

**Third session in 2010 of the Parliamentary Assembly of the Council of Europe
June 2010**

A COMMON STATEMENT ON HUMAN RIGHTS IN AZERBAIJAN

**Azerbaijani and international human rights NGOs' appeal to the
Parliamentary Assembly of the Council of Europe**

The Parliamentary Assembly will debate and vote on a resolution on the functioning of the democratic institutions in Azerbaijan. We welcome the thorough report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc 12270 31 May 2010. We urge the members of the Parliamentary Assembly of the Council of Europe to adopt the Draft resolution. In addition, we would like to highlight the following serious human rights concerns in the Republic of Azerbaijan.

We urge the Parliamentary Assembly of the Council of Europe to:

- **Call for judicial reform in Azerbaijan to ensure that the courts can operate freely and independently.**
- **Call upon the Azerbaijani authorities to respect freedom of assembly, association and the right to religious freedom in legislation and in practice.**
- **Call upon the Azerbaijan government to take immediate, concrete steps to create an environment conducive to freedom of expression, including by ceasing the political use of legal provision to silence critical voices. The prisoners of conscience, Emin Milli and Adnan Hajizade, should be released immediately and unconditionally.**
- **Call upon the government to seriously investigate all instances of violence against journalists, especially in the case of the murder of the editor Elmar Huseynov, and bring to justice those responsible.**
- **Urge the government to comply with the rulings of ECHR, including the recent judgment of the court regarding Eynulla Fatullayev. Ensure that he is released immediately and the new politically motivated charges against him are dropped.**
- Urge investigation of all claims of violence against defendants and deaths in custody, and to bring to justice those agents of the state responsible for this violence.
- Call upon the Azerbaijani government to honour its commitment to release all political prisoners, including journalists imprisoned for political reasons, and to stop using the courts to imprison critics and opponents.
- Call upon the Azerbaijani authorities to implement the Concluding Observation of the UN Committee on Human Rights (August 2009) and the UN Committee against Torture (November 2009).
- Call upon the Azerbaijani authorities to take effective measures to ensure that the Ombudsperson's Office is in practice a functioning, independent body, in compliance with the Paris Principles, relating to the status of national institutions of human rights.
- Remind the Azerbaijani authorities about the recent recommendations made by the Council of Europe's Committee for the Prevention of Torture and urge them to make the reports public.
- Urge the government of Azerbaijan to establish an alternative civil service.

- Call upon the Azerbaijani government to fulfil its obligations relating to national minorities.
- Encourage and facilitate dialogue between the Azerbaijani authorities and independent civil society to discuss major human rights concerns.
- Pay particular attention to the monitoring of the human rights situation in Nakhchivan.
- Urge the Council of Europe Rapporteur on the issue of political prisoners to visit Azerbaijan as soon as possible.
- Call upon the government of Azerbaijan to ensure the full realization of the human rights of IDPs, especially the rights to freedom of expression, assembly and association.
- In all circumstances, remind the Azerbaijani authorities to comply with all of the provisions of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Human Rights and Fundamental Freedoms.

Background

As a member of the Council of Europe, Azerbaijan has committed to respect basic freedoms, human rights and democracy. In spite of this commitment, human rights violations continue to be numerous and widespread and occur on a systematic basis. We welcome the thorough report of the Committee of the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc 12270 31 May 2010. We urge the members of the Parliamentary Assembly of the Council of Europe to adopt the Draft resolution.

President Ilham Aliyev has maintained a certain degree of stability in the country, but mostly by imposing a total crackdown on the political opposition, stifling the independent and opposition media, and curbing fundamental freedoms. Though a semblance of stability exists in the country, the potential for a political crisis is growing year by year as the country slides towards authoritarian rule.

As human rights organisations committed to improving the dire human rights situation in Azerbaijan, we would like to draw your attention in particular to the following challenges in Azerbaijan:

Lack of democracy and division of power. Azerbaijani elections have consistently failed to meet international standards for free and fair elections. The ruling party mobilizes all administrative resources, including police and local government officials, to interfere with the electoral process to ensure its victory. In March 2009, a referendum was held in the country, which lifted the term limits on the presidency, giving President Ilham Aliyev the possibility of remaining in office for life. The Venice Commission said the elimination of the presidential term limit is "a serious setback on Azerbaijan's road to a consolidated democracy." The ruling party is still in control of the electoral administration at all levels. Opposition parties and their members are harassed and marginalized. There is insufficient division of the legislative and executive branches, with Parliament functioning under the control of the Presidential Administration. This lack of balance is to a large extent repeated at the local level.

Upcoming parliamentary elections. The next parliamentary elections are expected to be held

on November 7. We, the undersigning NGOs, are extremely concerned that the forthcoming elections will fail to meet international standards for free and fair elections. The Azerbaijani authorities have so far consistently refused to accept that in order to hold fair elections, there must be a level playing field for all political forces. In order to prove its real commitment to democracy and human rights in Azerbaijan, the government must implement the recommendations of Doc 12270, points 12.1 – 12.7, to ensure the necessary conditions for full compliance with European standards.

A judicial system that does not provide justice. Numerous court cases have demonstrated that the courts have are used as tools for the authorities in their repression of the media, political opposition and civil society. The independence of the courts is further compromised by a lack of professionalism, excessive bureaucratic requirements and corruption in the judiciary, which does not function independently of the executive branch. Dozens of imprisoned persons are considered to be political prisoners in Azerbaijan. Amnesty International considers the editor Eynulla Fatullayev and the bloggers Adnan Hajizade and Emin Milli as prisoners of conscience.

Lack of media freedom and repression of journalists and editors. As underscored in the draft Resolution and the report by the rapporteurs, the authorities' actions to limit media freedom and freedom of expression are alarming. BBC, Radio Liberty and Voice of America (VoA) – lost their licence to air on national radio frequencies in January 2009. These radio stations were the only broadcast media outlets offering a plurality of political views, dissenting voices and alternative information to the Azerbaijani public. The Public TV channel, launched by the government in August 2005 in fulfilment of an obligation to the Council of Europe, is under the government's control and is closed to any views contradicting or criticising government policies. According to the results of monitoring on TV Channels, approximately 90 percent of the TV broadcasting is dedicated to the biased propaganda of the government¹. Recent amendments to the Constitution have restricted the media's right to photograph, film and record individuals without their consent.

Journalists who express critical opinions often become targets for persecution by the authorities. Politically motivated charges such as defamation, drug possession, inciting hatred, and hooliganism are used to imprison government critics. A number of journalists and editors have been arbitrarily imprisoned on spurious charges, after trials widely believed to have been unfair. The editor Eynulla Fatullayev received an eight-and-a-half year prison sentence after being convicted of trumped-up charges of supporting terrorism, inciting hatred, tax evasion, and defamation. Fatullayev remains in prison despite the European Court of Human Rights' (ECHR) ruling in April that he had been wrongfully imprisoned for exercising his right to freedom of expression, that his right to a fair trial was violated, and that he should be immediately released and compensation be paid. The Azerbaijan authorities have questioned the court's authority and have not yet complied with the judgment. Fatullayev now stands trial again, accused of possessing illegal drugs in prison - a charge that ARTICLE 19 believes to be based on fabricated evidence and intended to keep Eynulla Fatullayev in prison. We, the undersigning NGOs, support the call of the draft resolution, echoing the Secretary General of the Council of Europe, Thorbjørn Jagland, to decriminalise defamation and immediate release Fatullayev as ordered by the ECHR.

¹The monitoring of TV Channels was supported by the European Commission.

The widely publicised case of bloggers Adnan Hajizade and Emin Abdullaev (Milli) resulted in respective prison sentences of two and two and a half years on charges of hooliganism in November 2009. The bloggers had been beaten and then detained after appealing to the police as victims. The charges are widely viewed as politically motivated. The Council of Europe Parliamentary Assembly rapporteurs on Azerbaijan called the sentence ‘*a major setback to freedom of expression in Azerbaijan and a serious setback on the country’s path to democratisation*’².

Violent attacks against media representatives are frequent, and the murder of editor and publisher Elmar Huseynov in 2005 is yet to be solved. Since then, numerous independent and pro-opposition journalists have faced abductions, beatings, stabbings and other physical attacks. There have not been fair investigations into any of these attacks, resulting in a climate of impunity for those who perpetrate violence against critics of the government.

Restrictions on freedom of assembly and association. Peaceful opposition demonstrations in the aftermath of the presidential election in 2003 and the parliamentary elections in 2005 were violently dispersed by police. In June 2008, President Ilham Aliyev stated, in an address to the Police Academy, that none of the police officers involved in the violence in October 2003 and November 2005 would be punished.

Since 2005, independent public gatherings have de facto been banned. Recent attempts in April, May and June 2010 to stage peaceful pickets were violently dispersed by police and unidentified plain-clothed authorities. Prior to 30 April, when several youth activists were detained in Baku, police inspections were conducted at the Human Rights House and the Media Rights Center. Dozens of opposition party activists and several journalists were rounded up by police on 12 June and 19 June in peaceful unsanctioned rallies demanding that authorities respect freedom of assembly and improve the pre-election situation.

Over the past two years, many civil society organizations, including religious groups, have been closed down, denied registration, evicted from their offices, and faced with inspections. The adoption of the amendments to the NGO law in June 2009 by the Parliament allows for increased government control over NGOs. According to a decree issued in December 2009, every grant contract should be registered with the Ministry of Justice before any activity will be allowed under the contract. Many groups fear this provision could be used as another tool to interfere with the activities of NGOs working in areas such as democracy and human rights.

The use of torture and violations of the right to life. Torture and ill treatment are widespread practices in police stations and detention facilities. The definition of torture in the Criminal Code does not fully comply with article 1 of the Convention Against Torture despite the recommendations of UN CAT in 2003 and 2009. That prevents the proper identification of cases of torture. Incidents are not investigated appropriately and law-enforcement officers suspected of being responsible for acts of torture, are not prosecuted for ill-treatment, but instead charged with “minor, serious harm to health”. Even after the judgments issued by the ECHR in the Hummatov, Mammadov, Muradova and Garayev cases, the culture of impunity allows the

² <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2261>

perpetrators to go unpunished. The Office of the Ombudsperson lacks the level of independence to be the national institution responsible for investigating complaints of torture and other human rights violations, as well as to serve as the National Prevention Mechanism. The cases of the death in custody of Novruzali Mammadov (August 2009), Faina Kungurova (November 2007) and Mahir Mustafayev (December 2006), state the need for urgent independent medical examinations of suspected cases of ill-treatment treatment in prisons. The UN Committee against Torture expressed its concern about numerous reports of forced confinement of persons for nonmedical reasons in psychiatric hospitals in Nakhchivan.

While UN and ECHR identified several cases of violations of CAT and CPT, the Ombudsman's office failed to disclose even single case during 8 years of work. We, the undersigned are concerned of the ineffectiveness of the Ombudsman's Office as the National Preventive Mechanism under the UN OPCAT.

Repression in the Autonomous Republic of Nakhchivan. In Nakhchivan, political opponents are more harassed than in other regions, and civil society representatives, independent journalists and ordinary citizens face constant intimidation by the authorities and live in conditions of extreme poverty. In the beginning of January 2010, a public protest against police abuse and violence caused a wave of arrests in the village of Bananiyar, where several people were forcibly placed in psychiatric hospitals. Diplomats, journalists and human rights defenders, including the winner of the Rafto Award, journalist Malahat Nasibova, have been denied access to the village by the local authorities. Human Rights Watch characterized the situation in Nakhchivan as "even more severe than in other areas of Azerbaijan".

Denial of the rights of IDPs. There is massive poverty and unemployment among the country's over half a million IDP population, who were displaced as a result of the occupation of Nagorno-Karabakh and seven regions adjacent to it. The Azerbaijani government indeed has attempted to take some steps and adopt national strategies to address these problems, but the IDPs in general have continued to live in poverty and have been more disadvantaged than other Azerbaijani citizens over the past two decades. The persistence of indecent living conditions after so many years reinforces the social marginalization of IDPs. Though Azerbaijan has one of the world's largest per capita IDP populations in the world, the weight, impact and role of IDPs in Azerbaijan's domestic politics is almost invisible. IDPs have considerably little capacity to mobilise politically and are poorly represented in governmental bodies, political parties, the media and NGOs. The IDP settlements remain inaccessible for opposition parties, human rights activists and independent journalists. In all elections, international observers have always observed serious violations and found credible evidence from all IDP settlements that pressure is exerted on them to vote for the candidates favoured by the ruling regime and to stay away from opposition. Government officials continue to view the IDPs as passive objects of policy rather than active bearers of rights.

Denial of the right for conscientious objection. The Constitution provides a right to refuse military service. Azerbaijan is also obliged to create the alternative service under the PACE Opinion 222 (2000) agreed with the Government during accession in Council of Europe. However, the officials oppose the obligation under the pretext of war with Armenia. As result, some conscientious objectors are persecuted in criminal order.

Refusal of adoption of domestic Law on National Minorities. Even though deadlines expired in 2004, the obligations under the Opinion 222 (2000), including ratification of the European Charter for Regional or Minority Languages and adoption of law on national minorities are still not implemented.

The following organizations and persons support this statement:

- Norwegian Helsinki Committee, Norway
- Human Rights House Foundation, Switzerland & Norway
- ARTICLE 19: Global Campaign for Free Expression, UK
- Polish Helsinki Foundation for Human Rights, Poland
- International Federation for Human Rights, FIDH, France
- Rafto Foundation, Norway
- Index on Censorship, UK
- Human Rights Center, Georgia
- Institute for Peace and Democracy, Azerbaijan
- Legal Education Society, Azerbaijan
- Human Rights Center Azerbaijan
- Institute for Reporters' Freedom and Safety, Azerbaijan
- Public Association for Assistance to Free Economy, Azerbaijan
- "Democracy Monitor" Public Union, Azerbaijan
- Women Association for Rational Development (WARD), Azerbaijan
- Media Rights Institute, Azerbaijan
- Association for the Protection of Women's Rights in Azerbaijan after D. Aliyeva, Azerbaijan