



ARTICLE 19, International Media Support, and Institute for Reporters' Freedom and Safety

Concerns and Recommendations on Azerbaijan

Response to List of Issues

Submitted to the UN Human Rights Committee prior to its fourth periodic review of Azerbaijan

ARTICLE 19, International Media Support and Institute for Reporters' Freedom and Safety welcomes the upcoming UN Human Rights Committee ("the Committee") review of Azerbaijan's compliance with the International Covenant on Civil and Political Rights (ICCPR).

This submission provides information on the human rights situation in Azerbaijan, pursuant to the list of issues identified by the Committee, in particular on persistent violations of the right to freedom of expression under Article 19 of the ICCPR. Azerbaijan has long sought to silence all critical voices within the country; in doing so, the authorities have repeatedly violated a number of other rights protected by the Convention besides freedom of expression. These include the rights to freedom of peaceful assembly (Article 21), freedom of association (Article 22), the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment (Article 7) and the right to liberty and a fair trial (Article. 9)

The submission also provides updates on the human rights situation in Azerbaijan covering the period from April 2016, just prior to when the list of issues was adopted, until September 2016, raising concerns about the upcoming constitutional referendum and accompanying repression of political opposition; detentions and arrests of youth activists and bloggers on bogus charges following expression of dissenting views, which represent a continuum of Azerbaijan's harassment of civil society; and renewed crackdown on independent media.

We welcome the release of sixteen political prisoners at the end of March 2016, just prior to the adoption of the list of issues. However, the convictions of those released have not been quashed, the released still face numerous restrictions on their liberty, and legislation making those individuals vulnerable to arrest and prosecution, raised in previous reports to this Committee, remains in place. As the UN Working Group on Arbitrary Detention has noted that in spite of this release of prisoners, there has been "no perceptible change in practice" relating to other arbitrarily detained individuals.¹

The release of the prisoners does not demonstrate commitment by the Azerbaijani authorities to abandon its campaign of intimidation and harassment against government critics. Facing severe economic challenges, the authorities sought to whitewash the regime's human rights abuses, without

¹ Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.8H0j7p1H.dpuf>

committing to systemic and lasting change, as has been evidenced in the subsequent crackdown on political opposition, civil society and independent media, covered in the report.

We hope this submission informs the Committee's review of Azerbaijan, and trust that its Concluding Observations will see past the government's superficial gestures to ensure commitments to long-lasting systemic reforms to protect and promote the right to freedom of expression and related rights, in implementation of Azerbaijan's obligations under the ICCPR.

1. Repression of political opposition ahead of Constitutional Referendum

In relation to the following paragraphs of the list of issues:

- *Paragraph 17, **Right to a fair trial and independence of the judiciary (arts. 9 and 14)**, specifically: 'Please comment on reports indicating cases of arbitrary arrest and detention followed by impunity. In this regard, please also comment on reports of politically motivated trials, under false charges, including "hooliganism", "drug possession", "treason" or "economic crimes" particularly targeting human rights defenders, journalists, staff of non-governmental organizations (NGOs), members of the opposition and lawyers.'*
- *Paragraph 23, **Right to participate in public life (art. 25)**, specifically: 'In view of persistent reports of irregularities during past elections, including the recent election of 1 November 2015, please indicate efforts made towards establishing the necessary safeguards to guarantee fully transparent elections in the future. In this context please also comment on: (a) the reported intimidation of opposition candidates and the local population prior to the November 2015 election; (b) the detention of the leader of the opposition movement Republican Alternative; and (c) severe restrictions posed on candidates prior to the 2013 elections, including candidates being allowed to campaign for 22 days only.'*

The situation for freedom of expression and related rights in Azerbaijan has worsened since April 2016, when the Committee adopted its list of issues, ahead of a proposed constitutional referendum on 26 September 2016.

The proposed amendments would further consolidate President Aliyev's power, extending the president term from five to seven years, granting additional powers to dissolve parliament and call for early presidential and parliamentary elections and to create "vice-presidency" positions directly appointed by the president.

The proposed amendments also expand the recognised bases for limiting the rights to freedom of expression and freedom of peaceful assembly, to aims not recognised as legitimate in the exhaustive listings in Articles 19, 20(2) and 21 of the ICCPR. This includes limitations on expression that provokes "hostility", and freedom of peaceful assembly when they "disrupt ... public morale."

If the amendments are passed, they will legitimize and potentially intensify the government's crackdown on human rights in the country.

The HR Committee should call on the government to withdraw from the referendum constitutional amendments that would contradict the legitimate bases for restriction the rights to freedom of expression and freedom of peaceful assembly under the ICCPR.

In the run up to the constitutional referendum, the Azerbaijani authorities have launched a new wave of arrests of critical voices – in particular of the political opposition. This is increasingly justified on the grounds of countering the Gülen movement, which the Turkish government accuses of organising the failed coup attempt in Turkey on 15 July 2016. Such charges are absurd and a clear pretext to crack down on opposition: the Gülen movement has not been designated via court order as a terrorist organisation in either Azerbaijan or Turkey, and charges related to affiliation with the group are proceeding without any individualised evidence of involvement in a criminal act.

The government's use of extended periods of pre-trial detention, on trumped up charges related to legitimate political activity, effectively removes oppositional voices from public discussions around the referendum. The HR Committee indicated related concerns in the List of Issues, requesting that the Government of Azerbaijan comment on reports of cases of arbitrary arrest and detention targeting human rights defenders, journalists, staff of non-governmental organizations (NGOs), members of the opposition and lawyers and on the intimidation of, and restrictions placed on, opposition representatives prior to elections.

Recent cases prior to the referendum include:

- **Natiq Jafarli**, the executive secretary of the Republican Alternative (REAL) party, long subject to judicial harassment from the Azerbaijani authorities, was arrested on 12 August 2016 on bogus charges of “illegal business” and “abuse of official powers”. The arrest came shortly after Jafarli criticised the proposed constitutional amendments for the September 2016 referendum, and planned to conduct an active campaign against it. The charges stem from a criminal case the Prosecutor General's Office launched against a group of NGOs in 2014. Jafarli was placed in pre-trial detention, with the trial scheduled to take place just six weeks ahead of the referendum. On 9 September, Jafarli was released and his arrest substituted with a prohibition from leaving the capital city, Baku, while the criminal investigation is ongoing.
- **Togrul Ismayilov** and **Elshan Gasymov**, both REAL party activists, were charged on 16 August 2016 with “resisting police” following their arrest a day earlier on their way to a publishing house to pick up campaign posters reading, “Say no to amendments to the Constitution!”² The activists claimed in court that they were pressured into pleading guilty while in police detention. The court found them guilty of “insubordination in respect of the legitimate orders of the police”³ and sentenced both to seven days of administrative detention on 16 August 2016.⁴
- **Faiq Amirov**, the financial director of the most vocal opposition newspaper Azadliq, and assistant chairman of the Youth organization of Popular Front Party of Azerbaijan (PFPA), was arrested on 20 August 2016 and subsequently charged with “inciting religious hatred” and “violating the rights of citizens under the pretext of conducting religious rites”,⁵ after police allegedly found printed and audio materials containing the views of the Fethullah Gülen Movement in Amirov's car during his arrest.⁶ The materials are widely perceived to have been planted on Amirov; even if this were not the case, there would be no grounds for bringing charges, as the materials do not incite to violence and as such constitute legitimate expression.

² <http://www.kavkaz-uzel.eu/articles/287658/>

³ <http://www.kavkaz-uzel.eu/articles/287658/>

⁴ <http://www.contact.az/docs/2016/Social/081500165690en.htm#.V9awrjXQOV8>

⁵ <https://rsf.org/en/news/turkey-style-pretext-used-arrest-critic-azerbaijan>

⁶ <http://ann.az/en/azerbaijan-blames-party-leaders-aide-for-distributing-gulens-ideas/#.V9F25DXQOV8>

Amirov was accused of being an Imam in the movement led by Fethullah Gülen, and was placed in pre-trial detention on 22 August 2016.

- **Fuad Ahmadli**, a PFPA activist whose criminal case has been joined to Faiq Amirov's, faces trumped-up charges of "abuse of official powers".⁷ The State Security Service arrested Ahmadli on the street in Baku on 18 August 2016 and then searched his apartment. Printed and audiovisual materials containing the views of Fethullah Gülen and other members of that community, were allegedly found among the personal belongings of Ahmadli.⁸ As noted, these materials do not incite to violence; and the possession of them do not provide legitimate grounds for bringing charges. After being placed in pre-trial detention following his arrest, Ahmadli was denied his right to communicate and meet with family members in violation of his rights.⁹

The **Amirov** case highlights that the provision on "incitement to national, racial or religious hostility (article 283 of the Criminal Code of Azerbaijan) is open to abuse, contrary to Articles 19 and 20(2) of the ICCPR. The provision is imposed to suppress legitimate political expression, where there is no intent to incite violence, discrimination or other hostile act, or any likelihood or imminence of such harm occurring.

We recommend the HR Committee call on Azerbaijan to refrain from abusing provision 283 of the Criminal Code of Azerbaijan ("incitement to national, racial or religious hatred"), and to amend it in line with Articles 19(3) and 20(2) of the ICCPR, taking into consideration the guidance in the Committee's General Comment No. 34 and in the Rabat Plan of Action.¹⁰

We further recommend the HR Committee call on Azerbaijan to cease the judicial harassment, including arbitrary pre-trial detention, of the political opposition, and to release those currently detained.

2. Harassment and detention of youth activists, bloggers

In relation to the following paragraphs of the list of issues:

- *Paragraph 9, **Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 2, 6, 7)**, specifically: Please further comment on reported cases of politically motivated cases of torture and ill-treatment, including of journalists, human rights defenders and youth activists*
- *Paragraph 17, **Right to a fair trial and independence of the judiciary (arts. 9 and 14)**, specifically: 'Please comment on reports indicating cases of arbitrary arrest and detention followed by impunity. In this regard, please also comment on reports of politically motivated trials, under false charges, including "hooliganism", "drug possession", "treason" or "economic crimes" particularly targeting human rights defenders, journalists, staff of non-governmental organizations (NGOs), members of the opposition and lawyers.'*

⁷ <http://www.contact.az/docs/2016/Social/090500167770en.htm#.V9GC5DXQOV8>

⁸ <https://www.irfs.org/news-feed/official-statement-issued-on-opposition-party-activists-arrest/>

⁹ <http://www.contact.az/docs/2016/Social/090500167770en.htm#.V9bD6TXQOV9>

¹⁰ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 5 October 2012, A/HRC/22/17/Add.4; available at: https://www.article19.org/data/files/Rabat_Plan_of_Action_OFFICIAL.pdf

- *Paragraph 22, **Freedom of conscience and religious belief, of opinion and expression, of peaceful assembly and of association (arts. 2, 18, 19, 21 and 22)**, specifically: ‘Please comment on reported cases of arrests of bloggers’.*

Since April 2016, the authorities have continued to repress youth activists and bloggers, undermining any gains made by the prisoners’ release in March 2016. Those arrested include:

- **Giyas Ibrahimov** and **Bayram Mammadov**, two youth opposition activists of the NIDA (Exclamation) movement, were arrested on 10 May 2016 after Ibrahimov painted political graffiti on a statue in central Baku of Heydar Aliyev, former Azerbaijani president and the father of the current president, while Mammadov took a photo of the graffiti and shared it on Facebook.¹¹ Denied access to a lawyer in detention, Mammadov and Ibrahimov confessed to trumped-up charges of possession of heroin, retracting these in court on the basis they had been extracted under torture and other ill-treatment, including beatings, humiliation and rape threats. Both activists remain in jail and an investigation into the torture allegations is currently on-going.
- **Elgiz Gahraman**, also a NIDA activist, has reportedly been subject to torture and other ill-treatment following his arrest on 12 August 2016, on trumped-up charges of drug possession. According to his lawyer, Gahraman was detained by police in the centre of Baku, who allegedly found 3.315 grams of heroin on him before bringing him to the Organized Crime Unit at the Interior Ministry.¹² Held incommunicado for more than two days, with no access to a lawyer, Gahraman confessed to charges of drug possession after allegedly enduring torture and other ill-treatment, including beatings and humiliation. Gahraman was also made to sign statements about a relationship with Fethullah Gülen. This may be related to the crackdown prior to the constitutional referendum.

The HR Committee should call on the Government of Azerbaijan to cease using trumped-up charges to target opposition activists, and ensure accountability for and an end to the practice of forced confessions, denial of access to a lawyer, and the use of torture or other cruel, inhuman or degrading treatment or punishment.

3. Harassment of media organisations

In relation to the following paragraphs of the list of issues:

- *Paragraph 17, **Right to a fair trial and independence of the judiciary (arts. 9 and 14)**, specifically: ‘Please comment on reports indicating cases of arbitrary arrest and detention followed by impunity. In this regard, please also comment on reports of politically motivated trials, under false charges, including “hooliganism”, “drug possession”, “treason” or “economic crimes” particularly targeting human rights defenders, journalists, staff of non-governmental organizations (NGOs), members of the opposition and lawyers.’*
- *Paragraph 22, ‘**Freedom of conscience and religious belief, of opinion and expression, of peaceful assembly and of association (arts. 2, 18, 19, 21 and 22)**’, specifically: ‘Please provide information on measures taken to protect media pluralism and avoid State monopolization of mass media. Please respond to reports that journalists are frequently subjected to charges and*

¹¹ <http://azerbaijanfreexpression.org/detained-2016-giyas-ibrahimov/>

¹² <https://www.hrw.org/news/2016/08/19/azerbaijan-activist-arrested-held-incommunicado>

arbitrary detention based on flawed procedures, and that newspapers and radio stations continue to be closed.'

Since April 2016, the Azerbaijan authorities have launched a new wave of harassment against the few independent media outlets still left in the country. This may be related to the upcoming constitutional referendum; and in many cases, the authorities have recently used the pretext of “fighting against the Gülen movement” inside the country to further suppress any dissenting voices.

On 29 July 2016, the licence of ANS TV, a pro-government but privately owned television channel, was revoked by an Azerbaijani court on the basis that the channel violated provisions and conditions of the license that prohibit “propaganda of terrorism, violence, cruelty” and “incitement to mass unrest and terrorism”.¹³

The closure of the TV channel by the court followed an order by Azerbaijan’s National Television and Radio Council, all of whose nine members are nominated by the government undermining it’s independence, to temporarily close ANS TV in response to the channel’s plans to broadcast an interview with Fethullah Gülen. In an official statement, the National Television and Radio Council stated the decision was made further on the request of the General Prosecutor on 18 July 2016. The Council justified its decision on the grounds of “avoiding provocations aimed at damaging the strategic partnership between Turkey and Azerbaijan and to prevent obvious promotion of terrorism”, accusing ANS TV of “promoting terrorism”. The Turkish Embassy in Baku reportedly had expressed “deep concern” about the proposed broadcasting.¹⁴

On 20 April 2016, Azerbaijani authorities announced a criminal investigation against the Berlin-based online news outlet Meydan TV, on allegations of large-scale “unlawful business activity”, “large-scale tax evasion” and “abuse of office”, allegedly resulting in falsification of election results. The use of these charges against the media mirrors those used against human rights activists and opposition members in 2015.

Meydan TV, well known for its public interest reporting, particularly on human rights and corruption, closed its Baku office in 2014 as a result of security concerns. Emin Milli, an Azerbaijani dissident and former political prisoner in exile in Germany, is the head of Meydan TV.

The prosecutor’s office named fifteen journalists who have cooperated with Meydan TV in the investigation, and at least eight have been told, either during questioning by officials or on trying to leave the country, that they cannot leave the country due to the investigation that has been on-going since September 2015. Milli’s family have faced reported reprisals. In July 2015, his brother-in-law was arrested on bogus, politically motivated drug possession charges. On 22 April 2016, he was released under a suspended two years prison sentence.

Azerbaijani authorities also seek to exert pressure on independent media through financial means. On 6 September 2016, Azadliq, one of the few remaining independent newspapers that still challenges the government in Azerbaijan, was forced to stop publishing due to its inability to repay debts to the state-owned publisher.¹⁵ Financial pressures had built on Azadliq with state authorities pressuring distributors

¹³ <http://www.presstv.ir/Detail/2016/07/29/477511/Azerbaijan-ANS-TV-Station-Turkey-Gulen-Erdogan>

¹⁴ <http://www.rferl.org/content/azerbaijani-tv-station-shut-down-gulen-interview-turkey/27867890.html>

¹⁵ <https://www.irfs.org/news-feed/azadliq-newspapers-publication-halted/>

such as press kiosks and street distributors not to stock the publication, and a prohibition on selling Azadliq in the metro.¹⁶ The arrest and detention of Azadliq's financial director, Faiq Amirov, has further exacerbated these difficulties.

The HR Committee should call on Azerbaijan to:

- **Reform the Law on Mass Media to ensure against the revocation of broadcasting licenses on political grounds not consistent with Article 19(3) of the ICCPR;**
- **Reform the National Television and Radio Council to safeguard its independence and role in promoting media freedom, ensuring the genuine independence of members from the government and the repeal of illegitimate content restrictions, including vaguely defined anti-terror provisions that are open to abusive application.**
- **Ensure that travel bans are only used against journalists and media workers where justified by the requirements of Article 19(3) of the ICCPR, and are not used as a form of harassment.**
- **Cease measures to pressure distributors against stocking independent publications, and lift prohibitions on the circulation of independent publications in the metro.**

Recommendations:

The Azerbaijan government must take urgent measures to protect and promote the right to freedom of opinion and expression. In particular, we call upon the government of Azerbaijan to:

- Immediately and unconditionally release all political prisoners in pre-trial detention on trumped-up charges or serving sentences
- Lift any restrictions on recently released political prisoners, quash their convictions and drop any remaining charges that they face
- Refrain from further arbitrary detention and prosecutions on trumped charges against those engaged in the legitimate exercise of rights protected in the ICCPR, in particular the freedom of opinion and expression, of peaceful assembly and of association and to participate in public affairs
- Cease persecution of independent media, including by ceasing financial pressure on independent media outlets and opposition media
- Repeal or emend legislation that restricts the rights to freedom of expression, peaceful assembly and association to bring in line with international standards, in particular the Law on Mass Media and Article 283 of the criminal code (“incitement to racial, religious or national hatred”)
- Ensure that proposed amendments to the constitution that would further restrict these rights and limit checks and balances on power are not adopted
- Ensure the enforcement of the absolute prohibition of torture and other ill-treatment, including through prompt, effective and impartial investigations into all allegations of torture and other ill-treatment, ensuring fair prosecutions, in line with international standards on the right to a fair trial.

¹⁶ <https://www.meydan.tv/en/site/society/15619/>