



HUMAN RIGHTS HOUSE
NETWORK

NGO REPORT ON CIVIL AND POLITICAL RIGHTS IN AZERBAIJAN

Contribution to the List of Issues for the periodic report of
Azerbaijan at the 118th (2016) session of the Human Rights Committee

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**HUMAN RIGHTS HOUSE
NETWORK**

Human Rights House Network

The Human Rights House Network is a community of human rights defenders working for more than 100 independent organisations operating in 16 Human Rights Houses in 13 countries. Empowering, supporting, and protecting human rights defenders, the Network members unite their voices to promote the universal freedoms of assembly, organisation, and expression, and the right to be a human rights defender.

The Secretariat (HRHF) – based in Oslo, Geneva, and Brussels – stewards the community, raising awareness internationally, raising concerns at the UN, EU, and international institutions, and coordinating best use and sharing of the knowledge, expertise, influence, and resources within the Network.

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For human rights defenders in Azerbaijan

In 2009, members and partners of the Human Rights House Azerbaijan submitted an NGO report and contributed to the review of Azerbaijan at the Committee on Civil and Political Rights. Rasul Jafarov was one of them, working at the time with the Institute for Reporters' Freedom and Safety. He was inspired by the work of the Committee to further the defence of human rights in Azerbaijan.

Today, Rasul Jafarov is one of the detained human rights defenders in Azerbaijan. In 2011, the Human Rights House Azerbaijan was ordered to cease all activities.

This report reflects the grave deterioration of the human rights situation in Azerbaijan in the past few years. The country's situation, reviewed in 2009, was already challenging but can in no way be compared to today's situation. Today, all leading civil society actors are either in prison or have had to flee the country, while human rights organisations are forbidden from operating.

Our report is dedicated to all human rights defenders, lawyers, journalists, and youth activists who are today imprisoned in Azerbaijan or have fled the country.



Maria Dahle, Executive Director Human Rights House Network (left), Rasul Jafarov, imprisoned human rights defender in Azerbaijan (right)

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INTRODUCTION

1. The Human Rights House Foundation has produced this NGO report on the implementation of the Convention and Civil and Political Rights (ICCPR) in Azerbaijan, with the support of the Human Rights House Network, to contribute to the List of Issues prior to the ICCPR Committee review of Azerbaijan.
2. This report details cases and information collected on the ground by members and partners of the Human Rights House Network – through interview, legal assistance of victims, and trial monitoring. This information comes first hand and from reliable primary sources. Amongst the main resources are the following recent reports published by the Human Rights House Foundation:
 - Breaking Point in Azerbaijan: Promotion and Glamour Abroad, Repression and Imprisonment at Home, published in May 2015 in cooperation with Freedom NOW¹.
 - Human Rights Lawyers at Risk: Making the Case for Protection of Legal Professionals in Azerbaijan, Belarus, Moldova, Russia, and Ukraine,² published by the Human Rights House Network on 10 September 2015.
3. The secondary sources consulted for the report include ECtHR case law and NGO and governmental reports, such as those produced by the OSCE, ODIHR, CoE, Parliamentary Assembly of the Council of Europe (PACE), and the UN.
4. This report references the Concluding Observations of the Committee Against Torture, published on 9 December 2015 following the review of Azerbaijan at the 56th session of the Committee.
5. This report highlights a number of cases that represent the plight of those wrongly detained and subject to cruel inhuman or degrading treatments. These include the cases of Intigam Aliyev, Leyla and Arif Yunus, Rasul Jafarov, Emin Huseynov, Anar Mammadli, Ilgar Mammadov, Hilal Mammadov, Rauf Mirkadirov, Khadija Ismayilova, and a number of activists associated with the N!DA youth movement.

1 The full report is available at : <http://www.freedom-now.org/wp-content/uploads/2015/05/Breaking-Point-Azerbaijan1.pdf>

2 The full report is available at : <http://humanrightshouse.org/Articles/21175.html>

GENERAL INFORMATION ON HUMAN RIGHTS SITUATION IN AZERBAIJAN

Increased climate of repression and imprisonment since 2009

6. Azerbaijan's intensified crackdown in recent years on the exercise of fundamental human rights has shocked even seasoned observers³. Without any regard for protections under domestic or international law, the authorities in Azerbaijan have targeted journalists, political opposition leaders, grassroots activists, and human rights defenders (HRDs), including lawyers. Central to the government's strategy to suppress criticism is the employment of politically-motivated criminal prosecutions and detentions. This has devastated civil society in the country.
7. Azerbaijan has garnered considerable international attention on a number of occasions in recent years. These were events in which the Azerbaijani government could have showcased itself by embracing fundamental rights, the principles of democracy, and progressive leadership. However, instead of promoting rights and democracy, the authorities used these occasions to crack down on dissent at home while grandstanding to observers abroad.
8. Examples of missed opportunities that instead became a basis for repression include:
 - The May 2012 Eurovision Song Contest⁴ and the 2015 European Games in Baku⁵.
 - During the 2012 Eurovision contest, the authorities seized the opportunity to launch a publicity campaign to display the country's wealth, while HRDs and journalists used it to highlight ongoing rights violations. Although they were successful in bringing their message to the world, the government responded harshly with a crackdown that has, since that time, only intensified. Many have been jailed and their organizations shuttered, effectively turning the lights off on independent civil society. The government has ensured that there will be no locally-directed human rights campaign during the 2015 European Olympic Games in June.
 - The October 2013 presidential election.
 - Widely-respected observers found that the election, in which President Aliyev purportedly gained 85 % of the vote, failed to meet international standards. The Election Observation Mission sent by the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) found that the poll was "undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for the candidates" and local monitors documented a series of violations. After the election, the authorities turned their attention to those who criticized the election – including by arresting and jailing critical election monitors like Anar Mammadli and Bashir Suleymanli.

³ See also "*Human Rights Council 28th session: mixed success*" <http://humanrightshouse.org/Articles/20807.html>

⁴ See also "*Human rights situation worsened after Eurovision*" <http://humanrightshouse.org/Articles/18371.html>

⁵ See also "*International reactions at the end of the European Games in Azerbaijan*" <http://humanrightshouse.org/Articles/21055.html>

- The May-November 2014 chairmanship of Azerbaijan in the CoE Committee of Ministers
 - The rotating chairmanship of the Council of Europe, which Azerbaijan assumed for six months, was thought of as an occasion given to Azerbaijan to strengthen efforts in the implementation of European human rights law. Instead, during the chairmanship of the Council of Europe, Azerbaijan embarked on an unprecedented repression of civil society, including reprisals and arrests of activists participating events of the European Institution.

Legal and administrative reforms

9. Since the previous submission to the Committee Against Torture of 2009, the Azerbaijani government has grown increasingly authoritarian and freedoms of expression, assembly, and association are no longer tolerated when they are exercised in opposition to President Aliyev or his policies.⁶ The government has also undertaken a campaign that is sure to curtail growth: eliminating independent monitoring bodies and non-governmental organizations (NGOs).
10. In its “State party report under LoIPR (CAT/C/AZE/4CAT)”⁷ of 4 November 2014 report to the Committee, the Azerbaijani government argues that cooperation with international NGOs has increased (para. 142). Reality is that since 2011, measures have been taken to close down international organisations, prevent them from working in Azerbaijan, make access to funding for branches of international NGOs impossible. Major international NGOs were investigated and had to pay heavy tax-related fines in recent years. Actors of international NGOs are also prevented from entering the country all together, as most recently the researchers of Human Rights Watch and Amnesty International.
11. International media organisations are even more under pressure. All independent international media organisations have been closed down over the last few years, including Voice of America, the Azerbaijani service of the British Broadcasting Corporation, and most recently the Baku Office of Radio Free Europe / Radio Liberty. The situation of international NGOs reflects well how the government is closing down on civil society space in the country. Since 2014, it has effectively put under investigation, blocked the assets or closed down most independent non-governmental organisations.
12. In addition to procedural judicial rights, fundamental civil and political rights have been greatly curtailed through legislation, government harassment, and arbitrary detention. Excessive restrictions on such rights take a number of forms, including the use of arbitrary detention as a means of punishment for activism. Other restrictions include criminal defamation laws,⁸ both de-facto and de-jure restrictions on the ability of independent groups to protest or otherwise demonstrate,⁹ and limitations on the ability of HRDs,

⁶ *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, Human Rights Watch (Sep. 2013), available at http://www.hrw.org/sites/default/files/reports/azerbaijan0913_ForUpload_0.pdf.

⁷ See also UN Document CAT/C/AZE/4CAT, paragraph 142 available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2f4&Lang=en

⁸ Azerbaijani President Signs Law Criminalizing Online Defamation, RFE/RL (6 June 2013), available at <http://www.rferl.org/content/azerbaijan-internet-defamation-law-criminal-aliyev/25008799.html>.

⁹ *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, Human Rights Watch (Sep. 2013).

journalists, and activists to travel abroad.¹⁰ Religious freedom in Azerbaijan is similarly constrained by both law and practice, especially for religious minority groups.¹¹ Especially problematic are an ever-increasing constellation of over regulation of NGOs,¹² such the series of administrative laws and amendments passed since 2009 that place draconian restrictions on the registration, operation, and funding of independent groups; laws that are used to seize the assets of watchdog groups and jail their leaders.

¹⁰ Award-Winning Reporter Barred From Leaving Azerbaijan, Committee to Protect Journalists (17 June 2013), available at <https://www.cpj.org/2013/06/award-winning-reporter-barred-from-leaving-azerbai.php>.

¹¹ 2014 Annual Report, U.S. Commission on International Religious Freedom (28 July 2014), available at <http://www.uscirf.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf>.

¹² *Ibid.*

ARTICLES 7 AND 10: PROHIBITION OF TORTURE AND ILL-TREATMENT, AND CONDITIONS OF DETENTION

Use of torture and other mistreatments

13. Azerbaijan acceded to the ICCPR on 13 August 1992 and to CAT on 16 August 1996¹³. Despite this international directive, credible allegations of mistreatment of detainees abound in Azerbaijan. Such mistreatment appears to be pervasive especially when individuals are detained outside of Baku. Youth activists are also particularly at risk.
14. In its “State party report under LoIPR (CAT/C/AZE/4CAT)¹⁴ of 4 November 2014, the government of Azerbaijan writes that “no acts of torture or cruel, inhuman or degrading treatment or punishment of detainees by police officers were recorded during the period 2010–2013” (para. 22). In any country, acts of ill-treatment or torture can take place in detention facilities. The question for governments is how they prevent such acts and how they punish those who commit them, in order to limit them from happening again.
15. Azerbaijan’s indication to the Committee that no such acts occur in the country is, at best, ignorance of the issue. In fact, it reflects well the problem in Azerbaijan: by pretending that no torture is taking place, against all evidence documented in the present NGO report, the government is preventing any action to be taken. As the government admits itself, no police officer were subjected to “disciplinary or criminal proceedings for failure to respect the rights of persons in custody” (para. 22). Azerbaijani authorities should in fact take the issue seriously and look into changing its sources of information on torture in detention facilities.
 - Case of Hilal Mammadov: plain-clothed officers detained the journalist without a warrant and reportedly beat him until he lost consciousness. It was at this time that authorities claimed to have discovered narcotics on him. Authorities held him without access to food or water for two days, repeatedly threatened him, and insulted his political views and ethnic identity. Although Mr. Mammadov’s lawyer complained of the mistreatment during pre-trial proceedings, the government rejected those complaints without conducting a thorough and impartial review.¹⁵
16. Similar allegations of mistreatment have also been reported by imprisoned youth activists in Azerbaijan. Tortures are particularly used to extract confessions.

¹³ Azerbaijan acceded to CAT on 16 August 1996. Status of Ratification of the CAT, UNTC Chapter IV(9), available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec.

¹⁴ See also Un Document CAT/C/AZE/4CAT available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2f4&Lang=en

¹⁵ On 31 July 2012, the trial court rejected Mr. Mammadov’s complaint of mistreatment, citing article 449 of the Criminal Procedure Code, which simply provides authorization for such complaints but does not specify any specific standards, and without taking into consideration the arguments of the defence team. In a closed hearing at the Nizami District Court on 29 August 2012, the Deputy General Prosecutor denied Mr. Mammadov’s motion to file a complaint against the authorities for the mistreatment he suffered during his arrest and detention. Regarding the mistreatment of Mr. Mammadov, the UNWGAD found that “the response from the Government does not adequately address the source’s allegations of ill-treatment to which Mr. Mammadov has been subjected in detention...” *Mammadov v. Azerbaijan*, UNWGAD, Opinion No. 59/2013 (22 Nov. 2013) at para. 67.

- Omar Mammadov, the imprisoned activist and blogger who maintained the “Selections from AZTV” satirical website, reported that in order to obtain a confession from him, investigators repeatedly punched him in the stomach and made threats against his family.¹⁶
 - The N!DA activist Mahamad Azizov reported similar mistreatment at the hands of investigators on two occasions – once to extract a confession and once to force him to implicate others. He later recalled that: “The investigator got confused. He left to speak on the phone. A man named Azer took me to the room and started beating on me. He called someone on the phone and said, “bring the bottle.” A man arrived with a baton. I was glad it was not a bottle. He beat me on my head, on different parts of my body. The beating continued for 15 – 20 minutes. Then they called another man and took me to his room. His name was Mamay; they addressed him as “boss.” Mamay continued beating me with his fists and kicking me, while Azer beat me with the baton. They beat me continuously for an hour. They said I had to testify against [N!DA member] Rashad [Akhundov]. I said I would not do it. Then Mamay said I had to choose between being raped by a person, or with a bottle. I said I didn’t want either. He rested a bit, then continued beating me...”¹⁷
17. The description above is a clear example of mistreatment that rises to the level of torture under international law. However, authorities failed to conduct an investigation of the mistreatment.¹⁸ Despite the state’s obligations under international law, authorities who mistreat detainees do so with complete impunity. Indeed, when confronted about widespread mistreatment, especially in political cases, one member of the Azerbaijan parliament privately told Freedom Now: “It is a practice that we inherited from the Soviets.”
 18. Case of torture doesn’t receive appropriate attention and the authorities doesn’t pursue any investigation even when the accusation are supported by evidence material. In all reported cases, including the ones of Afghan Mukhtari journalist of “Yeny Musavat” (January 2007), Murad Adilov, activist of Popular Front Party’s Sabirabad branch (August 2014) and Seynur Hazi, columnist of Azadliq newspaper (May 2010), the victims submitted a complain of torture both to the Prosecutor Office and to the Court of Appeal. All victims submitted extensive proof of torture and inhuman treatments suffered while in detention. In all case the Baku Court of Appeal rejected the claims of torture. All aforementioned cases are currently under appeal at the European Court of Human Rights.
 19. On 10 and 11 November 2015, Azerbaijan was reviewed by the Committee Against Torture. As it stated in its concluding observations at Para 8, “The Committee is concerned about numerous and persistent allegations that torture and ill-treatment are routinely used by law enforcement and investigative officials, or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings. The Committee is

¹⁶ *Behind Bars: Silencing Dissent in Azerbaijan*, Amnesty International (May 2014). His lawyer indicated five days later that there was no signs of physical mistreatment on Mr. Mammadov; however, family members subsequently confirmed that Mr. Mammadov was in fact beaten while in police custody.

¹⁷ Arzu Geybullayeva, *Bringing the Bottle: Youth Activists Behind Bars in Azerbaijan*, Global Voices (17 April 2014).

¹⁸ The U.S. State Department noted in the 2013 Human Rights Report regarding mistreatment that: “Impunity remained a problem [in 2013]. Authorities reportedly maintained a de facto ban on independent forensic examinations of detainees who claimed mistreatment and delayed their access to an attorney.” *Country Reports on Human Rights Practices for 2013*, U.S. Department of State, at para. (1)(c).

further concerned that the State party deemed unfounded all the allegations of torture and ill-treatment raised during the dialogue, several of which had previously been addressed by other United Nations and regional human rights mechanisms. The Committee is particularly concerned that, according to the State party's report, in the period 2010–2015 not a single individual has been prosecuted despite the 334 complaints against officials of the prison system for torture or ill-treatment investigated by the Prison Service between 2009 and 2013, the 984 similar complaints received by the Ministry of Internal Affairs between 2010 and 2013 and the 678 similar complaints received by the Office of the Procurator-General between 2010 and 2013. In the Committee's view, the above is a strong indication that torture investigations are not conducted in a prompt, efficient and impartial manner (arts. 4, 12, 13, 15, 16)."¹⁹

Lack of adequate medical treatment and poor detention conditions

20. As stated by the Committee Against Torture in para 12 of its concluding observations of December 2015: "While welcoming the introduction of medical examinations for all persons detained on remand and the practice of recording the results of the examinations in a medical record opened for each detainee immediately upon arrival, the Committee remains concerned at reports that medical examinations take place in the presence of police officers and that, when injuries are recorded, they do not lead to any investigations into possible instances of torture or ill-treatment (arts. 2, 11, 12, 13, 15, 16)."
21. The cases of political prisoners Intigam Aliyev, Leyla Yunus, and her husband Arif Yunus should be assessed in the wider context of the severe crackdown on rule of law and human rights. These cases highlight various violations of the rights of "political prisoners", including the lack of medical treatment in prisons and poor detention conditions, and the fact that violence from police officials and inmates is part of common practice. Arif Yunus was released from prison on 12 November 2015 due to his deteriorating health. His wife, Human Rights Defender Leyla Yunus, was released on 9 December 2015 on five-years' probation. The release followed a request by her lawyers due to her deteriorating health condition²⁰.
22. Intigam Aliyev, Leyla Yunus and her husband Arif Yunus, since convicted, have serious chronic illnesses that are reportedly being exacerbated by their continued confinement. Mr Yunus suffers from a severe case of hyper tension. Mrs. Yunus also has a number of serious health conditions, including diabetes and medical problems related to her kidneys. Reports have indicated both Mr. Aliyev and Mrs. Yunus have been denied adequate medical treatment.²¹
23. In all aforementioned cases, the medical treatment and prison conditions are not in compliance with the relevant standards of humane treatment.

¹⁹ The Concluding Observations of the Committee Against Torture are available at : http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2fCO%2f4&Lang=en

²⁰ See also: <http://humanrightshouse.org/Articles/21344.html>

²¹ Intigam Aliyev Spent His 52nd Birthday in Prison in Azerbaijan, HRHN (30 Nov. 2014) available at <http://humanrightshouse.org/Articles/20594.html>. See also, Leyla Yunus Health Deteriorates in Prison, Meydan TV (4 Oct. 2014), available at <http://www.meydan.tv/en/site/news/3267/Leyla-Yunus-health-deteriorates-in-prison.htm>; Azerbaijan: Ongoing Arbitrary Detention and Deterioration of the Health Condition of Ms. Leyla Yunus, FIDH (18 Aug. 2014), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/15918-azerbaijan-ongoing-arbitrary-detention-and-deterioration-of-the-health>.

- Intigam Aliyev had problems with his health before his detention and following his arrest his health has severely deteriorated. He suffers from severe chronic headaches in addition to nerve pain and has reportedly been denied of appropriate health care during the first six months of his detention; only in 2015 did he received proper pain medication, but remains without appropriate medication for the treatment of his diseases.²² Furthermore, there is insufficient ventilation and heating in the cell and hot water is allowed only twice a week. Inadequate space in the prison cell makes it nearly impossible for him to walk and access to proper nutritional food is restricted. Moreover, he can meet his family only through a glass barrier once a week over a telephone.
24. In the case of Leyla Yunus, not only was she denied appropriate medical care, but she was also exposed to beatings by other prisoners who were ordered by the authorities of Baku Investigative Detention Facility Kurdakhany to beat and repeatedly attack her.
- On 6 September, Leyla Yunus was attacked by her cellmate. She was verbally harassed, and plates and cups were thrown at her. She banged on the door for help and asked to be taken out of the cell to see the doctor. She was told that she could see the prison administrator the following Monday. She was also beaten by the prison major – Major F. Yaqubov. The UN representatives (United Nations Working Group on Business and Human Rights), during the mission at the Kurdakhany prison, saw the applicant’s bruises. The UN Mission visited her on 27 August 2014. The authorities of Azerbaijan conducted a forensic examination over a month after the assault on Leyla Yunus, therefore coming to the conclusion that “no injury or signs of injury were revealed”. The investigation decided to discontinue the proceedings relying mostly on the testimonies of the cellmates Dunya Jafarova, Arifa Sadigova and Tahira Aliyeva and the prison administration. In addition, despite the open conflict between the first applicant and her cellmates, the authorities failed to secure her with a safe place of detention. Until the present date, the applicant is kept in similar conditions, under a constant risk of violence from fellow prisoners.
25. The detention conditions of Intigam Aliyev of August 2014²³, are also not in line with minimum standards of detention:
- This was a small room in the detention center. There were eight people in a small room. Everyone, except Mr Aliyev, smoked, but there is no separate place for smoking, so, the room is always smoky. The little window on the door of the cell was closed all the time. Temperature was unbearably high and inmates were sweating all the time. The temperature from 8 to 12 August 2014 was very high²⁴. There was no bathroom, toilet with sanitary conditions impossible to use. Water was running only twice a day, one hour each time. For the rest of the time they have a small can to keep water and eight people depend on that can. The room is not aired. Two small windows under the ceiling were open but there was no screen on the window and the small cell was also full of mosquitoes, which made it impossible to sleep. The electricity was not switched off the whole day, including the nights. Mr Aliyev has not been taken out of the cell

²² Source on file with the authors.

²³ <http://en.aidhr.org/?p=1514>, 12 August 2014; Intigam Aliyev kept in prison under severe conditions

²⁴ <http://www.accuweather.com/en/az/baku/27103/month/27103?monyr=8/01/2014>

during detention in that cell. Only following the visit of the ICRC, on August 12 he was transferred to another cell”

26. Poor detention conditions, incompatible with the medical conditions of the detainee, are also observed in the case of Leyla Yunus²⁵:
- There are 5 persons in her cell, two of them extremely noisy. There is no possibility to have any rest from them. Sometimes one of them smokes. Humiliations and mockery with the help of prison guards are continuous towards Leyla Yunus. There is a problem with hot water in the cell and it is impossible to use a heater. Electricity is off from 2 to 3 o'clock on daylight and from 1 o'clock till 8 o'clock at nights. That is why the cell was very cold in the winter, also the walking place. Currently, in the summer, there is no proper ventilation in the cell, which renders it very warm. On 8 July, the family friend tried to deliver a new machine to the detention, however he was denied such possibility. The applicant is required to be on a special diet, which provokes, that need to store vegetables and fruits. This is impossible in the cell conditions, as there is no fridge. The fruits become rotten in summer and were freezing in winter. There is one fridge for the entire floor, which is not sufficient for all the inmates. Any possibility to arrange assistance in that respect is denied by the prison authorities.

²⁵ See also: <http://humanrightshouse.org/Articles/21111.html>

ARTICLES 9 AND 14: PROHIBITION OF ARBITRARY DETENTION, RIGHT TO EQUALITY BEFORE COURTS AND TO A FAIR TRIAL

Use of administrative reforms to imprison civil society leaders

27. The targeting and imprisonment of dissidents has long been a problem in Azerbaijan; however, the current crackdown is notable. Both the scope of the individuals being targeted, including internationally-known and respected HRDs, and the seriousness of the charges and length of prison sentences that are being imposed against them, set the current crackdown apart from past repression. Despite Azerbaijan's commitments under international law, and its repeated promises to the international community to address wrongful imprisonment, it keeps going. In response, various international mechanisms established under the Council of Europe (CoE) and the United Nations (UN) have found that the imprisonment of peaceful advocates in Azerbaijan violates international law.
28. During 2014, the authorities rounded up many of the county's most well-known civil society leaders and audaciously even targeted those who monitored and documented the cases of political prisoners. The cases have been accompanied by severe violations of the rights to fair trial, while documented cases of torture and abuses committed by the police forces are often dismissed by the Prosecutor general as well as by the Court of Appeal and remain unpunished". (see also paragraph 27).
29. It has been observed that the Azerbaijani authorities use three strategies in imprisoning critics; its aim being to punish and silence them:
 - First, authorities rely on "patently politically-motivated charges," such as inciting hatred, mass disorder, and treason.
 - Second, authorities have been known to resort to "fabricated charges," including drug and weapon charges, hooliganism, embezzlement, and service forgery. Although here authorities attempt to hide their true motivation, procedural violations and the political context reveal the concealed motivations.
 - Third, the government has more recently confounded and alarmed international observers through the use of special "organization-directed charges" that have targeted primarily the heads of prominent NGOs in Azerbaijan. Such charges include illegal business activity, tax evasion, and abuse of office, and rely upon a deeply flawed legal theory. At their core, these cases involve both an attempt to limit the ability of NGOs to operate and impose criminal charges in response to the good faith perseverance of these groups.
30. In its concluding observation of December 2015 at para 10, the Committee Against Torture states: "The Committee is deeply concerned by consistent and numerous allegations that a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment, and in some cases have been denied adequate medical treatment in retaliation for their professional activities, such as: Leyla and Arif Yunus, Ilgar Mammadov, Intigam Aliyev, Mahamad Azizov, Rashadat Akhundov, and Rashad Hassanov. The Committee takes note of the fact that Mr. Yunus's incarceration has been replaced with house arrest. The Committee regrets the State party's categorical position that all the above allegations are unfounded, despite the existing reports of United Nations and other international organisations human rights mechanisms (see for example the joint statement of the Special Rapporteurs on the situation of human rights defenders, on the rights to freedom of peaceful assembly and of association, on freedom of opinion and

expression, on the independence of judges and lawyers, on the right to health and of the Chair-Rapporteur of the UN Working Group on Arbitrary Detention of 20 August 2015 or *Ilgar Mammadov v. Azerbaijan*, (Appl. No. 15172/13), Judgment of the European Court for Human Rights of 22 May 2014). It is also concerned that full, independent and effective investigations of these allegations and prosecution of the perpetrators have not taken place. Furthermore, the Committee is seriously concerned that following the 2009 and 2013 amendments of the Law on Non-Governmental Organisations and amendments of the Law on Grants and the Code of Administrative Offences, the implementation of projects without a registered grant agreement, as well as the acceptance of donations have been punished by dissolution of non-governmental organisations, imposition of financial penalties, freezing of assets and heavy prison sentences against non-governmental organisations' members (arts. 4, 12, 13, 16)."

Procedural violations

31. In addition to civil and political rights, the Azerbaijani authorities impinge on a number of critically important procedural protections – including the right to be free from torture, the right to a fair trial, the right to the presumption of innocence, and the right to legal counsel. While the violation of these rights can themselves render a detention arbitrary, they do not on their own indicate that a case is politically motivated. However, when considered in the context of the individual and the case, these deficiencies often lend strong supporting evidence to the contention that a charge is politically motivated. Not all of the outlined procedural rights are implicated in every case; however, the widespread violation of these rights in a number of the observed cases indicates that it is a systematic component of arbitrary detention in Azerbaijan.
32. The Committee Against Torture expressed in its concluding observations of December 2015 “serious concern at the State party’s failure in practice to afford all persons deprived of their liberty with all fundamental legal safeguards from the very outset of deprivation of liberty.” And that “detainees are frequently denied access to a lawyer of their choice and are not allowed to contact family members and that police officers forcibly extract confessions”.

Abuse of pre-trial detention

33. Irrespective of what charges the authorities ultimately use to unlawfully imprison HRDs, journalists, and activists in Azerbaijan, the imposition of pre-trial detention is a common feature of almost all politically-motivated prosecutions.²⁶
34. Azerbaijan’s domestic law requires the state provide reasonable grounds to believe that the suspect is likely to hide from investigators; obstruct the investigation by influencing parties or tampering with or hiding evidence; commit another criminal act or create a public threat; fail to comply with a lawful order; or prevent the execution of a court judgment. Further, in determining whether to impose pre-trial detention or a less restrictive measure, such as house arrest or bail, the courts are required to consider the seriousness of the

²⁶ The notable exception to this general rule is the case of Bashir Suleymanli – the head of the registered Public Association for International Cooperation Volunteers Union – who was released on bail pending a guilty verdict. This variation may have been motivated by the fact that, at the time, the use of organizational charges was relatively new; however, recent cases involving similar charges have resulted in pre-trial detention orders.

offense; the defendant's personality, age, health, occupation; his or her family, financial, and social situation; and criminal history.²⁷

35. Despite the safeguards under international law and the very specific requirements provided in domestic law in Azerbaijan, the government consistently subjects HRDs, journalists, activists, and other outspoken government critics to long periods of pre-trial detention without meeting the legal criteria. In issuing the order for pre-trial detention in individual cases, the courts merely provide a generic statement without detailing sufficient evidence or justification in support of the decision.

➤ In the case of Ilgar Mammadov, for example, the ECtHR held that the authorities failed to establish a “reasonable suspicion” of criminal activity because the decision to detain him was not based on any evidence except for the charging document and the prosecution's request to hold him in pre-trial detention. The ECtHR looked to the circumstances of the case, including that Mr. Mammadov is an outspoken opposition leader who had been critical of the government in the run-up to an election, in finding that the pre-trial detention imposed failed to meet the “high level of scrutiny” required.²⁸

36. Flouting this judgment, the government continues to subject HRDs, journalists, and activists to pre-trial detention without adequate justification and instead of imposing bail or a less restrictive alternative, such as house arrest.

➤ In the decision to detain Rasul Jafarov, for example, during the pre-trial phase, a Baku court cited the applicable standards under domestic and international law – but then failed to provide any specific detail whatsoever about the facts that supposedly supported its decision. The court merely recited the criteria and stated that those factors were present. The court ignored a number of factors clearly weighing in favour of less restrictive measures as provided by Mr. Jafarov's counsel, including the fact that Mr. Jafarov returned from abroad despite knowing that he was under investigation, that he complied with all previous orders to produce documents and submit to questioning, and that he is a widely-respected leader with deep ties to the community.²⁹ Moreover, the court's assertion that the seriousness of the allegations (which in no way involve any allegation that he used or advocated any kind of violence) warranted his confinement in pre-trial detention appears wholly unsupported.

37. The use of pre-trial detention in cases where HRDs, journalists, and activists suffer from pre-existing health problems is especially worrying such in the cases of Intigam Aliyev, Leyla Yunus and her husband Arif Yunus.

Independent and unbiased proceedings and right to a fair trial

38. The UN Human Rights Committee has opined that the right to a fair trial “is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.”³⁰ At its core, the fairness standard requires that criminal trials be conducted by a

²⁷ For a detailed description of the Criminal Procedure Code, see *Farhad Aliyev v. Azerbaijan*, Application No. 37138/06 (9 Nov. 2010) at para. 89 – 95.

²⁸ *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (22 May 2014) at para. 87 – 102.

²⁹ Decision on the Detention on Remand of the Accused, Case #4-(006)-513/2014 (2 Aug. 2014) (translation on file with authors).

³⁰ General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 2.

competent, independent, and impartial tribunal that is established by law.³¹ This standard must be measured by an objective “reasonableness standard” – that is, the court must appear to a reasonable observer to be impartial.³² If, for example, a court fails to prevent or remedy serious procedural mistakes – such as failing to consider evidence or address witness testimony favourable to the defendant – this would indicate to a reasonable observer that the proceedings are not “fair.”

39. Far from the independent, unbiased proceedings that are required under international law, the criminal prosecutions of activists in Azerbaijan cases are orchestrated from the beginning to reach a guilty verdict, as evidenced in from the prosecutions of Anar Mammadli, Intigam Aliyev, and Rasul Jafarov³³.
40. The trial observation conducted by International Monitoring mechanism, including the organisation submitting the current report, revealed failure of the courts to respect of the international fair trial guarantees.
41. The equality of arms principle have not been respected fully as the defense has not been given a reasonable opportunity to present their case and evidence relevant to the case without a substantial disadvantage. Essential motions to present additional factual and other evidence are not taken the decision³⁴ (effectively suspended) during the trial by the presiding judges. Neutrality of the court in many instances was broken leading to taking side against the defense, by closing the questions, intervening with the questions of the defense, quashing the question and the answer entirely.
42. The right to counsel being at the core of the notion of the due process has not been provided to the defendant as confidential and privileged communication has not been respected, effective and adequate time for the legal representation was not satisfied. Exclusion of some defense lawyers under the speculated grounds has weakened the exercise of right to council. The defense was not given the full and adequate access and to the protocols of the sessions and of the files of the case. The defense was given little time in the court itself, during the breaks, and in the presence of the police and security persons and is very likely under the audio-video registration in the court room to communicate with the defendant.
43. The right to a public hearing is a vital safeguard for the interest of the defendant and of the society as a whole has not been sufficiently ensured. Small court room size, inadequate visibility of the actors in the court room, restrictions on entering and re-entering, inconsistent application of rules on excluding the public and the media have violated the public’s right to record hearings under the international law.
 - From the trial monitoring of Intigam Aliyev³⁵: “According the outcomes of HRHF’s trial observation missions, the Court failed the examination of the grounds of the charges against Mr. Aliyev. it was clear, that the trial was based on trumped-up charges and that there was no evidence of Mr. Aliyev’s guilt. The Court did not analyze materials presented as evidences by the lawyers also the evidences made by itself (such

³¹ General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 25.

³² *Ibid* at para. 21.

³³ See also: <http://humanrightshouse.org/Articles/20788.html>

³⁴ See also “*New evidence weakens prosecution*”: <http://humanrightshouse.org/Articles/20815.html>

³⁵ See also “*Intigam Aliyev in court: an observer’s testimony*” at <http://humanrightshouse.org/Articles/20742.html>

as the materials of interrogation of the witnesses and victims) and the equality of arms was not provided. The defendant had problems with confidentiality of the conversation to his lawyers, he had limitation with access to the materials in some period of time. He wasn't promptly informed about the reasons and ground of his arrest. Furthermore, the meaning of charges were not explained to him. The publicity of the hearings was not provided fully and the communication procedure with the outside was limited. It is also unclear why a detention in the prison facility is needed. Formally, the legislative system of Azerbaijan provides the possibility of detention for the person with grave charges. In the current case due to weak justifications of his charges, as well the other grounds, such as the reputation of the accused, and his poor health conditions, it seems that any alternative measures should be used against him".

Right to presumption on innocence

44. Under international law, criminal defendants are "to be presumed innocent until proved guilty according to law."³⁶ This requirement creates obligations for the government, both inside and outside of the courtroom. At trial, the defendant must enjoy the benefit of the doubt and should be considered innocent until he or she is proven guilty.³⁷ Further, outside the courtroom, the authorities are under an obligation to "refrain from pre-judging the outcome of a trial;" specifically this means that officials must "abstain from making public statements affirming the guilt of the accused."³⁸ This requirement is violated where, for example, "public statements made by high ranking law enforcement officials portraying the [defendant] as guilty [are] given wide media coverage."³⁹
45. It is especially noteworthy that in Azerbaijan, senior government officials consistently use their positions of power to portray the work of NGOs and HRDs as threats to national security. Indeed, government officials and pro-government media have publicly smeared many of the detainees highlighted in this report – repeatedly and often before any criminal proceedings are even initiated and well before they are concluded.
46. In addition to the broader campaign to discredit the work of HRDs, Azerbaijani authorities undermine the right to the presumption of innocence by publicly pre-judging the outcome of criminal trials in politically-motivated cases. In the case of Ilgar Mammadov, the ECtHR found that the state violated the presumption of innocence when the Prosecutor General's office and the Ministry of Internal Affairs issued a public statement indicating that "it had been established" that Mr. Mammadov had urged local residents to resist police and block roads during unrest in the Ismayilli region – essentially pre-judging the outcome of the criminal proceedings.⁴⁰ In a striking violation of the right to the presumption of innocence,

³⁶ Article 14(2) of the ICCPR provide that "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law." Similarly, Article 6(2) of the ECHR provides that "Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law."

³⁷ General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 30.

³⁸ *Ibid* at para. 30. See also, *Daktaras v. Lithuania*, ECtHR, Application No 42095/98 (Judgment) (10 Oct. 2000) at para. 41 (The right to presumption of innocence "will be violated if a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even if in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty.").

³⁹ *Gridin v. Russian Federation*, UN Human Rights Committee, Communication No. 770/1997 (20 July 2000) para. 8.3.

⁴⁰ *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (Judgment) (22 May 2014) In that case, the ECtHR rejected the government's arguments that it was merely "providing information to the public about the status of the investigation and countering the dissemination of inaccurate and distorted information." It also held that the

the coerced confessions of three NIDA Activists were broadcast on television across Azerbaijan just days after the activists were arrested and beaten and long before the trial began.

Right to assistance of legal counsel

47. Both the International Covenant on Civil and Political Rights (ICCPR) and the ECHR protect the right of criminal defendants to have the assistance of legal counsel.⁴¹ While neither international nor European law specify at exactly what point detainees are to be afforded legal assistance, it is clear that the “right to communicate with counsel requires that the accused is given prompt access to counsel.”⁴² To that end, the ECtHR has observed that, “[as] a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it can be demonstrated in light of the particular circumstances of [the] case that there were compelling reasons to restrict this right.”⁴³ The rights of the defence will in principle be irrevocably prejudiced where incriminating statements made during police questioning without access to a lawyer are used to secure a conviction.⁴⁴
48. Despite the essential importance of the right to the assistance of legal counsel, access to an attorney of one’s own choosing has been denied or delayed in Azerbaijan at critical points in the prosecution of political detainees.⁴⁵ Most worrying is the interrogation of detainees following arrest – when many have complained of mistreatment or the planting of evidence.
- Authorities prevented Mr. Mammadov from meeting with his lawyer until the day following his arrest and prevented his lawyer from observing a search of Mr. Mammadov’s home – when more contested evidence of drugs selling was seized. In addition to drug charges, the government accused Mr. Mammadov of treason and “incitement of national, racial, or religious hatred.”
 - Mr. Mammadov was later charged with treason and inciting racial hatred, crimes that carry a life sentence. He was convicted after a trial plagued with procedural irregularities and sentenced to five years in prison on 27 September 2013. The United Nations Working Group on Arbitrary Detention (UNWGAD) has since ruled Mr.

inclusion a sentence indicating that the case would be “fully and thoroughly investigated and [would] receive legal assessment” was not enough negate the unqualified statement of guilt. *Id.* at para. para. 125 – 127.

⁴¹ Article 14(3) of the ICCPR provides that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [and] (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Article 6(3) of the ECHR provides that “Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

⁴² General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 34. Similarly, Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that “notwithstanding the exceptions [allowed in extenuating circumstances] communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”

⁴³ *Omelchenko v. Ukraine*, ECtHR, Application No 34592/06 (Judgment) (7 July 2014) at para. 46.

⁴⁴ *Blokhin v. Russia*, ECtHR, Application No 47152/06 (Judgment) (14 Nov. 2013) at para. para. 159 – 160.

⁴⁵ Country Reports on Human Rights Practices for 2013, U.S. Department of State, at para. 1(d).

Mammadov's detention as arbitrary and called for his immediate release, but he currently remains in prison.

- Similar circumstances were observed in the case of the NIDA activists, when three of the activists, including a minor, were arrested and interrogated without the assistance of a lawyer.⁴⁶ In these cases, there were no extenuating circumstances that would allow the authorities to interrogate the detainees, including a minor, without a lawyer. Indeed, the mistreatment they suffered while in custody points to the very reason that access to an attorney from the point of interrogation is so critical.

49. In addition to limiting access to a lawyer during interrogation, Azerbaijani authorities have a history of taking action against the lawyers who have represented defendants in politically motivated prosecutions.

Pressure against lawyers: intimidation and disbarments

50. The harassment and use of disciplinary sanctions against independent lawyers in Azerbaijan is a cause for serious concern. Threats of disbarment or temporary suspension are used to discourage lawyers from taking on politically sensitive cases and from filing appeals, which is a necessary precondition to filing an application for redress with the ECtHR. Pressure on lawyers from the Presidium of the Azerbaijan Bar Association first appears in the form of a verbal warning against taking on a particular client or case. Authorities then threaten disciplinary action against a lawyer, which could result in temporary or permanent suspension from the Bar. Once a lawyer is disbarred they can no longer serve as defence counsel in a criminal case at any level of review. The threat of disbarment hangs over the heads of any lawyer and threatens their livelihood and that of their families. This form of harassment has been very successful in reducing the number of lawyers in the country who are willing to risk their careers and their own security.⁴⁷

- “In September 2011, the lawyer Elchin Namazov was expelled from the Bar based on a court decision. Namazov was persecuted for protecting the opposition activists and protesters who participated in the rally on 2 April 2011. Over the past few years, a number of lawyers who engaged in the protection of journalists and opposition political activists have been expelled from the Bar on the basis of various complaints. The list includes Arzu Aliyev, Hazi Mammadov, Akif Mammadov, Namizad Safarov, Latifa Aliyeva, and others.”
- In the most extreme case of government harassment of lawyers, well-known lawyer Intigam Aliyev was arrested in 2014 and recently sentenced to seven and a half years in prison on politically motivated charges.
- Past harassment of Mr. Aliyev and his colleague Annaghi Hajibayli is illustrative of the campaign against independent lawyers. Both lawyers were refused membership in the Bar Association in 2009. The two lawyers proceeded to sue the Bar Association for failing to comply with existing legislation. Following the lawsuit, which the lawyers lost, the Bar Association filed a civil suit against Intigam Aliyev demanding 200,000 AZN (approximately €175,000) because of articles about the Bar Association

⁴⁶ Behind Bars: Silencing Dissent in Azerbaijan, Amnesty International (May 2014) at p 11

⁴⁷ Further details about the situation of lawyers available in report prepared for the European Parliament by the Legal Education Society, South Caucasus Network of HRDs, and HRHF, May 2013, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/613_elechrhune_/613_elechrhune_en.pdf.

leadership that Intigam Aliyev had published. Outcry from Azerbaijani civil society and international NGOs were successful in pressuring the authorities to drop the charges. Later, however, a Sheki Appeal Court judge filed another civil suit against Mr. Aliyev and his organization, the Legal Education Society, demanding 20,000 AZN (approximately €17,500) for defamation. The court ruled that Intigam Aliyev should pay 2,000 AZN (approximately €1,750) in damages. Both Mr. Aliyev and Mr. Hajibayli have yet to be admitted to the Bar Association.

51. The Azerbaijan Bar Association has also asked a court to disbar Mr. Khalid Bagirov, who serves as the lawyer for a number of prisoners of conscience, including Rasul Jafarov, Leyla and Arif Yunus, and Ilgar Mammadov. Although the formal disbarment will take some time, this action effectively ends his ability to proceed with the cases, and as the PACE President has noted, “against the background of increasing intimidation of HRDs in Azerbaijan, such clear pressure on independent lawyers defending civil society leaders is unacceptable.”⁴⁸
 - On 10 December 2014, the Presidium of the Azerbaijan Bar Association suspended the work of the lawyer Khalid Bagirov, having accused him of violating professional ethics. The charges stemmed from the lawyer’s speech for the defence of Ilgar Mammadov, the leader of the REAL opposition movement, in which he said: “Issuance of this sentence is evidence of the complete absence of fair justice in our country.” In addition to the suspension of Bagirov’s work, the Bar decided to apply to the court for the complete cessation of the lawyer’s powers. The lawyer believes that the decision of the Bar was unreasonable and biased, and aimed to punish him for his professional work and to silence him. As a lawyer, Bagirov had been working on the cases of the majority of the political prisoners in Azerbaijan, including the human rights defenders Arif Yunus and Leyla Yunus, and was about to proceed to the defence of the journalist Khadija Ismailova.
 - On 6 November 2014, Alaif Hasanov, Mrs. Yunus’ lawyer, was sentenced to 240 hours of community service due to his public statements about the detention conditions of his client. The pressure against him continues, including through government-controlled media.
52. In addition to imprisonment, disbarment, and smear campaigns, the government uses other inventive ways to interfere with defendants’ rights to counsel. In the cases of Leyla Yunus and Intigam Aliyev, the prosecution has called members of their legal team as witnesses for the prosecution, thereby precluding them from acting as defense counsel.⁴⁹ The practice is as follows: a person is summoned to appear as a witness⁵⁰; after the testimony, the person is treated as a suspected offender and then charged. In most cases, lawyers do not participate in this process, as it takes quite a lot of time to sign a contract with a client, obtain a relevant warrant to be able to defend the client, and get the relevant permission from the investigating authority. The suspect or the accused is deprived of the

⁴⁸ *Pressure on Ilgar Mammadov’s lawyer is unacceptable*, PACE (10 Dec. 2014), available at <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5347&lang=2&cat=15>.

⁴⁹ In the case of Intigam Aliyev; Fariz Namazli, Alayif Hasanov, Khalid Bagirov and Adil Ismayilov, four of the five lawyers who have been representing Intigam Aliyev since his detention on 8 August 2014, were removed from the case on 30 September 2014. In the case of Leyla Yunus, she was deprived of her lawyer, Javad Javadov, following his criticism of the judicial process against Leyla Yunus at a hearing on 24 October 2014.

⁵⁰ *Intigam Aliyev spent his 52nd birthday in prison in Azerbaijan*, HRHN (30 Nov. 2014), available at <http://humanrightshouse.org/Articles/20594.html>.

right to defence for this time. Moreover, in sensitive cases, charges will be filed against a client on weekends (Saturday, Sunday, or public holidays). Law offices that issue warrants do not work on these days. Therefore, lawyers cannot sign a contract with their client and receive the warrant, and consequently cannot defend their client.

53. In its concluding observations at para 16, the Committee Against Torture expressed its “concerns at reports that the Bar Association operating in Azerbaijan under the Lawyers and Legal Profession Act is not sufficiently independent from the executive, has a limited membership and that the above has had a negative impact on the independence of the legal profession. The Committee is also concerned at reports that, on many occasions, lawyers defending human rights activists and victims of torture, including Javad Javadov and Khalid Bagirov, have been disbarred, their licences have been suspended or they have been called as prosecution witnesses and therefore could no longer represent their clients (art.2).”

Independence of the judiciary

54. Courts in Azerbaijan lack the capacity and independence to effectively uphold the rule of law in the country, including ensuring adherence to international treaty obligations. This lack of independence has paved the way in recent years for the arbitrary arrest and imprisonment of HRDs in the country. Among others, the International Bar Association’s Human Rights Institute has documented how criminal law is misused in cases involving freedom of expression, and how the right to a fair trial is violated.⁵¹ Courts have also been ineffectual in protecting those in detention from mistreatment. As Freedom House noted in its 2014 report:

- The judiciary is corrupt, inefficient, and subservient to the executive branch. Arbitrary arrests and detention are common, particularly for members of the political opposition. Detainees are often held for long periods before trial and their access to lawyers is restricted. Police abuse of suspects during arrest and interrogation reportedly remains common; torture is sometimes used to extract confessions. Prison conditions are severe, with many inmates suffering from overcrowding and inadequate medical care.

55. The Committee Against Torture in its concluding observations at para 14 states that it “remains concerned at the lack of independence of the judiciary vis-a-vis the executive branch and its susceptibility to political pressure (art. 14). The Committee reiterates its previous recommendation that the State party should guarantee the full independence and impartiality of the judiciary, give practical effect to the guarantees for judicial independence laid down in its legislation, and review the regime of appointment, promotion, and dismissal of judges in line with the relevant international standards, including the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).”

⁵¹ *Azerbaijan: Freedom of Expression on Trial*, International Bar Association (April 2014), available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=E1192B49-6A7C-410D-A833-A17F5FD4BCBB>.

ARTICLE 19: RIGHT TO FREEDOM OF EXPRESSION

Restrictions on freedom of expression and attacks against journalists⁵²

56. Despite protections under national and international law safeguarding the right to freedom of expression, the government of Azerbaijan has escalated its use of the criminal justice system and restrictive legislation to silence independent journalists and media outlets in the country. As a result, virtually no independent print, radio, or television programs can openly operate in the country. Threats and physical attacks against journalists continue, and impunity for past cases of violence remain the norm. The 2005 murder of Monitor magazine editor in chief Elmar Huseynov and the 2011 murder of prominent journalist and writer Rafiq Tagi are still unsolved.
57. Defamation remains a criminal offense, punishable by up to three years in prison and large fines. Disseminating information that damages the honor and dignity of the president can be punished with up to two years in prison, or up to five years when linked to accusations of other criminal activity. In 2013, laws governing defamation were extended to include internet content. The government and political elite use defamation charges as one of many legal means to punish individual journalists and stifle independent and opposition media through financial pressure.
58. According to international watchdog groups, at least 12 journalists remain in prison in Azerbaijan. The government has also escalated its crackdown on news outlets to stamp out any vestiges of independent media in the country.
- On 19 April 2014, Journalist Rauf Mirkadirov was detained in Turkey and deported to Azerbaijan, shortly afterwards his press credentials were revoked. Mr. Mirkadirov was correspondent of the Baku-based Russian-language newspaper Zerkalo in Ankara, Turkey. He quickly gained the attention of both countries, as his articles were often critical of both the Azerbaijani authorities and the Turkish government. In addition to being a journalist, he participated in Azerbaijani-Armenian citizen diplomacy programs organized by HRD Leyla Yunus.
 - Mr. Mirkadirov was arrested upon his forced arrival in Baku. This arrest came days after Turkish Prime Minister Recep Tayyip Erdogan's visit to Baku.⁵³ Mr. Mirkadirov was charged with treason, specifically with passing classified information about Azerbaijan to Armenian intelligence during meetings in Armenia, Georgia, and Turkey. The Armenian agent that Mr. Mirkadirov supposedly contacted is Laura Bagdasrian, a journalist known for her work with Leyla Yunus. Prior to her own imprisonment, Mrs. Yunus was questioned by Azerbaijan authorities about her connections with Ms. Bagdasrian and Mr. Mirkadirov.⁵⁴ Mr. Mirkadirov faces life in

⁵² See also: <http://humanrightshouse.org/Articles/21174.html> of September 2015 about attacks against journalists during the EU Games in Baku.

⁵³ *Will Journalist's Arrest End Azerbaijani-Armenian Diplomacy?*, EurasiaNet.org (22 April 2014), available at <http://www.eurasianet.org/node/68297>.

⁵⁴ *Detained (2014): Rauf Mirkadov*, Article 19, available at <http://azerbaijanfreexpression.org/campaigns/imprisonment/detained-2014-rauf-mirkadirov>.

prison, but has waited more than a year for his trial to begin. His pretrial detention has been extended several times.⁵⁵

- On 21 August 2014, several unidentified people attacked the independent journalist Ilgar Nasibov in the office of the Resource Centre for Development of NGOs and Democracy in Nakhichevan, according to the center's director and Nasibov's wife, the Rafto Human Rights Laureate Malahat Nasibova. The attackers beat Nasibov unconscious and ransacked the office, Nasibov was seriously injured, including a concussion, broken cheekbones, nose, and ribs and loss of vision on one eye. The Resource Center is the only independent group in Nakhichevan, and is working on sensitive cases to restore justice to victims of human rights violations. Among the cases the group has been involved with is the death of Turaj Zeynalov as a result of police torture.
- Jasur Mammadov is a Journalist who has for several years gathered statistics and provided analysis of statistics related to the non-combat killings in the army in Azerbaijan. As a consequence of his work, on 3 September 2014 he was summoned to the Ministry of National Security and interrogated. He was accused of violating the law on military secrets due to his publications, and of working for the Armenian government. He has stated that his wife and two sons have been threatened both directly on the streets and via phone calls. Due to the severe security situation, Jasur Mammadov applied for foreign passports and was forced to flee the country together with his family to Georgia on 12 September 2014.
- On 29 January 2015, prominent journalist Seymour Hazi was sentenced to five years in prison on spurious "hooliganism" charges after spending five months in pre-trial detention. Hazi, who is a reporter for the opposition daily, Azadlig, was a vocal critic of the government's oppression of dissenters.
- Khadija Ismayilova⁵⁶ was arrested on 5 December 2014 on dubious charges of inciting an ex-boyfriend to attempt suicide and later charged on 13 February 2015 with tax evasion, illegal entrepreneurship, and abuse of authority.
- On 8 August 2014, IRFS Director Emin Huseynov⁵⁷ was forced into hiding, and was soon after granted refuge at the Swiss Embassy in Baku, where he remained for 10 months until he was finally allowed out of the country, but stripped of his Azerbaijani citizenship. Huseynov remains in exile abroad as a stateless person. His brother Mehman Huseynov, a well-known photojournalist and blogger, was detained in September 2015 when he tried to obtain a replacement ID card as authorities had seized his in connection with a politically motivated criminal case against him from 2012. He has been prevented from leaving the country since June 2013.
- In January 2015, IRFS deputy head Gunay Ismayilova was attacked outside her apartment in Baku.
- Other independent media that have been facing extensive pressure include Radio Free Europe/Radio Liberty (RFE/RL)'s Baku bureau, which was raided and closed by

⁵⁵ *Custody extended for Azerbaijani journalist*, Trend (21 Nov. 2014), available at <http://en.trend.az/azerbaijan/society/2335686.html>.

⁵⁶ See also "*We condemn the sentencing of journalist Khadija Ismayilova*" <http://humanrightshouse.org/Articles/21130.html>

⁵⁷ See also "*Emin Huseynov is free and safe*" <http://humanrightshouse.org/Articles/21025.html>

authorities in December 2014, shortly after the arrest of its former bureau chief and prominent investigative journalist Khadija Ismayilova, who was sentenced on 1 September to 7.5 years in prison on spurious charges. Opposition Azadliq newspaper once again teeters on the brink of closure after years of excessive fines from defamation cases filed by public officials and their supporters, and other financial pressures.

59. The authorities use various methods to censor the media, even though official censorship has been banned since 1998. For example, legal amendments adopted in 2009 restrict the ability of journalists to film or photograph individuals without their consent, even at public events.
60. Media rights group are subjected to the same restrictions as NGOs when it comes to the possibility to receive grants and foreign funding. In addition, on 3 February 2015, President Ilham Aliyev approved far-reaching amendments permitting the Ministry of Justice to request relevant courts to close any media outlet that receives foreign funding.
61. Journalists who investigate cases of corruption are particularly at risk of attacks and reprisals. The case of investigative journalist Khadija Ismayilova, for example, shows just how far the authorities are willing to go to prevent independent groups from reporting on corruption. Ms. Ismayilova, associated with the Organized Crime and Corruption Reporting Project, has faced repeated attempts by authorities to stop her investigations into high-level corruption in Azerbaijan. Despite harassment, a smear campaign, and attempted blackmail, Ms. Ismayilova continued her work until authorities finally resorted to arresting her on 5 December 2014.⁵⁸

Arrests of journalists in the aftermath of the EU games

62. A new wave of arrests of journalists took place in September 2015⁵⁹, in the aftermath of the European Games and the run-up to the 1 November parliamentary elections. The current list of incidents was published in a joint letter of concern by international NGOs, also signed by the Secretariat of the Human Rights House Network and here provided in attachment.
 - On 16 September Shirin Abbasov, a 19-year-old freelance journalist and Meydan TV contributor, went missing on his way to university early the afternoon of, and his whereabouts were unknown for nearly 30 hours. Authorities eventually disclosed that Abbasov was being held at the Ministry of Internal Affairs' notorious Department to Combat Organised Crime. Abbasov was prevented from seeing his lawyer. Prior to his arrest, Abbasov was one of four Meydan TV staff prevented from leaving Azerbaijan after the conclusion of the European Games in June, having been placed on a "blacklist" for unclear reasons.
 - On 17 September, Abbasov was sentenced to 30 days of administrative detention for "disobeying police."

⁵⁸ *Azerbaijan Jails Reporter Who Angered Top Officials*, New York Times (5 Dec. 2014), available at <http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html>.

⁵⁹ See also "*Azerbaijan: Crackdown on free expression and independent media*" <http://humanrightshouse.org/Articles/21174.html>

- On 18 September, authorities searched the flat of another Meydan TV reporter, Javid Abdullayev, in connection with the case against Abbasov, seizing computers and cameras – indicating more serious charges might be forthcoming.
- On 16 September, another young freelance journalist and Meydan TV contributor, Aytaj Ahmadova, was detained along with a friend, and questioned for five hours by employees of the Department to Combat Organised Crime, before being released. Ahmadova’s parents have reportedly been fired from their jobs and threatened with arrest.
- In June 2015, Meydan TV Director Emin Milli reported that he had received a threat from the Azerbaijani Minister of Youth and Sport, Azad Rahimov, in connection with Meydan TV’s critical reporting on the European Games. Meydan TV editor and popular writer Gunel Movlud also reported that her relatives have faced pressure in connection with her work; so far at least four have been fired from their jobs.
- ⁶⁰ Aliyev, chairman of the Institute for Reporters’ Freedom and Safety (IRFS), was murdered in August 2015. He died in hospital on 9 August after being severely beaten the day before. The attack on Aliyev took place one year from the date the authorities had raided and closed the office of IRFS and its online TV project, Obyektiv TV, which were forced to cease operations.
- ‘Azerbaycan saati’ (Azerbaijan Hour), an opposition-minded online television station, has also faced extensive pressure, including the arrest of its presenter Seymour Hezi, who is currently serving a five-year prison sentence on spurious charges.

⁶⁰ See also « *Journalist Rasim Aliyev murdered as human rights crackdown continues in aftermath of European Games* » : <http://humanrightshouse.org/Articles/21105.html>

ARTICLE 21: RIGHT TO PEACEFUL ASSEMBLY

Right to freedom of assembly, and excessive use of force against peaceful demonstrations

63. The right to freedom of assembly, protected under international law and Article 49 of the Constitution of the Republic of Azerbaijan,⁶¹ plays “a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy.”⁶²
64. Despite this protection, the Azerbaijani authorities consistently limit the right to peaceful protest. Governments may regulate assembly in narrow circumstances of public interest, but the Azerbaijani authorities have regulated in a broad set of circumstances. The ECtHR has rejected such a wider margin of appreciation for governments, even where demonstrations may lead to tension or heated exchanges between opposing views. Far from the narrow circumstances proscribed under international law, the Azerbaijani government broadly limits, and indeed suppresses, the right of its citizens to peaceful assembly.
65. In November 2012, amendments were made to the assembly law that exorbitantly increased the administrative fines for those participating or organizing unsanctioned protests. For example, the maximum fine for participating in unsanctioned public gatherings was increased from €955 to €7,600. In May 2013, the penalty for “organizing an unauthorized demonstration” (Article 298 of the code on administrative offences) was increased from 15 to 60 days’ imprisonment. The penalty for “disobeying the police” was increased from 15 to 30 days’ imprisonment (Article 310 of the code on administrative offences). Public demonstrations, even when peaceful, have been met with widespread police brutality, torture, and arrests of peaceful demonstrators.
- On 26 January 2013, the same month the amendments to the protest law came into effect, a wave of public protests took place in Baku and elsewhere. The police rounded up more than 60 people and used excessive force during the arrests. More than 20 people were issued with fines while a number of people were sentenced to several days in administrative detention, including well-known bloggers, journalists, and human rights activists.⁶³
 - On 10 March in Baku, peaceful protestors were again the victims of police violence. On that occasion, police used water cannons and tear gas to disperse the peaceful gathering in central Baku. Police arrested dozens of protestors, and courts convicted more than 20 on misdemeanor charges, sentencing five with to up to seven days’ detention and fining others up to AZN 600 (€518).
66. The authorities have used restrictions to the right to peaceful assembly as a pretext to imprison key civil society and political leaders, just as they have used restrictions on freedom of association. Emblematic is the case of Ilgar Mammadov, opposition leader and

⁶¹ Article 49 of the Constitution provides that “(I) Everyone has the right for meetings. (II) Everyone has the right, having notified respective governmental bodies in advance, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets.”

⁶² Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, UN Doc. A/HRC/20/27 (21 May 2012) at para. 24.

⁶³ See also: <http://humanrightshouse.org/Articles/19049.html>

potential Presidential candidate, who was arrested on 4 February 2013 after travelling to Ismaili, the site of another protest, and charged with “organizing mass disorder” and “violently resisting police.”

- Another case concerns the arrest and sentence of the N!DA Youth Activists, a group of young Azerbaijani activists who organized protests to promote democratic reform in the country⁶⁴. The group came to prominence for organizing a series of demonstrations in early 2013 to protest the death of Azerbaijani military conscripts from alleged hazing and bullying.⁶⁵ On 7 March 2013, just three days before a planned protest, police arrested three leaders of the N!DA group and accused them of possessing drugs and weapons and for attempting to organize massive public unrest.
67. From the de facto ban on assemblies in central Baku, to the violent response to the peaceful protests held by members of N!DA, the government’s policy fails to meet the very strict standards established under international law. Further, by imprisoning individuals who participate in protests – whether through patently politically motivated charges or fabricated allegations – the state violates the right to assembly.

⁶⁴ The group’s website is available at www.nihavh.org. According to the group, which is not affiliated with any political party, its mission is “to defend the constitutional and human rights of the society, and preserve the democratic and republican values. N!DA also aims to attract citizens, especially, you and students into the socio-political processes of the country in order to democratize Azerbaijan and increase their influence in the processes.”

⁶⁵ Arzu Geybullayeva, *Azerbaijan: N!DA Activists Face 6-8 Years in Prison*, Global Voices (9 May 2014), available at <http://advocacy.globalvoicesonline.org/2014/05/09/azerbaijan-nda-activists-face-6-8-years-in-prison>.

ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION

Restrictions on freedom of association

68. Since 2009, the Azerbaijani government has implemented multiple laws ostensibly aimed at strengthening the government's oversight of NGOs operating in the country. These laws were criticized at the time as being overly burdensome on these organizations and a measure intended not for better governance but to hinder the activities and independence of civil society. It is the NGOs that are critical and independent, especially those that receive foreign funding, that have been the focus of the government's campaign to clamp down on NGO operations.
69. Indeed, the strict application of laws affecting NGOs adopted since 2009, which excessively limit the right to freedom of association, have been used to root out independent NGOs and their leaders. This has devastated civil society. The government relies on provisions contained within a constellation of separate laws and their amendments – referred to collectively in this report as the NGO Regulation Laws – to harass and imprison civil society leaders.⁶⁶
70. In its concluding observations at para 10, the Committee Against Torture expressed “serious concerns that following the 2009 and 2013 amendments of the Law on Non-Governmental Organisations and amendments of the Law on Grants and the Code of Administrative Offences, the implementation of projects without a registered grant agreement, as well as the acceptance of donations, have been punished by dissolution of non-governmental organisations, imposition of financial penalties, freezing of assets, and heavy prison sentences against non-governmental organisations' members (arts. 4, 12, 13, 16).” The Committee Against Torture recommended that Azerbaijan should “amend and bring in line with international standards its legislation to facilitate the registration of human rights organizations and financial grants for the work of such organisations, and change its practice to ensure that all human rights defenders are able to freely conduct their work.

NGO registration and regulation

71. Under the law, Azerbaijan has set up a mechanism by which an organization must register itself with the authorities in order to carry out some formal activities, such as opening a bank account in its name. Numerous independent NGOs and foreign NGOs with offices in the country have been unable to complete the registration process. Azerbaijani authorities have an established track record of interfering with the registration of certain NGOs by prolonging the application process (as opposed to formally rejecting it). This tactic often involves repeated, arbitrary requests for clarification and more documentation, and in some cases complete silence from the authorities.⁶⁷

⁶⁶ The complex web of laws and amendments that govern the establishment and operation of NGOs in Azerbaijan include: the Law on Non-Governmental Organizations, the Law on Grants, the Law on Registration and the State Registry of Legal Entities, the Code of Administrative Offences, the Civil Code, and the Tax Code.

⁶⁷ In 2013 alone, 20 Azerbaijani NGOs submitted complaints to the ECtHR regarding the repeated return of registration application materials, including the Public Association for Democratic Initiatives and Social Development which had its application for registration returned on six different occasions over two years. *Aliyev and Others v. Azerbaijan (Communication from the Legal Education Society)*, ECtHR, Doc. No DH-DD(2014)39 (27 Nov. 2013). See also, *Opinion on the Law of the Republic of Azerbaijan in the Light of Amendments Made in 2009 and 2013 and Their Application (Opinion Prepared by Jeremy McBride)*, Expert Council of NGO Law of the Conference of INGOs of the Council of Europe (September 2014), OING Conf/Exp (2014) 1 at para. 40, available at http://www.coe.int/t/ngo/Source/OING_CONF_EXP_2014_1_Revised_Opinion_Azerbaijan_NGO_Law_en.pdf

72. Registration is still a lengthy and cumbersome process, though this is linked more to the implementation of the legislation than to its content. According to recent Venice Commission reports, the applicants are often required by the registering department to submit additional documentation not required under national legislation; they often receive repeated requests for corrections of the documents, although such requests must be submitted at once; the deadline for issuing the decision on the registration is not always respected; and the automatic registration, in case the Ministry of Justice does not respond to the applications within the statutory timeline, does not seem to be respected.⁶⁸
73. The ECtHR has not only found this tactic highly questionable, it has ruled in at least four cases that Azerbaijan has violated an organization's right to freedom of association.⁶⁹ The strict regulations in terms of registration of non-governmental¹ organisations have served as the basis to suspend the activities of several Human Rights organizations operating in the country.
74. The authorities in Azerbaijan use broad requirements on registration to hinder the work of Human rights organizations in the country. For example, the activities of the Human Rights House Baku were suspended on 10 March 2011, and the leaders of the Election Monitoring and Democracy Studies Center and the Human Rights Club are currently under arrest.
- On 16 March 2011, the government adopted a decree on rules governing the registration of foreign NGOs and negotiations with them on required agreements, leaving the Ministry of Justice with a broad and discretionary power to interpret and define those agreements. Today, the Ministry of Justice can indeed close down an organization without notification, after two warnings have been issued to the respective NGO. On 10 March 2011, a few days before the decree was adopted, the Azerbaijan Human Rights House (AHRH) was forced to suspend its activities until a required agreement with the State was approved.⁷⁰ After a process of negotiations since April 2011, a final application was submitted on 3 November 2011. Nevertheless, to date, there has been no progress and no further instructions by the Azerbaijani authorities.
 - AHRH was fully registered and had developed its activities since 2007. The changes to the legislation in 2009 should not have affected AHRH, as it was already registered. Rules adopted by government cannot have retroactive effect. However, these rules have been applied retroactively in the closure of AHRH. This closure was ordered on 10 March 2011, before the legal framework for allowing the government to close an institution was adopted on 16 March 2011. To date, the Election Monitoring and Democracy Studies Center is still denied registration.
 - On 19 February 2013, the Baku Administrative-Economic Court Nr. 1 rejected the appeal of the Human Rights Club (HRC) against the Ministry of Justice's decision to deny its registration, on grounds that HRC did not specify the responsibilities of its lawful representative in the decision on the establishment of the organization.

⁶⁸ Venice Commission 2014 Report at para. 46.

⁶⁹ *Ramazanova and Others v. Azerbaijan*, ECtHR, Application No. 44363/02 (Judgment) (1 Feb. 2007), *Ismayilov v. Azerbaijan*, ECtHR, Application No. 4439/2004 (Judgment) (17 Jan. 2008), *Nasibova v. Azerbaijan*, ECtHR, Application No. 4307/04 (Judgment) (18 Jan. 2008), *Aliyev and Others v. Azerbaijan*, ECtHR, Application No. 28736/05 (Judgment) (18 Mar. 2009).

⁷⁰ See: <http://humanrightshouse.org/Articles/17735.html>.

Expanded reporting and oversight requirements for NGOs

75. In 2013 and 2014, a number of amendments to the NGO Regulation Laws entered into force, which significantly hinder the operations of all NGOs with a presence in Azerbaijan, whether foreign or domestic.⁷¹ For example, expanded reporting and oversight requirements now require NGOs to inform the government of any change in the number of group members (potentially even covering unaffiliated individuals who participate in demonstrations or other events), as well as changes to the terms of employment for managers and deputy managers. These NGO Regulation laws also authorize the government to monitor compliance of the organization with the organization's own statutes. While the mechanism for such monitoring is not entirely clear, the Venice Commission has noted that although authorities may monitor compliance with domestic law, it should generally be the NGO itself, and not the government, that monitors compliance with an organization's own statutes.⁷²
76. In addition to increased registration, reporting, and oversight obligations, the revised NGO Regulation Laws provide for expanded liability in the event that an NGO fails to meet these increasingly onerous regulations. Authorities are now authorized to suspend or terminate an NGO's operation if more than two written communications have been sent by the authorities to the NGO regarding its violation of an administrative requirement.⁷³ Fines are imposed for administrative violations, such as: the failure to maintain a registry of members⁷⁴; failing to register a grant within 30 days (a penalty of between 5,000 and 7,000 AZN for organizations and 1,000 to 2,500 for individuals; amounts roughly equivalent to €4300 to €6050); and implementing unregistered grants.⁷⁵
77. As reported by the Human Rights House Foundation and its partner organizations at the 28th session of the UN Human Rights Council, the implementation of NGO Regulation Laws has been severely detrimental to civil society:
- Many NGOs have been forced to cease their activities and are subjected to legal prosecution. Bank accounts of more than a dozen NGOs are blocked and their offices are being searched and in some cases sealed. Many more HRDs have fled the country. Since May 2014, authorities have frozen the bank accounts of at least 50 independent organizations and, in many cases, of their staff members, while numerous others have been interrogated and harassed, forcing them to suspend their activities. In addition, several international NGOs

⁷¹ For example, HRH Azerbaijan, which is a registered branch of the HRHF was forced to close by the Ministry of Justice in 2011 – without any prior notice or complaints about the organization's regular reports to the government.

⁷² Venice Commission 2014 Report at para. para. 69 – 74, 77.

⁷³ According to the Venice Commission, under Article 31(3)(1) of the revised Law on Non-Governmental Organizations, an organization can be suspended for failure to remedy a violation. According to domestic lawyers, there is nothing to prevent the government from sending multiple notifications or communications regarding a violation within a short period of time – thereby subjecting the NGOs to the possibility of suspension or liquidation for a single violation.

⁷⁴ Venice Commission 2014 Report at para. 87. Fines are can be imposed for failure to adjust organizational documents so that they meet domestic legislation, “creation of obstacles” during an investigation of the NGO, failing to answer questions or providing false information, and failing to remedy violations identified by the government.

⁷⁵ Art. 223-1.4 of the Code of Administrative Offenses, as added, provides that “Due to the bank and other operations on non-registered grant agreements, concluding contracts on these grants and implementation of other organizational events, non-governmental organizations, branches and representatives of foreign non-governmental organizations in Azerbaijan, as well as physical persons are fined from 2'500 to 5'000 AZN, legal entities are fined from 5'000 to 8'000 AZN.” For other fines now imposed under the amended Code of Administrative Offenses, see *Communication from the Legal Education Society, (Aliyev and Others v. Azerbaijan, ECtHR, Application No. 28736/05, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2014\)39&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)39&Language=lanEnglish&Site=CM)*.

operating in Azerbaijan, with longstanding partnerships with local civil society in the country, have been forced to leave Azerbaijan or suspend their operations.

78. In 2014, the Venice Commission published a follow-up opinion on the new amendments, arguing that the further restrictions “seem to be intrusive enough to constitute a prima facie violation of the right to freedom of association.” The Commission added that “in general, the enhanced state supervision of NGOs seems to reflect a very paternalistic approach towards NGOs and calls again for sound justification. The same holds for new and enhanced penalties that can be imposed upon NGOs even for rather minor offences.” The Commission concluded further that “globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation, and funding of NGOs, is likely to have a chilling effect on the civil society, especially on associations that are devoted to key issues such as human rights, democracy, and the rule of law.

Restrictions on transfer and registration of grants

79. Amendments regulating the transfer and registration of domestic and foreign grants have had a devastating impact on groups that have sought in good faith for years to formalize their status without success.⁷⁶ These grants are crucial to funding the work of charitable organizations in Azerbaijan.

80. These new rules and penalties include:

- Copies of a grant agreement must be submitted to the Ministry of Justice 30 days after the signing of the agreement, or the NGO will be subject to a fine of 5,000 to 7,000 AZN (approximately €4300 to €6,300). NGO managers can be fined an additional 1,000 to 2,500 AZN (€860 to €2100).
- All projects must have a grant agreement, or are subject to a fine of 8,000 to 15,000 AZN (€6900 to €13,000). NGO assets can be seized and NGO managers can be fined an additional 2,500 to 5,000 AZN (€2150 to €4,300).
- All financial reports must include information on donations and be submitted to the correct government agencies or a fine of 5,000 to 8,000 AZN (€4300 to €6,900) is levied. NGO managers can be fined an additional 1,000 to 2,500 AZN (€860 to €2,150).
- Accepting cash donations higher than 200 AZN is subject to a fine of 7,000 to 10,000 AZN (€6,300 to €8,650) for the NGO manager, while the NGO is liable to a fine ranging from 1,000 to 2,500 AZN (€860 to €2,150).
- NGOs can receive donations from a foreign donor only if the foreign donor has an agreement with the Ministry of Justice.
- Foreign entities must have an agreement with the Ministry of Justice, a registered office in Azerbaijan, and the right to make a grant in Azerbaijan before grants to Azerbaijani NGOs can be made.

⁷⁶ Sources on file with authors. See also, *Request for Enhanced Supervision (Ramazanova and Others v. Azerbaijan)*, ECtHR, Application No. 44363/02, Communication from 7 NGOs (5 Sept. 2014), DH-DD(2014)1163, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2611588&SecMode=1&DocId=2188924&Usage=2>.

- An opinion on the “financial-economic expediency” of a grant by a competent executive body is required before a grant can be transferred.
- The Cabinet of Ministers will define the procedure for registering as a donor (but has not done so yet).
- Local and foreign NGOs are required to submit information on their donors and donations to the Ministries of Justice and Finance.
- All banking and donation operations must be reported to the Ministry of Justice.
- NGOs must conclude a contract for the provision of any service and fulfillment of any work.
- NGOs must register with the Ministry of Justice all service contracts with a foreign entity. The Cabinet of Ministers has not yet determined the penalty for noncompliance.

Abuse of NGOs: Directed charges to imprison civil society leaders

81. The increasingly draconian restrictions on the operation of NGOs in Azerbaijan are inconsistent with international norms, and in the case of delayed registration are an unlawful restriction of the right to freedom of association. However, the imprisonment of civil society actors is a separate, more outrageous violation. Complex administrative and criminal laws regulating NGO activity, and the arbitrary practices of regulatory authorities, have long frustrated local groups trying to fulfil their mandates while also complying with the law. The authorities exploit the lack of clarity in the law to target activists, some of whom have operated in the public sphere for decades. The government has not clearly explained or justified its application of these laws, either during criminal proceedings or in response to questions posed by the international community. A close examination of the charges and the trials, some of which have concluded, exposes a deeply flawed legal foundation that has been used to rationalize the detention of peaceful activists. In spite of the dizzying lack of clarity in the laws themselves and how the government is applying them, the following material attempts to explain step by step the “legal theory” the government uses to charge NGO leaders with crimes such as tax evasion or abuse of office.
82. These prosecutions against civil society leaders have emerged as follows:
83. First, the government alleges that an NGO – and its leader who stands accused – failed to comply with certain provisions of the NGO Regulation Laws. The alleged infractions by NGOs are a mix of those that appear to be entirely fabricated by the prosecution and those that cite breaches of unclear laws enacted to frustrate the operation of NGOs.
- The Azerbaijani authorities fabricated a violation against Intigam Aliyev. His organization, the Legal Education Society, was a registered NGO and registered the international grants it received. During the trial, the prosecution accused Mr. Aliyev of failing to register his grants. The prosecutor falsely claimed that the grants had never been registered, even though the authorities seized the registration documents during a raid of Mr. Aliyev’s offices. Even when Mr. Aliyev’s legal team produced evidence of the registration that had been posted on a government website (which they were able to obtain even though it had been subsequently removed by the Ministry of Justice), the court dismissed the evidence and ultimately found him guilty.⁷⁷

⁷⁷ *New evidence weakens prosecution*, HRHN (18 March 2015), available at <http://humanrightshouse.org/Articles/20815.html>.

84. In other cases, the alleged administrative failure is based upon the government's efforts to erect every possible barrier to the operation of independent NGOs in the country, targeting the very organizations that tried in earnest to comply with the bewildering requirements of the NGO Regulation Laws.
- In the case of Rasul Jafarov and the Human Rights Club, which is described in more detail in attachment, the authorities arbitrarily withheld registration from the organization. Mr. Jafarov continued to operate the Human Rights Club as an unregistered organization – which is legal in Azerbaijan – in his individual capacity and often in partnership with registered groups. Although Azerbaijani legal experts report that before 2014 there was no clear legal requirement for unregistered groups to register their grant information with the authorities, Mr. Jafarov submitted each of his grants to the Ministry of Justice out of caution. The authorities did not respond. He paid taxes on the individual income received from the grants through his personal tax identification number. Ignoring these facts, the prosecution applied the NGO Regulation Laws retroactively and accused him of failing to register the grants, even though during this time the law did not prohibit him from receiving grants as an individual or require registration of those grants.
85. The authorities' purposeful and discriminatory malfeasance creates a situation in which civil society leaders are being convicted and sentenced to prison terms because of failure to meet *administrative* requirements under the law. To be clear, the NGO Regulation Laws do not include imprisonment as a punitive measure for violations. For that, the authorities are turning to the Criminal Code and using charges such as tax evasion and illegal business activity⁷⁸, based on the alleged failures to comply with the NGO Regulation Laws.
86. The prosecution is using administrative rule violations not to apply administrative sanctions, but to render the activity of the organization as “entrepreneurial,” making it subject to the regulatory and tax treatment that the government applies to commercial organizations or activities.⁷⁹ Prosecutors then allege that the organization failed to comply with these obligations, which give rise to criminal liability. This theory, which has been applied discriminatorily to independent NGO leaders that are critical of the government, has no basis in Azerbaijani law, which distinguishes between commercial and non-commercial activity based upon the nature of the activity.⁸⁰ Such an approach empowers authorities – ostensibly through the law – to punish and

⁷⁸ Tax Evasion (Criminal Code 213): evasion of taxes by an individual or group in a “significant” or “large” amount by distorting or failing to disclose income; punishable by up to three years in prison.

Abuse of Office (Criminal Code 308): deliberate abuse of official power by the representative of a government body or other commercial or non-commercial organization that causes harm to the rights or interests of citizens, organizations, or the state; punishable by up to three years in prison.

⁷⁹ The tax status of grants under Azerbaijani law has been the subject of some debate. At least one translation of the Tax Code available on a government website explicitly exempts “grants, membership fees and donations received by non-commercial organizations.” See Article 106.1.2, available at http://www.taxes.gov.az/modul.php?name=qanun&cat=3&lang=_eng. By contrast, some experts have indicated that the law only exempts “charitable monetary transfers, membership fees, and donations.” However, those experts have also recognized that the actual practice of the government has been to treat grants as exempt under the theory that they qualify as “donations,” which are expressly exempt from tax but are not specifically defined elsewhere in the law. See *Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists Behind Bars*, Amnesty International (March 2015) at 9, available at http://www.amnestyusa.org/sites/default/files/azerbaijan_report_eur_5510772015.pdf (citing Gubad Bayramov, *Registration and Operation of NGOs, Taxing of NGOs, Public Funding of NGOs and NGO Participation of in Decision-Making, Azerbaijan*, Economics Research Center (2009), available at <http://blacksea.bcnl.org/en/articles/17-registration-and-operation-of-ngos-taxation-of-ngos-public-funding-for-ngos-and-ngo-participation-in-decisionmaking-azerbaijan.html>).

⁸⁰ Article 13 of the Civil Code of the Republic of Azerbaijan defines “entrepreneurial activity” as “a person’s activity conducted independently and for the main purpose of receiving obtaining [sic.] profit from the use of property, sale of goods,

silence government critics while appearing to use generally applicable provisions of the Criminal Code.

87. The authorities' use of organizational charges, as with the use of patently politically motivated and fabricated charges, are a blatant attempt to put independent NGOs out of operation and punish their leaders. The sentences handed down are not merely "disproportionate," but completely without merit because they are based on a deeply flawed legal theory that misuses domestic law to punish the legitimate work of civil society groups.
88. Regardless of the specific tactic used by the Azerbaijani authorities to detain critics, the continued imprisonment of peaceful activists is arbitrary and therefore violates the state's obligations under international law. This conclusion remains true whether or not the authorities employ patently politically motivated charges, fabricated charges, or use a legal "slight-of-hand" to obtain the same result.

and performance of works or provision of services." See also Article 13.2.26 of the Tax Code. Non-commercial activity, by contrast, is defined under Article 13.2.27 of the Tax Code as "a conduct of legal activity the purpose of which is not generation of profit and that stipulate the use of income received in non-commercial purposes only, including the purposes of its charter. Otherwise such activity shall be considered as commercial."

ARTICLE 25: RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

A presidential election to display strength

89. While President Aliyev points to his re-election in 2013 as evidence of the country's strength – albeit a victory without any campaigning on his part – information reported from NGOs on the ground during the election tell a different story. President Aliyev was elected to a third term with 85 percent of the vote on 9 October 2013; this new third term was made possible by a dubious referendum that removed a constitutional limitation on consecutive presidential terms.⁸¹ The election was described by the Election Observation Mission of ODIHR as having been “undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates.”⁸²
90. Prior to the 2013 election, various restrictions were imposed on the candidates. Most limiting, presidential candidates were only allowed to campaign for 22 days. Moreover, candidates had to demonstrate that they had been resident in Azerbaijan for at least ten years,⁸³ had a university degree, and had collected 40,000 signatures from registered voters.⁸⁴ During the permissible campaign period, opportunities to assemble supporters were severely limited for candidates. Azerbaijan's Central Election Commission issued a list of 152 indoor and outdoor venues where presidential candidates could hold campaign events free of charge. Authorities interpreted this list as exhaustive and prohibited the use of any other venue; as a result the ODIHR mission noted that the right to freedom of assembly had been impacted and unreasonably limited.⁸⁵ This concern was underlined by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, who said at the time that “peaceful demonstrations in Azerbaijan have increasingly been targeted in the context of the forthcoming elections of October 2013.”⁸⁶
91. In its Statement of Preliminary Findings and Conclusions, ODIHR observers remarked that “continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign. Significant problems were observed throughout all stages of election day processes.”⁸⁷ Local Azerbaijani NGO, the Election Monitoring and Democracy Studies Centre (EMDS), also found serious violations, including examples of ballot interference, cases where voters were being influenced, violations of the secrecy of voting, and inconsistencies during voting and counting of ballots.⁸⁸
92. The presidential election was marred not only by campaigning limitations and polling irregularities, but also by controversy over the premature release of poll results. The Central Election Commission created an application allowing citizens to track the election results via their

⁸¹ *Opposition Condemns Changes to Azeri Constitution*, Institute for War and Peace Reporting (13 April 2009), available at <https://iwpr.net/global-voices/opposition-condemns-changes-azeri-constitution>.

⁸² Election in Azerbaijan undermined by limitations on fundamental freedoms, lack of level playing field and significant problems on election day, international observers say, OSCE (10 Oct. 2013), available at <http://www.osce.org/odihr/elections/106908>.

⁸³ This was believed to be aimed at eliminating Oscar-winning film-maker Rustam Ibragimbekov from running after he announced he would stand in the election and gained support from all opposition parties.

⁸⁴ More information on the conditions of the presidential elections is available in the ODIHR Needs Assessment of 12 July 2013, available at <http://www.osce.org/odihr/elections/103561?download=true>.

⁸⁵ *Republic of Azerbaijan, Presidential Election*, OSCE/ODIHR Election Observation Mission Final Report (9 Oct. 2013)

⁸⁶ Rights to freedom of peaceful assembly and of association UN Doc. A/68/299 at para. 19

⁸⁷ *Republic of Azerbaijan, Presidential Election*, 9 October 2013, OSCE/ODIHR Election Observation Mission Final Report.

⁸⁸ *Elections in Azerbaijan: Aliyev's frozen time*, HRHN, Tatiana Pechonchik (19 Oct 2013), available at <http://humanrightshouse.org/Articles/19740.html>.

mobile phones. The day before the election a reporter at Berlin-based Meydan TV discovered the application had already released the election outcome in the district of Hacigabul-Kurdamir, awarding President Aliyev 72.76 percent of the vote. The application's designer claimed it was a test run using data from the 2008 elections. However, observers were quick to note that the application provided the names of the current presidential candidates.⁸⁹

93. Despite the negative assessment by many observers, including the widely respected team from ODIHR, a joint delegation of parliamentarians from the European Parliament and PACE deemed the election process to be “free, fair, and transparent.”⁹⁰ This was despite their own acknowledgement that the decision of the president not to conduct a campaign was “disappointing,” that they had been told about “a number of alleged incidents of candidate and voter intimidation,” as well as their recognition of the fact that “freedom of expression remains a serious concern in Azerbaijan.”

Repression throughout the electoral period

94. The 2013 presidential election itself was marred by numerous inconsistencies and deemed by many observers to have lacked the necessary safeguards to be judged free and fair, and the authorities' actions targeting opposition and civil society leaders were unambiguously repressive. Government reprisals against those who displayed criticism and dissent during the electoral period were harsh and swift. The arrest of opposition politician Ilgar Mammadov in February 2013 highlights that repression not only followed the presidential election, but persisted throughout the electoral period.
95. The crackdown against those who raised their voices during the electoral period continued immediately afterwards. The first target of the government's retribution was the only independent election monitoring group in Azerbaijan, EDMS, which had published critical findings of the election. It had operated without official legal status – having been denied registration under discriminatory NGO regulations – and thus was staffed with observers who were accredited individually. The ODIHR Mission noted that some EDMS-hosted training sessions, which were conducted in private homes, were interrupted by officials, thereby infringing on their right to free association.⁹¹ Furthermore, the office of EDMS was searched on 31 October 2013 and authorities confiscated two computers, print materials, press releases, reports, and financial documents.⁹² Shortly after, the organization's chairman Anar Mammadli and director Bashir Suleymanli were arrested and charged with tax evasion, illegal business activities, and abuse of office. In a joint statement, the UN Special Rapporteur on freedom of assembly and association and the Rapporteur on HRDs said: “We are seriously concerned that... HRDs are being prosecuted in retaliation for their legitimate work in documenting alleged widespread irregularities and human rights violations around the presidential elections of 9 October 2013.”⁹³

⁸⁹ *App-Gate and Azerbaijan's Presidential Election*, The Central Asia-Caucasus Analyst (16 Oct. 2013), available at <http://www.cacianalyst.org/publications/field-reports/item/12832-app-gate-and-azerbaijans-presidential-election.html>.

⁹⁰ *Observation of the presidential election in Azerbaijan*, PACE, Doc. 13358 (21 Nov. 2013), available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20259&lang=EN>.

⁹¹ *Republic of Azerbaijan, Presidential Election*, OSCE/ODIHR Election Observation Mission Final Report (9 Oct. 2013).

⁹² *Head of Independent Election Monitoring Group Must Be Released*, HRHN (17 Dec. 2013), available at <http://humanrightshouse.org/Articles/19866.html>; *Harassment of the Azerbaijani Election Monitoring and Democracy Studies Centre*, HRHN (12 Nov. 2013), available at <http://humanrightshouse.org/Articles/19744.html>.

⁹³ *UN Experts urge Azerbaijan to drop charges against HRDs*, OHCHR (9 May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14582&LangID=E>

96. The arrest of Mr. Mammadli and Mr. Suleymanli, who were later convicted and sentenced, resonated with a larger campaign against independent media during the election period. On 4 October 2013, for example, a group of journalists from opposition media outlets was attacked by a pro-government mob whilst covering a sanctioned opposition rally in the Sabirabad region. Police officers stood by at the scene as journalists were assaulted, and their equipment damaged by the mob.⁹⁴ Earlier in the year, between March and July 2013, youth activists associated with the opposition movement N!DA, the REAL movement, and the Free Youth movement were also arrested and detained on charges that include drug and gun possession, hooliganism, and not obeying police orders; some members remain in prison.⁹⁵
97. As noted by the UN Special Rapporteur Maina Kiai, in his report to the UN General Assembly in October 2013, “electoral periods are such an important time to build democratic, responsive, and accountable institutions and that very strict and clear safeguards should be put in place by States to prevent undue interference in public freedoms, in particular in the rights to freedom of peaceful assembly and of association.”⁹⁶ The Azerbaijani government, however, has shown little interest in implementing or even acknowledging such recommendations. Tana de Zulueta, Head of the ODIHR Mission summed up the situation: “citizens of Azerbaijan deserve better.”⁹⁷

⁹⁴ *Azerbaijan's president run turns ugly over media crackdown*, HRHN (5 Oct. 2013), available at <http://humanrightshouse.org/Articles/19622.html>.

⁹⁵ *An extensive campaign against independent voices*. HRHN (9 Oct. 2013), available at <http://humanrightshouse.org/Articles/19626.html>.

⁹⁶ Rights to freedom of peaceful assembly and of association. UN Doc. A/68/299 at para. 56.

⁹⁷ *Citizens of Azerbaijan deserve better*, HRHN (11 Oct. 2013), available at <http://humanrightshouse.org/Articles/19641.html>.