

INTERNATIONAL COURT OF JUSTICE

**INTERPRETATION AND APPLICATION OF THE  
INTERNATIONAL CONVENTION ON THE  
ELIMINATION  
OF ALL FORMS  
OF RACIAL DISCRIMINATION  
(REPUBLIC OF AZERBAIJAN v. REPUBLIC OF  
ARMENIA)**

REQUEST  
FOR THE INDICATION OF  
PROVISIONAL MEASURES OF  
PROTECTION

23 September 2021



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## I.

### INTRODUCTION

1. I have the honor to refer to the Application filed with the Court on 23 September 2021, instituting proceedings on behalf of the Republic of Azerbaijan (“*Azerbaijan*”) against the Republic of Armenia (“*Armenia*”) in respect of the interpretation and application of the International Convention on the Elimination of All Forms of Racial Discrimination (“*CERD*”) (the “*Application*”) and to submit, in accordance with Article 22 of CERD, Article 41 of the Statute of the Court (the “*Statute*”), and Articles 73, 74 and 75 of the Rules of Court (the “*Rules*”), a Request that the Court indicate provisional measures. In light of the nature of the rights at issue, as well as the real and imminent risk that serious and irreparable prejudice will be caused to those rights, Azerbaijan requests that the Court consider this Request as a matter of urgency.

## II.

### FACTS SUPPORTING THE REQUEST

2. Azerbaijan’s Application describes in detail the dispute between the parties under CERD, and Armenia’s ongoing violations of CERD-protected rights that underlie the need for the urgent relief sought by this Request<sup>1</sup>.

3. Armenia has perpetrated and continues to perpetrate these acts of racial discrimination against Azerbaijanis on the

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<sup>1</sup> *Interpretation and Application of the International Convention on the Elimination of all forms of Racial Discrimination (Republic of Azerbaijan v. Republic of Armenia)*, Application Instituting Proceedings (hereinafter “*Application*”).

basis of their “national or ethnic origin” within the meaning of Article 1(1) of CERD.

4. Throughout the course of two wars and its nearly thirty-year occupation of Azerbaijan’s internationally recognized sovereign territory, Armenia has engaged in a campaign of ethnic cleansing and other discriminatory acts in Daghlygh Garabagh and the surrounding districts of Azerbaijan (the formerly “*Occupied Territories*”). Armenian forces have expelled more than 700,000 Azerbaijanis from that territory, have prevented displaced Azerbaijanis from returning home, have caused significant environmental damage to Azerbaijani lands, and have deprived Azerbaijanis of their ability to access or otherwise enjoy essential natural resources.

5. Armenia simultaneously has been pursuing an overarching policy of “cultural erasure” in an effort to remove any trace of Azerbaijani ethnicity, culture, or traditions in the formerly Occupied Territories, by: resettling Armenians in areas from which Azerbaijanis had been expelled; razing a number of Azerbaijani municipalities and renaming others with Armenian labels; looting and destroying Azerbaijani cultural heritage sites; and conducting propaganda campaigns denying and distorting Azerbaijani history, culture, and ethnic identity.

6. Armenia’s violations continue to pose an ongoing threat of irreparable harm to rights asserted by Azerbaijan under CERD in three key respects that support the indication of provisional measures as a matter of urgency.

- Armenia’s refusal to provide comprehensive and accurate maps of the hundreds of thousands of landmines it planted in Azerbaijan’s territory and its ongoing operations to salt Azerbaijan’s territory with more landmines present a real and imminent risk of death or bodily injury to Azerbaijanis.
- Armenia continues to engage in Government-sponsored cyber disinformation operations and to

support the activities of hate groups to incite ethnic hatred and violence against Azerbaijanis.

- Armenia's failure to investigate, collect, or preserve evidence relating to allegations of racial discrimination, including serious violent crimes committed against Azerbaijanis, risks the irreparable loss of vital evidence.

7. Azerbaijan requests that the Court indicate provisional measures to protect, preserve, and avert the threat of serious and irreparable harm to its rights and those of its people, and to prevent aggravation or extension of the dispute pending the determination of the merits of the issues raised by the Application.

#### **A. Armenia's Ongoing Campaign of Ethnic Cleansing Directed Against Azerbaijanis**

8. As described in the Application, Armenia is engaging in a systematic campaign of ethnic cleansing to purge Azerbaijanis and any trace of Azerbaijani history or cultural heritage from Armenia and the formerly Occupied Territories. As the Soviet Union collapsed in the late 1980s, Armenia expelled more than 200,000 Azerbaijanis remaining in Armenia and then launched the First Garabagh War against Azerbaijan to claim Daghygh Garabagh and the surrounding districts, comprising nearly 20 percent of Azerbaijani territory. In the course of that War, Armenia cleansed Azerbaijanis from the formerly Occupied Territories, expelling and murdering Azerbaijani civilians and destroying Azerbaijani cities, towns, and cultural monuments. Armenia's ethnic cleansing is fueled by a racist, ethno-nationalist ideology that glorifies Armenian ethnic purity and superiority and simultaneously denigrates Azerbaijanis as rootless nomads without a distinct ethnic identity of their own<sup>2</sup>. All told, Armenia's ethnic cleansing resulted in the expulsion or displacement of almost one million

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<sup>2</sup> Application, paras. 30, 87.

Azerbaijanis, including more than 700,000 Azerbaijanis from the formerly Occupied Territories.

9. Having emptied Daghlygh Garabagh and the surrounding districts of Azerbaijanis, Armenia continues actively to try to keep the territory “cleansed” of Azerbaijanis by: (i) refusing to provide Azerbaijan with comprehensive and accurate maps detailing the placement of existing mine fields in Azerbaijan; and (ii) continuing to plant landmines on Azerbaijan’s territory.

10. The Azerbaijan National Agency for Mine Action (“*ANAMA*”) is the implementing agency of the Azerbaijan Mine Action Programme and was formed with the support of the United Nations Development Programme. In conducting a technical survey to assess the threat posed by landmines and unexploded ordnances, ANAMA determined that an astonishing 75% of the formerly Occupied Territories (11,784 square kilometers) are at risk, with 1,605 square kilometers being “highly contaminated” with “confirmed mine areas” and 7,121 square kilometers having “medium” or “low” levels of contamination<sup>3</sup>. As depicted in Figure 1 below, landmines are pervasive across the former Line of Contact and close to densely populated regions of Azerbaijan. The mine fields also spread throughout the formerly Occupied Territories, with high concentrations of mines in areas where the vast majority of the population had been Azerbaijani before being expelled by Armenia’s ethnic cleansing campaign<sup>4</sup>. By design, Armenia’s

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<sup>3</sup> *Annex 32*, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), pp. 5-6 (explaining high contamination refers to confirmed mine areas, and medium and low contamination refers to suspected minefields and battlefields).

<sup>4</sup> *Annex 32*, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), p. 4 (stating that

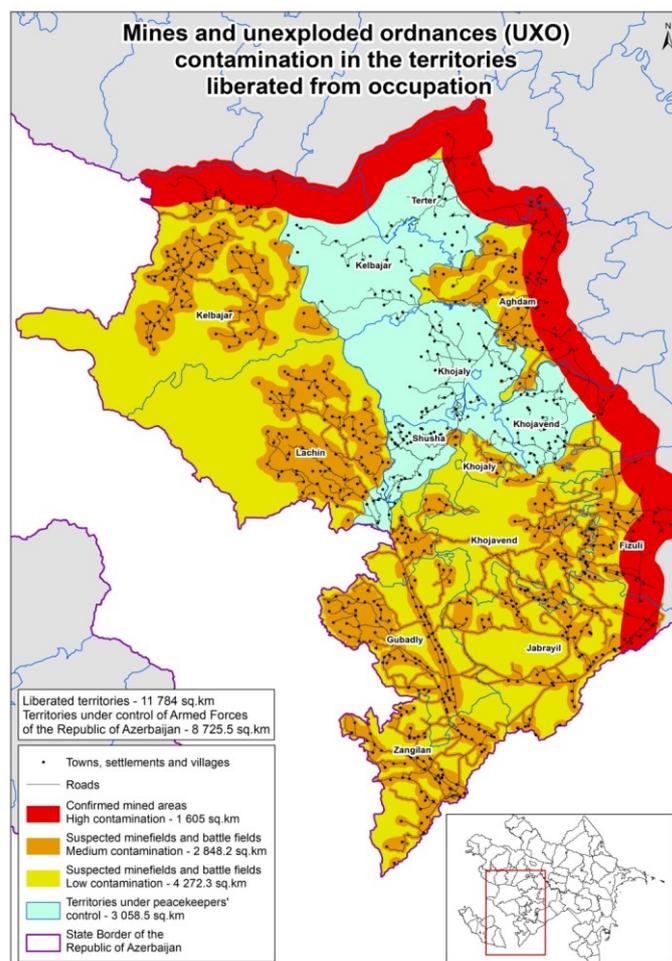
landmines are present far from former military positions in “agriculture fields, graveyards, gardens and other areas of social and economic utility in the liberated territories of Azerbaijan”, endangering Azerbaijanis currently living or working there, preventing displaced Azerbaijanis from returning to their homes, and further impeding Azerbaijan’s rehabilitation and reconstruction work<sup>5</sup>.

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patterned mine lines, randomly placed mines, and scattered munitions were present in all of the regions in the formerly Occupied Territories).

<sup>5</sup> **Annex 32**, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), p. 2.

**Figure 1: Mines and Unexploded Ordnances Contamination in the Liberated Territories<sup>6</sup>**



<sup>6</sup> **Annex 32**, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), p. 5.

11. Hundreds of thousands of landmines are estimated to be present on Azerbaijan's territory as a result of Armenia's conduct. In the nearly one year following the signing of the Trilateral Statement, Azerbaijan has been able to clear only a small part of the contaminated area, and that process may take more than a decade to complete without accurate maps showing the location of the landmines<sup>7</sup>. Notwithstanding Azerbaijan's best efforts, the number of landmine casualties continues to rise. Since the cessation of hostilities in November 2020, at least 160 Azerbaijanis have been killed or injured by these landmines, including at least 23 Azerbaijani civilians who were killed and 36 Azerbaijani civilians who were injured<sup>8</sup>. For example, Azerbaijani civilians Zulfugar Huseynov and Shakir Hacıyev, along with Hacıyev's daughter and brother, were killed by an anti-tank mine while attempting to return to Hacıyev's home in the Fuzuli district on 28 November 2020<sup>9</sup>. On 4 June 2021, two Azerbaijani journalists and one Azerbaijani government employee were killed, and four others

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<sup>7</sup> See, e.g., Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, *Mine Problem in the Liberated Areas: Ad Hoc Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan* (June 2021), p. 7, available at <https://www.ombudsman.az/upload/editor/files/Ad%20Hoc%20Report%20of%20the%20Ombudsman%20on%20landmine%20problem.pdf> (noting that Azerbaijan cleared more than 35,000 landmines in 200 days following the signing of the Trilateral Statement).

<sup>8</sup> See, e.g., **Annex 27**, Prosecutor General's Office of the Republic of Azerbaijan, *Civilian landmine casualty statistics* (11 August 2021), available at <https://genprosecutor.gov.az/az/post/4008> (Certified Translation).

<sup>9</sup> R. Synovitz, "Dying To Go Home: Displaced Azerbaijanis Risk Mines, Munitions To See Homeland", *Radio Free Europe / Radio Liberty* (18 February 2021), available at <https://www.rferl.org/a/azerbaijan-idps-karabakh-return-home-mines-munitions-risks/31110165.html>.

injured when their vehicle struck an anti-tank mine in the Kalbajar district<sup>10</sup>.

12. Armenia has made clear that it possesses maps showing where its landmines are located, but refuses to share comprehensive and accurate maps—which are critical for effective and safe demining operations—with Azerbaijan. In June 2021, Armenia provided what its Prime Minister admitted was only “a tiny part”<sup>11</sup> of the landmine maps it possesses, in exchange for Azerbaijan’s release of 15 Armenian detainees being held on suspicion of having committed war crimes and other unlawful acts in the formerly Occupied Territories. To date, Armenia has provided Azerbaijan with maps purportedly setting out the location of approximately 189,000 anti-tank and anti-personnel mines in the Aghdam, Fuzuli and Zangilan districts, but their inaccuracy has rendered them largely useless for purposes of de-mining operations. Indeed, Azerbaijan has determined that almost half of the information provided in the maps is incomplete, and a quarter are either completely false or contain no information pertinent to demining<sup>12</sup>.

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<sup>10</sup> Prosecutor General’s Office of the Republic of Azerbaijan, *Prosecutor General Kamran Aliyev officially addressed a number of international organizations regarding the fact that a group of people were struck in the minefield in the liberated Kalbajar district* (4 June 2021), available at <https://genprosecutor.gov.az/az/post/3751>. See also Twitter Post, Regarding 4 June Landmine Explosion, @Giorgi\_Gogia (4 June 2021 at 10:08am), available at [https://twitter.com/giorgi\\_gogia/status/1400816623158710275](https://twitter.com/giorgi_gogia/status/1400816623158710275) (posting as Associate Director of the Europe and Central Asia Division of Human Rights Watch that “[l]andmines pose ongoing threat to civilians and hinder post-conflict recovery efforts.”).

<sup>11</sup> **Annex 33**, Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 June 2021), available at <https://www.youtube.com/watch?v=7lbPymz14zQ> (Certified Translation) (stating “a tiny part”, representing “only a portion” of Armenia’s landmine maps were provided to Azerbaijan).

<sup>12</sup> Annex to the Letter dated 9 August 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the

13. There are still four districts that are known to contain landmines and for which Armenia has yet to provide maps, including Kalbajar—the site of the June 2021 mine explosion that resulted in the deaths of Azerbaijani civilians. With each day that the landmines are not removed, the risk of further casualties increases, as Azerbaijanis in these areas are in daily danger from unmarked landmines and minefields.

14. Armenia’s ongoing refusal to provide landmine maps elicited strong condemnation from the international community, which has recognized the serious and current danger to Azerbaijani civilians resulting from Armenia’s conduct. On 12 April 2021, for example, the Chair of the PACE Migration Committee called on Armenia to “urgently disclose[]” information on the location of the landmines in order to “avoid ongoing death and injury”<sup>13</sup>. The Commissioner for Human Rights of the Council of Europe has also stressed the “urgent need to demine the areas affected by the conflict”,<sup>14</sup> while the OSCE Minsk Group co-chairs from

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Secretary-General, UN doc. A/75/986-S/2021/721 (12 August 2021), p. 2, available at <https://undocs.org/en/A/75/986> (“[A]s a result of subsequent analysis by Azerbaijani specialists, it has been identified that almost half of these formularies are only partially filled in, while one fourth are either completely false or contain no information pertinent to demining.”).

<sup>13</sup> Parliamentary Assembly of the Council of Europe, *Migration Committee Chair expresses deep concern over the fate of alleged captives and missing persons from the recent conflict between Armenia and Azerbaijan* (12 April 2021), available at <https://pace.coe.int/en/news/8246/migration-committee-chair-expresses-deep-concern-over-the-fate-of-alleged-captives-and-missing-persons-from-the-recent-conflict-between-armenia-and-azerbaijan#:~:text=Armenia%20and%20Azerbaijan-Migration%20Committee%20Chair%20expresses%20deep%20concern%20over%20the%20fate%20of,conflict%20between%20Armenia%20and%20Azerbaijan&text=The%20Court%20identified%20188%20Armenians%20allegedly%20captured%20by%20Azerbaijan>.

<sup>14</sup> Twitter Post, Regarding 4 June Landmine Explosion, @CommissionerHR (4 June 2021 at 09:39am), available at

France, Russia and the United States have issued a joint statement urging the “exchange of *all* data necessary to conduct effective demining of conflict regions”<sup>15</sup>. After Armenia provided Azerbaijan with a limited (and later determined, inaccurate) subset of its available landmine maps, Vice-President of the European Commission Josep Borrell stressed that the “handing over of *all* available maps of mined areas” was crucial “to avoid further civilian casualties”<sup>16</sup>.

15. Instead of complying with these demands, Armenia presses ahead with its actions. Despite the clear danger intentionally created for Azerbaijanis, Armenia continues to plant landmines in Azerbaijan’s territory near the border between Armenia and Azerbaijan. On 27 May 2021, for example, Azerbaijan detained a reconnaissance and sabotage group of the Armenian Armed Forces in the Kalbajar district who were attempting to plant landmines in Azerbaijan’s territory<sup>17</sup>.

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<https://twitter.com/CommissionerHR/status/1400809475804745734?s=20>.

<sup>15</sup> OSCE Minsk Group, *Statement by the Co-Chairs of the OSCE Minsk Group* (13 April 2021), available at <https://www.osce.org/minsk-group/483416> (emphasis added).

<sup>16</sup> Delegation of the European Union to Angola, *Armenia/Azerbaijan: Statement by High Representative Josep Borrell on the latest developments* (13 June 2021), available at [https://eeas.europa.eu/delegations/angola/99984/armeniaazerbaijan-statement-high-representative-josep-borrell-latest-developments\\_en](https://eeas.europa.eu/delegations/angola/99984/armeniaazerbaijan-statement-high-representative-josep-borrell-latest-developments_en) (emphasis added).

<sup>17</sup> Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:191/21, Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the next provocation of the armed forces of Armenia along the border in the direction of the Kalbajar region* (2021), available at <https://mfa.gov.az/en/news/no19121-information-of-the-press-service-department-of-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-on-the-next-provocation-of-the-armed-forces-of-armenia-along-the-border-in-the-direction-of-the-kalbajar-region-enru>; Ministry

16. To protect the lives of Azerbaijanis, there is an urgent need for Armenia to release *comprehensive and accurate* information in its possession regarding landmines it placed in the formerly Occupied Territories and to *cease any operations* to continue to place landmines in Azerbaijan's territory.

### **B. Armenia's Ongoing Campaign to Incite Ethnic Violence Against Azerbaijanis**

17. As explained in the Application, in addition to engaging in ethnic cleansing and cultural erasure, Armenia has disseminated, supported and condoned hate speech and incitement of violence against Azerbaijanis<sup>18</sup>. Armenian officials at the highest levels have invoked the so-called "ethnic incompatibility" between Armenians and Azerbaijanis, promoting the superiority of Armenians over the "tribal", "barbarian" and "nomad" Azerbaijanis, and attempting to erase and deny the very existence of Azerbaijanis as a distinct national or ethnic group<sup>19</sup>.

18. As part of its discriminatory campaign, the Armenian Government is engaging in a widespread and deliberate cyber operation using social media platforms to disseminate false news, as well as supporting hate groups operating in Armenia, all with a view to inciting ethnic hatred and violence between Armenians and Azerbaijanis.

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of Defense of the Republic of Azerbaijan, *Armenia committed a provocation in the direction of the Kalbajar region of the state border* (27 May 2021), available at <https://mod.gov.az/en/news/armenia-committed-a-provocation-in-the-direction-of-the-kalbajar-region-of-the-state-border-36046.html>.

<sup>18</sup> Application, paras. 85-93.

<sup>19</sup> *Id.*

## 1. Armenia's Cyber Disinformation Operations

19. As set forth in the Application, Armenia's dissemination of anti-Azerbaijani hate speech online is part of a deliberate campaign. Earlier this year, the United States social media company Twitter announced its discovery that the Government of Armenia was conducting a coordinated campaign on the social media platform that was deliberately designed to stoke ethnic tensions between Armenians and Azerbaijanis. On 23 February 2021, Twitter published the following statement:

Under our platform manipulation policy, we investigated and removed 35 accounts that had ties to the Government of Armenia. These accounts were created in order to advance narratives that were targeting Azerbaijan and were geostrategically favorable to the Armenian government. In some cases, the fake accounts purported to represent government and political figures in Azerbaijan, as well as news entities claiming to operate in Azerbaijan. The accounts engaged in spammy activity to gain followers and further amplify this narrative.<sup>20</sup>

20. Some of the accounts flagged by Twitter attempted to stoke racial tensions between Armenians and Azerbaijanis by posing as Azerbaijani government officials or Azerbaijani news sources and tweeting anti-*Armenian* statements, to make it falsely appear that Azerbaijani sources were engaged in hate

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<sup>20</sup> Twitter Safety, "Disclosing networks of state-linked information operations", *Twitter, Inc.* (23 February 2021), available at [https://blog.twitter.com/en\\_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.html](https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.html) (emphasis added).

speech against Armenians. For example, an account posing as an Azerbaijani news source—but actually linked to the Armenian Government—tweeted: “Mars is an ancestral Azerbaijani land, insidious and malicious little Armenian people must occupy it”<sup>21</sup>.

21. Other accounts manufactured by Armenia engaged in hate speech and cultural erasure by echoing anti-Azerbaijani language and referring to Azerbaijanis as “barbarian[s]” and “vagabond tribes”, and disparagingly denying the existence of Azerbaijanis as a national or ethnic group by referring to Azerbaijan as an “artificial formation”<sup>22</sup>.

22. Armenia’s actions evidence a pattern and practice of engaging in cyber disinformation operations to incite and stir ethnic hatred and violence against Azerbaijanis. Twitter’s recent identification and takedown of Armenia’s State-sponsored cyber operation is sobering evidence from a third party confirming that Armenia’s conduct is deliberate, ongoing, and chillingly effective in disseminating disinformation.

## **2. Armenia’s Support of Anti-Azerbaijani Hate Groups**

23. Armenia also continues to permit the armed hate group Voxj Mnalu Arvest, or VoMA, to recruit members, raise funds, and operate training centers out of Armenia<sup>23</sup>. VoMA is a self-described “militant nationalist movement”, whose stated aim is to create an entirely ethnic Armenian “Nation Army” and to ready the mono-ethnic Armenian State against the

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<sup>21</sup> **Annex 34**, Twitter, Inc., *Information Operations Report Archive* (2021), available at <https://transparency.twitter.com/en/reports/information-operations.html> (With Certified Translation) (containing datasets including the referenced *Armenia (February 2021) – 35 Accounts* dataset).

<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g.*, Application, para. 91.

perceived “threat” of Azerbaijanis<sup>24</sup>. VoMA advertises that its mission is to “[i]mmediately prepare 100,000 Armenian Citizens and Diaspora to face the Ottoman and Caspian Threat”, “[f]ortify all strategically important territory for the indigenous population”, and “[c]reate a specialized center for the information war”<sup>25</sup>.

24. To drive support for the group’s cause, VoMA’s founder has repeatedly used anti-Azerbaijani hate speech designed to stoke fear of Azerbaijanis and to erase their identity as a unique ethnic group, for example by calling them “barbarians” and “Turks” and advocating to “liquidat[e] that state [Azerbaijan]”<sup>26</sup>. The founder’s messages are amplified on VoMA’s social media platforms, which command a significant following—more than 100,000 people follow the group’s Facebook page, and more than 5,000 people have subscribed to VoMA’s Telegram channel. On 3 March 2021, for example, the following statement by VoMA’s founder was posted to the group’s Facebook page:

We constantly forget that we are not the owners of the little Armenia, but the Greater Armenia. And now the Turks take advantage of what was taken and stolen from us. And we foolishly comply with it.

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<sup>24</sup> “About Us”, *VoMA* (last accessed 21 September 2021), available at <https://www.voma.center/en/who-we-are>. See also “Threats”, *VoMA* (last accessed 21 September 2021), available at <https://www.voma.center/en/threats> (describing Armenia as “a deterrent, a security outpost against mixed Turkish-pseudo-Islamic formations, which are a threat not only to us, but also to other countries in the region” and “a wedge in the sick body of Eurasia”).

<sup>25</sup> “About Us”, *VoMA* (last accessed 21 September 2021), available at <https://www.voma.center/en/who-we-are>.

<sup>26</sup> **Annex 35**, *Voxj Mnalu Arvest (VoMA) Social Media Posts*, pp. 2-3 (Certified Translation).

If we can form a militant population in the Artsakh Autonomous Republic and Armenia, and if we can make Artsakh an indivisible part of Armenia, then we can find many, including Russian peacekeepers, to help us<sup>27</sup>.

VoMA uses fear and hatred of Azerbaijanis as a recruiting tool, and racist messages insulting Azerbaijanis as a people are regularly shared via the group's social media pages<sup>28</sup>.

25. VoMA's propaganda and recruitment to violence are not just aimed at Armenian adults, but also children in order to militarize the next generation of Armenians and to teach them to hate and fear Azerbaijanis from a young age. In March 2021, for example, VoMA shared on its Telegram channel that:

[O]ur children have been studying the art of war willingly. They have come to understand despite their young age that they will only be able to secure their families' and their Motherland's safety by relying on themselves and their weapons. Because you, Osman and Caspian Turks, only understand the language of strength. History has taught us that<sup>29</sup>.

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<sup>27</sup> **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 5 (Certified Translation).

<sup>28</sup> *See, e.g.*, **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, pp. 5-7 (Certified Translation) (denouncing "False Muslims, wolf worshipping terrorist states [that] conduct destructive and invasive policies towards all its neighbors", and stating that Armenia is "destined" to "transform into a fortress state and an all-army nation").

<sup>29</sup> **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, pp. 10-11 (Certified Translation). *See also* **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, pp. 13-14 (Certified Translation) ("When

26. Far from preventing VoMA's unlawful activities, Armenia has actually supported and encouraged the group's activities, for example, by allowing new VoMA volunteers to train throughout Armenia, glorifying their activities, and even cooperating militarily. VoMA announced, for instance, that in May 2021 it hosted military training courses in Yerevan for 150 people; opened five new branches across Armenia; and deployed artillery reconnaissance and sniper volunteers to the border that reportedly "work[ed] in close cooperation with the Armed Forces and received a commendation by the command"<sup>30</sup>. Armenia's actions with respect to VoMA pose a current and serious risk to the safety and security of Azerbaijanis. Provisional measures urgently are required to protect the Azerbaijani people from the fomenting of racial hatred and violence while this case proceeds.

### **C. Armenia's Ongoing Failure to Take Action to Ensure the Preservation of Evidence Related to Racial Discrimination Against Azerbaijanis**

27. Armenia has failed to take action to prevent the destruction and otherwise ensure the preservation of evidence related to allegations of ethnically-motivated violent crimes and other acts of racial discrimination against Azerbaijanis. Armenia's failure in this regard has been longstanding; Armenia failed to investigate such crimes against Azerbaijanis committed in the First Garabagh War and throughout the nearly thirty year period of occupation, and the most heinous crimes

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we have made sure that old people, women, young people and children will have the skills to make war and are armed to the max, we will be able to wear them down with acts of sabotage to the point where, one day, the Baku khanate will disintegrate into 10 small khanates!").

<sup>30</sup> **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, pp. 16-29 (Certified Translation). *See also* **Annex 35**, Voxj Mnalu Arvest (VoMA) Social Media Posts, pp. 7-8 (Certified Translation) (referring to training in Armenia on 17 to 26 September 2021).

against Azerbaijanis have remained without effective remedies or legal redress as required by CERD<sup>31</sup>.

28. Most recently, both during hostilities and after the signing of the November 2020 Trilateral Statement, credible allegations arose related to Armenian servicemen who:

- unlawfully executed Azerbaijani servicemen;
- tortured and mistreated Azerbaijani prisoners of war, including by performing an unnecessary amputation, conducting surgeries without anesthesia, and injecting alcohol into their bodies with syringes;
- indiscriminately attacked Azerbaijani civilians and targeted civilian areas with no military objectives;
- desecrated the bodies of deceased Azerbaijani servicemen, including by feeding the corpses to pigs; and
- indiscriminately planted landmines in civilian areas<sup>32</sup>.

Such conduct has been well-documented by non-governmental organizations such as Human Rights Watch<sup>33</sup>.

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<sup>31</sup> Application, paras. 73-81.

<sup>32</sup> Application, para. 84. *See, e.g., Annex 25*, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, *Report on the facts of torture against Azerbaijani soldiers by the Armed Forces of Armenia* (July 2021); *Annex 26*, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, *Report on the facts of torture, other cruel, inhuman or degrading treatment or punishment of Azerbaijani prisoners of war and civilians by Armenia during hostage taking and captivity* (January 2021).

<sup>33</sup> *See, e.g.,* Human Rights Watch, *Armenia: Unlawful Rocket, Missiles Strikes on Azerbaijan* (11 December 2020), *available at*

29. With each day that passes, it becomes increasingly impossible to realize Azerbaijanis' right to effective protection and remedies for acts of racial discrimination through the investigation and prosecution of perpetrators of racial discrimination. There is a serious risk that alleged perpetrators will flee in order to escape prosecution, that witnesses to these crimes will be unable to be located, and that evidence will deteriorate or become wholly unavailable. Provisional measures thus are required on an urgent basis to preserve the possibility of prosecutions for these grave crimes by gathering and securing necessary evidence before it is lost or destroyed while this case proceeds.

### III.

#### PRIMA FACIE JURISDICTION

30. The Court may indicate provisional measures “if the provisions relied on by the applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded”<sup>34</sup>. In order for the Court to determine that it has prima facie jurisdiction, the acts complained of must be “prima facie capable of falling within the provisions of [the relevant] instrument”, such that “the dispute is one which the Court could have jurisdiction *ratione materiae* to entertain”<sup>35</sup>. The

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<https://www.hrw.org/news/2020/12/11/armenia-unlawful-rocket-missile-strikes-azerbaijan>; Human Rights Watch, *Armenia: Cluster Munitions Kill Civilians in Azerbaijan* (30 October 2020), available at <https://www.hrw.org/news/2020/10/30/armenia-cluster-munitions-kill-civilians-azerbaijan>.

<sup>34</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights (Islamic Republic of Iran v. United States of America)*, Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018, para. 24.

<sup>35</sup> *Id.* at para. 30.

Court “need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case” at this stage<sup>36</sup>.

31. As set forth in the Application, the Court has jurisdiction over the dispute between Azerbaijan and Armenia regarding the interpretation and application of CERD pursuant to its Statute and Rules and Article 22 of CERD<sup>37</sup>. Neither party has entered a reservation to Article 22 of CERD, which provides for the Court’s jurisdiction in respect of such disputes. This case concerns a dispute between Azerbaijan and Armenia concerning the interpretation and application of CERD, which the parties have been unable to resolve through negotiations<sup>38</sup>. Therefore, the Court has *prima facie* jurisdiction to indicate provisional measures.

#### IV.

#### THE RIGHTS AZERBAIJAN SEEKS TO PROTECT

32. The Court has “the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party”<sup>39</sup>. To indicate provisional measures in respect of these rights, the Court need not “establish the existence of breaches

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<sup>36</sup> *Id.* at para. 24. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, para. 141 (“the Court is not called upon, for the purpose of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under CERD”).

<sup>37</sup> Application, paras. 1, 21-23.

<sup>38</sup> Application, paras. 24-26.

<sup>39</sup> Statute of the International Court of Justice, Art. 41.

of CERD”<sup>40</sup> or “determine definitively whether the rights which [the Applicant State] wishes to see protected exist”<sup>41</sup>. Rather, the Court may exercise the power to indicate provisional measures so long as “it is satisfied that the rights asserted by the party requesting such measures are at least plausible”<sup>42</sup>.

33. With respect to CERD, the Court has held that:

Articles 2, 4, 5, 6, and 7 of CERD are intended to protect individuals from racial discrimination. Consequently, in the context of a request for the indication of provisional measures, a State party to CERD may avail itself of the rights under [CERD] only if the acts complained of appear to constitute acts

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<sup>40</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, para. 90.

<sup>41</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 44.

<sup>42</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, para. 63. *See also Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 43; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, para. 43.

of racial discrimination as defined in Article 1 of the Convention.<sup>43</sup>

34. As explained in further detail in the Application, Armenia's policies and practices target Azerbaijanis for discriminatory treatment falling within the scope of Article 1(1) and in violation of Articles 2, 3, 4, 5, 6, and 7 of CERD<sup>44</sup>. As described above, the rights invoked by Azerbaijan are clearly plausible, and Azerbaijan requests provisional measures to protect against the harm caused by Armenia's ongoing unlawful conduct. On the other hand, there are no rights or legitimate interests of Armenia that would be jeopardized by the indication of the provisional measures requested here.

## V.

### URGENCY AND IRREPARABLE HARM

35. The Court may order provisional measures "when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences"<sup>45</sup>. The Court will exercise its power to indicate provisional measures only if

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<sup>43</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 52.

<sup>44</sup> Application, paras. 97-98.

<sup>45</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, para. 64. *See also Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 60; *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights (Islamic Republic of Iran v. United States of America)*, Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018, para. 80.

“there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision”<sup>46</sup>. As the Court has recently confirmed, “the condition of urgency is met when the acts susceptible of causing irreparable prejudice can ‘occur at any moment’ before the Court makes a final decision on the case”<sup>47</sup>.

36. The Court previously has indicated provisional measures where rights under CERD were threatened by ongoing acts of racial discrimination<sup>48</sup>. In that context, the Court has recognized that certain rights protected by CERD—in particular, “several of the [civil and economic, social, and cultural] rights stipulated in Article 5, paragraphs (a), (d) and (e) . . . —are of such a nature that prejudice to them is capable of causing irreparable harm”<sup>49</sup>. The Court has also ordered

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<sup>46</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, para. 65; See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 61.

<sup>47</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, para. 65.

<sup>48</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008.

<sup>49</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, para. 67.

provisional measures where past violations have occurred and it is “not inconceivable” that they might occur again<sup>50</sup> and in circumstances that were “unstable and could rapidly change” due to “ongoing tension and the absence of an overall settlement to the conflict”, and where the affected group remained vulnerable to human rights violations<sup>51</sup>.

37. There can be no doubt that the rights Azerbaijan seeks to protect are threatened with imminent and irreparable injury by Armenia and that Azerbaijanis threatened by Armenia’s conduct remain vulnerable. Absent action by the Court:

- Armenian-laid landmines continue to maim and kill Azerbaijanis, and continue to prevent their safe return to the formerly Occupied Territories;
- Armenia’s widespread, virulent campaign of State-sponsored cyber disinformation operations and support for armed hate groups such as VoMA continue to stoke hatred and facilitate the serious risk of racial discrimination and violence against Azerbaijanis; and
- Armenia’s failure to collect and preserve evidence with respect to *any* allegations of ethnically-motivated crimes and other acts of racial discrimination against Azerbaijanis risks the irreparable loss of vital evidence necessary to secure Azerbaijanis’ rights to effective protection and legal remedies.

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<sup>50</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016, para. 89.

<sup>51</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, para. 143.

38. Provisional measures are thus urgently requested to compel Armenia to abide by its international obligations under CERD and protect Azerbaijanis from the irreparable harm caused by Armenia's ongoing conduct.

## VI.

### THE MEASURES REQUESTED

39. On the basis of the facts set forth above and in the Application, Azerbaijan, in its own right and as *parens patriae* of its citizens, respectfully requests the Court as a matter of urgency to indicate the following provisional measures, which are directly linked to the rights that form the subject matter of this dispute, pending its determination of this case on the merits:

- a) Armenia shall take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the landmines laid in Azerbaijan's territory by the Armenian military and/or other groups under the direction, control, or sponsorship of Armenia, including by immediately providing comprehensive and accurate information about the location and characteristics of landmines in Azerbaijan's territory;
- b) Armenia shall immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan's territory;
- c) Armenia shall take all necessary steps effectively to prevent organizations operating in Armenian territory, including the VoMA organization, from engaging in the incitement of racial hatred and racially-motivated violence targeted at Azerbaijanis, and immediately shall cease and desist incitement based on the fabrication of public and private hate speech attributed to Azerbaijanis on Twitter and other social media and traditional media channels.

- d) Armenia shall take effective measures to collect, and to prevent the destruction and ensure the preservation of, evidence related to allegations of ethnically-motivated crimes against Azerbaijanis of which it is aware, including those identified in communications from the Republic of Azerbaijan;
- e) Armenia shall refrain from any measure that might aggravate, extend, or make more difficult the resolution of this dispute; and
- f) Armenia shall submit a report to the Court on all measures taken to give effect to its Order indicating provisional measures within three months, as from the date of the Order, and thereafter every six months, until a final decision on the case is rendered by the Court.

40. Azerbaijan respectfully asks that this Request be considered by the Court, and a hearing on it be scheduled, at the earliest possible opportunity.

41. Azerbaijan reserves its rights to amend this Request and to request additional provisional measures to prevent irreparable harm to the rights at issue in this case, or to prevent further aggravation of the dispute between the Parties, should they become necessary during the course of these proceedings.

I have the honor to reassure the Court of my highest esteem and consideration.

The Hague, 23 September 2021

Fikrat Akhundov

Ambassador to The Netherlands

The Republic of Azerbaijan