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**THE OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS  
(OMBUDSMAN) OF THE REPUBLIC OF AZERBAIJAN**

**COMPLEMENTARY REPORT  
of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan  
to the Committee on the Elimination of Racial Discrimination (CERD)**

**August 13, 2020**

**Baku**

## **Introduction**

1. Many national-ethnic groups live in Azerbaijan. Although, they represent different religions and speak different languages, they enjoy all rights and freedoms equally according to the national legislation of the Republic of Azerbaijan. In the history of Azerbaijan, there was not a single case of conflict between any national-ethnic groups or on the grounds of different religious belief. Azerbaijan is known as a multicultural country and multiculturalism is a state policy in the country. Today, the state policy which is successfully pursued in the Republic of Azerbaijan aimed at preserving this cultural, linguistic and ethnic diversity necessitates an environment of special care and enrichment of the historical experience in the sphere of multiculturalism, strengthening of promotion of the unique success achieved in the Azerbaijani society in this direction which is saved up for centuries on the international arena.<sup>1</sup>
2. This report is based on the activities of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and covers the period of 2015-2020.

## **The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (HRCA)**

3. According to Article 1.1. of the Constitutional Law on the Human Rights Commissioner of the Republic of Azerbaijan (hereinafter Constitutional Law) the position of the HRCA is set up “to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party and violated by governmental and municipal bodies and officials of the Republic of Azerbaijan, as well as to prevent violation of human rights in cases envisaged by this Constitutional Law.”
4. According to the Constitutional Law the HRCA also covers the restoration of the violated rights related to the discrimination enshrined in the Constitution of the Republic of Azerbaijan (hereinafter the Constitution) and other national acts, as well as in international conventions to which Azerbaijan is a party.<sup>2</sup> On November 29, 2019, the Parliament of the Republic of Azerbaijan elected Sabina Aliyeva as a new Commissioner for Human Rights (Ombudsman) of the country. The regional centers of the HRCA were opened in four regions of the Republic of Azerbaijan where national minorities live more compactly: Guba (covers 6 regions), Sheki (covers 6 regions), Jalilabad (covers 9 regions) and Ganja (covers 12 regions).

## **Right to equality and prohibition of discrimination: General legal framework**

5. In general, combating racial and religious discrimination is regulated by the national legislation and the international conventions to which Azerbaijan is a party. Article 25 of the Constitution of the Republic of Azerbaijan stipulates the principle of general equality. The Article states that everyone is equal before the law and the court, and that the state shall guarantee the equality of rights and freedoms to everyone, irrespective of race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organizations or other public associations. Restrictions of rights and freedoms on the grounds of race, ethnicity, religion,

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<sup>1</sup> [http://multiculturalism.preslib.az/en\\_a1.html](http://multiculturalism.preslib.az/en_a1.html)

<sup>2</sup> The Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Article 1.1.

language, sex, origin, beliefs, or political or social affiliation are prohibited.<sup>3</sup> According to Article 47 of the Constitution of the Republic of Azerbaijan, everyone has the right to freedom of thought and speech. According to the Constitution, nobody can be forced to proclaim or to repudiate her/his thoughts and beliefs. Agitation and propaganda inciting racial, national, social discord and animosity is inadmissible. Under Article 8.1, the Commissioner shall examine complaints on violations of human rights from citizens of the Republic of Azerbaijan, foreigners and stateless persons, as well as legal entities<sup>4</sup>. Thus, according to the Constitutional Law, the right to appeal to the HRCA is entitled irrespective of the nationality, ethnicity, religion, language, etc. Prohibition of restriction of human rights and freedoms on racial, national, religious and other grounds is reflected not only in the Constitution but also in Criminal, Criminal Procedure, Civil Procedure, Family, Labor Codes and other legislative acts of the Republic of Azerbaijan.

6. The duties enshrined in the paragraphs 2.2, 4.10 and 4.11 of the National Program for Action to Raise of the Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan<sup>5</sup> cover important directions such as the continuation of the activities to preserve and develop the cultural heritage of ethnic minorities, conduction of awareness activities in order to develop a proper culture of law, to prevent discrimination, promote a culture of peace and tolerance and national and spiritual values of our people. These points put responsibility over the shoulders of implementing bodies on further deepening and expanding the activities for maintenance the tolerance environment, non-discriminative approaches in all spheres, attentive and sensitive approach to the cultural heritage of minorities in the country, carrying put measures for their preserve and developing.

### **Legal Liability**

7. According to Article 283 of the Criminal Code “The actions directed on excitation of national, racial or religious hostility, the humiliation of national advantage, as well as actions directed on restriction of citizens rights, or establishment of the superiority of citizens on the basis of their national or racial belonging, creeds committed publicly or with use of mass media – is punished by the penalty at a rate from one up to two thousand of the nominal financial unit, or restriction of freedom for the term up to three years, or imprisonment for the term from two up to four years.”
8. Article 6 of the Code provides for the principle of equality before the law and affirms that persons who committed crimes are equal before the law and that they will be prosecuted irrespective of belonging to race, nationality, religion, language, sex, origin, property status, position, convictions, membership of political parties, trade unions and other public associations and other circumstances. This responsibility is the expectation of the principle of equality.
9. Article 120 of the Criminal Code defines punishment for deliberate murder. According to Article 120.2.12, murder on motive of national, racial, religious hatred or enmity is considered as an aggravating circumstance and shall be punished by imprisonment for the term from fourteen up to twenty years or life imprisonment. Public threat of this act is characterized not only by murder on

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<sup>3</sup><https://static2.president.az/media/W1siZiIsIjIwMTgvMDMvMDkvNHQzMWNrcGppYV9Lb25zdGl0dXNpeWFfRU5HLnBkZiJdXQ?sha=c440b7c5f80d645b>

<sup>4</sup> The Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Article 8.1.

<sup>5</sup> Please see: <https://en.president.az/articles/4017>

the ground of national, racial, religious belonging, but also by inciting hatred and enmity among nations, religious groups and races.

10. Articles 109 (Persecution), 111 (Racial discrimination (apartheid), 154 (Violation of the right to equality) and 283 (incitement to ethnic, racial or religious hatred or hostility) of the Criminal Code of the Republic of Azerbaijan envisage criminal responsibility for the violation of rights and interests protected by Law of the person on nationality, race, religion, language, gender, origin, property status, faith, affiliation to political parties, trade unions and other public organizations grounds.

### **Factors and difficulties impeding the implementation of the CERD**

11. Due to the fact that 20 percent of the territory of Azerbaijan is under the occupation of Armenia, the HRCA has no access to these territories. The HRCA is concerned about the rights of more than one million our compatriots who became IDPs and refugees as a result of this occupation. Their fundamental rights were violated and they have undergone discrimination. Due to the occupant policy of Armenia, thousands of people have been killed or forced to leave their own lands on the grounds of their ethnic belongings. All these actions fall under the definition of ethnic cleansing<sup>6</sup> as enshrined in the international documents.
12. The occupied Nagorno-Karabakh and adjacent seven districts are once again proved to be the integral part of the Republic of Azerbaijan under the international law, as well as UN Security Council Resolutions 822, 853, 874, 884 from 1993, UN General Assembly Resolution on “Situation on the occupied territories of Azerbaijan” dated on March 14, 2008, Resolution 1416 from 2005 and Recommendation 1690 of the Parliamentary Assembly of the Council of Europe, as well as European Parliament’s Resolution on Nagorno-Karabakh from October 23, 2013, the European Parliament Resolution of December 12, 2018.
13. The occupation of the above-mentioned territories of Azerbaijan caused the gross violation of human rights of the people, total discrimination and ethnic cleansing. On the night from February 25 to 26, 1992, the Armenian armed forces occupied Khojaly with the assistance of the 366<sup>th</sup> motorized regiment of the former USSR and committed an act of genocide against the civil population. As a result of this act 613 people, including 106 women, 63 children and 70 elderly, were murdered with special cruelty and 487 people get various injuries because of their ethnic belonging – being an Azerbaijani. At the same time, eight families were completely annihilated, 130 children lost one of

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<sup>6</sup> A United Nations Commission of Experts mandated to look into violations of international humanitarian law committed in the territory of the former Yugoslavia defined ethnic cleansing in its interim report S/25274 as “... *rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.*” In its final report S/1994/674, the same Commission described ethnic cleansing as “... *a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.*” Please see: <https://www.un.org/en/genocideprevention/ethnic-cleansing.shtml>

their parents, and 25 children lost both parents, 1275 were subjected to tortures being captured and taken hostage, the fate of 150 of them, including 68 women and 26 children, is still unknown.<sup>7</sup>

14. Unfortunately, Armenia still ignores the fundamental human rights, International Law and continues the occupation in posing a great threat for the region. The HRCA also concerns about the rights of Dilgam Asgarov and Shahbaz Guliyev, who were taken hostages by the Armenian soldiers in Kelbajar city of the Republic of Azerbaijan while trying to visit their homeland. Being imprisoned by the court of unrecognized separatist so-called “Nagorno-Karabakh Republic”, they have undergone discrimination, torture and degrading treatment.

### **Awareness-raising activities**

15. The HRCA carries out regular awareness-raising activities with regard to the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. The HRCA organizes regular meetings with different groups of the population including minorities, local and religious communities in different regions of the country, studies their problems and takes necessary measures for resolving them.
16. Every year, at the initiative of the HRCA Peace Month-long campaign from August 21-September 21 is held in the country. Different events within the framework of “November 16 - International Day for Tolerance” and “World Harmonious Relations Week”, as well as open classes for students were also conducted. During these events, the importance of peaceful co-existing, the importance of cooperation and inclusion, as well as inadmissibility of racial discrimination, xenophobia and intolerance have been highlighted.
17. Within the framework of “Peace” Month-long campaign lectures have been delivered by the HRCA for the representatives of different state bodies, the events involving civil society organizations and mass media, programs dedicated to peace topics are broadcasted on TV and Radio channels, articles have been published in newspapers.
18. The HRCA closely cooperates with international organizations in order to bring national legislation in line with international law and standards for more efficient combating discrimination, hate speech and intolerance. As such, the HRCA joined the COE/EU Regional Program Partnership for Good Governance (PGG) “Strengthening the access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries” in 2019.
19. Within the framework of the mentioned PGG Program on January 29-30, 2020, the Council of Europe (COE), the European Union (EU) and the Commissioner for Human Rights co-organized training seminar, on the topic “Anti-discrimination in practice for the field officers of the Commissioner for Human Rights of the Republic of Azerbaijan” in Guba, Azerbaijan. Along with

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<sup>7</sup> The Statement of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan regarding the 28<sup>th</sup> anniversary of Khojaly Genocide, issued in 2020. <http://ombudsman.gov.az/en/view/pages/84>

the representatives of the Ombudsman Office and regional centers, the members of national minorities living in Guba region also attended the event.<sup>8</sup> In the course of the training-seminar, interactive discussions were conducted on European standards and effective approaches to combating discrimination.

20. Besides the activities mentioned above, the HRCA regularly submits proposals to the Milli Mejlis (Parliament) of the Republic of Azerbaijan on improvement of the relevant legislation and ratification of related international documents for effective and reliable ensuring human and citizens' rights and freedoms.

### **Ensuring equal rights to education for all without any discrimination**

21. The Law of the Republic of Azerbaijan "On Education" stipulates that providing access to inclusive and high-quality education for all citizens on equal conditions, and ensuring the right to education is one of the main principles of the state policy in education.
22. According to Article 5 of the "Law on General Education", the state guarantees the access to general education and non-discrimination to every citizen, regardless of gender, race, language, religion, political beliefs, ethnicity, social status, origin, or health capacities and the state guarantees the right of every citizen to receive a compulsory general secondary education.
23. Although the language of instruction in educational institutions is the state language – the Azerbaijani language, in accordance with international treaties to which our country is a party or in agreement with the body determined by the relevant executive authority, at the request of citizens and founders of educational institutions, the instruction can be delivered in other languages based on the relevant state educational standards.
24. To increase the opportunities for the members of ethnic minorities to learn their languages, the classes at the state general schools are conducted in Russian and Georgian languages along with Azerbaijani language. At the general schools in the areas where ethnic minorities live compactly, free preschool preparatory courses are operating in order to provide these families with better opportunities to study the language of instruction. At the same time, at the general education level, ethnic minority language is taught twice a week and ethnic minority language textbook and teachers resources are prepared and published. Besides, for the schools with the Georgian as a language of instruction, all textbooks are translated into the Georgian language.
25. The Republic of Azerbaijan recognizes equal opportunities in the field of culture for everyone living in the country, regardless of their ethnicity by joining the International Covenant on Economic, Social and Cultural Rights and the Framework Convention for the Protection of National Minorities. Thus, various measures are being taken to continue activities aimed at preserving and developing the cultural heritage of ethnic minorities. Exhibitions reflecting the history and culture of ethnic minorities living in Azerbaijan, roundtables on "Protection of Rights of Ethnic Minorities", "Protection of Civil Rights in our Country", "Human Rights and Multiculturalism", "Multiculturalism and Tolerance" are being organized at general schools. At the

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<sup>8</sup> <http://ombudsman.gov.az/en/view/news/1705/a-training-seminar-on-anti-discrimination-was-held-in-guba>

same time, educational activities are being conducted throughout the year in secondary schools to instil democratic principles in the school, educate students in the spirit of respect for their and others' rights and promote the values of multiculturalism based on human rights and equality.

26. In order to involve children with limited physical capacities in education (inclusive education) together with other children, the "State Program for the Development of Inclusive Education for Children with Disabilities in the Republic of Azerbaijan in 2018-2024" has been approved, which is important in terms of eliminating the available difficulties in providing the inclusive and quality education.

### **The activities of the HRCA in response to the COVID-19 pandemic**

27. Due to the outbreak of the new COVID-19 infection in the country, on March 24, 2020, a special quarantine regime was declared in Azerbaijan. Both state and private sector bodies were consolidated at a high level to struggling against this new type Coronavirus. The HRCA took many steps in order to prevent violation of the rights of different groups of the population during the quarantine regime.
28. From the first days of COVID-19 outbreak in the country, the upon the instruction of the HRCA, the members of her National Preventive Group have conducted visits to the places which the people can not leave on their own will and monitored the status of implementation of preventive measures carried out by the administration of these facilities and made necessary recommendations. After the enact of the special quarantine regime in the country, the HRCA issued a general call addressed to the public calling them to follow the rules of the Operational Headquarters established under the auspices of the Cabinet of Ministers of the Republic of Azerbaijan as well as the World Health Organization.
29. Although the live reception of applicants in the Ombudsman Office was suspended, the reception of appeals via post, online, e-mail, fax, 24/7 hotlines, as well as Facebook and Twitter accounts of the Ombudsman Institution are being continued.
30. The HRCA also issued a special call related to the protection of rights of vulnerable groups of the population, such as persons with disabilities, migrants, children and addressed to the relevant governmental bodies to pay special attention to ensuring their urgent needs. The HRCA also focused on the protection of the rights of these persons during the pandemic.
31. During the quarantine regime, the HRCA, on regular basis, held online meetings with her regional centers and got information about the issues of ensuring human rights of all groups of the population, as well as the rights of minorities in rural areas and gave duly instructions.
32. During the quarantine regime, the staff of the Ombudsman Institute have joined several times the online meetings with the representatives of the Council of Europe. During these meetings, the staff members shared information on the activities of the HRCA on taking necessary measures on ensuring the equal rights of all groups of the population without any discrimination during the special quarantine regime.

33. Taking into consideration the recommendation of CERD Committee, the HRCA pays special attention to holding meetings, on a regular basis, with ethnic minorities in the country regions.

***Recommendations:***

*We consider expedient for Azerbaijan to continue the process of joining important international treaties on human rights and freedoms, including Protocol No. 12 to the CoE Convention for the Protection of Human Rights and Fundamental Freedoms signed by our country on November 12, 2003, European Charter for Regional or Minority Languages signed on December 21, 2001.<sup>9</sup>*

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<sup>9</sup> The Annual report on provision and protection of human rights and freedoms in the Republic of Azerbaijan for 2013. Please see: <http://www.ombudsman.gov.az/en/view/pages/59>