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AZERBAIJAN

Beaten, Blacklisted, and Behind Bars

The Vanishing Space for Freedom of Expression in Azerbaijan

HUMAN
RIGHTS
WATCH

Beaten, Blacklisted, and Behind Bars

The Vanishing Space for Freedom of Expression in Azerbaijan

The government of Azerbaijan is engaged in concerted efforts to limit the space for freedom of expression in the country. Senior government officials frequently pursue criminal defamation and other cases against journalists and human rights defenders criticizing the government. Dozens of journalists have been prosecuted and imprisoned or fined. Police and sometimes unidentified assailants are able to physically attack journalists and human rights defenders with impunity, deliberately interfering with their efforts to investigate human rights abuses and other issues of public interest or in retaliation for their work.

Recent legislative amendments restrict journalists' ability to use video, photo or sound recording without the explicit consent of an individual even at public events. The government also banned all broadcasting of foreign radio stations on FM frequencies beginning in 2009.

State antagonism toward independent and opposition media has been a serious problem in Azerbaijan for a number of years. Many journalists and editors regularly resort to self-censorship to avoid criminal prosecutions or other repercussions for critical reporting. Dozens of journalists have fled Azerbaijan in recent years fearing for their safety.

These trends are particularly alarming given the upcoming November 7, 2010 parliamentary elections in Azerbaijan, as vibrant public discourse is crucial for a free and fair vote.

The government of Azerbaijan should take immediate steps to abolish criminal penalties for defamation. They should conduct prompt, thorough, and impartial investigations to end impunity for violence against journalists and human rights defenders. Azerbaijan's international partners should use every opportunity to urge the Azerbaijani authorities to ensure respect for freedom of expression and to release imprisoned journalists.

Baku, Azerbaijan: A plainclothes policeman detains an opposition activist demanding free speech.

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Beaten, Blacklisted, and Behind Bars
The Vanishing Space for
Freedom of Expression in Azerbaijan

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I. Summary & Key Recommendations

The government of Azerbaijan is engaged in concerted efforts to limit the space for freedom of expression in the country. Senior government officials frequently bring criminal defamation and other charges against journalists and human rights defenders criticizing the government. Dozens of journalists have been prosecuted and imprisoned or fined. Police carry out physical attacks on journalists with impunity, deliberately interfering with their efforts to investigate a range of issues of public interest. The vanishing space for freedom of expression is particularly alarming given the upcoming November 7, 2010 parliamentary elections in Azerbaijan, as vibrant public discourse is crucial for a free and fair vote. Azerbaijan has a history of curtailing free speech in the run up to elections, which have overall failed to meet international standards.

The government's campaign has touched upon all forms of media, including broadcast, print, and electronic media. In addition to intimidation of individual journalists, recent legislative amendments restrict journalists' ability to use video, photo or sound recording without explicit consent of an individual even at public events. The government also banned all broadcasting of foreign radio stations on FM frequencies beginning 2009. Media freedoms have also been restricted by the Press Council, a professional association which should function as a self-regulatory body for the press but which regularly publishes a "black list" of newspapers which can serve to hinder newspapers' ability to secure business deals and limits their access to information.

Human Rights Watch has documented restrictions on freedom of expression in Azerbaijan for many years, and has identified an increasingly hostile and narrow space for journalists and others who criticize the government or seek to expose human rights abuses. For this report, Human Rights Watch interviewed 37 print and radio journalists, editors, and a radio station manager, as well as lawyers, other experts, and government officials.

State antagonism toward independent and opposition media has been a serious problem in Azerbaijan for a number of years. At the end of 2007, there were ten journalists in prison. Although as of this writing there are three imprisoned journalists in Azerbaijan, this hardly speaks of an improved media climate, as many journalists and editors regularly resort to self-censorship to avoid criminal prosecutions or other repercussions for reporting critical of the government. At least nine journalists have fled Azerbaijan in recent years out of fear for their safety. Although with one exception the violations documented in this report concerned Baku-based journalists, some evidence suggests that intimidation of provincial

journalists is even more severe, and the corresponding self-censorship of the local press more complete.

Azerbaijan's criminal and civil defamation laws are often used to silence non-violent criticism and opposition views. Criminal defamation prosecutions have often resulted in prison sentences or substantial fines against journalists. According to the Media Rights Institute, a nongovernmental media rights organization in Azerbaijan, government officials initiated 26 criminal cases in the first half of 2010; courts delivered 14 criminal sanctions. In addition, 36 civil defamation claims were filed, of which 30 were successful.

In addition to journalists, Human Rights Watch has documented the authorities' use of criminal defamation charges to silence outspoken representatives of civil society, such as human rights defenders, opposition activists, and public intellectuals. The Ministry of Internal Affairs appears to lead the way in initiating defamation complaints. The most common claim is that the defendants have caused moral damage to the ministry's reputation by giving interviews linking torture, ill-treatment and corruption to the police.

In a number of cases, government officials have brought other criminal charges against journalists to silence them. For example, the authorities used terrorism, incitement to racial, national and religious hatred, as well as tax evasion charges to prosecute the outspoken government critic Eynulla Fatullayev, founder and editor of the two most popular newspapers in Azerbaijan. Fatullayev has been in prison since 2007, serving an eight-and-half-year sentence. In two other cases Ganimed Zahidov, an outspoken editor, and Emin Milli and Adnan Hajizade, young activists who criticized government policies through social media sites were jailed on bogus hooliganism charges after entrapment in staged fights.

Journalists, human rights defenders and others who would publicly criticize the government risk violence, threats, and harassment. In all cases of violence in this report, journalists were attacked as they carried out their professional duties. On occasion those duties included documenting police activity at public demonstrations, when police then detained the journalists and confiscated or deleted video, photo or other materials. Although in all cases documented in this report journalists filed complaints following the attacks, as of this writing, there have been no thorough and impartial investigations and no perpetrators have been held accountable.

The prosecution of journalists and acts of violence committed with impunity has had a chilling effect on journalists and editors, who admit regularly resorting to self-censorship out of fear of potential legal or physical repercussions for articles criticizing the government. As

a result, many journalists and editors avoid reporting on certain topics altogether and limit investigative reporting, particularly on issues concerning the government. This in turn impinges upon the rights of Azerbaijan's citizens to receive information.

Besides the legal and physical intimidation, a set of legislative amendments and executive decisions have further restricted freedom of expression. March 2009 constitutional amendments placed severe restrictions on the ability of journalists to use video or other recording devices, even in public spaces. Also as of 2009, the government banned foreign radio broadcasting on FM frequencies. As a result, the BBC, Voice of America and Radio Free Europe/Radio Liberty, were pulled off the air, eliminating important news sources for many radio listeners. The government also exercises full control over broadcast frequencies by directly appointing the members of the regulatory state authority, National Television and Radio Council.

The Press Council, ostensibly a membership-based, self-regulatory body for print media, regularly publishes a "black list of racketeering newspapers" allegedly meant to reprimand newspapers that have breached ethical journalism standards. The black list currently contains 8 newspapers. At least some blacklisting designations appear to be politically-motivated. Although the Press Council lacks a formal enforcement mechanism, in practice, state and non-state institutions, including publishing companies refuse to enter into business dealings with or provide information to blacklisted newspapers. In some cases, blacklisting has led to the closure of media outlets.

Under international law, and as a state-party to both the European Convention on Human Rights and the International Covenant on Civil and Political Rights, the Azerbaijani government has specific legal obligations to protect the right to freedom of expression. International human rights law recognizes freedom of expression as a fundamental human right, essential both to the effective functioning of a democratic society and to individual dignity. While international human rights law allows for restrictions on freedom of expression to protect the reputation of others, such restrictions must be narrowly defined to serve a legitimate purpose and be demonstrably necessary in a democratic society. European Court of Human Rights case law demonstrates that criminal penalties for libel are a disproportionate government response, particularly for speech about issues of public interest or public figures. That politicians and other public figures are expected to tolerate, as a matter of law, wider and more intense scrutiny of their conduct is well established in international human rights law.

For many years, and particularly since Azerbaijan became a member of the Council of Europe (CoE) in 2000, it has been receiving international assistance from multilateral and bilateral donors to meet its commitments on free expression. As an accession commitment to the CoE Azerbaijan undertook to protect fundamental rights and freedoms, including “to guarantee freedom of expression and the independence of the media and journalists.” Azerbaijan's international partners have been critical of Baku’s efforts to meet its commitments, but the criticisms appear to have had little impact on these actors’ relationships with Azerbaijan. Azerbaijan’s international partners should impose clear benchmarks for improvements on human rights violations if the international community is to succeed in persuading Baku to respect its freedom of expression commitments.

The government of Azerbaijan should take immediate steps to abolish criminal penalties for defamation and to initiate legislative amendments transferring the defamation provisions from the Criminal Code to the civil law domain. The Civil Code should also be amended to establish a reasonable monetary cap on damages in civil defamation suits.

The authorities should conduct prompt, thorough, and impartial investigations to end impunity for violence and threats of violence against journalists and human rights defenders. The investigations should be capable of leading to prosecution of the assailants, as required by Azerbaijan’s international obligations.

The government should also ensure diversity of media outlets, abolish unnecessary restrictions on access to information and the practice of professional journalism, and allow foreign media broadcasts in Azerbaijan. They should discourage the publication and dissemination of the “black list of racketeering newspapers” and encourage the development of an ethics code for journalists.

The government should also take immediate steps to ensure the ability of journalists and human rights defenders to freely express opinions and disseminate information in the run-up to the November 2010 parliamentary elections. This will be a key step in preventing some of the same serious flaws that have hindered free and fair elections in Azerbaijan in previous years.

II. Methodology

Human Rights Watch has conducted research on freedom of expression in Azerbaijan for many years. This report is based primarily on in-depth interviews by Human Rights Watch researchers in Azerbaijan in June 2010. Researchers conducted follow-up telephone interviews and desk research through October 2010. Human Rights Watch interviewed over 40 print and radio journalists, editors, and a radio station manager. Researchers also interviewed human rights defenders, lawyers and academics with expertise in media and freedom of expression, government officials and political party activists.

Human Rights Watch identified the victims and witnesses of abuses with the assistance of Azerbaijani nongovernmental organizations, as well as through media reports. In some cases, journalists provided Human Rights Watch with their colleagues' contact information.

Interviews were conducted in English and Russian by Human Rights Watch researchers who are fluent in both languages. Some interviews were conducted in Azeri, during which a translator for Human Rights Watch (a native speaker of Azeri) translated into English and Russian. In a few instances the names of interviewees have been withheld at their request and out of concern for their security.

Although with one exception the violations documented in this report concerned Baku-based journalists, some evidence suggests that intimidation of provincial journalists is even more severe, and the corresponding self-censorship of the local press more complete.

Prior to this research, Human Rights Watch documented deteriorating media freedoms in Azerbaijan for many years, reacting to various events and incidents as they took place, by conducting telephone interviews with victims and witnesses, as well with lawyers and human rights defenders. We issued several press releases and wrote letters to President Ilham Aliyev and his ministers on several occasions, urging them to investigate violence against journalists, calling for fair trials of those charged with defamation and other spurious criminal charges, and asking them to decriminalize libel.¹

In July 2007 Human Rights Watch Executive Director Kenneth Roth travelled to Azerbaijan to hold high-level government meetings, including with the ministers of internal affairs, justice,

¹ To read Human Rights Watch letters, press releases and other reporting on Azerbaijan, please visit <http://www.hrw.org/en/europecentral-asia/azerbaijan>.

and foreign affairs, the prosecutor general and the head of the presidential administration, urging them to release imprisoned journalists and take immediate steps to bring Azerbaijan in line with its international obligations.

In August 2010 Human Rights Watch sent letters to the Azerbaijani minister of internal affairs, the prosecutor general and the head of the presidential administration to obtain their response to the findings documented in this report as well as relevant data, including statistics on the frequency of criminal defamation prosecutions, and information on steps they have taken to address deteriorating media freedoms in the country.

Human Rights Watch received a response from the Ministry of Interior and Prosecutor General's Office.

Human Rights Watch letters and the responses from the government can be found in the appendix to this report.

III. Background

Azerbaijan's Political Landscape

Azerbaijan is an oil-rich country located in the South Caucasus, with a population of 8.3 million.² Although Azerbaijan gained independence from the Soviet Union in 1991, it abolished official state censorship of the media only in 1998. After an initial outburst of relatively unrestrained reporting in the years following the abolition of censorship, the state has used other, less obvious means such as harassment, regulations and restrictions on access to information, to restrict freedom of expression and the media. Periodic political events, most notably elections, are usually accompanied by even greater restrictions, as the authorities demonstrate even less tolerance for criticism. As the November 7, 2010 parliamentary elections approach, current restrictions on freedom of the press and expression, if allowed to continue, are likely to negatively affect the elections' freedom and fairness.

Many hoped that the October 2003 election of Ilham Aliyev to the presidency that his late-father, Heydar, had held almost from independence, would mark a new era of democracy and respect for human rights in the country.³ However, 2003 presidential and 2005 parliamentary elections proved that those expectations were premature. Vote fraud, pre- and post-election police violence, intimidation of opposition supporters and others marred both elections.⁴

President Ilham Aliyev was re-elected in October 2008 in a poll that was boycotted by the opposition and failed to meet Azerbaijan's international commitments.⁵ In February 2009 a popular referendum initiated by President Aliyev amended the constitution to lift the two-term limit on the tenure of the presidency. Many local and international observers believe that this has simply cleared the way for President Aliyev to remain in office indefinitely.⁶

² "Azerbaijan," CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html> (accessed August 17, 2010)

³ "Crushing Dissent: Repression, Violence and Azerbaijan's Elections," Human Rights Watch report, January 2004, Vol. 16, No.1(D), <http://www.hrw.org/en/reports/2004/01/22/crushing-dissent> (accessed August 17, 2010).

⁴ "Azerbaijan: Presidential Elections 2003," Human Rights Watch Briefing Paper, October 13, 2003, <http://www.hrw.org/en/reports/2003/10/13/azerbaijan-presidential-elections-2003> (accessed August 17, 2010); "Azerbaijan Elections and After," Human Rights Watch Briefing Paper, November 18, 2005, <http://www.hrw.org/legacy/background/eca/azerbaijan1105/index.htm>, (accessed August 17, 2010).

⁵ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Statement of Preliminary Findings and Conclusions Presidential Election Azerbaijan, October 2008, http://www.osce.org/documents/odihr/2008/10/34414_en.pdf, pg 1 (Accessed 16 October 2010).

⁶ Human Rights Watch World Report 2010, covering the events of 2009, Azerbaijan Chapter, <http://www.hrw.org/en/world-report-2010/azerbaijan> (accessed August 17, 2010).

Neither the parliament nor the judiciary counterbalances Azerbaijan's dominant presidency. The judiciary depends heavily on the executive and fails to provide effective recourse against violations of basic rights.⁷ The ruling Yeni Azerbaijan Party (YAP) dominates the parliament (Milli Mejlis), which has limited powers at any rate, largely serving to pass legislation proposed by the government.⁸ The opposition holds only a handful of the parliament's 125 seats.⁹

Elections in the country since independence have fallen far short of international standards. This pattern seems likely to persist into 2010, not least because of pre-election conditions that do not allow the electorate to make a free and fully informed choice at the polls. The Organization for Security and Co-operation in Europe (OSCE) released a needs assessment report in advance of the November 2010 parliamentary elections which noted some improvement in technical organization, but expressed concern that "freedom of assembly is very limited in practice, as political parties are routinely denied permission to assemble, particularly in central Baku. Detentions, defamation lawsuits and other forms of pressure on journalists constrain freedom of the media in Azerbaijan and create an atmosphere that is not conducive to the free expression of ideas inherent in a democratic election process."¹⁰

Media in Azerbaijan

The media landscape in Azerbaijan is not pluralistic and is largely politicized.¹¹ Television broadcast media represents the largest media sector in the country, but most television stations are either state-run or owned by people with close ties to the government. In contrast to broadcast, print media enjoy unlimited market entry, but most print publications have limited circulation. In the past few years online media have turned into an increasingly viable source of information, but its penetration is limited outside of the capital Baku. While

⁷ Freedom House, "Nations in Transit 2010," Azerbaijan chapter, <http://www.freedomhouse.org/images/File/nit/2010/NIT2010Azerbaijanfinal1.pdf> (accessed August 18, 2010).

⁸ Azerbaijan's opposition is marginalized as a result of many years of restrictions on assembly, harassment of political figures, ruling-party incumbents' abuse of institutional resources, and other violations during election periods. In advance of the 2005 Parliamentary elections, three opposition parties – the Popular Front Party (PFP), the Musavat Party and the Azerbaijan Democratic Party (ADP) for the first time created a block, Azadlig [Freedom], but failed to achieve notable success, not least because of restrictions on their ability to campaign and election-day violence and fraud. See "Azerbaijan Elections and After," Human Rights Watch Briefing Paper, November 18, 2005, <http://www.hrw.org/legacy/backgrounder/eca/azerbaijan1105/index.htm>, (accessed August 17, 2010).

⁹ There are a number of nominally independent members of parliament who are believed to be closely affiliated with the government. "Nations in Transit," p. 87.

¹⁰ OSCE/ODHIR, "Republic of Azerbaijan Parliamentary Elections, 7 November 2010," Needs Assessment Mission Report, June 21-24, 2010, p.1., http://www.osce.org/documents/odihr/2010/07/45274_en.pdf (accessed August 17, 2010).

¹¹ European Journalism Center, "Media Landscape – Azerbaijan," http://www.ejc.net/media_landscape/article/azerbaijan/ (accessed August 19, 2010). For general background see also, Reporters Without Borders, "Press Freedom Index," 2009, <http://en.rsf.org/report-azerbaijan,91.html> (accessed August 19, 2010).

online media is largely free from government censorship, the authorities have expressed the desire to regulate it.¹²

Broadcast Media

Television represents Azerbaijan's largest media sector, reaching the widest audience.¹³ Because the government exercises full control over broadcast licenses via the National Television and Radio Council (NTRC), the licensing of broadcast media remains highly political in Azerbaijan.¹⁴ The NTRC consists of nine members appointed directly by the president, and is fully funded from the state budget.¹⁵ There are no legal guarantees of its independence.¹⁶

The country has eight national, fourteen regional and thirteen cable television stations.¹⁷ The fact that the government controls the licensing process through the composition of the regulating authority ensures that most stations (with the exception of ANS TV) have close ties to the government, and those ties determine the nature of content that is broadcast.¹⁸ "Free Waves," a 20-month study monitoring television broadcasting supported by the European Commission, concluded that Azerbaijan's television networks devoted most news coverage to President Aliyev, his government, and the ruling party. State-run AzTV, for

¹² Mina Muradova, "Azerbaijani Government Pondering Ways to Control the Web," *EurasiaNet*, March 13, 2010, <http://www.eurasianet.org/node/61060> (accessed August 17, 2010).

¹³ IREX, "Media Sustainability Index 2010: the Development of Sustainable Independent Media in Europe and Eurasia," http://www.irex.org/programs/MSI_EUR/2010/EE_MSI_2010_Azerbaijan.pdf (accessed August 17, 2010), p. 128.

¹⁴ The NTRC shares responsibility for regulating the media with other executive bodies, including the Cabinet of Ministers, Ministry of Information Technologies, Ministry of Economic Development, Ministry of Health, and the State Commission on Radio Frequencies.

¹⁵ Direct presidential appointment of all the members of the NTRC and the lack of public deliberation during the appointments process is inconsistent with the recommendation from the Council of Europe's Committee of Ministers on the independence of regulatory authorities which was adopted to ensure member States would "guarantee the regulatory authorities for the broadcasting sector genuine independence." Amongst a number of measures to ensure independence of the authorities, the recommendation specifically notes that the rules governing membership of regulatory authorities in the broadcasting sector should be defined [t]o protect them against any interference, in particular by political forces or economic interests." The recommendation calls for specific rules to avoid regulatory authorities being under the influence of political power and to guarantee that the members of the authorities are appointed in a democratic and transparent manner. Committee of Ministers Recommendation Rec(2000)23 On The Independence and Functions of Regulatory Authorities for the Broadcasting Sector, adopted by the Committee of Ministers on December 20, 2000, <https://wcd.coe.int/ViewDoc.jsp?id=393649&Lang=en> (accessed August 23, 2010).

¹⁶ Media Rights Institute, "Legal Challenges to Mass Media, Annual Report 2008," Baku, January 2009, <http://www.mediariights.az/index.php?id=20&lngs=eng> (accessed August 19, 2010).

¹⁷ A. Huseynbala, "NTRC chairman: Claims for non-allocation of free TV and radio frequencies groundless," Trend News Agency, April 6, 2010, <http://en.trend.az/news/society/media/1664042.html> (accessed August 19, 2010). Television stations with national coverage are AzTV, iTV, ANS TV, Space TV, Lider TV, ATV, Khazar TV, and Sport TV. Media Rights Institute, "Legal Status of Mass Media in Azerbaijan: Half-year Report January-June 2010," http://www.mediariights.az/docs/half_year_report_2010_Azerbaijan_MRI.pdf (accessed August 17, 2010), p. 13.

¹⁸ IREX, "Media Sustainability Index 2010," p. 130.

example, devoted 98 percent of its political coverage to these subjects, portraying them in a positive light.¹⁹

ANS TV, Azerbaijan's most popular and longest-running independent television station, has faced licensing problems in the past. In November 2006, the NTRC refused to extend the channel's broadcast license without giving any explanation. The government subsequently confiscated ANS's equipment and annulled accreditation for all ANS journalists.²⁰ In April 2007, under immense international pressure ANS's license was extended for six years, but as a result of the licensing ordeal, ANS's content now appears to be prone to self-censorship.²¹

There are thirteen radio stations operating in Azerbaijan,²² and following the 2009 government ban on broadcasts from the BBC, Radio Liberty/Radio Free Europe (Radio Azadlıq), and the Voice of America,²³ as described later in this report, the diversity of options has been significantly reduced.

Print Media

Print media in Azerbaijan are mainly divided between vehicles of the government and of opposition parties with only an isolated few independent, unaffiliated papers published.²⁴ Unlike broadcast media, print media theoretically enjoy unlimited market entry, but generating sufficient revenue to sustain their presence has proved more challenging for independent and opposition publications.²⁵ The majority of independent or pro-opposition

¹⁹ US State Department, Bureau of Democracy, Human Rights, and Labor, "2009 Human Rights Report: Azerbaijan," March 11, 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136020.htm> (accessed August 17, 2010).

²⁰ The closure of ANS came after the station had been subjected to a year-round tax inspection and had been fined US\$500,000 allegedly for tax evasion. Letter from Human Rights Watch to President Aliiev, Azerbaijan, February 8, 2007, <http://www.hrw.org/en/news/2007/02/08/letter-human-rights-watch-president-aliev>.

²¹ Human Rights Watch, World Report 2008, covering the events of 2007, Azerbaijan Chapter, <http://www.hrw.org/englishwr2k8/docs/2008/01/31/azerbai17742.htm>. Azerbaijani experts have indicated to Human Rights Watch that ANS news and debate show content appears less critical and more prone to self-censorship. Human Rights Watch interviews, Baku, June 2-5, 2010.

Media Rights Institute, "Half-year Report January-June 2010," p. 13.

²³ US State Department, "2009 Human Rights Report: Azerbaijan," March 11, 2010.

²⁴ The main newspaper, Azerbaijan, is the official state publication founded by the Milli Mejlis (parliament). Closely associated pro-government newspapers include Khalg Gazeti [The People's Newspaper], established by the Presidential Administration; Yeni Azerbaijan [New Azerbaijan], owned by the ruling party, Respublika [Republic], and Milkiyyet [Property]. In addition, each of the nearly 80 administrative districts in Azerbaijan has a state-funded newspaper. Opposition newspapers include Azadlig [Liberty]; established by the opposition Popular Front Party, Yeni Musavat [New Equality] established by the opposition Musavat party; Baki-Zaman [Baku Times], Bizim Yol [Our Way], and others. There are also some independent newspapers available, such as Ayna-Zerkalo [Mirror], and Ekho [Echo]. European Journalism Center, "Media Landscape – Azerbaijan."

²⁵ Azerbaijani legislation allows newspapers to launch operations five days after submitting registration documents to the Ministry of Taxation and a letter of intent to the Ministry of Justice. In reality, however, it often takes up to three weeks for the Ministry of Justice to issue a certificate of registration, required for newspaper publication and distribution. IREX, "Media Sustainability Index 2010," p. 131.

newspapers rely almost exclusively on revenue generated from subscriptions and individual sponsorships, rather than advertising.²⁶ Private businesses are wary of advertising in independent or pro-opposition newspapers, out of fears of possible retaliation by the government.²⁷ Since early June 2010, the government has placed restrictions on street newspaper vending in central Baku, banning them from selling papers in central streets, allegedly for aesthetic and sanitary reasons, which has further limited newspapers' distribution and revenues.²⁸

Many pro-government newspapers benefit from mandatory subscription by government agencies.²⁹ As a result, official and pro-government newspapers constitute an overwhelming percentage of print media as a whole. However, *Yeni Musavat*, an independent opposition newspaper, continues to enjoy one of the highest circulations, selling about 12,000 copies daily nationwide.³⁰

Online Media

A lack of independent media outlets in Azerbaijan has made the internet an increasingly important source of information. According to International Telecommunication Union statistics for 2010, approximately 44 percent of Azerbaijan's inhabitants use the internet.³¹ The young especially have turned to social networking sites such as Facebook and Twitter, including for news.³² Outside of Baku, however, access to the internet is far less widespread and the connection is often very slow and expensive.³³

²⁶ IREX, "Media Sustainability Index 2010," p. 136.

²⁷ Ibid. The one notable exception is Azercell, the mobile communications giant, who advertises with some opposition papers.

²⁸ The Institute for Reporters' Freedom and Safety (IRFS) maintains that the street vendors are working in accordance with the law and have been issued the requisite licenses. IRFS, "Street Newspaper Vending Banned in Central Streets," June, 10, 2010.

²⁹ IREX, "Media Sustainability Index 2010," p. 137.

³⁰ Ibid., p. 128; Human Rights Watch interview with Rauf Arifoglu, editor-in-chief of *Yeni Musavat*, Baku, June 2, 2010. According to distribution companies, *Yeni Musavat* was the only paper that continued to work with profit in the absence of any advertising. IREX, "Media Sustainability Index 2010," p. 136.

³¹ International Telecommunications Union, <http://www.internetworldstats.com/asia/az.htm> (accessed August 17, 2010).

³² In a particularly striking example, citizen journalists live-blogged the trial of Emin Milli (Abdullayev) and Adnan Hajizade from within the courtroom, sending frequent updates that far outstripped the coverage of more traditional media outlets. See more on this case below. Luke Alnutt, "Azerbaijan's Donkey Bloggers Are Just the Beginning," RFE/RL, July 8, 2010, http://www.rferl.org/content/Azerbaijans_Donkey_Bloggers_Are_Just_The_Beginning/2094553.html (accessed August 17, 2010).

³³ According to the Azerbaijan Internet Forum, 95 percent of Azerbaijan's Internet users still have low-quality dial-up, and only 5 percent had access to ADSL services. IREX, "Media Sustainability Index 2010," p. 135.

Many print publications in Azerbaijan also have online versions. Some of the most popular online news sources include *Turan*, *APA* and *Day.Az* news agencies.³⁴ The Azerbaijan State Telegraph Agency is the official online news source.³⁵ While bloggers and other internet media continue to develop in Azerbaijan, they are not yet seen as full-scale alternatives to traditional media sources.³⁶ The conviction of two bloggers, Adnan Hajizade and Emin Milli, described in more detail below, was seen by many as a warning signal to the online media community about consequences they might face for critical reporting. The warning was amplified by the government suggestions that it might introduce laws to regulate the internet. According to Tohid Aliyev, an attorney for the NTRC, “there is no doubt, electronic media should be under control.”³⁷

³⁴ www.turan.az, <http://az.apa.az>, www.day.az.

³⁵ www.azertag.com.

³⁶ REX, “Media Sustainability Index 2010,” p. 134.

³⁷ Mina Muradova, “Azerbaijani Government Pondering Ways to Control the Web,” March 13, 2010, <http://www.eurasianet.org/node/61060> (accessed August 17, 2010).

IV. Prosecution of Journalists and Human Rights Defenders

The Azerbaijani authorities, including senior government officials, regularly bring criminal and civil defamation complaints against journalists and, in some cases, human rights defenders who criticize the government. Human Rights Watch has documented cases in which the authorities brought other criminal charges, including for terrorism or incitement to racial, national and religious hatred, against outspoken journalists and editors. In two remarkably similar cases, unknown persons have initiated fights with journalists, apparently to provide grounds to bring bogus hooliganism charges against them. Criminal defamation and other prosecutions often result in prison sentences or substantial fines.

4.1 Criminal and Civil Defamation Cases against Journalists, Human Rights Defenders, and Other Government Critics

In the past several years, state officials have brought dozens of defamation charges against journalists, human rights defenders and others who criticize the government. According to the Media Rights Institute, a nongovernmental organization in Azerbaijan, government officials initiated 26 criminal defamation cases in the first half of 2010; courts delivered 14 criminal sanctions. In addition, 36 civil defamation claims were filed, of which 30 were successful.³⁸

The Azerbaijani government uses criminal defamation laws to undermine the work of journalists and human rights defenders who bring information about human rights violations to the attention of the public or who otherwise work to secure accountability for human rights violations in Azerbaijan. Pursuit of legal cases, in particular criminal cases, against those who report on or broadcast on issues of public interest is a cynical attempt by government to impose censorship. Use of criminal defamation by government officials in this manner violates Azerbaijan's international legal obligations with respect to freedom of expression, as described in more detail below.

The Ministry of Internal Affairs appears to be particularly active in initiating criminal defamation complaints against journalists, editors, and human rights defenders. The most

³⁸ Media Rights Institute (MRI), "Half Year Report: January-June 2010." In 2009, 32 criminal complaints were filed under the private prosecution procedures, resulting in conviction of 10 journalists. Besides, 39 civil claims were initiated, and 31 of them were partially satisfied. MRI, "Legal Status of Mass Media in Azerbaijan, Annual Report – 2009", <http://www.mediarights.az/docs/MRI-Annual%20Report%20on%20Status%20of%20Mass%20Media%20Azerbaijan%20-%202009.pdf> (accessed September 21, 2010). In 2008, Azerbaijani courts heard 63 criminal and civil defamation complaints against media representatives, 49 of them were filed by state officials. MRI, "Legal Challenges to Mass Media, annual Report – 2008", http://www.mediarights.az/docs/Annual_report_%202008.pdf (accessed September 21, 2010.)

common claim is that the defendants have caused moral damage to the ministry's reputation by linking torture, ill-treatment and corruption to the police.

The Azerbaijani government should take immediate steps to repeal its criminal libel laws and instruct its officials to refrain from filing defamation complaints in their capacity as public officials or on behalf of the institutions they serve. It should also secure the release of journalists and activists prosecuted and serving custodial sentences on spurious criminal charges.

Relevant Laws of Azerbaijan

Freedom of Expression under Azerbaijan's Constitution

Azerbaijan's constitution protects freedom of opinion and speech and freedom of the mass media. Article 47 states that "[e]veryone has the freedom of thought and speech. Nobody may be forced to identify or refuse his ideas and principles. Propaganda inciting racial, ethnic or religious animosity or hostility is inadmissible." Article 50 provides that "[e]veryone is free to look for, acquire, transfer, prepare, and distribute information," and that "[f]reedom of mass media is guaranteed. State censorship in mass media, including press, is prohibited."³⁹

Criminal Defamation Laws

Most states have adopted some form of defamation law to protect individuals from unwarranted attacks on their reputations. Some only have civil defamation laws, meaning that individuals who believe they have been defamed may have access to a judicial remedy, but as a private actor, on their own initiative.⁴⁰ If an individual is found guilty of civil defamation, he may be required to pay compensation to the defamed party or to take other measures such as publicly retracting the defamatory statement. Other states, including Azerbaijan, have both criminal and civil defamation laws.

Article 147 of the Criminal Code of Azerbaijan prohibits defamation, defined as: "dissemination, in a public statement, publicly exhibited work of art or through the mass media, of knowingly false information discrediting the honor and dignity of a person or damaging his or her reputation...", which can result in a prison sentence of up to six months

³⁹ Constitution of the Republic of Azerbaijan, adopted November 12, 1995, arts. 47 and 50.

⁴⁰ These states include the United Kingdom, New Zealand, Papua New Guinea, the Maldives, Ukraine, Georgia, Romania, Cyprus, Ghana, and Lesotho. See Article 19, Defamation Mapping Tool, <http://www.article19.org/advocacy/defamationmap/map/> (accessed October 15, 2010).

or other penalties.⁴¹ Part 2 of article 147 prohibits “[d]efamation by accusing [a person] of having committed a serious or especially serious crime,” and is punishable by imprisonment for a term up to three years.⁴²

Article 148 defines the crime of slander as the “deliberate humiliation of the honor and dignity of a person, expressed in an obscene manner in a public statement, publicly exhibited work of art or in mass media,” and envisages sanctions of up to six months imprisonment.⁴³ The Criminal Code also envisages a special provision protecting the honor and dignity of the president.⁴⁴ Human Rights Watch has not documented cases of prosecutions based on this article.

An additional feature of criminal defamation provision in Azerbaijan is that it allows for a “private prosecution procedure.”⁴⁵ This procedure allows private individuals to directly apply to the court, without the involvement of the police or the prosecutor’s office, to initiate prosecutions against individuals for defamation and seek criminal sanctions, including imprisonment. In all cases documented by Human Rights Watch in this report, criminal defamation charges were initiated by means of the private prosecution procedure.

Civil Defamation Law

Azerbaijan’s civil code grants individuals the right to recover damages caused by the “dissemination of information harming the honor, dignity or business reputation of a natural person.”⁴⁶ In a May 2002 decision, Azerbaijan’s Constitutional Court confirmed that trial court judges enjoy discretion to award damages, and while it set no financial parameters, it ruled that judges should “take into account the character and degree of moral and physical suffering as well as the guilt of the respondent, his/her financial position and other important aspects.”⁴⁷ In practice, however, civil libel suits brought against journalists and

⁴¹ “Defamation... shall be punishable by a fine in the amount of one hundred to five hundred conditional financial units, or by community service for a term of up to two hundred and forty hours, or by corrective labor for a term of up to one year, or by imprisonment for a term of up to six months. Criminal Code of Azerbaijan, art. 147.

⁴² Criminal Code of Azerbaijan, January 1, 2005, art. 147.

⁴³ Ibid., art. 148.

⁴⁴ Article 323 of the criminal code criminalizes “humiliation of honor and dignity of the President of the Azerbaijan Republic in public statement, publicly shown product or mass media,” which is punishable by up to two years imprisonment. Criminal Code of Azerbaijan, article 323, part.1. The same acts combined with “an accusation of committing a serious or especially serious crime” are punishable by up to five years imprisonment. Criminal Code of Azerbaijan, art. 323, part 2.

⁴⁵ Criminal Procedure Code of Azerbaijan, July 14, 2000, № 907-IG, arts. 12.2 and 88.

⁴⁶ Article 23 (4) of the Civil Code of the Republic of Azerbaijan. Article 23 (4) reads in full: “Where information harming the honor, dignity or business reputation of a natural person is dissemination, such person has the right to recover damages caused by such dissemination and obtain a declaration that the information is untrue.”

⁴⁷ Ibid.

others often result in crippling high fines, which can sometimes amount to many times a person's average monthly salary.

Cases brought by Azerbaijan's Ministry of Internal Affairs

This report documents six cases in which Ministry of Interior officials filed criminal defamation lawsuits against journalists or human rights defenders in the last three years. The Minister of Internal Affairs, Ramil Usubov, was the plaintiff in three of these cases.

Criminal defamation case against Leyla Yunus

In early 2009, Minister of Internal Affairs Ramil Usubov filed a criminal defamation complaint against Leyla Yunus, director the Institute for Peace and Democracy, a non-governmental human rights organization based in Baku. Yunus was monitoring the trial of several men accused of kidnapping two young sisters in 2005. One of the defendants confessed to the crime and also implicated the head of a local police department in the kidnapping. At trial, the defendant said that the police tortured him to compel him to withhold testimony about the alleged police involvement.

In an interview published on the *Day.Az* website in December 2008, Yunus noted that the court had delayed in summoning the accused officer to give evidence and that the defendants' accusations of torture in custody were ignored. She made a brief comparison to police practices in Mexico and Nigeria, and mentioned a prior kidnapping case in which several Ministry of Internal Affairs officials, including a deputy minister, were found guilty and sentenced to long prison terms.

Usubov's complaint against Yunus, filed on behalf of the Ministry of Internal Affairs as an institution, alleged that Yunus had "groundlessly" insulted the ministry during an ongoing investigation and that her comparison of the country's police force to those in Mexico and Nigeria was "not confirmed by official sources" and had caused moral damage to the "professional reputation" of the Azerbaijani police.⁴⁸ The Ministry of Internal Affairs dropped the case in February 2009, apparently as a result of immense international pressure.

Criminal defamation case against Ayyub Karimov

In October 2009, Minister of Internal Affairs Usubov initiated a slander complaint against Ayyub Karimov, a practicing lawyer and editor-in-chief of the *Femida* 007 newspaper.

⁴⁸ Human Rights Watch has on file the unofficial Russian translation of the lawsuit filed against Ms. Yunus.

Karimov had given an interview to the opposition daily newspaper *Azadlig* [Freedom], in which he expressed his opinion that the Ministry of Internal Affairs had become a “nest” for criminals.⁴⁹ In February 2010, the Yasamal District Court convicted Karimov of slander. The court ordered Karimov to pay a fine of 15 percent of his monthly salary for 18 months as well as legal costs. Karimov told Human Rights Watch:

The case was brought under article 147, part 2 “[d]efamation by accusing [a person] of having committed a serious or especially serious crime”. In my commentary to *Azadlig* I didn’t identify the names of any individual. It wasn’t a personal insult against the minister. ... I expressed my opinion after a group of criminals and kidnappers had been arrested in the Ministry [of Internal Affairs]. Present counter-arguments, and if I am proved wrong, then ask me to refute my words by publishing a retraction. But imprisonment is simply retaliation.⁵⁰

Both Karimov and Minister of Internal Affairs Usubov appealed the sentence, Usubov on the grounds that the lower court should be ordered to issue a harsher sentence against Karimov.⁵¹ In October the Court of Appeals upheld the decision.⁵²

Criminal defamation cases against Sardar Alibeili and Faramaz Novruzoglu

Sardar Alibeili, editor-in chief, and Faramaz Novruzoglu, reporter at the *Nota* [Note] newspaper have also each been convicted twice for defamation, including in a case brought by Minister of Internal Affairs Usubov in 2006. Usubov brought criminal defamation charges against Novruzoglu and Alibeili, claiming that a series of articles written by Novruzoglu alleging corruption in the Ministry of Internal Affairs defamed and insulted him personally. A court convicted Novruzoglu and Alibeili of criminal libel in January 2007 and sentenced Novruzoglu to two and a half years in prison. Alibeili was fined 20 percent of his income for 18 months. On December 28, 2007, after serving nearly 12 months of his sentence, Novruzoglu was released under a presidential pardon. Alibeili paid the designated fine for nine months until he was pardoned. Alibeili told Human Rights Watch that the fine had a significant impact on him and his ability to support his family, including a child with disabilities.⁵³

⁴⁹ Human Rights Watch interview with Ayyub Karimov, Baku, June 2, 2010.

⁵⁰ Human Rights Watch interview with Ayyub Karimov, Baku, June 2, 2010.

⁵¹ Ibid.

⁵² Human Rights Watch telephone interview with Ayyub Karimov, October 18, 2010.

⁵³ Human Rights Watch interview with Sardar Alibeili, Baku, June 5, 2010.

Most recently, in 2009, the chairman of a local pro-government organization, Azadlyg Harakatchilari [Freedom Movement], brought criminal charges against Alibeili and Novruzoglu, alleging that he had been insulted in six articles published in *Nota*, which accused the group and its chairman of being government mouthpieces. A court convicted Alibeili and Novruzoglu in July 2009 and sentenced them each to three months in prison. The decision was upheld on appeal in October 2009.⁵⁴ Alibeili and Novruzoglu served their full sentences.

Criminal slander complaint against Muzaffar Bakhishov

Other officials in the Ministry of Interior have also brought criminal complaints against critics. For example, on May 19, 2010 Mirjafar Seidov, the head of the Ministry of Internal Affairs Organized Crime Department, filed a criminal complaint against Muzaffar Bakhishov, a practicing lawyer and trial monitor for the Organization for Security and Co-Operation in Europe (OSCE). Seidov claimed that Bakhishov had insulted him in an interview in which he stated that, based on his experience monitoring criminal trials in Azerbaijan, detainees are tortured in the custody of the Organized Crime Department.⁵⁵ The case is pending with the Yasamal District Court. Bakhishov told Human Rights Watch that he links the charges against him directly to his activities as a human rights defender and government critic: “I often criticize the government in my interviews. I guess my turn has come and I fear they are preparing grounds for my incarceration.”⁵⁶

Defamation Cases Brought by Other Officials

Human Rights Watch also documented four cases in which other officials or entities, including Ramiz Mehdiyev, the head of the Presidential Administration, officials from the Ministry of Education, as well as ruling party parliamentarian Jalal Aliyev, have brought criminal and civil defamation charges against journalists and, in one case, a mathematics professor who criticized the Ministry of Education.

Civil defamation complaint against the *Khural* newspaper

In June 2010, Ramiz Mehdiyev, the head of the Presidential Administration, brought a civil defamation complaint against the *Khural* [Supreme Council] independent weekly newspaper, seeking protection of his honor and dignity and compensation for non-pecuniary damages.

⁵⁴ Ibid.

⁵⁵ The article was published in the newspaper Azadlig [Freedom] on May 4, 2010. Human Rights Watch interview with Muzaffar Bakhishov, Baku, June 4, 2010.

⁵⁶ Ibid.

Mehdiyev's complaint was that an article published on May 23, 2010 alleged that he had sought to prevent Bakhtiyar Vahabzadeh, a famous Azerbaijani poet, from being elected to Parliament.⁵⁷

On July 2, 2010, the court ordered *Khural* to publish an apology for harming Mehdiyev's honor and dignity and levied a fine of 10,000 AZN (approximately US\$12,430) to be transferred to an orphanage in Baku, in accordance with Mehdiyev's request.⁵⁸ *Khural's* editor has appealed the decision.⁵⁹ In September, the Court of Appeals upheld the decision.

In July 2010, Vugar Safarli, executive director of the State Support Fund for Development of Mass Media also brought a civil defamation lawsuit against *Khural*.⁶⁰ Safarli claimed that a July 2010 article calling him the "press butcher" offended his honor and dignity. He demanded a public retraction and 10,000 AZN (approximately US\$12,400) in compensation.⁶¹ *Khural's* editor-in-chief expressed his fear that the newspaper might be forced to close if another fine is levied on it.⁶² In October, the court ordered *Khural* to publish a retraction and pay a 500 AZN (US\$620) fine.

Criminal defamation complaints brought by Jalal Aliyev

Jalal Aliyev, a ruling party member of the Milli Mejlis and President Ilham Aliyev's uncle, has also brought several defamation charges against journalists. In May 2007, the Yasamal district court sentenced Rovshan Mahmudov (pen name Rovshan Kabirli), editor-in-chief, and Yashar Agazade, a journalist at the opposition *Mukhalifat* [Opposition] newspaper to two years and six months each for criminal defamation and slander charges. The lawsuit stemmed from a February 27, 2007 article accusing Jalal Aliyev of corruption.⁶³ Mahmudov and Agazade were released in December 2007 under a presidential pardon.

Previously in 2003, a district court also convicted Mahmudov and Agazade on defamation charges initiated by Jalal Aliyev, and sentenced each to five months imprisonment, although

⁵⁷ The article was titled: "Ramiz Mehdiyev's Plan to End Bakhtiyar Vahabzadeh! Why Did Head of Presidential Administration Ramiz Mehdiyev Punish Population of Shaki and its Chief Executive Authority?" Email communication with the Media Rights Institute, which represents *Khural's* interests in the court proceedings, August 12 and 13, 2010.

⁵⁸ Ibid.

⁵⁹ "Khural Newspaper Editor-in-chief Files Appeal," IRFS report, August 5, 2010.

⁶⁰ The fund was established by Presidential Decree on April 3, 2009.

⁶¹ "Alert: Lawsuits Against 'Khural' Newspaper Could Result in its Closure," IRFS/IFEX, August 4, 2010, http://www.ifex.org/azerbaijan/2010/08/04/khural_newspaper_lawsuits/ (accessed August 18, 2010).

⁶² Ibid.

⁶³ Human Rights Watch, World Report 2008, covering the events of 2007, Azerbaijan Chapter, <http://www.hrw.org/englishwr2k8/docs/2008/01/31/azerba17742.htm>.

it exempted both from serving their sentences on the basis of an amnesty. The journalists appealed the 2003 convictions and sentences to the European Court of Human Rights, which held that in resorting to imprisonment as a punishment for the journalists, Azerbaijan had violated article 10 of the European Convention on Human Rights.⁶⁴ This case is described in more detail below.

On February 10, 2010, the Nasimi District Court refused to accept another criminal defamation complaint brought by Jalal Aliyev, this time against Azer Aykhan, deputy editor, and Goshgar Bakili, reporter, at the *Yeni Musavat* [New Equality] daily newspaper. The complaint was based on January 5, 2010 article stating that Jalal Aliyev owned a hotel in Baku, which the president disliked. The judge argued that the complaint was not prepared in accordance with the Criminal Procedure Code.⁶⁵

Criminal defamation complaint against Alovzat Osmanli

Not only journalists and human rights defenders who write or speak about human rights issues or politically-sensitive topics face defamation charges. In one case documented by Human Rights Watch, Ministry of Education officials brought charges against Alovzat Osmanli, a mathematician, physicist and textbook author, after he publicly criticized the ministry for errors in new mathematics textbooks.

Osmanli is the author of several school textbooks, and has also published numerous articles about the development of mathematics curriculum in schools. In January 2010, Osmanli published a series of articles criticizing the Council for Textbook Evaluation, the branch of the Ministry of Education responsible for the development and publication of textbooks. In one article, Osmanli pointed out various arithmetic mistakes and inaccuracies in a mathematics textbook approved by the council. In his article, Osmanli stated that “[t]he Council for Textbook Evaluation commits falsification [fraud] in approving textbook sets.”⁶⁶

On February 15, 2010, all eleven members of the Council for Textbook Evaluation filed criminal defamation charges against Osmanli requesting six months imprisonment. Following the initial hearing on the charges, the judge ordered a “linguistic examination” of the one sentence in Osmanli’s article. On July 8, 2010, the court announced that the

⁶⁴ Ibid.

⁶⁵ Human Rights Watch email correspondence with Media Rights Institute, the organization providing legal representation to Khural, August 12 and 13, 2010.

⁶⁶ See Alovzat Osmanli, “Black-Hundreder,” [In Azeri], *Azadlig* [Freedom], January 22, 2010.

examination had found Osmanli's statement defamatory.⁶⁷ To date, the trial in Osmanli's case has been postponed.

In an interview with Human Rights Watch, Osmanli expressed his disbelief that a debate regarding mistakes in a mathematics textbook might land him in prison:

For two years I have been writing letters to the Minister of Education suggesting that the mathematics curriculum be examined and discussed. But he would never respond, and so I sent my letters to be published in the newspaper. . . . We should have discussed these issues as fellow academics but instead they file a criminal case against me.⁶⁸

In a separate case, on June 2, 2010, the Nasimi District Court of Baku ruled in a civil defamation suit against Osmanli, brought by the director of the Institute for Educational Matters. In a February 2, 2010 *Azadlig* article, Osmanli called the institute "a decoration of the Ministry of Education," alleging that it has failed to provide intellectual leadership and undertake needed educational reforms.⁶⁹ The court ordered Osmanli to publish an apology and a retraction in *Azadlig*. Osmanli plans to appeal the ruling.

4.2 Other criminal cases brought against journalists

Criminal defamation and other charges against Eynulla Fatullayev

One of the most egregious cases of journalists facing politically-motivated criminal defamation and other charges is that of the outspoken government critic Eynulla Fatullayev, founder and editor-in-chief of two of the largest and most popular newspapers in the country – *Gundelik Azerbaijan* [Azerbaijan Daily] and *Realny Azerbaijan* [Real Azerbaijan]. Fatullayev has been in prison since April 2007.⁷⁰ He was convicted of both civil and criminal defamation in relation to a newspaper article and internet posting about the 1992 Khojali massacre during the war

⁶⁷ Human Rights Watch telephone interview with Isakhan Ashurov, lawyer for Aloysat Osmanli, July 20, 2010.

⁶⁸ Human Rights Watch interview with Aloysat Osmanli, Baku, June 4, 2010.

⁶⁹ Ibid.

⁷⁰ Prior to his conviction, Fatullayev had faced threats, attacks, and prosecution apparently in retaliation for his writing. In July 2004, he was severely beaten on a street in Baku apparently for an article criticizing the government. In August 2006, the minister of interior Rasul Usubov brought three defamation claims against Fatullayev, and one month later a court handed him a suspended two-year sentence and a fine of more than US\$10,000. In October 2006, Fatullayev was forced to briefly suspend publication of both newspapers, after his father was kidnapped. The kidnappers threatened to kill him and his father if Fatullayev continued to publish. Fatullayev resumed publication of the newspapers shortly after his father's release, but the kidnappers were never apprehended. See, Human Rights Watch letter to Azerbaijan Prosecutor General regarding new charges against Fatullayev, February 26, 2010, <http://www.hrw.org/en/news/2010/02/26/letter-azerbaijan-prosecutor-general-regarding-new-charges-against-eynulla-fatullayev> (accessed October 14, 2010).

between Azerbaijan and Armenia over the disputed territory of Nagorno-Karabakh.⁷¹ The article questioned the version of the Khojali events most commonly accepted in Azerbaijan.⁷²

On April 6, 2007, in a civil action brought by Tatyana Chaladze, the Head of the Center for Protection of Refugees and Displaced Persons, a Baku-based organization, Fatullayev was found guilty of insulting the honor and dignity of the victims of the Khojali massacre. The court ordered Fatullayev to publish a retraction and fined him 10,000 AZN (US\$12,430).⁷³

In a separate criminal complaint brought by four survivors of the Khojali events and two former soldiers of Azerbaijani army, who were represented by Ms. Chaladze, on April 21, 2007, the same court found Fatullayev guilty of criminal defamation and slander, based on the same article and internet posting. The court sentenced Fatullayev to two years and six months' imprisonment.⁷⁴

In May 2007, the Ministry of National Security initiated a second criminal investigation against Fatullayev on the basis of another article he had written. In July, the police charged Fatullayev with threatening terrorism and inciting ethnic hatred.⁷⁵ In September 2007, the authorities brought additional tax evasion charges, allegedly for Fatullayev's failure to declare personal income he earned as a newspaper editor.⁷⁶ In October 2007, the Grave

⁷¹ The article, titled "The Karabakh Diary," was published in *Realny Azerbaijan* in April 2005 following a visit by Fatullayev to Nagorno-Karabakh. More than a year later, comments similar to those made in "The Karabakh Diary" were then posted on the public forum of a website called *AzeriTriColor*, and attributed to Fatullayev.

⁷² The Khojali events took place on February 26, 1992. According to the version of the events most commonly accepted in Azerbaijan, hundreds of Azerbaijani civilians were killed by Armenian armed forces, with the alleged assistance of the Soviet 366th Motorized Rifle Regiment, in the course of the war in Nagorno-Karabakh. For many in Azerbaijani society, the events surrounding Khojali have come to symbolize the worst sufferings of the Azerbaijani people during the war. The events are often invoked by various elements of Azerbaijani society, including the government, in discussions about the commission of war crimes by the Armenian side. See, "Seven Years of Conflict," Human Rights Watch Report, December 1, 1994, <http://www.hrw.org/en/reports/1994/12/01/seven-years-conflict-nagorno-karabakh>, (accessed August 17, 2010)

⁷³ The court in question was the Yasamal District Court. Human Rights Watch interview with Isakhan Ashurov, lawyer for Eynulla Fatullayev, Baku, June 4, 2010.

⁷⁴ Fatullayev was arrested in the courtroom and immediately transferred to Detention Facility No.1. In June, the Court of Appeal upheld the lower court judgment, which was then affirmed by the Supreme Court in August 2007. Human Rights Watch interview with Isakhan Ashurov, Baku, June 4, 2010.

⁷⁵ Criminal Code of Azerbaijan arts. 214.1 and 283.2.2. The threat of terrorism and inciting ethnic hostility charges were based on a newspaper article entitled "The Aliyevs Go to War," published in *Realny Azerbaijan* on March 30, 2007. The article, written by Fatullayev, but signed under the pseudonym "Rovshan Bagirov," was an opinion piece criticizing the country's foreign policy. The piece described the possible consequences of Azerbaijan's support for a United Nations Security Council Resolution calling for economic sanctions against Iran. Fatullayev argued that Iran might retaliate against Azerbaijan and enumerated several possible targets in the country that might come under attack. "The Aliyevs Go to War," *Realni Azerbaijan*, March 30, 2007 (English translation of the article, on file with Human Rights Watch).

⁷⁶ Criminal Code of Azerbaijan, art. 213.2. Human Rights Watch interview with Isakhan Ashurov, lawyer for Eynulla Fatullayev, Baku, June 4, 2010.

Crimes Court convicted Fatullayev on all counts and sentenced him to eight years and six months imprisonment.⁷⁷

As part of the investigation the Ministry of National Security had confiscated the computer hard drives and sealed the offices of *Gundelik Azerbaijan* and *Realny Azerbaijan* in May 2007, leading to the closure of both publications.⁷⁸

Fatullayev appealed to the European Court of Human Rights in September 2007. In an October 4, 2010 judgment the court found that Azerbaijan had violated article 10 of the European Convention on Human Rights (freedom of expression) and article 6 paragraphs 1 and 2 (the right to a fair trial, including the presumption of innocence). The court called upon the authorities to secure Fatullayev's immediate release.⁷⁹

In December 2009, after the European Court had heard arguments in Fatullayev's case, but before it had issued a judgment, the Azerbaijani authorities brought additional charges against Fatullayev for alleged possession of drugs. On December 29, 2009, guards at Correctional Colony No. 12 allegedly found 0.223 grams of heroin in Fatullayev's shoes and coat sleeve during a search of his cell.⁸⁰ On July 6, 2010, a Baku court convicted Fatullayev of illegal possession of narcotics for personal use and sentenced him to an additional two and a half years' imprisonment.⁸¹

Numerous international organizations, nongovernmental organizations, and representatives of foreign governments criticized the charges brought against Fatullayev in 2007 and in 2010 as being politically motivated.⁸²

⁷⁷ Fatullayev was sentenced to eight years imprisonment on threat of terrorism charges, three years for inciting ethnic hatred, and four months for tax evasion charges. The partial merger of these sentences resulted in eight years and four months imprisonment, which was then merged with the two years and six months for his defamation conviction, resulting in a total of eight years and six months imprisonment. In January 2008 the Court of Appeal and in June 2008 the Supreme Court left the sentence unchanged.

⁷⁸ The first instance court has also ordered that previously seized computers as material evidence from the newspapers' offices be confiscated in favor of the State.

⁷⁹ Fatullayev v. Azerbaijan, No. 40984/07, judgment of October 4, 2010.

⁸⁰ Human Rights Watch interview with Isakhan Ashurov, Eynulla Fatullayev's lawyer, Baku, June 4, 2010.

⁸¹ Fatullayev was convicted under article 234.1 of the Criminal Code. "Eynulla Fatullayev Sentenced to 2.5 Years in Prison," News.Az, July 6, 2010, <http://www.news.az/articles/18662> (accessed August 20, 2010). According to Fatullayev's lawyer, the legal process was plagued with procedural violations, including in regard to the search of Fatullayev's cell, which was conducted without a court order, and denial of access to his lawyer immediately following the search. Human Rights Watch interview with Isakhan Ashurov, Baku, June 4, 2010.

⁸² See for example, OSCE Representative on Freedom of the Media Miklós Haraszti, "Regular Report to the Permanent Council," March 13, 2008, http://www.osce.org/documents/rfm/2008/03/30234_en.pdf (accessed August 20, 2010); "OSCE Media Freedom Representative Denounces 'New Provocation' Against Jailed Azerbaijani Journalist," Press Release, December 30, 2009, <http://www.osce.org/item/42272.html> (accessed August 20, 2010); and Report by Thomas Hammarberg,

Criminal prosecution and death in custody of Novruzali Mammadov

Human Rights Watch has expressed serious concern about the death in custody of Novruzali Mammadov and the subsequent lack of a meaningful investigation into the circumstances that led to his death. Professor Mammadov was the 69-year-old editor-in-chief of the newspaper *Talishi Sado* [Voice of the Talysh], and also active in defending the cultural rights of the Talysh, an ethnic minority living southern Azerbaijan.

On February 17, 2007, Mammadov was charged with high treason for espionage. He had been detained and interrogated twice by police officials who allegedly subjected Mammadov to beatings and other ill-treatment to force him to confess to acts of espionage for Iran.⁸³ After more than 16 months in pretrial detention, on June 24, 2008 Mammadov was sentenced to ten years in prison.⁸⁴ International and local human rights groups, including Human Rights Watch, believe that the charges were fabricated, and politically motivated, particularly as the trial was closed to the public and the evidence against Mammadov was never made public.⁸⁵

Mammadov's health reportedly began to deteriorate after he was put in solitary confinement in Prison No. 15 in January 2009. He died on August 17, 2009, in the penitentiary system's central hospital apparently as a result of heart failure caused by a stroke.⁸⁶ Despite international and local calls to transfer Mammadov to a civilian hospital, he was kept in the penitentiary system as his health continued to decline.

Mammadov's wife and son filed a lawsuit seeking an investigation into the adequacy of the medical treatment Mammadov received while in prison. However, in January 2010, a local

Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March, 2010, Strasbourg, June 29, 2010, p.5.

⁸³ FIDH (International Federation for Human Rights), "New information on the death in detention of Mr. Novruzali Mammadov - AZE 001 / 0808 / OBS 139.6," October 23, 2009, <http://www.fidh.org/New-information-on-the-death-in-detention-of-Mr> (accessed August 19, 2010).

⁸⁴ The court convicted Mammadov for "distribution of Talysh nationalist ideas and attempts to destroy the foundations of the Azerbaijani state," and for spreading "a negative image of Azerbaijan" internationally by writing about abuses against minorities. Human Rights Watch, *World Report 2009, Azerbaijan Events of 2008*, <http://www.hrw.org/en/node/79265>.

⁸⁵ Human Rights Watch letter to the Azerbaijan Authorities Regarding the Death of a journalist in Custody, August 21, 2009, <http://www.hrw.org/en/news/2009/09/01/letter-azerbaijani-authorities-regarding-death-journalist-custody> (accessed July 30, 2010).

⁸⁶ Mammadov reportedly suffered from a number of illnesses, including high blood pressure, bronchitis, a condition affecting his nervous system, and a prostate tumor. Human Rights Watch phone interview with Mammadov's lawyer, August 21, 2009.

court rejected the lawsuit after concluding on the basis of a forensic examination that the medical treatment had been adequate.⁸⁷

The Azerbaijani authorities have a legal obligation to promptly and effectively investigate every death in custody. This obligation is an element of the duty to protect the right to life particularly as it relates to persons in custody. For example, Article 2 of the European Convention on Human Rights, which protects the right to life, imposes strict requirements in relation to the investigation of deaths in custody. According to the European Court of Human Rights, where a death has occurred during custody, the burden of proof is on the authorities to provide a satisfactory and convincing explanation for the events leading to a detainee's death.⁸⁸

Fabricated hooliganism cases against journalists

In two strikingly similar cases in recent years, journalists and political activists were attacked by unknown persons, but were then later themselves charged in the attacks and sentenced to lengthy prison sentences on “hooliganism” and other charges. In both cases, that of Ganimed Zahidov and that of Emin Milli and Adnan Hajizade, the journalists received prison sentences, while their attackers were not charged.

“Hooliganism” prosecution of Emin Milli and Adnan Hajizade

In a high-profile case against two young activists and bloggers, Emin Milli (Abdullayev) and Adnan Hajizade were victims of an apparently staged attack, and were subsequently charged with hooliganism and sentenced to prison. Milli and Hajizade are the founders of the youth movement “OL” [“Be!”] and an alumni network of former exchange students. They had become well-known for criticizing Azerbaijani government policies in blog postings on Facebook, Twitter, and in videos on YouTube. In late June 2009, approximately a week before their arrests, they helped produce a satirical video, distributed on YouTube, mocking the

⁸⁷ FIDH, “Impunity in Mr. Novruzali Mammadov’s Death in Detention,” February 3, 2010, <http://www.fidh.org/Impunity-in-Mr-Novruzali-Mammadov-s-death-in> (accessed August 23, 2010).

⁸⁸ Velikova v. Bulgaria, no. 41488/98, judgment of May 18, 2000, para 70; Salman v. Turkey, no. 21986/93, judgment of June 27, 2000, paras. 99 and 100; Tanli v. Turkey, no. 26129/95, judgment of April 10, 2001, para.141; and Orak v. Turkey, no. 31889/96, judgment of February 14, 2002. In order for an investigation to satisfy the requirements of article 2 of the ECHR, the investigation should be independent and impartial, and open to public scrutiny. The court has found that public scrutiny of the investigation or its results is necessary to secure accountability and the next-of-kin of the victim should be involved in the procedure to the extent necessary to safeguard his or her legitimate interest. Nachova and Others v. Bulgaria, para. 119; see also McKerr v. the United Kingdom, no. 28883/95, ECHR 2001-III.

government for wasting oil revenues after reports of state funds being used to import two donkeys for US\$41,000 each.⁸⁹

On July 8, 2009, Milli and Hajizade met at a Lebanese restaurant in the center of Baku with four of their friends. According to Ulvi Hassanov, who was in the group, they were discussing the upcoming municipal elections when two strangers approached them. According to Hassanov:

I arrived around 7 p.m. The guys were eating and discussing some current social and political issues in the country. Two young men, who looked like athletes, were sitting one table away from us. We didn't pay any attention to them, but one of them came over and started arguing with Emin [Milli]. He asked what we were discussing, but Emin did not respond. Then the other guy came over and unexpectedly headbutted Emin. Emin's head started bleeding.

I was sitting next to Emin and tried to intervene, but the guy pushed me aside. Then the other guy kicked the table, turning it upside down. He also hit Emin in the stomach. Then Adnan [Hajizade] got up and stood between them, but the same guy headbutted him too, breaking his nose. Adnan's nose was swollen and Emin had a cut on his forehead, bleeding. His foot was also bleeding as he was wearing flip-flops and got it cut on a broken plate. I ran to call the police.⁹⁰

Personnel from the restaurant intervened to stop the incident. Emin Milli and Adnan Hajizade immediately proceeded to a police station near the restaurant, but were referred to police station No. 9, where they filed a complaint. They were soon transferred to a local clinic to undergo testing for consumption of alcohol and other substances. After returning to the station around 9.20 p.m., the chief investigator opened a criminal case against Milli and Hajizade for malicious acts of hooliganism.⁹¹ The alleged attackers were freed the same night.

⁸⁹ In a mock press conference, an activist in a donkey suit said that in Azerbaijan one has a better chance of success if you're a donkey. The video was posted on YouTube and can be viewed at: <http://www.youtube.com/watch?v=Aaecvg7xClk>. (accessed July 21, 2010).

⁹⁰ Human Rights Watch interview with Ulvi Hassanov, an activist with the "Dalga" ["Wave"] youth movement, Baku, June 7, 2010.

⁹¹ Criminal Code article 221.2.1. Human Rights Watch interview with Isakhan Ashurov, lawyer for Milli and Hajizade, Baku, June 4, 2010.

Numerous procedural violations have marred the case,⁹² including violation of the accused men's access to their own legal counsel. Isakhan Ashurov, a lawyer retained by Hajizade's father arrived at the police station around 9:30 p.m., but the investigator prevented him from seeing Milli or Hajizade during their interrogation without providing any explanation. Ashurov explained to Human Rights Watch:

I was allowed in to see Adnan the next morning. By that time, all the procedural actions, including interrogations, confrontation between the parties and other actions had been conducted in the presence of a state-appointed lawyer, despite the fact that the young men explained that they had a right to have lawyer of their choosing be present.⁹³

On November 11, 2009 the Sabail District Court of Baku sentenced Emin Milli to two and a half years in prison and Adnan Hajizade to two years imprisonment. The convictions were upheld on appeal,⁹⁴ and Hajizade's July 2010 appeal for parole based on good behavior was denied.⁹⁵

Numerous diplomats and representatives of international organizations, including the Council of Europe's Commissioner for Human Rights Thomas Hammarberg have called the charges against Milli and Hajizade politically-motivated and have called for their immediate release.⁹⁶

"Hooliganism" prosecution of Ganimed Zahidov

In another case involving an apparently staged attack followed by hooliganism charges, Ganimed Zahidov, editor-in-chief of the opposition daily *Azadlig*, was convicted in March 2008 on questionable hooliganism charges and sentenced to four years in prison. Zahidov is well-known for his writings which are often critical of high-ranking Azerbaijani government officials, and in the past has been the victim of numerous libel lawsuits, resulting in fines of

⁹² Following his visit to Azerbaijan in March 2010, Thomas Hammarberg cited "the court's refusal to take into account photographic and video evidence provided by the two defendants," as a serious violation in the proceedings. Report by Thomas Hammarberg, June 29, 2010, p.8.

⁹³ Human Rights Watch interview with Isakhan Ashurov, Baku, June 4, 2010.

⁹⁴ On August 19, 2010, the Supreme Court of Azerbaijan upheld a ruling by the lower courts convicting Milli and Hajizade. "Azerbaijan: Supreme Court Upholds Bloggers' Conviction," ARTICLE 19 Press Release, August 20, 2010, <http://www.article19.org/pdfs/press/azerbaijan-supreme-court-upholds-bloggers-conviction.pdf> (accessed August 20, 2010).

⁹⁵ "Jailed Azerbaijani Blogger's Appeal Rejected," Radio Free Europe/Radio Liberty, July 27, 2010, <http://www.rferl.org/archive/watchdog/3/646/646.html> (accessed August 11, 2010).

⁹⁶ Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March, 2010, Strasbourg, June 29, 2010, p.19.

hundreds of thousands of dollars.⁹⁷ Zakhidov's brother, Mirza Sakit, is a prominent satirist and *Azadlig* reporter who was sentenced in October 2006 on spurious drug charges and served a three-year-long prison sentence.⁹⁸

On November 7, 2007, as he returned to his office after visiting his brother in Baku's Prison No.14, Zahidov was attacked by unknown persons. However, Zahidov himself was charged in the incident. Zahidov told Human Rights Watch:

As I approached the entrance to my office, I heard a woman speaking on a mobile phone loudly. She started screaming at me as I passed by. ... Then a young man came and started to curse me, and pushed me. ... The same day the man and the woman complained to the police that I had threatened and then hit the woman and then beat the man who came to her rescue, and that I had allegedly broken his cheek bone.⁹⁹

Two days later, the Yasamal District Police charged Zahidov with hooliganism and causing minor bodily harm and he was remanded to pre-trial detention for two months.¹⁰⁰ On March 2, 2008 he was convicted and sentenced to four years imprisonment.¹⁰¹ Zahidov was released under the terms of a presidential pardon on March 17, 2010.¹⁰²

4.4. Freedom of Expression and Criminal Defamation in International Law

International human rights law recognizes freedom of expression as a fundamental human right, essential both to the effective functioning of a democratic society and to individual human dignity. Article 19 of the International Covenant on Civil and Political Rights (ICCPR),

⁹⁷ Zahidov told Human Rights Watch that over a dozen lawsuits were filed against *Azadlig* in 2006 alone. The paper was repeatedly charged with libel and/or insulting the personal honor and dignity of government officials and was fined over US\$300,000. See, "Human Rights Watch letter to President Aliyev," February 9, 2007, http://www.hrw.org/english/docs/2007/02/09/azerba15374_txt.htm (accessed August 18, 2010).

⁹⁸ Mirza Sakit was arrested on June 23, 2006 soon after a senior ruling party official publicly criticized the poet for his writing. Azerbaijan's Court for Grave Crimes sentenced Sakit to three years imprisonment on October 4, and the Court of appeals upheld the decision on December 15, 2006. See, "Azerbaijan: Imprisoned Journalists Recognized for Courage," April 23, 2008, <http://www.hrw.org/en/news/2008/04/23/azerbaijan-imprisoned-journalists-recognized-courage> (accessed August 18, 2010), and "Letter from Human Rights Watch to President Aliyev," February 9, 2007, http://www.hrw.org/english/docs/2007/02/09/azerba15374_txt.htm (accessed August 18, 2010). Sakit now lives in exile due to fears of further government persecution.

⁹⁹ Human Rights Watch interview with Ganimed Zahidov, Baku, June 2, 2010.

¹⁰⁰ Criminal Code of Azerbaijan, art. 221, part 1, and art. 127, parts 2 and 3.

¹⁰¹ In October 2008 the Supreme Court left the sentence unchanged and Zahidov's lawyers subsequently filed a complaint with the European Court of Human Rights. Human Rights Watch interview with Elchin Sadigov, Baku, June 6, 2010.

¹⁰² Human Rights Watch interview with Ganimed Zahidov, Baku, June 2, 2010.

ratified by Azerbaijan in 1992, provides, in part: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.”¹⁰³

The ICCPR permits states to restrict freedom of expression for the purpose of protecting the reputations of others, but there are strict conditions for such limitations. According to article 19(3), restrictions “shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”¹⁰⁴

As the UN Human Rights Committee has noted, restrictions on the right to freedom of expression “may not put in jeopardy the right itself” and must satisfy three conditions: they must be clearly provided by law; designed to pursue one of the legitimate aims articulated in article 19(3); and be both proportional to the accomplishment of that objective and necessary for its accomplishment.¹⁰⁵

In language similar to article 19, article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁰⁶ provides “[e]veryone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

The second part of article 10 establishes that the exercise of those freedoms can only be subject to restrictions that “are prescribed by law and are necessary in a democratic society” in order to protect specific public and private interests, such as “the reputation or rights of others.” The court has determined that any exceptions to article 10 must be “narrowly

¹⁰³International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Azerbaijan on August 13, 1992, art. 19(2).

¹⁰⁴Ibid. art. 19(3).

¹⁰⁵UN Human Rights Committee, General Comment No. 10, Freedom of expression (Art. 19), (Nineteenth session, 1983). See also UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, A/HRC/7/14, Feb. 28, 2008, para. 41.

¹⁰⁶European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), (ETS No. 5), 213 U.N.T.S. 222, entered into force September 3, 1953. Azerbaijan ratified the ECHR in 2002.

interpreted”¹⁰⁷ and restrictions are permissible only if warranted by a “pressing social need” and if proven to be proportionate to the legitimate aim pursued.¹⁰⁸

International Standards on Criminal Defamation

Implemented properly, civil defamation and criminal incitement laws allow states to protect national security, public order, and the reputations of citizens from unjustified attack while still safeguarding the right to freedom of expression.

International Human Rights Law

For a variety of reasons, many of which are illustrated in this report, criminal defamation laws and, in particular, the sanction of imprisonment as a punishment for defamation, are increasingly seen as inconsistent with the conditions set forth in international human rights law. Even where they are inspired by legislators’ genuine desire to encourage people to responsibly exercise their freedom of expression, criminal defamation laws pose a particularly significant risk of chilling legitimate free speech and of violating the principles of legality, proportionality, and necessity.

As the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression noted in 2008, “the subjective character of many defamation laws, their overly broad scope and their application within criminal law have turned them into a powerful mechanisms to stifle investigative journalism and silence criticism.”¹⁰⁹ Additionally, several international authorities have determined that criminal penalties, and particularly imprisonment, are always disproportionate punishments for defamation, which is, by definition, a non-violent offense.¹¹⁰

¹⁰⁷ This is a long established requirement. See for example, *The Sunday Times v. the United Kingdom*, Judgment of April 26, 1979, Series A no. 30, para. 65. The court has determined that the evaluation of such restrictions presents the court “not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted (see, mutatis mutandis, the *Klass and others* judgment of 6 September 1978, Series A no. 28, p. 21, para. 42).”

¹⁰⁸ This is a long established requirement. See for example, *Handyside v. the United Kingdom*, Judgment of December 7, 1976, Series A no. 24, paras. 48-50.

¹⁰⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, *Ibid.*, para. 39.

¹¹⁰ In 1994 the Human Rights Committee stated that custodial sanctions are inappropriate for defamatory statements, as well as for any peaceful expression of views. UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36, UN Doc. E/CN.4/2000/63, January 18, 2000, para. 48. Additionally, international bodies such as the European Court of Human Rights have determined that excessive damages for defamation violate human rights law because they are likely to have a “chilling effect” on freedom of expression. (*Tolstoy Miloslavsky v. the United Kingdom* (1995)).

When criminal defamation laws like Azerbaijan's create a chilling effect that effectively restricts both legitimate as well as harmful speech, they not only violate the right to free expression, but can impair other human rights as well. For example, criminal defamation laws jeopardize the rights to freedom of information and to participate in public affairs. These rights are vital in a democratic society.¹¹¹ Criminal defamation laws can also impair citizens' exercise of their rights to assemble peacefully; form, join, or participate in and communicate with associations; know, seek, or obtain information about human rights and fundamental freedoms; and publish, discuss, or otherwise impart such information.¹¹²

As a result of these and other considerations, the UN special rapporteur on freedom of expression entered into a joint declaration in 2000 with his counterparts at the Organization for Security and Cooperation in Europe (OSCE) and Organization of American States (OAS), emphasizing their shared belief that "[c]riminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws."¹¹³

The special rapporteur has emphasized that states should take particular care to ensure that defamation laws—civil or criminal—are not used by public officials regarding matters that relate to their actions in public office, as defamation laws "should never be used to prevent criticism of government,"¹¹⁴ and "should reflect the principle that public figures are required to tolerate a greater degree of criticism than private citizens."¹¹⁵ The special rapporteur repeated this call in 2008, stating, "elected officials and authorities should accept the fact that because of their prominent and public role, they will attract a disproportionate amount of scrutiny."¹¹⁶ Indeed all four experts (UN, Africa, Americas and Europe) on free speech reiterated in 2010

¹¹¹ UN Human Rights Committee, General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh session, 1996), UN Doc. CCPR/C/21/Rev.1/Add.7, (1996), para. 25 (This right safeguards "the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives ... including freedom to engage in political activity ... freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas").

¹¹² UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), UN Doc. A/RES/53/144, March 8, 1999, arts. 5 and 6.

¹¹³ Joint Declaration of by the UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on freedom of the media, and the OAS Special Rapporteur on freedom of expression, "International Mechanisms for Promoting Freedom of Expression," December 10, 2002, http://www.osce.org/documents/rfm/2002/12/190_en.pdf.

¹¹⁴ UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, UN Doc. E/CN.4/1999/64, January 29, 1999, para. 28(a).

¹¹⁵ *Ibid.*, para 28(b).

¹¹⁶ UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, A/HRC/7/14, Feb. 28, 2008, para. 79.

that while all criminal defamation laws are problematical, the protection of the reputation of public bodies, or the State itself, and a failure to require public officials and figures to tolerate a greater degree of criticism than ordinary citizens were particularly concerning.¹¹⁷

In a trend that signals growing acceptance of these principles by parties to the ICCPR, in 2009 the United Kingdom,¹¹⁸ Argentina¹¹⁹ and the Maldives¹²⁰ all repealed criminal defamation statutes.

The European Court of Human Rights and Freedom of Expression in Azerbaijan

The European Court has established particularly strong protections for press freedoms. It reviews sanctions against the press in the light of what it calls “the pre-eminent role of the press in a State governed by the rule of law,”¹²¹ and the right of the public to receive information and ideas:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹²²

¹¹⁷ Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade. The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, February 2, 2010, available on <http://www.cidh.org/Relatoria/showarticle.asp?artID=784&IID=1>,

¹¹⁸ Criminal defamation laws had not been invoked in the UK since the 1970s. “United Kingdom: Defamation Decriminalized,” Article 19, Nov. 13, 2009, <http://www.article19.org/pdfs/press/united-kingdom-defamation-decriminalised.pdf> (accessed August 18, 2010); and Index on Censorship, “UK government abolishes seditious libel and criminal defamation” July 13, 2009, <http://humanrightshouse.org/Articles/11311.html> (accessed August 18, 2010).

¹¹⁹ “Criminal defamation eliminated in Argentina,” CPJ Blog, Nov. 19, 2009, <http://cpj.org/blog/2009/11/criminal-defamation-eliminated-in-argentina.php> (accessed August 18, 2010).

¹²⁰ “Maldives: Defamation Decriminalized,” Article 19, Nov. 25, 2009, <http://www.article19.org/pdfs/press/maldives-defamation-decriminalised.pdf> (accessed August 18, 2010). Shortly thereafter, the UN Special Rapporteur congratulated the Maldives, urging “all States which have not already done so to repeal criminal defamation laws in favour of civil laws. In addition, any provisions that allow public officials to bring defamation suits with regard to their actions in public office should be totally eliminated.” “Freedom of expression: UN expert welcomes decriminalization of defamation in the Maldives,” UN Office of the High Commissioner for Human Rights press release, December 1, 2009, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9653&LangID=e> (accessed August 18, 2010).

¹²¹ *Thorgeirson v. Iceland*, Judgment of June 25, 1992, Application No. 13778/88, para. 63.

¹²² *Castells v. Spain*, Judgment of April 23, 1992, Series A no. 236, para. 43.

For these reasons, the press is entitled to the greatest protection under the convention when it covers matters of public interest. An important element of this general principle is that the reputational rights of politicians and government officials are entitled to less protection vis-à-vis the press than those of private citizens. In the words of the court, a politician “inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance”¹²³

A central theme of the European Court’s defamation case law is the distinction made by the court between statements of opinion (or value judgments) and statements of fact. “The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof,” the court held in the landmark *Lingens* case.¹²⁴ It follows that a journalist cannot be required by law to prove the truthfulness of a supposedly defamatory opinion; such a requirement, and any punishment based on the defendant journalist’s failure to meet it, would be “itself an infringement on freedom of expression.”¹²⁵ The same applies generally to statements that reflect public opinion.¹²⁶

Value judgments on matters of public interest deserve therefore a very high level of protection—unless made in bad faith, based on grossly inaccurate facts, or expressed in a particularly insulting fashion. Not every strongly worded statement, however, will fall outside the protective sphere of article 10. As the European Court has consistently affirmed, freedom of expression:

[A]pplies not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.¹²⁷

The European Court has issued two rulings, in 2004 and in April 2010, finding that Azerbaijan had violated article 10.¹²⁸ Both judgments reiterated the core principles of the European Court’s jurisprudence on the right to freedom of expression.

¹²³ *Oberschlick v. Austria*, Judgment of May 23, 1991, Series A no. 204, para. 59. See also, *Lingens v. Austria*, Judgment of July 8, 1986, Series A no. 103.

¹²⁴ *Lingens v. Austria*, para. 46.

¹²⁵ *Oberschlick v. Austria*, para 63.

¹²⁶ See *Thorgeirson v. Iceland*.

¹²⁷ *Handyside v. the United Kingdom*, para. 49.

¹²⁸ *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, Judgment of December 18, 2004 and *Fatullayev v. Azerbaijan*, no. 40984/07, Judgment of October 4, 2010

Mahmudov and Agazade v. Azerbaijan, involved a 2003 criminal defamation complaint brought by parliamentarian Jalal Aliyev against the editor-in-chief and a journalist of the newspaper *Mukhalifat* [Opposition], which resulted in five month prison sentences for each defendant.¹²⁹ In its judgment, the European Court reiterated that while state parties are permitted to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputations:

[T]hey must not do so in a manner that unduly deters the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power... Investigative journalists are liable to be inhibited from reporting on matters of general public interest if they run the risk, as one of the standard sanctions impossible for unjustified attacks on the reputation of private individuals, of being sentenced to imprisonment. A fear of sanction inevitably has a chilling effect on the exercise of journalistic freedom of expression.¹³⁰

The court found that the criminal sanction imposed on Mahmudov and Agazade “was undoubtedly very severe, especially considering that lighter alternatives were available under the domestic law.”¹³¹ Therefore, the court reasoned, even if the interference with the journalists' right to freedom of expression was justified, Azerbaijan had violated article 10 by imposing a criminal sanction that was “disproportionate to the legitimate aim pursued by applicants' convictions for defamation and slander.”¹³²

In *Fatullayev v. Azerbaijan*, the court found two violations of article 10 as well as a violation of article 6 paragraphs 1 and 2 (the right to a fair trial, including the presumption of innocence), and called for the immediate release of imprisoned journalist Eynulla Fatullayev. The court recalled the “vital role of ‘public watchdog’ which the press performs in a democratic society,”¹³³ and reiterated that:

[T]he limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of

¹²⁹ The facts of this case and the Fatullayev case are described in more detail above in sections 4.1 and 4.2, respectively.

¹³⁰ *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, para. 49 (emphasis added).

¹³¹ *Ibid.*, para. 50.

¹³² *Ibid.*, para. 53.

¹³³ See *Fatullayev v. Azerbaijan*, para. 87.

public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings when replying even to the unjustified attacks and criticisms of its adversaries, particularly where other means are available.¹³⁴

The court also emphasized that where a publication cannot be categorized as inciting to violence or instigating ethnic hatred, a state party “cannot restrict, with reference to maintaining public order and safety, the right of the public to be informed of matters of general interest, by bringing the weight of the criminal law to bear on the media.”¹³⁵

Alternatives to Criminal defamation

Civil defamation

One important step Azerbaijan could take in reforming its defamation laws would be to enact a new civil defamation legal regime that appropriately balances the individual right to freedom of expression with the state’s obligation to protect its citizens from unjustified attacks on their character and reputations.

In 2000 the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression outlined a list of minimum requirements that civil defamation laws must satisfy in order to comply with article 19 of the ICCPR, so as not to improperly restrict freedom of expression. They include the following:

- Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive, and impart information ... and damage awards should be strictly proportionate to the actual harm caused.
- Government bodies and public authorities should not be able to bring defamation suits.
- Defamation laws should reflect the importance of open debate about matters of public interest and the principle that public figures are required to tolerate a greater degree of criticism than private citizens.
- Where publications relate to matters of public interest, it is excessive to require truth in order to avoid liability for defamation; instead, it should be sufficient if the author has made reasonable efforts to ascertain the truth.

¹³⁴ Ibid., para. 116 (emphasis added).

¹³⁵ Ibid.

- Where opinions are concerned, they should only qualify as defamatory if they are unreasonable, and defendants should never be required to prove the truth of opinions or value statements.
- The burden of proof of all elements should be on the person claiming to have been defamed rather than on the defendant.
- A range of remedies should be available in addition to damage awards, including apology and/or correction.¹³⁶

Currently, civil defamation law in Azerbaijan suffers from many of the same weaknesses as the existing criminal defamation law. The law does not require damages to be proportional to the actual harm caused; it contains no “good faith” exception; and it places the burden of proof on the defendant rather than the person claiming to be defamed. In order to bring Azerbaijani laws in line with international standards, the Azerbaijani legislature should craft specific civil defamation provisions that address all of these issues.

¹³⁶ UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36, UN Doc. E/CN.4/2000/63, January 18, 2000, para. 52.

V. Violence against Journalists

Police and others acting on behalf of the state harass, assault, intimidate and threaten Azerbaijani journalists. In most of the cases of violence against journalists included in this report, law enforcement officers attacked journalists as they carried out their professional duties, including while documenting police activity at public demonstrations.¹³⁷ Police subsequently detained journalists and confiscated or deleted video, photo or other materials.

Although in almost all cases documented by Human Rights Watch, journalists filed complaints following the attacks, as of this writing, there have been no thorough and impartial investigations into these incidents and no perpetrators have been held accountable. Only prompt, thorough, and impartial investigations capable of leading to prosecution of the assailants can break the cycle of impunity and bring the country in line with its international obligations.

The persistent use of criminal and civil defamation charges, combined with violence and threats of violence, have had a chilling effect on journalists and editors, who admit to regularly resorting to self-censorship out of fear of potential legal or physical repercussions for articles criticizing the government. As a result, journalists and editors avoid reporting on certain topics altogether and limit investigative reporting, particularly on issues concerning the government. At least nine journalists have fled Azerbaijan in recent years out of fear for their safety.

5.1. Violence against Journalists and Lack of Effective Investigations

In the period covered by this report, law enforcement officers used force to prevent journalists from gathering information or documenting human rights violations. Police also accosted photo and video journalists covering trials, political rallies, religious events, or evictions of residents from apartment buildings. In some cases these attacks resulted in serious injuries for journalists. Police or other authorities subsequently detained, interrogated, and in some cases threatened the journalists. Human Rights Watch is not aware of any investigations leading to the prosecution of those responsible for these attacks.

¹³⁷ The several cases of threats against journalists documented by Human Rights Watch are not detailed in this report, due to space limitations.

Attack on Afgan Mukhtarli

On January 7, 2009, on assignment for *Yeni Musavat*, Afgan Mukhtarli was covering a rally in front of the Israeli embassy. Mukhtarli wore his press vest, clearly identifying him as a member of the media. Shortly after noon, the police began to use force to disperse the protesters.

While Mukhtarli was photographing the scene, law enforcement officers brutally attacked him. As Mukhtarli described:

After the police dispersed the crowd and most of the journalists left, I stayed to photograph how police were beating the remaining demonstrators. That's when about twenty policemen attacked me. They started beating me. Four of them twisted my arms and made me kneel, as others kicked and beat me. They broke my right wrist and left knee. They were cursing me and my newspaper and kicking with their boots, which had iron heels. ... It lasted about 10-12 minutes. They also took my camera. I could not say anything. I was trying to keep my head down, maybe lie down to protect my head and face.¹³⁸

According to Mukhtarli, the attackers were uniformed policemen who beat him without any prior warning. During the beating, Mukhtarli saw the Yasamal District Police Department police chief apparently ordering the attack against him. Mukhtarli had previously written articles criticizing the police chief.

Following the beating, officers shoved Mukhtarli into a police car and left him for a few minutes. Mukhtarli called his editor-in-chief, who in turn called the Press Council, a national print media professional organization (for a full description see below) and the Baku deputy police chief. Fifteen minutes later, the police released Mukhtarli. Mukhtarli went to his editor's office and later to Baku City Hospital No. 5.

As a result of the attack, Mukhtarli's right wrist, as was later confirmed, was broken; he was unable to walk straight due to what he presumed was a fracture in his leg or knee; and he had swelling and bruises all over his body. Doctors put a splint on his wrist and leg, and ordered him not to walk for 15 days. Despite Mukhtarli's requests, the doctors refused to

¹³⁸ Human Rights Watch interview with Afgan Mukhtarli, Baku, June 5, 2010.

give him any documents recording his injuries.¹³⁹ The police returned Mukhtarli's camera the same day, with all the materials deleted.¹⁴⁰

Once he was permitted to walk again, Mukhtarli went to the Ministry of Internal Affairs together with his editor to meet Deputy Minister Yashar Aliyev and later with Colonel Oruj Aliyev, in charge of the investigation. Mukhtarli gave an explanatory statement and signed a protocol of interrogation. Mukhtarli requested a forensic examination of his injuries, which was issued only 20 days later, just over a month after the incident. According to Mukhtarli, the exam did not confirm his broken knee and it was conducted so long after the incident that it could not establish the exact date his wrist was broken.¹⁴¹

Three months later, the case was dropped for lack of evidence.¹⁴² In December 2009, after exhausting domestic remedies and meeting repeated refusals from the authorities to formally re-open an investigation, Mukhtarli appealed to the European Court of Human Rights.¹⁴³

Attack on journalists outside Sabail District Police Station No. 22

On May 10, 2009 police broke up a demonstration of about 30-40 activists of the youth wing of the opposition Musavat Party in front of the offices of the ruling Yeni Azerbaijan Party (YAP).¹⁴⁴ As journalist Afgan Mukhtarli described, "Policemen started to violently disperse the gathering. They were dragging young women by the hair. They stuffed activists into police cars and took them away. I was photographing the events."¹⁴⁵

Mukhtarli, together with several other journalists followed the police to the Sabail District Police Station No. 22, where many of the protesters had been detained. When the journalists arrived at around 2 p.m., there were about 40 people gathered outside, including about 10 members of the media. According to witnesses, approximately 30 policemen suddenly

¹³⁹ Human Rights Watch interview with Afgan Mukhtarli, Baku, June 5, 2010. Human Rights Watch has on file photographs depicting Mukhtarli's condition soon after the incident, photographed by the Institute for Reporters Freedom and Safety (IRFS).

¹⁴⁰ Human Rights Watch interview with Afgan Mukhtarli, Baku, June 5, 2010.

¹⁴¹ Human Rights Watch interview with Afgan Mukhtarli, Baku, June 5, 2010; Human Rights Watch interview with Elchin Sadigov, lawyer for Afgan Mukhtarli, Baku, June 4, 2010.

¹⁴² Human Rights Watch interview with Elchin Sadigov, lawyer for Afgan Mukhtarli, Baku, June 4, 2010.

¹⁴³ Ibid.

¹⁴⁴ They were protesting the holding of Azerbaijan's yearly flower festival celebrations less than two weeks after a deadly shooting at the Azerbaijan Oil Academy. In the incident, a gunman had shot at least 12 people before turning the gun on himself. "Baku Gun Attack 'Leaves 12 Dead'," BBC News, April 30, 2009, <http://news.bbc.co.uk/2/hi/europe/8026194.stm> (accessed July 30, 2010); "Azerbaijan: Shooting At Azerbaijan's Oil Academy Leaves at Least 13 Dead," Eurasianet.org, April 29, 2009, <http://www.eurasianet.org/departments/insightb/articles/eavo43009c.shtml> (accessed July 30, 2010).

¹⁴⁵ Human Rights Watch interview with Afgan Mukhtarli, Baku, June 5, 2010.

exited the station and began to attack those gathered outside.¹⁴⁶ Human Rights Watch interviewed three journalists who witnessed and suffered from the attack and corroborated each other's account of the events. According to Natig Adilov, a columnist for *Azadlig*:

We were standing in a small park near the [police] station. All of a sudden, policemen from the station and nearby patrol cars attacked us. They were cursing us and kicking us. Three policemen attacked me. I got hit on the back and fell to the ground. Then they kicked me in the legs. They left us alone after Elchin Hassanov [a reporter for *Yuksalesh Namina* [For Progress] newspaper] fell to the ground, apparently after fainting.¹⁴⁷

Leyla Ilgar, correspondent for *Yeni Musavat* [New Equality], witnessed how four policemen beat Hassanov:

Four policemen surrounded Elchin; they were kicking him. One of them kicked him in the crotch and he fell. When the policemen saw that Elchin had fainted [from the kick], they left us alone. We helped Elchin get up and then went to find medical assistance.¹⁴⁸

The same day, Mukhtarli, Hassanov and Adilov filed a complaint with the Sabail District Prosecutor's office, requesting an investigation. Adilov told Human Rights Watch that police and prosecutors never questioned him, and the prosecutor's office did not open a criminal investigation. The journalists challenged the decision in court, but in April 2010, the Sabail District Court judge rejected the request to open a criminal investigation, despite the introduction of photographs clearly demonstrating police attacking the journalists.¹⁴⁹

Ill-treatment of Idrak Abassov

In February 2009, national security officials from the Nakhchivan Autonomous Republic, a landlocked region in the South-West of Azerbaijan surrounded by Armenian territory, detained and ill-treated freelance journalist Idrak Abassov. Abassov contributes regularly to the Baku-based *Ayna Zerkalo* [Mirror] newspaper and the Institute for War and Peace Reporting (IWPR). On February 18, 2009, together with his colleague Rashad Aliyev, Abassov

¹⁴⁶ Human Rights Watch interview with Natig Adilov, Baku, June 5, 2010.

¹⁴⁷ Ibid.

¹⁴⁸ Human Rights Watch interview with Leyla Ilgar, Baku, June 7, 2010.

¹⁴⁹ Human Rights Watch interview with Natig Adilov, Baku, June 5, 2010.

travelled from Baku to Nakhchivan, to report on the region and meet with local authorities and prison officials. After working for two days, Abassov received a call from someone stating that the Nakhchivan national security minister would like to meet him. Abassov described what happened to him after he arrived at the ministry:

Upon entering the building my hands were restrained and I was blindfolded. They put a sack on my head. A security official confiscated my cell phone and photo and video cameras. They were holding me so that my feet were in the air. I remember they took me on a staircase, but I was completely disoriented and don't know if we went up or down. I told them that I have heart problems and am required to take medications regularly, but they were aggressive anyway. They took me somewhere in the building, took off the blindfold and then the minister personally interrogated me about what I was investigating in Nakhchivan.¹⁵⁰

National security officials released Abassov a few hours later and ordered him to leave the autonomous republic. They warned him to never return or risk similar treatment. They returned his cameras, but with all the photo and video images deleted. After returning to Baku on February 20, Abassov was hospitalized with heart problems.¹⁵¹

Stabbing of Agil Khalil

In February 2008, two Ministry of National Security officers allegedly beat 25-year-old newspaper *Azadlig* [Freedom] correspondent Agil Khalil, while he was investigating Ministry of National Security officials' alleged involvement in criminal land deals. Khalil filed a complaint with local police. Soon thereafter he began receiving threats and reported to colleagues that he was being followed.

On March 13, 2008 at around 7:30 p.m, four assailants assaulted and stabbed him after he left his office in downtown Baku.¹⁵² According to Khalil, "I recognized one [of my attackers].

¹⁵⁰ Human Rights Watch interview with Idrak Abassov, Baku, June 4, 2010.

¹⁵¹ Ibid.

¹⁵² Video interview with Agil Khalil one day after he had been stabbed, March 30, 2008, recorded and posted at IRFS website, [in Azeri, with English subtitles], <http://www.irfs.az/content/view/504/1/lang,eng/> (accessed August 23, 2010).

This guy was one of the people who were following me for more than a week.”¹⁵³ Following the incident, Khalil was hospitalized with a chest wound.¹⁵⁴

On July 15, a court convicted Sergei Strekalin, whom authorities claimed was Khalil’s former lover, and who had allegedly confessed to the crime, of the assault.¹⁵⁵ Khalil, however, denied that Strekalin was the man who had attacked him and stated that he had never met Strekalin before.¹⁵⁶ Khalil also alleged numerous other discrepancies—most notably Strekalin’s assertion that he had stabbed the journalist several times. Khalil suffered a single knife wound.¹⁵⁷ In a July 17, 2008 statement, Miklos Haraszti, the OSCE Representative for Freedom of the Media, stated: “This is the climax of a smear campaign orchestrated by law-enforcers against Khalil, his newspaper, and the remnants of critical journalism in Azerbaijan.”¹⁵⁸

On July 24, 2008, out of fear for his safety, Khalil fled to France, where he remains.

Detention and ill-treatment of Emin Huseynov

On June 14, 2008 Emin Huseynov, a journalist and chairman of the Institute for Reporter Freedom and Safety (IRFS), a media watchdog organization, was detained as he was working at a café in Baku and ill-treated in police custody. At around 12:30 p.m., without any warning or explanation, 30 to 40 policemen raided the café and rounded up some 20 to 25 people, including Huseynov and two of his colleagues. One police officer punched Huseynov in the head while other policemen placed him in a patrol car.¹⁵⁹

Huseynov and the others were taken to Baku’s Nasimi District Police Station No. 22. Huseynov objected to police fingerprinting and filming the detainees, and called several journalists to report on what was happening. He related what followed:

¹⁵³ Human Rights Watch telephone interview with Agil Khalil, August 19, 2010.

¹⁵⁴ “Azerbaijan: Investigative Journalist Hospitalized After Stabbing,” *RFE/RL*, March 14, 2008, <http://www.rferl.org/content/article/1079639.html> (accessed August 20, 2010).

¹⁵⁵ Human Rights Watch World Report 2009, covering the events of 2008, Azerbaijan Chapter, <http://www.hrw.org/en/world-report/2009/azerbaijan> (accessed August 23, 2010).

¹⁵⁶ “Attacks on the Press in 2008: Azerbaijan,” Committee to Protect Journalists (CPJ), February 10, 2009, <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-azerbaijan.php> (accessed August 20, 2010).

¹⁵⁷ *Ibid.*

¹⁵⁸ OSCE Press Release, “OSCE media freedom watchdog calls Baku trial ‘fake’, aimed to discredit opposition journalist and protect his real attackers,” July 17, 2008, <http://www.osce.org/item/32232.html> (last accessed August 19, 2010).

¹⁵⁹ Human Rights Watch phone interview with Emin Husseinov, June 17, 2008.

I was singled out and taken into the deputy chief's room. ... A man in a plainclothes took out his gun, slamming it on the table in front of me, cursing me and threatening to destroy me. Then he hit me on the back of my neck with a gun and on my back with his fist. I felt dizzy and asked for an ambulance, but police refused to call one.¹⁶⁰

Around 4 p.m. a group of local NGOs and representatives of diplomatic missions gathered outside the police station. Police released Huseynov shortly afterwards, but soon thereafter he lost consciousness and was hospitalized with head trauma and high blood pressure. He was diagnosed with a concussion and remained in intensive care for three days. When the hospital employees learned how he had sustained his injury, they changed his diagnosis to “stress syndrome,” which allegedly caused the high blood pressure. Shortly after he was transferred from intensive care to a regular ward on June 17, Huseynov reported that he still could not walk or eat normally because of dizziness and nausea.¹⁶¹

Police initiated an investigation into the incident on June 14, 2008. They carried out a forensic medical examination on Huseynov on June 18, but dropped the case a week later, citing the absence of a “criminal element” in the incident.¹⁶² Huseynov appealed the decision not to initiate a criminal complaint to no avail. In November 2009, Huseynov’s legal team brought the case to the European Court of Human Rights.¹⁶³

Detention and ill-treatment of Seymur Haziev

Seymur Haziev is a 28-year-old reporter for *Azadlig* who has also written for opposition newspaper Bizim Yol [Our Way], and has been active in the *Azadlig* opposition political bloc. On May 15, 2010, Haziev took part in a rally at which demonstrators called for restrictions on freedom of assembly to be lifted in advance of the November 2010 parliamentary elections.¹⁶⁴

At about 3 p.m., uniformed police officers detained Haziev and took him, together with approximately 30 other demonstrators, to the police station.¹⁶⁵ According to Haziev, by 5 p.m., the police had interrogated him without allowing him access to a lawyer of his

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Human Rights Watch interview with Elchin Sadigov, lawyer for Emin Huseynov, Baku, June 4, 2010.

¹⁶³ Ibid.

¹⁶⁴ Human Rights Watch interview with Seymur Haziev, Baku, June 8, 2010.

¹⁶⁵ Ibid.

choosing, charged him with “resisting arrest,” and then quickly brought him before the Narimanov District Court for a hearing.¹⁶⁶ The court found Haziiev guilty and sentenced him to seven days imprisonment, ordering him to be held at the Binagadin District Investigative Isolation Cell (SIZO).¹⁶⁷

Haziiev told Human Rights Watch that two days later, on May 17, 2010, SIZO Head Captain Agil Aliyev brought Haziiev out of his cell and escorted him to a room where two men in black suits and white shirts interrogated Haziiev for over an hour, while kicking and hitting him periodically.¹⁶⁸ Haziiev described the ill-treatment he suffered:

Captain Agil Aliyev left me standing in the room with them and closed the door. The men immediately started asking me why I write articles critical of [President] Ilham Aliyev and the government. ... Then they asked me to spread my legs apart. When I resisted they started kicking both of my feet. While they beat me they said that I ‘should not criticize Ilham Aliyev in my articles.’ They did not beat me continuously. They took three different breaks to interrogate me but then would start kicking me again. . . . They pushed me around to different parts of the room and were holding a cell phone up, so I know they were recording everything. By the time I was brought back to the isolation cell I couldn’t even step using my right foot.¹⁶⁹

On May 22, 2010, Haziiev was released. Haziiev filed a complaint against the police but has not been questioned by police regarding the incident.¹⁷⁰

Attack on Elmin Badalov

On July 28, 2010, unidentified men attacked 21-year-old Elmin Badalov¹⁷¹, a *Yeni Musavat* reporter, and another reporter, Anar Gerayli, while they were taking photographs for an

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Earlier, in January 2010, Badalov was expelled from the Azerbaijan State Oil Academy, where he was a student in his final year of undergraduate studies, apparently in retaliation for publishing a series of articles on the internet exposing corruption and bribery inside the academy. The official reason given for his expulsion was for “failing an exam.” Human Rights Watch interview with Elmin Badalov, Baku, June 7, 2010.

investigative story about luxury villas on the outskirts of Baku that allegedly belonged to Transportation Minister Ziya Mammadov. According to Badalov:

We were taking pictures of the villa when a car pulled up. One man with an athletic build got out and came up to us and started to choke us. Then another car stopped and out came another guy holding a crowbar. The first told the second to beat us with it. A third car appeared and four or five men got out and they all started to beat us at once. They beat my head against the asphalt, causing me to lose consciousness, and broke my nose and injured my shoulder.¹⁷²

According to Badalov, the assailants threatened the journalists' lives if they continued their work. "While they were beating us one of them said, 'We were told to get rid of you, but we will let you go if you promise not to publish anything about this topic anywhere. If we see that you publish this information anywhere, we will kill you,'" he recounted.¹⁷³ After the beating, the assailants held the two journalists for about three hours around the premises where the journalists had been collecting information before releasing them and erasing all of the photographs from Badalov's camera.

Immediately following the incident, *Yeni Musavat* lodged a complaint with the police. However, at this writing, *Yeni Musavat* and Badalov have not been questioned by the police regarding the incident.

5.2 Chilling Effects

Criminal and civil prosecutions, often resulting in prison sentences or stifling fines, violence and threats of violence against journalists, and at least two deaths of outspoken editors in recent years all combine to create a serious chilling effect on the media in Azerbaijan. Fewer journalists are willing to take the risks involved in writing investigative pieces and many practice self-censorship due to fear of repercussions, particularly when writing about the government corruption and the president and his family. Self-censorship in turn impinges upon the rights of Azerbaijan's citizens to receive information.

Several journalists interviewed by Human Rights Watch spoke in particular of the impact on their journalism of the still-unsolved violent murder of Elmar Huseynov, an outspoken

¹⁷² Human Rights Watch telephone interview with Elmin Badalov, August 17, 2010.

¹⁷³ Ibid.

government critic and editor-in-chief of Monitor magazine, who was killed in Baku on March 2, 2005.¹⁷⁴ As Rauf Arifoglu, the editor of *Yeni Musavat*, the most popular newspaper in Azerbaijan, succinctly stated, “We’ve all become accustomed to the fact that we [journalists] might be killed like Elmar Huseynov.”¹⁷⁵

Arifoglu further explained:

By now we know writing about which issues could lead to arrest, beatings or even death. Criticizing the authorities is very dangerous. They react very negatively. You can write about corruption, but in general terms. [...] There are 50 journalists working at *Yeni Musavat*. I have to think about their work too.¹⁷⁶

Rauf Mirkadirov, head of the politics section at the popular Russian-language daily Zerkalo [Mirror], also told Human Rights Watch that the numerous attacks and prosecutions over the past several years have helped engender a far-reaching self-censorship in the minds of editors and journalists. He divides news stories into those which are “completely” or “partially off-limits.” He explained to Human Rights Watch:

Our newspaper chooses not to touch the family matters [related to President Aliyev’s family]. One can say something about the president himself, but not about his family members. Journalists have no protection whatsoever. You never know what kind of means will be used against you: legal means or just a brutal beating in the street or something else. Therefore, we choose not to touch this subject, which is entirely closed.

The president himself is a partially-closed subject. You can write about him as long as you stick to “ethical norms,” but certain epithets cannot be used. Corruption is another issue. One has to be very careful here.¹⁷⁷

¹⁷⁴ On March 19, 2010, Azerbaijan’s Minister of National Security Eldar Mahmudov told the *APA News Agency* that the investigation into Huseynov’s death had identified two suspects, who allegedly are in hiding in neighboring Georgia and that they are working to extradite them. However, many local observers believe that the case has not been investigated properly. “Eldar Mahmudov: The Main Actors of Elmar Huseynov’s Murder Are Known, they Will be Detained and Brought to Justice Sooner or Later,” *APA News Agency*, March 19, 2010, <http://en.apa.az/news.php?id=118301> (accessed July 30, 2010).

¹⁷⁵ Human Rights Watch interview with Rauf Arifoglu, Baku, June 2, 2010.

¹⁷⁶ *Ibid.*

¹⁷⁷ Human Rights Watch interview with Rauf Mirkadirov, Baku, June 4, 2010.

Zamin Haji, another very experienced journalist and currently a columnist at *Yeni Musavat*, told Human Rights Watch, “Writing about certain issues is simply dangerous. ... I have two kids and if they arrest me who will feed them? ... I don’t write critical articles anymore. It’s easier this way. This way I can be calm while walking home, knowing that I’ll make it home safe...”¹⁷⁸

Azadlig columnist Natig Adilov shares similar concerns: “We are all scared. We saw what happened to Ganimed Zahidov, Fikret Huseynly, Bahhadin Hadziev, and others. [Zahidov was prosecuted and sent to prison, while Huseynly and Hadziev suffered attacks by unidentified assailants.] We saw these events happen with impunity and of course it has affected us. We can’t write freely about everything.”¹⁷⁹

Khadija Ismayilova, the bureau chief for Radio Azadliq, the RFE/RL station in Azerbaijan, told Human Rights Watch, “Our journalists in Baku face threats all the time, especially when covering political rallies...”¹⁸⁰ Yet, according to Ismayilova, in some respects, the situation for journalists is even worse outside the capital. After RFE/RL’s correspondents were beaten in the Nakhichevan autonomous republic, Ismayilova says, “We stopped asking for stories from them, because it is becoming too dangerous for them.”¹⁸¹

The rapidly deteriorating situation for the freedom of expression in Azerbaijan has caused a number of independent and opposition journalists to flee the country in recent years and seek political asylum mostly in European capitals. These include: Agil Khalil, Fikret Huseynly, Elbai Hasanli, Shahnaz Metlebgizi, Kamil Tagisoi, Elhan Hasanli, and Rahib Kazimli. All had worked for the opposition newspaper *Yeni Musavat*. Mirza Sakit and Sarvan Rizvanov, journalists at *Azadlig*, also left the country out of fear of persecution.

¹⁷⁸ Human Rights Watch interview with Zamin Haji, Baku, June 5, 2010.

¹⁷⁹ Human Rights Watch interview with Natig Adilov, Baku, June 5, 2010.

¹⁸⁰ Human Rights Watch interview with Khadija Ismayilova, Baku, June 5, 2010.

¹⁸¹ *Ibid.*

VI. Legislative and Other Restrictions on Freedom of the Media

Together with the harassment and intimidation of individual journalists and publications, the state and its agents have undertaken several administrative and legal steps to curtail free speech and access to information overall. In March 2009 constitutional amendments placed severe restrictions on the ability of journalists to use video or other recording devices, even in public spaces. The government, via the National Television and Radio Council (NTRC), terminated all foreign radio broadcasting in the country beginning in January 2009.

Finally, the Press Council, an ostensibly independent professional organization but one with clear government ties and influence, has since 2009 compiled a “Black list” of newspapers which have allegedly breached ethical journalism standards. As a result of the subsequent financial and operational pressure, several independent and opposition-affiliated papers have been forced to close after having been blacklisted.

6.1. Constitutional Amendments Restricting Freedom of Information

On March 18, 2009, through a referendum, Azerbaijan adopted a set of amendments to the constitution.¹⁸² One amendment changed article 32 (right to personal immunity), part 3 (protection of a person’s private life) to include the following: “No one shall be followed, filmed, photographed, recorded, or subjected to any other similar actions without his or her knowledge or despite his or her disapproval, except when such actions are prescribed by law.”¹⁸³

The Venice Commission, the Council of Europe’s advisory body on constitutional law,¹⁸⁴ criticized this amendment for setting no exception for recording at public meetings or meetings of public interest. The commission argued that article 10 of the ECHR grants journalists the freedom to inform and comment upon issues of public interest, which applies to “reporting on political figures to the extent that their activities or actions have a bearing

¹⁸² The Council of Europe’s Venice commission criticized the constitutional amendments approved through the referendum, stating that they distort the balance of power and contradict European practice. For the full analysis of the amendments, please see, “Opinion on the draft Amendments to the Constitution of the Republic of Azerbaijan,” Adopted by the Venice commission at its 78th Plenary Session, Venice, March 13-14, 2009, [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)010-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)010-e.asp) (accessed October 12, 2010).

¹⁸³ Constitution of the Republic of Azerbaijan, art. 32, part 3.

¹⁸⁴ The full name is the European Commission for Democracy through Law (Venice Commission).

on matters of general interest.”¹⁸⁵ According to the Venice Commission the limitation set by the Azerbaijani Constitution is “likely to be used in practice to exclude unwelcome journalists, especially from the electronic media, from reporting on events of public interest. Also, if a journalist films or records a politician or official in a situation involving the acceptance of a bribe, it would probably lead to the journalist being prosecuted instead of the politician or official. Investigative journalism with respect to corruption allegations could therefore be seriously hampered.”¹⁸⁶

Ignoring the Venice Commission recommendations, on December 21, 2009, President Aliyev sent a number of legislative proposals to the Milli Mejlis regarding amendments to laws on the Mass Media, Freedom of Information, Operative and Investigative Activities, Intelligence and Counterintelligence Activities, and Access to Information, to bring these laws into line with the constitutional amendments.¹⁸⁷ In February 2010, the Milli Mejlis approved the amendments, which banned media representatives from using video, photo, or voice recording without a subject’s prior knowledge or consent, except in “operative-investigative cases.”¹⁸⁸

The negative effects of the amendments

Human Rights Watch documented at least one case in which the new legislative amendments were invoked to hinder a journalist’s recording of matters of public interest. Babek Bekir, a reporter and head of the investigative journalism department at Radio Azadliq, the Azerbaijani service of Radio Free Europe/Radio Liberty (RFE/RL), told Human Rights Watch that the constitutional and legislative amendments have negatively affected his work. For example, in August 2009, Bekir noticed that police roadblocks designed to allow the car of speaker of the Milli Mejlis [parliament] to pass unimpeded caused large traffic jams, particularly near the Khirdalan crossroads on the outskirts of Baku. Bekir decided to photograph police roadblocks.

Police interfered with Bekir’s photographing, asked to see the photographs, they demanded he delete them. Bekir told Human Rights Watch:

¹⁸⁵ European Commission for Democracy Through Law (Venice Commission), “Draft Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan,” Opinion no. 518/2008, Strasbourg, March 6, 2009, CDL(2009)026, [http://www.venice.coe.int/docs/2009/CDL\(2009\)026-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)026-e.asp) (accessed June 20, 2010).

¹⁸⁶ Ibid.

¹⁸⁷ Azerbaijani media and civil society representatives appealed to President Aliyev, asking him to recall the amendments. See <http://www.irfs.az/content/view/3438/28/lang.eng/> (accessed July 30, 2010.)

¹⁸⁸ Operative investigative activities are carried out by law-enforcement and security forces, inter alia, to monitor telephone communications for surveillance purposes.

I did not want to delete them. They told me that according to new law I had to get their permission before I could photograph them. I tried to explain that they were public officials and that I had not filmed their private lives, but they told me that they would not let me go if I did not delete them. I told them that I did not know how to, but they took the camera and deleted the photographs themselves.¹⁸⁹

6.2. Ban on Foreign Broadcasting

On December 30, 2008, the National Television and Radio Council (NTRC), the body that regulates broadcast licensing in Azerbaijan, announced that it would ban international radio stations from broadcasting on national FM frequencies. The ban came into force on January 1, 2009 and terminated the radio broadcasts of the British Broadcasting Company (BBC), and the United-States-funded Voice of America and Radio Azadliq (Radio Free Europe/Radio Liberty's Azeri language service). The NTRC argued that national FM and medium-wave radio frequencies are state property, and that foreign-owned stations should not have access to them.¹⁹⁰

The ban of foreign radio broadcasting generated an outpouring of international criticism. OSCE Representative on Freedom of Media, Miklos Haraszti, noted that foreign radio broadcasts “were among the few remaining sources of varied, public-service quality information” in the country, and criticized the move as a “serious step backwards for an OSCE democracy.”¹⁹¹ The Council of Europe (CoE) called the decision “highly regrettable” and reminded Baku of its accession commitments: “When it acceded to the Council of Europe in 2001, Azerbaijan undertook to guarantee the freedom of expression and independence of the media, which are essential preconditions for the functioning of a democratic society.”¹⁹²

According to Khadija Ismayilova, the Bureau chief for Radio Azadliq, roughly 12 percent of the radio audience in Azerbaijan, or about 600,000 people listened to Radio Azadliq exclusively. Ismayilova said that the station lost approximately 90 percent of its audience,

¹⁸⁹ Human Rights Watch interview with Babek Bekir, Baku, June 7, 2010.

¹⁹⁰ “Nushiravan Maharramli: ‘We Should Have Halted Transmission of Foreign Radio Stations in Azerbaijan Six Years Ago,’” APA News Service, November 5, 2008.

¹⁹¹ “Azerbaijan’s Ban on Foreign FM Radio Broadcasting is Serious Step Backwards, Says OSCE Media Freedom Representative,” OSCE Press Release, Vienna, December 30, 2008, <http://www.osce.org/item/35848.html> (accessed August 2, 2010).

¹⁹² Statement by Miguel Ángel Moratinos, Chairman of the Committee of Ministers and Spanish Minister of Foreign Affairs and Co-operation, and Lluís Maria De Puig, President of the Parliamentary Assembly of the Council of Europe, January 15, 2009, <http://www.coe.int/T/latest-News/122.html> (accessed August 2, 2010).

and the remaining 10 percent now listens to Radio Azadliq through the internet, short wave radio, and the TurkSat television satellite.¹⁹³ However, for many ordinary citizens who do not have access to the internet, especially those who live outside of Baku, the ban has effectively cut them off from a vital source of information. As an editor of Zerkalo, Rauf Mirkadirov, put it, “The average person used to listen to Radio Free Europe from 5 pm to 6 pm while going home from work; now they simply cannot get it.”¹⁹⁴

After the ban, Radio Azadliq strengthened its online content, but has experienced problems with the periodic blocking of its websites as well. Ismayilova told Human Rights Watch that it appears that their two websites [in Azeri and in Russian] are intentionally filtered and blocked. She explained:

[The] filtering of our website started this spring, when we covered the story of the president’s wife allegedly acquiring some property in Dubai. Our websites were not accessible the hours we had the talk shows about the story. We sent letters to the internet providers, asking for an explanation, but they never respond officially, and tell us over the phone that they don’t know what the problem is.¹⁹⁵

6.3 The Press Council and the Black List of Newspapers

The Press Council of Azerbaijan was established in March 2003 officially as a self-regulatory body for print media. The Press Council consists of a 19-member board and a chairman. According to its official website, the council aims to protect “freedom of the press and also freedom of speech according to the standards of journalism.”¹⁹⁶ While formally a membership-based organization, the Press Council is heavily influenced and controlled by the government, and has sought to exercise an oversight function over all print media in the country. As the chairman of the Press Council, Aflatun Amashov, stated in an interview with a local news agency, “we asked the publishing houses to include the Press Council on the list of agencies to which they send obligatory copies of newspapers. We want to be aware of the activities of all newspapers printed in this country.”¹⁹⁷

¹⁹³ Human Rights Watch interview with Khadija Ismayilova, Baku, June 5, 2010.

¹⁹⁴ Human Rights Watch interview with Rauf Mirkadirov, Baku, June 4, 2010.

¹⁹⁵ Human Rights Watch interview with Khadija Ismayilova, Baku, June 5, 2010.

¹⁹⁶ Official website of the Press Council, <http://www.presscouncil.az/az/#>, [in Azeri], (accessed August 2, 2010).

¹⁹⁷ “Azerbaijan’s Press Council Prepared New List of ‘Racketeering’ Newspapers,” *APA News Agency*, March 13, 2009, <http://www.en.apa.az/news.php?id=98810> (accessed October 14, 2010).

The Press Council plays a role in restricting media freedoms in Azerbaijan by publishing regularly since 2009 a “black list of racketeering newspapers.” As of this writing, the “black list” contained approximately eighty newspapers which, according to the Press Council, had breached standards of ethical journalism by “ignoring the views of those criticized in the articles, violating the right to privacy, and insulting people’s honor and dignity.”¹⁹⁸ The black list is distributed widely to state and non-state institutions. Although the Press Council lacks a formal mechanism to ban entities from having on dealings or entering into business with blacklisted newspaper, in practice, state and non-state institutions, including publishing companies, treat those on the list as “prohibited” and politically unacceptable.

In addition, despite the black list’s lack of formal legal significance, the government imposes a number of restrictions on any newspaper found on the list. For example, blacklisted newspapers are ineligible to receive grants or participate in competitions run by the state-run Mass Media Support Fund, a governmental fund established by President Aliyev in April 2009 to support the growth and development of the mass media.¹⁹⁹ In addition, in at least one case, the parliament has used inclusion on the black list to justify the revocation of a journalist’s accreditation.²⁰⁰

Vugar Safarli is the deputy chairman of the Press Council and is also the executive director of the state-run Mass Media Support Fund. In an interview with Human Rights Watch, Safarli stated that the Press Council sees its role as to inform the public about which newspapers are “reliable.” As Safarli stated, “We use the black list to help newspapers find the true path as their activity is based on blackmail rather than on disseminating the truth,”²⁰¹ adding that “[w]e do this for their [the newspapers’] own benefit.”²⁰²

Safarli also indicated that black-listed newspapers may receive a “second chance” if they “improve.” To be taken off the list, an editor must apply to the Press Council, submitting work published in the past year. If, after the articles have been examined the Press Council finds that sufficient progress has been made, it may decide whether to remove the

¹⁹⁸ “Azerbaijan’s Press Council Publicizes New List of Racketeering Newspapers – FULL LIST,” APA News Agency, August 3, 2010, <http://en.apa.az/news.php?id=127229> (accessed August 19, 2010).

¹⁹⁹ The fund received 1.3 million AZN (US\$1.6 million) from the state budget for these purposes. Human Rights Watch interview with Vugar Safarli, Executive Director of the State Mass Media Support Fund, Baku, June 7, 2010.

²⁰⁰ Human Rights Watch interview with Sardar Alibeili, Baku, June 5, 2010.

²⁰¹ Human Rights Watch interview with Vugar Safarli, Baku, June 7, 2010.

²⁰² *Ibid.*

publication from the black list.²⁰³ Safarli rebuts the notion that these designations are politically motivated:

None of these newspapers on the black list are well-known and at least half of them don't even publish anything. What they do is not journalism but to make money and invade a person's private life. Once they are put on the list they scream about being an 'opposition' newspaper, but in reality they are not.²⁰⁴

The "Black List" and its impact

Human Rights Watch research found that contrary to Safarli's assertions, some popular opposition newspapers with substantial readership have been blacklisted in recent years, including *Nota* [Note] (circulation 1,000-1,500 copies) and *Tezedlar* (circulation 5,000 copies). *Nota* landed on the black list in July 2009, after publishing a series of critical articles about the Ministry of Internal Affairs and the Ministry of National Security. Editor-in-chief Sardar Alibeili described how being on the black list immediately put an end to his ability to publish:

As soon as I published these articles, the Press Council announced that I was a 'racketeer,' and I could no longer get my newspaper published anywhere. The Press Council immediately circulates the list, and once this happens, [publishers] refuse to publish your newspaper or work with you at all.²⁰⁵

The Chap Evi publishing house, which previously had published *Nota*, refused to print the newspaper following the blacklisting. "[The owner] told me that if he published my newspaper his company would have legal problems of its own," Alibeili told Human Rights Watch.²⁰⁶ Under pressure and with nowhere to publish, *Nota* was forced to close.

Alibeili was eventually able to register another newspaper under a new name, *Nota P.S.* [Note P.S.]. Alibeili attempted to bring a civil defamation suit against the Press Council for the damage done to his reputation by the black list, but a district court dismissed the suit. Last year, the appeals court rejected Alibeili's appeal without informing him or his lawyer and has thus far refused to issue any written decision. Alibeili only found out about the dismissal of his appeal weeks later after repeated calls to the court. Alibeili believes this is

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Human Rights Watch interview with Sardar Alibeili, Baku, June 5, 2010.

²⁰⁶ Ibid.

being done intentionally, as without a written decision he will not be able to appeal the case further. He told Human Rights Watch, “This is my destiny and my livelihood, yet the court will not issue a written decision despite us making two written requests. It seems they want to make it harder to appeal the decision ultimately to the European Court of Human Rights”²⁰⁷

In addition to financial consequences, as a result of being placed on the black list, newspapers can be denied access to information by both government and non-governmental sources. Asif Merzili (pen-name of Asif Mamedov) is the editor of *Tezedlar* [Contradictions], a newspaper with a readership of approximately 5,000, and 12 full-time staff, well-known for covering controversial themes including the Nagorno-Karabakh conflict and alleged corruption at Azerbaijan International University. In 2009, the newspaper devoted several stories to the ongoing process of normalization in Turkish-Armenian bilateral relations—a phenomenon that has been met with vocal criticism from Azerbaijani government officials, including President Ilham Aliyev.²⁰⁸

On September 16, 2009, shortly after it had published stories critical of the Turkish government, the Press Council announced that *Tezedlar* had been placed on the black list. Merzili filed a lawsuit in the Nasimi District Court on January 29, 2010, asking to be removed from the list. On March 30, the district court ruled in *Tezedlar*’s favor, ordering the Press Council to remove the newspaper from the black list. The Baku Court of Appeals refused to hear the Press Council’s April 2010 appeal. Nevertheless, *Tezedlar* remained on the black list at the time of a June 2010 interview with Human Rights Watch,²⁰⁹ and was number 61 in the black list published on August 3, 2010.²¹⁰

In the meantime, *Tezedlar* faced obstacles in receiving public information. For example, in February 2010, reporters made a routine request for information from a local non-governmental organization, the Union for the Freedom of Movement. “They sent us a letter saying they could not send us any information because we were on the black list,” Merzili explained.²¹¹ According to Asif Merzili, the newspaper’s parliamentary correspondent had her accreditation revoked after *Tezedlar*’s blacklisting.²¹² In addition, the newspaper distribution

²⁰⁷ Ibid.

²⁰⁸ “Turkey-Armenia Pact Hits Snags,” Wall Street Journal, January 28, 2010, http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748703410004575029360850565870.html (accessed August 5, 2010).

²⁰⁹ Human Rights Watch interview with Sardar Alibeili, Baku, June 5, 2010.

²¹⁰ “Azerbaijan’s Press Council Publicizes New List of Racketeering Newspapers – FULL LIST.”

²¹¹ Human Rights Watch interview with Asif Merzili, Baku, June 7, 2010.

²¹² Ibid.

company “Qasid” sent an official letter to *Tezedlar* also in February, stating that it could no longer distribute the newspaper, since it was blacklisted. “Qasid” restored the distribution only after the district court ruling.

The blacklisting has caused the near demise of *Tezedlar*. As Merzili explained:

We can barely publish our newspaper any longer. Commercial advertising agencies have refused to place ads with us. The biggest telecommunications firms like Bakcell and AzerCell refuse to advertise with us. We’ve lost all of our advertising revenue, about 1,000- 2,500 euro (US\$1,285-3,220).²¹³

What is ironic, notes Merzili, is that the Press Council is a membership-based organization into which participating newspapers pay dues. “Every year we have paid approximately US\$200 in dues to the Press Council, and this is how we are dealt with. The Press Council is supposed to be a public organization set up to help the press, but it does the opposite.”²¹⁴

The Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg, has expressed “strong reservations” about the Press Council’s black list as an effective approach to ensuring professionalism of journalists, and argued that there are other, more efficient means to ensure quality journalism, including “by adopting a code of ethics which is properly implemented, a self-regulation system, and an open and broad debate about the quality of the media among all actors.”²¹⁵

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Report by Thomas Hammarberg, June 29, 2010, p.10.

VII. International Responses to Azerbaijan's Repression of Free Expression

Azerbaijan has made a number of commitments to protect international human rights, including freedom of expression. Azerbaijan's international obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights are outlined in the legal section of this report. However, Azerbaijan has also been receiving international assistance from multilateral and bilateral donors to further human rights protection, including from the European Union (EU), Organization for Security and Co-operation in Europe (OSCE), the United States (U.S.), and the Council of Europe (CoE).

A number of international and regional institutions and bilateral partners have criticized Azerbaijan's human rights record in the past, especially regarding Azerbaijan's failure to adequately protect freedom of expression. However, these efforts appear to have had little impact on these actors' relationships with the country. This may in part be due to the fact that these actors prioritize Azerbaijan's geostrategic importance and hydrocarbon wealth in their relations with the country.

Azerbaijan's international partners should continue to use bilateral and multilateral frameworks for engagement to raise human rights concerns, including related to freedom of expression. Efforts should include urging the authorities to release imprisoned journalists and bring legislation related to freedom of expression in line with international norms. Sustained pressure and clear benchmarks for remedying human rights violations are needed if the international community is to succeed in persuading the Azerbaijani government to respect fundamental rights and liberties.

Council of Europe (CoE)

Europe's foremost human rights body, the Council of Europe,²¹⁶ admitted Azerbaijan as a member in 2000, imposing a number of accession commitments. Those commitments obliged Azerbaijan, *inter alia*, to "guarantee freedom of expression and the independence of media and journalists, and particularly to exclude the use of administrative measures to

²¹⁶ Founded on May 5, 1949, the Council of Europe is an intergovernmental body, with 47 member countries, based in Strasbourg, France.

restrict the freedom of the media.”²¹⁷ Ten years after the accession, Azerbaijan has yet to meet its commitments to guarantee free expression.

The monitoring committee²¹⁸ of the Council of Europe Parliamentary Assembly (PACE), the body in charge of monitoring Azerbaijan’s progress in meeting its accession commitments, has produced six reports assessing Azerbaijan’s compliance since its accession – two on the monitoring procedures and four on the functioning of democratic institutions in the country. The two co-rapporteurs appointed for this purpose²¹⁹ carry out regular visits to the country, meeting with the authorities, civil society representatives and other independent experts, and parliamentarians. In its most recent resolution on Azerbaijan, adopted in June 2010, the PACE condemned “the arrests, intimidation, harassment, and physical threats of journalists, as borne out by the judgment of the [European Court of Human Rights] in the case *Fatullayev v. Azerbaijan*” and expressed concern “about the fate of two youth activists, Emin Milli and Adnan Hajizade.”²²⁰ It further noted the “often disproportionate character of criminal sanctions imposed on some journalists in defamation cases,” and called on the government to decriminalize defamation, release Fatullayev and “create the conditions for journalists to conduct their professional work without interference by the authorities.”²²¹

The PACE co-rapporteurs have voiced criticism of Azerbaijan’s freedom of expression record on a number of occasions. For example, in November 2009 they called the conviction of young bloggers Milli and Hajizade, “yet another blow to freedom of expression in Azerbaijan and serious setback on the country’s path to democratization.”²²² They have also expressed concern about the death in custody of *Talishi Sado* newspaper editor Novruzali

²¹⁷ Opinion No. 222 (2000), Azerbaijan’s Application for Membership of the Council of Europe, Parliamentary Assembly of the Council of Europe, text adopted on June 28, 2000, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOPl222.htm> (accessed October 14, 2010).

²¹⁸ The full name of the Committee is the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe.

²¹⁹ The current co-rapporteurs on Azerbaijan are Maltese Joseph Debono Grech and Estonian Andreas Herkel. PACE also maintains a third rapporteur on Azerbaijan to follow up specifically on the issue of political prisoners. German MP Christoph Strasser was appointed in 2009 to this post.

²²⁰ “The Functioning of Democratic Institutions in Azerbaijan”, Resolution 1750 (2010), Parliamentary Assembly, Council of Europe, text adopted on June 24, 2010, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1750.htm> (accessed October 14, 2010).

²²¹ Ibid.

²²² “Conviction of Bloggers in Azerbaijan ‘a Blow to Freedom of Expression’, Says PACE Rapporteurs”, Press Release, Strasbourg, November 12, 2009, <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2261> (accessed October 15, 2010).

Mammadov.²²³ The current and former Secretary Generals of the Council of Europe have also urged Azerbaijan to meet its freedom of expression commitments.²²⁴

Thomas Hammarberg, Council of Europe commissioner for human rights, also carries out regular visits to Azerbaijan to promote better human rights protection in the country, in accordance with his mandate. In June 2010, Hammarberg published a report on his March visit to Azerbaijan, reporting on a range of issues, including freedom of expression.²²⁵ He called on Azerbaijan authorities to release imprisoned journalists without delay and decriminalize defamation. He has also voiced concern about reports of threats, harassment, and violence against journalists and human rights activists.²²⁶

In 2008, in response to the Azerbaijan authorities' request for assistance, the Council of Europe developed a program aimed at improving the professionalism of journalists with the assistance of the BBC.²²⁷

The Council of Europe should continue to use the PACE monitoring procedure to document and report on violations of freedom of expression in Azerbaijan. The Committee of Ministers should use its authority to insist that Azerbaijan implement the recommendations outlined in the PACE resolutions and the Human Rights Commissioner's reports, and that it take the steps required to implement judgments issued by the European Court of Human Rights against Azerbaijan.

Organization for Security and Co-operation in Europe (OSCE)

Azerbaijan became a member of the OSCE in 1992 after signing the Helsinki Final Act,²²⁸ which also contains provisions guaranteeing freedom of expression. As an OSCE

²²³ "Azerbaijan: PACE Rapporteurs Regret Death in Prison of Talysh Activist," Press Release, Strasbourg, August 18, 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4857.

²²⁴ "Council of Europe Secretary General Calls on Azerbaijan to Comply with ECHR Ruling," Strasbourg, July 7, 2010; "Terry Davis: 'There Can Be No Genuine Democracy without Freedom of Expression,'" Statement by Council Of Europe Secretary General, May 3, 2007, <http://www.coe.az/Latest-News/71.html> (accessed October 15, 2010).

²²⁵ Other issues reviewed were: freedom of association, conduct of law enforcement officials, administration of justice, and observations on his visit to the Autonomous Republic of Nakhchivan. "Report by Thomas Hammarberg, Commissioner for Human Rights of the council of Europe, Following His visit to azerbaijan from 1 to 5 March 2010", Strasbourg, June 29, 2010, <https://wcd.coe.int/ViewDoc.jsp?id=1642017&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed October 15, 2010).

²²⁶ Ibid.

²²⁷ "The Functioning of Democratic Institutions in Azerbaijan", Resolution 1750 (2010), op.cit.

²²⁸ The Conference on Security and Co-operation in Europe Final act (Helsinki Final Act) led to the establishment of the OSCE. Currently the ISCE has 56 participating States.

participating state, Azerbaijan is obliged to “respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.”²²⁹

In order to promote participating states’ compliance with the OSCE press freedom commitments, the OSCE maintains a Special Representative on Freedom of the Media.²³⁰ The former Special Representative Miklos Haraszti visited Azerbaijan on a number of occasions and made statements expressing grave concern regarding freedom of expression, urging the authorities to decriminalize defamation, release imprisoned journalists, disclose information to the public regarding the investigation into the 2005 murder of *Monitor* magazine editor-in-chief Elmar Huseynov, and reinstate the foreign radio broadcasting.²³¹ Those concerns were reiterated by the current Special Representative Dunja Mijatovic at a June 2010 hearing convened by the US Commission for Security and Co-operation in Europe (CSCE, also known as the Helsinki Commission) on “Threats to Free Media in the OSCE Region.”²³²

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), which includes an election-observation mandate among other activities,²³³ conducts media monitoring prior to major elections in OSCE participating states. According to its most recent media monitoring report, the news on most television stations in Azerbaijan lacked balance prior to and during the official campaign period preceding the 2008 presidential vote, with President Ilham Aliyev receiving the bulk of the coverage.²³⁴ The report also noted the deteriorating media environment in Azerbaijan, “in particular due to problems with media independence and the lack of pluralism in the broadcasting sector.”²³⁵

The OSCE Special Representative should continue to actively monitor media freedoms in Azerbaijan and urge the authorities to abolish criminal defamation and release imprisoned

²²⁹ Conference on Security and Co-operation in Europe Final Act, Helsinki, 1975.

²³⁰ For more on the OSCE Representative on Freedom of the Media see, <http://www.osce.org/fom>; the current Special Representative is Dunja Mijatovic who replaced Miklos Haraszti in March 2010.

²³¹ “OSCE Media Freedom Representative Calls on Azerbaijan to Improve Media Freedom, Hopes Detained Bloggers May be Released Soon,” OSCE Press Release, September 10, 2009, <http://www.osce.org/item/39507.html> (accessed October 13, 2010).

²³² “Statement by OSCE Representative on Freedom of the Media Dunja Mijatovic”, Helsinki Commission Hearing on the Threats to Free Media in the OSCE Region, June 9, 2010, http://www.osce.org/documents/rfm/2010/06/44433_en.pdf (accessed October 13, 2010).

²³³ OSCE/ODIHR is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law.

²³⁴ “Republic of Azerbaijan, Presidential Election, 15 October 2008,” OSCE/ODIHR Election Observation Mission Final Report, Warsaw, December 15, 2008, p.5, http://www.osce.org/documents/rfm/2010/06/44433_en.pdf (accessed October 13, 2010).

²³⁵ Ibid.

journalists. ODIHR should also investigate and publicly report on cases of criminal prosecution of journalists as well as reports of harassment and assaults on journalists and other restrictions on the media in the course of Azerbaijan's November 2010 parliamentary elections.

European Union (EU)

Azerbaijan has been developing an increasingly close relationship with the EU, deepening political and economic ties. As they embark on negotiating even closer political-economic ties through an Association Agreement, begun in July 2010, Brussels should set clear benchmarking on human rights by making concrete, measurable improvements in the area of freedom of expression an explicit requirement for closer relations with the EU.

The EU-Azerbaijan Partnership and Cooperation Agreement (PCA), which entered into force in 1999, set as goals, *inter alia*, the promotion of respect for democracy, the rule of law and human rights.²³⁶ The PCA serves as the legal framework for Azerbaijan-EU relations, establishing regular political dialogues at the ministerial, parliamentary, senior official, and head of state level.²³⁷

EU-Azerbaijan political relations further deepened with Azerbaijan's inclusion in the European Neighborhood Policy (ENP) in 2004. The ENP builds on the existing PCA but at the same time offers the prospect of closer relations with the EU, including a greater degree of economic integration. In the framework of the ENP, Azerbaijan and the European Commission have signed a five-year Action Plan (AP) spelling out priority areas for cooperation, including strengthening democracy, the protection of human rights and of

²³⁶ "Partnership and cooperation Agreement Between the European Communities and Their Member states, of the One Part, and the Republic of Azerbaijan, of the Other Part", http://ec.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf (accessed October 13, 2010). EU is also a large investor, since the first support provided in 1992, the European Commission has invested EUR 417 million in Azerbaijan. Delegation of the European Union to Azerbaijan webpage, Technical and Financial Co-operation, http://ec.europa.eu/delegations/azerbaijan/eu_azerbaijan/tech_financial_cooperation/index_en.htm (accessed October 13, 2010). EU is also the largest trade partner of Azerbaijan, with 43 percent share in Azerbaijan's overall external trade in 2009. 98.8 percent of total Azerbaijani exports to the EU consists of oil and gas. See, European Commission, Trade, South Caucasus, at <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/south-caucasus/> (accessed October 13, 2010).

²³⁷ The ministerial-level Co-operation Council meets once a year to take stock of the implementation of the PCA. It brings together members of the Government of Azerbaijan, usually headed by the foreign minister, with EU representatives of the Council of the European Union and the European Commission, headed by the High Representative. The Co-operation Committee meets every 6 months and monitors progress in implementing economic/trade chapters of the EU-Azerbaijan Action Plan. The Parliamentary Co-operation Committee consists of members of the Azerbaijan Parliament and the European Parliament and meets twice a year, providing the forum for political dialogue between parliamentarians from the European Union and Azerbaijan. A summit, held at heads of state level, was first held in the context of the Eastern Partnership in May 2009, and will be organized on a 2-year basis.

fundamental freedoms and the rule of law.²³⁸ The EU has been monitoring Azerbaijan's progress in implementing the Action Plan, and issues annual progress reports. The latest progress report, released in May 2010, criticized Baku for deteriorating conditions for freedom of expression and media freedoms. It noted that "cases of intimidation of journalists through defamation court proceedings, imprisonment and threats continued to be reported and were criticized by the international community including the EU."²³⁹

Respect for human rights and promotion of the good governance are also part of the Eastern Partnership Initiative (EaP), launched in 2009 in Prague.²⁴⁰ The EaP is the enhancement of the existing ENP, aiming at substantially upgrading engagement with the EU's six Eastern neighbors.²⁴¹ The ENP will gradually be replaced by the EaP. Alongside the EaP process, the European Commission established an Eastern Partnership Civil Society Forum (CSF) to promote contacts among civil society organizations and facilitate their dialogue with public authorities.²⁴²

As part of the EaP, the EU started negotiating Association Agreements with Armenia, Azerbaijan and Georgia in July 2010. According to the EU, the negotiations process will be "guided by the principles of inclusiveness, differentiation, conditionality and joint ownership, as well as by a strong commitment of the parties to shared values and principles, including democracy, the rule of law and respect for human rights and good governance."²⁴³

The EU is well aware of the deteriorating respect for freedom of expression in Azerbaijan and has made public statements of concern in the past. For example, the EU High Representative for Foreign Affairs and Security Catherine Ashton expressed her regrets about the August 2010 Azerbaijan Supreme Court decision upholding the prison terms of the bloggers Emin

²³⁸ EU-Azerbaijan Action Plan, Priority areas 2 and 3, http://ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf (accessed October 13, 2010).

²³⁹ "Implementation of the European Neighbourhood Policy in 2009: Progress Report Azerbaijan," Commission Staff working Document, Brussels, May 12, 2010, http://ec.europa.eu/world/enp/pdf/progress2010/sec10_519_en.pdf (accessed October 13, 2010).

²⁴⁰ The Eastern Partnership Initiative was launched in Prague on 7 May 2009 after being signed by representatives of the EU, Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. For more, see, Eastern Partnership, European Union External Action, http://eeas.europa.eu/eastern/index_en.htm (accessed October 13, 2010).

²⁴¹ The six eastern neighbors include: Belarus, Armenia, Azerbaijan, Georgia, Moldova and Ukraine. The EU will invest EUR 600 million in the project up to 2013. "EU launches 'Eastern partnership'", May 8, 2009, <http://news.bbc.co.uk/2/hi/europe/8040037.stm> (accessed October 13, 2010).

²⁴² The first meeting of the CSF took place in Brussels, November 16-17, 2009. See, Delegation of the EU to Azerbaijan, Civil Society Dialogue, http://ec.europa.eu/delegations/azerbaijan/eu_azerbaijan/civil_society_dialogue/index_en.htm (accessed October 13, 2010).

²⁴³ "EU Launches Negotiations on association Agreements with Armenia, Azerbaijan and Georgia," Press Release, Brussels, July 15, 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/955&type=HTML> (accessed October 14, 2010).

Milli and Adnan Hajizade and called for their release.²⁴⁴ In December 2009, the European Parliament adopted a resolution on freedom of expression in Azerbaijan, voicing its “concern about the deterioration of media freedom in Azerbaijan, deploring the practice of arresting, prosecuting and convicting opposition journalists on various criminal charges” and calling for immediate release of imprisoned journalists.²⁴⁵ In 2007 the then-German Presidency of the EU issued a critical statement on media freedoms in Azerbaijan, expressing concern that “criminal defamation suits initiated by public officials are being used in order to limit media freedom in Azerbaijan,” and called the authorities to “create an environment where the media can work freely, effectively and without fear.”²⁴⁶

As Azerbaijan and EU embark on negotiating the Association Agreement, the EU should stay true to its conditionality commitment and impose concrete benchmarks for Azerbaijan in exchange for greater political and economic integration. Such benchmarks should clearly spell out specific steps Azerbaijan needs to take to address concerns on freedom of expression, which should include, but not be limited to, releasing imprisoned journalists and repealing criminal defamation provisions.

United States (U.S.)

United States considers Azerbaijan as a strategic partner. Azerbaijan provides its airspace for the transfer of coalition troops to Afghanistan; contributes peacekeeping forces to Afghanistan and Iraq; supports US efforts to combat terrorism and the proliferation of weapons of mass destruction; and is a key player for diversifying and securing global energy supply.²⁴⁷ According to the US Department of State, the US provided Azerbaijan with assistance totaling US\$ 25.84 million in 2009.²⁴⁸ The assistance was targeted, *inter alia*, “to

²⁴⁴ “Statement by EU High Representative Catherine Ashton on Azerbaijan’s Supreme Court Judgement of 19 August concerning the Two Youth Organization Members,” Brussels, August 24, 2010, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/116230.pdf (accessed October 13, 2010).

²⁴⁵ “European Parliament Resolution of 17 December 2009 on Azerbaijan: Freedom of Expression,” Strasbourg, December 19, 2009, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0120&language=EN> (accessed October 14, 2010).

²⁴⁶ “EU Statement on Media Freedom in Azerbaijan”, Meeting of the Permanent council, April 26, 2007, http://www.wien-osze.diplo.de/Vertretung/wienosce/en/02/EU-Erkl_C3_A4rungs_20AZE_20260407__ddatei,property=Daten.pdf (accessed October 13, 2010).

²⁴⁷ For an overview of the US-Azerbaijan relations please see, “US-Azerbaijan Relations,” Speech by William J. Burns, US Under Secretary for Political Affairs, delivered at Georgetown University, Washington DC, September 19, 2009, <http://www.state.gov/p/us/rm/2009a/129375.htm> (accessed October 14, 2010).

²⁴⁸ “Foreign Operations Appropriated Assistance: Azerbaijan,” Bureau of European and Eurasian Affairs Fact Sheet, December 1, 2009, <http://www.state.gov/p/eur/rls/fs/140592.htm> (accessed October 13, 2010).

development of democratic institutions of government and civil society to promote public participation, combat corruption and strengthen the rule of law.”²⁴⁹

In December 2006 Washington initiated the US-Azerbaijan Democracy and Human Rights Dialogue, seeking to strengthen Azerbaijan’s democratic development.²⁵⁰ The third round of the talks was held in August 2007 and focused on media freedom, electoral processes and human rights.²⁵¹

The Obama administration has grown increasingly outspoken about the deteriorating media freedoms in Azerbaijan. During his UN General Assembly speech in September 2010, President Barack Obama expressed hope that Azerbaijan would implement democratic reforms and increase human rights protections, including by releasing imprisoned bloggers Emin Milli and Adnan Hajizade.²⁵² President Obama and Azerbaijan President Ilham Aliyev met in New York on the sidelines of the United Nations General Assembly session.

In July 2010, US Secretary of State Hillary Clinton visited Baku and raised a number of human rights concerns with the Azerbaijani government, including the imprisonment of Milli and Hajizade.²⁵³

The US should continue to make freedom of expression an integral part of all bilateral engagement with Azerbaijan, urging for decriminalization of libel and release of imprisoned journalists, as well as for effective investigations into violence or threats of violence against journalists.

²⁴⁹ Ibid.

²⁵⁰ “US-Azerbaijan Democracy and Human Rights Dialogue”, Press Release, US Department of State, August 7, 2007.

²⁵¹ Ibid.

²⁵² “President Obama Meets President Aliyev in New York,” September 24, 2010, <http://azerbaijan.usembassy.gov/index.html> (accessed October 13, 2010).

²⁵³ “Opening Remarks at a Roundtable with Azerbaijani Civil Society and Youth Leaders,” July 4, 2010, Baku, Azerbaijan, http://azerbaijan.usembassy.gov/speeches_o7o410a.html (accessed September 13, 2010).

VIII. Extended Recommendations

To the Azerbaijani President and Government:

On Defamation Laws and their application:

- Propose legislative amendments to repeal the criminal slander and libel provisions of the Criminal Code.
- Instruct all government officials to refrain from filing criminal defamation complaints in their capacity as public officials or on behalf of the institutions they serve.
- Publicly oppose the use of criminal defamation provisions of the law as a matter of principle.
- Propose legislative amendments to the Civil Code and other relevant laws to establish clear standards of liability, evidence, and compensation in civil defamation cases, consistent with international and European human rights law and practice, specifically:
 - o Government institutions should not be able to bring defamation suits.
 - o The burden of proof of all elements should be on the persons claiming to have been defamed.
 - o Truth should be a complete defense to defamation, and in matters of public interest, the author should only be required to have acted in due diligence to ascertain the truth.
 - o A range of remedies should be available in addition to damages, such as issuing an apology or retraction.
 - o Any damages awarded should be strictly proportionate to the actual harm caused.
- Propose establishment of a reasonable statutory cap on civil awards for non-pecuniary damages.

On Imprisoned Journalists:

- Without further delay implement the European Court of Human Rights judgment in the case *Fatullayev v Azerbaijan* secure his immediate release.
- Ensure release of all other journalists imprisoned because of views or opinions expressed, particularly that of Emin Milli and Adnan Hajizade.
- End the practices of selective criminal prosecution and imprisonment of journalists, human rights defenders, and others who criticize the government.

On Harassment, Intimidation and Violence against Journalists:

- End widespread impunity for harassment and violence against journalists by police officials.
- Publicly condemn attacks and harassment of journalists and implement a policy of zero tolerance towards such attacks.
- Propose the establishment of a formal, disciplinary framework in the Ministry of Interior for internal investigations into reports of police abuse, irrespective of whether there is an official complaint by the victim.
- Insist on a thorough, impartial, and conclusive investigation into the death of Elmar Husseynov.
- Insist on a prompt and effective investigation of death in custody of Novruzali Mammadov, in accordance with the article 2 requirements of the European Convention on Human Rights.

On Access to Information and broadcast license regulations:

- Propose amendments to the Azerbaijani Constitution and legislation to guarantee access to public information.
- Repeal the 2009 constitutional amendments which violate article 10 of the European Convention on Human Rights, in line with the recommendations of the Council of Europe Venice Commission
- Allow the resumption of foreign radio broadcasts on FM frequencies.
- Amend the law to make the composition of the NTRC independent, in line with CoE recommendations.

Concerning the November 2010 parliamentary elections:

- Ensure the ability of the journalists and civil society activists to freely express opinions and disseminate information in the run up to, during, and following the November 2010 parliamentary elections.

To the Ministry of Internal Affairs and Prosecutor General's Office:**On Defamation Laws and their Application:**

- Refrain from filing criminal defamation complaints on behalf of the Ministry of Interior, its departments or employees of the ministry.
- Drop all current criminal defamation suits filed by the Ministry of Interior and their personnel.

On Harassment, Intimidation and Violence against Journalists and Civil Society Activists:

- Conduct prompt, thorough and effective investigations of all allegations of violence and threats of violence against journalists and hold perpetrators accountable.
- Conduct prompt and impartial investigations of police personnel implicated in abuses against members of the media, and prosecute or discipline those responsible.
- End the widely-tolerated harassment and intimidation of journalists by police officials.
- Provide training to police personnel regarding the right of the press to cover police activities and to monitor and report about public demonstrations and rallies.
- Provide training to police personnel on the right of the public to be informed about human rights violations, police misconduct, and other matters of legitimate public interest.

To the Azerbaijani Parliament:

- Repeal the defamation provisions in the Criminal Code, specifically Articles 147 and 148.
- Speedily adopt the law on defamation in line with international standards that satisfy the conditions outlined above.
- Repeal constitutional and legislative amendments restricting access to information by media representatives in accordance with the Council of Europe Venice Commission recommendations.
- Consider forming an Ad Hoc Parliamentary Commission to analyze the failure of the prosecutorial system to investigate police abuse against journalists and civil society activists.

To the Azerbaijani Judiciary:

- Refrain from imposing custodial sentences against journalists based on defamation provisions in the Criminal Code.
- In deciding cases involving defamation allegations, take into consideration article 10 of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

To the National Television and Radio Council:

- Ensure timely publication of available frequencies.
- Ensure that tenders for available frequencies are held in a timely, transparent and impartial manner.
- Ensure that the NTRC decisions are publicly available.

To the Press Council of Azerbaijan:

- Immediately stop the compilation, publication, and dissemination of the “Black List of Racketeering Newspapers.”
- Consider adopting a code of ethics for journalists, conducting trainings for journalists, and undertaking other measures to promote professional journalism.

To the Governments of the United States, European Union, and other bilateral partners:

- Make respect for freedom of expression an integral component of all bilateral and multilateral engagement with Azerbaijan.
- Ensure that all sponsored training programs on democracy and rule of law for police, prosecutors, judges, legislators, and relevant civil servants include instruction on freedom of expression and the importance of non-violent criticism to the proper functioning of democracy.
- Continue to support the development of civil society organizations committed to media monitoring and development.
- Support civil society groups assisting individuals facing criminal defamation claims.

To the European Union:

- Make respect for freedom of expression an integral part of the EU-Azerbaijan Human Rights Dialogue, clearly spelling out the specific steps Azerbaijan needs to take to address concerns in this area, which include but are not limited to releasing wrongfully imprisoned journalists and repealing criminal defamation provisions.
- Make concrete, measurable improvements in the area of freedom of expression an explicit requirement in the context of the negotiations of an Association Agreement between the EU and Azerbaijan.
- Use every opportunity, in particular high-level meetings between the EU and Azerbaijan, to urge the Azerbaijani authorities to release imprisoned journalists, who are held because of views or opinions expressed.
- Ensure adequate monitoring and reporting of violations of freedom of expression in the European Neighborhood Policy Action Plan Progress Reports.
- Provide trainings to Azerbaijani lawyers, media rights groups and interested journalists on defamation issues and internationally protected media freedoms.

To the Council of Europe:

- The Parliamentary Assembly's monitoring procedure on the honoring of obligations and commitments by Azerbaijan should continue to place strong emphasis on monitoring and reporting of violations of freedom of expression.
- The Committee of Ministers should urge the Azerbaijani authorities to without further delay implement the European Court of Human Rights judgment in the case *Fatullayev v Azerbaijan* and secure Eynulla Fatullayev's immediate release.
- The Committee of Ministers should urge the Azerbaijani authorities to implement the recommendations by the Commissioner for Human Rights, Thomas Hammarberg, following his visit to Azerbaijan in March 2010.
- Assist the Azerbaijani authorities in bringing Azerbaijan's criminal and civil defamation laws in line with international standards.
- Assist the Azerbaijani authorities in providing systematic and periodic training to judges and prosecutors of all levels on the European Convention on Human Rights and the jurisprudence of the European Court. As a matter of priority, such training should cover freedom of expression and fair trial issues.
- Provide trainings to Azerbaijani lawyers, media rights groups and interested journalists on defamation issues and internationally protected media freedoms.

To the Organization for Security and Co-operation in Europe:

- The OSCE Representative on Freedom of Media should continue monitoring of media freedoms in Azerbaijan and engage the Azerbaijani authorities in a structured dialogue to remedy continuing abuses, including those set out in this report.
- The OSCE Representative on Freedom of Media should continue to call for the abolishment of criminal defamation in Azerbaijan.
- The OSCE Office for Democratic Institutions and Human Rights (ODIHR) should thoroughly investigate and publicly report on cases of harassment and assaults on journalists or other restrictions on the media in the course of Azerbaijan's November 2010 parliamentary elections.
- The OSCE office in Azerbaijan should monitor and report publicly on violence against media professionals and regularly monitor defamation trials involving journalist defendants.

To the United Nations:

- The Special Rapporteur on freedom of expression should request an invitation to visit Azerbaijan and produce an authoritative report on violations with detailed recommendations for steps required to address them.
- The Human Rights Committee should follow up on its welcome emphasis on violations of freedom of expression in Azerbaijan, as reflected in the concluding observations resulting from its 2009 review of Azerbaijan's compliance with the International Covenant on Civil and Political Rights, requesting the Azerbaijani government to report back within one year on the steps it had taken to implement the Committee's recommendations pertaining to, inter alia, freedom of expression.

IX. Acknowledgements

This report was researched by Giorgi Gogia and Steve Swerdlow, researchers in the Europe and Central Asia division of Human Rights Watch. It was written by Giorgi Gogia with contributions from Steve Swerdlow, who wrote the legal background and parts of several other sections. Erica Lally, associate, Peter Slezkine, intern, in the Europe and Central Asia Division contributed to the media background section of the report and Erica Lally and Yulia Korovikov, intern, conducted research for the political background section. The report was edited by Jane Buchanan, senior researcher in the Europe and Central Asia division, and reviewed by Aisling Reidy, senior legal advisor, and Cassandra Cavanaugh, Program editor. Veronika Szente Goldston, advocacy director of the Europe and Central Asia Division reviewed the summary and recommendations and the chapter on international responses.

Production assistance was provided by Erica Lally, associate in the Europe and Central Asia Division, Anna Lopriore, creative manager and photo editor, Kathy Mills, publications coordinator, and Fitzroy Hepkins, mail manager.

Human Rights Watch expresses its sincere thanks to the print and radio journalists and editors, as well as to the lawyers and academics, who shared their stories with us. Special thanks go to Leyla Ismaylova who assisted and served as an interpreter to Human Rights Watch researchers in Baku. Human Rights Watch also gratefully acknowledges the expertise and assistance of Vugar Gojayev of the Norwegian Human Rights House in Baku. Human Rights Watch also thanks our many Azerbaijani NGO colleagues and others in Baku who provided information and support for this research.

X. Communication with Azerbaijani Government Officials

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August 16, 2010

Chief of the Presidential Administration of the Republic of
Azerbaijan Ramiz Mehdiyev,
Executive Administration of the President of the Republic of
Azerbaijan
“The President Palace”
Istiglaliyyat street, 19, Baku city, AZ1066
Republic of Azerbaijan,

Dear Dr. Mehdiyev,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is preparing a report regarding freedom of expression in Azerbaijan, including the use of criminal defamation laws, violence and threats of violence against journalists, and legislative amendments affecting access to information.

We are writing to ensure that our report properly reflects the views, policies, and practices of the government of Azerbaijan regarding criminal defamation provisions and media freedom in general in the country.

Human Rights Watch has been following the developments in Azerbaijan regarding freedom of expression for over seven years. We have conducted several field missions and met with journalists, civil society activists, and government representatives. As a result of our inquiry, we have identified certain patterns testifying to the deterioration of media freedoms in the country.

We feel we have credible allegations that criminal defamation and other spurious criminal charges have been used by representatives of government agencies to stifle opposition and independent journalists expressing dissenting opinions, as well as against activists of non-governmental organizations who publicly criticize the government. We have documented a growing number of criminal defamation charges brought by the Ministry of Interior using the private prosecution procedure. Despite calls from Azerbaijan’s international partners, Azerbaijan remains one of

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the few Council of Europe member states that maintains criminal libel laws and uses them to imprison journalists.

- What is your explanation for maintaining criminal libel laws?
- How many prosecutions for criminal libel were commenced in 2006, 2007, 2008, 2009, and to date for 2010?
- Human Rights Watch has noted an apparent increase in the number of criminal libel complaints brought by government officials against journalists, human rights defenders, and others. What is your explanation for this?
- Does the government of Azerbaijan have any plans to reform its legislation to decriminalize libel? If so, please indicate the steps you intend to take. If no, please indicate why not.
- Can civil defamation with a reasonable monetary cap provide an adequate remedy for citizens who feel they have been defamed, and why or why not?
- According to international standards, public figures are required to tolerate a greater degree of criticism than private citizens, and defamation laws should not be used to prevent criticism of government. Do the Azerbaijani authorities intend to amend the defamation provisions of the Criminal and Civil Codes to provide heightened standards for use of those provisions by government officials? If yes, please indicate the steps you intend to take. If no, please indicate why not.

In its recent ruling on *Fatullayev v. Azerbaijan*, the European Court of Human Rights found Azerbaijan in violation of the Article 10 of the European Convention on Human Rights and ordered the immediate release of Eynulla Fatullayev, founder and editor of the two most popular newspapers in the country. In July, Azerbaijan referred the case to the Grand Chamber of the Court. In his recent report on Azerbaijan, the Council of Europe Commissioner for Human Rights Thomas Hammarberg noted that although the Court's judgment was not final, given the particular circumstances of the case, "a full and prompt execution of the judgment would require the immediate release of Eynulla Fatullayev." Does the government of Azerbaijan plan to secure the release of Eynulla Fatullayev. If yes, please indicate the steps you intend to take. If no, please indicate why not. What other steps are planned to implement the Court's recommendations to bring Azerbaijan in line with its international obligations?

Human Rights Watch has also documented cases of violence and threats of violence against journalists in the process of performing their duties or as retaliation for their writings. It appears that law enforcement officials have used violence against journalists as the latter

were observing non-violent protests or in the process of gathering information on issues of public interest. In at least 10 cases researched by Human Rights Watch, although journalists have filed complaints, there have not been conclusive investigations of such incidents resulting in accountability for the abuses.

- Have the authorities investigated complaints regarding violence and threats of violence against journalists?
- Have any Ministry of Internal Affairs' officials been prosecuted or been subject to disciplinary actions in relation to an attack on a journalist?
- Have there been any internal inquiries in the Ministry of Internal Affairs regarding violence and threats of violence against journalists perpetrated by police officers? When did these take place and what were the outcomes?
- What kind of training, if any, do police forces receive concerning freedom of expression, including the rights of journalists?

Human Rights Watch has studied a set of legislative amendments adopted by the Milli Mejlis (parliament) aimed to bring Azerbaijani laws in line with the changes in the constitution resulting from the March 2009 constitutional referendum. Changes supposedly designed to protect an individual's right to privacy banned the practice of using video, photo, or voice recording by a media representative without the subject's prior knowledge or consent. The Council of Europe criticized the amendments for setting no exceptions for issues of public interest. Human Rights Watch research has found that these new laws have been used by state officials to ban photographing or recording of events taking place in public and which the public has a legitimate interest in knowing about.

- What is the official explanation for not heeding to the Council of Europe recommendations?
- If the aim of these legislative changes is not to limit the public's access to information, then how do the authorities plan to remedy the negative effects of the legislative amendments?

Human Rights Watch research has shown that the Press Council, a self-regulatory body for the press, regularly publishes "the Black List of racketeering newspapers." Currently there are over one hundred newspapers on the list, which were deemed to have allegedly breached ethical journalism standards. As a consequence of black listing, some newspapers were forced to close and others lost access to official sources of information as their accreditations were revoked.

- Has your ministry used the "Black List" to deny a request for information from a media representative in the past?

- Do you agree with this concept as a means to establish higher journalistic standards? If yes, why? If not, please indicate the steps you intend to take to discourage this practice.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you or your subordinates will respond to the attached questions so that your ministry's views are accurately reflected in our reporting. In addition to information requested above, please include any other relevant materials, statistics, and government actions regarding the protection of freedom of expression in the country. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by September 14, 2010.

Thank you for your time in addressing these urgent matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel Denber', with a stylized, flowing script.

Rachel Denber
Acting Executive Director
Europe and Central Asia Division

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August 16, 2010

Minister Usubov Ramil Idris oglu,
Ministry of Internal Affairs

Dear Minister Usubov,

Please accept my regards on behalf of Human Rights Watch.

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We are writing to ensure that our report properly reflects the views, policies, and practices of the government of Azerbaijan regarding criminal defamation provisions and media freedom in general in the country.

Human Rights Watch has been following the developments in Azerbaijan regarding freedom of expression for over seven years. We have conducted several field missions and met with journalists, civil society activists, and government representatives. As a result of our inquiry, we have identified certain patterns testifying to the deterioration of media freedoms in the country.

We feel we have credible allegations that criminal defamation and other spurious criminal charges have been used by representatives of government agencies to stifle opposition and independent journalists expressing dissenting opinions, as well as against activists of non-governmental organizations who publicly criticize the government. We have documented a growing number of criminal defamation charges brought by the Ministry of Interior using the private prosecution procedure. Despite calls from Azerbaijan's international partners, Azerbaijan remains one of the few Council of Europe member states that maintains criminal libel laws and uses them to imprison journalists.

- What is your explanation for maintaining criminal libel laws?

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- Can civil defamation with a reasonable monetary cap provide an adequate remedy for citizens who feel they have been defamed, and why or why not?
- According to international standards, public figures are required to tolerate a greater degree of criticism than private citizens, and defamation laws should not be used to prevent criticism of government. Do the Azerbaijani authorities intend to amend the defamation provisions of the Criminal and Civil Codes to provide heightened standards for use of those provisions by government officials? If yes, please indicate the steps you intend to take. If no, please indicate why not.

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- Does the government of Azerbaijan plan to secure the release of Eynulla Fatullayev. If yes, please indicate the steps you intend to take. If no, please indicate why not.
- What other steps are planned to implement the Court's recommendations to bring Azerbaijan in line with its international obligations?

Human Rights Watch has also documented cases of violence and threats of violence against journalists in the process of performing their duties or as retaliation for their writings. It appears that law enforcement officials have used violence against journalists as the latter were observing non-violent protests or in the process of gathering information on issues of public interest. In at least 10 cases researched by Human Rights Watch, although journalists have filed complaints, there have not been conclusive investigations of such incidents resulting in accountability for the abuses.

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- What is the official explanation for not heeding to the Council of Europe recommendations?
- If the aim of these legislative changes is not to limit the public's access to information, then how do the authorities plan to remedy the negative effects of the legislative amendments?

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- Has your ministry used the "Black List" to deny a request for information from a media representative in the past?
- Do you agree with this concept as a means to establish higher journalistic standards? If yes, why? If not, please indicate the steps you intend to take to discourage this practice.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you or your subordinates will respond to the attached questions so that your

ministry's views are accurately reflected in our reporting. In addition to information requested above, please include any other relevant materials, statistics, and government actions regarding the protection of freedom of expression in the country. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by September 14, 2010.

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August 16, 2010

Zakir Garalov
Prosecutor General of Azerbaijan
Office of the Prosecutor General
7 Nigar Rafibeyli Street
Baku, Azerbaijan

Dear Prosecutor General,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is preparing a report regarding freedom of expression in Azerbaijan, including the use of criminal defamation laws, violence and threats of violence against journalists, and legislative amendments affecting access to information.

We are writing to ensure that our report properly reflects the views, policies, and practices of the government of Azerbaijan regarding criminal defamation provisions and media freedom in general in the country.

Human Rights Watch has been following the developments in Azerbaijan regarding freedom of expression for over seven years. We have conducted several field missions and met with journalists, civil society activists, and government representatives. As a result of our inquiry, we have identified certain patterns testifying to the deterioration of media freedoms in the country.

We feel we have credible allegations that criminal defamation and other spurious criminal charges have been used by representatives of government agencies to stifle opposition and independent journalists expressing dissenting opinions, as well as against activists of non-governmental organizations who publicly criticize the government. We have documented a growing number of criminal defamation charges brought by the Ministry of Interior using the private prosecution procedure. Despite calls from Azerbaijan's international partners, Azerbaijan remains one of the few Council of Europe member states that maintains criminal libel laws and uses them to imprison journalists.

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- What is your explanation for maintaining criminal libel laws?
- How many prosecutions for criminal libel were commenced in 2006, 2007, 2008, 2009, and to date for 2010?
- Human Rights Watch has noted an apparent increase in the number of criminal libel complaints brought by government officials against journalists, human rights defenders, and others. What is your explanation for this?
- Does the government of Azerbaijan have any plans to reform its legislation to decriminalize libel? If so, please indicate the steps you intend to take. If no, please indicate why not.
- Can civil defamation with a reasonable monetary cap provide an adequate remedy for citizens who feel they have been defamed, and why or why not?
- According to international standards, public figures are required to tolerate a greater degree of criticism than private citizens, and defamation laws should not be used to prevent criticism of government. Do the Azerbaijani authorities intend to amend the defamation provisions of the Criminal and Civil Codes to provide heightened standards for use of those provisions by government officials? If yes, please indicate the steps you intend to take. If no, please indicate why not.

In its recent ruling on *Fatullayev v. Azerbaijan*, the European Court of Human Rights found Azerbaijan in violation of the Article 10 of the European Convention on Human Rights and ordered the immediate release of Eynulla Fatullayev, founder and editor of the two most popular newspapers in the country. In July, Azerbaijan referred the case to the Grand Chamber of the Court. In his recent report on Azerbaijan, the Council of Europe Commissioner for Human Rights Thomas Hammarberg noted that although the Court's judgment was not final, given the particular circumstances of the case, "a full and prompt execution of the judgment would require the immediate release of Eynulla Fatullayev."

- Does the government of Azerbaijan plan to secure the release of Eynulla Fatullayev. If yes, please indicate the steps you intend to take. If no, please indicate why not.
- What other steps are planned to implement the Court's recommendations to bring Azerbaijan in line with its international obligations?

Human Rights Watch has also documented cases of violence and threats of violence against journalists in the process of performing their duties or as retaliation for their writings. It appears that law enforcement officials have used violence against journalists as the latter were observing non-violent protests or in the process of gathering information on issues of public interest. In at least 10 cases researched by Human Rights Watch, although journalists

have filed complaints, there have not been conclusive investigations of such incidents resulting in accountability for the abuses.

- Have the authorities investigated complaints regarding violence and threats of violence against journalists?
- Have any Ministry of Internal Affairs' officials been prosecuted or been subject to disciplinary actions in relation to an attack on a journalist?
- Have there been any internal inquiries in the Ministry of Internal Affairs regarding violence and threats of violence against journalists perpetrated by police officers? When did these take place and what were the outcomes?
- What kind of training, if any, do police forces receive concerning freedom of expression, including the rights of journalists?

Human Rights Watch has studied a set of legislative amendments adopted by the Milli Mejlis (parliament) aimed to bring Azerbaijani laws in line with the changes in the constitution resulting from the March 2009 constitutional referendum. Changes supposedly designed to protect an individual's right to privacy banned the practice of using video, photo, or voice recording by a media representative without the subject's prior knowledge or consent. The Council of Europe criticized the amendments for setting no exceptions for issues of public interest. Human Rights Watch research has found that these new laws have been used by state officials to ban photographing or recording of events taking place in public and which the public has a legitimate interest in knowing about.

- What is the official explanation for not heeding to the Council of Europe recommendations?
- If the aim of these legislative changes is not to limit the public's access to information, then how do the authorities plan to remedy the negative effects of the legislative amendments?

Human Rights Watch research has shown that the Press Council, a self-regulatory body for the press, regularly publishes "the Black List of racketeering newspapers." Currently there are over one hundred newspapers on the list, which were deemed to have allegedly breached ethical journalism standards. As a consequence of black listing, some newspapers were forced to close and others lost access to official sources of information as their accreditations were revoked.

- Has your ministry used the "Black List" to deny a request for information from a media representative in the past?
- Do you agree with this concept as a means to establish higher journalistic standards? If yes, why? If not, please indicate the steps you intend to take to discourage this practice.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you or your subordinates will respond to the attached questions so that your ministry's views are accurately reflected in our reporting. In addition to information requested above, please include any other relevant materials, statistics, and government actions regarding the protection of freedom of expression in the country. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by September 14, 2010.

Thank you for your time in addressing these urgent matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel Denber', with a stylized flourish at the end.

Rachel Denber
Acting Executive Director
Europe and Central Asia Division

Date: 01 September 2010

Ref. No. 12/2694-10

**Mrs. Rachel Denber
Acting Executive Director
Europe and Central Asia Division
Human Rights Watch**

Dear Mrs. Denber,

In reply to your letter to the Prosecutor General's Office of the Republic of Azerbaijan regarding the preparation of report on freedom of expression in the Republic of Azerbaijan dated 16 August 2010, please be advised that following the thorough reforms implemented after gaining the independence, all obstacles restricting pluralism, freedom of expression and information have been eliminated and hence the legislation base regulating mass media means have been improved to the international standards thereof. On the Decree of the President of the Republic of Azerbaijan dated 6 August 1998, the entity run within the Cabinet of Ministers who was supervising the state secrets on the press and other mass media outlets was closed leading to the elimination of censorship applied to the press and opening new prospects of development for the national press. In 2003, in the course of the First Congress of Azerbaijani Journalists, the Press Council was set up to implement the functions of self-regulation of the press and regulation of relations between the state bodies and the press.

The Constitution of the Republic of Azerbaijan and the Laws of the Republic of Azerbaijan on "Freedom of Expression" adopted in 1998, on "Mass Media Outlets" adopted in December 1999 and improved over the following years within the atmosphere of co-operation with international organizations have completely ensured the freedom of expression and information as well as the independent activity of press and journalists.

As to the question in your letter about the range of powers of the Prosecutor General's Office of the Republic of Azerbaijan, the actions connected with preventing the journalists' implementation of their legal profession activity, i.e. forcing them to distribute or refuse from distributing an information forcefully or by threatening to force has been set forth in Article 163 of the Criminal Code of the Republic of Azerbaijan dated 01 September 2000, as an offence, and stipulating that if the above actions are committed by a state official, it will be recognized as an abuse of power with aggravating circumstances.

The preliminary investigation of criminal actions to prevent journalists' legal implementation of their profession activities falls over the prosecution offices' powers under Article 215.3.1 of the Criminal Procedural Code of the Republic of Azerbaijan.

Moreover, by the Order of the General Prosecutor of the Republic of Azerbaijan dated 3 March 2006 with the reference number 09/18 on “Providing special information”, a list of “Incidents and crimes envisaging special information” has been confirmed and the crimes concerning the persecution of journalists and applying them force have been included in that list by taking into account their public danger degree and character.

The objective of the Press Council who is involved in self-regulation of the media in the Republic of Azerbaijan is to implement public supervision over professional activities of journalists to ensure that their activities comply with requirements of the legislation and with professional principles and to ensure strengthening the relations and trust between state authorities, public and press, and to encourage broader opportunities for the freedom of expression, opinion and information. The inclusion of some media outlets into the “Black list of racketeering publications” is applied as a public reproach to those mass media outlets who approach their professional principles ignorantly, issuing defamations against the honor and dignity to the object of criticism and by intentionally discrediting them.

Apart from the aforesaid, it is noteworthy to state that all the enquiries from the mass media means to the prosecution offices of the Republic of Azerbaijan are appropriately addressed stemming from requirements of the Order of the Prosecutor General’s Office dated 27 June 2005, with reference number 09/62 on “Co-operation issues between prosecution offices and mass media means and non-governmental organizations”.

In order to ensure favorable conditions for the implementation of freedom of expression, to regularly provide the public with detailed and objective information about the investigation of criminal cases that has provoked deep interest and sensation in the society, the Press Service and official website has been set up with the Prosecutor General’s Office of the Republic of Azerbaijan and the list of the prosecution officers responsible to the relations with the mass media outlets and non-government organizations has been established and presented to the public.

Sincerely,

**Head of the International Relations Department
Prosecutor General’s Office
of the Republic of Azerbaijan**

Ruslan Hajiye



**AZƏRBAYCAN
RESPUBLİKASININ
BAŞ PROKURORLUĞU**

AZ 1001, Bakı şəhəri, N. Rəfiyaylı küç., 7
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01.09.2010 il № 12/2694-10

“Human Rights Watch” təşkilatının
Avropa və Orta Asiya bölməsi üzrə
icraçı direktorunun səlahiyyətlərini
icra edən

xanım Reyçil Denberə

il tarixli №-yə cavab

Hörmətli xanım Denber,

Azərbaycan Respublikasında söz azadlığı ilə bağlı hesabatın hazırlanması barədə Baş Prokurorluğa ünvanladığınız 16.08.2010-cu il tarixli məktubla əlaqədar bildirilir ki, dövlət müstəqilliyi bərpa olunduqdan sonra Azərbaycanda aparılmış köklü islahatlar nəticəsində plüralizmi, söz və məlumat azadlığını məhdudlaşdıran maneələr aradan qaldırılmış, kütləvi informasiya vasitələrinin fəaliyyətini tənzimləyən qanunvericilik bazası təkmilləşdirilərək beynəlxalq standartlara uyğunlaşdırılmışdır. Azərbaycan Respublikası Prezidentinin 1998-ci il 6 avqust tarixli Fərmanı ilə Nazirlər Kabineti nəzdində fəaliyyət göstərmiş mətbuatda və digər kütləvi informasiya vasitələrində dövlət sirlərini mühafizə edən qurum ləğv edilmiş, bununla da mətbuata tətbiq edilən senzura aradan qaldırılmış, milli mətbuatın inkişafı yolunda yeni perspektivlər açılmışdır. 2003-cü ildə Azərbaycan Jurnalistlərinin Birinci Qurultayında mətbuatın özünü-tənzimləmə orqanı və dövlət qurumları ilə mətbuat arasında münasibətlərin nizamlanması funksiyalarını yerinə yetirən Mətbuat Şurası yaradılmışdır.

Azərbaycan Respublikasının Konstitusiyası, 1998-ci ildə qəbul edilmiş “Məlumat azadlığı haqqında”, 1999-cu ilin dekabrında qəbul olunmuş və sonrakı illərdə beynəlxalq təşkilatlarla əməkdaşlıq şəraitində təkmilləşdirilmiş “Kütləvi informasiya vasitələri haqqında”, 2005-ci ildə qəbul edilmiş “İnformasiya əldə etmək haqqında” Azərbaycan Respublikasının Qanunları söz və məlumat azadlığına, mətbuatın və jurnalistlərin müstəqil fəaliyyətinə tam təminat vermişdir.

Məktubunuzda göstərilmiş Azərbaycan Respublikası Baş Prokurorluğunun səlahiyyətlərinə aid olan məsələlərlə əlaqədar bildirilir ki, jurnalistlərin qanuni peşə fəaliyyətinə mane olma, yəni zor tətbiq etməklə və ya belə zor tətbiq etmə hədəsi ilə onları məlumat yaymağa və ya məlumat yaymaqdan imtinaya vadar etmə 01.09.2000-ci il tarixdən qüvvədə olan Azərbaycan Respublikası Cinayət Məcəlləsinin 163-cü maddəsində cinayət əməli kimi təsbit edilmiş, həmin əməllərin vəzifəli şəxs tərəfindən öz qulluq mövqeyindən istifadə etməklə törədilməsi isə məsuliyyəti ağırlaşdıran hal kimi müəyyən olunmuşdur.

Jurnalistlərin qanuni peşə fəaliyyətinə mane olma cinayətinin ibtidai istintaqı Azərbaycan Respublikası Cinayət Prosessual Məcəlləsinin 215.3.1-ci maddəsinə əsasən prokurorluq orqanlarının səlahiyyətlərinə aid edilmişdir.

Bununla yanaşı, Azərbaycan Respublikası Baş prokurorunun "Xüsusi məlumatların verilməsinə dair" 03.03.2006-cı il tarixli 09/18 nömrəli əmri ilə «Xüsusi məlumatların verilməsi nəzərdə tutulan hadisələrin və cinayətlərin Siyahısı» təsdiq olunmuş, ictimai təhlükəlilik dərəcəsi və xarakteri nəzərə alınmaqla peşə fəaliyyəti ilə əlaqədar jurnalistlərin təqib edilməsi və onlara zor göstərilməsi ilə bağlı cinayətlər həmin siyahıya əlavə olunmuşdur.

Azərbaycan Respublikasında medianın özünü tənzimləməsinə həyata keçirən Mətbuat Şurasının məqsədi jurnalistlərin öz peşə fəaliyyətlərində qanunvericiliyin tələblərinə, peşə prinsiplərinə əməl etməsinə ictimai nəzarətin həyata keçirilməsi, dövlət orqanları və ictimaiyyətlə mətbuat arasında əlaqələrin və etimadın möhkəmləndirilməsi, söz, fikir və məlumat azadlığına daha geniş imkanlar yaradılmasından ibarətdir. Mətbu orqanının Mətbuat Şurasının qərarına əsasən "reket nəşr" elan edilməklə xüsusi siyahıya daxil edilməsi ictimai qınaq növü kimi peşə prinsiplərinə tam laqeyd yanaşan, yazılarında tənqid obyektinin şərəf və ləyaqətini ləkələyən, işgüzar nüfuzuna bilərəkdən ziyan vuran KİV-lər haqqında tətbiq edilir.

Göstərilənlərlə yanaşı qeyd edilməlidir ki, KİV tərəfindən Azərbaycan Respublikasının prokurorluq orqanlarına ünvanlanmış sorğular Baş Prokurorluq üzrə "Prokurorluq orqanlarının kütləvi informasiya vasitələri və qeyri-hökumət təşkilatları ilə əməkdaşlıq məsələləri haqqında" 27.06.2005-ci il tarixli 09/62 nömrəli əmrin tələblərinə uyğun olaraq müvafiq qaydada cavablandırılır.

Məlumat azadlığının həyata keçirilməsinə əlverişli şərait yaradılması, xüsusi maraq kəsb edən, cəmiyyətdə geniş əks-səda doğuran cinayət işlərinin istintaqı barədə mütəmadi olaraq ictimaiyyətə dolğun və obyektiv məlumat verilməsi məqsədilə Azərbaycan Respublikası Baş Prokurorluğunda Mətbuat Xidməti və prokurorluğun rəsmi internet sahifəsi təsis edilmiş, KİV və qeyri-hökumət təşkilatları ilə əlaqələrə görə məsul olan prokurorluq əməkdaşlarının siyahısı müəyyən olunaraq ictimaiyyətə təqdim edilmişdir.

Hörmətlə,

Beynəlxalq əlaqələr idarəsinin rəisi



Ruslan Hacıyev

REPORT

about questions covered in the letter sent by “Human Rights Watch” international human rights organization

The Republic of Azerbaijan, as a fully entitled member of international community, decided to follow the way of secular, democratic and legal state system by accepting pre-eminence of universal values after gaining its state independence, and protection and maintenance of human rights and freedoms became priority issue of state policy.

The Republic of Azerbaijan, which declared maintenance of pre-eminence of law, establishment of legal, secular and democratic state system, provides equality of rights and freedoms, personal immunity, protection of dignity and honor, voting right, freedom of information, expression and speech for each person, and breach of such constitutional norms are punished by the Criminal Law of the Republic of Azerbaijan (Chapter 21).

Holding criminally liable is considered normal for insult and slander with the aim of providing more reliable protection of personal immunity, dignity and honor rights which covered by the international legal norm. It is worthy of note that, Articles 147 and 148 of the Criminal Code establish criminal liability for slander and insult in public statement, publicly or in mass media shown products, but in other circumstances this matter will be settled by filing a civil action.

The thoughts about calling journalists to criminal account for their professional activity don't tell the truth. According to the legislation, individuals have been held criminally liable on the basis of complaints filed by victims against them because of insults and slander-character information by means of mass media.

Though, within 2006-2010, hundreds of slander-character information was published in the press against officers of the Ministry of Interior, only 10 statements of claim and private accusations have been brought to the court thereof.

The ministerial administration considers inadmissible any kind of interference to representatives of mass media in performance of their professional activity irrespective of their political positions and press organ they represent. Articles 163 of the Criminal Code, moreover, establishes criminal liability for impeding journalists in their legal professional activities, and investigation of such offences is carried out by public prosecution bodies.

Where the citizens, non-governmental organizations and journalists lodge complaints against, and where mass media provides information (publishes) about disregard of the law, as well as other human rights and freedoms abuse by police officers, Internal Investigation Department, an independent body of the Ministry of Interior, reports results of the investigation to the ministerial administration by taking immediate and

objective investigation. In case where violation of terms of Law "About Police", as well as "Code of Ethics for Internal Affairs Authorities" and other domestic normative documents by associates in the course of investigation are detected, serious disciplinary steps shall be taken. Where the traces of criminal character are identified in the action, the collected material shall be submitted to competent investigative agency for making proper decision in conformance with procedural legislation. Furthermore, the applicant shall be provided with official replies by clarifying his/her rights and the procedure for applying to a court if he/she is not satisfied with the decision adopted.

Azerbaijan takes all necessary steps to ensure safety for each person, as well as journalists, and investigation shall be held by starting up criminal cases under the provisions established by the procedural legislation if they are suffered from criminal offence.

Criminal cases, in accordance with related articles of the Criminal Code, have been started up to investigate the fact of assault and battery of Fikret Huseynli, correspondent of "Azadliq" newspaper in 06.03.2006, Nijat Huseynov, correspondent of the very newspaper in 25.12.2006, Bahaddin Haziyeve, editor-in-chief of "Bizim Yol" newspaper by unknown persons, and investigative-operational measures are being continued to identify the offenders.

Investigation was held on application of Ali Orujov about his assault and battery, editor-in-chief of "Millet" newspaper. Given that he had reconciled with the offender Elsever Shabanov and he had no longer complaint and claim against Elsever Shabanov, the latter was set free from criminal liability in 08.01.2007.

Though repeat complaints have been filed by the journalists about further inflicted violence, these facts were determined.

While examining the prisoners and their beds in detention facility No 12 of the Ministry of Justice's Penitentiary Service of Azerbaijan Republic in 29.12.2009, 0,223 g heroin was found and taken from E.Fatullayev, sentenced to imprisonment because of concrete criminal action under the applicable legislation. By starting up criminal cases, in accordance with Article 234.1 of the Criminal Code, due investigation was carried out with the very fact, and E.Fatullayev was declared accused under the judgment of the court. Claiming any prosecution for freedom of speech and expression, as well as seeking of political motives in a crime obviously known common by everyone is not right.

With the aim of enhancing mutual relations with civil society in the provision of public safety and strengthening cooperative relations with representatives of mass media, all necessary measures are taken.

This year the Ministry of Interior held panel discussion in different regions of the republic on the Project "Improvement of Police and Press Relations" together with "Journalists in Extreme Conditions" public union and OSCE Baku Office. During the last 4 years, analogical events and trainings have

been held in different regions of our country under the aegis of the Fund on State Support for Mass Media under the President of the Azerbaijan Republic and in the initiative of Democratic Journalists League and “Yeni Nesil” Journalists Union. The principal purpose of these meetings, the attendants of which are representatives of local mass media and authorized officers of the territorial police bodies, is to improve relations between minions of law and journalists, as well as to facilitate opportunities for journalists’ access to information from police bodies, and to hold discussions on enhancement of speech and press freedom.

All daily requests and references on different topics entered by local and international mass media are provided with operative and detailed replies by the Press Service of the Ministry of Interior. The applicant Mass Medias, which have been entered into the “black list” by the Press Council are not differentiated.

Arrangement of the “black list” by the Press Council caused decrease of unnecessary appeals by racketeering newspapers, a kind of social reproof, and in general, exerted positive influence over the image of journalism.

The activities conducted in the fields of reliable assurance of human rights and freedoms in the country are carried on reasonable.

Ministry of Interior of the
Republic of Azerbaijan

11 September 2010