelming Government-induced anti-Armenian hatred⁹ and impunity on the violent hate crimes perpetrated against Armenians, the detained combatants and civilians of Armenian origin face imminent and grave threat to their lives and health in Azerbaijani custody. Even before the war erupted the European Court of Human Rights made two rulings in 2020. The Court found the “Azerbaijani authorities responsible for the death and torture of an Armenian man in a military police department”¹⁰ in Baku. On another case the Court found that Azerbaijan clearly endorsed its citizen (namely Ramil Safarov, an axe murderer of a sleeping Armenian) and acted in his favour, which had been ethnically motivated¹¹.

Therefore, it did not come as a surprise that once Azerbaijan unleashed yet another military offensive against Nagorno-Karabakh on September 27, 2020 one of the first things Armenia did was to apply to the European Court of Human Rights (ECHR) requesting an interim measure against Azerbaijan to ensure respect for the Convention rights of the Prisoners of War and provide them with necessary and appropriate treatment. The ECHR granted the interim measure.

However, the rulings of the ECHR have not stopped Azerbaijan from committing war crimes against detainees. In one of the recent cases, Mr. Arsen Gharakhanian, a father of four, was found shot dead on January 18 in Nagorno-Karabakh’s Hadrut district occupied by the Azerbaijani force. He was considered a Prisoner of War based on a video circulated through social networks on January 7. The video was used as an evidence for the Armenian application to the European Court of Human Rights to issue an “interim measure” requiring Baku to provide information about Mr. Gharakhanian’s whereabouts and guarantee his safety. Instead, his slain body was repatriated.

On 3 December 2020 the Government of Azerbaijan asked the ECHR to suspend the proceedings on interim measures. However, the Court issued a press release on 16 December 2020, by which it rejected the request of Azerbaijan, noting that a very large number of interim measure requests “predominantly directed against Azerbaijan, continue to arrive at the Court, containing allegations that individuals have been captured and, in some cases, severely ill-treated. The Azerbaijani Government have frequently failed to provide the information requested by the Court.”¹² Moreover, the ECHR issued a final notice to Azerbaijan with request to provide information about the detainees.

The cruelty, inhumane and degrading treatment of the captive Armenians, both combatants¹³ and civilians¹⁴ alike, by Azerbaijan have surpassed all the worst predictions. The social media accounts of the Azerbaijani users are full of images and video footages of the Armenian detainees, depicting the cases of summary executions¹⁵ and at least two confirmed cases of beheading of the elderly civilians¹⁶. One of them was Genadi Petrosyan, 69, who had settled

⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=%2020021&LangID=E>.

⁸ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhshv33kpiN1yQcFINQGeFmqM5IxR4PQMZWvxmoWXYtsshELrTf%2FHJH%2FqsIqI6FD8OFwu28r7iZSIAYRm9fDeUVCTGadLogIKdYRd4jrLMRra>.

⁹ The anti-Armenian hatred that Azerbaijan has cultivated for decades materialized in a most ugly terms during the recent war in Nagorno-Karabakh. There have been plenty of signs that could have served as early warning signals pinpointing at the upcoming atrocities. In particular, the UN Committee on the Elimination of Racial Discrimination reported “the repeated and unpunished use of inflammatory language by politicians speaking about the Nagorno-Karabakh conflict and at its adverse impact on the public’s view of ethnic Armenians”. Similar concerns have been expressed by the European Commission against Racism and Intolerance of the Council of Europe and the Advisory Committee of the Framework Convention for the Protection of National Minorities.

¹⁰ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22003-6624858-8792767%22%5D%7D>.

¹¹ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-202524%22%5D%7D>.

¹² <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22%3A%5B%22003-6889210-9244085%22%5D%7D>.

¹³ https://t.me/kolorit_18/173.

¹⁴ <https://twitter.com/naghdalyan/status/1329715534812897280>.

¹⁵ <https://twitter.com/NKobserver/status/1339105767924719622?s=20>.

¹⁶ <https://www.theguardian.com/world/2020/dec/15/two-men-beheaded-in-videos-from-nagorno-karabakh-war-identified>.

in Nagorno-Karabakh after surviving the Armenian massacres committed in February 1988 in Sumgait town of Azerbaijan¹⁷.

The Human Rights Watch (HRW) has extensively reported on the mistreatment of a number of Armenian Prisoners of War¹⁸. The UN High Commissioner for Human Rights referred to the case of summary execution of the two captive Armenians as a possible war crime¹⁹. The repatriated corpses of the Armenian servicemen and civilians revealed numerous cases of executions and mutilations.

The Human Rights Ombudsperson of Nagorno-Karabakh²⁰ have put together six reports on the torture and inhumane treatment of the members of the Artsakh (Nagorno-Karabakh) Defense Army and captured Armenian civilians by Azerbaijan that cover the period since 27 September 2020 till January 2021. These reports are not disseminated through open public sources, since they contain instances of extreme cruelty and most graphic violent images. However, they can be provided by the Ombudsperson upon request.

The continued presence of numerous jihadist foreign terrorist fighters in the ranks of the army of Azerbaijan²¹, who are trained to commit atrocity crimes only adds to the existing grave concerns on the fate of the detained combatants and civilians of Armenian origin in the Azerbaijani custody. H.E. Heiko Maas, Federal Minister for Foreign Affairs of Germany recently stated at the Parliamentary Assembly of the Council of Europe that “with regard to Nagorno-Karabakh, based on current intelligence, we have to assume that a certain number of these Syrian fighters are indeed still in the crisis area.”²²

President Ilham Aliyev confirmed that Azerbaijan holds Armenian prisoners, however, he claimed that “they cannot be considered prisoners of war because the war is over. They are terrorists and saboteurs.”²³ That is a material breach of the International Humanitarian Law which unequivocally guarantees the rights of all Prisoners of War and interned persons. Article 4 (1) of Third Geneva Convention defines PoWs as “members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces”. Article 118 of the Third Geneva Convention requires the release and repatriation of prisoners of war without delay after the cessation of active hostilities. According to Article 132 of the Fourth Geneva Convention, each interned person must be released as soon as the reasons for internment end, while Article 133 provides that, in any event, internment must cease as soon as possible after the close of hostilities. Article 85(5) of the Additional Protocol 1 provides that grave breaches of the 1949 Geneva Conventions and of the Protocol “should be regarded as a war crime”.

Moreover, Azerbaijan fails to respect basic human rights of the detained combatants and civilians of Armenian origin. Nothing can exempt Azerbaijan from implementing its international commitments in this regard.

It is our conviction that this dire situation of the Armenian Prisoners of War and civilian detainees in the Azerbaijani custody and protection of their rights in line with International Human Rights Law and International Humanitarian Law deserve the immediate attention and reaction of the UN member states both individually and collectively.

Azerbaijan must respect the rules of International Humanitarian Law, refrain from violence against the civilian population and treat under all circumstances all detained combatants and civilians of Armenian origin in accordance with the Geneva Conventions. Furthermore, Azerbaijan must immediately release all detained combatants and civilians of Armenian origin.

¹⁷ <https://www.washingtonpost.com/archive/politics/1988/03/16/soviet-tells-of-pogroms-by-rioters-in-azerbaijan/56dc16e1-9aeb-40cd-9ffd-0f176a55a223/>.

¹⁸ <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>.

¹⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>.

²⁰ https://artsakhombuds.am/en/ad_hoc_reports.

²¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494>.

²² <https://pace.coe.int/en/verbatim/2021-01-26/pm/en#speech-10701>.

²³ <https://en.president.az/articles/49937>.