

To: UN Working Group on Business and Human Rights
United Nations Office of the High Commissioner for Human Rights (OHCHR)

From: Office of the Commissioner for Human Rights (Ombudsman)
of the Republic of Azerbaijan

Ref: *Call for inputs for business in conflict and post-conflict contexts*

Dear colleagues,

In response to your call for inputs regarding the business in conflict and post-conflict periods to be reported in the 2020 General Assembly, the Office of the Commissioner for Human Rights of the Republic of Azerbaijan kindly presents the following information for your review and consideration as a matter of urgency, as well as for reporting at the GA meeting.

In situations of armed conflicts, enterprises have to respect the norms of international humanitarian law. The Guiding Principles on Business and Human Rights affirm that business enterprises have a responsibility to respect human rights and States have a duty to ensure that they do so because all human rights may be at risk of infringement by businesses. Under the international law, States have undertaken an obligation not only to protect and promote human rights, but also never derogate from peremptory norms. Furthermore, the right to protect (R2P) obliges a State to protect all persons under its jurisdiction, be they natural, or be they legal persons.

As a result of the Armenian-Azerbaijan Nagorno-Karabakh armed conflict, twenty percent of the Azerbaijani territories have been occupied, local inhabitants have been forced to leave from their homes, lost their lives and health, national and cultural values were destructed, the places of historic interest, the environment and natural resources were looted. During this conflict Armenian armed forces not only occupied our territories, but also inflicted widespread environmental damage, which was also criticized by the GA Resolution (A/RES/60/285) in its sixtieth session by calling international organizations, inter alia the OSCE to assess short and long-term effects.

Azerbaijan currently has no effective control over the occupied territories and therefore, is unable to eliminate challenges and restore the violated rights because shootings are still continuing at the front line. We cannot consider that cease-fire is a post-conflict situation. The UN Security Council, in its four Resolutions on Nagorno-Karabakh specifically reaffirm that the parties are bound to comply with the principles and rules of international humanitarian law (A/67/875-S/2013/313) and called on them to refrain from all violations of international humanitarian law (874 (1993), para. 9). International humanitarian law instruments specifically prohibit any activities aimed at deportations and transfers of civilians, infringement on private and public property, pillage, exploitation of the inhabitants, the

resources or other assets of the territory under occupation for the benefit of the occupying power or its population (A/63/662–S/2008/812, and A/63/692–S/2009/51).

From the experience of Azerbaijan, it should be noted that “Azercosmos” OJSCo has shot photos from the satellite to evidence how the natural resources, of the *de-jure* recognized as an integral part, but occupied territories of Azerbaijan, are illegally exploited by business entities of the separatist regime and foreign corporations operating there. This includes exploitation since 2013 of Demirli open pit copper-molybdenum mine in the occupied part of Tartar district, and since 2012 of mining facilities of copper and gold mine near Heyvaly village in the occupied Kalbajar district and so on. In this circumstance, Azerbaijan cannot impose criminal penalties on those business entities for their illegal activities due to the lost control over those territories.

Illegal exploitation of natural resources, as well as of inhabitants by the occupying powers for their purposes under the international humanitarian law is prohibited, and that it was also stated by the International Law Commission in its 3469th meeting on “Protection of the environment in relation to armed conflicts” in 2019, (A/CN.4/SR.3469).

This conflict has had serious damages to social and economic life of the country. Solution of problems with housing and living conditions, social protection and other rights of over one million IDPs and refugees became the issues of priority for the Government. In this regard, tens of thousands of people were settled in new dwellings, the constructions of which have been funded by the State, donor States and international organizations; refugees and IDPs were provided with housing in various cities and districts. A number of humanitarian projects and other measures with regard to their social protection were implemented as well as they have been subjected to particular decreased taxes and also, granted with concessions. Measures for improving social welfare of refugees and IDPs are being continued at present.

Considering the importance of the above-mentioned aspects and expecting that the international organizations will urge Armenia to respect human rights and humanitarian law principles and fulfil its international obligations, we suggest:

- To establish mechanisms and strengthen the sanctions on those Member States that not only violate the territorial integrity of another Member State, but also invite transnational corporations to operate in the occupied territories;
- To oblige not conflict-party Member States to sanction the parent corporations and their subordinate entities, operating in the officially unrecognized occupied territories of one of the conflict-party States and to cease the activity of those corporations, also to develop compensation mechanism to the victim State;
- To institute mechanisms by the WG on Business and Human Rights in relation to business in the context of frozen conflicts as well, considering their risk of brink of eruption again;
- To include norms regulating the relations during conflict and post-conflict periods in the process of preparing national action programs on business and human rights by Member States;

We would like to share our good practices with regard to policies, regulations and adjudications measures in the field of corporate-related human rights abuses and conflict-sensitive responsible business.

- 1) As a good example, we underline our national experience with respect to Boards of Appeals, established at central and local executive bodies by the relevant Presidential Decree. These collegial boards as a public-based and non-judicial mechanism, amicably examine complaints against the decisions and/or activity and inactivity of central executive power body in relation to the natural and legal persons pursuing business activities, its subordinate bodies. In performing their duties, the boards interact with other executive bodies, self-governing bodies, NGOs, and legal and natural persons.

In addition to this, the Mediation Council to be operate as provided by the Law of the republic of Azerbaijan on Mediation. Thus, taking account of the necessity of developing business-related human rights protection mechanisms, coordination the activities of the responsible stakeholders, we suggest:

- To establish Boards of Appeals and Mediation at business stakeholders, as these collegial mechanisms, consisting of subject matter experts, (if deemed necessary other experts, as well as members of NHRIs may be involved) can be effective as a non-state-based protection mechanism of business-related human rights;
- 2) Azerbaijan has a good practice concerning the WG on business and human rights created and initiated by the Ombudsman and consisting of various public and private stakeholders, non-governmental organizations. The main goal of the WG is to study and implement relevant international documents, to analyze national laws, drafting proposals to competent bodies, and to carry out awareness-raising activities. Also, the WG organizes round tables, consultations with the relevant public and private stakeholders to coordinate their activities as well.

We think this is essential to apply similar experience to develop and enforce business and human rights protection mechanisms for coordination of the activities of business entities, interested parties, *inter alia*, business entities to be developed in this group, as well as to develop control mechanisms over those activities.

- 3) Commercial Courts have been established in Azerbaijan since 2019. These courts provide effective and prompt resolution to the problems by handling commercial disputes. Therefore, it is advisable to carry out judicial and legal reforms in order to effectively and urgently settle the business-related human rights disputes.
- 4) As a consequence of the successful counter-offensive operations of the Azerbaijani armed forces, in the liberated Jojug Marjanli village of Jabrayil district there were created favorable conditions for the restoration of the destroyed infrastructure and returning civilians to their historical lands. For this reason, the President signed the relevant Decree on national action plan according to which individual houses and school buildings and relevant infrastructure were constructed in those places and more than 1400 persons have been moved there.

The Government of Azerbaijan initiated to host consistent measures in relation to the organization of social security and development of agriculture of inhabitants in Jojug Marjanli in the frame of the project run together with the Turkish Embassy to Azerbaijan, Turkish Cooperation and Coordination Agency, Azerbaijan Turkey Business Association and with

entrepreneurs. In beekeeping farms, mobile workshop for manufacturing and packaging products under the “Karabakh” brand name and mobile point of sales of agriculture products were put into exploitation. Opening souvenirs manufacture under the “Jojug Marjanli” brand name is considered in the present year.

All this paved way for establishing infrastructure and enterprises and developing employment and social welfare of local residents. Relevant organizations launch capacity-building training for those hired in those enterprises, with participation of national and foreign experts. Furthermore, necessary measures are being taken in order to promote manufactured products of the enterprises, which will enable to bring products to markets domestically and internationally.

Considering the mentioned above we suggest the followings:

- To develop strict mechanism by international organizations for tightening their requirements and sanctions on the States in a way that they are obliged to fulfill their international obligations with respect to international human rights and humanitarian law norms;
- To enhance criminal and civil laws, legislation related to anti-trafficking, labor, environment, consumer protection and legislative acts regulating the businesses to protect persons from corporate-related human rights abuses as well as from the illegal activities of businesses such as pillage of natural resources and exploitation of civilians and damaging the cultural property;
- To refrain from property, organizational and legal concessions and avoid acting in a discriminative manner by States with respect to the entrepreneurs for the use of material and technical, financial, labor, information and natural resources;
- To carry out preventive measures together with business entrepreneurs in order to ensure the effectiveness of identification, prevention or mitigation of the business and human rights-related risks; to conduct awareness-raising activities; if necessary, to provide state support to business enterprises in the field of information, advising, science and education and others;
- To apply control-monitoring mechanism for the enforcement of business-related human rights abuses and to engage NHRIs in those control and monitoring processes through extending their competences and making additions and amendments to national laws;
- To prepare mechanisms for submission of periodic reports on the respect for rights and freedoms by medium and large business entities to ensure effective protection of human rights and to make additions and amendments to the relevant norms regulating business activities;
- To promote corporate social responsibility and to impose taxes and to grant concessions to business entities, actively participating and/or will to participate in social and economic life of the country, depending on the situation, to encourage them, and to amend the laws accordingly;
- To develop mechanisms encouraging companies to ensure due diligence or invest only those businesses that engaged in due diligence to prevent harms;

- To cease state support to business entities, causing severe human rights abuses, and refusing to cooperate for their elimination and to develop non-judicial compensation mechanisms for business entities that intentionally or negligently damage the health of an employee or civilian at war and peace; and/or to oblige companies to establish programs for preventing harms caused;
- To oblige business entities to report about child labor and hazardous work conditions for particularly aged and female employees involuntarily, and to conduct ad-hoc inspections of those entities without prior notification;

The Ombudsman Office of Azerbaijan avails itself of this opportunity to renew the assurances of its highest consideration to the United Nations Office at Geneva (UNOG).