

## Observations on the Human Rights Situation of People affected by the Conflict between Armenia and Azerbaijan over the Karabakh region

### Introduction

1. The Council of Europe Commissioner for Human Rights visited Armenia and Azerbaijan, including the Karabakh region, from 16 to 23 October 2023.<sup>1</sup> The focus of the visit was on the human rights situation of people affected by the conflict. It was the first time in decades that a human rights mission of this kind was able to visit the Karabakh region.
2. The purpose of the Observations is to assess the human rights situation of people affected by the conflict and to highlight humanitarian and human rights issues that require urgent attention.<sup>2</sup> The Commissioner regrets that it was not possible to travel to the conflict affected areas earlier in order to carry out independent and impartial human rights monitoring in line with her mandate. However, she hopes that these Observations and recommendations will serve as a human rights roadmap during the process of building reconciliation and lasting peace for all people affected by the conflict.
3. In addition to the visit, these Observations draw from the Commissioner's long-standing engagement on this topic. This includes her '[Memorandum](#) on the humanitarian and human rights consequences following the 2020 outbreak of hostilities between Armenia and Azerbaijan over Nagorno-Karabakh' (hereinafter, the 2021 Memorandum),<sup>3</sup> which was published on 8 November 2021. The 2020 hostilities, which lasted for six weeks, resulted in the loss of several thousand lives and caused severe hardship for people living in the conflict affected areas. This outbreak of hostilities ended with the statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation "on a complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict", signed on 9 November 2020 (hereinafter, the [trilateral statement](#)).
4. The Commissioner has monitored the situation closely since the signing of the trilateral statement. The situation in and around the Karabakh region has continued to evolve since the publication of the Memorandum in 2021, to the point of the mass displacement of over 101 000 Karabakh Armenians who in only a few days at the end of September fled to Armenia.<sup>4</sup> This displacement followed the military action by Azerbaijan on the 19 and 20 September, its subsequent full control over the region and the prolonged disruption of the movement of people and access to essential goods, services and energy supplies that were experienced by Karabakh Armenians as a result of the nine-month blockade by Azerbaijan of the road along the Lachin corridor.<sup>5</sup> The military operation was followed by an agreement between the Azerbaijani authorities and the *de facto* authorities of the region, the latter announcing their dissolution as of January 2024.

<sup>1</sup> Nothing in this document can be interpreted as being contrary to full respect for the sovereignty and territorial integrity of Armenia and Azerbaijan within their internationally recognised borders.

<sup>2</sup> These Observations were finalised on 5 January 2024.

<sup>3</sup> Council of Europe Commissioner for Human Rights, [Memorandum](#) on the humanitarian and human rights consequences following the 2020 outbreak of hostilities between Armenia and Azerbaijan over Nagorno-Karabakh, 8 November 2023, CommDH(2021)19.

<sup>4</sup> See the Council of Europe Commissioner for Human Rights [statement](#) "Ensure the safety and human rights of Karabakh Armenians" of 2 October 2023.

<sup>5</sup> See the Council of Europe Commissioner for Human Rights [statement](#) "Movement along the Lachin Corridor should be restored as a matter of urgency to prevent a deterioration of the humanitarian situation in Nagorno-Karabakh" of 22 December 2022; the [statement](#) "Restore free movement along the Lachin Corridor and ensure the rapid and unimpeded delivery of humanitarian assistance in Nagorno-Karabakh" of 28 August 2023 and the [statement](#) "Karabakh region: End the military escalation and ensure the safety and human rights of civilians" of 20 September 2023. See also the [statement](#) by Ms. Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, on the situation in Armenia and Azerbaijan, 10 October 2023.

5. During the visit to Armenia, the Commissioner had meetings with the Prime Minister, Nikol Pashinyan, the Deputy Prime Minister, Tigran Khachatryan, the Minister of Labour and Social Affairs, Narek Mkrtchyan, the Deputy Foreign Minister, Paruyr Hovhannisyan, the Deputy Minister of Territorial Administration and Infrastructure, Vache Terteryan, the Head of the Migration and Citizenship Service of the Ministry of Internal Affairs, Armen Ghazaryan, and the President of the Investigative Committee, Argishti Kyaramyan. The Commissioner also met with the Human Rights Defender of Armenia (Ombuds), Anahit Manasyan. She visited shelters for displaced persons in the cities of Aghavnadzor and Tsaghkadzor in Kotayk province where she spoke with Karabakh Armenians, including families, older persons, people with disabilities and other vulnerable persons. The Commissioner also had meetings with representatives of international organisations and civil society.
6. During the visit to Azerbaijan, the Commissioner had meetings with the Assistant to the President of the Republic of Azerbaijan – Head of the Department of Foreign Policy Affairs of the Presidential Administration, Hikmat Hajiyev, the Deputy Minister of Foreign Affairs, Yalchin Rafiyev, and the Deputy Head of the Working Group of the State Commission on Prisoners of War, Hostages and Missing Persons, Eldar Samadov. She also met with the Commissioner for Human Rights of the Republic of Azerbaijan (Ombuds), Sabina Aliyeva. The Commissioner visited the Karabakh region of Azerbaijan and travelled to Fuzuli, Shusha (referred to as Shushi by Karabakh Armenians), Malibayli village, Khankendi (referred to as Stepanakert by Karabakh Armenians), Khojaly and Aghdam.
7. The Commissioner would like to thank the Armenian and the Azerbaijani authorities for their assistance in organising her visit. She expresses her gratitude to all of the interlocutors in Armenia and in Azerbaijan who shared with her their knowledge and experiences.
8. The Commissioner stresses that there are still many pending human rights issues from the previous major outbreaks of hostilities that took place from 1991 to 1994 and from 2020 up to the present. While these Observations address some of these issues it is not their purpose to deal with all of the consequences of the conflict. Furthermore, while there is a clear urgent need for political solutions that go beyond the Commissioner's mandate, which are under discussion in the context of the talks over peace, several important actions should be taken in order to protect the human rights of people affected by the conflict. In this context, the Commissioner formulates recommendations for urgent human rights protection in several fields.
9. The Observations begin by describing the context of the displacement of Karabakh Armenians to Armenia (I). They then address the human rights situation of Karabakh Armenians who fled to Armenia (II); the need to ensure the right to return and other human rights of displaced persons (III); the need for protection from mines and explosive remnants of war (IV); the situation of persons detained in relation to the conflict (V); the situation concerning missing persons (VI); the need to ensure accountability for human rights and international humanitarian law violations through a victim centred approach (VII); the access for and the presence of human rights actors in the Karabakh region (VIII); and the need to combat hate speech, promote peaceful coexistence and initiate steps towards reconciliation (IX).

#### **I. The context of the displacement of Karabakh Armenians to Armenia**

10. Since the publication of the Memorandum in 2021 and until recently, the security and stability in and around the Karabakh region, including the human rights situation of its population, were continuously undermined. Only minimal progress was noted in regard to implementation of the Commissioner's previous recommendations. The recent tragic mass displacement of Karabakh Armenians following Azerbaijan's military action of 19 and 20 September 2023 should be seen in this context.
11. Security along the international border between Armenia and Azerbaijan had remained fragile, with numerous episodes of armed incidents.<sup>6</sup> Constant threats to the life and security of the population

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<sup>6</sup> In [October 2022](#), the instability of the region led to the deployment of an EU monitoring capacity in Armenia (EUMCAP) along the Armenian side of the international border with Azerbaijan with the objective of monitoring, analysing and reporting on the situation on the ground. The mission lasted until 19 December 2022. On 23 January 2023, the EU civilian mission in Armenia (EU Mission in Armenia/EUMA) under the Common Security and Defence Policy (CSDP) was formally [established](#) with a two-year mandate.

living in border villages fuelled a sentiment of fear, disrupting their daily lives and undermining the full enjoyment of their human rights.<sup>7</sup> The lack of action to effectively counter the spread of sentiments of hostility, hate speech and intolerance continued to prevent efforts aimed at promoting peace and reconciliation between the populations affected by the conflict. This combined with the continued lack of a comprehensive approach to dealing with the past and addressing the serious human rights violations committed in the context of the outbreaks of conflict in the 1990s and from 2020 up until today has fuelled fear among the population about their safety and respect for their rights.

12. Since 12 December 2022, the blocking of the Lachin corridor, the only road connecting the Karabakh region with Armenia, disrupted the distribution of essential goods and services leading to the isolation of Karabakh Armenians, who had to start rationing the available resources. Protests backed by the Azerbaijani authorities as of 16 December 2022 blocked the road, while the Azerbaijani authorities created a checkpoint on that same road in April 2023. There were also frequent cuts of gas supplies to the region during freezing winter conditions. On 21 December 2022, as an interim measure, the European Court of Human Rights indicated to Azerbaijan to take all measures within its jurisdiction to ensure safe passage through the Lachin corridor for seriously ill persons in need of medical treatment in Armenia and others stranded on the road without shelter or means of subsistence.<sup>8</sup> The following day, the Commissioner emphasised the urgent need to restore the movement of people, goods and services, including food supplies and urgent medical care, in order to prevent the deterioration of the humanitarian situation there. She also highlighted the importance of ensuring free and unhindered access for humanitarian assistance and international human rights missions to all areas and people.<sup>9</sup>
13. The humanitarian and human rights situation, including humanitarian access to the region, further deteriorated throughout 2023. In February 2023, the International Court of Justice ordered Azerbaijan to “take all measures [...] to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions”.<sup>10</sup> As of mid-June, Azerbaijan blocked the passage of all humanitarian goods and non-medical items that had, until then, been delivered respectively by Russian peacekeepers and the International Committee of the Red Cross (ICRC). It also periodically delayed ICRC’s medical evacuations to Armenia. In July, the ICRC declared its inability to bring humanitarian assistance to the civilian population through the Lachin corridor or through any other routes, including Aghdam, and called on the relevant authorities to allow the resumption of its essential humanitarian operations in the area.<sup>11</sup> In August, the Commissioner reiterated her call for the relevant stakeholders to avoid any further deterioration of the situation and to guarantee safe and free passage to those providing humanitarian assistance and those ensuring human rights protection.<sup>12</sup> On 18 September, ICRC announced a humanitarian consensus between the authorities to bring shipments of wheat flour and essential medical items to people in need via the Lachin corridor and the Aghdam road.<sup>13</sup>
14. The sense of fear and uncertainty that these circumstances generated among the local population reached a yet greater level of intensity following Azerbaijan’s military action on 19 and 20 September, its subsequent full control over the region and the surrender of the *de facto* authorities on 20 September.<sup>14</sup> Testimonies shared with the Commissioner by Karabakh Armenians show how the

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<sup>7</sup> See, among others, Human Rights Defender of Armenia, *Ad hoc report on the results of the fact-finding activities in Togh community of Syunik province and the border communities of Gegharkunik province*, April-May 2023.

<sup>8</sup> [Interim measures](#) in the case *Armenia v. Azerbaijan* (No. 4), 21 December 2022.

<sup>9</sup> Commissioner’s [statement](#), “Movement along the Lachin Corridor should be restored as a matter of urgency to prevent a deterioration of the humanitarian situation in Nagorno-Karabakh”, 22 December 2022.

<sup>10</sup> International Court of Justice, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), [Request for the indication of provisional measures](#), 22 February 2023.

<sup>11</sup> ICRC, *Azerbaijan/Armenia: Sides must reach “humanitarian consensus” to ease suffering*, 27 July 2023. See also ICRC, [Operational update on ICRC’s work across the Lachin Corridor](#), 18 August 2023.

<sup>12</sup> Commissioner’s [statement](#), “Restore free movement along the Lachin Corridor and ensure the rapid and unimpeded delivery of humanitarian assistance in Nagorno-Karabakh”, 28 August 2023.

<sup>13</sup> ICRC, [Azerbaijan/Armenia: Humanitarian consensus allows ICRC to deliver humanitarian relief](#), 18 September 2023.

<sup>14</sup> Council of Europe Commissioner for Human Rights, [statement](#), “Karabakh region: End the military escalation and ensure the safety and human rights of civilians”, 20 September 2023. On 22 September, the European Court of Human Rights [issued](#) interim measures indicating to Azerbaijan that it should “refrain from taking any measures

combination of deep-rooted fear for their lives and future during armed escalations and Azerbaijan's control stemming from previous unresolved atrocities and ongoing intimidatory acts, the sense of being abandoned by all parties, including the *de facto* authorities and Russian peacekeepers, their high level of vulnerability experienced during the blockade and the sudden reopening of the Lachin corridor at the end of September 2023 led them to feel that in order to secure their existence and future they had no choice but to leave the region and to do so immediately. On the basis of what she could hear and see, the Commissioner concluded that the Karabakh Armenians found themselves abandoned without any reliable security or protection guarantees by any party and that for them at that moment leaving home was the only reasonable option available.

15. As a result, over 101 000 Karabakh Armenians left the Karabakh region for Armenia in just a few days. They arrived in a state of exhaustion, hunger and mental and physical distress faced with an uncertain future.<sup>15</sup> Some of them stated that this constituted the third displacement in their lifetime related to this conflict. The Commissioner spoke with Karabakh Armenians during her visits to shelters in the cities of Aghavnadzor and Tsaghkadzor in Armenia's Kotayk province, including families, women, older persons, people with disabilities and other vulnerable persons, some of them suffering from chronic diseases. They told the Commissioner about the immense burden that the blockade had had on the rights of the population, particularly vulnerable groups. They gave accounts of how the disruption of access to essential goods, services and energy supplies led to a paralysis of their daily lives, placing them at risk of starvation and undermining their access to life-saving supplies and services such as medical care.
16. Karabakh Armenians also informed the Commissioner about their fears and trauma resulting directly from the military action of 19 and 20 September. This included acts of intimidation through the dissemination of audio-visual content, via Azerbaijani media platforms and social networks, depicting images of past atrocities, violence and hatred towards Armenians.<sup>16</sup>
17. The Commissioner notes that the sudden departure of Karabakh Armenians from their homes meant that these people left almost everything they owned behind. The panic and ensuing urgency to flee led to a chaotic situation where some families became separated, including children, and where long queues of cars made the journey to Armenia very long.<sup>17</sup> Reaching Armenia for those living in rural areas meant travelling for an even longer period of time and in difficult conditions, many without sufficient food and water for such a long journey. The Commissioner was also informed that some people reportedly died from health complications during the displacement to Armenia. On 25 September, a fuel depot in Asgaran, where people had gathered in an attempt to store the necessary fuel for their departure, exploded reportedly leading to the deaths of more than 200 people with many more injured.<sup>18</sup>
18. In Khankendi, following the departure of its population, the Commissioner witnessed empty streets, abandoned business premises, shops and restaurants, shattered shop windows, abandoned furniture and personal belongings, including children's toys left in the open, laundry still hanging outside empty flats and almost no sign of the presence of civilians. Only pets searching for food were noticed in various parts of the city. All of these and many other signs suggest that the population's departure happened in a great hurry.
19. The Commissioner visited a shelter in Khankendi that was set in place by the Ministry of Labour and Social Protection of the Population of Azerbaijan. She met with several Karabakh Armenians who had remained in the city and benefited from health and social services and food provided by social workers. She was informed by the Azerbaijani authorities that very few ethnic Armenians who lived in the region had remained, mostly older people, individuals unable to travel due to their poor health

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which might entail breaches of their obligations under the [European Convention on Human Rights], notably regarding the right to life and the prohibition of torture and other degrading treatment or punishment."

<sup>15</sup> See the Council of Europe Commissioner for Human Rights [statement](#) "Ensure the safety and human rights of Karabakh Armenians" of 2 October 2023.

<sup>16</sup> See also section VII below on the need to ensure accountability for human rights and international humanitarian law violations through a victim centred approach, concerning allegations of breaches of international humanitarian law and serious violations of human rights during the military action.

<sup>17</sup> [www.icrc.org/en/document/armenia-azerbaijan-evacuating-wounded-delivering-humanitarian-relief](http://www.icrc.org/en/document/armenia-azerbaijan-evacuating-wounded-delivering-humanitarian-relief).

<sup>18</sup> OC Media, "The fight to save Nagorno-Karabakh's burns patients", 30 November 2023. See also ICRC, [Armenia/Azerbaijan: Ambulances, medical supplies being sent to assist victims of explosion](#), 26 September 2023.



condition, persons with disabilities or those who had no means to travel. The Commissioner was informed that those several dozen individuals who had remained in Khankendi and the immediate vicinity needed support and could not survive on their own due to the disruption of ordinary life, with economic and social ties and municipal and communal services interrupted.

## **II. The human rights situation of Karabakh Armenians who fled to Armenia**

20. The UNHCR and the Government of Armenia reported that within a matter of only a few days of Azerbaijan's military action of 19 and 20 September 2023 a total of 101 848 people from the Karabakh region had arrived in Armenia.<sup>19</sup> The number of arrivals in relation to the size of the population of Armenia presented the authorities, population, civil society and international partners with an enormous challenge.<sup>20</sup> The Commissioner notes that this challenge was compounded both by the impact of the nine-month blockade, which had left large numbers of those arriving in Armenia in a very fragile and vulnerable state, and the fact that the vast majority appear to have fled at short notice, leaving behind virtually all of their possessions.
21. In view of this, the initial focus of the Armenian authorities and their partners was the immediate fulfilment of the right to housing of refugees.<sup>21</sup> The authorities at all levels made remarkable efforts in this respect by providing all those in need with the first basic assistance, including accommodation in temporary shelters for those who did not have a place to stay with family members or acquaintances. The Armenian government was clearly cognisant of the need to ensure that people could move from temporary shelters, which provided only basic conditions, to medium and long-term accommodation. To this end, it launched a programme to provide each displaced person not in receipt of housing assistance with a monthly payment of 40 000 Armenian dram (AMD) or around € 90 for rent and AMD 10 000 (about € 23) for utilities over a period of six months as well as a one-off payment of AMD 100 000 (about € 230) for immediate needs. This programme had just been put into operation at the end of the Commissioner's visit and there were reports that some people had already begun to move out of temporary shelters in anticipation of this.
22. The two temporary shelters that the Commissioner saw during her visit provided basic but adequate conditions, although she was informed that circumstances in different shelters varied significantly across the country. Discussions were also held about the potential risks related to large numbers of people suddenly looking for affordable rental accommodation. The private rental market is unregulated and this could lead to displaced persons ending up in sub-standard conditions and at risk of abuse. The Commissioner stresses the importance of continuous monitoring of the housing conditions of refugees, both those still in temporary accommodation and those in rented accommodation.
23. The Commissioner was informed about efforts to enable refugees to take up longer-term residence and employment in the provinces, including investment in more peripheral areas close to the border with Azerbaijan.<sup>22</sup> While the authorities assured the Commissioner that the development of such areas and incentive structures would by no means imply the obligation for refugees to live in such areas several people told her about their fear of ending up in areas close to the border and the possibility of again being caught up in conflict. It is therefore important for the authorities to allay fears that people may be required to live in areas where they feel unsafe and that incentive programmes do not have the unintended effect of leaving people feeling compelled to move to areas where they do not feel safe.
24. Alongside housing, the issues of education, employment and social welfare were frequently discussed as priorities for refugees. During her visit the Commissioner heard about activities undertaken to enrol children in schools in the places where they were first accommodated, although

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<sup>19</sup> See the Refugee Response Plan, p. 4. Updated information via <https://data.unhcr.org/en/country/arm> (last accessed 5 January 2024).

<sup>20</sup> This is in addition to some 31 000 people remaining in a refugee type situation in Armenia after the 2020 conflict as well as refugees, asylum seekers and stateless persons from other countries who have settled in Armenia. See Refugee Response Plan, p. 5 footnote 1.

<sup>21</sup> Regarding the use of the term 'refugees', see the discussion on the legal status of Karabakh Armenians in Armenia in paragraphs 32-33 below.

<sup>22</sup> It was widely acknowledged that rental prices in Yerevan would be prohibitive for most displaced persons and that alternatives would need to be found by them in other areas.

she was informed that some parents were waiting until they found more permanent accommodation before enrolling their children. At the time of her visit, reportedly, over half of all refugee children had already been enrolled in schools. In relation to employment, the Commissioner was informed about the establishment of employment markets/events in different places in Armenia intended to connect potential employers with refugees looking for work. She was informed that apart from positions in public service, which can only be accessed by Armenian citizens, they would not be subject to restrictions on employment. Considering the large number of refugees in need of employment to meet their basic needs, the Commissioner stresses the importance of close monitoring of the employment sector and effective action against labour exploitation.

25. Discussions about pensions for displaced persons were still ongoing during the Commissioner's visit, with many displaced persons who draw pensions from the *de facto* administration not having received their pension for September. According to the Commissioner's information, an accelerated process for evaluating pension entitlements will be established for those displaced persons who apply for Armenian citizenship.
26. Another key issue discussed during the Commissioner's visit was the situation of particularly vulnerable groups, including persons with disabilities, older persons, children (especially unaccompanied or separated ones), victims of torture, victims of trafficking in human beings or those at risk of trafficking, single women and LGBTI persons. According to a rapid needs assessment conducted by the United Nations Inter-Sector Coordination Group Armenia and the Armenian Ministry of Labour and Social Affairs, there were around 9 000 persons with disabilities among those displaced from the Karabakh region as well as 12 000 persons aged 65 or older and 30 000 children (including small groups of unaccompanied or separated children).<sup>23</sup> In this respect, the Commissioner raised her concern that vulnerable refugees appeared at heightened risk of ending up in institutionalised settings. She was informed, for example, that several persons with disabilities and older persons who had been living independently in the Karabakh region (for example, with family support) had been placed in state institutions in Armenia. The Commissioner has previously addressed the human rights consequences of the institutionalisation of persons with disabilities, older persons and children in Armenia.<sup>24</sup> While she fully recognises the challenges faced by Armenian authorities at all levels in terms of providing assistance to these groups, she calls on them to remain alert to and make all possible efforts to avert the risks that the new situation of these people entails. The Commissioner discussed some of the steps foreseen by the government in relation to the adoption of a more deinstitutionalised approach. It is important to continue and accelerate deinstitutionalisation reform in Armenia, especially in regard to vulnerable persons displacement from the Karabakh region.
27. The Commissioner stresses the need to strengthen mechanisms at all administrative levels in order to identify people with vulnerabilities and to refer them to the appropriate support. This is particularly important because vulnerable persons were spread across the country after their arrival in Armenia and a comprehensive overview of their whereabouts and needs may be lacking. Given the experiences of refugees during the blockade and since their flight to Armenia there is also a very evident need for increased mental health and medical services. This includes those who have been traumatised, injured or whose health condition has deteriorated significantly over that period for reasons such as a lack of medicine and/or malnutrition.
28. The Commissioner specifically wishes to highlight the vulnerability of (single) women and children who have fled to Armenia, including the risks of exposure to sexual violence, exploitation and trafficking in human beings. There is a clear need to scale up the mechanisms to prevent and detect such actions, accessible services to report them and to provide support for victims adapted to their specific needs. In this respect, the Commissioner welcomes the ratification by Armenia of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) in 2020.
29. In view of the above-mentioned challenges, the Commissioner reiterates her calls on Armenia to adopt a comprehensive anti-discrimination framework as well as to ratify the Council of Europe

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<sup>23</sup> [Inter-Agency Rapid Needs Assessment Report](#), October 2023, published 13 November 2023, p. 5.

<sup>24</sup> [Report](#) of the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, following her visit to Armenia from 16 to 20 September 2018, CommDH(2019)1, published 29 January 2019, Chapter 2.

Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).<sup>25</sup>

30. Ensuring appropriate protection for Karabakh Armenians in Armenia is tied closely to their legal status. At the time of the Commissioner's visit, there were still key questions about the specific solutions to the legal status that would be provided. There have been significant developments since then.
31. The vast majority of those displaced from the Karabakh region to Armenia were in possession of passports issued by the Armenian government, albeit with a specific code (070) indicating that these were issued to inhabitants of the Karabakh region. The Government of Armenia maintains that these passports were issued to allow Karabakh Armenians to travel internationally but that they do not confer Armenian citizenship on their holders.<sup>26</sup> This means that Karabakh Armenians displaced to Armenia are unable to exercise the rights linked to citizenship, including ownership of land (which is of relevance in view of the fact that the Karabakh Armenian population is largely rural) and employment in governmental agencies.<sup>27</sup> They are also excluded from political participation rights.<sup>28</sup>
32. On 26 October, the Government adopted Decree No. 1864 that provides for the 'temporary protection' of persons displaced from the Karabakh region. The Decree grants temporary protection to "those persons registered in the population register of Nagorno-Karabakh" and persons in or outside Armenia "whose last registered address was in Nagorno-Karabakh" and "persons not registered in the population register of Nagorno-Karabakh, but who were registered by the Migration and Citizenship Service of the Ministry of Interior of Armenia after being forcibly displaced as a result of the military operations by Azerbaijan against Nagorno-Karabakh since 19 September 2023".<sup>29</sup> Persons meeting these conditions are recognised as refugees under Article 62(1) of the Law on Refugees and Asylum of Armenia.<sup>30</sup> They are therefore entitled to the rights of refugees set out in that Law, including in relation to non-refoulement as well as rights in regard to the acquisition and transfer of movable property, leases of immovable property and in other property legal relations, intellectual property, wage earning employment, engaging in entrepreneurship, social security and medical care, education and freedom of movement within Armenia. Temporary protection is valid for one year with the possibility of extension.<sup>31</sup>
33. Alongside the decision on refugee status, the Commissioner notes that from the outset there have been discussions about the possibility to enable persons displaced from the Karabakh region to apply for Armenian citizenship. On 25 October, several amendments to the Law on Citizenship of Armenia were passed in order to simplify the eligibility requirements for citizenship of children whose parents are Armenian citizens and of adults whose children are Armenian citizens. Reportedly, the Migration and Citizenship Service started accepting applications from Karabakh Armenians for citizenship as from 10 November. The Prime Minister has also announced that applications will be dealt with promptly, especially for those who would like to apply for employment in public service.<sup>32</sup> The Commissioner welcomes the announcement that persons displaced from the Karabakh region will remain eligible for the six-month support programme mentioned above (see paragraph 21), regardless of whether or not they obtain Armenian citizenship.<sup>33</sup>
34. Karabakh Armenians who fled to Armenia should be guaranteed access to all necessary support and assistance in the immediate, medium and long term. Particular attention in this respect should be

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<sup>25</sup> [Report](#) of the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, following her visit to Armenia from 16 to 20 September 2018, CommDH(2019)1, published 29 January 2019.

<sup>26</sup> See the Armenian government's position in the case of [Chiragov and Others v. Armenia](#) before the European Court of Human Rights, application No. 13216/05, judgment (merits) of 16 June 2015, para. 83.

<sup>27</sup> See the [Constitution of the Republic of Armenia](#), Articles 60(6) and 49.

<sup>28</sup> Including the right to establish a political party and join a political party (Article 46 of the Constitution) and the right to participate in elections or a referendum and the right to stand for elected office in the National Assembly (Article 48).

<sup>29</sup> Decree No. 1864, section 1(1)-(3).

<sup>30</sup> Decree No. 1864, section 3.

<sup>31</sup> Decree No. 1864, section 4.

<sup>32</sup> News.am, "[PM: I will order that citizenship issue of Karabakh people applying for public service in Armenia be discussed quickly](#)", 24 November 2023.

<sup>33</sup> News.am, "[Former Karabakh residents to continue to benefit from 6-month support programme if they become Armenia citizens?](#)", 6 November 2023.

paid to the needs of vulnerable groups. The Commissioner notes the importance of ensuring that refugees from Karabakh receive all relevant information in an accessible way in order for them to make a free and informed choice between refugee status on the one hand and Armenian citizenship on the other. This information should also cover the potential implications, such as, for example, the right to return to the Karabakh region and related rights (e.g. access for visits and property rights), notably in view of the current situation in Azerbaijan whereby dual citizenship is not accepted (see section III below on the need to ensure the right to return and other human rights of displaced persons).

35. Regarding the overall response, the Commissioner again welcomes both the significant efforts of the Armenian authorities and their recognition of the importance of many of the issues set out above. She welcomes the fact that the Government of Armenia has committed very significant financial resources in order to meet the needs of displaced persons and that certain areas where support can be provided under the Council of Europe's Action Plan for Armenia (2023-2026) and the Action Plan on Protecting Vulnerable Persons within the context of migration and asylum (2021-2025) have already been identified.<sup>34</sup> At the same time, she emphasises that member states should also maintain a focus on providing financial support to ensure that the humanitarian needs of displaced persons and their host populations can be fully met. In this context, the Commissioner notes that a Refugee Response Plan (RRP) for Armenia covering the period from October 2023 until March 2024<sup>35</sup> was published in October. The total funding needs for the RRP amount to USD 97 million; however, as of 5 January 2023, only USD 36.6 million had been received, leaving a funding gap of approximately 62 per cent.<sup>36</sup> The Commissioner is concerned that in the light of global developments attention to the needs of those displaced from the Karabakh region is waning and that this could result in underfunding of humanitarian programmes. She urges member states not to lose their focus and their sense of urgency and to provide adequate funding.
36. Finally, the Commissioner notes that the involvement of civil society in the broadest sense will be instrumental to the successful implementation of the humanitarian and human rights response to the current displacement. She therefore encourages the authorities at all levels to look to establish close cooperation with them. Additionally, it is crucial that refugees from the Karabakh region themselves are closely consulted about any activities that impact them and that they can actively participate in any decision-making affecting them.

### **III. The need to ensure the right to return and other human rights of displaced persons**

37. In her 2021 Memorandum the Commissioner stressed that persons displaced by the conflict have the right to return to their homes or places of habitual residence under conditions of safety and dignity.
38. Regarding the most recent situation of Karabakh Armenians displaced in September and October 2023 and those who were stranded in Armenia during the blockade the Commissioner is aware that the issue of (permanent) return will be far from the minds of many refugees, whom the Commissioner found to be still in shock and focused on their immediate survival. The continued mistrust between communities that was heightened by the events that took place during the blockade and the military operation of 19 and 20 September as well as by continued hate speech (see section IX below on the need to combat hate speech...) currently leaves many refugees deeply doubtful that they can ever return to their homes. Nevertheless, it is important that this possibility – even if it seems hypothetical for most at the moment – is available to those that would choose this option in the short or longer term.
39. In this respect, the Commissioner notes that the International Court of Justice (ICJ) indicated to Azerbaijan on 17 November 2023 provisional measures to prevent the imminent risk of irreparable prejudice to rights which are the subject of judicial proceedings in relation to the enjoyment of the right to return to one's country. The ICJ ordered Azerbaijan, *inter alia*, to "ensure that persons who

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<sup>34</sup> Council of Europe Special Representative of the Secretary General on Migration and Refugees, "[Council of Europe to prepare package of measures in response to refugee influx in Armenia following Special Representative on Migration and Refugees' visit](#)", 30 October 2023.

<sup>35</sup> [Refugee Response Plan](#).

<sup>36</sup> [Refugee Funding Tracker](#), inter-agency portal for refugee aid programmes. Accessed 5 January 2023.



have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner”.<sup>37</sup>

40. The Commissioner has taken note of public statements made by the Azerbaijani authorities and the Commissioner for Human Rights (ombuds)<sup>38</sup> that the Azerbaijani authorities would ensure the safety of the Armenian population of the Karabakh region and respect their rights and freedoms,<sup>39</sup> take measures to reintegrate them<sup>40</sup> and facilitate their return.<sup>41</sup> To this end, Azerbaijan has taken a series of steps. These include creating a special working group of the government mandated to determine the legal status of the Karabakh Armenians and to solve the humanitarian, economic and social issues connected to their reintegration, initiating the registration of the Karabakh Armenians with the State Migration Service and publicising a plan on the reintegration of this group into the Karabakh region.
41. In Khankendi the Commissioner visited the local office of the State Migration Service of Azerbaijan and got acquainted with the authorities’ procedures to receive individual applications from the Karabakh Armenians as the initial step in their reintegration. Such a registration would allow them to benefit from public services, help meet their socio-economic and humanitarian needs and pave the way for obtaining citizenship in Azerbaijan. On 4 October, the Azerbaijan State News Agency [announced](#) that the State Migration Service had received 13 in-person paper applications and 98 online applications.
42. Azerbaijani authorities also reported having held several meetings with representatives of the Armenian residents at the end of September to discuss particular steps for their reintegration. On 2 October, the Presidential Administration of Azerbaijan published the reintegration roadmap. It includes measures in the legal, security, economic, social, cultural, educational and religious spheres as well as on governance and participation in public affairs.<sup>42</sup> In particular, the roadmap highlights that reintegration as well as citizenship and property issues are to be regulated on the basis of the Constitution of Azerbaijan and in accordance with the relevant domestic legislation. The document also indicates that residents are entitled to social benefits, social services and employment programmes for the Karabakh region and can be involved in the work of its governing structures and internal affairs bodies. According to the roadmap, municipalities are formed through elections, in line with Azerbaijan legislation. The text explicitly notes that the rights of residents to preserve and develop their culture, their freedom of religion and protection of cultural and religious monuments are guaranteed by the government of Azerbaijan, which would also create opportunities for the use of the Armenian language.
43. The Commissioner notes that discussions on possible return have become tied up with those on the legal status of Karabakh Armenians. The Azerbaijani authorities have opened up the possibility for Karabakh Armenians to apply for Azerbaijani citizenship. However, the Commissioner underlines that many years of mutual mistrust and high levels of fear will make it unlikely that many Karabakh Armenians will be willing to apply for Azerbaijani citizenship, especially since, under Azerbaijani law, dual citizenship is not allowed. The roadmap does not indicate the timeline or manner of implementation for each of the measures foreseen. In particular, given the absence of specific provisions concerning the use of the Armenian language in the current legislation of Azerbaijan, it is unclear what opportunities would be created by the authorities of Azerbaijan for the use of the Armenian language in the Karabakh region. The Commissioner urges the authorities of Azerbaijan to find flexible solutions, in particular as concerns the citizenship and legal status of Karabakh Armenians, and to implement their roadmap in accordance with their obligations under the European

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<sup>37</sup> International Court of Justice, [Application](#) of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), Request for the indication of provisional measures, order, year 2023, 17 November 2023, general list No. 180, paragraph 74.

<sup>38</sup> [Statement](#) of the Azerbaijani Ombuds on “ensuring and protecting the rights and freedoms of the Armenian-origin citizens living in Karabakh”, 29 September 2023.

<sup>39</sup> See President of the Republic of Azerbaijan, [event](#): “Ilham Aliyev participated in 2nd Azerbaijan National Urban Forum in Zangilan”, 29 September 2023.

<sup>40</sup> See Ministry of Foreign Affairs, [Post conflict rehabilitation, reconstruction and reintegration](#).

<sup>41</sup> See the formal undertaking of the Azerbaijani authorities mentioned in the ICJ [Application](#) of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), Request for the indication of provisional measures, order, year 2023, 17 November 2023, general list No. 180, paragraph 61.

<sup>42</sup> See [Statement](#) by the Presidential Administration of the Republic of Azerbaijan, 2 October 2023.

Convention on Human Rights and the Framework Convention for the Protection of National Minorities. Azerbaijan should also make progress in combating discrimination and ratify the Istanbul Convention.

44. The Commissioner reiterates her call on the Azerbaijani authorities to improve adherence to standards relating to freedom of expression, freedom of peaceful assembly and creating an enabling environment for human rights defenders, civil society activists and journalists in the specific context of returns, since durable returns are naturally also dependent on the general human rights situation. She calls once more on the Azerbaijani authorities to release civil society activists and journalists who have been imprisoned for their legitimate work, to refrain from using disproportionate force by police during assemblies, and to refrain from restricting in any way the work of human rights defenders, lawyers, and journalists.<sup>43</sup>
45. The human rights situation of internally displaced persons in Azerbaijan was addressed in the Commissioner's 2019 report on Azerbaijan. Throughout the visit to Fuzuli, Shusha, Malibayli village, Khojaly and Aghdam the Commissioner noted several of the long-lasting consequences of the conflict, including civilian infrastructure still in ruins and ongoing demining works. She could also see the reconstruction works in several places and how the return process has started within the framework of the government programme. In particular, when she visited Fuzuli she met with internally displaced families who have started to settle back in a newly constructed city that is still under development in view of further returns. She welcomes the steps taken by the Azerbaijani government to facilitate the return of internally displaced persons. As she was informed that the region is still heavily contaminated with mines and explosive remnants of war (see also section IV on the need for protection from mines and explosive remnants of war) and that much of infrastructure still needs to be put in place, the Commissioner hopes that all internally displaced persons who so wish will be able to return as soon as possible in safety and dignity to their homes or places of habitual residence.
46. More generally, as the sides are discussing the path to peace and reconciliation, the Commissioner wishes to reiterate that all persons displaced by the long-lasting conflict have the right to return to their homes or places of habitual residence, regardless of whether they have been displaced internally or across borders. Both Armenia and Azerbaijan have the obligation to ensure that any return is voluntary and that they are carried out under conditions of safety and dignity. Accurate information should be provided by all sides to candidates for return in order to ensure that their choice is informed.
47. Furthermore, the Commissioner underlines that the right to return is an individual right and that the choice whether or not to exercise it lies entirely with the individual. The obligation to ensure the effective exercise of this right is incumbent on the state to which return is foreseen, which must guarantee it vis-à-vis to each individual rights holder. As such, the Commissioner stresses that the right to return of one person cannot be made conditional upon the right of others. The right to return of persons in each of the groups of displaced persons should be secured independently and should not be based on reciprocity. Similarly, no person should be put under pressure by the state in which they currently reside to either exercise or forego the right to return. In this respect, the Commissioner reiterates her call to ensure that Karabakh Armenians can make free and well-informed choices about applying for citizenship, refugee status or any other status, such as residence permit, and that they should not be under pressure to opt for one or the other.
48. The Commissioner acknowledges that it could still take a long time for the conditions for a safe and dignified return to be established and that for many the issue of return on a permanent basis will remain theoretical. In light of this and the most recent events the Commissioner emphasises in particular the importance of promptly finding ways for Karabakh Armenians to access their homes or places of habitual residence, even if this does not imply residing there.
49. Another element highlighted by several interlocutors during the visit was the importance of being able to visit graveyards where loved ones are buried in order to pay their respects whenever they want and potentially for the purpose of preparing reburial elsewhere, if this is so decided by family

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<sup>43</sup> See the Commissioner's 2019 [report](#) on Azerbaijan and the more recent work of the Commissioner on Azerbaijan in general, which is available on the [country page](#) of the Commissioner's website. See also Human Rights Watch, "[Even More Journalists Arrested in Azerbaijan](#)", 5 December 2023.

members. Being able to access their homes and places of habitual residence for Karabakh Armenians could also present an opportunity to assess the situation on the ground, which could prove crucial in terms of making an informed decision about any permanent return and also help them to prepare for such a possible step.

50. Given the high level of fear and mistrust it is important that the Azerbaijani authorities provide clear security guarantees to Karabakh Armenians who want to access their former places of residence. Effective and flexible arrangements should be put in place to enable those who fled to enter and leave the Karabakh region through the Lachin corridor in safety and with dignity, including for short-term visits to collect their belongings and visit the properties left behind as well as to travel to gravesites and religious or cultural monuments. Such arrangements should also address security concerns.
51. Furthermore, the Commissioner stresses that all refugees and displaced persons have the right to have restored to them any housing and/or property of which they have arbitrarily or unlawfully been deprived or to be compensated if it is factually impossible to restore. This should be determined by an independent impartial tribunal, while the right to restitution should be considered as the preferred remedy for displacement.<sup>44</sup> In this respect, it is incumbent on the Azerbaijani authorities to ensure that property left behind by Karabakh Armenians is protected from looting, theft or being taken over.
52. In terms of both property restoration and compensation the Commissioner notes that the European Court of Human Rights has already found in relation to previous outbreaks of hostilities that both Azerbaijan and Armenia should “establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment”.<sup>45</sup> Regretfully, such property claims mechanisms have not yet been put in place in either member state and these cases remain under the supervision of the Committee of Ministers.<sup>46</sup> The Commissioner reiterates the urgency of establishing such mechanisms fully in line with the Court’s case law and the decisions of the Committee of Ministers and that such mechanisms should also come to encompass the situation of people who have been displaced in hostilities since the delivery of the Court’s judgments, including the most recent military action by Azerbaijan on 19 and 20 September. In this respect, she draws attention to the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons.<sup>47</sup>
53. The Commissioner further stresses that it is essential that all sides co-operate on the recovery, protection and sharing of documents and data related to the right of return. It is important that any documents and registries, such as civil registries, identity documents and property titles, wherever they are stored, be preserved and made accessible in order to enable people affected by the conflict to exercise their rights regardless of whether they have left, remained or returned already in the areas concerned.<sup>48</sup>
54. Finally, the Commissioner wishes to stress that the few ethnic Armenians who have stayed in the Karabakh region should benefit from all the protection under the European Convention on Human Rights and other international human rights standards binding upon Azerbaijan, including equality of treatment and freedom of movement and in particular the right to leave the country if they so wish.

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<sup>44</sup> See the United Nations [Principles](#) on Housing and Property Restitution for Refugees and Displaced Persons, also known as the Pinheiro Principles, 2005.

<sup>45</sup> [Sargsyan v. Azerbaijan](#), application No. 40167/06, judgment of 16 June 2015, paragraph 238; [Chiragov and Others v. Armenia](#), application No. 13216/05, judgment of 16 June 2015, paragraph 199.

<sup>46</sup> On the state of execution of these judgments, see [here](#) for [Sargsyan v. Azerbaijan](#) and [here](#) for [Chiragov and Others v. Armenia](#).

<sup>47</sup> Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 28 June 2005, E/CN.4/Sub.2/2005/17, Annex.

<sup>48</sup> See, for example, the ICJ order of 17 November, para 45, “a link exists between those rights [to leave and return] and the requested measure with respect to civil registries, identity documents and property titles and registers” and the Decision “The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, protect and preserve registration, identity and private property documents and records that concern the persons identified under subparagraph (1) and have due regard to such documents and records in its administrative and legislative practices”.

#### IV. The need for protection from mines and explosive remnants of war

55. In her 2021 Memorandum the Commissioner stressed the need to protect people from mines and explosive remnants of war. Mine contamination and explosive remnants of war represent one of the most challenging, resource consuming and far-reaching safety problem in the Karabakh region and significantly impedes the return of displaced persons and the rebuilding of the civilian infrastructure and economic growth of the region. In 2021, the Commissioner emphasised that the region was among the areas most contaminated with mines and explosive remnants of war in the world. There have been more landmine accidents per capita in the Karabakh region than elsewhere globally since the conflict in the early 1990s, mostly affecting the civilian population including children.<sup>49</sup> The Commissioner called on Armenia to hand over all maps to those in charge of the demining activities.<sup>50</sup> The Commissioner's interlocutors in Azerbaijan reported that the 2020 outbreak of hostilities has further exacerbated the situation with new contamination by unexploded ordnances and cluster munitions and new mines and improvised explosive devices being planted in the region up until September 2023.
56. According to the Azerbaijan National Agency for Mine Action (ANAMA), there have been 333 victims of mine and explosive ordnance related incidents since the signature of the 2020 trilateral statement with 65 individuals killed and 268 severely injured. The overall number of victims of mines and explosive remnants of war in the Karabakh region amounts to 3 412 individuals since early 1990s. ANAMA estimates that the overall contaminated area extends to 8 236 km<sup>2</sup> of which only 765 km<sup>2</sup> have been cleared to date. The President of Azerbaijan declared that, according to international experts' estimations, it would take nearly 30 years and 25 billion US dollars to complete the demining of the contaminated area.<sup>51</sup>
57. The Commissioner had a meeting with the Deputy Chairman of ANAMA's Board and was informed about the current pace of demining and related challenges, including the absence of comprehensive and reliable minefield maps in their possession, in particular for areas around former lines of contact. According to the Commissioner's interlocutors in Azerbaijan, only 25 per cent of the information communicated in the maps handed over by Armenia indicating landmines in the areas of Aghdam, Fuzuli and Zangilan has proven to be accurate, and this has an impact on the pace at which the relevant agencies can proceed in removing the mines and explosive remnants of war and make the areas safe for the return of internally displaced persons.
58. The demining process is funded mainly by the Government of Azerbaijan (up to 90-95%), with support provided by the United Nations Development Programme (UNDP), the European Union (EU) and the International Committee of the Red Cross (ICRC). The Commissioner's interlocutors reported that the demining capacity could be increased if additional material and technical and methodological support were provided, including specialised equipment and machinery as well as training and an expansion of awareness raising activities most notably for targeted groups among the civilian population.
59. The demining process naturally has a direct impact on the pace of return of displaced persons, rebuilding the civil infrastructure and more generally in terms of the economic growth of the region. As the return of internally displaced persons to Aghdam, Fuzuli and other areas has already begun (see section III above on the need to ensure the right to return) mines and explosive remnants of war continue to pose a serious risk to their health and life. While the relevant agencies are taking the necessary measures to shield civilians from mines and unexploded ordnance by marking the contaminated areas, putting up fences, setting buffer zones and carrying out risk education programmes and awareness raising campaigns, a return to normal life will only be possible after the complete decontamination of the affected territories.
60. In Aghdam the Commissioner met with several victims of mine explosions who informed her about the circumstances of their incidents and the challenges in their rehabilitation. These include access to special medical care, which for the most part is currently available in the medical establishments

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<sup>49</sup> See the Commissioner's 2021 Memorandum paragraph 24.

<sup>50</sup> See the Commissioner's 2021 Memorandum, paragraph 29.

<sup>51</sup> Azerbaijan State News Agency, [President Ilham Aliyev: Azerbaijan needs nearly 30 years and 25 billion US dollars to solve issues related to demining](#), 30 October 2022.



situated in Baku. The system of social disability specific payments provided by the government also seems to be ill-adapted to the actual needs of those concerned, amounting to 220-250 Azerbaijani Manats (AZN) per month.<sup>52</sup> The Commissioner calls on Azerbaijan to step up efforts to provide the required medical, social and psychological support and rehabilitation to the victims of mines and explosive remnants of war.

61. The Commissioner notes that mine contamination and explosive remnants of war related to the conflict is also a concern within the territory of Armenia, affecting the lives of people living in contaminated areas. The reported level of mine contamination in Armenia at the end of 2021 was estimated at 9.52 km<sup>2</sup> of mined area of which 3.01 km<sup>2</sup> was contaminated by anti-personnel mines. Four out of the eleven provinces in Armenia are reportedly contaminated by landmines. According to information collected by the Landmine and Cluster Munition Monitor, all known casualties amounted to 635 of which 129 were fatalities as of 2019. The Armenian Centre for Humanitarian Demining and Expertise (CHDE), which was designated as Armenia's national mine action authority (NMAA) in 2014, recorded a total of almost 0.65km<sup>2</sup> of cluster munition contaminated area. Prior to the 2020 conflict it was reported that Armenia had just one confirmed hazardous area containing cluster munition remnants located in Kornidzor (Syunik province). As a result of the 2020 conflict CHDE recorded new cluster munition contaminated areas, including unexploded M095 submunitions, in the Gegharkunik, Syunik and Tavush provinces bordering Azerbaijan.<sup>53</sup>
62. It was reported that the UNDP supported CHDE in conducting technical survey, clearance and land release in 2022. Following the armed hostilities that took place in September 2022, with the support of UNDP, CHDE conducted new non-technical survey in the Syunik, Gegharkunik and Vayots Dzor provinces to assess whether there was any new contamination. The Commissioner notes that the assessment of the extent of new cluster munition remnants contamination is ongoing and no date for the completion of clearance has been set.<sup>54</sup> A lack of sufficient funding is reported as a concern for the advancement of the process of clearance.
63. International humanitarian law requires that parties to armed conflict take particular care to minimise the indiscriminate effects of landmines<sup>55</sup> and take all feasible precautions to protect civilians from the effects of explosive remnants of war.<sup>56</sup> Those who use landmines must record their placement, as far as possible<sup>57</sup> and remove or otherwise render them harmless to civilians, or facilitate their removal at the end of active hostilities.<sup>58</sup> The Commissioner reiterates her call on the Armenian and Azerbaijani authorities to ratify international legal instruments, such as the United Nations [Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction](#), the [Convention on Cluster Munitions](#), and the United Nations [Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects](#) and its amended Protocol II and Protocol V.
64. In view of the ongoing peace process, and to ensure effective protection for the people residing in the areas affected by mines and explosive remnants of war, the Armenian and Azerbaijani authorities, with the support of the international community, should step up their efforts and co-operation on the issue of humanitarian demining, including in terms of identifying, marking, monitoring and clearing of areas contaminated by mines and explosive remnants of war and providing effective warnings to civilians about these hazards, as well as through the establishment of the appropriate channels for regular exchange of concrete and meaningful information on the location of mines and explosive remnants of war.

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<sup>52</sup> Equivalent to approximately 120-135 euros.

<sup>53</sup> Mine Action Review, [Clearing cluster munition remnants Report 2023](#), Armenia.

<sup>54</sup> Ibid.

<sup>55</sup> See ICRC, Customary International Humanitarian Law, 2005, Volume I: Rules, Rule 81. Also available online at: [ihl-databases.icrc.org/en/customary-ihl](http://ihl-databases.icrc.org/en/customary-ihl).

<sup>56</sup> Ibid., Rule 15.

<sup>57</sup> Ibid., Rule 82.

<sup>58</sup> Ibid., Rule 83.

## V. Persons detained in relation to the conflict

65. In her 2021 Memorandum the Commissioner called on Armenia and Azerbaijan to respect the human rights of all persons detained in relation to the conflict and in particular their right to life and the prohibition of torture and ill-treatment as well as to facilitate their release and return. The release of persons detained in connection with the conflict and the conditions of their detention and level of contact with their families were issues that the Commissioner raised with various interlocutors throughout her visit.
66. Numerous cases of individuals detained by the Azerbaijani authorities following the most recent military action were brought to the Commissioner's attention when in Armenia, including several representatives of the *de facto* administration of the Karabakh region. As indicated in the 2021 Memorandum, a number of Armenian citizens have been arrested and detained by the Azerbaijani military forces along the border for alleged illegal border crossings since the outbreaks of hostilities in 2020. The Commissioner noted that the status of these persons is disputed. The Armenian authorities consider them as prisoners of war and have asked for their immediate release, while the Azerbaijani authorities contend that these persons committed criminal offences and that, since they are not covered by the trilateral statement, they should serve their sentence in Azerbaijan. Based on the different information she received at the time of the visit the Commissioner was unable to determine the exact number of individuals detained in relation to the conflict. The circumstances surrounding the captivity of the individuals, whose names were indicated in different lists presented to the Commissioner, are yet to be fully established and remain unclear. In some cases, individuals who were reported as missing by their friends or relatives or whose families could no longer establish contact with after leaving the Karabakh region for Armenia or under other circumstances were presumed to be in captivity by some or were indicated as missing by others. The process of establishing the facts and clarifying the whereabouts of these individuals can be time consuming and the necessary information has yet to be collected or made available to the relevant authorities (see also section VI on missing persons).
67. The Commissioner was informed by the Ombuds of the Republic of Azerbaijan that she regularly visits all persons detained in relation to the conflict, facilitates their communication with family members and monitors the conditions of their detention. The ICRC also visits those detained in connection with the armed conflict, to monitor their conditions of detention, assess whether they are being treated in accordance with the applicable legal standards, and facilitate contacts with their families.
68. In this context, the Commissioner recalls that international humanitarian law protects persons deprived of liberty in connection to armed conflict. They must be treated humanely under all circumstances, and, as general rule, must be allowed to correspond with their families. International humanitarian law further provides that prisoners of war must be released and repatriated without delay after the end of hostilities;<sup>59</sup> similarly, internment of protected civilians under the Fourth Geneva Convention must cease as soon as possible after the close of hostilities, with the exception of those detained in the context of on-going penal proceedings, or in the course of completing a penalty.<sup>60</sup> In accordance with the Geneva Conventions, the ICRC must be permitted to visit prisoners of war and protected civilians, wherever they may be.<sup>61</sup>
69. On 7 December 2023, the Office of the Prime Minister of the Republic of Armenia and the Presidential Administration of the Republic of Azerbaijan announced in a joint statement the release of 32 Armenian military servicemen by Azerbaijan and 2 Azerbaijani military servicemen by Armenia.<sup>62</sup> The Commissioner encourages the authorities to build on this positive momentum and move towards achieving the completion of the process of release and return of prisoners of war and other captives in line with the relevant international humanitarian law and human rights standards. She would also like to receive updated information about those individuals who remain in detention after the most recent release.

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<sup>59</sup> [Geneva Convention](#) relative to the treatment of prisoners of war of 12 August 1949, Article 118.

<sup>60</sup> [Geneva Convention](#) relative to the protection of civilian persons in time of war of 12 August 1949, Article 133.

<sup>61</sup> Geneva Convention relative to the treatment of prisoners of war of 12 August 1949, Article 126; Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, Article 143.

<sup>62</sup> [Joint statement](#) of the Office of the Prime Minister of the Republic of Armenia and the Presidential Administration of the Republic of Azerbaijan.

## VI. Missing persons

70. The Commissioner notes that many families in both Armenia and Azerbaijan still do not know the fate and/or whereabouts of their relatives who went missing during the previous outbreaks of hostility in and around the Karabakh region. Assisted by international actors, both countries continue to make efforts to clarify the fate of over 4 500 people considered missing in Azerbaijan and in Armenia as a result of the conflict in the 1990s. As noted in the 2021 Memorandum, the number of missing persons has increased following the 2020 outbreak of hostilities. According to the ICRC, approximately 300 people were still missing from the conflict escalation in 2020, in January 2022. Since the ceasefire in November 2020, the remains of more than 1 700 people have been found and are in the process of being identified and returned to their families. The presence of landmines, explosive remnants of war and other security concerns have resulted in limited access to remote areas, which hinders the search and rescue operations for those persons reported missing by their family members.
71. The Investigative Committee of Armenia reports that over 200 servicemen and civilians were killed during Azerbaijan's military action of 19 and 20 September, while about 12 civilians and 30 servicemen are considered missing.<sup>63</sup> The Commissioner was informed by the President of the Investigative Committee during her visit to Armenia that the total estimated death toll and number of missing persons is complicated by the previously mentioned explosion at a fuel depot on the 25 September which, according to the records of the Investigative Committee, caused the deaths of at least 270 people. During the aftermath of the military action and the mass displacement of Karabakh Armenians, the remains of bodies presumably belonging to Karabakh Armenians were handed over by the ICRC to the Armenian authorities. Some Karabakh Armenians brought these remains directly with them when they arrived in Armenia.
72. The President of Armenia's Investigative Committee informed the Commissioner about the current work to identify the remains of the bodies and stressed that further assistance from the international community is required in order to establish the fate and whereabouts of more than 140 reportedly missing Armenian persons from the 2020 outbreak of hostilities. He noted that in the aftermath of the 2020 outbreak of hostilities Azerbaijan and the Russian peacekeepers provided only limited opportunities for the *de facto* authorities to carry out search operations in the region and that as of February 2022 they were prevented from continuing the search.
73. During her visit to Azerbaijan, the Commissioner was informed by displaced persons, witnesses and survivors and their families, victims of mine and family members of missing persons about several human rights issues flowing from the previous major outbreaks of hostilities that occurred from 1991 to 1994 and from 2020 up until the present. The Commissioner also met with the Deputy Head of the Working Group of the State Commission on Prisoners of War, Hostages and Missing Persons, which is responsible for the development of measures to search for missing persons and supervises their implementation. It also collects information about citizens of Azerbaijan who are missing and is responsible for the relevant database for the registration and systematisation of this information. The Deputy Head of the Working Group informed the Commissioner about its continuing work and the fact that it will need enhanced co-operation from the Armenian authorities and more support generally to make progress on identifying the remains and clarifying the fate and whereabouts of missing persons.
74. The work of international actors, in cooperation with the relevant national authorities, has been and remains crucial to clarifying the fate of missing persons throughout the region and to providing answers to the families. In this respect, the Commissioner notes that the ICRC supported exhumation work at three sites in Azerbaijan between January and June 2023. The ICRC provided technical expertise, contacted 996 families of missing persons and provided 91 referrals for health, legal and administrative issues as well as psychosocial support.<sup>64</sup> The ICRC also works to strengthen the forensic capacity of local stakeholders and to develop the legal frameworks supporting the families of the missing, whilst facilitating the transmission of information on missing persons between the sides.

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<sup>63</sup> [Information](#) reported by the MFA Spokesperson on 30 October 2023.

<sup>64</sup> ICRC, [Azerbaijan: Activity highlights for January–June 2023](#), August 2023.

75. In 2021, the International Commission on Missing Persons (ICMP) assisted Armenia with strengthening the DNA laboratory of the Ministry of Health through DNA identification and capacity building as well as through the provision of technical support as a first step in helping the country to account for missing and disappeared persons. The ICMP continued to perform DNA testing for the Ministry of Health's laboratory in 2022 and conducted separate assessments of the overall missing persons process and related capacities in both Armenia and Azerbaijan in 2023. The ICMP has proposed concrete measures to the parties aimed at improving the domestic capacities. This includes the creation of a secure central database on missing persons in each country to manage data collection, to locate and excavate suspected illicit burial sites, support identification and family reunification through DNA testing and other forensic processes and transfer knowledge and expertise on case management, data processing and outreach to families.<sup>65</sup>
76. The Commissioner observes that both countries have established national mechanisms to address the issue of the search for and identification of missing persons and commends their efforts to address the issue of missing persons over the past years. However, as noted by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, difficulties accessing conflict affected areas and deficient cooperation between the relevant authorities has impeded progress in this area. The passage of time has also undermined access to witness testimony and information about the burial sites of missing persons who have lost their lives.<sup>66</sup>
77. During her visit to Armenia and Azerbaijan the Commissioner noted that the expectations of the families of missing persons from both past and more recent outbreaks of the conflict remain high. Experiences from the past decades in Europe have shown how the issue of missing persons tends to become a long-term issue that leads to tremendous suffering and human rights violations of the relatives. The Commissioner refers to her previous recommendations in this field stemming from her 2021 Memorandum and reiterates in particular the need to place the families of missing persons, their legal and practical needs and their right to know the truth at the centre of all actions taken by the relevant authorities when addressing the consequences of conflict in the region.
78. As stressed in the 2021 Memorandum, all parties to the conflict are under the obligation, under customary international humanitarian law, to make their best efforts to search for and to facilitate the search for persons reported missing as a result of a conflict and take all possible measures to ensure that the mortal remains of missing persons are located, collected, identified, and disposed of in a respectful manner. Mutilation of dead bodies is prohibited, and the parties must take all possible measures to prevent the dead from being despoiled. Their graves must be respected and properly maintained. If the party to which the deceased belonged to, or their next of kin, request to have the remains returned, the parties must endeavour to facilitate such a return, along with the deceased's personal effects. Such searches should continue until all feasible measures to account for the missing persons have been exhausted and should involve victims' associations and non-governmental organisations working on the issue of missing persons. Failure to disclose information on the fate and whereabouts of missing persons and refusal to hand over the remains of the deceased can amount to enforced disappearance.
79. The Commissioner notes that more engagement is needed by both sides to step up and facilitate search operations and promote cooperation, including by establishing an international coordination mechanism on missing persons that could be chaired by a neutral intermediary and create a common database and share information related to mass graves and resulting from exhumation. Such international mechanism would increase the chances of classifying the whereabouts of missing persons, and the location and identification of their mortal remains.<sup>67</sup> The Commissioner invites the authorities of both countries to follow the guidance of international actors, such as the ICRC and the ICMP, in this respect. The Office of the Commissioner Issue Paper on 'Missing persons and victims of enforced disappearance in Europe' provides detailed recommendations to Council of Europe

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<sup>65</sup> [ICMP Annual Report 2022](#).

<sup>66</sup> United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on his [visit](#) to Armenia (16 to 24 November 2023).

<sup>67</sup> See for examples of such mechanisms, *Establishing mechanisms to clarify the fate and whereabouts of missing persons: A proposed humanitarian approach*, Monique Crettol, Lina Milner, Anne-Marie La Rosa and Jill Stockwell, *International Review of the Red Cross* (2017), 99 (2), pp. 600-606. Available here: [international-review.icrc.org/sites/default/files/irrc\\_99\\_905\\_8.pdf](https://www.icrc.org/sites/default/files/irrc_99_905_8.pdf).



member states on various aspects of looking into and acting on all cases of missing persons and enforced disappearance, which can serve as useful guidance in the current context.<sup>68</sup>

## **VII. The need to ensure accountability for human rights and international humanitarian law violations through a victim centred approach**

80. Council of Europe member states have the legal obligation to combat impunity as a matter of justice for the victims, as a deterrent to future human rights violations and in order to uphold the rule of law and public trust in the justice system.<sup>69</sup> In her 2021 Memorandum the Commissioner addressed numerous allegations of serious human rights violations that occurred prior to its publication and recommended prompt and independent investigations into these allegations. Since the publication, there have been further allegations of serious human rights violations including in relation to the circumstances of the mass displacement of Karabakh Armenians (see section I on the context of the displacement of Karabakh Armenians to Armenia).
81. The Commissioner notes that the military action of 19 and 20 September differs from previous outbreaks of hostilities in and around the Karabakh region for a number of reasons. These include its short duration, the actors present in the field and the specific circumstances under which the crisis unfolded, as described in section I. In particular, the lack of access for independent journalists and human rights monitoring mechanisms and NGOs in the region has led to very limited verified evidence on acts that could constitute breaches of international humanitarian law as well as serious human rights violations. In this context, during the visit to Armenia, the Commissioner received reports of major disruptions to internet connectivity and telecommunication in the Karabakh region on the days around the military action, limiting first-hand reporting and preventing communication among the population. Furthermore, NGOs that interviewed Karabakh Armenians immediately upon their arrival in the Syunik region reported that some had indicated that they were either forced by the Azerbaijani authorities to delete their phone data before crossing the border to Armenia or had opted themselves to delete it out of fear of undermining their chances of departure.
82. The Human Rights Defender of Armenia (Ombuds) shared with the Commissioner the preliminary report on the results of the fact finding activities conducted from 24 to 30 September 2023 at the places of registration for displaced persons. On the basis of the information collected through various interviews, reports and monitoring of the media outlets and social media the Ombuds referred to allegations of, among others, the targeting of civilian objects and infrastructure, including residential buildings, schools and ambulances, on 19 and 20 September. She reported that the number of wounded civilians exceeded 40 persons, including 13 children, while there were 10 confirmed civilian deaths, including 5 children as of September 20. However, the Ombuds noted that information about casualties was difficult to obtain because of the paralysis of the *de facto* authorities at that time. The Ombuds also referred to alleged violence and signs of torture/mutilation among the reported 14 dead bodies that were transferred to Armenia, which is yet to be confirmed by forensic examination.<sup>70</sup>
83. As concerns investigations into developments around the Karabakh region that occurred in December 2022 and in 2023, the President of the Investigative Committee of Armenia informed the Commissioner during the visit to Armenia about the opening of investigations into the circumstances of the closure of the Lachin corridor and its impact on the rights of the population as well as allegations of breaches of international humanitarian law and serious human rights violations having taken place on 19 September.<sup>71</sup>
84. During the visit to Azerbaijan, the Commissioner enquired about any progress on investigating breaches of human rights and international humanitarian law committed in relation to the conflict

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<sup>68</sup> Office of the Council of Europe Commissioner for Human Rights, [Issue Paper](#), Missing persons and victims of enforced disappearance in Europe, 2016.

<sup>69</sup> Council of Europe Guidelines on Eradicating Impunity for Serious Human Rights Violations, H/Inf (2011)7, adopted by the Committee of Ministers on 30 March 2011.

<sup>70</sup> The Human Rights Defender of the Republic of Armenia, [Preliminary report on the results of fact finding activities conducted at the places of registration of forcibly displaced people from Nagorno-Karabakh](#), 10 October 2023.

<sup>71</sup> Investigative Committee of Armenia, [newsfeed](#) from General Military Investigative Department, "Criminal proceedings were initiated with regard to the facts of committing genocide by the military-political leadership of Azerbaijan", 20 September 2023.

including as concerns the most recent events. The Commissioner was later informed that on 7 November an Azerbaijan Military Court sentenced an ethnic Armenian from the Karabakh region to 15 years of imprisonment for war crimes committed during the first outbreak of hostilities from 1991 to 1994. He has been held in Azerbaijan since July, when he was detained by Azerbaijani border guards during a medical evacuation from the Karabakh region to Armenia organised by the ICRC.<sup>72</sup>

85. The European Court of Human Rights has been presented with cases relating to acts committed in the context of the conflict against both sides. The Commissioner notes in particular that Azerbaijan and Armenia lodged interstate applications before the European Court of Human Rights on allegations of widespread violations of the Convention that took place between 27 September 2020 and 10 November 2020 in six cases. Four of these cases were lodged by Armenia against Azerbaijan and two by Azerbaijan against Armenia.<sup>73</sup> Both countries have also instituted proceedings before the International Court of Justice with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>74</sup>
86. The Commissioner acknowledges the ratification by Armenia of the Rome Statute of the International Criminal Court (ICC), which will enter into force in February 2024.<sup>75</sup> She notes that Armenia retroactively accepted the ICC jurisdiction since 10 May 2021 within the limits of rules governing its jurisdiction under the ICC statute.<sup>76</sup> The ICC is complementary to national courts, meaning that it acts when national courts are either unwilling or unable to investigate and/or prosecute crimes under its jurisdiction. The Commissioner calls on Azerbaijan to ratify the Rome Statute, because this step would represent a strong signal of commitment to prevent and prosecute any serious human rights violations.
87. The Commissioner reiterates that all allegations of breaches of international humanitarian law and serious human rights violations reported in relation to the conflict in and around the Karabakh region need to be effectively and promptly investigated in order to bring the perpetrators to justice and if found guilty after a fair independent and impartial trial to be sentenced and punished. This includes allegations relating to the circumstances of the blocking of the Lachin corridor, the mass displacement of Karabakh Armenians and the military operation of 19 to 20 September as described in section I.
88. In this respect, the Commissioner notes that since the 2021 Memorandum no notable progress has been reported by the two countries on investigating breaches of international humanitarian law and serious human rights violations in relation to the conflict in and around the Karabakh region. She reiterates that impunity for serious human rights violations is a major impediment to building lasting peace and reconciliation. The Commissioner regrets the continued pattern displayed on both sides of the conflict whereby responsibility for any past or ongoing human rights abuses, as observed in the 2021 Memorandum, is attributed to the opposite side. The Commissioner has repeatedly stressed the need to address shortcomings and ensure a genuinely independent and impartial review by the judiciary in Armenia and Azerbaijan of complex human rights violations, included those committed by members of their own forces. In this context, she reiterates that further steps should be taken to establish individual legal responsibility for the serious abuses committed. This should be done through an independent and credible process.
89. Indeed, the Commissioner stresses that only the fair and impartial application of justice will serve the interests of the victims and strengthen respect for human rights and international humanitarian law. While international humanitarian law both allows for and requires investigations conducted into war crimes committed by combatants of the adverse party, the Commissioner stresses again the legal

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<sup>72</sup> See ICRC, [Armenia/Azerbaijan: Medical patient arrested during transfer through Lachin Corridor](#), 29 July 2023.

<sup>73</sup> European Court of Human Rights, [Azerbaijan v. Armenia \(No. 47319/20\)](#), [Azerbaijan v. Armenia \(III\) \(No. 39912/22\)](#), [Armenia v. Azerbaijan \(No. 42521/20\)](#), [Armenia v. Azerbaijan \(II\) \(No. 33412/21\)](#), [Armenia v. Azerbaijan \(III\) \(No. 42445/21\)](#) and [Armenia v. Azerbaijan \(IV\) \(No. 15389/22\)](#).

<sup>74</sup> See the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Azerbaijan v. Armenia*), 23 September 2021, [press releases](#), and Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), [press releases](#), 16 September 2021.

<sup>75</sup> Permanent Mission of Armenia to the United Nations, [Armenia's Instrument of Ratification of the ICC Rome Statute Deposited at the UN](#), 14 November 2023.

<sup>76</sup> See ICC [Press release](#), Armenia joins the ICC Rome Statute, 17 November 2023.

obligation of all parties to an armed conflict to impartially bring to account those responsible for international crimes, regardless of their identity or affiliation.

90. The interests of all victims of the conflict in and around the Karabakh region and their families should be the primary consideration guiding any accountability efforts, from the start of an investigation to ensuring proper reparation. The Commissioner stresses that victims have the right to reparation, which includes redress, compensation, rehabilitation and just satisfaction in line with the Council of Europe Guidelines on Eradicating Impunity for Serious Human Rights Violations and the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law as well as many other instruments of international law. Adequate effective and prompt reparation helps restore the human dignity of victims and enables them to rebuild their lives and livelihoods. Treating victims, their families and witnesses of crimes with sensitivity and compassion, ensuring their protection and caring for their needs in the context of investigations should be another priority.
91. The Commissioner underscores that a comprehensive approach to dealing with the past and addressing the serious human rights violations committed in the context of the conflict in and around the Karabakh region continues to be lacking. In addition to access to justice, progress is crucial in the field of truth seeking, reparation and guarantees of non-repetition. This includes measures to ensure restitution, compensation, rehabilitation, satisfaction and the guarantee of non-repetition.<sup>77</sup> In line with the recent call by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the authorities in both countries should foresee the implementation of independent mechanisms of truth-seeking, including fact finding mechanisms, in consultation with the affected populations and victims and record the different instances of human rights violations referred to in these Observations.<sup>78</sup> Such mechanisms should also be established under the auspices of the international community in order to ensure impartiality and trust among all parties as well as to prevent any reoccurrence of the violence.<sup>79</sup>

#### **VIII. Access for and the presence of human rights actors in the Karabakh region**

92. In her 2021 Memorandum the Commissioner recommended putting in place effective and flexible modalities of access in order to enable humanitarian and human rights actors to reach out to all those in need of urgent humanitarian assistance and human rights protection. The impediments to access in the region had been on the rise in 2022 and 2023, culminating in the blocking, including for humanitarian relief efforts, of the road along the Lachin corridor (see above paragraphs 12-13).
93. Obstacles to access for human rights missions to the region have not yet been fully lifted and access to settlements situated in remote areas is also limited due to the presence of landmines, explosive remnants of war and other security concerns. However, there have been important developments since October 2023 when the United Nations mission visited the Karabakh region to assess humanitarian needs. The Commissioner also travelled to the region within the framework of her visit to Azerbaijan in October 2023. This was the first time in decades that a human rights mission of this kind was able to do so. The Commissioner believes that this visit should set the stage for periodic visits by other international human rights actors and missions, including the Council of Europe institutions and monitoring bodies in accordance with their respective mandates and in full compliance with the relevant state obligations. Security related concerns that could impede their travel to certain geographical areas should not prevent their access to the region as such. The Commissioner considers that an international human rights presence should be established in the region to independently monitor the evolving human rights situation, including in view of anticipated voluntary returns. Other actors playing a key role in post-conflict recovery and reconciliation efforts should also have access to the region, including independent media, journalists and civil society organisations.

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<sup>77</sup> See the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005.

<sup>78</sup> See the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, [preliminary observations](#) on his visit to Armenia (16 to 24 November 2023).

<sup>79</sup> Ibid.

## **IX. The need to combat hate speech, promote peaceful coexistence and initiate steps towards reconciliation**

94. Since the 2021 Memorandum, public debate has continued to be marked by highly toxic, hostile and intolerant communication and a high level of hate speech against Armenians in Azerbaijan and against Azerbaijanis in Armenia. This has been fuelled by inflammatory political rhetoric and displays of mutual distrust as well as by instances of biased media reporting, including when covering judicial trials, the spreading of images depicting atrocities and derogatory comments made by members of the general public on social media.
95. In December 2021, the International Court of Justice delivered an Order on Armenia's request for the indication of provisional measures whereby, among others, it indicated to Azerbaijan to take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin.<sup>80</sup> In September 2022, the United Nations Committee on the Elimination of Racial Discrimination, while noting the efforts of Azerbaijan to investigate some incidents of hatred, expressed concern about, among others, the "incitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including on the Internet and social media, as well as by public figures and government officials, and the lack of detailed information on investigations, prosecutions, convictions and sanctions for such acts".<sup>81</sup>
96. In June 2023, the European Commission against Racism and Intolerance (ECRI) stressed that one of the ethnic and linguistic minorities most targeted by hate speech in Azerbaijan is Armenians.<sup>82</sup> ECRI noted that before, during and after the 2020 outbreak of hostilities the public discourse had been marked by "the use of inflammatory rhetoric in public statements by politicians, including at the highest political level, and other public figures, as well as by the wide dissemination of hateful and dehumanising content, in traditional and social media".<sup>83</sup> While understanding the suffering of the Azerbaijani population, including that of the many internally displaced persons, in the context of the long-standing conflict and confrontations, ECRI considers that efforts should now focus on promoting sustainable peace and genuine reconciliation between the affected populations.<sup>84</sup>
97. At the same time, ECRI also noted that in Armenia limited public awareness of what constitutes hate speech has led to some confusion about what can be seen as acceptable debate in politics and in the media, including online. It also noted the insufficient action taken to prevent and sanction hate speech.<sup>85</sup> ECRI stressed that this also applies to hate speech offensively referring to 'Azeris' and 'Turks', which is deeply rooted in resentment in the context of the long-standing conflict and confrontations with Azerbaijan. ECRI added that such adversarial narratives are used as tools against political opponents in order to exacerbate internal divisions and hinder any peace negotiations. It reported that anti-Azeri/anti-Turk rhetoric was growing in the political sphere.<sup>86</sup>
98. The Commissioner notes that the military action of 19 and 20 September was also accompanied by hate speech and the glorification of violence. As mentioned in paragraph 16, the dissemination of audio-visual content on Azerbaijani media platforms and social networks that depict images of past atrocities, violence and hatred towards Armenians has contributed to instilling fear among the population of the Karabakh region and perpetuates animosity between the people living on the different sides of the dividing lines. The Commissioner was informed that in the immediate aftermath of the military action pictures of Karabakh Armenians, including children, posted online by their family members in their quest to reunite after the sudden and chaotic displacement to Armenia and the explosion at the fuel depot, were disseminated on Azerbaijani social media and made the object of violent hate speech and in the case of women and girls of sexist hate speech, including threats of sexual abuse and rape.

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<sup>80</sup> [Press release 2021/34](#), Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), 7 December 2021.

<sup>81</sup> United Nations Committee on the Elimination of Racial Discrimination, [Concluding Observations on the combined tenth to twelfth periodic reports of Azerbaijan](#), CERD/C/AZE/CO/10-12, 22 September 2022.

<sup>82</sup> ECRI, Fifth [report](#) on Azerbaijan, adopted on 29 March 2023, published on 21 June 2023, p.15.

<sup>83</sup> Ibid. p.16.

<sup>84</sup> Ibid. p.17.

<sup>85</sup> ECRI, Fifth [report](#) on Armenia, adopted on 29 March 2023, published on 21 June 2023, p.13.

<sup>86</sup> Ibid. p. 15.



99. Rampant and long-standing impunity when it comes to hate speech and hate crimes and the absence of condemnation by the public authorities of such hatred represents a major source of concern for the Commissioner. Tolerance and reconciliation between communities is essential to preventing future hatred and violence. Political leaders bear specific responsibility in this regard.<sup>87</sup> The Commissioner accordingly reiterates her call on the authorities in both countries to take all necessary actions against any use of hate speech and to promote mutual understanding and trust, in line with Council of Europe standards and guidance in this area provided by its bodies.<sup>88</sup> In this respect, the Commissioner welcomes the fact that promoting tolerance and non-discrimination has been identified as one of the areas for co-operation within the Council of Europe Action Plan on Azerbaijan for 2022-2025 and the Council of Europe Action Plan on Armenia for 2023-2026.<sup>89</sup> She calls on the authorities of both countries to ensure unwavering and continuous support for the implementation of the co-operation activities proposed in the respective Council of Europe action plans.
100. The Commissioner reiterates the importance of engaging in confidence building measures between the two countries. Accordingly, she welcomed the four meetings organised by the Council of Europe involving civil society representatives, young journalists and media professionals from Armenia and Azerbaijan in 2022 and 2023.<sup>90</sup> They were focused on discussing ways to develop young journalists' skills on balanced reporting on sensitive issues with the aim to restore dialogue between the societies of both countries. As stated in the 2021 Memorandum, media can play a crucial role in promoting understanding for all the victims of the conflict and in encouraging tolerance and reconciliation between communities.<sup>91</sup> To avoid fanning hostility and hatred media working in the conflict affected areas and/or reporting on the conflict, its origins and consequences should ensure the highest level of ethical reporting, provide objective and unbiased information and avoid stigmatised and prejudiced characterisation. The Commissioner therefore invites the authorities of both countries to continue their engagement in such important confidence building measures and to explore possibilities to widen their range and stakeholder involvement.
101. The Commissioner also encourages Armenia and Azerbaijan to consider using sport as a confidence building measure. Sport can bring people together, break down barriers and build trust and community spirit for future generations. It is a powerful tool for building interethnic relations and friendships between countries and across their borders.
102. National human rights structures, including the ombudsman institutions,<sup>92</sup> should lead by example in this process towards peaceful coexistence and reconciliation and the Commissioner encourages the two ombudsman institutions to participate in this process to further build trust and confidence among both societies. The Commissioner conveyed this message to both ombuds during the visit and is ready to continue the dialogue and work together with them on this matter.

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<sup>87</sup> Parliamentary Assembly of the Council of Europe, Resolution 2275 (2019), The role and responsibilities of political leaders in combating hate speech and intolerance, adopted on 10 April 2019.

<sup>88</sup> See, among others, European Court of Human Rights, *Gündüz v. Turkey*, Decision of 13 November 2003; Parliamentary Assembly of the Council of Europe, Resolution 2275 (2019), The role and responsibilities of political leaders in combating hate speech and intolerance, adopted on 10 April 2019; ECRI General Policy Recommendation n°15 on Combating Hate Speech; ECRI, Statement on preventing and combating ultra-nationalistic and racist hate speech and violence in the context of confrontations and unresolved conflicts, adopted by ECRI at its 85th plenary meeting (30-31 March 2021).

<sup>89</sup> [Council of Europe Action Plan for Azerbaijan 2022-2025](#), adopted by the Committee of Ministers on 16 February 2022; [Council of Europe Action Plan for Armenia 2023-2026](#), adopted by the Committee of Ministers on 3 November 2022.

<sup>90</sup> On [16-19 May 2022](#), within the framework of the Confidence-Building Programme, the Council of Europe organised an exploratory meeting on "Confidence-building measures to restore dialogue between civil societies of Armenia and Azerbaijan" held in Venice, gathering Armenian and Azerbaijani participants from civil society, media professionals and educators and experts from other member states. Civil society representatives from Armenia and Azerbaijan met on [8-9 December 2022](#) in Tbilisi at the initiative of the Council of Europe to discuss ways to develop young journalists' skills on balanced reporting on sensitive issues. On [31 January 2023](#), journalists and professors of journalism from Armenia and Azerbaijan, Georgia and Israel met in Paris to discuss ways to develop a training curriculum for young journalists and journalism students on balanced reporting on sensitive issues. The working group on the preparation of such a framework curriculum met in Istanbul on [30-31 March](#).

<sup>91</sup> See the Commissioner's 2021 Memorandum, paragraphs 80-81.

<sup>92</sup> See, among others, European Network of National Human Rights Institutions, *Guide on the Role of National Human Rights Institutions in (Post-)Conflict Situations*, September 2020.

103. To make progress towards long-lasting peace for all people affected by conflict in the region the Commissioner stresses the urgency of genuine dialogue between the authorities of Armenia and Azerbaijan. In this respect, the peace negotiations initiated with the aim of signing a bilateral peace agreement in the near future are a source of hope. It is essential that hatred and violence are left behind for good and decisive progress is achieved at the negotiating table. The international community can have a constructive role in assisting the parties to the conflict to move forward on the path towards reconciliation.
104. The Commissioner welcomes the recent expression of good will announced on 7 December 2023 whereby the countries promised “concrete measures” to normalise relations and reaffirmed their intention to “sign a peace agreement”. They also agreed on the release of prisoners (see above paragraph 69). In the joint statement the two countries stressed that they saw a “historical chance” for the “long-awaited peace”.
105. This peace process represents a historic momentum that must be seized responsibly and in good faith to ensure the safety and rights of the populations of Azerbaijan and Armenia and future generations as well as, more broadly, a more peaceful and prosperous future for the whole South Caucasus region. The Commissioner notes that Armenia and Azerbaijan have agreed on the basic principles for a peace agreement. She emphasizes that effective human rights protection of all populations affected by the conflict is key to the success of the peace process and calls on the authorities to ensure a focus on human rights protection in their talks and to establish strong human rights safeguards concerning all the fields addressed in these Observations and beyond.
106. Peace negotiations should be accompanied by real and concrete efforts to deal with the past, including state led good faith processes of memorialisation about the conflict. In the 2021 Memorandum the Commissioner stressed how durable solutions must encompass a holistic approach, in accordance with states’ obligations under international law. Ensuring memory of the past is also crucial as responding adequately to past crimes can help prevent their reoccurrence.<sup>93</sup> This includes implementing active and multidimensional memory policies, developed in compliance with human rights, which make a meaningful contribution to countering the denial of atrocities and the revisionism of the past.<sup>94</sup> Memory initiatives can range from literature, school textbooks, the arts and academia to the work of truth commissions, state apologies and the observance of days to commemorate disappeared persons.
107. Unfortunately, so far, memory initiatives in Armenia and Azerbaijan, including memorials and history teaching, have tended to denigrate the other party through the use of discriminatory language that feeds hostility and resentment and undermines progress in any envisaged peace process. In this regard, the Commissioner was relieved to see that the Azerbaijani authorities had ordered the removal of dehumanising scenes involving mannequins of Armenians soldiers from the Baku Trophy Park that opened in April 2021.<sup>95</sup> She also acknowledges Armenia’s membership of the Observatory on History Teaching in Europe in November 2020. History education is an important factor of change and a widely recognised tool for transitional justice. The Observatory plays an important role in this context by promoting cooperation between education authorities, with the primary objective of fostering dialogue, facilitating mutual agreements and contributing towards peaceful relations among member states.<sup>96</sup> The Commissioner strongly encourages the authorities of Azerbaijan to take steps towards securing its membership.
108. The Commissioner underscores the important role that civil society plays in memory policies and reconciliation processes. She reiterates her calls upon the authorities to create an enabling environment for NGOs or civil society representatives engaged in cross-border initiatives to work

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<sup>93</sup> United Nations Special Rapporteur on the promotion of truth, justice reparations and guarantees of non-recurrence, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice’, A/HRC/45/45, 9 July 2020.

<sup>94</sup> Ibid.

<sup>95</sup> OC Media, “[Azerbaijan removes mannequins and helmets from military trophy park](#)”, 15 October 2021. See also the Council of Europe Commissioner for Human Rights [Letter](#) to the President of Azerbaijan, published on 27 April 2021.

<sup>96</sup> [Resolution](#) CM/Res(2023)6 confirming the establishment of the Enlarged Partial Agreement on the Observatory on History Teaching in Europe.

without fear, pressure, intimidation or retaliation for their human rights work. The Commissioner reiterates the need to integrate a gender perspective into any conflict prevention and resolution, peacekeeping and peace building activities.<sup>97</sup> Finally, investing in a culture of peace should also foresee the inclusion of the youth, as agents of change, to the greatest possible extent in the promotion of peaceful and inclusive societies.

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<sup>97</sup> Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, adopted by the Committee of Ministers on 30 June 2010.