



**THE HUMAN RIGHTS
DEFENDER OF THE
REPUBLIC OF ARMENIA**

**THE HUMAN RIGHTS
OMBUDSMAN OF THE
REPUBLIC OF ARTSAKH**

AD HOC PUBLIC REPORT

**ON THE USE OF INCENDIARY AMMUNITION OF
MASS DESTRUCTION (INCENDIARY WEAPON)
AGAINST CIVILIAN OBJECTS OF ARTSAKH
(NAGORNO -KARABAKH) BY THE AZERBAIJANI
ARMED FORCES**



WARNING

18+

**YEREVAN
STEPANAKERT
November 2020**



**THE HUMAN RIGHTS
DEFENDER OF THE REPUBLIC
OF ARMENIA**

**THE HUMAN RIGHTS
OMBUDSMAN OF THE REPUBLIC
OF ARTSAKH**

JOINT AD HOC PUBLIC REPORT

**ON THE USE OF INCENDIARY AMMUNITION OF MASS
DESTRUCTION (INCENDIARY WEAPON) AGAINST CIVILIAN
OBJECTS OF ARTSAKH (NAGORNO-KARABAKH) BY THE
AZERBAIJANI ARMED FORCES**

**YEREVAN
STEPANAKERT
November 2020**

CONTENTS

INTRODUCTION	4
I. USE OF THE INCENDIARY AMMUNITION OF MASS DESTRUCTION CONTAINING CHEMICAL ELEMENTS (POSSIBLY WHITE PHOSPHORUS) BY THE AZERBAIJANI ARMED FORCES AGAINST ARTSAKH (NAGORNO-KARABAKH).....	6
1. Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijan, causing long-term dangerous consequences for life and health of the people of Artsakh: Presentation of facts.....	10
2. Use of the ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijani Armed Forces causing widespread, long-term and severe damage to the natural environment of Artsakh: Presentation of facts.....	19
3. Use of the ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijani Armed Forces causing destruction of the objects indispensable to the survival of the civilian population of Artsakh: Presentation of facts.....	22
4. Conclusion.....	26
II. USE OF THE INCENDIARY AMMUNITION OF MASS DESTRUCTION CONTAINING CHEMICAL ELEMENTS (POSSIBLY WHITE PHOSPHORUS) BY THE AZERBAIJANI ARMED FORCES AGAINST ARTSAKH (NAGORNO-KARABAKH), AS THE GRAVE VIOLATION OF THE INTERNATIONAL HUMANITARIAN LAW (IHL), CUSTOMARY LAW AND ENVIRONMENTAL LAW.....	27
1. Definition of the incendiary weapon, inter alia the ammunition of mass destruction, including those containing white phosphorus;	29
2. Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, causing long-term dangerous consequences for the life and health of the people of Artsakh: Legal analysis.....	30

<ul style="list-style-type: none"> a) <i>Use of incendiary weapons against civilian objects and civilians by the Azerbaijani Armed Forces as the violation of the Protocol III to the 1980 Convention on Certain Conventional Weapons</i> 	30
<ul style="list-style-type: none"> b) <i>Use of incendiary weapons against civilian objects and civilians by the Azerbaijani Armed Forces as the violation of the Customary International Humanitarian Law</i> 	32
<ul style="list-style-type: none"> 3. <i>Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, causing widespread, long-term and severe damage to the forest areas and natural environment of Artsakh: Legal analysis</i>..... 	33
<ul style="list-style-type: none"> <ul style="list-style-type: none"> a) <i>Use of incendiary weapons against forest areas by the Azerbaijani Armed Forces as the violation of the Protocol III to the 1980 Convention on Certain Conventional Weapons</i> 	33
<ul style="list-style-type: none"> <ul style="list-style-type: none"> b) <i>Use of incendiary weapons against forest areas by the Azerbaijani Armed Forces as the violation of the International Humanitarian Law, Environmental Law and the Customary Law</i> 	34
<ul style="list-style-type: none"> 4. <i>Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces causing destruction objects indispensable to the survival of the civilian population of Artsakh: Legal analysis</i> 	36

INTRODUCTION

From early morning of 27 September, 2020 Azerbaijan began launching indiscriminate military aggressive air and artillery attacks against Artsakh (Nagorno-Karabakh) along the entire line of the border, targeting also civilian communities and peaceful population.

Almost one month the villages, towns and the capital city Stepanakert are under indiscriminate shelling. There are numerous casualties among peaceful population and destructions in civilian communities. In numerous cases the Azerbaijani targeted attacks towards the residential areas.

According to the results of the fact-finding mission of the Human Rights Defender of Artsakh, *[A]s of November 3, a total of 46 civilians have been killed - a little girl, 7 women, and 38 men. A total of 144 people was wounded, of which 123 received serious injuries: 104 of them are male and 19 are female citizens.*

170 peaceful settlements of the Artsakh Republic were severely damaged, in particular, 13800 private immovable property, 2100 private movable property, 3100 infrastructures, public and industrial objects.¹

The Human Rights Ombudsman of Artsakh published two interim reports on The Azerbaijani atrocities against Artsakh population in September-October 2020². The intentional targeting of civilian communities, use of banned weapons and killings of peaceful population is comprehensively presented within these reports.

During this aggression Azerbaijan is also intentionally targeting the cultural and religious heritage of Armenians in Artsakh. This is a part of the cleansing of ethnic Armenians living in Artsakh. On October 8, Azerbaijan targeted and bombarded one of the historical symbols of Armenian architecture, the St. Holy Savior Ghazanchetsots Cathedral of Artsakh, located in Shushi city center. Azerbaijani military forces launched the second missile attack shortly after the first one. The missile attacks caused significant destruction to the Cathedral.

¹ See the official statement of the Human Rights Ombudsman of Artsakh, <https://www.facebook.com/ArtsakhOmbuds/posts/1708263799340775>

² See the Updated Edition of the Second Interim Report of the Human Rights Ombudsman of Artsakh "On The Azerbaijani Atrocities Against Artsakh Population In September-October 2020", <https://artsakhombuds.am/en/document/735?fbclid=IwAR0Pevh4ZDqm-MSiC9KkKyvkDEPraFygCqPAuVQ0BMRNIN9zCa3JpuMiY9s>

Another ad hoc report of the Artsakh Human Rights Ombudsman on targeted attacks on the St. Holy Savior Ghazanchetsots Cathedral was also published, analyzing the aggression in the context of the International Humanitarian Law and International Criminal Law.³

Furthermore, on November 1 Azerbaijan targeted also the mosque in Shushi.⁴

On October 28, the Azerbaijani armed forces struck more than 15 times on different parts of the capital Stepanakert and Shushi town, deliberately targeting the maternal and child health center and some residential and public objects.⁵

There were many other cases of intentional targeting of civilians, which are presented in details by the Human Rights Ombudsman of Artsakh.⁶

The analyzed data shows that the intentional attacks towards peaceful population is aimed at ethnic cleansing of ethnic Armenians living in Artsakh. It is thoroughly justified that in the life and health of Armenian children, women and the entire population of Artsakh are under a very real threat.

According to the published official information, as well as the monitoring to the Human Rights Ombudsman of Artsakh, from October 29 to 31 the Azerbaijani Armed Forces used incendiary ammunition of mass destruction containing chemical elements in Artsakh (Nagorno-Karabakh). According to the information the ammunition contained white phosphorus. A number of reports have been released since then proofing the huge destructions resulted from those attacks.

The current report seeks to analyze the use of incendiary ammunition of mass destruction containing chemical elements by the Azerbaijani Armed Forces in the course of the International Humanitarian Law (IHL), Environmental Law and Customary Law.

³ See Ad hoc Report of the Human Rights Ombudsman of Artsakh "The Azerbaijani targeted attacks against the St. Holy Savior Ghazanchetsots Cathedral of Shushi, Artsakh (Nagorno-Karabakh) as a war crime and crime against humanity",

https://artsakhombuds.am/hy/document/740?fbclid=IwAR2DTSiTafBcw3_lkKIC7V5ZDdfYNfSmdKDDWbjOi-CHMtW4IYneiubrm8

⁴ See the media publication, <https://www.youtube.com/watch?v=IVHLoOjn4y8>

⁵ See the publication of the Human Rights Ombudsman of Artsakh, <https://www.facebook.com/ArtsakhOmbuds/posts/1700925256741296>

⁶ See the official Facebook page of the Human Rights Ombudsman of Artsakh, <https://www.facebook.com/ArtsakhOmbuds>

I. USE OF THE INCENDIARY AMMUNITION OF MASS DESTRUCTION CONTAINING CHEMICAL ELEMENTS (POSSIBLY WHITE PHOSPHORUS) BY THE AZERBAIJANI ARMED FORCES AGAINST ARTSAKH (NAGORNO-KARABAKH)

The methods used by the Azerbaijani Armed Forces during the ongoing military activities on intentional targeting the civilian communities is well-known fact. The deliberate targeting of peaceful population, vital infrastructures and residential areas of Artsakh (Nagorno-Karabakh) is already proofed by various documents.

On October 29 Azerbaijani Armed Forces launched targeted attacks against the forest areas of Artsakh near to civilian communities, causing massive fire and environmental disaster. In particular, the Azerbaijani Armed Forces used incendiary ammunition of mass destruction containing chemical elements against the forest areas. Furthermore, according to the opinion of experts and local population, the used mean may contain white phosphorus or other similar chemical elements, which is an incendiary and toxic chemical substance used as a filler in a number of different munitions.

One of the attacks was launched on October 29 nearly at 6:20 pm against the forests located on the east (to the direction of Martuni Region) of Artsakh (Nagorno-Karabakh). The incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) was used through air and cause a real environmental disaster to the forests nearby.⁷

There was also another recorded case of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces against the forest areas of Artsakh.⁸

⁷ See the video on use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus), https://www.youtube.com/watch?feature=emb_title&v=0NLASjID5Iw&fbclid=IwAR3_FjzyPS5ii105_yE5mzmkd2fX81HA3bB09dW02RLgsQgrf5D8IBCEx4&app=desktop

⁸ See the video on use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus), <https://www.youtube.com/watch?v=xDrjxpBjhZw>

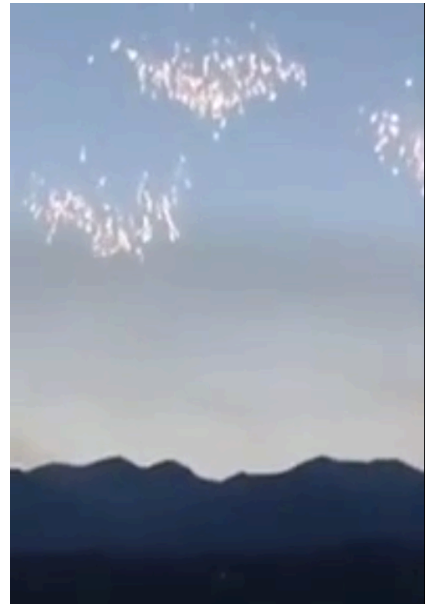
Below the pictures are illustrating only two cases of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces against the forest areas of Artsakh are presented.

Figures 1, 2 and 3: *Use of incendiary ammunition of mass destruction (possibly white phosphorus) containing chemical elements by the Azerbaijani Armed Forces against Artsakh forests (Episode 1)*





Figures 4, 5, 6, 7 and 8: *Use of incendiary ammunition of mass destruction (possibly white phosphorus) containing chemical elements by the Azerbaijani Armed Forces against Artsakh forests (Episode 2)*



According to the official sources, the chemical element within the ammunitions most possibly is **white phosphorus**.

In particular, the Artsakh Defense Army stated that the mean used by Azerbaijan against the forests of Artsakh is white phosphorus. According to the official statement, *[I]n the Azerbaijani-Artsakh conflict zone, the Azerbaijani Armed Forces used chemical weapons **containing elements of phosphorus**.*

*This is a gross violation of international humanitarian law, norms and principles of customary law, the Geneva Conventions, as well as the provisions of the UN conventions and documents. Besides the goal of causing harm to Armenian Armed Forces, they also aim to set massive forest fires and create real environmental disaster in the area.*⁹

The Ministry of Defense of the Republic of Armenia also published a statement, according to which, *[T]he hostile force used phosphorous munitions containing elements of chemical weapons in the Artsakh-Azerbaijani conflict zone, which is a gross violation of International Humanitarian Law, norms, and principles of Customary Law, Geneva Conventions, as well as the provisions of the relevant UN conventions and documents.*¹⁰

1. Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijan, causing long-term dangerous consequences for the life and health of the people of Artsakh: Presentation of facts

Based on the opinion of the experts of relevant field, the use of incendiary weapon will cause a disaster both for the human beings and the environment. Particularly, as it is stated in the publication of the Human Rights Watch, the damage can be divided into two main groups:

1) Thermal Burns and Respiratory Damage;

⁹ See the statement of the Artsakh Defense Army, <https://fb.watch/1vLfw5-ZBm/>

¹⁰ See the official statement of the RA Ministry of Defense, https://l.facebook.com/l.php?u=https%3A%2F%2Fm.youtube.com%2Fwatch%3Ffeature%3Demb_title%26v%3D0N_LASjID5Iw&h=AT1uFYgXGSLTDSrtgzN1iOyJG8gN_RHkUamBdjOrHOcOWXcndMVLHjz9Tuae1-Y3vBBE4Rgx5AyhXdr49g-UwGFhm-YyiTpuPiczy-ohVTgQCxvT5dmtzWwGSWwSjDce0Wcb2c6w5A&s=1

2) Long-Term Effects and Permanent Damage.

Thermal Burns and Respiratory Damage: *“[V]ictims of incendiary weapon attacks can experience serious bodily harm, including thermal burns and respiratory damage. Through the action of their chemical agents and through secondary fires, incendiary weapons can cause fourth- or even fifth-degree thermal burns. Such burns can go beyond destroying the skin; they can damage muscles, ligaments, tendons, nerves, blood vessels, and even bones. The recovery process is slow and painful. The daily cleansing of burns “inflicts pain that defies description.” (...) **One doctor compared this process to being “flayed alive.” Many victims die. Those who survive are left physically and psychologically scarred.***

The heat and smoke of incendiary weapons can seriously affect the respiratory system. Inhaling hot gas and combustion products can result in respiratory burns and other pulmonary complications, including pneumonia. Because incendiary weapons often produce carbon monoxide or other noxious gases, victims can also die from poisoning.”

Long-Term Effects and Permanent Damage: *[T]he harm caused by incendiary weapons can be long lasting and far reaching. Victims who survive initial injuries face an aftermath that can involve intense pain, serious infections, organ failure, severe disfigurement, and lifelong disability. Furthermore, victims can lose motor function, especially in the hands, due to scarring and skin damage, and can suffer from contractures, the restriction of underlying muscles and joints from superimposed scars or inadequate skin grafts. Treatment of the victims’ pain can lead to drug dependency and later to withdrawal symptoms.*

***Victims endure suffering that goes beyond physical injury.** They are forced to “confront ... the sight of one’s own naked and burned body ... and the stench of one’s own rotting flesh.” They are often physically and psychologically isolated from society during their treatment. After healing, they are sometimes socially shunned because of their scarring and disfigurement, causing them to further withdraw from society. Victims are thus vulnerable to psychological trauma and face difficulties in reintegrating into society.¹¹*

¹¹ See the publication of the Human Rights Watch, <https://www.hrw.org/news/2016/12/12/time-act-against-incendiary-weapons>

Considering that there are reasonable doubts that the used incendiary weapon by the Azerbaijani Armed forces may contain white phosphorus, this issue of its possible results on environment and health of human beings must be discussed in that context as well. In particular, according to the statement of the expert of the RA Ministry of Defense, *[P]rohibition of the above-mentioned actions and the concomitant rights and values rest primarily in the realm of customary law, whereas the use of such weapons, which do not distinguish between military and civilian targets, **while causing environmental disasters and possible human losses, constitute war crimes.***¹²

Within another statement, the expert of the RA Ministry of Defense is presenting the possible catastrophic results in case of use of white phosphorus. In particular, he states that **except the massive fires, the use of this incendiary weapon, can cause lethal results for the human beings and animals, including drowning as a result of dense smoke.**¹³

Furthermore, as white phosphorus continues to burn when exposed to oxygen until the chemical substance is depleted (or the oxygen supply is cut off), its remnants pose a continuing threat of injury for several days, even weeks, after the use of the munition.

According to the joint publication of the Human Rights Watch and the Harvard Law School International Human Rights Clinic entitled “Q & A on Incendiary Weapons and CCW Protocol III”, *[D]espite the regulations in Protocol III to the Convention on Conventional Weapons (CCW), incendiary weapons continue to cause needless and unacceptable suffering to civilians in conflicts around the world. **These weapons produce conscience-shocking injuries to humans and are frequently indiscriminate.***¹⁴

Within the preparation of the current report, an expert opinion was requested with regard the effects of the white phosphorus on health of a human being.

¹² See the official statement of the RA Ministry of Defense, https://l.facebook.com/l.php?u=https%3A%2F%2Fm.youtube.com%2Fwatch%3Ffeature%3Demb_title%26v%3D0N_LASjID5Iw&h=AT1uFYgXGSLTDSrtgzN1iOyIG8gN_RHkUamBdjOrHOcOWXcndMVLHjz9Tuae1-Y3vBB4Rgx5AyhXdR49g-UwGFhm-YyiTpuPiCzy-ohVTgQCxvT5dmtzWwGSWwSJDe0Wcb2c6w5A&s=1

¹³ See the official publication of the RA Ministry of Defense, <https://www.facebook.com/shushanstepanyan/videos/3376327979070005>

¹⁴ See the joint publication of the Human Rights Watch and the Harvard Law School International Human Rights Clinic entitled “Q & A on Incendiary Weapons and CCW Protocol III”, https://www.hrw.org/sites/default/files/related_material/2011_arms_qandaincendiaryweaponsccwpii.pdf

According to the results, *the white phosphorus is extremely toxic and is easily oxidizing in the air. Based on the same expert document, there are 3 ways of the white phosphorus penetration into the organism of a human being:*

- 1) *through upper respiratory tract (by inhaling the polluted air);*
- 2) *through gastrointestinal tract (by using the polluted liquid or food);*
- 3) *through eyes.*

It is undoubtable, that the results of the use of white phosphorus on the organism of human beings may be extremely serious and severe. Depending on the level of pollution, the results may be even lethal.

It should be also underlined that in practice the use of white phosphorus and its dangerous results for the life and health of human beings were reported in various publications and are fact. From 2000 to 2016 at least 7 cases of the use of white phosphorus were reported: Afghanistan, Gaza (Palestine), Iraq, Lebanon, Somali, Ukraine and Yemen.¹⁵ According to those statements, Turkey launched white phosphorus attacks against Kurds living in Syria.¹⁶

In the concrete case of the use of incendiary ammunition of mass destruction (possibly white phosphorus) containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces against forest areas, was a real threat to the life and health of the people of Artsakh. **According to the investigation, it was revealed that the civilians living nearby were supposed to hide in the forests which were further targeted by the Azerbaijani Armed Forces.**

In particular, after the escalation of the conflict in Artsakh (Nagorno-Karabakh) there are spontaneous arrivals to the Republic of Armenia among ethnic Armenians living there, as well as displaced population within Artsakh. The special working groups in the Offices of the Human Rights Defender of Armenia and the Human Rights Ombudsman of Artsakh aimed at assessing the needs of those civilians and analyzing the possible violations of their rights. For this purpose,

¹⁵ See the publication of the Human Rights Watch, <https://www.hrw.org/news/2016/12/12/time-act-against-incendiary-weapons>

¹⁶ See the media publication, <https://www.thetimes.co.uk/article/syria-invasion-phosphorus-evidence-mounts-against-erdogan-7v2thnhtd>

subgroups conducted visits to the people arrived from Artsakh and displaced within the territory, and made interviews with them.

As it was revealed from the interviews, a number of civilians, after indiscriminate shellings of residential areas of Artsakh by the Azerbaijani Armed Forces, were supposed to flee and hide in forests. Furthermore, it was also found out that the peaceful population was supposed to hide and live in the forest days long.

The real threat for the civilians' life and health as a result of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) against the forests of Artsakh, as well as the fact that there is peaceful population sheltered in forests is stated also by the Human Rights Ombudsman of Artsakh. In particular, according to the statement *[G]iven the size and geographical coverage of the burned forests, the population of the Artsakh Republic is facing an environmental catastrophe, which undermines the environmental security in the region and contains long-term dangerous consequences for the life and health of the people of Artsakh. Moreover, the Azerbaijani armed forces, with these criminal methods, intend to harm the civilian population sheltered in the forests.*¹⁷

It should be also underlined, that even in peace time and the period of war when their residents were not under the Azerbaijani Armed Forces shelling, the local civilians are going to the forests nearby, since, it is one of the ways of their livelihood.

There are reasonable claims on the casualties and severe injuries among civilian population as a result of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces.

¹⁷ See the official statement of the Human Rights Ombudsman of Artsakh, <https://www.facebook.com/ArtsakhOmbuds/posts/1706398566193965>

Figures 9 and 10: *Severely injured civilian (left hand)*



Figures 11: *Severely injured civilian (left hand)*



Figures 12: *Severely injured civilian (right foot)*



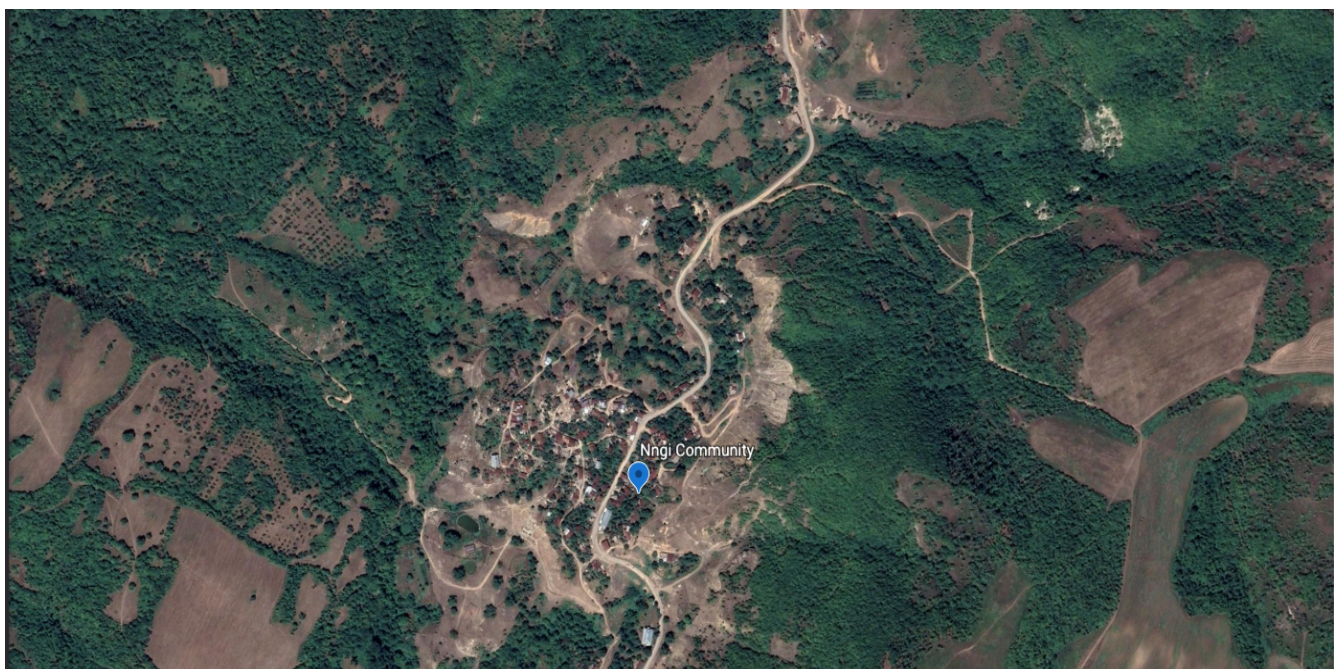
It should be also noted, that there might be other cases of casualties among civilian population, that were not revealed during the monitoring activities and not reported accordingly.

Furthermore, there are also cases when the targeted forest areas are very close to the residential ones. This means that **even if the local civilians were not sheltered in the forests, the caused damage, in any case, will be catastrophic.**

For example, following the statement of the Head of Nngi community of Martuni region, the mentioned attacks were made against the forests within the community lands, which are very close to the residential areas: *[I]t is already the third day that the community-owned forest is being burnt due to the use of white phosphorus weapons by the enemy. It covers an area of more than **150 hectares**. (...)*¹⁸

According to the maps below, the forests near the Nngi community are very close to the residential areas.

Figure 13, 14 and 15: *The map illustrating the location of the Nngi community of Martuni region of Artsakh (Nagorno-Karabakh) and the distance between forest and residential areas*



¹⁸ See the statement of the Head of Nngi community of Martuni region, <https://www.facebook.com/ArtsakhInformation/posts/207485577558897>



As it is foreseen from the maps, the forests are so close to the residential areas that the fire can even easily reach the houses of local civilians. Following to the calculation of the “Google Earth”, the distances between the Nngi community and the deep parts of the near forest areas are approximately 180 m. Furthermore, the approximate distance between the residential areas and the forest is approximately 100 m (several minutes of walk).

Hence, due to the Azerbaijani Armed Forces indiscriminate attack by using the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) in any case the life and health of those civilians living nearby (e.g. Nngi community) was under very real threat, causing long-term dangerous consequences.

Meantime, it must be once again mentioned, that the case of Nngi community discussed in details within the current report is one among number of Azerbaijani attacks on the forests of Artsakh, as a result of which civilians' life and health was endangered.

2. *Use of the ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijani Armed Forces causing widespread, long-term and severe damage to the natural environment of Artsakh: Presentation of facts*

Turning to the issue of the environmental disaster caused as a result of the use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces against Artsakh forests, it should be firstly underlined, that according to expert assessments, **the fire, caused by this type of weapon is not stopped even with the extinguishing materials or water.** This means, that even if there will be no further attack, the fire cannot be extinguished easily, and the forest areas of Artsakh will continue to burn, causing environmental disaster, also being dangerous for human beings.

The Ministry of Defense of the Republic of Armenia also published a statement, according to which, *apart from the intent to inflict damage on the Armenian forces, the enemy also aims to cause massive forest fires and create real environmental disaster hazards in the area.*¹⁹

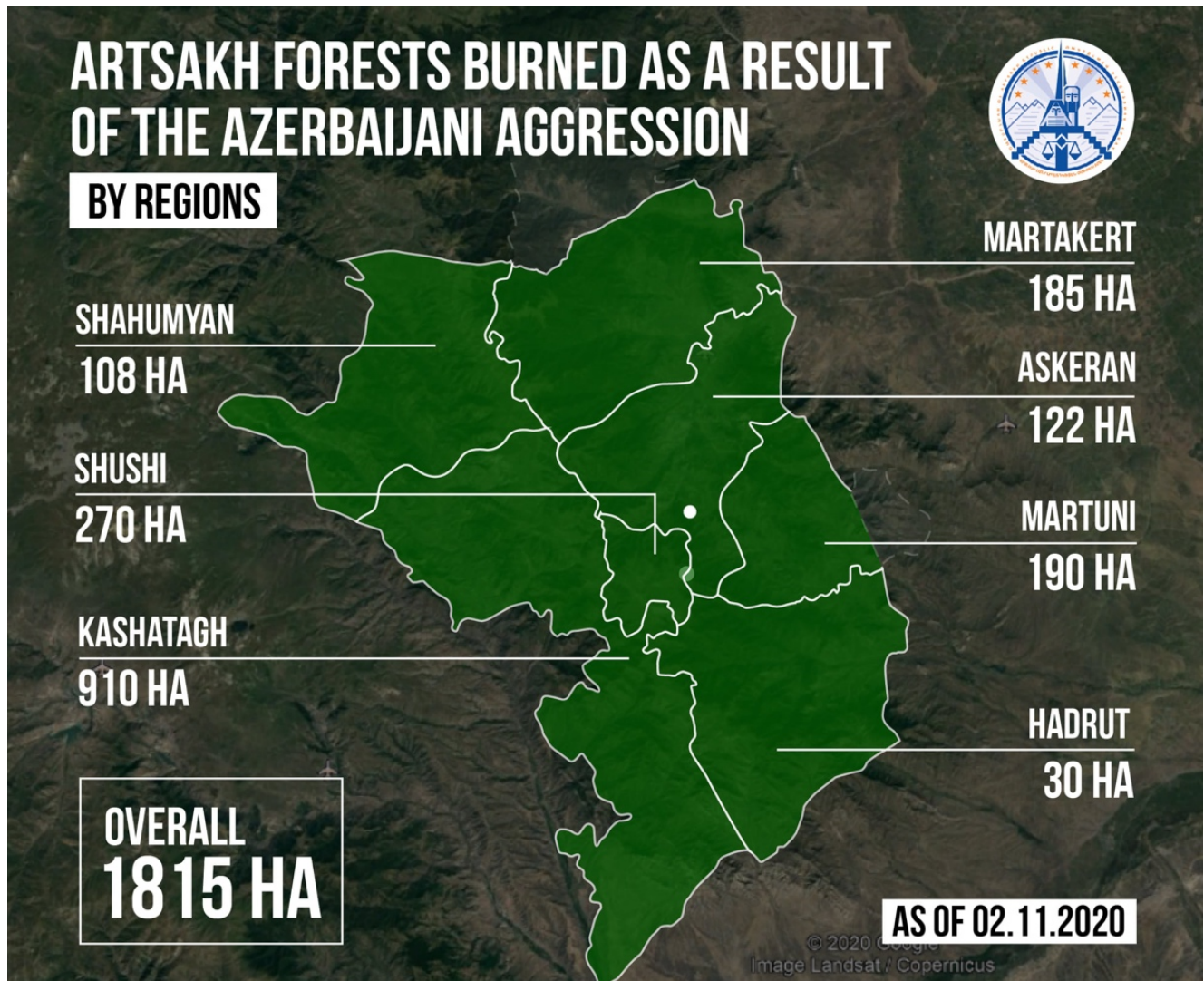
According to the monitoring of the Human Rights Ombudsman of Artsakh, number of forest areas close to the residential areas were damaged as a result of the attacks.

Name		Name	
1.	Near Yeghegnut	6.	Near Togh
2.	Near “Dadivank” Monastery	7.	Territory of Tsarekh
3.	Territory of Mataghis	8.	Territory of Haterk
4.	Territory of Sghnakh	9.	Other forest areas of Shushi
5.	Territory of Vorotan	10.	Etc.

¹⁹ See the official statement of the RA Ministry of Defense, https://l.facebook.com/l.php?u=https%3A%2F%2Fm.youtube.com%2Fwatch%3Ffeature%3Demb_title%26v%3D0N_LASjID5Iw&h=AT1uFYgXGsLTDSrtgzN1iOyJG8gN_RHkUamBdjOrHOcOWXcndMVLHjz9Tuae1-Y3vBB4Rgx5AyhXdr49g-UwGFhm-YyiTpuPiczy-ohVTgQCxvT5dmtzWwGSWwSjDce0Wcb2c6w5A&s=1

Figure 16: Burned area of forests of Artsakh by regions as a result of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces.

Note: *The data is presented as of 2 November*



According to the official statement of the Human Rights Ombudsman of Artsakh, as of 2 November, at least **1815 hectares forest area** of Artsakh was deliberately burned by the Azerbaijani Armed Forces:

(...) Within the framework of the fact-finding mission of the Artsakh Human Rights Ombudsman, it was revealed that the deliberate burning of the forests of Artsakh by the

Azerbaijani side is widespread and covers all regions. According to preliminary data, 1815 hectares of forest area have already been burned, but fires continue in various areas, and there is a tendency for rapid growth. (...)²⁰

Furthermore, the results of the Azerbaijani Armed Forces' deliberate attacks on the forest areas of Artsakh were also reported by the State Emergency Situations Service of Artsakh. It is stated in the official statement, that "[I]n addition to targeting the peaceful settlements of Artsakh, the Azerbaijani-Turkish forces use incendiary missiles in the forest areas of almost all regions of Artsakh.

In the places which are accessible, the fire rescuers of the State Emergency Situations Service are conducting fire-fighting measures, but the disaster still continues.

*Thereby, the enemy is trying to add to the ongoing humanitarian disaster an environmental one, causing significant damage to the flora and fauna of Artsakh."*²¹.

Therefore, the Azerbaijani Armed Forces' indiscriminate attacks through the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) have already caused widespread, long-term and severe damage to the forest areas and natural environment of Artsakh.

3. *Use of the ammunition of mass destruction containing chemical elements (possibly white phosphorus) by Azerbaijani Armed Forces causing destruction of the objects indispensable to the survival of the civilian population of Artsakh: Presentation of facts*

Except causing real threat to the health and life of the civilian population, as well as the huge destruction to the forest areas and the natural environment of Artsakh, the Azerbaijani Armed Forces indiscriminate attacks through the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) cause a real harm to the vital infrastructures and

²⁰ See the official statement of the Human Rights Ombudsman of Artsakh, <https://www.facebook.com/ArtsakhOmbuds/posts/1706398566193965>

²¹ See the official statement of the State Emergency Situations Service of Artsakh, <https://www.facebook.com/ArtsakhInformation/posts/208087090832079>

objects. Meaning, the objects indispensable to the survival of the civilian population as a result of those attacks were also damaged.

In particular, in the course of the preparation of the current report, an official information from the Human Rights Ombudsman of Artsakh was received on the damage of the gas pimples in number of civilian communities (e.g. Nngi, Taghavard, Aknaghbyur, Sghnakh). **Except being extremely dangerous, the burn of gas pimples caused a deprivation of the use of gas as an object the indispensable to the survival of the civilian population.**

Figure 17: *The map illustrating the location of the Taghavard community of Martuni region of Artsakh (Nagorno-Karabakh)*

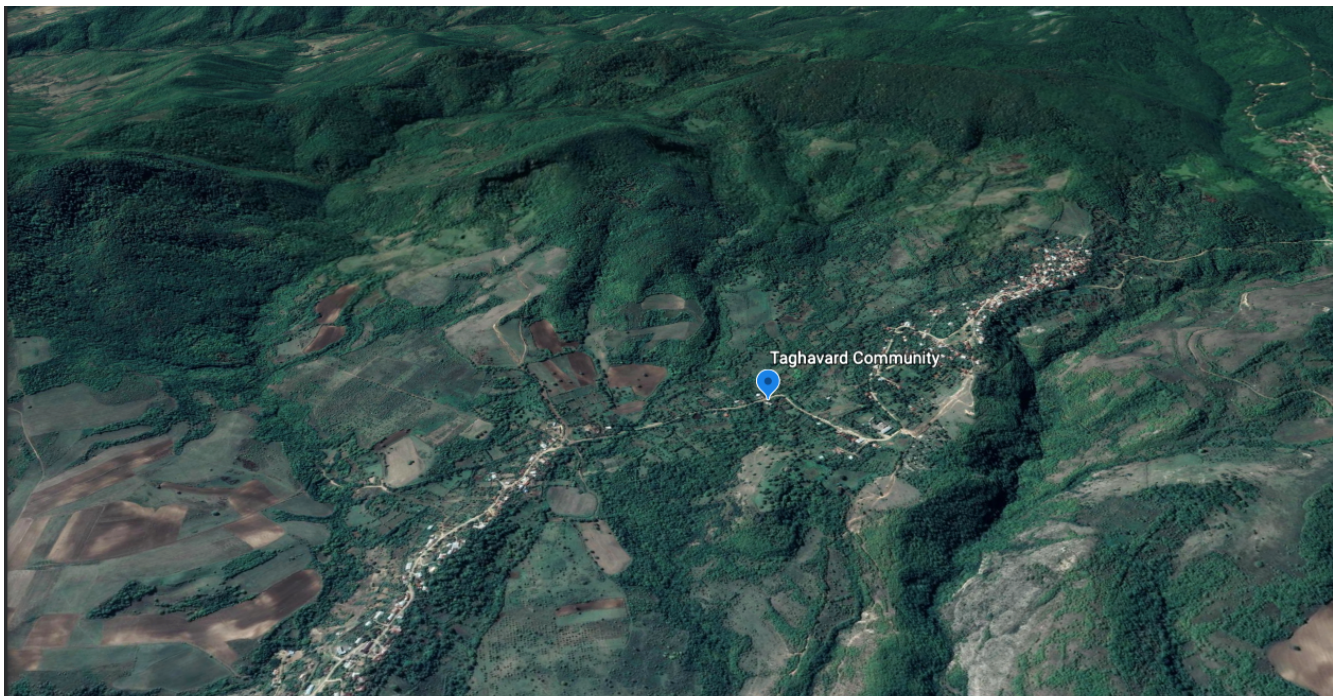
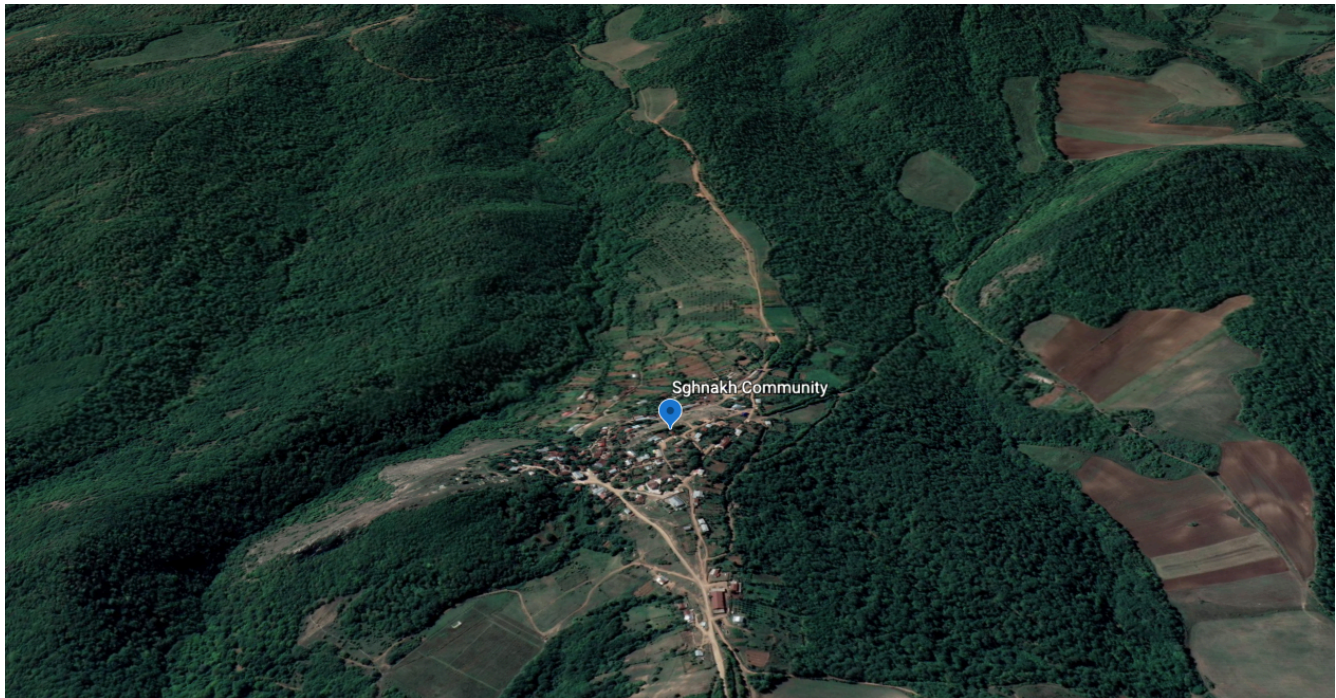


Figure 18: *The map illustrating the location of the Aknaghbyur community of Askeran region of Artsakh (Nagorno-Karabakh)*



In fact, it was revealed also that animals were injured as a result of the Azerbaijani Armed Forces' deliberate attacks towards the forests of Artsakh by the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces.²²

²² See the media publication, <https://infoport.am/am/news/artsakh/koveri-ankum-adrbejancineri-koghmic-fosforayin-zinatesakneri-kirarumic-heto?fbclid=IwAR2500xhqYD7v8YUfLCs7NABhBslznkDUawpho3u1HbSMPgHBwmAUuHjjh4>

Figures 19 and 20: *Slaughtered animals as a result of the use of incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces*



Here it should be also underlined, that both forests and the animals are livelihood for those living nearby. The destruction of forests and lose of animals can also cause a real harm to those peaceful civilians.

Hence, the Azerbaijani Armed Forces' indiscriminate attacks through the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) have already destroyed several objects indispensable to the survival of the civilian population of Artsakh.

4. Conclusion

Taking into account the above-mentioned facts it should be concluded that unfortunately at the moment of the preparation of the current report it was impossible to know 100% what was exactly the chemical element within the ammunition used by the Azerbaijani Armed Forces against the forests of Artsakh in between 29 – 31 October. Put it otherwise, it is not clear whether it was white phosphorus or no. However, considering the reported effects both on the natural environment and the population of Artsakh, it can be considered that the caused damage was in any case destructive.

However, in any case, at least the following facts can be reported:

- 1) mass destruction ammunitions are used;
- 2) ammunitions contain chemical elements (possibly white phosphorus);
- 3) ammunitions are used towards forests, causing mass fires and destruction to the natural environment;
- 4) according to expert assessments, the fire, caused by this type of weapon is not stopped even with the extinguishing materials or water;
- 5) the forests where these ammunitions were used, are located near the civilian communities;
- 6) the used ammunitions cause a real threat to the civilian population living near the targeted forest areas;
- 7) based on the official data, there are burned forests in all regions of Artsakh (overall at least 1815 hectares of forest area);
- 8) as a result of the use of discussed ammunition, there are slaughtered animals;
- 9) there are destructed several objects indispensable to the survival of the civilian population;
- 10) according to the official statements and fact-finding activities, civilians are hiding from attacks of the Azerbaijani Armed Forces in those forests.

II. USE OF THE INCENDIARY AMMUNITION OF MASS DESTRUCTION CONTAINING CHEMICAL ELEMENTS (POSSIBLY WHITE PHOSPHORUS) BY THE AZERBAIJANI ARMED FORCES AGAINST ARTSAKH (NAGORNO-KARABAKH), AS THE GRAVE VIOLATION OF THE INTERNATIONAL HUMANITARIAN LAW (IHL), CUSTOMARY LAW AND ENVIRONMENTAL LAW

As it was already mentioned in the Introduction of the current report, it is already well proofed fact that Azerbaijan is intentionally targeting the civilian communities of Artsakh (Nagorno-Karabakh), kill peaceful population, including children women and elderly people and destroy vital infrastructures. Meantime, it should be also underlined, that from the very beginning of the escalation of the conflict, Azerbaijan used banned weapons against civilians.

According to the Updated Edition of the Second Interim Report of the Human Rights Ombudsman of Artsakh “On The Azerbaijani Atrocities Against Artsakh Population In September-October 2020”, *[S]ince the launch of the large-scale aggression against Artsakh, Azerbaijan has been repeatedly using multiple rocket launching systems and cluster munitions in areas where civilian population and civilian objects are located.*

On September 27-28, October 2-8 Azerbaijan deployed LAR-160 and SMERCH cluster warhead missiles against the capital Stepanakert, towns of Shushi and Hadrut and the village of Shosh near Stepanakert.³⁰ There are many other reports on usage of cluster weaponries in other settlements and days, too. The Emergency State Service of the Republic of Artsakh stated that since September 27 by October 10 the Service found over 180 cluster munitions only in Stepanakert.²³

The use of banned weapons (cluster munitions) by Azerbaijan against residential areas of Artsakh was also reported as a result of the Human Rights Watch fact finding mission in place. Specifically, it is stated that *Azerbaijan has repeatedly used widely banned cluster munitions in*

²³ See Section 2 Subsection 2.1. on the Use of Banned Weapons of the Updated Edition of the Second Interim Report of the Human Rights Ombudsman of Artsakh “On The Azerbaijani Atrocities Against Artsakh Population In September-October 2020”, <https://artsakhombuds.am/en/document/735?fbclid=IwAR0Pevh4ZDqm-MSiC9KkKyvkDEPraFygCqPAuVQ0BMRNIN9zCa3JpuMiY9s>

residential areas in Nagorno-Karabakh. (...) Human Rights Watch identified the remnants of Israeli-produced LAR-160 series cluster munition rockets and unexploded M095 dual-purpose submunitions in Stepanakert and Hadrut.

It should be also underlined that there are no military objects near the places of attacks. This was also underlined by the Human Rights Watch: *Human Rights Watch was not able to identify any military equipment or bases in the three neighborhoods where the attacks took place. Even if there had been, given the indiscriminate effects of cluster munitions, their use in a residential civilian setting is not permitted under the laws of war.*²⁴

These, as well as the facts presented above in the Chapter I of the current report shows, that the Azerbaijani Armed Forces continues using banned weapons and means of warfare against civilian communities and peaceful population.

One of its examples is the use of the ammunition of mass destruction containing chemical elements (possibly white phosphorus) against forests close to the residential areas of Artsakh. As it was already underlined, unfortunately at the moment of the preparation of the current report it was impossible to know 100% what was exactly the chemical element within the ammunition used by the Azerbaijani Armed Forces against the forests of Artsakh in between 29 – 31 October. However, there are reasonable doubts that the ammunitions used by the Azerbaijani Armed Forces contain white phosphorus.

Hence, the analysis must be done in the context of the following issues:

- a) Definition of the incendiary weapon, inter alia the ammunition of mass destruction, including those containing white phosphorus;***

- b) Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces against civilians of Artsakh;***

²⁴ See the statement of the Human Rights Watch on the fact finding mission in Artsakh (Nagorno-Karabakh), entitled “Azerbaijan: Cluster Munitions Used in Nagorno-Karabakh: Stop Use of Banned Weapons; Secure and Destroy Stocks”, https://www.hrw.org/news/2020/10/23/azerbaijan-cluster-munitions-used-nagorno-karabakh?fbclid=IwAR38xu1sBfmaiRHG5WJxLc4K0cdQTLytleG0IpSL5xVcDO891_uITGEWMaU

c) Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces causing widespread, long-term and severe damage to the forest areas and natural environment of Artsakh;

d) Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces causing destruction objects indispensable to the survival of the civilian population of Artsakh.

1. Definition of the incendiary weapon, inter alia the ammunition of mass destruction, including those containing white phosphorus;

No treaty deals specifically with 'white phosphorus', 'white phosphorus weapons', or 'white phosphorus munitions' as a means of warfare, but several treaties regulate munitions containing white phosphorus.

However, owing to the incendiary effects of white phosphorus, munitions containing it can fall within the ambit of the 1980 Protocol on Incendiary Weapons (Protocol III to the 1980 Convention on Certain Conventional Weapons, hereinafter referred to as "the Protocol"). The Protocol sets clear definition of the incendiary weapon.

In particular, according to the Article 1 Paragraph 1 of the Protocol, ***"[I]ncendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target.***

Furthermore, as it is stated in the Subparagraph (a) of the same paragraph, *[I]ncendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.*²⁵

²⁵ See the 1980 Protocol on Incendiary Weapons (Protocol III to the 1980 Convention on Certain Conventional Weapons), [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/B409BC0DCFA0171CC12571DE005BC1DD/\\$file/PROTOCOL+III.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/B409BC0DCFA0171CC12571DE005BC1DD/$file/PROTOCOL+III.pdf)

According to the facts presented above, the incendiary ammunition used by the Azerbaijani Armed Forces was in the form of flame throwers and set fire to targeted objects through the action of flame, possibly also through heat.

From the above-mentioned, indeed, it can be concluded that the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) used by the Azerbaijani Armed Forces against Artsakh is “Incendiary weapon” in the meaning of the Protocol.

2. *Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, causing long-term dangerous consequences for the life and health of the people of Artsakh: Legal analysis*

By using the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus) against the civilians and civilian objects of Artsakh, Azerbaijan grossly violates the International Humanitarian Law and relevant Customary Law.

a) ***Use of incendiary weapons against civilian objects and civilians by the Azerbaijani Armed Forces as the violation of the Protocol III to the 1980 Convention on Certain Conventional Weapons***

The Protocol restricts use of incendiary weapons as a means or method of warfare during armed conflict, prohibiting its use against civilians and civilian communities. In particular, according to the Article 2 Paragraph 1 of the Protocol, ***[I]t is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.*** Here it should be mentioned, in the meaning of the Protocol (Article 1 paragraph 4), “[C]ivilian objects” are all objects which are not military objectives as defined in paragraph 3.²⁶

²⁶ Ibid.

Meantime, it is stated in the Paragraph 3 of the Article 1, that "*[M]ilitary objective*" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.²⁷

As it was presented and well proofed in the Chapter I of the current report, the Azerbaijani Armed Forces launched attacks towards the civilian communities (e.g. Nngi community), by using the incendiary ammunition of mass destruction. **Furthermore, the targets, indeed, were not military objects, as it is foreseen from the facts, including the videos and pictures.** Moreover, objectively there cannot be military objects in the area of 1815 hectares (the area of burned forests only).

Taking into account the definition of the civilian object in the context of the Protocol and the facts discussed, it can be easily concluded that the attacks were made towards civilian objects and violate the very essence and core principles of the Protocol.

Furthermore, according to the Article 2 Paragraph 2, *[I]t is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.* In the context of the Protocol (Article 1 paragraph 2), "*[C]oncentration of civilians*" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.²⁸

As it was presented above, according to the investigation of the Human Rights Defender of Armenia and the official statement of the Human Rights Ombudsman of Artsakh, following the damages caused to the civilian communities as a result of the Azerbaijani Armed Forces' indiscriminate and in some cases targeted attacks, there were civilians in sheltered in the forests close to their residents. **Therefore, those forests became camps of evacuees, where the civilians of Artsakh were hiding from the Azerbaijani Armed Forces' attacks.**

Hence, by targeting the forest areas used as a camps for evacuees (civilians population of Artsakh), the Azerbaijani Armed Forces grossly violate also another fundamental principle of the Protocol.

²⁷ Ibid.

²⁸ Ibid.

b) *Use of incendiary weapons against civilian objects and civilians by the Azerbaijani Armed Forces as the violation of the Customary International Humanitarian Law*

Furthermore, the International Humanitarian Law (IHL) rule of distinction in attacks holds that in the conduct of hostilities during an armed conflict parties to the conflict must **target only lawful military objectives and never civilians or civilian objects. An attack that does not target one or more lawful military objectives is an indiscriminate attack.** This includes the use of an inherently indiscriminate weapon. **If conducted intentionally it may constitute a war crime.**

In particular, according to the Article 8 Paragraph 2 Subparagraph (b) Point (iv) of the Rome Statute of the International Criminal Court, the following will constitute a war crime: *"[I]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated".*²⁹

The rule of distinction — the duty to distinguish in attacks between lawful military objectives on the one hand (e.g. combatants and military materiel) and civilians and civilian objects on the other — can be considered the most fundamental of all IHL rules governing the conduct of hostilities. Its application and respect in international armed conflict are generally more straightforward than in non-international armed conflict. **In any armed conflict the use of an inherently indiscriminate weapon violates the rule of distinction and is prohibited.**

Here, the indiscriminate weapon should be determined. An indiscriminate weapon is a weapon that cannot be directed at a military objective or whose effects cannot be limited as required by IHL. **Weapons that are regularly claimed in jurisprudence and legal doctrine to be indiscriminate include also the incendiary weapons.**

Therefore, it must be concluded that the use of the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, violates also the IHL fundamental principle

²⁹ See the Rome Statute of the International Criminal Court, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

on the prohibition of indiscriminate attacks and use of indiscriminate weapon. Moreover, this constitute a war crime.

3. *Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, causing widespread, long-term and severe damage to the forest areas and natural environment of Artsakh: Legal analysis*

Through using the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus) against the forest areas of Artsakh, which may cause environmental disaster, Azerbaijan grossly violates the International Humanitarian and Environmental Law. Azerbaijan, as a party to the Geneva Conventions and their Additional Protocols, must adhere to their obligations along with *jus cogens* norms of International Customary Law, which unequivocally prohibit attacks on civilian objects, including forest areas.

a) ***Use of incendiary weapons against forest areas by the Azerbaijani Armed Forces as the violation of the Protocol III to the 1980 Convention on Certain Conventional Weapons***

The Protocol restricts the use of incendiary weapons against forests as well. Specifically, according to the Article 2 Paragraph 4, ***[I]t is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.***³⁰ Hence, the forests can be targeted solely in cases when there are military objects.

According to the facts analyzed in the Chapter I of the report, there were no military objects in the forest areas where the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) was used by the Azerbaijani Armed forces. As it was already underlined, objectively in practice there cannot be 1815 hectares military objects.

³⁰ Ibid.

Therefore, the Azerbaijani Armed Forces violated also the current norm of the Protocol, by using the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus), put it otherwise, the incendiary weapon.

b) *Use of incendiary weapons against forest areas by the Azerbaijani Armed Forces as the violation of the International Humanitarian Law, Environmental Law and the Customary Law*

The prohibition on the attacks that might cause long-term and severe damage to the natural environment, including through use of incendiary weapons is strict. It is enshrined in various IHL documents including the Additional Protocol I to the 1949 Geneva Conventions (hereinafter referred to as “the Additional Protocol”). In particular, the Article 35 Paragraph 3 stipulates that “[I]t is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.”³¹ The article directly protects the natural environment and applies to intentional damage, as well as expected collateral damage.

Furthermore, the Article 55 Paragraph 1 of the Additional Protocol provides specific protection of the environment as part of the protection granted to civilian objects and it explicitly prohibits attacks on the environment by way of reprisals. In particular, it states that “[C]are shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. ***This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.***”³² The rule underlines the importance of the protection of the natural environment from the damage, which may cause a threat to the people around.

Moreover, in its advisory opinion in the Nuclear Weapons case in 1996, the International Court of Justice stated that “[R]espect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality.

³¹ See the Additional Protocol I to the 1949 Geneva Conventions, https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

³² Ibid.

*This approach is supported, indeed, by the terms of Principle 24 of the Rio Declaration, which provides that: "Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary."*³³

Furthermore, the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (hereinafter referred to as "the ENMOD Convention") is an instrument of international disarmament law specifically intended to protect the environment in the event of armed conflict. It prohibits hostile use of the environment as a means of warfare, such as the engagement in the military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury.³⁴ The provisions of Additional Protocol I of 1977 to the Geneva Conventions of 1949 form an essential complement to those of the ENMOD Convention, as they directly prohibit damage to the environment during armed conflict.³⁵ Other rules and principles of international humanitarian law also confer protection on the environment during armed conflict, though without mentioning it specifically.

This is particularly the case with general customary principles regarding the conduct of hostilities, such as the principle of distinction, which prohibits attacks on environment, and that of proportionality, which prohibits the use of means and methods of warfare that cause excessive damage to nature.³⁶

Moreover, under the Fourth Geneva Convention, extensive destruction of property "*not justified by military necessity and carried out unlawfully and wantonly*" constitutes a grave breach.³⁷ This rule is restated in other instruments with respect to the natural environment.³⁸ It is also applied to the

³³ See the International Court of Justice Legality of the Threat or Use of Nuclear Weapons Advisory Opinion of 8 July 1996, Paragraph 30, <https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>

³⁴ See the UN Treaty Series, vol. 1108, p. 151 and depositary notification C.N.263.1978.TREATIES-12 of 27 October 1978, Art 1, <https://treaties.un.org/doc/Publication/UNTS/Volume%201108/v1108.pdf>

³⁵ See the Additional Protocol I of 1977 to the Geneva Conventions of 1949, https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

³⁶ See the Preamble of the 1976 Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques, <https://www.icrc.org/en/document/1976-convention-prohibition-military-or-any-hostile-use-environmental-modification>

³⁷ See the Fourth Geneva Convention, Article 147, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

³⁸ See, e.g., Agenda 21, para. 39.6; San Remo Manual, para. 44; Guidelines on the Protection of the Environment in Times of Armed Conflict, para. 8.

natural environment in a number of official statements.³⁹ In a resolution on the protection of the environment in times of armed conflict in 1992, the UN General Assembly stressed that “*destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to existing international law*”.⁴⁰ The Final Declaration adopted by the International Conference for the Protection of War Victims in 1993 urged States to reaffirm and ensure respect for international humanitarian law protecting the natural environment against “*wanton destruction causing serious environmental damage*”.⁴¹

Taking into account the presented facts in the Chapter I and the relevant international norms, it can be concluded that, by deliberate targeting of the forest of Artsakh and causing a fire of 1815 hectares of forest areas through use of the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus), Azerbaijani Armed Forces cause widespread, long-term and severe damage to the forest areas and natural environment of Artsakh. In its turn, this must be considered a grave violation of the International Humanitarian Law and Environmental Law.

4. *Use of the incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces causing destruction objects indispensable to the survival of the civilian population of Artsakh: Legal analysis*

According to the facts presented in the Chapter I of the current report, it must be underlined that by targeting and destroying objects indispensable to the survival of the civilian population of Artsakh, the Azerbaijani Armed Forces conducted grave violation of the International Humanitarian Law.

In particular, according to the Article 54 Paragraph 2 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, “[I]t is prohibited to attack, destroy, remove or render useless **objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural**

³⁹Jean Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1 Rules, ICRC, Cambridge, 2005, p 145, <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

⁴⁰Ibid.

⁴¹ Ibid.

areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."⁴² **It should be underlined, that the prohibition covers any case, irrespective from the motive.**

Furthermore, Article 14 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 stipulates that "[S]tarvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."⁴³

In 1993, in a statement by its President on the situation in Sarajevo, the UN Security Council demanded "an end to the disruption of public utilities (including water, electricity, fuel and communications) by the Bosnian Serb party".⁴⁴

Furthermore, in 1998, in a statement by its President on the situation in the Democratic Republic of the Congo, the UN Security Council recalled "the unacceptability of the destruction or rendering useless of objects indispensable to the survival of the civilian population, and in particular of using cuts in the electricity and water supply as a weapon against the population".⁴⁵

In 1998, the UN High Commissioner for Human Rights and the UN Under-Secretary-General for Humanitarian Affairs issued a joint statement on the situation in the Democratic Republic of the Congo in which they expressed their concern that: "[T]he humanitarian situation on the ground is steadily deteriorating, in particular in Kinshasa **where electricity and water supplies have been disrupted** sporadically over recent days ... The United Nations and its agencies call on those who

⁴² See the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, <https://ihl-databases.icrc.org/ihl/WebART/470-750069>

⁴³ See the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, <https://www.ohchr.org/en/professionalinterest/pages/protocolii.aspx>

⁴⁴ See the publication by the International Committee of Red Cross, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule54#:~:text=%2D%20Objects%20that%20are%20indispensable%20to,and%20supplies%20and%20irrigation%20works.

⁴⁵ Ibid.

instigated these acts to immediately restore all vital basic services, in particular power supply and drinking-water to the capital, and to refrain from willfully endangering the lives of thousands of innocent men, women and children.”. According to the mentioned statement, the destruction of water and electricity supplies were condemned by the UN.⁴⁶

Taking into account the mentioned International Humanitarian Law rules, the relevant statements of the UN bodies, as well as the facts presented in the Chapter I, it can be concluded that the attacks on the objects indispensable to the survival of the civilian population is prohibited, and Azerbaijan gravely violates those rules by targeting that objects in Artsakh.

⁴⁶ Ibid.