



CENTER FOR  
**TRUTH &  
JUSTICE**

**Azerbaijan's Serious and Persistent Breaches  
of the Convention against Torture and Other  
Cruel, Inhuman or Degrading Treatment  
or Punishment**

**Shadow Report to the Fifth Periodic  
Report of Azerbaijan**

**Submitted by the Center for Truth and Justice  
79th Session of the United Nations Committee  
against Torture, Geneva**

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## **Table of Contents**

<b>I. Introduction</b>	<b>3</b>
<b>II. Relevant Provisions of the Convention</b>	<b>4</b>
<b>III. Background and Context</b>	<b>5</b>
<b>IV. Violations of Substantive Rights under the Convention</b>	<b>8</b>
<b>V. Violations of Procedural Rights under the Conventions</b>	<b>13</b>
<b>VI. Discrimination against Ethnic Armenians as the Purpose of Torture</b>	<b>17</b>
<b>VII. Applicability of the Convention in the Circumstances of the Above Acts</b>	<b>21</b>
<b>VIII. Recommendations</b>	<b>25</b>
<b>IX. Conclusion</b>	<b>27</b>

## **I. Introduction**

1. The Center for Truth and Justice (“CFTJ”) submits this shadow report to the UN Committee against Torture (“the Committee”) under Rule 63 of the Rules of Procedure in advance of the Committee’s consideration of the fifth periodic report of the Republic of Azerbaijan (“Azerbaijan” or “the Government”) under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the CAT” or “the Convention”) at its 79th session. This report outlines Azerbaijan’s persistent violation of the Convention with specific regard to its state and military authorities’ treatment of ethnic Armenian prisoners of war (“POWs”) during and after the Second Nagorno-Karabakh War.<sup>1</sup> This report highlights both substantive and procedural breaches of the Convention by the Government.

2. This report relies on the testimonies of repatriated POWs—all of whom are of Armenian ethnic or national origin—who were held in Azerbaijani custody, many of them incommunicado, for substantial periods of their detention. However, CFTJ highlights that a substantial number of Armenian POWs remain detained by the Government. The Government fails to recognize that several such persons remain in its custody, despite evidence to the contrary, including testimonial evidence in the possession of CFTJ from repatriated POWs.<sup>2</sup>

3. CFTJ is also in possession of evidence suggesting that POWs still in Azerbaijan’s custody have been subject to torture and cruel, inhuman, and degrading treatment and punishment in substantive violation of the CAT. Moreover, on the basis of the pattern of torture and ill-treatment against POWs of Armenian national or ethnic origin detailed herein, CFTJ wishes to express to the Committee its grave concern that POWs who remain detained by the Government have been or are being exposed to other serious substantive and procedural violations of their rights under the Convention. CFTJ urges the Committee to consider the present submission in light of this urgent concern.

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<sup>1</sup> In using the term “prisoner of war,” CFTJ is referring to the factual circumstances of the individuals in question, that is, that they were members of armed forces captured and detained in the context of an armed conflict of international character, and is not requesting the Committee opine on the status of such persons under the Third Geneva Convention or any other instrument of international humanitarian law, which remain outside its competence.

<sup>2</sup> See Center for Truth and Justice, ‘Supplement White Paper on the Disappearance of Armenian Soldiers’ (21 October 2021) <<https://www.cftjjustice.org/supplement-white-paper-on-the-disappearance-of-armenian-soldiers/>>.

4. This report will first provide an overview of the applicable provisions of the Convention before providing a brief background to the conflict against the backdrop of which the violations of the CAT discussed herein took place. It will then discuss substantive breaches of the Convention committed by Azerbaijan through its treatment of POWs of Armenian national or ethnic origin in its captivity.

## **II. Relevant Provisions of the Convention**

5. Azerbaijan ascended to the CAT on 16 August 1996, signed the Optional Protocol to the Convention on 15 September 2005, and ratified the latter on 28 January 2009. Article 1, paragraph 1 of the Convention defines torture as follows:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

6. With regard to torture as defined above, the Convention imposes a number of obligations on Azerbaijan as a State Party. Principally, the Government must, pursuant to Article 2, paragraph 1 of the Convention, “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Moreover, Article 12 of the Conventions mandates that the “competent authorities” of Azerbaijan must “proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”<sup>3</sup>

7. Azerbaijan is further required, under Article 13 of the Convention, to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.” With respect to other acts of cruel, inhuman or degrading treatment or

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<sup>3</sup> Azerbaijan’s territorial jurisdiction in the cases of torture documented herein, with particular regard to the applicability of Articles 2 and 12 of the Convention in “any territory under its jurisdiction,” is addressed in Section VII below.

punishment which do not amount to torture, Azerbaijan is obliged under Article 16, paragraph 1 of the Convention to “undertake to prevent” such acts “in any territory under its jurisdiction ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

8. In addition, a core obligation under the Convention is the exclusionary principle, enshrined in Article 15, which mandates that Azerbaijan “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This principle lays out a fundamental procedural human right, as “[a] coerced confession is offensive to basic standards of justice ... declarations procured by torture are not premises from which a civilized forum will infer guilt.”<sup>4</sup> The exclusionary rule is codified in Azerbaijani domestic law in the form of Article 125.2.2 of the Code of Criminal Procedure.

### III. Background and Context

9. On September 27, 2020, Azerbaijan, with the support of Turkey and thousands of Syrian mercenaries,<sup>5</sup> launched a large-scale military offensive against Nagorno-Karabakh, then a *de facto* independent ethnic Armenian enclave known to Armenians as Artsakh. The resulting armed conflict, lasting 44-days, marked the most severe hostilities in the region since the First Nagorno-Karabakh War (1998–94). The conflict, which has become known as the Second Nagorno-Karabakh War, formally came to an end with a trilateral ceasefire statement jointly issued by the President of Azerbaijan, the Prime Minister of Armenia, and the President of the Russian Federation.<sup>6</sup>

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<sup>4</sup> *Lyons v. Oklahoma*, 322 U.S. 596, 605 (1944).

<sup>5</sup> See Center for Truth and Justice, ‘Report to the United Nations Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination’ (18 October 2022) <<https://www.cftjustice.org/un-working-group-on-mercenaries-urged-to-sanction-azerbaijan-and-turkey-for-employing-terrorist-mercenaries/>>.

<sup>6</sup> See Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation (11 November 2022) UN Doc S/2020/1104.

10. As a result of large-scale war waged by Azerbaijan, nearly 5,000 Armenians were killed and 85% of Nagorno-Karabakh's population of 150,000 people was forcibly displaced as they fled to neighboring Armenia for protection.<sup>7</sup>

11. From December 12, 2022, the Azerbaijani government created a humanitarian crisis for the ethnic Armenians of Nagorno-Karabakh, trapping and starving the population of the region through a blockade of the Lachin Corridor. This blockade persisted in defiance of orders of the International Court of Justice ("ICJ").<sup>8</sup> Nine months later on September 19, 2023 — violating the 2020 ceasefire agreement ending the Second Nagorno-Karabakh War — Azerbaijan launched another large-scale military offensive against Nagorno-Karabakh in primarily civilian regions. Within a day of heavy bombardment, a ceasefire was reached that forced the unconditional surrender of the *de facto* republic and armed forces, as well as the integration of Nagorno-Karabakh into mainland Azerbaijan. Considering the grave human rights violations committed prior to the 2020 war, during the 2020 and 2023 wars, as well as blatant rhetoric from government officials deprecating ethnic Armenians,<sup>9,10</sup> an exodus of Armenians began in the following days, seeing that nearly all 120,000 Armenians were forcefully displaced from their indigenous lands.<sup>11</sup>

12. At the signing of the ceasefire agreement, though the numbers were never verified by Azerbaijan, there were over two hundred and fifty (250) Armenian POWs in captivity. After the

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<sup>7</sup> See UNICEF, Press Release, 'UNICEF Statement on One Month of Fighting in and Beyond Nagorno-Karabakh' (28 October 2020) <<https://www.unicef.org/press-releases/unicef-statement-one-month-fighting-and-beyond-nagorno-karabakh>>.

<sup>8</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v Azerbaijan)* (Provisional Measures) (International Court of Justice, General List No 180, 22 February 2023) para 62 ("Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under CERD, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions"); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v Azerbaijan)* (Provisional Measures) (International Court of Justice, General List No 180, 6 July 2023) para 30 (reaffirming the provisional measure indicated on 22 February 2023).

<sup>9</sup> Center for Truth and Justice, 'High Alert - Looming Genocide: Hate Speech and The Aliyev Regime Stoking Hatred, Violence and Ethnic Cleansing in Violation of ICJ's Provisional Orders of December 7, 2021' (1 May 2023) <<https://www.cftjustice.org/wp-content/uploads/2023/05/Aliyev-and-Hate-Speech.pdf>>.

<sup>10</sup> Center for Truth and Justice, 'To All State Parties of the Genocide Convention: Azerbaijan's Policy of Irredentism: Illegitimate Territorial Claims on the Republic of Armenia: Primary Source of Evidence: Azerbaijan' (January 2023) <<https://www.cftjustice.org/wp-content/uploads/2024/02/Azerbaijans-Policy-of-Irredentism-Illegitimate-Territorial-Claims-on-the-Republic-of-Armenia-.pdf>>.

<sup>11</sup> Center for Truth and Justice, 'What Happened to All the Armenians in Nagorno-Karabakh? An Exodus Out of Indigenous Lands: Azerbaijan's Forced Displacement of the Ethnic Armenians from Nagorno-Karabakh' (December 2023) <[https://www.cftjustice.org/wp-content/uploads/2023/12/Exodus\\_FinalV4.pdf](https://www.cftjustice.org/wp-content/uploads/2023/12/Exodus_FinalV4.pdf)>.

signing of the agreement, Azerbaijan broke the ceasefire regime and captured an additional ten (10) civilians and sixty-two (62) military personnel, bringing the total number of Armenian prisoners of war to three hundred and twenty (320). To date, one hundred and seventy (170) prisoners of war have been released.<sup>12</sup> There are an additional one hundred and ninety five (195) Armenians that are missing in action, with evidence that they were last seen/observed in Azerbaijani custody.<sup>13</sup>

13. To date, CFTJ has gathered the testimonies of thirty (30) prisoners of war. Following the release of 32 Armenian POWs in December 2023,<sup>14</sup> Azerbaijan now publicly acknowledges holding 23 Armenian POWs in captivity, while evidence exists that at least another 32 are in Azerbaijani captivity. At a minimum, it is believed that there are 55 Armenian POWs still in custody in Azerbaijan, however, this number cannot be positively verified because evidence from testimonies and open source media have shown that there are many other Armenian soldiers that were last seen in Azerbaijan's custody, but there has not been independent confirmation of their whereabouts.<sup>15</sup>

14. Recorded testimonies of the Armenian prisoners of war establish the involvement of state actors that carried out systematic acts of violence, battering them physically as well as psychologically with degrading and racist language, withholding food,<sup>16</sup> water, hygiene and proper housing, coercing them to sign false confessions in Azerbaijani without an interpreter, beating them to and from court and torturing them for prolonged periods without any medical care or contact with family or friends. Those who carried out this systematic prolonged physical and psychological torture of Armenian prisoners of war include Azerbaijani soldiers, special forces, military commanders<sup>17</sup>, jail guards, medical personnel, interrogators, prosecutors and impartial judges.

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<sup>12</sup> 'Armenia and Azerbaijan Exchange Prisoners at Border' (*Reuters*, 13 December 2023)

<<https://www.reuters.com/business/aerospace-defense/armenia-azerbaijan-exchange-prisoners-border-2023-12-13/>>.

<sup>13</sup> See CFTJ Interview, Witness 22LC-0004 ("While being in captivity I was considered missing in action (MIA) in Armenia").

<sup>14</sup> 'Armenia and Azerbaijan Exchange Prisoners at Border' (n 11).

<sup>15</sup> '55 Armenians Still Held Captive but Azerbaijan Acknowledges Only 23 – Says Law Enforcement Official' (*Armenpress*, 5 January 2024) <<https://armenpress.am/eng/news/1127401.html>>.

<sup>16</sup> CFTJ Interview, Witness 22LC-0054 ("The quality of food was bad and it was insufficient. It seemed like liquid remains from some food. We were given muddy and rotten potatoes. I lost 20 kilograms. I was exhausted and dizzy").

<sup>17</sup> CFTJ Interview, Witness 22LC-0003 ("Azerbaijani commander, who I believe was a major, watched the soldiers carry out the beatings, but did not stop them").

#### IV. Violations of Substantive Rights under the Convention

15. A majority of the torture inflicted upon Armenian POWs detained by Azerbaijani authorities<sup>18</sup> appears to have been committed at the hands of the State Security Service of Azerbaijan (*Dövlət Təhlükəsizlik Xidməti*) (“DTX”), which repatriated POWs often refer to as the “KGB” after its Soviet-era precursor. On some occasions, POWs were explicitly told that they were in the custody of the DTX, with Witness 21LC-0030 being told that by the guards he was in their “KGB building” and that “no one leaves that building alive.”<sup>19</sup> Witness 22LC-0041 stated, “Usually, we were beaten by soldiers, sergeants, lieutenants, and senior lieutenants, whose ranks I knew because of their shoulder patches.”

16. The Armenian POWs were struck with fists, boots, batons, chains and guns by Azerbaijani authorities.<sup>20</sup> Witness 22LC-0004 states:

It was hit on the head and when I woke up, I was already sitting with my hands and feet tied. They transported me by cars and were beating me all the way and making me repeat that Karabakh is Azerbaijan ... They would hit me with wooden sticks, with their weapons, and laugh about it. They made me repeat statements in their language, and when I made a mistake, they would hit me with wooden sticks and I was to remain silent during the beatings. If I made any sound, they would hit me again. My feet were hit with wooden sticks so many times that I could no longer feel them ... While in the cell at the military police, three Azerbaijanis in civilian clothing entered and started beating me, breaking my ribs. I was on the floor while they were beating me when suddenly I couldn't breathe. I started screaming that I was dying.

He continues that when he was given water three Azerbaijanis in civilian clothing entered and asked the soldiers whether the Witness was Armenian. When they confirmed he was Armenian they started beating him again, for being Armenian.

17. Witness 22LC-0041 story is one that is commonly repeated throughout the interviews of

<sup>18</sup> CFTJ Interview, Witness 22LC-0054 (“The Azerbaijani military personnel also ordered us to stand bent over. When I refused to do so, the Azerbaijanis, including a senior lieutenant named [REDACTED] with three stars on his shoulder strips, entered the cell and started to beat and kick me all over my body”).

<sup>19</sup> CFTJ Interview, Witness 21LC-0030.

<sup>20</sup> See, eg, CFTJ Interview, Witness 22LC-0054 (“Approximately twenty Azerbaijanis entered the cell and started beating everyone. They used batons, hammers, pliers, all possible construction equipment, chains, ropes, belts, etc. to beat us. I was trying to defend myself, but my hands were tied and there were many of them”).



the witnesses, when he states that “[e]very 30 minutes about 10 to 15 Azerbaijani soldiers would come and beat us, mainly kicking and punching. Every beating would last from five to 10 minutes. I was beaten by seven Azerbaijani soldiers at once.”

18. Interviewees testified that cigarette lighters were used to burn their fingers while they remained handcuffed.<sup>21</sup> Witness 22LC-0041 stated how a “sergeant, pretended to light my cigarette, but instead, burned my left eye with the lighter. I immediately fell to the ground because of the pain. The major who was standing next to him allowed me to wash my eye, but I was never provided with medical care. I could not see anything with that eye for over two days, I could not even open it.”

19. Witness 22LC-0054 recalls that “[a]n Azerbaijani junior sergeant wearing the prison uniform, named [REDACTED], broke my ribs...I couldn’t take a deep breath. I was constantly in pain. I wrapped my stomach tight with a shirt. My ribs were hurting for a month. No medical assistance was provided though Azerbaijanis were informed about my condition.”

20. At least one POW testified that Azerbaijani soldiers, thinking that his golden teeth were made of real gold, extracted his teeth without anesthesia or apparent medical justification, subsequently refusing medical treatment.<sup>22</sup> Many POWs suffer permanent pain and injury from these beatings, including headaches and sinus conditions from broken noses, as well as severe post-traumatic stress disorder.<sup>23</sup>

21. Azerbaijani soldiers also engaged in insulting and humiliating Armenian POWs. Testimonial evidence shows that Armenians were forced to repeat “Karabakh is Azerbaijan” or face more beatings.<sup>24</sup> Azerbaijani soldiers forced Armenian POWs to crawl around on their hands and knees, dragged the POWs around on the floor and treated them like dogs, by beckoning them with “*kootcha kootcha*”, a phrase typically used to call a dog.<sup>25</sup> One prisoner recalled how the guards would bang his head to the wall, handcuffed and blindfolded, calling

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<sup>21</sup> CFTJ Interview, Witness AUA0070.

<sup>22</sup> CFTJ Interview, Witness AUA0070.

<sup>23</sup> See Center for Truth and Justice, ‘Initiating an Investigation: White Paper on Azerbaijan’s Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War’ (September 2021) <<https://www.cftjjustice.org/white-paper-of-the-torture-mistreatment-of-armenian-pows-2/>> (‘CFTJ, First White Paper’).

<sup>24</sup> See paragraph 50 below.

<sup>25</sup> CFTJ, First White Paper (n 23) 9–10.

him “like a dog, all along mocking and laughing at me.”<sup>26</sup> Another stated that his legs had been injured during the war and for seven days he had been crawling, on the verge of dehydration and starvation when he was captured by Azerbaijani soldiers. Upon capture, they took him to a makeshift medical unit where he was beaten by the interrogation committee and then ordered to walk to the car. When Witness 22LC-0003 told them he could not walk, “one of them, maybe a colonel, told me to crawl like a dog and bark on the way.”<sup>27</sup>

22. Armenians were forced to memorize degrading poems and songs in Azerbaijani,<sup>28</sup> a language that they neither understood nor spoke. The captors beat their knees to force them to kneel when greeting the interrogators, and threw their food on the ground and forced them to eat it from there.<sup>29</sup> Sadly, multiple returned POWs who testified about their experience in Azerbaijani captivity indicated that they were only sharing the information that they could bear to say out loud.<sup>30</sup> Multiple times, interviewees stated that they were omitting the worst details of the abuse. CFTJ, out of respect for the interviewees who are traumatized and only recently freed, did not push for the “worst” to be explained.<sup>31</sup>

23. One POW recounts that “[f]ive-six soldiers were beating me, laughing, and filming... It was like their revenge [on] Armenians. They were trying to inflict such harm so that I would get hearing problems, become blind, or go mad.”<sup>32</sup> Another states, “After beating me, they took me to the cell and threw me in like one would throw a dog into its cage.”<sup>33</sup>

24. Another witness relays how they were subjected to humiliation when they needed to use the lavatory. Witness 22LC-0041 states, “When we would like to use the bathroom two of them [the Azerbaijani soldiers] would take us without untying our legs. We had to jump all the way to the toilet while they would beat and mock us. When we would get closer to the toilet more Azerbaijani soldiers would appear and they would kick and punch us.

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<sup>26</sup> CFTJ Interview, Witness AUA0085.

<sup>27</sup> CFTJ Interview, Witness A0086.

<sup>28</sup> CFTJ Interview, Witness AUA0070.

<sup>29</sup> CFTJ Interview, Witness 24LC-0005 (“They [the Azerbaijani guards] would curse on us saying ‘you are a filthy nation.’ We were given a rotten potato for dinner. I would not give such potatoes even to my pigs”).

<sup>30</sup> CFTJ Interview, Witness AUA0071.

<sup>31</sup> CFTJ Interview, Witness AUA0071 (“Those 2 days that we were in the Yashma cells... You know... I cannot. I really don’t want to open all of this back up again, I cannot. I don’t want to remember everything. They would line us up against a wall, we were helpless. You are helpless and he is armed, and you are defenseless. That’s it”).

<sup>32</sup> CFTJ Interview, Witness 21LC-NK0064.

<sup>33</sup> CFTJ Interview, Witness 24LC-0005.

25. Witness 22LC-0054 recounted how Azerbaijanis entered his cell with a young boy in civilian clothing who seemed to be the commander's son. They gave the boy a rubber baton, threw one of the prisoners into the middle of the cell. When the boy started beating the prisoner over his head, legs, back and stomach, another Azerbaijani was filming the entire event."

26. In addition to suffering from physical mistreatment, a lack of proper housing, clothing, hygiene and loss of personal belongings, Armenian POWs also suffered from psychological torment. According to 22LC-0054, "There was blood in our cell. There were two mattresses within the cell which were completely blood-soaked. The blood was not completely dried and it smelled very bad." The POW relays how he was to the iron bunk bed and left there until evening, in his underwear, with the balcony door open, to expose him to the wind and cold. Witness 22LC-0054 states how he was psychologically tormented. He was told, "You will rot in prison. If the others will stay here for ten to fifteen years, you will stay here for twenty-five or more years." He describes how they were mocking him and saying, "Even if we let you go, we will inject you white or black oil and you can only choose the color." The Witness states in his interview that he could not stand the psychological torment and begged them, "Shoot me and put an end to this theater."

27. Armenian POWs were also subjected to the extreme psychological strain of being isolated from their families, a practice that contravenes international standards on humane treatment. The Convention Against Torture explicitly prohibits cruel, inhuman, or degrading treatment or punishment, which encompasses denying detainees the fundamental human right to communicate with their loved ones. Such deprivation not only inflicted significant psychological harm on the POWs but also placed undue stress on their families, leaving them in agonizing uncertainty regarding the fate of their loved ones for extended periods. This denial of communication serves as a form of psychological abuse, directly contravening the principles outlined in the Convention Against Torture, which seeks to protect individuals from acts that cause severe mental suffering. This is cruel mistreatment that, on top of the violence and degradation to which the POWs have been subjected, is shocking to the conscience. For example, one of the repatriated POWs recounted that he asked the Azerbaijani authorities "to contact my family several times, said that my father had a heart attack and I wanted to let him

know that I am alive, but I was not allowed.”<sup>34</sup> The same individual adds, “They gave me a piece of paper to memorize what I was going to say and made me repeat it while filming me in the hospital. They told me I should say things which would degrade my nation. It took about 3 hours, then they showed me that they uploaded the video to my Instagram page. The video was also sent to my contacts, and posted on YouTube with an Azerbaijani translation.”<sup>35</sup>

28. Witness 22LC-0033 stated: “We were beaten by approximately 20-30 Azerbaijani soldiers. They hit me in different parts of the body, also on my leg, and since I had a blood clot in my leg, the situation got worse. After beating us, they made us sit down, videotaped us making us repeat things in their language.” The psychological torture of Armenian POWs have stayed with them to this day. One testified that after his release he is “constantly worried. It’s like something is going to happen. Very often I cannot sleep at nights. I am having nightmares.”<sup>36</sup>

29. One of the POWs testified that the guards “were using psychological pressure on me, but I knew that such things were unavoidable because I am Armenian.”<sup>37</sup>

30. The psychological pressures were not confined to disrespecting the ethnicity, it was also designed to turn POWs against each other. One POW remembers, “the guard ordered me to curse at myself, then ordered my cellmate to curse at me. When I refused to follow his orders, he beat me up with a plastic broom and did not stop even after I was bleeding. I developed hearing problems because of that beating.”<sup>38</sup>

31. Another repatriated POW testified that the guards “entered the cell, one of them pointed at me and told me to sweep the corridor. I saw them [the Azerbaijanis] breaking the crosses which they had taken from Armenian prisoners. While sweeping the corridor, I collected all the broken crosses from the floor and carefully put them in a cellophane.”<sup>39</sup>

32. Several repatriated POWs reported severe physical abuse at the hands of Azerbaijani authorities. One POW recounted, “Four-five people were severely beating me saying that I was a terrorist.”<sup>40</sup> Another stated, “When the guards opened the door, we had to stand up and shout

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<sup>34</sup> CFTJ Interview, Witness A0086.

<sup>35</sup> CFTJ Interview, Witness A0086.

<sup>36</sup> CFTJ Interview, Witness AUA0085.

<sup>37</sup> CFTJ Interview, Witness A0086.

<sup>38</sup> CFTJ Interview, Witness 21LC-NK0064.

<sup>39</sup> CFTJ Interview, Witness 24LC-0005.

<sup>40</sup> CFTJ Interview, Witness 21LC-NK0064.

‘Karabakh is Azerbaijan,’ and if we were even a second late, we would be beaten as punishment.”<sup>41</sup> Another recounts, “They [the Azerbaijani soldiers] would enter and beat me constantly. They were saying that this was because I am Armenian.”<sup>42</sup>

33. The testimonies also revealed deep-seated Armenophobia and disrespect for Armenian religious symbols. POWs were subjected to ethnic slurs and insults. Another poignant account details the desecration of religious symbols. Witness 22LC-0003 stated how he was wearing a sweater that had the Armenian flag and emblem stitched on the arm. They “ripped the flag off my arm with pliers leaving a scar on my arm. There was also the [Armenian] emblem on my chest which they ripped off my sweater.” These violent acts of ripping symbols of Armenia and religion aim to denigrate the POWs’ national and cultural heritage.

34. Another POW testified that he was constantly “cussed out for being an Armenian” and being threatened by saying that “our nation will disappear.” He also states that “the entire Azerbaijani Judicial System...mentally and physically tortured me.”<sup>43</sup>

## **V. Violations of Procedural Rights under the Conventions**

35. Beyond the right to be free from torture and other forms of ill-treatment, the Convention also prescribes a number of procedural rights to be enjoyed by all persons. The most notable of these rights is the exclusionary rule, the prohibition against the usage of torture derived evidence, particularly confessions, as evidence in judicial proceedings, provided for under Article 15 of the Convention. After enduring serious torture and ill-treatment, as described in the previous section, Armenian POWs were compelled to sign court documents in languages they did not understand, including false confessions to spurious offenses, under the threat of further torture and ill-treatment and often following interrogations themselves replete with torture and ill treatment. They were not afforded an interpreter nor competent counsel<sup>44</sup>. One POW recounted that “During the interrogations, the interrogators were very cruel. They would beat me, use a taser on

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<sup>41</sup> CFTJ Interview, Witness 22LC-0007.

<sup>42</sup> CFTJ Interview, Witness 21LC-NK0064.

<sup>43</sup> CFTJ Interview, Witness AUA0033.

<sup>44</sup> CFTJ Interview, Witness 21LC-NK0064 (“I had a so-called lawyer, but he was working with them [the interrogators]. He was there when I was made to repeat statements and sign documents. He was definitely not protecting my interests”).

me, burn me with a lighter and constantly mock and laugh.”<sup>45</sup> All former POWs interviewed by CFTJ reported that they were forced to sign papers in the Azerbaijani language, without understanding the content of the documents. None of the interviewed POWs either read or understood the language in which the papers were written in.

36. Witness 21LC-0082 describes being taken to an investigation room where “[t]he interrogators used a taser on my leg, hit me with cables, hit my head with keys, [and] used hands and feet to beat me.” He was subsequently ordered to sign “eleven or twelve papers” written in the Azerbaijani language which he does not understand, signing these documents out of a fear of further torture. He testifies that “[t]he interrogators did not even untie my hands and made me sign while being handcuffed in the back. I did not know what papers I was signing.” He was assigned what appears to be a Court appointed lawyer; however, the lawyer did not speak Russian and Witness 21LC-0082 does not speak Azerbaijani, so they were unable to communicate. No interpreter was provided.

37. Witness 21LC-0082 recounts that the documents that he was forced to sign were introduced in court as his confession that his commander had given him “orders to kill Azerbaijani soldiers if I see them, and threaten civilian population if I encounter them.” When the witness protested in court, he was shown the documents that were being used to incriminate him. They were in Azerbaijani and it had his and one other signature. The interpreter in court stated that these documents were translated to the Witness. He again protested and told the court he had not been given the benefit of a translator. His protests were futile. During his transportation from court to prison the guards hit Witness 21LC-0082 several times in the head.

38. Another POW describes the violent treatment they had to endure while being transported from prison to court and back. He states, “Azerbaijanis wearing dark green uniforms with the scale of justice in their arms were taking us to the court proceedings while beating and kicking us.”

39. A different Armenian POW, Witness AUA0003, similarly testifies to being compelled to sign documents in Azerbaijani that he would later discover were confessions to contrived criminal offenses. He was taken to be interrogated and “was told by the interrogator that

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<sup>45</sup> CFTJ Interview, Witness AUA0070.

everyone thinks we are dead and they can kill us if they want.” He observes that the interrogator then “gave me a piece of paper to sign which was also signed by this man named [REDACTED] [REDACTED]. This piece of paper was in Azerbaijani.” He signed the documents and was subsequently taken back to his prison cell where he was punched in the head by a guard. He was routinely beaten both before and after signing these documents. One Azerbaijani guard threatened him and the other Armenian POWs, “your families have no information about you, we can kill you now, but for now we are not doing anything.”

40. Witness AUA0067 testifies that, after being extensively tortured on a regular basis for an extended period of time, a day before his trial, he was blindfolded and taken to an unknown location. He states that “then the interrogator put a document and told me to sign. One of the investigators had a taser in his hand implying that I should sign, otherwise I would be electrocuted again. The documents were in Azerbaijani language.” Witness AUA0088 recounts the same experience, “[t]he interrogators gave me papers and forced me to sign them. Those documents were in Azerbaijani language, and when I asked what kind of document it was, I was told that it was none of my business, and that my business was only to sign.”<sup>46</sup>

41. In a similar vein, Witness AUA0033 testifies that, following a period being beaten, he was “made to sign a paper” that “was in Azerbaijani” with no translation. He observes: “How could one not sign? After being beaten for 10–15 minutes straight, would you not sign?” He describes being compelled to sign the documents through physical torture: “While being handcuffed they [the interrogators] would beat me with two or three people using [a] taser. I was also electroshocked with a stun gun while I was handcuffed. This is how my ear was hurt. They would beat us without leaving any bruises on a visible place on our body or face. They would beat me for about 10–15 minutes, get what they wanted, which was signing the documents.”<sup>47</sup> After signing these papers, he was taken to a court for an incredibly short hearing that lasted about four minutes. The judge left for several minutes then returned with his decision, handing down a four month sentence for a contrived terrorism charge.

42. Witness AUA0068 stated that “[t]he court proceeding lasted a few minutes. It was in Azerbaijani; I could not understand anything. I was blindfolded before I entered the court. I did

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<sup>46</sup> CFTJ Interview, Witness AUA0088.

<sup>47</sup> CFTJ Interview, Witness AUA0033.

not have a lawyer nor an interpreter. I entered the court while being dragged to the courtroom by my hair. I was given a paper in Azerbaijani to sign.”

43. Witness AUA0033 stated that his court-appointed lawyer “neither spoke in the court nor with us.” He adds that “[w]e were not explained in any official institution why we were here, and the investigators told me that I am a terrorist.”

43. Witness AUA0068 recounts the torture he was subjected to before being ordered to sign papers in Azerbaijani as follows: “When I entered the interrogation room, the Azerbaijanis untied my blindfold but I was still handcuffed. The interrogator hit the back of my knee, so I kneeled down. The interrogation started and I was kneeled down until the end of the interrogation. Both of the interrogators beat me with a baton and a ruler.” He continues, that “[t]he interrogator electroshocked me twice. The second time, I tried to escape the room, but I was stopped. Both times, he electroshocked me for 15–20 seconds over my shoulder and neck. I genuinely thought that I would end up dead there.” Afterwards, he testifies: “I entered the court while being dragged to the courtroom by my hair. I was given a paper in Azerbaijani to sign.” Once taken to court, Witness AUA0068 adds that “[t]he prosecutor read ‘my’ written testimony out loud to the court but I informed them that it was not my testimony, as I was forced to sign papers written in Azerbaijani under threat of violence which I did not understand.” The court ignored the Witness in court regarding the false confession he was coerced to sign.

44. Witness 21LC-NK0064 recounts that “[s]igning a big pile of papers was a constant thing. I was signing papers in Azerbaijani language and never learned of their contents. I was being threatened that I would be beaten by five-six people if I refused.” He was also told what to say in court. He states “[t]he prosecutor was instructing me what to say before the court proceedings. He told me to say that I had a weapon and other untrue things. I was being filmed at that time and there was an interpreter and a lawyer next to me during the whole process. There were also soldiers there wearing special gloves that would beat me up if I refused to say what I was instructed to.” Witness AUA0070 also testifies that he was forced to sign documents while blindfolded and handcuffed, adding that “[t]he interrogators made me sign documents without even untying my hands. I didn’t know what I was signing.” When he asked what he was signing,



he was beaten on his hands and feet with batons. He adds “I was never told about my rights. The only thing I knew is that I had no rights.”<sup>48</sup>

45. When taken together, the evidence of these witnesses, a representative but non-exhaustive sample of the testimonies of Armenian POWs interviewed by CFTJ after their repatriation to Armenia, suggests not a number of isolated instances of judicial missteps, but a systematic denial of fundamental rights under Article 15 of the Convention to Armenian POWs in Azerbaijani custody. This pattern of flagrant violations committed against Armenian prisoners constitutes a serious breach by Azerbaijan of one of the most important obligations under the Convention.

## **VI. Discrimination against Ethnic Armenians as the Purpose of Torture**

46. The definition of torture under Article 1, paragraph 1 of the Convention demands the ill-treatment in question be committed for a certain prohibited purpose, with “discrimination of any kind” being one such purpose. This purpose requirement is often regarded as the key factor differentiating torture from other forms of ill-treatment,<sup>49</sup> with the Committee generally specifying the what prohibited purpose torture aimed to achieve when adjudicating individual complaints under Article 22 of the Convention.<sup>50</sup> Crucial to understanding the pervasive pattern of the torture of POWs by Azerbaijani security and military authorities is centering the discriminatory intent on the part of Azerbaijani state authorities in torturing detainees specifically of Armenian ethnic or national origin. CFTJ notes while, in general, acts of official torture and impunity for such acts remain “systemic and endemic” in Azerbaijan,<sup>51</sup> that acts of

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<sup>48</sup> CFTJ Interview, Witness AUA0070.

<sup>49</sup> See, eg, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (5 February 2010) UN Doc A/HRC/13/39/Add.5, para 34; Lene Wendland, *A Handbook on State Obligations under the UN Convention against Torture* (Association for the Prevention of Torture 2002) 28; Malcom D Evans, ‘Getting to Grips with Torture’ (2002) 51(2) *International and Comparative Law Quarterly* 365, 374; Nigel S Rodley, ‘The Definition(s) of Torture in International Law’ (2002) 55(1) *Current Legal Problems* 467, 489–90; Oona A Hathaway, Aileen Nowlan, and Julia Spiegel, ‘Tortured Reasoning: The Intent to Torture under International and Domestic Law’ (2012) 52(4) *Virginia Journal of International Law* 791, 799–800.

<sup>50</sup> Gerrit Zach, ‘Art 1: Definition of Torture’ in Manfred Nowak, Moritz Birk, and Giuliana Monina (eds), *The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Commentary* (2nd edn, Oxford University Press 2019) 23, para 112.

<sup>51</sup> European Committee for the Prevention of Torture, ‘Report to the Azerbaijani Government on the Visit to Azerbaijan Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 30 October 2017’ (18 July 2018) Council of Europe Doc CPT/Inf (2018) 37, para 27. See also UN Committee against Torture, ‘Concluding Observations on the Fourth Periodic Report

torture directed against ethnic Armenians in Azerbaijani captivity take on a fundamentally distinct character than the mistreatment of prisoners of non-Armenian ethnic or national backgrounds.

47. While torture in Azerbaijan is generally characterized by ‘casual’ violence at the hand of law enforcement and pervasive impunity for such acts, the torture of ethnic Armenians detained by Azerbaijan is perpetrated in a systematic fashion, is markedly more severe than other reported instances of torture involving non-Armenians, and is characterized by an added element of psychological torture, particularly through ethnically-charged abuse, not present in other instances of torture in Azerbaijan. Moreover, it is crucial to emphasize that the torture of ethnic Armenians documented by CFTJ was not perpetrated by ordinary Azerbaijani domestic law enforcement authorities, but rather in an organized fashion by members of the Government’s highly centralized military and security apparatuses, namely the Azerbaijani Armed Forces (*Azərbaycan Silahlı Qüvvələri*) and the DTX.

48. One repatriated POW, Witness AUA0070, testified that “racial slurs and demeaning comments were constantly used by jailers and interrogators,” adding that “we, to their eyes, were subhuman.”<sup>52</sup> He was beaten extensively and severely, often by up to seven men at a time while handcuffed. Guards would subject Witness AUA0070 to a variety of severe physical abuse, including through the use of an electric taser and by burning him with a lighter. Another Armenian POW, Witness 21LC-0030, testifies that the Azerbaijani guards would cheer when beating an Armenian, appearing to take heightened joy in the act. He also recalls that the guards had put “signs on the doors of cells which had Armenians inside so that everyone would know.”

49. Witness 22LC-0061 testifies that a guard who identified himself as ██████ made him and other prisoners kneel and beat them as he yelled “you are Armenian, you are a filthy nation. You cannot be as pure as Muslims, your religion should be changed. In six months, we will change your religion.”<sup>53</sup> Witness 22LC-0061 states that if they said nothing in response or if they protested they would be beaten by the guards. He adds that an older higher-ranking man would

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of Azerbaijan’ (27 January 2016) UN Doc CAT/C/AZE/CO/4, para 8; US Department of States, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices: Azerbaijan’ (2022) 3–7.

<sup>52</sup> CFTJ Interview, Witness AUA0070.

<sup>53</sup> CFTJ Interview, Witness 22LC-0061.

electrocute him while talking “about Khojaly,” adding that “it was all the anti-Armenian things just like always.”<sup>54</sup>

50. Witness AUA0070 testifies that he and his fellow Armenian detainees “were ordered to always say that Karabakh is Azerbaijan whenever the door would open.”<sup>55</sup> He adds that on two occasions he failed to greet his guards in such a manner, resulting in them beating him severely with batons.<sup>56</sup> Witness 22LC-0004, another Armenian POW, similarly testifies that “[e]ach time when the door would open we were to kneel and say that Karabakh is Azerbaijan, and curse Pashinyan,” referring to Nikol Pashinyan, the Prime Minister of Armenia. Witness 21LC-0043 also testifies that “we had to say ‘Karabakh is Azerbaijan’ every time the door or the small window on the door opened. Sometimes we had to kneel or line up when the door opened.”<sup>57</sup> Witness 22LC-0061 also observes that the Azerbaijani interrogators “would say that not only Karabakh is Azerbaijan, but also Armenia is Azerbaijan.” Witness AUA0070 explains the attitudes of the guards towards the Armenian prisoners in particular: “For them we were lesser men, we were subhuman.” When he had asked what he was being forced to sign he was beaten and told “‘Who are you? What right do you have to ask questions?’”

51. Witness AUA0070 details how they would sing a song in Azerbaijani that translates into ‘we were thrown like dogs.’ He states because they were Armenian, they were constantly mocked. At one point, this Witness was beaten so severely by the guards that he passed out. When he woke up he saw a lot of blood on the floor. His cellmates told him that while he was unconscious they used his body to mop the blood. Witness AUA0070 said, “You are a lesser man there, who would provide me with [a] doctor?”

52. Witness 22LC-0054 testified that the Azerbaijani investigators opened his social media accounts and when they saw he had posted images of Armenian national heroes and a map of historical Armenia, they got very angry, brought a taser and began to subject him to electroshock torture. The Witness, after having been electroshocked on his shoulders, back and neck fell to the ground. The only reason they stopped using the taser on him was because it had run out of charge.

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<sup>54</sup> CFTJ Interview, Witness 22LC-0061.

<sup>55</sup> CFTJ Interview, Witness AUA0070.

<sup>56</sup> CFTJ Interview, Witness AUA0070.

<sup>57</sup> CFTJ Interview, Witness 21LC-0043.

53. Witness 22LC-0004 recounts an instance of torture where he, while drinking water in prison, was approached by three Azerbaijanis in civilian attire who “asked the guards whether I was Armenian.” He continues that “[w]hen receiving a positive answer, they started beating me. I know that they were beating me because they hate Armenians.”<sup>58</sup> Another POW testifies that “[w]hile being transported two Azerbaijani soldiers ordered me to say that Karabakh is Azerbaijan. When I refused, they started beating me.” This beating caused him to go unconscious.<sup>59</sup> The witness continued, “I was feeling emotionally numb. I witnessed how an Azerbaijani soldier was plucking one of the POWs’ beards with pliers, while other Azerbaijanis were forcibly holding his hands and head. I could hear screaming and moaning within my cell and from other cells.”

54. As noted above, Azerbaijani soldiers forced Armenian POWs to crawl around on their hands and knees, dragged the POWs around on the floor and treated them as if they were dogs, by beckoning them with “*kootcha kootcha*”, a phrase typically used to call a dog.<sup>60</sup> One prisoner recalled how the guards would bang his head to the wall, handcuffed and blindfolded, calling him “like a dog, all along mocking and laughing at me.”<sup>61</sup> Another stated that his legs had been injured during the war and for seven days he had been crawling, on the verge of dehydration and starvation when he was captured by Azerbaijani soldiers. Upon capture, they took him to a makeshift medical unit where he was beaten by the interrogation committee and then ordered to walk to the car. When Witness 22LC-0003 told them he could not walk, “one of them, maybe a colonel, told me to crawl like a dog and bark on the way.”<sup>62</sup>

55. Given that Armenians generally belong to the Apostolic Christian faith, discrimination against ethnic Armenian POWs was often expressed in a religious context. Multiple Armenia POWs interviewed by CFTJ testify that Azerbaijani guards took small personal crosses from them which were worn, for instance, around the wrist or neck.<sup>63</sup> Witness 22LC-0061 recalled, “Emen [a guard] would make us kneel, hit us and say that ‘you are Armenian, you are a filthy nation. You cannot be as pure as Muslims, your religion should be changed. In six months, we

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<sup>58</sup> CFTJ Interview, Witness 22LC-0004.

<sup>59</sup> CFTJ Interview, Witness, 21LC-0030.

<sup>60</sup> CFTJ, First White Paper (n 23) 9–10.

<sup>61</sup> CFTJ Interview, Witness AUA0085.

<sup>62</sup> CFTJ Interview, Witness A0086.

<sup>63</sup> CFTJ Interview, Witness 22LC-0003.

will change your religion.’ When we did not agree and said nothing, he got mad and started beating us.”

56. Witness 21LC-0030, an Armenian POW with a cross tattoo testified as follows: “In KGB they [the Azerbaijani guards] saw my cross tattoo and wanted to peel it off my skin. I said ‘better kill me than touch my cross’. ... They told me that they did not want to see any crosses and that they would put crescent[s] on all Armenians.” He also testifies that “[t]hey took my small Bible which was always in my pocket and said that they were taking it because I am Armenian and I don’t have any right to have a Bible with me there.”

57. Witness NKR0047 testifies that “[t]he Azerbaijani soldiers were not allowing us to speak Armenian,” adding that they “hit and cursed on us. Insults were directed at the prisoners and the Armenian nation.”

58. Witness 21LC-NK0064 recalls that he was severely beaten to the point that his captors’ “hands were covered in my blood.” He details one instance where “[f]ive-six soldiers were beating me, laughing, and filming .... It was like their revenge [on] Armenians. They were trying to inflict such harm so that I would get hearing problems, become blind, or go mad.” Such targeted beatings were a constant for Witness 21LC-NK0064 and other Armenian prisoners. Witness 21LC-NK0064 testifies that “[t]hey [the Azerbaijani soldiers] would enter [my cell] and beat me constantly. They were saying that this was because I am Armenian.” Explicit statements from Azerbaijani state agents conducting the torture in question directly evidence the discriminatory motivation and purpose of the torture, particularly in their references to the First Nagorno-Karabakh War and associated ethnically charged animosities.

## **VII. Applicability of the Convention in the Circumstances of the Above Acts**

59. CFTJ recognizes that many of the factual circumstances of the substantive violations of the Convention detailed above, having occurred in the context of an international armed conflict, are covered *lex specialis* by relevant norms of conventional and customary international humanitarian law (“IHL”), in particular, the Third Geneva Convention. CFTJ, however, highlights that the CAT, as a core human rights instrument, continues to operate during armed

conflict in a complimentary manner with IHL.<sup>64</sup> With regard to the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), another core human rights instrument, the International Court of Justice (“ICJ”) concluded in its case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v Azerbaijan)* that while “international humanitarian law governs the release of persons fighting on behalf of one State who were detained during hostilities with another State ... the right of such persons not to be subjected to inhuman or degrading treatment based on their national or ethnic origin while being detained by Azerbaijan” plausibly falls under the CERD, affirming the relevance of human rights law in the treatment of POWs in complement to relevant rules of IHL.<sup>65</sup>

60. Moreover, Article 2, paragraph 2 of the CAT provides that “[n]o exceptional circumstances whatsoever” including “a state of war or a threat of war ... may be invoked as a justification of torture.” Accordingly, this Committee has, on multiple occasions, rejected the argument of the Convention’s non-applicability to situations of armed conflict on the basis of the *lex specialis* nature of IHL.<sup>66</sup> CFTJ wishes to note the observation of the UN Committee on Economic, Social and Cultural Rights in its concluding observations on the fourth periodic report of Azerbaijan, adopted on 15 October 2021, where it recalled that “in situations of armed hostilities, the applicability of international humanitarian law does not preclude the application of international human rights law.”<sup>67</sup> In its concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan, adopted on 26 August 2022, the UN Committee on the

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<sup>64</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 106. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Provisional Measures) [2008] ICJ Rep 353, para 112.

<sup>65</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v Azerbaijan)* (Provisional Measures) [2021] ICJ Rep 361, para 60 (‘*Armenia v Azerbaijan*, Order on Provisional Measures of 7 December 2021’).

<sup>66</sup> See, eg, UN Committee against Torture, ‘General Comment No 2: Implementation of Article 2 by States Parties’ (24 January 2008) UN Doc. CAT/C/GC/2, para 5 (‘CAT Committee, GC No 2’); UN Committee against Torture, ‘Conclusions and Recommendations of the Committee against Torture: United States of America’ (25 July 2006) UN Doc CAT/C/USA/CO/2, para 14 (‘CAT Committee, Concluding Observations on the USA: Second Periodic Report’); UN Committee against Torture, ‘Concluding Observations of the Committee against Torture: Israel’ (23 June 2009) UN Doc CAT/C/ISR/CO/4, para 11; UN Committee against Torture, ‘Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America’ (19 December 2014) UN Doc CAT/C/USA/CO/3-5, paras 6, 11 (‘CAT Committee, Concluding Observations on the USA: Third-Fifth Periodic Reports’)

<sup>67</sup> UN Committee on Economic, Social and Cultural Rights, ‘Concluding Observations on the Fourth Periodic Report of Azerbaijan’ (2 November 2021) UN Doc E/C.12/AZE/CO/4, para 6.

Elimination of Racial Discrimination reached an identical conclusion.<sup>68</sup> CFTJ trusts that the Committee will consider Azerbaijan’s obligations under the CAT cognizant of this reality as highlighted by other treaty monitoring bodies.

61. In previous representations to this Committee, Azerbaijan has argued that it is not responsible for the performance of its human rights obligations in the territory of Nagorno-Karabakh given its lack of effective control over the territory.<sup>69</sup> It has made similar representations before other UN treaty monitoring bodies more recently as well.<sup>70</sup> This argument is also notably the subject of a declaration accompanying the Government’s ratification of the European Convention on Human Rights.<sup>71</sup> However, while Article 2, paragraph 1 of the Convention provides that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture *in any territory under its jurisdiction*” (emphasis added), the obligations of the Convention are not strictly limited territorially, as Articles 5–9 of the Convention also impose obligations to investigate, and to prosecute or extradite (*aut dedere aut judicare*), on States Parties with respect to torture committed extraterritorially where suspected perpetrators become located in territory under the State’s jurisdiction. Accordingly, by virtue of these provisions, “states cannot argue that the CAT prohibition of torture does not bind their agents acting extraterritorially if, at the same time, they accept the obligation to initiate criminal proceedings against these individuals.”<sup>72</sup>

62. Moreover, in its order of 16 November 2023 in the case concerning the *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

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<sup>68</sup> UN Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined Tenth to Twelfth Periodic Reports of Azerbaijan’ (22 September 2022) UN Doc CERD/C/AZE/CO/10-12, para 4.

<sup>69</sup> See UN Committee against Torture, ‘Summary Record of the 1360th Meeting’ (16 November 2015) UN Doc CAT/C/SR.1360, para 11 (statement of Khalaf Khalafov, Deputy Minister of Foreign Affairs of Azerbaijan).

<sup>70</sup> See, eg, UN Committee on Economic, Social and Cultural Rights, ‘Summary Record of the 36th Meeting’ (11 October 2021) UN Doc E/C.12/2021/SR.36, para 3 (statement of Khalaf Khalafov, Deputy Minister of Foreign Affairs of Azerbaijan); UN Committee on the Elimination of Discrimination against Women, ‘Summary Record of the 1885th Meeting’ (27 June 2022) UN Doc CEDAW/C/SR.1885, para 12 (statement of Elnur Mammadov, Deputy Minister of Foreign Affairs of Azerbaijan); UN Committee on the Elimination of Racial Discrimination, ‘Summary Record of the 2903rd Meeting’ (26 August 2022) UN Doc CERD/C/SR.2903, para 11 (statement of Elnur Mammadov, Deputy Minister of Foreign Affairs of Azerbaijan).

<sup>71</sup> See Ratification (with Declaration and Reservations) of Azerbaijan, Convention for the Protection of Human Rights and Fundamental Freedoms (15 April 2002) 2195 UNTS 340, 343 (“The Republic of Azerbaijan declares that it will be unable to guarantee the application of the provisions of the Convention in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation”). See also *Sargsyan v Azerbaijan* [GC], App No 40167/06 (ECtHR, 16 June 2015) para 93.

<sup>72</sup> Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford University Press 2010) 206.

(*Canada and the Netherlands v Syrian Arab Republic*), the ICJ concluded that the provisions of the Convention “are intended to protect individuals from torture and other acts of cruel, inhuman or degrading treatment or punishment” and thus that “that there is a correlation between respect for individual rights enshrined” in the Convention and States’ obligations under the Convention.<sup>73</sup> The necessary reconciliation of the individual rights-centered subject and State obligation-centered form of the Convention<sup>74</sup> as a core human rights instrument centering the enjoyment of rights by individuals is that its scope cannot be restricted by territory when agents of a State breach the rights of individuals under the Convention, even if such breaches are committed by State agents in territory where the State lacks effective control.

63. In the present context, at least some of the instances of torture inflicted by members of the Azerbaijani against Armenian POWs took place immediately or shortly after their capture on the battlefield, or during their transportation to and from makeshift interim detention sites, thus occurring in the territory of Nagorno-Karabakh, where at the time, the extent of Azerbaijan’s effective control of the territory was unclear.<sup>75</sup> The Committee has broadly constructed the territoriality requirements of Articles 2 and 12 of the Convention, interpreting the phrase ‘any territory under its jurisdiction’ as encompassing “any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the *de jure* or *de facto* control of a State party” and “all areas where the State partly exercises, directly or indirectly, in whole or in part, *de jure* or *de facto* effective control, in accordance with international law.”<sup>76</sup>

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<sup>73</sup> *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v Syrian Arab Republic)* (Provisional Measures) (International Court of Justice, General List No 188, 16 November 2023) para 57, citing *Armenia v Azerbaijan*, Order on Provisional Measures of 7 December 2021 (n 65) para 57.

<sup>74</sup> See Matthew Craven, ‘Legal Differentiation and the Concept of the Human Rights Treaty in International Law’ (2000) 11(3) *European Journal of International Law* 489, 493; Frédéric Mégret, ‘Nature of Obligations’ in Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2014) 96, 98–101.

<sup>75</sup> It is likely that during the course of its military operations, namely as it seized areas formerly controlled by the Artsakh Defense Forces, Azerbaijan came to acquire effective control over certain parts of Nagorno-Karabakh while hostilities were ongoing. However, the assessment of whether such mid-conflict control was established in the case of individual instances of torture described herein, one would require both specific information on the exact location in which acts of torture took place, which many POWs interviewed by CFTJ do not possess, and a more complex assessment as to the degree of Azerbaijani control over that particular location at that particular time. Given that such determinations are, firstly beyond the scope of this shadow report and secondly impossible to accurately undertake with publicly available information, this report proceeds under the generalized assumption that Azerbaijan lacked effective control over Nagorno-Karabakh as a whole during the course of active hostilities.

<sup>76</sup> CAT Committee, GC No 2 (n 61) paras 7, 16. See also *Sonko v Spain*, Communication No 368/2008 (25 November 2011) UN Doc CAT/C/47/D/368/2008, para 10.3.



The Committee has, moreover, emphasized that State Parties remain bound by the provisions of the Convention when their militaries operate on the territories of foreign States or in military installations located on the territories of foreign States.<sup>77</sup> This must apply equally to the obligations of a State when its armed forces operate in territories where they lack general or complete effective control.

64. With regard to acts of torturer perpetrated by Azerbaijani State agents in the territory of Nagorno-Karabakh, reconciling the substance and form of the Convention's protection demands that Azerbaijan be considered bound by its obligations under the Convention, particularly Article 2, paragraph 1, and Article 12, with respect to all conduct herein presented by its State agents in Nagorno-Karabakh. Azerbaijan must not be permitted to exploit the horizontal integration of individual rights under the Convention, that is, the protection of these rights through the prescription of State obligations towards individuals,<sup>78</sup> through the invocation of principles of territorial jurisdiction and effective control to circumvent responsibility for acts of torture perpetrated by its State agents as part of a systematic pattern of discriminatory policies and practices against ethnic Armenians.

65. In the cases of torture described above where Armenian POWs were subjected to while in the custody of the DTX and other State agencies within Azerbaijan, the question of territoriality is clear. These acts are believed to have occurred in prison facilities located in Baku and other locations inside Azerbaijan, outside Nagorno-Karabakh. Such locations without question constitute territory under the jurisdiction of Azerbaijan.

## **VIII. Recommendations**

66. On the basis of the information presented in this shadow report, CFTJ respectfully requests that the Committee direct *inter alia* the following recommendations to Azerbaijan in its

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<sup>77</sup> See, eg, UN Committee against Torture, 'Conclusions and Recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories' (10 December 2004) UN Doc CAT/C/CR/33/3, para 4(b); CAT Committee, Concluding Observation on the USA: Second Periodic Report (n 66) para 15; UN Committee against Torture, 'Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (24 June 2013) UN Doc CAT/C/GBR/CO/5, para 9; CAT Committee, Concluding Observations on the USA: Third-Fifth Periodic Reports (n 66) para 10.

<sup>78</sup> See John H Knox, 'Horizontal Human Rights Law' (2008) 102 *American Journal of International Law* 1, 18–19.

concluding observations on its fifth periodic report:

1. Immediately and unconditionally release all ethnic Armenian POWs in the custody of the Government, given that such prisoners remain at an urgent risk of torture and other forms of ill-treatment on the basis of their ethnic identity.
2. Immediately release a comprehensive list of all ethnic Armenian POWs under Azerbaijani custody, including those whose detention was previously undisclosed.
3. Immediately constitute an extraordinary independent national mechanism to investigate and prosecute individuals involved in the torture and ill-treatment of ethnic Armenian POWs.
4. Immediately extend an invitation to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the UN Committee against Torture, under the terms of the Optional Protocol to the CAT, for the specific purpose of visiting ethnic Armenian POWs in Azerbaijani custody and independently assessing their torture and ill-treatment.
5. Immediately submit individuals involved in the torture and ill-treatment of ethnic Armenian POWs to criminal prosecution.
6. Insure compliance with all national and international judicial and non-judicial bodies investigating violations of international law relating to the torture and ill-treatment of Armenian POWs.
7. Immediately review all guidance and training provided to members of the Armed Forces, members of state security agencies, and prison officials regarding torture and ill-treatment and strengthen such guidelines in particular light of the systematic torture and ill-treatment of ethnic Armenian POWs in Azerbaijani custody.
8. Immediately cease and desist from public hate speech directed at ethnic Armenians, including at the highest echelons of government, which put remaining Armenian POWs at dire risk of further torture and ill-treatment, and ensure such hate speech impartially investigated and prosecuted where appropriate.

67. In addition, CFTJ J respectfully requests that the Committee, as it has done in its concluding observations on the Government's previous periodic reports, demand Azerbaijan ratify those core human rights instruments it has yet to ratify or accede to. Most notably, CFTJ hopes the Committee will stress the particular importance of Azerbaijan's ratification of the International Convention for the Protection of All Persons from Enforced Disappearance ("ICPPED"). The continued detention by Azerbaijan of ethnic Armenian POWs, many of whom on spurious or contrived charges, coupled with its refusal to acknowledge its detention of Armenian POWs constitutes acts of enforced disappearance pursuant to Article 2 of the ICPPED. Azerbaijan's ratification of the ICPPED would significantly contribute to the pursuit of justice for ethnic Armenian POWs detained by Azerbaijan, especially for those subject to torture and other violations of the CAT, particularly under the procedures of the UN Committee on Enforced Disappearances outlined in Articles 30–34 of the ICPPED.

## **IX. Conclusion**

68. The information presented to the Committee in this report represents a non-comprehensive summary of the extensive testimonial evidence collected by CFTJ from repatriated Armenian POWs. It synthesizes evidence of patterns and practices of systematic abuse against POWs in Azerbaijani custody involving serious abuses amount to torture and other forms of cruel, inhuman, and degrading treatment, as defined under Article 1, paragraph 1 and Article 16, paragraph 1 of the Convention.

69. With these acts having been perpetrated by organs of the Azerbaijani state pursuant to a State policy of discrimination and persecution against persons of Armenian ethnic or national origin, Azerbaijan bears responsibilities for these acts as serious breaches of its obligation under Article 2 of the Convention. Moreover, in failing to initiate criminal investigations into credible allegations of torture, not only has Azerbaijan further evidenced a State sponsored policy of anti-Armenian hatred, but has also violated its obligations under Articles 12 and 13 of the Convention. Yet Azerbaijan's transgressions of the Convention go beyond violations of substantive rights, and also include the denial of Armenian POWs' procedural rights, namely, the right to not have evidence derived from torture used against them in judicial proceedings, pursuant to Article 15 of the Convention. The use of compelled confessions, signed by POWs

out of duress and as the product of extensive torture, compounds the already grave torture undergone by Armenian POWs.

70. CFTJ calls on this Committee to be unequivocal in its condemnation of Azerbaijan's persistent and egregious breaches of the Convention, and to take urgent measures aimed at justice, reparation, and non-reoccurrence. As the primary monitoring body of the CAT, this Committee is uniquely positioned to condemn Azerbaijan's flagrant disregard of the Convention, one of the most fundamental in the pantheon of core human rights instruments.