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ICCPR List of Issues Submission

NGO Submission to the UN Human Rights Committee prior to the Adoption of the List of Issues for the review of Azerbaijan

18 December 2015

Joint submission by

FIDH (International Federation for Human Rights)

and

OMCT (World Organisation Against Torture)

Over the past years and months, the Republic of Azerbaijan has continued to constantly and seriously breach international and regional law and standards, in particular its obligations arising from the International Covenant on Civil and Political Rights (ICCPR).

Since mid-2014, the Azeri authorities have operated an unprecedented crackdown on all dissenting voices in the country, in particular leading human rights defenders and organisations, independent journalists and political activists, relying on restrictive NGO legislation coupled with an abusive use of provisions of the Criminal Code.

In August 2014, the names of human rights defenders Ms. **Leyla Yunus**, Mr. **Arif Yunusov**, Mr. **Intigam Aliyev** and Mr. **Rasul Jafarov**, joined later by Ms. **Khadija Ismayilova** were added to the list of prisoners of conscience. In 2012 and 2013, human rights activists Mr. **Hilal Mammadov** and Mr. **Anar Mammadli** had already been sentenced to harsh prison sentences in relation to their human rights activities, and currently remain in detention. This severe crackdown on civil society intensified even further over the past months, with harsh sentences being handed down to Mr. Rasul Jafarov, Mr. Intigam Aliyev, Ms. Leyla Yunus, Mr. Arif Yunusov and Ms. Khadija Ismayilova, after speedy and blatantly unfair trials. Although Ms. Leyla Yunus and Mr. Arif Yunusov were recently released on probation, charges are still pending against them, including for state treason, in a case involving arbitrarily detained columnist Mr. **Rauf Mirqadirov**.

Over the past year, the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and the World Organisation Against Torture (OMCT), has been closely following the situation of human rights defenders in Azerbaijan, through a fact-finding mission (January 2015), a series of trial observations in the case of Rasul Jafarov (January-July 2015) and in the case of Leyla and Arif Yunus (July-December 2015), as well as over 40 urgent alerts¹.

At the institutional level, the Secretary General of the Council of Europe², the President of the Parliamentary Assembly of the Council of Europe³, the Commissioner on Human Rights of the Council of Europe⁴, the United Nations (UN) High Commissioner for Human Rights⁵, the UN Subcommittee on Prevention of Torture (SPT)⁶, the UN Committee Against Torture (CAT)⁷, the UN Special Rapporteurs on the situation of human rights defenders, on the rights to freedom of peaceful assembly and of association, and on the promotion and protection of the right to freedom of opinion and expression⁸, a coalition of 25 UN member-States at the UN Human Rights Council⁹, the European Parliament¹⁰, the President of the European Parliament¹¹, the OSCE/ODIHR Director¹², as well as the OSCE Special Representative on Freedom of the Media¹³ are among the figures, bodies and authorities which recently expressed or reiterated serious concerns over the deterioration of the situation of human rights defenders in the country.

In view of the November 1, 2015, legislative elections in Azerbaijan, the European Parliament further declared in its above-mentioned resolution that it had **“declined to send an Election Observation Mission, as the background for holding free and fair elections does not exist and limitations on the freedoms of**

1 See <https://www.fidh.org/en/region/europe-central-asia/azerbaijan> and <http://www.omct.org/search/?c=320&sd=1>.

2 See Council of Europe, [Statement by the Spokesperson of Secretary General Jagland on today's verdict in the case of Khadija Ismayilova in Azerbaijan](#), September 2015, and [Secretary General Thorbjørn Jagland expresses concern for human rights defenders in Azerbaijan](#), August 11, 2014.

3 See <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5733&cat=15>.

4 See [Facebook Page of the Commissioner](#), and [Weekly media report of the European Union](#).

5 See Office of the High Commissioner for Human Rights, [Zeid condemns civil society crackdown in Azerbaijan](#), September 8, 2015.

6 See Office of the High Commissioner for Human Rights, [UN human rights body suspends Azerbaijan visit citing official obstruction](#).

7 See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16860&LangID=E>

8 See OHCHR, [Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan](#).

9 See [Joint statement on the situation of human rights in Azerbaijan](#) read by the Republic of Ireland, June 24, 2015.

10 See [European Parliament Resolution 2015/2840\(RSP\)](#), September 10, 2015.

11 See Martin Schulz, statement [on the verdict handed down to Leyla Yunus and Arif Yunus](#).

12 See ODIHR Director, [Restrictions imposed by Azerbaijan compel cancellation of parliamentary election observation mission](#), September 11, 2015.

13 See all statements of the OSCE RFOM on Azerbaijan at: http://www.osce.org/fom/statements?filters=+im_taxonomy_vid_5:%28145%29&solrsort=ds_date%20desc&rows=10

expression, assembly and association in the country make it impossible to create a level playing field for candidates and to organise a genuinely competitive vote". ODIHR Director also announced that he was compelled to cancel the ODIHR election observation mission, deploring that "**due to restrictions imposed by the Azerbaijani authorities, ODIHR has no choice but to cancel its mission to observe the country's 1 November parliamentary elections**"¹⁴. In spite of this unprecedented context, the Bureau of the Parliamentary Assembly of the Council of Europe (PACE) decided to proceed with an election observation. PACE was therefore the only international organisation which dispatched electoral observers within the framework of a short term mission¹⁵. The official conclusions of the PACE election observation mission were contested through two dissenting opinions, endorsed respectively by four members and two members of the PACE delegation¹⁶.

The Observatory calls upon the experts of the United Nations Human Rights Committee (CCPR) to include the issues of arbitrary detention, unfair trials, abusive charges against dissenting voices, conditions of detention and imprisonment including denial of adequate medical treatment, and torture or ill treatment of human rights defenders and opponents, as well as restrictive NGO legislation into the list of issues for the review of Azerbaijan by the CCPR.

For more information regarding the main trends and patterns of harassment affecting human rights defenders in Azerbaijan, see Observatory Fact-Finding Mission report (April 2015), available at:

<https://www.fidh.org/en/issues/human-rights-defenders/azerbaijan-repression-escalates-in-run-up-to-european-games> and <http://www.omct.org/files/2015/04/23097/azerbaijanobsang2015web.pdf>

14 See ODIHR Director, [Restrictions imposed by Azerbaijan compel cancellation of parliamentary election observation mission](#), September 11, 2015.

15 Following the vote of the Bureau, PACE President Anne Brasseur highlighted that "unless the long- and short-term ODIHR observers are present, it will be very difficult, if not impossible, for [PACE] ad hoc committee to make a thorough and comprehensive assessment as to whether the election is consistent with our standards and with Azerbaijan's commitments to the Council of Europe". See http://website-pace.net/en_GB/web/apce/president/-/asset_publisher/slfXcAeVeuF0/content/opening-statement-september-2015-part-session/maximized.

16 See <http://www.frank-schwabe.de/kontext/controllers/document.php/12.c/8/57dfba.pdf> and <http://gue-uel.org/statement-by-uel-members-mr-jonasson-and-ms-kavvadia-following-the-parliamentary-elections-in-azerbaijan/>.

Freedom of expression, freedom of assembly and freedom of association (Articles 19, 21 and 22)

Freedom of Association:

On December 17, 2013, the Parliament adopted a set of amendments to the Law on NGOs, Grants and Taxation, aiming at further restricting NGO work. These amendments provide that non-registered NGOs cannot be considered recipients of grants anymore. Refusal to register NGOs that are critical of the regime is a commonly used method of repression by Azeri authorities, as exemplified by the constant ungrounded refusal to register Rasul Jafarov's Human Rights Club. Unregistered organisations are barred from opening a bank account, working, and receiving funding legally. Furthermore, even registered NGOs are obliged to register any funding from abroad with the Ministry of Justice. Thus any funding which fails to be registered by the authorities in spite of duly filed applications is considered as personal income of NGO leaders and any NGO activity is seen as illegal entrepreneurship. The authorities use this very convenient repressive legal framework to prosecute activists and human rights defenders for tax evasion and other related accusations, and thus silence critical voices, as they did against **Rasul Jafarov**, **Intigam Aliyev** and many other detained human rights defenders (see below).

On February 3, 2014, the President of Azerbaijan signed further amendments to the NGO Law, allowing the authorities to temporarily suspend and permanently ban national and foreign NGOs in Azerbaijan, and introducing new offences punishable by fines. Criminal cases were opened against several NGOs that had received foreign grants. New amendments were signed on November 19, 2014, further shrinking the capacity of NGOs to operate independently, by posing additional obstacles to their ability to receive funding.

In December 2014, the European Commission for Democracy through Law (Venice Commission)¹⁷ issued a strong opinion on this legislation, and recommended that the existing regulations be amended in order to simplify the procedure, to make it transparent, to limit the grounds for refusing the registration and to authorise foreign funding unless in the case of clear specific reasons. Such recommendations have to date been ignored.

Threats and harassment against opposition candidates:

Ahead of the November 1, 2015 parliamentary elections, local observers have reported cases of intimidation of local population trying to prevent signature collection for opposition candidates, and restrictions were also imposed on opposition parties collecting signatures. It was also highlighted that the situation in the country with respect to political freedoms, freedom of expression and media, and freedom of assembly did not provide conditions for holding free and democratic elections, and that the violations which occurred in the first stage of the elections – in the process of nomination and registration of candidates – cast doubt on legitimacy of the process. For example, the Central Election Commission registered the candidacy of only 25 out of 60 potential contenders from the major opposition party Musavat, after declaring invalid signatures from 40 of the contenders, even signatures from the contenders' own relatives. The Deputy Chairman of Musavat, Tofiq Yagublu, is serving a five year prison sentence on clearly politically motivated charges. The leader of the opposition movement REAL, Ilgar Mammadov, is serving seven years in prison on fabricated charges (see below). Another major opposition party, the Popular Front Party, decided to boycott the election.

Liberty and security, fair trial and independence of the judiciary (Articles 9, 10 and 14)

Azerbaijani criminal law is being used against journalists, human rights defenders and political opponents in cases involving freedom of expression. Since 2014, the authorities have operated an unprecedented crackdown against journalists and human rights defenders, who have been subjected to punitive detention on spurious charges and are now serving harsh prison terms, following blatantly unfair trials.

Arbitrary detention:

¹⁷ See Opinion 787/2014 of the Venice Commission, adopted on December 15, 2014, available at: http://www.coe.int/t/ngo/Source/Venice_Comm_opinion_787_2014_amendments_NGO_law_Az_en.pdf.

On August 13, 2015, Ms. **Leyla Yunus**, Director of the Institute of Peace and Democracy (IPD) and a member of OMCT General Assembly, and her husband Mr. **Arif Yunusov**, Head of the Conflictology Department at IPD, were sentenced to 8.5 and 7 years in prison respectively. While in detention, they were humiliated by police officers, put in overcrowded cells, beaten several times and deprived of much needed medical treatment. On November 12, 2015, Arif Yunus was released under house arrest on health grounds. The decision was based on a medical reference provided by the Head of the Department of Penitentiary Service of the Ministry of Justice, stressing the critical health situation of Mr. Yunusov. The court also lifted the order to seize the house owned by the couple. On December 9, 2015, the Baku City Court of Appeal finally changed Leyla Yunus' sentence and that of her husband Arif into suspended sentences of 5 years, on probation. Leyla Yunus was, in turn, released from detention. However, most of the charges against the couple have not been dropped. The state of health of Leyla Yunus, who has been diagnosed with diabetes and hepatitis C, and that of Arif Yunus, who suffers from high blood pressure, remain concerning. Leyla Yunus requires an urgent medical examination and she should be granted the right to receive medical treatment abroad if necessary. Arif Yunus must also be provided with swift and adequate medical assistance. There are doubts that adequate medical assistance can be provided in Azerbaijan.

On September 1, 2015, award-winning investigative journalist Ms. **Khadija Ismailova** was sentenced to 7,5 years imprisonment on charges of “embezzlement”, “illegal entrepreneurship”, “tax evasion”, and “abuse of office” by the Baku Court of Grave Crimes. The appeal filed by the latter to contest her 7.5-year jail sentence was struck out on November 25 by the Baku Court of Appeal. Ms. Ismailova remains in arbitrary detention.

In addition, on July 31, 2015, the Supreme Court of Baku upheld a 6.3-year prison sentence against Mr. **Rasul Jafarov**, engaged in the defense of the rights of political prisoners and an active participant in "Sing for Democracy" and "Art for Democracy", on criminal charges of “tax evasion”, “illegal entrepreneurship” and “abuse of authority”. Mr. Jafarov remains in arbitrary detention.

On July 21, 2015, the Baku Appeal Court also upheld the 7.5-year sentence against Mr. **Intigam Aliyev**, a prominent human rights lawyer heading the Legal Education Society. In addition, Mr. **Anar Mammadli**, Chairperson of the Election Monitoring and Democracy Studies Centre (EMDSC), sentenced to 5.5 years' imprisonment on May 26, 2014 for “tax evasion”, “illegal entrepreneurship”, and “abuse of authority”, as well as Mr. **Hilal Mammadov**, a defender of the rights of the Talysh ethnic minority sentenced in 2012 to 5 years in jail on charges of “high treason”, also remain behind bars. Last but not least, columnist **Rauf Mirqadirov** remains in detention and is facing charges of state treason.

Besides, the leader of the opposition movement REAL, Ilgar Mammadov, has been convicted to seven years in prison. On May 22, 2014, the European Court of Human Rights (ECtHR) held Azerbaijan responsible for violating the European Convention of Human Rights in arresting and sentencing Mr. Mammadov. The decision of the ECtHR has remained unimplemented by the authorities.

In view of this situation, on December 16, 2015, the Secretary General of the Council of Europe decided to *“send representatives to Azerbaijan to seek explanations from the authorities concerning the country's implementation of the Human Rights Convention”*. This is a very rare procedure which can be activated in case of serious violations of the Convention (Article 52). The Secretary General added that he was *“particularly alarmed when individuals are deprived of their liberty due to an abuse of power by a country's legal authorities, as the European Court of Human Rights found in the case of Ilgar Mammadov”*, stressing that *“this is a very serious violation of the Convention”* and that *“Judgments from the European Court of Human Rights have highlighted an arbitrary application of the law in Azerbaijan, notably in order to silence critical voices and limit freedom of speech”*¹⁸.

Human rights lawyers judicially harassed:

On July 10, 2015, the Nizami District Court upheld the request filed by the Presidium of the Azerbaijan Bar Association (ABA) to disbar Mr. **Khalid Bagirov** for alleged inappropriate conduct in court. Mr. Khalid Bagirov is a prominent human rights lawyer who represented human rights defenders Ms. Leyla Yunus, Mr.

18 See http://www.coe.int/en/web/portal/full-news/-/asset_publisher/rfs6RdVHzAWb/content/secretary-general-launches-inquiry-into-respect-for-human-rights-in-azerbaijan.

Arif Yunusov, and Mr. Rasul Jafarov. Mr. Bagirov was notified of the date of the hearing on the eve of July 10. As a consequence, he did not have sufficient time to prepare his defence and alert potential independent trial observers, which constitutes a violation of his right to a fair trial. In December 2014, the ABA Presidium suspended Mr. Bagirov's licence, hereby preventing him from further representing the Yunus couple, Mr. Jafarov and opposition leader Mr. Ilgar Mammadov. Mr. Bagirov also intended to defend human rights lawyer Intigam Aliyev. Other human rights lawyers continue to face constant obstacles to their activities.

Deficiencies in procedural guarantees of fair trial (Article 14):

Several cases highlight deficiencies in procedural guarantees of a fair trial under Azerbaijani law especially in cases concerning journalists and human rights defenders, including: the right to a fair trial before a competent, independent and impartial tribunal, the right to call and cross-examine witnesses; the right to equality of arms and the right to be presumed innocent until proven guilty; and the right to a reasoned decision.

For a detailed illustration of such deficiencies, see Observatory trial observation report on the trial of Rasul Jafarov (June 2015), available at: <https://www.fidh.org/IMG/pdf/azerbaijanobsang2015print.pdf> and <http://www.omct.org/human-rights-defenders/reports-and-publications/azerbaijan/2015/06/d23196/>

Conditions of detention and imprisonment including denial of adequate medical treatment, and torture or ill treatment of human rights defenders and opponents (Articles 7, 9 and 10):

A number of individuals have been arbitrarily deprived of their liberty, subjected to ill-treatment, and in some cases have been deliberately prevented from receiving adequate health care in retaliation for their legitimate human rights or political activities. This includes human rights defenders Leyla and Arif Yunus, Intigam Aliyev as well as political opponent Ilgar Mammadov. Full, independent and effective investigations of these allegations and prosecution of the perpetrators have not taken place.

Alarming, the Ombudsman Office and its National Preventive Mechanism, which establishment was supported by the international community over the last decade, have largely justified government policies against human rights defenders. In late 2014¹⁹, the UN Sub-Committee for the Prevention of Torture in a very rare occurrence had to suspend its visit to Azerbaijan for a lack of cooperation by the authorities – another indication of the authorities' attempt to suppress independent scrutiny to its treatment and detention record.

In its Concluding Observations published on December 9, 2015²⁰, the UN Committee Against Torture expressed its concern for the numerous allegations of ill-treatment of human rights defenders and in paragraph 11 it instructed that the State Party should "Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest, denial of adequate medical treatment, and torture or ill treatment of human rights defenders, including those listed above, prosecute and punish appropriately those found guilty, and provide the victims with redress"

19 See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15047&LangID=E>.

20 See http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUT/CAT_C_AUT_CO_6_22475_E.docx.