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Analysis



# NAGORNO- KARABAKH: REFUGEE RIGHT OF RETURN

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*Prepared by the  
Public International Law & Policy Group  
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## **Refugee Right of Return Rapid Response Analysis**

*October 2023*

### **Statement of Purpose**

The purpose of this Rapid Response Analysis is to lay out the right of Armenians who fled from Nagorno-Karabakh as a result of the Azeri government's military offensive in September 2023 to return to their territory of origin (Nagorno-Karabakh). The Analysis also sets out the right of Armenian refugees to self-determination upon their return to Nagorno-Karabakh.

### **Brief History of the Conflict**

Nagorno-Karabakh is historic Armenian territory which, in different eras, has formed part of Armenia. Its Armenian roots reach back to before the first millennium BC. In 1918, 330,000 Armenian people lived within the then-existing borders of Nagorno-Karabakh. They made up 95 percent of its population, with 3 percent Azerbaijanis and 2 percent others. As a result of the Turkish-Azerbaijani aggression in 1918-1920 aimed at total cleansing of the Armenians of Nagorno-Karabakh, an estimated 20 percent of all Armenians were killed.

The violent conflict in the Caucasus ended with the Sovietization of the Caucasian republics. On November 30, 1920 the Sovietized government of Azerbaijan recognized Nagorno-Karabakh as a part of Armenia, but then reversed this decision several days later.

On March 16, 1921, a treaty between Turkey and Soviet Russia determined that Nagorno-Karabakh and Nakhichevan were to be under the authority of Soviet Azerbaijan. On June 12, 1921 the government of Soviet Armenia declared Nagorno-Karabakh as its integral part on the basis of the repeatedly expressed will of its population. On July 5, 1921 the Caucasus Bureau of the Russian Communist Party adopted a political decision to annex Armenian-populated Nagorno-Karabakh to Soviet Azerbaijan.

In 1923, Nagorno-Karabakh had a population of almost 158,000, 95 percent of which were Armenians. On July 7, 1923, Soviet Azerbaijan's Revolutionary Committee resolved to dismember Karabakh and to create on part of its territory the Autonomous Region (oblast) of Nagorno-Karabakh.

This separation became a subject of continual protest -- from both Nagorno-Karabakh and Armenia -- which was expressed periodically in the form of petitions to Moscow. Furthermore, in September 1966, the Soviet Armenian leadership petitioned the central authorities to examine the question of returning Karabakh to Armenia. In addition to the petitions, by the late 1960s there were mass protests held in Karabakh, which led to a large-scale crackdown on Armenian activists.

The most recent struggle over Nagorno-Karabakh began in February of 1988 when the Karabakh Armenians, encouraged by perestroika and glasnost, began to take steps to break free of Azerbaijani control. The response within Azerbaijan was brutal acts of violence organized by Azerbaijani nationalists with the tacit support of the secret police directed against the Armenian civilian population. In 1989, according to the official USSR census, Nagorno-Karabakh had 189,000 inhabitants, of whom 76.9 percent were Armenians and 21.5 percent were Azerbaijanis.

In 1991, Nagorno-Karabakh declared independence.<sup>1</sup> Since then, despite multiple periods of violence and wars involving the self-declared Artsakh (Nagorno-Karabakh) republic, Armenia, and Azerbaijan, the territory has operated as a de facto state. Internationally, it was recognized as part of Azerbaijan.

In 2020, a 44-day war broke out between Azerbaijan, Nagorno-Karabakh, and Armenia. As a consequence of the conflict, Azerbaijan assumed control of the territory surrounding Nagorno-Karabakh as well as some territory of Nagorno-Karabakh proper. In November of 2020, Russia mediated a ceasefire, which provided for the return of Agdam, Kalbajar, and Lachin to Azerbaijan (excluding the Lachin corridor, which connected Armenia to Stepanakert, the capital of Nagorno-Karabakh). Russian peacekeeping troops were deployed to ensure the terms of the ceasefire.

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<sup>1</sup> See HAIG E. ASENBAUER, ON THE RIGHT OF SELF-DETERMINATION OF THE ARMENIAN PEOPLE OF NAGORNO KARABAKH 98 (1995).

## **Context: Forced Displacement of Armenians from Nagorno-Karabakh**

In December of 2022, Azerbaijan instituted a blockade of Nagorno-Karabakh by closing the Lachin corridor, a humanitarian corridor which connects Nagorno-Karabakh to Armenia and the region. During the blockade, the Azeri government deliberately targeted civilian infrastructure that supplies fuel, electricity, and internet. Additionally, it seized the territory surrounding the Lachin corridor establishing military checkpoints to block any alternative routes and isolate the Artsakh people from the rest of the world. The blockade seriously threatened the survival of the Armenians in Nagorno-Karabakh to the extent that many, including Armenia, have claimed it amounts to a genocidal act.<sup>2</sup> Before the blockade, approximately 400 tons of food and medicine would enter Nagorno-Karabakh on a daily basis. As Armenia stressed, closing the Lachin corridor means that humanitarian convoys could not enter the territory and provide humanitarian aid that was necessary for the survival of the Artsakh people. Opening the corridor was also necessary for the Artsakh people to be able to travel and work and generate income.

In February, 2023, the International Court of Justice, acting upon Armenia's request for provisional measures, ordered Azerbaijan to lift the blockade and take all measures at its disposal to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions. However, Azerbaijan took no action to comply with this order with the result that the Artsakh people subsequently suffered from severe starvation, lack of water, medical aid, electricity, and fuel. To cope with the food shortages, Artsakh authorities introduced rationing of basic food, prioritizing families with children. While hospitals were forced to select patients to be treated to save medical equipment. The increased malnutrition and lack of medical aid has caused the death of many.

The humanitarian crisis reached a climax worsened following the most recent military offensive launched on September 19, 2023. On 19 September 2023, Azerbaijan launched a military offensive against the region of Nagorno-Karabakh. In a 24-hour assault on the region, Azerbaijan successfully occupied nearly all the territory of Nagorno-Karabakh. Under duress, on September 28, the region's President Samvel Shahramanyan signed a decree agreeing to a full surrender, the

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<sup>2</sup> Luis Moreno Ocampo, Former Prosecutor, International Criminal Court, *Expert Opinion "Genocide against Armenians in 2023"* (2023) available at <https://www.cftjustice.org/wp-content/uploads/2023/08/Moreno-Ocampo-Expert-Opinion.pdf>.

dissolution of its government and the dismantling of all state institutions as of January 1st, 2024.<sup>3</sup>

With the Nagorno-Karabakh surrender, Azerbaijan opened the Lachin corridor to Armenia, which prompted nearly all of the 120,000 Armenians living in Nagorno-Karabakh to flee to Armenia fearing further violence, persecution, and genocide by Azerbaijan and seeking aid after suffering under the Azerbaijani 9-month long blockade. These individuals now reside in Armenia and elsewhere.

### **The Right to Return of Ethnic Armenians to Nagorno-Karabakh**

The violence and deprivation of aid in Nagorno-Karabakh during the majority of 2023 forced nearly all Nagorno-Karabakh Armenians to flee under the threat of ethnic cleansing or genocide. While the situation in Nagorno-Karabakh at the moment is not conducive to safe return, international law provides that the Artsakh people who have fled Nagorno-Karabakh have a right to return to their territory of origin. Additionally, Azerbaijan is obliged to identify the conditions that prevent their return and address them to facilitate such a process.

International law provides a wide range of guidelines, rules, obligations, and rights regarding the treatment of forcibly displaced persons. Often such people are further classified as refugees or internally displaced persons (IDPs). Refugees are people who have fled their own country and crossed international borders, whereas IDPs are people who have fled their homes but have remained in their own country. Depending on the classification, different laws may be applicable which can be found in an overlapping set of protections found in refugee law, international humanitarian law, and human rights law. Though many specific provisions are part of treaty law,<sup>4</sup> most core protections, including the right of voluntary return have become part of customary international law.

Specifically, the right of voluntary return requires states to allow refugees and IDPs to return if they so choose.<sup>5</sup> This right of persons displaced by conflict to

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<sup>3</sup> France24, *Karabakh separatists to disband after surrender to Azerbaijan* (Sept. 28, 2023), available at: <https://www.france24.com/en/live-news/20230928-nagorno-karabakh-to-dissolve-ending-independence-dream>

<sup>4</sup> United Nations High Commissioner for Refugees, *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93* (Jan. 31, 1994); Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INTERNATIONAL JOURNAL OF REFUGEE LAW 533, 533-34 (2001); United Nations Sub-Commission on the Protection and Promotion of Human Rights Res. 2002/30, *The Right of Return of Refugees and Internally Displaced Persons, delivered to the Commission on Human Rights*, (2002).

<sup>5</sup> United Nations Sub-Commission on the Protection and Promotion of Human Rights Res. 2002/30, *The Right of Return of Refugees and Internally Displaced Persons, delivered to the Commission on Human Rights*, (2002).

return to their homes voluntarily and safely is recognized as a customary norm of international humanitarian law<sup>6</sup> and is protected by the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and numerous regional conventions.<sup>7</sup>

### *Azerbaijan's Obligations Under the Right to Return*

Under modern applications of international law, voluntary return has two components: (1) the displaced person has the choice of whether or not to return and (2) the conditions in the home state have to be safe enough to allow the return and resettlement.<sup>8</sup> These applications would require a state to ensure safe conditions for the return of displaced persons and to allow the returnee to choose when and where to return and resettle in the fled territory.<sup>9</sup> During the return and resettlement process, returnees have the same rights as those who had not been displaced, but face different challenges in the exercise of those rights. Therefore, states and international organizations must play an active role in addressing the unique needs of returnees, and in ensuring they have equal enjoyment of their rights.

To guarantee the Artsakh people's right of return, Azerbaijan must first identify real or potential challenges to their return to Nagorno-Karabakh, including threats to their safety and security, and second, develop a resettlement plan that duly addresses the identified challenges.<sup>10</sup> Examples of obstacles to the safe return of displaced persons are the lack of safe passage to their homes or country of origin or threats of persecution, ethnic cleansing, or genocide upon return.<sup>11</sup> The following actions are often needed to facilitate the safe return of displaced persons:

- Disarm and demobilize armed groups. The presence of armed groups in the territory displaced persons fled from does not facilitate their return especially if they fled for fear of persecution. Armed personnel

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<sup>6</sup> International Committee of the Red Cross, *Rule 132: Return of Displaced Persons*, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW DATABASE.

<sup>7</sup> *Universal Declaration of Human Rights* art. 13(2), U.N. Doc. No. A/810 (Dec. 10, 1948); *International Covenant on Civil and Political Rights* art. 12 (1976), 999 U.N.T.S. 171.

<sup>8</sup> United States Institute of Peace, *Return and Resettlement of Refugees and Internally Displaced Populations*, in GUIDING PRINCIPLES FOR STABILIZATION AND RECONSTRUCTION.

<sup>9</sup> United States Institute of Peace, *Return and Resettlement of Refugees and Internally Displaced Populations*, in GUIDING PRINCIPLES FOR STABILIZATION AND RECONSTRUCTION.

<sup>10</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* prin. 28–30 (1998).

<sup>11</sup> United States Institute of Peace, *Return and Resettlement of Refugees and Internally Displaced Populations*, in GUIDING PRINCIPLES FOR STABILIZATION AND RECONSTRUCTION.



deployed to Nagorno-Karabakh must not be allowed to constitute a threat to ethnic Armenians but should guarantee their protection.

- Guarantee safe passage. The existence of dangers to the passage of displaced persons as they return home often discourages returnees from returning home. Returns of displaced persons should take place as far from the border as possible to reduce the risk of chaos and violence. Furthermore, the lack of access of humanitarian aid to the region and the limitations on the movement of persons do not constitute conditions for the safe return and resettlement of displaced persons.<sup>12</sup>
- Protect the population from any forms of violence, including persecution. Ethnic Armenians are at risk of abuse, especially the most vulnerable groups, such as children, women, and the elderly. Azerbaijan must implement public security and law enforcement programs that specifically aim to protect ethnic Armenians in Nagorno Karabakh and the most vulnerable groups.
- Guarantee human rights. All human rights protections owed by a state to its nationals apply to returnees during the process of return.<sup>13</sup> One of these applicable rights is the freedom of movement, which allows returnees to choose whether to return to their place of origin or another area of the state.<sup>14</sup> Another is the freedom from arbitrary arrest and arbitrary detention, which prohibits returnees from being housed in camps during the return process, unless the camps are strictly necessary for public safety.<sup>15</sup> Some rights, such as the right to property and access to basic services,<sup>16</sup> are particularly important for ethnic Armenians displaced from Nagorno-Karabakh.

### Property Rights and Restitution

As displaced persons return to their homes, they often seek to reclaim their houses, properties, or lands, which might have been destroyed, occupied, or looted.

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<sup>12</sup> United States Institute of Peace, *Return and Resettlement of Refugees and Internally Displaced Populations*, in GUIDING PRINCIPLES FOR STABILIZATION AND RECONSTRUCTION.

<sup>13</sup> Office of the High Commissioner for Human Rights, *Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons*, in TRAINING MANUAL ON HUMAN RIGHTS MONITORING 203, 208 (2001).

<sup>14</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* prin. 14-15 (1998); *International Covenant on Civil and Political Rights* art. 12 (1976), 999 U.N.T.S. 171.

<sup>15</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* prin. 12 (1998); *International Covenant on Civil and Political Rights* art. 9 (1976), 999 U.N.T.S. 171.

<sup>16</sup> Office of the High Commissioner for Human Rights, *Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons*, in TRAINING MANUAL ON HUMAN RIGHTS MONITORING 203 (2001).

Under customary international humanitarian law, displaced persons retain property rights in the property they left behind.<sup>17</sup> There are no justifiable grounds, including war or calamities, upon which it is possible to legitimize the arbitrary acquisition of properties, expropriation, or destruction of homes and lands.<sup>18</sup> This is reinforced by Rule 133, displaced persons cannot be arbitrarily deprived of property and possessions. Their property and possession shall be protected from pillage, indiscriminate attacks, being used as shields for military operations, objects of reprisal, or as a form of collective punishment.<sup>19</sup>

In addition, the United Nations Sub-Commission on Human Rights recognized the right of refugees to restitution for lost property, reparations, and compensation in both conflict and non-conflict situations.<sup>20</sup> The Pinheiro Principles clarify the scope and application of the right to restitution and provide recommendations for its full protection.<sup>21</sup> Accordingly, the right to restitution applies to any person forcibly displaced, regardless of their categorization as refugee or IDP, and regardless of the circumstances by which displacement occurred.<sup>22</sup> Additionally, the right to restitution should be prioritized over the right to resettlement and the two can be complementary at times. Furthermore, the right to restitution exists as a distinct right, regardless of the actual or non-return of the displaced persons.<sup>23</sup>

Azerbaijan has the obligation to ensure that displaced persons are not arbitrarily deprived of their properties and possessions, and to facilitate the returnees' right to property restitution. If properties or possessions cannot be restituted, reparations, including compensation, shall be awarded for confiscated or destroyed property.<sup>24</sup> To address such challenges, there must be an efficient system

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<sup>17</sup> International Committee of the Red Cross, *Rule 133: Property Rights of Displaced Persons*, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW DATABASE.

<sup>18</sup> Human Rights High Commissioner, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, *Pinheiro Principles* 9, 16 (2007).

<sup>19</sup> International Committee of the Red Cross, *Rule 133: Property Rights of Displaced Persons*, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW DATABASE.

<sup>20</sup> United Nations Sub-Commission on the Protection and Promotion of Human Rights Res. 2002/30, *The Right of Return of Refugees and Internally Displaced Persons*, para. 13 delivered to the Commission on Human Rights.

<sup>21</sup> Human Rights High Commissioner, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, *Pinheiro Principles* (2007).

<sup>22</sup> Human Rights High Commissioner, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, *Pinheiro Principles* 9, 16 (2007).

<sup>23</sup> Human Rights High Commissioner, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, *Pinheiro Principles* (2007).

<sup>24</sup> United Nations Sub-Commission on the Protection and Promotion of Human Rights Res. 2002/30, *The Right of Return of Refugees and Internally Displaced Persons*, para. 13, delivered to the Commission on Human Rights (2002).



for property dispute resolution which includes both options for restitution of property and compensation for resettlement.<sup>25</sup>

### Access to Basic Services

Returnees have rights to equal access to health, education, and other public services.<sup>26</sup> Under international law, returnees ought to be provided access to these services, and the distribution of these cannot discriminate against them.<sup>27</sup> Providing public services can be a challenge for many states, as returnees often return to areas that had been conflict zones and where the infrastructure may have been destroyed.<sup>28</sup> Due to unequal access in areas of displacement, a state may choose to prioritize areas with displaced populations for post-conflict reconstruction.

Governments may also choose to provide special benefits packages for returnees that include food aid, and payments for use in rebuilding shelter.<sup>29</sup> These benefits packages can help meet the government's obligation to provide for the basic needs of returnees in the short-term, pending long-term improvement of the delivery of public services such as water, electricity, and education.<sup>30</sup>

In the specific case of Nagorno-Karabakh, given the population's reliance on international humanitarian aid, Azerbaijan must enable the conditions for safe passage of humanitarian aid to the region.

### *The Role of Peacekeepers in Facilitating the Exercise of the Right of Return*

While it is the responsibility of Azerbaijan to facilitate the safe return and resettlement of displaced persons in Nagorno-Karabakh, international organizations and third states may facilitate the creation of conditions for safe and dignified return through the creation of a peacekeeping or monitoring mission.

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<sup>25</sup> Human Rights High Commissioner, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, *Pinheiro Principles* 9, 26 (2007).

<sup>26</sup> Office of the High Commissioner for Human Rights, *Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons*, in TRAINING MANUAL ON HUMAN RIGHTS MONITORING 203, 208 (2001).

<sup>27</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* prin. 29 (1998).

<sup>28</sup> American Public Health Association, *The Health of Refugees and Displaced Persons: A Public Health Priority* (2014).

<sup>29</sup> United Nations High Commission on Refugees, *East Timor: UNHCR and IOM Working for Return of Remaining Refugees* (Nov. 1, 2002).

<sup>30</sup> United Nations High Commission on Refugees, *East Timor: UNHCR and IOM Working for Return of Remaining Refugees* (Nov. 1, 2002).

The involvement of third parties in the process of return and resettlement is particularly important when returnees fear persecution, ethnic cleansing, or genocide.

## **The Right of Self-Determination**

In addition to the refugee right of voluntary return, under the principle of self-determination, all peoples with a coherent identity and connection to a defined territory are entitled to collectively determine their political destiny in a democratic fashion and to be free from systematic persecution. The principle of self-determination is clearly set forth in the United Nations Charter, numerous General Assembly resolutions, and international treaties, and reaffirmed in various International Court of Justice decisions, as well as by regional and domestic courts. Moreover, the principle of self-determination is part of customary international law and thus binding on all states. Importantly, self-determination also qualifies as a fundamental human right and the realization of related civil, political, economic, social, and cultural rights depends on the fulfillment of the right to self-determination and vice versa.<sup>31</sup> Therefore, the protection of the right to self-determination is a necessary condition for the protection of other individual rights.

The principle of self-determination can be exercised internally, through autonomy within the contours of a larger state, or externally, by creating a new state (succession). While the exercise of the right to external self-determination has traditionally been problematic, given its political connotation, the right to internal self-determination has been widely recognized by judicial bodies and national courts. Consequently, existing practice and applicable rules of international law mainly concern the right to internal self-determination. For example, in 1920, a Commission of Rapporteurs, operating within the auspices of the League of Nations, recognized that the people of Aaland Islands, which belonged to Finland but claimed the right to separate from Finland in order to join Sweden, had the right to exercise self-determination through internal autonomy within Finland. The Canadian Supreme Court, in its advisory opinion regarding the legality of the proposed Quebecois secession from Canada, expressed a similar view in 1998 and held that peoples had the right to exercise self-determination

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<sup>31</sup> Eze, Kenneth Uzor & G. N. Okeke, *The Right Of People To Self-Determination And The Principle Of NonInterference In The Domestic Affairs Of States*, 7 NALSAR Law Review 145,162.

through the pursuit of their “political, economic, social and cultural development within the framework of an existing state.”<sup>32</sup>

For a group to be entitled to a right to the right to self-determination, it must possess a focus of identity sufficient for it to attain distinctiveness as a people.<sup>33</sup> The traditional two-part test examines first “objective” elements of the group to ascertain the extent to which its members share a common racial background, ethnicity, language, religion, history, and cultural heritage. Another important “objective” factor is the territorial integrity of the area which the group is claiming.<sup>34</sup> The second “subjective prong” of the test requires an examination of the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct “people.” It necessitates that a community explicitly express a shared sense of values and a common goal for its future. Another “subjective” factor is the degree to which the group can form a viable political entity.<sup>35</sup>

The Armenians of Nagorno-Karabakh possess the objective and subjective factors required of a group entitled to the right to self-determination<sup>36</sup> and therefore this principle is applicable to them.

The Armenians of Nagorno-Karabakh are objectively distinct from the Azerbaijanis. The Nagorno-Karabakh Armenians speak a dialect of Armenian, an Indo-European language, while the Azerbaijanis speak a Turkic dialect, which is part of the Altaic language group. The Nagorno-Karabakh Armenians are Christians, while the Azerbaijanis are predominantly Shia Muslims. And the Nagorno-Karabakh Armenians share the ancient culture and historical experience of the Armenian people, while the Azerbaijanis are now developing a national identity and share the historical experience of Turkic peoples.

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<sup>32</sup> Reference re Secession of Quebec, 2 S.C.R. 217, para. 126 (1998), *available at*: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

<sup>33</sup> The United Nations Economic and Social Cooperation Organization (UNESCO) defines “people” as individuals who relate to one another not just on the level of individual association, but also based upon a shared consciousness, and possibly with institutions that express their identity. UNESCO considers the following indicative characteristics in defining people: (a) a common historical tradition; (b) religious or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; and (g) common economic life. *See* Patrick Thornberry, *The Democratic or Internal Aspect of Self-Determination*, in MODERN LAW OF SELF-DETERMINATION 102, 124 (Christian Tomuschat ed., 1993).

<sup>34</sup> Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT’L L. 177, 178-79 (1991).

<sup>35</sup> Ved Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 CASE W. RES. J. INT’L L. 257, 276 (1981).

<sup>36</sup> *See* HAIG E. ASENBAUER, ON THE RIGHT OF SELF-DETERMINATION OF THE ARMENIAN PEOPLE OF NAGORNO KARABAKH 98 (1995).

Nagorno-Karabakh also has a long tradition of being a distinct territorial unit. The region of Nagorno-Karabakh (Artsakh) was organized as one of the fifteen provinces of historical Armenia and was also a separate “Melikdom” under the Persian Empire. Nagorno-Karabakh's distinct territorial identity was recognized by the Soviet Union when it was designated an “autonomous region” (1923 through 1989) and later as an “ethno-territorial administrative division” administered directly from Moscow rather than by Azerbaijan (January through November 1989).

Given the distinct nature of Armenians from Nagorno-Karabakh and their right of return to their territory of origin, they possess the right of internal self-determination within Azerbaijan. Upon return to Nagorno Karabakh, under the principle of self determination, they ought to be able to “freely [...] determine, without external interference, their political status and to pursue their economic, social and cultural development”.<sup>37</sup> As such, the Armenian refugees are entitled to a special status within Azerbaijan as was recognized and afforded to the territory under the Soviet Union or an equivalent form of political autonomy within Azerbaijan.

In this regard, it is important to stress the interrelatedness between the right to self-determination and other individual rights. The realization of the right to self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights<sup>38</sup> such as all rights enshrined in the articles 6 to 27 of the International Covenant on Civil and Political Rights (ICCPR)<sup>39</sup> as well as articles 6 to 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The protection of the right to self-determination in conjunction with article 27 ICCPR (the rights of minorities) will be particularly important for the returnees to Nagorno-Karabakh.

The right enshrined in article 27 (the rights of minorities) of the ICCPR is an individual right which aims to ensure the survival and continued development of the cultural, religious, and social identity of the minorities concerned.<sup>40</sup> This right

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<sup>37</sup> International Covenant on Civil and Political Rights, 16 Dec. 1966, art. 1, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, art. 1, 993 U.N.T.S. 3.

<sup>38</sup> CCPR Committee, General Comment No. 12, Rights of Self-determination (Article 1), para. 1, U.N. Doc. HRI/GEN/1/Rev.1 (Mar. 12, 1984).

<sup>39</sup> 5HRC, Lubicon Lake Band against Canada, 26 Mar 1990, UN Doc. CCPR/C/38/D/167/1984, para. 32.1.

<sup>40</sup> CCPR Committee, General Comment No. 23, Rights of Minorities (Article 27), para. 9, UN Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).

specifically focuses on individuals belonging to minorities and shall be protected as such. According to article 27, persons belonging to ethnic, religious, or linguistic minorities (who share in common a culture, a religion and/or a language) shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. According to the Human Rights Committee, at times some aspects of this right, such as that of enjoying a particular culture, may consist in a way of life that is closely related to the territory where the minority lives and the use of specific resources and therefore constitutes a traditional way of life.<sup>41</sup> The state party where the minority resides, even if the individuals are not citizens of that state, has the obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The state must provide protection from its own acts but also from the acts of other persons acting with the state party.

Azerbaijan has consistently and systematically pursued policies of forced displacement aimed to oppress and disintegrate the Artsakh people living in Nagorno Karabakh breaching their right to freely determine their political status and freely pursue their economic, social, and cultural development, hence the need to affirm and emphasize the right of the Armenian population of Nagorno-Karabakh to self-determination. The displacement of a people necessarily causes a disruption of their way of life, including religious and cultural practices that play a key role for the identification of those individuals with a specific group. In the long term, this has serious consequences on the perception of the individuals as members of the group and therefore on their cultural identity. Similarly, Azerbaijan's policies targeting the Armenian's cultural heritage through acts of vandalism, desecration, and historical revisionism breach the right of the Artsakh people to determine their own cultural identity and development. By pursuing discriminatory policies that breach the Artsakh people's right to self-determination, Azerbaijan inevitably violates the individual rights of minority groups enshrined in article 27. In fact, such policies significantly affect the survival and continued development of the cultural, religious and social identity of the minorities concerned.

To ensure full protection of human rights in Nagorno-Karabakh, Azerbaijan must take steps to guarantee political, economic, social, and cultural development of the ethnic Armenians.

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<sup>41</sup> CCPR Committee, General Comment No. 23, Rights of Minorities (Article 27), para. 3.2, UN Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).

## **Conclusion**

Displaced persons have the right to safely return and resettle in Nagorno-Karabakh. Azerbaijan has the obligation to facilitate such a process. Third parties, such as peacekeeping forces, should be engaged to provide additional security, especially to ensure that returnees are not victims of any form of violence including persecution. As part of the right to return, Azerbaijan must ensure that the properties and possessions of returnees are promptly restored to the displaced persons. If that is not possible, Azerbaijan must have a system of resettlement or reparation in place. Returnees are protected by the same human rights as any other citizen in Azerbaijan. As such, their right to self-determination and corollary individual human rights must be duly protected.



## ANNEX I: SOURCES OF INTERNATIONAL LAW GOVERNING REFUGEE RETURN

### *Right of Return*

- 1) The International Covenant of Civil and Political Rights
- 2) The Fourth Protocol to The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>42</sup>
- 3) The Hague Regulation<sup>43</sup>
- 4) The Universal Declaration of Human Rights<sup>44</sup>
- 5) The Vienna Declaration and Programme of Action<sup>45</sup>
- 6) International Convention on the Elimination of All Forms of Racial Discrimination<sup>46</sup>
- 7) Convention on the Rights of the Child<sup>47</sup>
- 8) Guiding Principles on Internal Displacement<sup>48</sup>
- 9) General Assembly Resolution 194<sup>49</sup>
- 10) UNHCR Statute<sup>50</sup>

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<sup>42</sup> The Fourth Protocol to The European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3(2), 1963, available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>43</sup> The "Martens Clause" in the final paragraph of the preamble to the Hague Convention states that the Hague Regulations are to be read and construed in light of their overriding purpose—to spare the local inhabitants the horrors of war to the maximum extent possible—and that any "gaps" which might appear in the Hague Regulations are to be 'filled' with general principles of international law.

<sup>44</sup> The Universal Declaration of Human Rights, art. 13(2), 1948.

<sup>45</sup> The Vienna Declaration and Programme of Action, para 23, 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

<sup>46</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(ii), 1965, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

<sup>47</sup> Convention on the Rights of the Child, art. 10(2), 1989, available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>48</sup> Guiding Principles on Internal Displacement, principle 6(3) and 28(1), available at <http://www.unhcr.org/43ce1cff2.html>

<sup>49</sup> General Assembly Resolution 194, U.N. 3<sup>rd</sup> Sess., U.N. Doc A/810 (1948)

<sup>50</sup> Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Introductory Note (1950).