



**Permanent Mission
of the Republic of Azerbaijan
to the UN Office and other
International Organizations**

GENEVA

Ref: 0008/12/23/22

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the request of the Working Group on Enforced or Involuntary Disappearances dated 5 November 2021, has the honor to transmit herewith the inputs by the Government of the Republic of Azerbaijan to study to be prepared by the Working Group to mark the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 4 pages



Geneva, 17 January 2022

Office of the United Nations
High Commissioner for Human Rights
GENEVA

Information

on the questionnaire marking the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance

On question 1:

According to Part II of Article 28 of the Constitution of the Republic of Azerbaijan, the right to liberty may be restricted only in accordance with the procedure prescribed by law, by detention, arrest or imprisonment. At the same time, according to Part II of Article 31 of the Constitution, except for cases prescribed by law it is prohibited to infringe upon a person's life, physical and mental health, and to commit acts of violence against him/her.

Also, in accordance with Article 27 of the Constitution, everyone has the right to life. Except for cases prescribed in this Article, the right of every person to life is inviolable.

Regarding part 1 of Article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance, it shall be noted that Article 110 of the Criminal Code prescribes liability for enforced disappearance of persons. Thus, pursuant to the Article, detention, arrest or kidnapping of a person with the purpose of deprivation of lawful protection for long period under task, support or with consent of the state or political organization and subsequent denying of the fact on imprisonment of a person or refusal giving data about his/her fate or location shall give rise to criminal liability.

Also, Article 145 of the Code prescribes liability for illegal deprivation of a person's freedom, not connected with kidnapping.

At the same time, in accordance with Articles 290 and 292 of the Code, criminally prosecuting, unlawfully arresting, unlawfully detaining, and unlawfully keeping a person in a place of detention, while knowing that he/she is not guilty, shall give rise to criminal liability.

Moreover, in connection with the provision of Part 1 of Article 8 of the Declaration on non-extradition of a person in case of possible enforced disappearance, it shall be noted that according to Article 3.2 of the Law "On Extradition", the extradition of a person may be refused if there are sufficient grounds to believe that upon transfer he/she will be subjected to torture or cruel, inhuman or degrading treatment or punishment, or be prosecuted on the basis of his/her race, nationality, language, religion, citizenship, political opinion or sex; or that his/her right to a fair trial will be grossly violated.

Regarding Part 3 of Article 9 of the Declaration, it shall be stated that according to Article 1.2 of the Constitutional Law "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan", in order to prevent torture or other cruel, inhuman or degrading treatment or punishment, the Ombudsman shall visit places which detainees are unable to leave at will, on a regular basis or in any case he/she deems necessary.

Also, according to Article 18-1.2 of the Constitutional Law, the National Preventive Group, established for the purpose of performing the functions of a national preventive

mechanism, is entitled to, at any time and without prior warning, access police stations, places of temporary detention, pre-trial detention facilities, prisons, garrison guardhouses, psychiatric institutions, centers for detention of illegal immigrants, and other places which the person cannot leave at will; to meet and talk, privately or if necessary together with an expert or interpreter, with detained persons or any other persons able to provide relevant information; to get acquainted with and obtain copies of documents confirming the legality of detention, as well as all other documents related to their treatment and detention conditions; to draw up an act, to protocol the status and results of the measures taken; and to be received by the administration of the mentioned places without delay.

Regarding the registry of persons deprived of liberty, envisaged in Part 3 of Article 10 of the Declaration, it shall be noted that based on subparagraph 5.7.1 of the "Internal Disciplinary Rules of Pre-trial Detention Facilities", approved by the 26 February 2014 No. 63 Resolution of the Cabinet of Ministers of the Republic of Azerbaijan, the administration of the pre-trial detention facility shall meet the arrested person brought to the pre-trial detention facility and register information on his/her last name, name, patronymic, date and place of birth, and place of residence.

Also, according to paragraph 2.2 of the "Instruction on organization of registration of arrested and sentenced persons in penitentiary establishments", approved by the 30 June 2015 No. 7-N Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan, registration bodies of penitentiary establishments shall draft the documents on arrested and sentenced persons taken on and off registration; shall keep the record of persons and convicts who are under custody of the search, investigation, as well as judicial authorities (persons in respect of who a judgment has not been issued, who filed an appeal, cassation or protest against the judgment, or whose judgments has not come into legal effect), and of persons and convicts whose case has been dismissed by court, and maintain the database of arrested and sentenced persons.

At the same time, the "Instruction on organization and maintenance of centralized individual records of persons accused or suspected of committing crime, convicts, and persons arrested in administrative order", approved by the 16 January 2019 No. Q11-001-19 Decision of the Plenary Board of the Ministry of Internal Affairs of the Republic of Azerbaijan, regulates the issues of records of persons deprived of liberty.

Paragraph 1.3 of the Instruction stipulates discovery of disappeared persons as one of the purposes of the centralized registry.

Regarding Part 1 of Article 13 of the Declaration, it is informed that according to Article 207.1 of the Criminal Procedure Code, the preliminary investigator, the investigator, or the prosecutor in charge of the procedural aspects of the investigation shall register immediately and examine any information received from individuals or legal entities about an offence committed or planned, and information within the investigating authority's jurisdiction which has been published in the media and submitted together with confirming document, and shall take other measures prescribed by the Code.

Also, according to Articles 209.2.6 and 209.2.7 of the Code, the investigator or the prosecutor in charge of the procedural aspects of preliminary investigation shall immediately institute criminal proceedings when there are signs that a person has been kidnapped or taken hostage, or where there is suspicion of murder of a missing person but no information; and when a person is deprived of liberty illegally.

On question 4:

It is well known that the Declaration led to the adoption of the International Convention on the Protection of All Persons from Enforced Disappearances. Azerbaijan supported and contributed to the global efforts for the adoption of the Convention. Azerbaijan was also among the first signatories of the Convention. Azerbaijan is the main sponsor of the biennial resolution of the UN General Assembly on "Missing persons" adopted by consensus since 2002. The resolution focuses on the necessity of taking measures to prevent persons from going missing and makes reference to the International Convention on the Protection of All Persons from Enforced Disappearances.

On question 5:

The International Convention on the Protection of All Persons from Enforced Disappearances was signed by the Republic of Azerbaijan on February 6, 2007. The ratification of the Convention is under the consideration.

On question 7:

Enforced disappearance is a problem encountered by thousands in Azerbaijan for almost three decades. Approximately 4000 Azerbaijanis are still missing as a result of the military aggression by Armenia. Armenia extensively practiced taking and holding of hostages and mistreatment and summary execution of Azerbaijani prisoners of war and hostages since the early 1990s. Despite the fact that the taking of hostages is clearly prohibited by international humanitarian law, there facts that 872 Azerbaijanis (including 29 children; 98 women; 112 elderly people) were imprisoned or taken hostage and weren't released by Armenia. By these illegal acts Armenia seriously violated the relevant provisions international humanitarian and human rights law, in particular those relating to the right to be protected from arbitrary detention, the right to fair trial affording all judicial guarantees, the prohibition of torture and other cruel, inhuman or degrading treatment, the prohibition of enforced disappearances, the rights of persons deprived from liberty and others. Those reported missing among Azerbaijani population disappeared in circumstances that raise serious concerns as to their well-being, particularly given the atrocities widely practiced by the armed forces of Armenia.

The State Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Azerbaijan identified that in violation of the norms of international humanitarian and human rights law, the Azerbaijani hostages were detained under unbearable conditions, together with prisoners of war, were transferred from one place of detention to another, both in the formerly occupied territories of Azerbaijan and in the territory of Armenia. There was mass annihilation of Azerbaijani prisoners of war and hostages by armed forces of Armenia in 1990s. Many hostages, including children and women were brutally killed, some died later in Armenian captivity as a result of torture, intolerable conditions and diseases. As the corpses of the dead were not handed over to Azerbaijan, these persons are still considered forcefully disappeared. Despite repeated appeals of the State Commission, only a few years ago it was possible to get information about 54 Azerbaijani prisoners of war and hostages, including 6 women who were registered by the International Committee of Red Cross (ICRC) and visited at various times by the ICRC's representatives at the places of detention. It is very disturbing that remains of only 17 persons out of 54 were returned to Azerbaijan. 12 of them were held and subsequently killed on the territory of Armenia. 33 persons were reported dead, but their remains were not returned, and the fate of 4 persons was not reported at all.

The main source of the information on enforced disappearances of Azerbaijanis is the testimonies of persons released from Armenian captivity. Having many irrefutable facts, it could be possible to trace the fate of forcefully disappeared persons, but all attempts of search were unsuccessful due to the rigid position of Armenian side and concealment of the facts. For more than 25 years, Armenia, despite being a party to the International Convention on the Protection of All Persons from Enforced Disappearances has failed its obligation under the applicable international law to conduct effective investigation into the fate of forcefully disappeared Azerbaijanis.

On question 9:

The Ministry of Foreign Affairs and State Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Azerbaijan organized conference and exhibition dedicated to the International Day of the Victims of Enforced Disappearances on August 30, 2021. At the event attended by diplomatic corps in the country and representatives of media, the participants were informed about the right to be protected from enforced disappearances, as well as the rights of missing persons and their family members. They were also informed about the enforced disappearance problem in Azerbaijan emerged as a result of Armenia's military aggression.