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Introduction

In the early morning of 27 September 2020, Azerbaijan began launching indiscriminate military aggressive air and artillery attacks against Artsakh (Nagorno-Karabakh) along the entire border line, targeting civilian communities and peaceful communities population. Furthermore, the 13-14 September 2022 war against Armenia, is an example proving the continuous existential threats of the Azerbaijani hatred policy. This aggression targeted Syunik, Vayots Dzor and Gegharkunik provinces of Armenia (Jermuk, Vardenis, Goris, Martuni, Sotk, Tegh, Verishen, Akner and other towns and villages, etc.).

The gross violations of International Humanitarian Law and International Human Rights Law must be considered in the context of the Armenophobic policy of Azerbaijan and the impunity for war crimes during previous atrocities. This policy is based on ethnic hatred, keeping Armenians and Azerbaijanis in tension and animosity throughout the world. This undermines security in the region, destroys prospects of peace and nullifies the normal life of people.

This policy always results in atrocities and torture, beheadings and willful killings, destruction of civilian communities, and provocation of hatred. This was proved by the Artsakh (Nagorno-Karabakh) 2020 44-day war; the Artsakh 2016 April war, and other Azerbaijani military attacks against Armenia or Artsakh.

In particular, monitoring of the mass media and social networks during the September-November 2020 war and the September 2022 war, revealed torture, inhuman treatment, extrajudicial killings and brutalities of Armenian soldiers and civilians by the Azerbaijani armed forces. These gross violations of the Azerbaijani armed forces were accompanied by organized intensive hate speech and animosity against Armenians enjoying sponsorship in Azerbaijan.

The Human Rights Defender (Ombudsman) of Armenia (from 2016 to 2022) and the Human Rights Ombudsman of Artsakh have regularly published the following thorough and evidence-based reports confirming the existence of state-sponsored hatred and Armenophobia (evidence illustrated in this report are just examples):

- Artsakh ombudsman: “Interim public report on atrocities committed by Azerbaijani military forces against the civilian population of the Nagorno Karabakh Republic and servicemen of the Nagorno Karabakh Defence Army on 2-5 April 2016.1.

¹ Ad Hoc Public Report is available in English at: <https://artsakhombuds.am/ru/document/560>.

- Artsakh ombudsman: “Interim public report on Armenophobia in Azerbaijan organized hate speech and animosity toward Armenians”, 20182.
- The Human Rights Defender of Armenia and the Human Rights Ombudsman of Artsakh: “On organized hate speech and animosity toward ethnic Armenians in Azerbaijan as root causes of ethnically-based torture and inhuman treatment by Azerbaijani armed forces” (September-November 2020)³.
- The Human Rights Defender of Armenia: “A Park of killed Armenian soldiers and chained prisoners of war in Baku: A museum of human sufferings and promotion of racism”, 20214.
- The Human Rights Defender of Armenia: “Urgent necessity for a demilitarized security zone in the areas of contact with the Azerbaijani military forces as a fundamental safeguard to protect the rights of the population in Armenia: Evidence-based analysis in the context of the ongoing situation in Gegharkunik and Syunik provinces, 20215.
- The Human Rights Defender of Armenia and the Human Rights Ombudsman of Artsakh: “Facts on Azerbaijani fictitious peacebuilding and absence of honest dialogue as long-standing threats to human rights: the Baku-Tbilisi platforms (the situation in 2016 and 2017)”⁶.
- The Human Rights Defender of Armenia: “The Azerbaijani policy of hatred and animosity toward Armenians as root causes of ethnically motivated violations of human rights: evidence-based analysis of the post-war developments”, 20227.

The analysis of revealed materials and public rhetoric of high-level officials of Azerbaijan, including the president, as well as the current trends in the society of this population proved the causal link between the state-supported hate speech and animosity against ethnic Armenians (Armenophobia) and the gross violations of human rights during both wars.

The mentioned materials were being disseminated through Facebook, Twitter, TikTok and other social media networks by targeting Armenian mass media and social network users, including minors. Furthermore, the photo and video material of those being tortured and

² Ad Hoc Public Report is available in English at: <https://artsakhombuds.am/hy/document/570>

³ Ad Hoc Public Report is available in English at: <https://www.ombuds.am/images/files/2032f021fe81176414a649d588ad0e86.pdf>

⁴ Ad Hoc Public Report is available in English at: <https://ombuds.am/images/files/96e6d55d169a784b6424e4d565b29dba.pdf>

⁵ Ad Hoc Public Report is available in English at: <https://ombuds.am/images/files/26a9d7838a4f87fc198e65daadbc4ef1.pdf>

⁶ Ad Hoc Public Report is available in English at: <https://ombuds.am/images/files/f3caae1085fb33cb2ad98365cc3e88ce.pdf>

⁷ Ad Hoc Public Report is available in English at: https://ombuds.am/images/files/3101f60c869b0f378dbc737b002e5054.pdf?fbclid=IwAR3BPWvKOlreGmQ7r_eVZbgKR3-F1MiP0JbxiXni-JJcA_KGKVjA9H71M3g#page50

executed are also being shared with the family members directly. It is aimed to cause as much psychological pain or suffering to family members or relatives as possible. Monitoring revealed that all the above-mentioned are being encouraged by the authorities of Azerbaijan.

Another method used by the Azerbaijani authorities and armed forces was artificially hindering the search for the dead and intentional delay of handing over the bodies and human remains. This also aimed to cause severe psychological trauma to the family members and keep tension in the population of Armenia at large.

This report is prepared by the Center for Law and Justice “TATOYAN” foundation and analysis the case of delayed return of the mutilated and unrecognizable dead bodies of fallen soldiers, returned to their parents and relatives a long time after the ceasefire statement. It particularly focuses on the human rights violations of the family members of fallen soldiers caused by Azerbaijan.

For the preparation of the current report, interviews with the family members were carried out. The collected findings were analysed in the context of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). The names of interviewees are not publicised for privacy and security reasons.

The current report was prepared and published by the Center for Law and Justice “Tatoyan” Foundation, including U.S. lawyers Garo Ghazarian and Karnig Kerkonian. This team has extensive experience of active engagement with fact-finding activities in 2016-2022, thus the results of fact-finding missions, studies and professional analyses of that period were also relevantly used in this context.

I. Anguish and Distress Suffered by Families of Fallen Armenian Soldiers Because of the Intentional Delay in Returning the Remains by Azerbaijan

1. The serious human rights violations causing suffering anguish and distress by the families of victims of serious human rights violations may amount to ill-treatment. This is particularly the case in some instances which relates to the confirmed death of relatives and the treatment of their bodies.

2. Following the September-November 2020 war, a trilateral ceasefire statement was signed on November 9, 2020, by Armenia, Azerbaijan, and Russia⁸. The 8th point of the statement provides that “[T]he Parties shall exchange prisoners of war, hostages and other detained persons, and dead bodies.”⁹

3. However, there were a number of reported cases in the September-November 2020 war and the September 2022 war when Azerbaijan intentionally did not return the bodies and human remains to the relatives, causing severe mental suffering and distress.¹⁰

4. As was mentioned in the report prepared by the Armenian NGOs on the Human Rights violations during the 44-Day War in Artsakh, the existing evidence suggests that many civilians were kept in incommunicado detention after their capture by members of the Azerbaijani army. Relatives of some civilians learnt about the fact of their capture and detention only from the videos published on the Internet, which demonstrates that Azerbaijan failed to comply with the obligation to transfer information about the whereabouts of civilians under its control, and to allow communication with relatives.¹¹

5. Furthermore, Modern technology was used by Azerbaijani social media users to cause severe suffering to the Armenian population. In Azerbaijani channels of the Telegram social network, Stickers [application] of the photos of tortured and dismembered bodies of Armenian soldiers and civilians through chatbots were created. The photos of atrocities conducted in the September-November 2020 war and during the war against Armenia in September 2022 were used for the stickers.

⁸ Hereinafter referred to as the Trilateral Statement.

⁹ Trilateral ceasefire statement of November 9, 2020, available at: <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>.

¹⁰ Media publications of BBC including interviews with Mr Arman Tatoyan, available at:

<https://www.bbc.com/russian/news-64886810> and <https://www.bbc.com/russian/features-57739392>.

¹¹ Report of the Armenian NGOs, “Human Rights Violations during the 44-Day War in Artsakh”, page 152, available at: https://www.osf.am/wp-content/uploads/2022/06/Fact-Finding-Report_FINAL_web.pdf.

6. These stickers were created on September 14, 2022, but were found on September 18. Immediately after creation, they became publicly accessible with the opportunity to download and use them during communication in public. Overall, 119 photos (i.e. 119 stickers) were reported. They had been downloaded more than 20,000 times in 5 days.

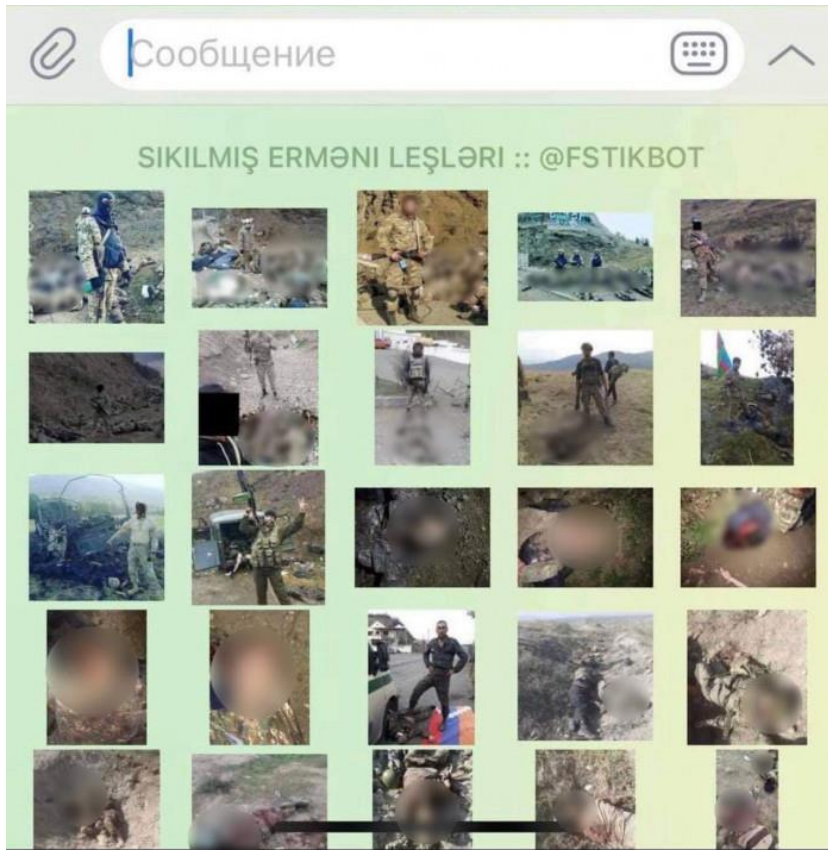


Figure 1

7. The violations of Azerbaijani armed forces were reported by Human Rights Watch prepared in cooperation with the Human Rights Defender of that period Dr Arman Tatoyan and lawyers representing the families of soldiers Mr Artak Zeinalyan and Ms Siranush Sahakyan. In particular, it states about dozens of videos alleging abuse of Armenian POWs have been posted to social media. Human Rights Watch closely examined 14 and spoke with the families of five POWs whose abuse was depicted.¹²

¹² "Azerbaijan: Armenian Prisoners of War Badly Mistreated", Human Rights Watch, available at: <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>.

8. Furthermore, during the war and immediately after the war, the Human Rights Defender of Armenia obtained objective evidence certifying that Azeris illegally take passwords and usernames of Armenian social network accounts and manage those pages themselves. Evidence shows that these social network pages or accounts are activated from the Azerbaijani IP (Internet Protocol) domain. Our monitoring shows that these are our compatriots who were taken as prisoners of war or otherwise appeared in Azerbaijan.¹³ These are only some examples among dozens of cases of Azerbaijani ill-treatment against the families of Armenian soldiers.



Figure 2

¹³ See for instance the publications of the Human Rights Defender of Armenia “The Azerbaijanis control the social media pages of the Armenian POWs; the Human rights Defender has obtained evidence” available at: https://www.ombuds.am/en_us/site/ViewNews/1344, “The Azerbaijanis manage the Armenian war prisoners' social network pages, spreading hatred and enmity: The Human Rights Defender's study”, available at: https://www.ombuds.am/en_us/site/ViewNews/1357 or “Azerbaijanis are spreading internal enmity in our society through the social network accounts of the Armenian captives: The Defender has obtained new evidence”, available at: https://www.ombuds.am/en_us/site/ViewNews/1426.

Facebook interface showing session logs for www.facebook.com. The logs include details for Web Session Terminated and Login events, such as Time, IP address, Browser (Mozilla/5.0), Cookie (e_GG), and Location (Baku, AZ).

Facebook interface showing session logs for www.facebook.com. The logs include details for Mobile Session Terminated and Web Session Terminated events, such as Time, IP address, Browser (Mozilla/5.0), Cookie (Fo5w), and Location (Baku, AZ).

Facebook interface showing session logs for www.facebook.com. The logs include details for IP address, Browser, Cookie, Location (Yerevan, AM), and Login events, such as Time, IP address, Browser (Mozilla/5.0), Cookie (e_GG), and Location (Baku, AZ).

Whois IP 85.132.71.56

Updated 26 minutes ago

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% This is the RIPE Database query service.
% The objects are in RPSL format.
%
% The RIPE Database is subject to Terms and Conditions.
% See http://www.ripe.net/db/support/db-terms-conditions.pdf

% Note: this output has been filtered.
% To receive output for a database update, use the "-B" flag.

% Information related to '85.132.64.0 - 85.132.95.255'
% Abuse contact for '85.132.64.0 - 85.132.95.255' is 'abuse@delta-telecom.net'

inetnum:      85.132.64.0 - 85.132.95.255
netname:     DELTA-DSL
descr:       DELTA Broadband Network
country:     AZ
admin-c:     RA907-RIPE
tech-c:      EK1287-RIPE
status:      ASSIGNED PA
mnt-by:      MNT-DELTA-TEL
mnt-lower:   MNT-DELTA-TEL
mnt-routes:  MNT-DELTA-TEL
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last-modified: 2011-03-18T12:08:21Z
source:      RIPE

person:      Elvin Kelenterov
address:     241 Sharifzadeh str
address:     Baku, AZ1012
address:     Azerbaijan Republic
phone:       +99412 4311428
phone:       +99412 4040478
phone:       +99450 2058570
fax-no:      +99412 4310805
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remarks:    Technical contact Delta Telecom LTD
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created:     2006-04-15T08:21:53Z
last-modified: 2017-10-30T21:48:54Z
source:      RIPE # Filtered

person:      Rahid Alekberli
address:     Baku, AZ1012
phone:       +994 12 404 12 12
nic-hdl:     RA907-RIPE
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created:     2003-03-03T10:29:45Z
last-modified: 2013-12-16T12:38:35Z
source:      RIPE

% Information related to '85.132.71.0/24AS29049'
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descr:       AzerSat-Route-85.132.71.0/24
origin:      AS29049
mnt-by:      AZERSAT-MNT
created:     2004-12-03T14:11:24Z
last-modified: 2004-12-03T14:11:24Z
source:      RIPE

% This query was served by the RIPE Database Query Service version 1.98 (ANGU)

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Figures 2, 3, 4 and 5

9. In another case, the Human Rights Defender reported that during the 44-day war, on 16 October, at around 1 PM a member of the Azerbaijani armed forces called the brother of an Armenian soldier and said that his brother is with them; they beheaded him and were going to post his photo on the Internet. Afterwards, several hours later, the brother found the photo on his killed brother's social media page.

10. The conviction is that these were members of the Azerbaijani army who posted the Armenian soldier's photo on his social media page. There were two phone calls with Azerbaijani soldiers who used hate speech intending to humiliate the Armenian-killed soldier's brother. As the latter informed the Human Rights Defender, the calls were made from the Armenian soldier's phone number.¹⁴



Figure 6

11. This and a number of other criminal acts confirm the intent of the Azerbaijani armed servicemen, which is to cause mental suffering to families of victims and Armenian society. They intend to play with emotions. Similar cases were also recorded during the 2016 April war.

¹⁴ Publication of the Human Rights Defender "The Azeris beheaded the Armenian soldier, called and informed his brother and posted the picture on the Internet. The Human Rights Defender recorded the fact", available at: https://ombuds.am/en_us/site/ViewNews/1337.

Their approach has not changed. These crimes have become inveterate because the perpetrators of such atrocities remain unpunished.

12. In the example of several cases, the current chapter seeks to report the details of the anguish and distress suffered by relatives of fallen Armenian soldiers as a result of the significant delay in returning the bodies and remains of their loved ones, collected as a result of the fact-finding activities. The aim is also to describe the psychological impact of the violations of Azerbaijan among the relatives of the Armenian soldiers which amount to severe violation of their rights.

13. As it was mentioned in the introduction, one of the key pillars of the methodology of the current report is the interviewing of the relatives of the Armenian soldiers fallen during the September-November 2022 war and the war in September 2022. It allows the possibility to collect first-hand evidence and analyse it in the context of the IHL and the IHRL.

1) Families of Armenian soldiers of the Tsor military unit D20 Artillery Division

14. For the purpose of the current chapter the information reported during the interviews with the families, the materials of relevant criminal case and the publicly available sources on court proceedings of those case was considered.

15. Azerbaijan violated the Triparty Statement by returning the mutilated and unrecognizable dead bodies of 11 fallen soldiers of the D20 Artillery Division of the Tsor military unit to their parents and relatives only after a year after the statement.

16. During the September-November 2020 war, on 12 October, Armenian soldiers of the D20 artillery division of the Tsor military unit found themselves surrounded and attacked by the Azerbaijani troops in Juvarlu. During the battle, some Armenian servicemen exited the adversary's fire zone and retreated to the rear. However, 20 of the soldiers were forced into combat and died. Their bodies remained in the firing position.¹⁵

17. Nine bodies (bodies of L.G., S.G., V.H., N.B., A.A., G.B., N.A., V.A., G.A.) were removed on December 1, 2020, during search operations carried out by the Armenian side. The remaining eleven bodies (bodies of R.P., V.P., S.P., K.D., D.A., A.T., N.O., A.M., H.A., H.P., H.M,) were handed to the Armenian side by the Azerbaijanis only one year after the war, on the 2nd of November 2021.

18. After the battle in Juvarlu (Varanda region of Artsakh), video materials started circulating, showing the bodies of dead Armenian soldiers of the Tsor military unit who died

¹⁵ Evidence-based Report on the Intentional Mutilation of the Dead bodies of Armenian Soldiers, prepared by the "International and Comparative Law Center" NGO, page 3.

as a result of the mentioned attack. According to the interviews with the family members of these soldiers, they also saw the videos in question and were able to clearly identify their relatives. However, Azerbaijan handed over to the family members only humiliated body parts and remains of the soldiers.¹⁶

19. Following the interviews with the family members of Armenian soldiers of the Tsor military unit, the identification of soldiers was possible to make only after the Deoxyribonucleic acid (DNA) examinations. It took a month on average to receive the results of the DNA examination. Furthermore, they were supposed to give the DNA samples.

20. These caused additional trauma to the family members, which can be avoided if Azerbaijan would hand over the bodies of Armenian soldiers of the Tsor military unit on time by following the norms of the IHL and the IHRL.

21. The representatives of the Center for Law and Justice “TATOYAN” foundation carried out interviews with the relatives of the Armenian soldiers of the Tsor military unit, namely the family members of A. A., A. M., S. P., H. M., N. B., L. G.

22. All of the family members highlighted that they saw a video on one of the Telegram channels, where the completely depicted bodies of their loved ones appeared. Consequently, they made every effort to get the bodies, but, unfortunately, there was no success.

23. Below the details of the interviews are concluded.

24. During the interview with A. A., the father of the fallen soldier A. A. stated:

“After the incident, we tried all possible options to bring back the bodies of our children, but the enemy did not allow us to approach the scene, also, the Azeri military corps did not take the initiative to return our children to us or at least exchange them with the bodies of their victims. Then, after the end of the war, on December 1, 2020, we were able to enter the battle site, where our children were killed, for search purposes.

There I saw traces of our children’s bodies, however, the bodies disappeared, and we found only the remains of nine children. We collected the remains, other parents J. M., A. B. and others were also with me.

The remains were sent to the Scientific Center of Forensic Medicine, and after a long time, we received information about the identification and matching of the remains. Some of them belonged to my son A. A.

¹⁶ Evidence-based Report on the Intentional Mutilation of the Dead bodies of Armenian Soldiers, prepared by the “International and Comparative Law Center” NGO, pages 8 - 11.

From the beginning, the Azerbaijani side did everything to hinder the search operations. We have seen contemptuous and humiliating behaviour from them. I continued searching our children's bodies with other parents until I found all of them. Until now, the commander Norayr Hayrapetyan is missing, and the family is in a difficult situation."

25. J. M., the father of fallen soldier A. M., mentioned:

"We have visited the scene about twenty times with our parents. At first glance, it would seem that we had a special privilege as a group of parents, but the reality was different. At first, it was very difficult for us to agree to visit the site for search operations. There were many cases that they didn't allow us to search normally, limiting our work by allowing us to just walk in a very small area. That's why we found relics or clothes after several visits and not at once.

We were treated very demeaningly, even our children's outerwear or helmets were not allowed to be taken, at least as something to remember. We made every effort to return our children during the negotiations, but we mostly heard cynical answers, like: "Yes there were the bodies unless different military groups entered there and took children to somewhere that we don't know".

Then we had a more civilized dialogue with an Azeri officer, he told us that he was born in Stepanakert during the Soviet Union period. We showed him the video and asked him to help us find our children. Even in that video, there was an Azeri soldier, who was recording the scene of the incident and talking and mocking our children. We asked him to find that person and ask for the place of the children's conditional burial. He replied that Armenian snipers killed him. Of course, he lied, because the aunt of one of our soldiers, A.M. had found out the identity of that person and the fact that he was alive through her connections, and one of the employees of the State Ministry of Emergency Situations of the Republic of Artsakh had even found him in Shushi while getting permission to go on usual search operations. That person also did not say the location of the children, he only mentioned that he was passing by and saw the bodies, thus, decided to take a video.

On another day of regular visits, we went to Shushi to get permission, we had to go on regular search operations, and one of the Azeri officers told us that they knew our Tsor D-20 artillerists very well, they fought well, caused significant damage to their armed forces and died heroically. Enemies have made great efforts to hurt our children. And as that officer said, they died like real martyrs and were buried like heroes, but he did not say the place of burial. Further, he asked with surprise: "You

had such a soldier, how did you lose the war?”. I could not say anything in response, I remained silent.

For a long time, A. M. and I applied to all governmental and international institutions, presented the details of the case and asked for help in finding our children. Then we went to Artsakh, approached the Russian peacekeepers with our parents and negotiated the return of our children. We showed the video again and said that these dead children are also ours, bring us their remains.

First, we will understand who is dead and who is alive, and then we will continue searching for the live soldiers among the prisoners. A couple of days later, with the mediation of Russian peacekeepers, the Azeri side handed over the remains of eleven soldiers to the Armenian side. One of our parents, A. A., is among the officials who received the remains, and during the preliminary examination, he found my son's military ID.

In fact, there were eleven bags of mixed remains, it was difficult to identify the children without DNA examination. I remember well, it was November, and the DNA identification process took about a month. And in the end, we found out that all the relics belonged to our children, no relics of any other soldier either enemy or other military unit were found in those bags. That Azeri officer was honest with us and said that our hero children were buried like martyrs, in a separate pit. It was already clear to all of us that they knew the place, they just didn't tell.”

26. S. P., the father of fallen soldier S. P., testifies:

“I participated in almost all searching operations. The most difficult day for me, was when I found my son's death place at the scene as a result of matching with the video, it was a little far from the blown-up car.

I found my son's helmet with a bunch of hair stuck to it. I wanted to take it, but Azeri soldiers didn't allow me. After all my efforts and persuasions, they allow me to take the hair from the helmet. That bunch of hair was the only memory left for me and my wife.

We searched for our children for a long time and negotiated by suggesting all possible options, but for fourteen months we did not achieve any success. Fourteen months later, the Azeri side hands over the remains to us, but in fact, they were bags with mixed bones, the identification process took a month, and then it turned out that some bones belonged to our son. We had hard days, I had a heart attack and surgical intervention, my wife had a stroke, and now she doesn't speak or walk, we move around in a wheelchair.”

27. K. M., the uncle of fallen soldier H. M, mentioned during the interview, the following:

“My sister was a single mother, her only son was a soldier in the armed forces of Artsakh. Our H. died along with his comrades on October 12, 2020, but we received one hip bone fourteen months later.

Since his mother’s health condition was seriously weak, my other sister and I were conducting the search operations. I was going to the scene with the fathers of our dead children and there I was trying to find our H., while A. was looking for his body in all the morgues.

One of the most painful days was when I found my H.'s clothes at the scene, and the Azeri officers did not even allow me to touch his outerwear. They observed it and found my H.'s phone. I was begging to take back the phone, but they stubbornly refused and did not give it.

Then, with the efforts of A. A., one of our parents, only the phone's SIM card was returned. Against everyone's will, I just tore off the metal badge with his name and surname from his clothes. I wanted to have at least something to remember.”

28. A. M., H. M.'s aunt, stated during the interview:

On October 12, 2020, the accident happened, since that day I have tried all possible options to bring the child's body. However, my efforts were in vain, all the responsible departments assured me that the Azeri side is not interested in the exchange of bodies, the authorities of the enemy country repeatedly violated the ceasefire regime and did not allow the exchange of bodies.

I waited until the end of the war, after which I started looking for the child in the morgues. In the process, I got acquainted with the parents of my H.'s military allies. Since then, together we continued our search operations. The whole process was a severe ordeal for me. The serious condition of my sister and the fact of a missing child destroyed me psychologically.

However, the most horrible day was the day of the joint announcement of all our parents. I remember that the Armenian side handed over the maps of mined areas, which were considered a state secret, to the Azeri side for exchange with prisoners. At that time, rumours circulated that the Azeri side was also putting pressure on the Armenian side, demanding territorial concessions in exchange for the prisoners. This was the period when we still didn't know if there was at least one survivor among our children.

We gathered together with all the parents and announced through the media: “The Motherland is the only worth that belongs to all, to the future generations, the only

heart of our national identity, it cannot be negotiated. Our children are not objects of sale, but let everyone know that for the sake of our motherland, state and people, many soldiers, were injured, died, captured and missed, every inch of land in our country is priceless to us". That night was the most sinister, I wish I would not wake up. I had the feeling that I had betrayed my Hayk in the difficulty. Since then, life became worthless to me.

For a long time, I had many meetings with the state officials, we regularly conducted fact-finding operations, and I continued to transfer the updated facts to the institutions that took responsibility for the children's search. Fourteen months later, a hip bone from my H. was transferred to us.

We are not saying that we buried our child, we are just stating that we buried a fact that proves the circumstances of Hayk's death. Our child's grave is still open, we hope that other relics or maybe a complete skeleton will be handed over to us someday.

29. Furthermore, A. B., the mother of the fallen soldier N. B., told:

"We had no news for a long time, but we were informed from Yerevan that there were relics in a bad condition and could not be identified. The parents living in Yerevan had doubts that they were my son's hands. Then A. A., one of our parents, showed me the pictures of the relics, there were two hands with the preserved tissues, and I immediately recognized my son's hands. However, regardless of my statements, there was a procedure for DNA identification. With the efforts of our parents, living in Yerevan, a double sampling and examination have been done.

In the end, it was confirmed that it was my son's remains. According to our Armenian investigators, the hands were torn off in such a way that raised doubts about his death, so they suggested waiting until other relics would be also found.

In Yerevan, J. M., father of A. M., and A. M. aunt of H. M., thanks to their negotiations and explanations, the hands were transferred to us, and we performed the funeral, according to the Armenian Apostolic Church rules.

N.'s funeral took place on August 26, 2021. It seemed that we reconciled with the loss, but in November, the Azeri side handed over to the Armenian side eleven bags with mixed relics of soldiers, and we received relics from my son again. A second funeral took place in December. The psychological situation of the family was terrible, his daughter suffered a lot. We buried my son for the second time."

30. The last member of the family of fallen soldiers interviewed, M. G., the father of the fallen soldier L. G., testified:

“From the very first day, I participated in almost all search operations together with our parents. For the first time, we found the remains of nine children, which were transferred to the Scientific Center of Forensic Medicine in Yerevan.

It was December, and the identification and matching were in March, but we reexamined the remain for the second time. In May we reported that the results of the DNA identification confirmed the coincidence with our son L.

My wife lost consciousness from that terrible news; she was hospitalized. The saddest moment was that suffering in our lives was not over.

In November 2021, the Azeris handed over the remains, where there were still bones from my son, we demolished the child's grave for the second time and buried him again. My wife's health deteriorated again due to this incident.

The terrible reality did not end there. Months later, relics were found again, identified and matched with L., this time I didn't tell my wife, I did the third funeral alone.

2) Family of the Armenian soldier S.K., fallen during the September 13-14, 2022 war

31. 61-year-old H K, who lives in Pokr Masrik village of Gegharkunik province, says that after the short battles in Kutakan mountains in September 2022, the body of his 34-year-old son S. K. is there, first he was in military clothes, now there are bones.¹⁷

“Every day with tears in my eyes, I leave the house, I look at the mountain, a child lying on it, what should I do? So they can't take out the body of that child, bring it, they have been making these people cry for four months,”

32. Only after some time, they found out what happened to S. K. from conversations with fellow soldiers.

“They called to go to the positions by car for help, with 12 people, S. K. was behind them, they went to the position, but it turns out that the position was already Turkish, when they started shooting at the car, 11 of them escaped. They tell us that they brought them down from a position of several meters, but couldn't they have

¹⁷ Media article of Azatutyun Radio “13 bodies of Armenian solders were identified”, available at: <https://www.azatutyun.am/a/32167470.html>.

brought them back or, if the enemy is already there, they send them to kill them, but was it possible to send so many people one after the other?"

33. For a significantly long period, S.K.'s body was in the interposition zone of Kutakan. His relatives took pictures of him in military uniform, and then his bones, through video surveillance devices and also with a drone. His father told:

"Later, the Turks brought them and put a post there. At least if they had told us on the third day, we would have brought the child's body in another way,"

3) Other cases

34. Another case was reported in the report prepared by the Armenian NGOs on the Human Rights violations during the 44-Day War in Artsakh. There was a lack of information for a protracted period about the fate of Sasha's son, Arsen. Also, the capture of K.M. became known to relatives only following the publication of videos depicting them.

35. In the interviews with the Fact-Finding Group, interviewees reported at the time about missing fellow villagers; for instance, H.S. of Berdashen village reported about seven people missing from the village. In the case of A.A. (see above), his whereabouts were unknown to his family members for at least ten days after his capture, until after the ICRC delegates visited him and he was given an opportunity to contact his wife.¹⁸

36. Above-presented evidence prove the Azerbaijani intention to cause mental suffering and anguish to the relatives of fallen Armenian soldiers. They clearly describe the continuity of human rights violations in question from the September-November 2020 war to nowadays. Furthermore, the evidence presents objective grounds and statements on war crimes the international legal standards of which are discussed below.

¹⁸ Report of the Armenian NGOs, "Human Rights Violations during the 44-Day War in Artsakh", page 152-153, available at: https://www.osf.am/wp-content/uploads/2022/06/Fact-Finding-Report_FINAL_web.pdf.

II. International and Regional Legal Framework

37. Human rights violations are being reported during the armed conflicts. Those violations affect not only the victims themselves but also their relatives and family members. It might include cases of enforced disappearances which cause suffering anguish of uncertainty for the fate of their loved ones and amount to the violation of their rights. Furthermore, the situations of the confirmed death of relatives and the treatment of their bodies might also fall in this scope.

1) Return of the Remains and Personal Effects of the Dead

38. Return of the remains and personal effects of the dead is an important principle of the IHL. According to the IHL customary rules prepared by the International Committee of Red Cross (ICRC), Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.¹⁹

39. State practice establishes the customary nature of this rule in international armed conflicts. The rule with respect to the return of the remains of the deceased is based on the Geneva Conventions.²⁰ The relevant provisions in the Conventions, however, are rather general and require agreement between parties for the remains to be returned. Additional Protocol I also recognize the need for such an agreement but sets out the procedure to be followed in the absence of an agreement.²¹

¹⁹ Customary rules of the International Humanitarian Law prepared by the International Committee of Red Cross, Rule 114, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule114#:~:text=international%20armed%20conflicts-,Rule%20114.,their%20personal%20effects%20to%20them.>

²⁰ First Geneva Convention, Article 17(3), available at:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.30_GC-I-EN.pdf.

Third Geneva Convention, Article 120(6), available at:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf.

Fourth Geneva Convention, Article 130(2), available at:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

²¹ Additional Protocol I, Article 34(2) and (3), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>

2) Enforced disappearance

40. Considering that the relatives of the Armenian soldiers of the Tsor military unit did not receive any information about the whereabouts of their loved ones for about a year, the issue of enforced disappearance should be also considered in the context of the current report.

41. According to the International Convention for the Protection of All Persons from Enforced Disappearance, enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.²²

42. The same convention states, that the States Parties shall cooperate and shall afford one another the greatest measure of mutual assistance to assist victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.²³

43. It is characterized by three cumulative elements:

- deprivation of liberty against the will of the person;
- involvement of government officials, at least by acquiescence;
- refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.

44. A disappearance has a doubly paralysing impact: on the victim, who is removed from the protection of the law, frequently subjected to torture and in constant fear for their lives; and on their families, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come.

45. Enforced disappearance has frequently been used as a strategy to spread terror within societies. The feeling of insecurity generated by this practice is not limited to the close relatives of the disappeared but also affects their communities and society as a whole.²⁴

²² International Convention for the Protection of All Persons from Enforced Disappearance, Adopted by the resolution 47/133 General Assembly of the United Nations on 23 December 2010, Article 2, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>.

²³ Ibid. Article 15.

²⁴ Article on the OHCHR webpage, "About enforced disappearance", Working Group on Enforced or Involuntary Disappearances, available at: <https://www.ohchr.org/en/special-procedures/wg-disappearances/about->

46. Furthermore, the International Convention for the Protection of All Persons from Enforced Disappearance states that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.²⁵

47. Drawing from the case law of international tribunals as well as from the Statute of the International Criminal Court, it can be seen that crimes against humanity are crimes which are committed in a context. In other words, crimes against humanity are characterized by contextual elements. Those specific elements make it possible to differentiate, for instance, murder as a common crime from murder when occurring as a crime against humanity. The same applies to enforced disappearances.

48. The case law of the two *ad hoc* international criminal tribunals has been settled, among others, by the judgement of the ad hoc International Criminal Tribunal for the Former Yugoslavia Appeals Chamber in the *Prosecutor V Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, in which the Appeals Chamber considered that the contextual elements of the crime against humanity are the following :

- a. there has been an “attack”
- b. the attack was targeting any civilian population;
- c. this attack must have been widespread or systematic;
- d. the perpetrator had knowledge of the attack.²⁶

49. These same elements are repeated in the Rome Statute of the International Criminal Court (Statute): enforced disappearance of persons is among the crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.²⁷

[enforced-disappearance#:~:text=An%20enforced%20disappearance%20is%20considered,deprivation%20of%20liberty%20or%20by.](#)

²⁵ International Convention for the Protection of All Persons from Enforced Disappearance, Adopted by the resolution 47/133 General Assembly of the United Nations on 23 December 2010, Article 5, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>.

²⁶ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Judgement Prosecutor V Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, 12th June 2002, IT-96-23 & 23/1-A, Paragraphs 71-105, available at: <https://www.legal-tools.org/doc/029a09/pdf>.

²⁷ Rome Statute of the International Criminal Court, Article 7(1)(i), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

International Criminal Court, Explanatory note: “Elements of Crime”, Article 7(1)(i), available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

50. For the purpose of the Statute, "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.²⁸

51. In a landmark decision, Preliminary Chamber I of the International Criminal Court extensively cited the mentioned *Prosecutor V Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* judgement to interpret Article 7(1) of the Statute.²⁹

52. Furthermore, the UN Working Group on Enforced Disappearance in its general comment on enforced disappearances as a crime against humanity stated that the definition given by Article 7(1) of the Statute of the International Criminal Court now reflects customary international law³⁰

53. Both the September-November 2020 war and the September 2021 war contain the contextual elements of the crimes against humanity. In particular, there was an attack in the first case against the Artsakh (Nagorno-Karabakh) and in the second one against Armenia. In both cases, the attacks were widespread and systematic, targeting civilian communities. This is proved by a number of fact-finding reports, photo and video materials, statements from the international community, etc. The scale of both attacks was more than sufficient for the perpetrators to be aware of it.

54. The case law of the European Court of Human Rights (ECtHR) discusses some exceptions about enforced disappearance in the cases of killings. In general, the same principle would not mainly apply to situations where a person is killed by an agent of the State. However, where the news about the missing person's death was preceded by a sufficiently long period when he or she had been deemed disappeared, there exists a distinct period during which the applicant's sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances and which may thus give rise to a separate issue under Article 3 European Convention of Human Rights (ECHR).³¹

²⁸ Ibid. Article 7(2)(i)

²⁹ Preliminary Chamber I of the International Criminal Court, the Prosecutor v. Ahmad Muhammad Harun (« Ahmad Harun ») and Ali Muhammad Ali Abd-Al-Rahman (« Ali Kushayb »), n° ICC-02/05- 01/07, Decision on the Prosecutor application under Article 58(7) of the Statute, 27 April 2007, Paragraphs 60-62, available at: <https://www.legal-tools.org/doc/0b8412/pdf/>.

³⁰ UN Working Group on Enforced Disappearance, General comment Enforced disappearances as a crime against humanity, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf.

³¹ Luluyev and Others v. Russia (2006), Application no. 69480/01, §§ 114-118, available at: <https://hudoc.echr.coe.int/eng/?i=001-77926>.

55. Furthermore, for instance, in the case of Armenian soldiers of the D20 Artillery Division of the Tsor military unit, the commander is still missing, as was stated by one of the family members. Hence, that case should be also discussed in the context of enforced disappearance, which causes the human rights violation of relatives of the Armenian soldiers of the Tsor military unit, who disappeared for about a year after the end of hostilities.

3) Confirmed deaths

56. As it was revealed during the interviews, family members of all Armenian soldiers of the Tsor military unit, as well as the relatives of other Armenian soldiers witnessed the video materials about their dead loved ones intentionally disseminated by Azerbaijan. It can be even stated that they were forced to watch those materials to have information about the whereabouts of their sons, brothers and other family members. Furthermore, the Azeri soldiers were intentionally sending photos and/or video materials of killed soldiers to their family members.

57. In this frame, it should be noted that a separate finding of a violation of the ECHR Article 3 was found only in situations of confirmed death where the applicants were direct witnesses to the suffering of their family members.³²

58. In this frame, not allowing to return the body of S. K. from the hill close to their house following the September 2022 war caused severe suffering and ill-treatment to the family members

4) Treatment of dead bodies

59. The treatment of dead bodies may give rise to a violation of Article 3 ECHR concerning the deceased's relatives.

60. For instance, in *Khadzhialiyev and Others v. Russia* (2008), applicants could not bury the dismembered and decapitated bodies of their children properly since only parts of the remains had been found.³³

³² *Janowiec and Others v. Russia* [GC] (2013), Application nos. 55508/07 and 29520/09, available at: <https://hudoc.echr.coe.int/eng?i=003-4541478-5482631>.

³³ *Khadzhialiyev and Others v. Russia* (2008), Application no. 3013/04, available at: <https://hudoc.echr.coe.int/fre?i=001-89348>.

5) The excessive time length between the death and burial

61. According to the ECtHR case law, dealing appropriately with the dead out of respect for the feelings of the deceased's relatives falls within the scope of Article 8 of ECHR.³⁴

62. An excessive time between the death and burial and the way the deceased body was treated prior to its return to family members may violate the right to private and family life.³⁵

Conclusion

63. Considering the evidence collected during the fact-finding activities and the relevant international and regional standards referred to in the current report, it should be noted that Azerbaijan failed to guarantee the fundamental rights of the relatives of the Armenian soldiers.

64. In particular, artificial delays or non-provision of the necessary information about the loved ones of the relatives of the Armenian soldiers and hindering the search of bodies and remains amounted to ill-treatment of the relatives. Furthermore, the dissemination of the video materials in question also caused ill-treatment of the family members.

65. The family members of fallen soldiers did not receive identifiable corpses but only the remains of the body parts after the elapse of a prolonged time. The anguish and distress suffered by the relatives amounted to ill-treatment.

66. The excessive time length between the death and burial, namely about one year, amounts to a violation of the private life of fallen soldiers' family and relatives

³⁴ Genner v Austria (2016), Application no. 55495/08, available at: <https://hudoc.echr.coe.int/eng?i=001-159886>.

³⁵ Girard v. France (2011), Application no. 22590/04, available at: <https://hudoc.echr.coe.int/eng?i=001-105388>.