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Documentation and investigation into war crimes committed during the recent war between Armenia and Azerbaijan over Nagorno-Karabakh is urgently needed

Dear Foreign Minister Ine Eriksen Søreide,

We thank you for your positive response to our 7 October 2020 letter on the need for an international commission of inquiry for the Nagorno-Karabakh conflict.¹

- Following the 9 November 2020 cease-fire, the Norwegian Helsinki Committee (NHC) wants to reiterate the need for such a commission with a mandate to investigate reports and allegations of war crimes and serious human rights abuses committed during the war between Armenia and Azerbaijan over Nagorno-Karabakh and surrounding territories.

The persistent reports of war crimes committed by both parties give reason for alarm. There is an urgent need for an independent and credible inquiry into such crimes to break the cycle of impunity.

Among the alleged war crimes committed is Azerbaijani use of foreign fighters from Syria, as stated by the UN Working Group on the use of mercenaries and other UN experts.² The UN experts also refer to “reports indicating that Armenia has been involved in the deployment of foreign nationals to fight in the Nagorno-Karabakh conflict”.

There are reports of physical abuse and humiliation of Armenian prisoners of war, captured on videos shared on social media by members of Azerbaijani forces, as reported by Human Rights Watch (HRW).³ There are also reports of mutilation and desecration of dead soldiers by both sides. Both Armenia and Azerbaijan still hold prisoners of war, and they must be

¹ The letter is available on the web site of the Norwegian Helsinki Committee: <https://bit.ly/3guaa8P>

² The Working Group on the use of mercenaries and other human rights experts, “Mercenaries in and around the Nagorno-Karabakh conflict zone must be withdrawn”, Geneva 11 November 2020, available at: <https://bit.ly/3qGxy7W>

³ Human Rights Watch, «Azerbaijan: Armenian Prisoners of War Badly Mistreated. Investigate, Prosecute Violations; Ensure Protection of All Military Detainees», Berlin 2 December 2020, available at: <https://bit.ly/3lYJiiv> A HRW report is forthcoming on abuse of Azerbaijani prisoners of war by Armenian forces.

reminded of their obligations to treat prisoners humanely and respectfully in accordance with the 3rd Geneva Convention (1949).

The 4th Geneva Convention (1949), which protects civilians, may have been breached by shelling or other unlawful attacks against populated areas with few if any military targets. This has been recorded during Armenian attacks on Azerbaijani cities of Ganja, Berde and Terter, and Azerbaijani attacks in Nagorno-Karabakh, most notably on Stepanakert.

Ganja, situated far from the frontlines, was attacked by ballistic weapons causing civilian losses only. Both sides have used widely banned cluster munitions in populated areas causing unnecessary suffering for the population.

The NHC has seen reports of deliberate mass destruction of housing and other infrastructure and a kind of “scorched earth tactic” by Armenians in Kelbajar and Lachin districts. Territories have been mined before transfer from Armenian to Azerbaijani control, seriously obstructing the return of Azerbaijani IDPs, jeopardising the lives of any person entering them, and making them inhabitable for years to come or until they have been effectively de-mined.

These are some, but not all, of the reported crimes.

After six weeks of heavy fighting, the war ended after Armenian Prime Minister Nikol Pashinyan and Azerbaijani president Ilham Aliyev signed a truce negotiated by the Russian Federation. Under the agreement, Azerbaijan has taken control over parts of Nagorno-Karabakh, as well as over seven surrounding territories occupied by Armenia since 1994, when a cease-fire agreement ended an all-out war which had lasted for several years.

Azerbaijan’s military advances forced Armenia to accept conditions which largely turned the tables from the 1994 cease fire agreement. Both sides have reported that at least 2700 of their soldiers have been killed. Civilian losses are reported to be approximately 90 Azerbaijanis and 50 Armenians. Thousands of Armenian inhabitants of Nagorno-Karabakh have fled their homes in and near the area Azerbaijan now controls. The deal also means that Russian military have been deployed as peace keeping forces.

The Russian-brokered agreement bears little hope of ending the conflict between the two peoples in any near future. Notably, the status of Nagorno-Karabakh itself has not been determined. The conflict, which have lasted since the end of the Soviet era, has cost tens of thousands of lives, thousands missing, and thousands injured by landmines and other unexploded devices even before the last six weeks of warfare. More than a million have lost their homes as warfare and occupation have forced them into displacement. The massive suffering has caused hatred and bitterness which will not be forgotten easily on either side.

The peoples of Armenia and Azerbaijan deserve a lasting peace, and we believe that ending impunity is one of the preconditions for the process of reconciliation we believe must be initiated. Documenting war crimes by a thorough and unbiased investigation and bringing perpetrators to justice is a necessary condition for a future healing of painful wounds. One of the great weaknesses of the peace agreement is the lack of attention to this important factor for a lasting peace.

The NHC therefore asks the Norwegian government to take an initiative to establish an international commission of inquiry, under the auspices of the OSCE, the Council of Europe,

the UN or the EU. The EU established such a commission after the war between Georgia and Russia in 2008. It gained importance when the International Criminal Court (ICC) opened an investigation into war crimes in 2016.

The NHC letter of 7 October 2020, was shared with foreign ministers in like-minded European countries. Both the Netherlands and Sweden gave positive responses, recognising the need for accountability for war crimes and serious human rights abuses as soon as hostilities ended. Ann Linde, Sweden's Minister of Foreign Affairs, stated in a letter to the NHC of 23 November:

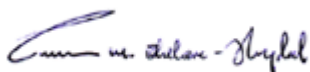
It is clear that the full range of the conflict is not over and that many issues remain to be resolved. It is therefore important that the OSCE and the international community remain committed to a long-term sustainable negotiated solution and to investigate suspected violations and abuses of international human rights law and international humanitarian law. As I take over the chairpersonship of the OSCE at the turn of the year, I will continue to support these efforts.

As a member of the UN Security Council from 2021, Norway can also propose referring the situation of Nagorno-Karabakh and surrounding territories for investigation by the ICC. Such a referral will put pressure on Armenian and Azerbaijani authorities to investigate crimes themselves. Neither Armenia nor Azerbaijan has ratified the Rome Statute of the ICC, which gives ICC jurisdiction, but according to Article 13(b) of the Statute, "[a] situation in which one or more of such crimes appears to have been committed" can be referred to the ICC Prosecutor by the Security Council.

There are several other avenues to justice, if the Security Council fails. Both states may refer situations on their territory for ICC investigation (Article 12(3)), like Ukraine did on 17 April 2014 and 8 September 2015.⁴ A third option may be to establish a hybrid court, based on an agreement with an international organization such as the UN or the Council of Europe.

In any case, to lay a proper groundwork for criminal justice in the future, it is of paramount importance that a system of documenting, analyzing and making quality-controlled information available on war crimes and serious human rights violations. We believe that this can only be credibly done by an international commission of inquiry.

Sincerely yours,



Gunnar M. Ekeløve-Slydal
Acting Secretary General

⁴ ICC, «Preliminary Examination Ukraine», information available at: <https://www.icc-cpi.int/ukraine>