



Submission to the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Regarding the Protection of Dead Persons and their Human Remains, Including of Victims of Potentially Unlawful Killings

January 2024

“We also collected soil from that area and brought it with us so that if we don’t find the bodies, at least we have something to bury — the soil soaked in their blood.”

I. Introduction

1. The Center for Truth and Justice (“CFTJ”), a non-profit human rights organization documenting violations of international human rights law and international humanitarian law (IHL) in the South Caucasus since the 2020 Nagorno-Karabakh War by collecting first-hand testimonies from victims and witnesses, submits this report to the Special Rapporteur responsive to his call for input on the protection of dead persons and their human remains, including of victims of potentially unlawful killings. This report addresses the international legal regime protecting the security and integrity of the deceased, particularly those who were killed during armed conflict in a manner constituting a grave violation of IHL, through the lens of CFTJ’s years-long investigation into the despoliation of the corpses of ethnic Armenian soldiers during the 2020 Nagorno-Karabakh conflict.

2. This report represents an abridged version of CFTJ’s previous, more extensive report on the subject published in October 2023, which includes more detailed evidence and a more in-

depth discussion of witness testimonies collected by CFTJ investigators.¹ This case study not only serves to highlight a specific serious violation of IHL that has gone largely overlooked by the international community but also acts as a microcosm of the myriad issues of the current IHL and human rights law regimes concerning the protection of the dead in armed conflict.

II. The Case of the Tsor Group

A. Background on the Tstor Group

3. On October 12, 2020, units of the D-20 Artillery Division of the 46492nd Military Unit of the Artsakh (Nagorno-Karabakh Republic) Defense Army, hereinafter referred to as the “Tsor Group” after the geographic region they operated in, were surrounded by units of the Azerbaijani Armed Forces in the Juvarlu area in the region of Varanda (Fizuli), Nagorno-Karabakh. Twenty Armenian servicemen from the group were killed, either in action or extrajudicially following their capture.

4. During the ensuing fighting, at least 20 members of the Tsor Group were killed in action. Evidence from social media videos suggested that their corpses had been mutilated, an observation confirmed when the body parts and partial remains of several members of the Tsor Group were repatriated following significant delay.

B. Torment of the Family of Tsor Group Members

5. The family members of servicemen whose corpses suffered mutilation and other forms of ill-treatment suffered psychological trauma by virtue of their exposure to their loved ones’ mutilation and through their inability to properly bury their loved ones. Such trauma was inflicted by Azerbaijani authorities by either withholding information on the whereabouts of corpses, or barring or severely restricting search groups’ access to certain areas. For instance, witness 22LC-0053, whose son, A.M. (b. 2001) was part of the Tsor Group, testified that “[t]he Azerbaijani side was subjecting us to psychological torture by not telling us the whereabouts of our children for months.” Furthermore, multiple witnesses viewed a pair of videos circulating on Telegram channels depicting the corpses of the Tstor Group being mocked with visible signs of ill-treatment.

¹ See CTR. FOR TRUTH & JUST., DESECRATION OF SOLDIERS’ CORPSES CARRIED OUT BY AZERBAIJAN AGAINST ARMENIAN SOLDIERS: TSOR GROUP (Oct. 2023), <https://www.cftjustice.org/wp-content/uploads/2023/11/TSOR-GROUP-WORKING-DRAFT.pdf> (more information on individual anonymized witnesses referenced in the present report is available here).

6. Eleven bodies were present in the video, with many bodies disfigured to the point of being unrecognizable. Witness 22LC-NK0008 recognized his son, A.A. (b. 2000), in the videos. He noted that multiple bodies in the video showed signs of mutilation, including the body of R.P., a relative of witness 22LC-0050, whose head appeared to be badly bludgeoned. Witness 22LC-0050 would also identify corpses in the videos whose ears had been severed. Witness 22LC-0053 also identified the body of R.P. in the Telegram videos and similarly noted that the corpses appeared to have been mutilated. 22LC-0053 and 22LC-0044 also viewed videos circulating on Telegram channels depicting the corpses of the Tsor Group being mocked with visible signs of ill-treatment. Eleven bodies were present in the videos, with many bodies disfigured to the point of being unrecognizable. One of the videos shows an Azerbaijani officer mocking the corpses.

C. The Search for the Remains of the Tsor Group

7. Witnesses 22LC-NK0008, 22LC-0053, 22LC-NK0008, 22LC-0050, 22LC-0043, and 22LC-0044 all participated in search operations for both their own loved ones and other members of the Tsor Group. Attempts to search for remains were impeded on multiple occasions by Azerbaijani authorities, who denied access to certain areas and refused to provide families of Armenian authorities with information about the potential whereabouts of the corpses. Several remains were found which were partially or entirely decomposed, now showing any direct signs of mistreatment. These were mostly in the form of bones without any flesh or connective tissue remaining on them. This raises serious questions as to Azerbaijani compliance with requirements under IHL to search for, collect, and evacuate the dead,² return the remains and personal effects of the dead,³ and, when the latter is not possible, dispose of the remains of the dead in a respectful manner.⁴

² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 15, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter GC I]; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts arts. 32, 33, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I]; 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, Rule 112 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005) [hereinafter ICRC CIHL STUDY].

³ GC I, *supra* note 2, art. 17(3); Geneva Convention Relative to the Treatment of Prisoners of War art. 120(6), Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter GC III]; AP I, *supra* note 2, arts. 34(2), (3); ICRC CIHL STUDY, *supra* note 2, Rule 114.

⁴ GC I, *supra* note 2, art. 17; GC III, *supra* note 3, art. 120; AP I, *supra* note 2, art. 130; ICRC CIHL STUDY, *supra* note 2, Rule 115.

8. While searching, witnesses also uncovered pits that appeared to be open exhumed graves. Witness 22LC-NK0008 testified that there “were dug up holes” at the sight of the battle where the Tsor Group soldiers had been killed when they returned there to search, which showed signs that someone had buried remains in them and then subsequently exhumed those remains. This raises questions as to Azerbaijani compliance with various aspects of IHL, *inter alia* the obligation to organize official graves registries and share such registries with the opposing side,⁵ to mark, respect, and maintain graves,⁶ and to only permit grave exhumations for the purpose of facilitating the return of remains of the enemy dead pursuant to special agreements between parties.⁷ By the end of the witnesses’ searches, 11 bodies of Tsor Group members remained unaccounted for.

9. The witnesses would also monitor those formal handovers of bodies from Azerbaijan that would occur, hoping their loved ones were amongst the remains. Witness 22LC-0053 testified as follows: “Around 1500 bodies were handed over to the Armenian side: about 2000 remains. I saw each of them; 70% of the bodies were beheaded. In the cases where there was a head, there were mostly no ears, so in any case, the bodies were mutilated.” Even before discovering their own relatives’ corpses, they feared such a fate had befallen their remains.

D. Evidence of the Mutilation of Tsor Group Corpses

10. In November 2020, shortly following the ceasefire agreement ending the 2020 war, three half-complete bodies of Tsor Group members were recovered. These three corpses had been beheaded; it is unclear if this occurred while they were alive or postmortem. On November 2, 2021, Witness 22LC-0043, a survivor of Tsor Group, learned from the Armenia National Security Service that the Azerbaijani side transferred 11 bags of remains to the Armenian side. All of the remains belonged to the servicemen in the Tsor Group. Only the right thigh bone of H.M.’s body was recovered.

11. The 11 bags were returned nearly a year after the end of active hostilities to Goris, Armenia, and were directly viewed immediately upon their return by witnesses 22LC-0050, 22LC-0043, and 22LC-NK0008. Witness 22LC-NK0008, whose son, A.A., was amongst the remains, remarked that “the bodies were inhumanely treated” and that the remains “were in

⁵ GC I, *supra* note 2, art. 17(3), (4); GC III, *supra* note 3, art. 120(6); AP I, *supra* note 2, art. 78(3).

⁶ GC I, *supra* note 2, art. 17(3); GC III, *supra* note 3, art. 120(4); AP I, *supra* note 2, art. 34(1), (2), (3); ICRC CIHL STUDY, *supra* note 2, Rules 115, 116.

⁷ GC I, *supra* note 2, art. 17(3); AP I, *supra* note 2, art. 34(2), (3), (4).

ordinary bags of wheat flour, mixed with soil,” adding that “some of our soldiers had only a few small bones returned to us, and some — without heads.” While it was claimed by Azerbaijani authorities that the 11 bags contained the remains of 11 soldiers, the remains of 12 were found, including the skull and brain matter of one soldier whose femur had previously been discovered. Each bag contained a mix of multiple soldiers’ remains, with individual soldiers’ remains appearing in multiple bags as well. The skull of R.P., the relative of witness 22LC-0050, showed signs of bludgeoning and blunt force trauma that had entirely shattered one side of his skull.

III. Concerns for the Special Rapporteur’s Consideration

A. Corpses Mutilation in International Humanitarian Law

12. During armed conflict, belligerent parties are under a number of obligations under the Geneva Conventions to respect the remains of *inter alia* combatants who die in battle,⁸ prisoners of war who die in custody,⁹ and civilians who die during interment.¹⁰ Article 34 of Additional Protocol I to the Geneva Conventions provides broad protections for the bodies of all persons killed during hostilities or occupations not otherwise protected by the Conventions during international armed conflict.¹¹

13. Deceased combatants, as persons *hors de combat* under customary IHL, retain the protections of common Article 3 of the Geneva Conventions, the minimum standards of protection applicable in all contexts during armed conflict of both international and non-international character,¹² in particular the protection against “outrages upon personal dignity, in particular humiliating and degrading treatment.”¹³ Accordingly, outrages upon the personal dignity of the dead constitute war crimes during international armed conflicts and non-international armed conflicts.¹⁴

⁸ GC I, *supra* note 2, arts. 18–20.

⁹ GC III, *supra* note 3, arts. 120–21.

¹⁰ Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 129–31, Aug. 12, 1949, 75 U.N.T.S. 287.

¹¹ AP I, *supra* note 2, art. 34.

¹² *See, e.g.*, Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 392, ¶ 218 (June 27); Prosecutor v. Tadić, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 98 (Int’l Crim. Trib. former Yugoslavia Oct. 2, 1995).

¹³ Geneva Conventions common art. 3(1)(c), Aug. 12, 1949, 75 U.N.T.S. 31.

¹⁴ Rome Statute of the International Criminal Court arts. 8(2)(b)(xxi) and 8(2)(c)(ii), July 17, 1998, 2187 U.N.T.S. 3. *See* ICC ELEMENTS OF CRIMES arts. 8(2)(b)(xxi), element 1, n.49 and 8(2)(c)(ii), element 1, n.57 (2013).

14. While the recent jurisprudence of European national courts exercising universal jurisdiction has largely settled the matter of the *hors de combat* status of the dead in customary IHL,¹⁵ a determination in this regard by the Special Rapporteur would serve as a welcome clarification and emphasis on the fact that corpses continue to enjoy protection and inviolability under common Article 3 of the Geneva Convention as well as other treaty instruments and norms of customary IHL relating to persons *hors de combat*. The Special Rapporteur's mandate's particular authority on this matter would help to bolster the customary status of such protections. This would also contribute to greater clarity with regard to the criminal responsibility of individuals who mutilate corpses during armed conflicts for war crimes, which remains a matter of dispute amongst some.¹⁶

B. Violations of the Human Rights of Families of Deceased Persons

15. In light of the psychological trauma inflicted on the families of Tsor Group servicemembers highlighted above who were exposed to videos of their family members' corpses being mocked and mistreated by Azerbaijani soldiers, the Special Rapporteur should clearly and univocally declare that such conduct is in violation of international law. The European Court of Human Rights (ECtHR) has found a violation of relatives' rights under Article 3 of the European Convention on Human Rights (ECHR) regarding the prohibition of torture and cruel and inhumane treatment when their deceased loved ones have been mutilated or physically tampered with without their family's consent and when they are unable to properly bury the latter due to the absence of their remains.¹⁷

16. Regardless of the direct responsibility of the State for mutilation committed by State agents, a violation of family members' right to be free from cruel, inhuman, and degrading treatment may also occur when a State displays little to no interest in addressing the mutilation of

¹⁵ See, e.g., Bundesgerichtshof [Federal Court of Justice] [BGH], Sept. 8, 2016, NJW 2016, 3604, 3606, ¶ 22 (Ger.); BGH, July 27, 2017, NJW 2017, 3667, 3668, ¶¶ 13–14 (Ger.); Rechtbank [District Court] [Rb.] Den Haag, July 23, 2019, NbSr 2019, 269, § 5.4.1.2, ECLI:NL:RBDHA:2019:7430 (Neth.); Rb. Den Haag, Apr. 21, 2021, ECLI:NL:RBDHA:2021:5336, § 5.4.1.3 (Neth.); *In re Saeed*, Case B 5595-19, NJA 2021, s. 303, ¶¶ 25–27, 39 (Sup. Ct. May 5, 2021) (Swed.). See also Prosecutor v. Brđanin, Case No. IT-99-36-T, Trial Judgment, ¶ 1019 (Int'l Crim. Trib. former Yugoslavia Sept. 1, 2004).

¹⁶ Cf. Kai Ambos, *Deceased Persons as Protected Persons Within the Meaning of International Humanitarian Law: German Federal Supreme Court Judgment of 27 July 2017*, 16 J. INT'L CRIM. JUST. 1105, 1114–16 (2018).

¹⁷ *Akkum v. Turkey*, App. No. 21894/93, ¶ 258 (Eur. Ct. H.R. Mar. 24, 2005); *Elberte v. Latvia*, App. No. 61243/08, ¶ 143 (Eur. Ct. H.R. Jan. 12, 2015); *Khadzhialiyev v. Russia*, App. No. 3013/04, ¶ 121 (Eur. Ct. H.R. Nov. 6, 2008); *Sabanchiyeva v. Russia*, App. No. 38450/05, ¶ 138 (Eur. Ct. H.R. June 6, 2013).

corpses.¹⁸ The Inter-American Court of Human Rights has additionally found that the postmortem treatment of a dead relative's corpse may be regarded as reaching the threshold of inhuman or degrading treatment under Article 5 of the American Convention on Human Rights (ACHR) with respect to their surviving family.¹⁹

17. The Special Rapporteur should first affirm that the families of deceased victims of corpse mutilation, such as those of the Tsor Group members, suffer violations of their human rights by virtue of witnessing their loved ones' mutilated corpses on videos circulated online and upon actually receiving their mutilated corpses. In particular, the Special Rapporteur should clearly outline the precise circumstances under which such conduct constitutes a human rights violation and how such conduct should be assessed under human rights instruments beyond the ECHR and ACHR, particularly the International Covenant on Civil and Political Rights and the Convention Against Torture.



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¹⁸ Benzer v. Turkey, App. No. 23502/06, ¶¶ 208–13 (Eur. Ct. H.R. Nov. 12, 2013).

¹⁹ See *Moiwana Village v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 145, ¶¶ 99–100 (June 15, 2005); *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 250, ¶¶ 160–65 (Sept. 4, 2012); *Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 251, ¶¶ 117, 252 (Oct. 24, 2012).