

# Republic of Azerbaijan

## NGO Report on the implementation of ICCPR (Replies to the list of issues)

The contribution to this report is given by:

**Institute for Reporters' Freedom and Safety, coordinator**  
**International Student Cooperation**  
**Legal Education Society**  
**Association for the Protection of Women's Rights**  
**Society for Humanitarian Research**  
**Media Rights Institute**  
**Public Association for Assistance to Free Economy**  
**Institute of Peace and Democracy**

All organizations are members of the South Caucasus Network for Human Rights Defenders  
and some are partners of the Human Rights House Azerbaijan in Baku

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Human Rights House Foundation (HRHF)



## **Recommendation concerning discrimination against women and domestic violence**

**(arts. 2 (1), 3, 7, 26)**

### **Section prepared by the Legal Education Society & the Association for the Protection of Women's Rights**

*List of Issues, 5 November 2008, § 2*

*Please clarify whether the Gender (Male and Female) Equality Act of 2006 (report, para. 66) envisages temporary special measures to overcome de facto discrimination against women and provide examples of cases where such measures have been implemented successfully. Please also provide detailed information on the measures taken to promote the representation of women in Parliament (paras. 87 and 93-94) and in senior positions in government and in the private sector (paras. 71 and 92).*

1. The Gender Equality Act of 2006 does not provide for temporary special measures to overcome *de facto* discrimination against women. Such measures should be envisaged in law and/or implemented in practice.

*List of Issues, 5 November 2008, § 3*

*Please indicate whether the State party has adopted legislation which specifically criminalizes domestic violence (report, para. 89) and provide detailed information on its scope and content. Please also provide information on the definition of rape in the Criminal Code (para. 74) and indicate whether it covers marital rape as well as non-consensual sexual acts in the absence of resistance. What measures have been taken to ensure that acts of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned, and what has been their impact? Please provide more detailed information on the steps taken to combat domestic violence (report, paras. 537-543), such as training for judges, prosecutors, the police and health professionals and awareness-raising campaigns for women to inform them about their rights and available remedies, and on the number of safe shelters and the resources allocated to victim assistance.*

2. Despite previous recommendations from the HR Committee,<sup>1</sup> violence against women is still widespread in Azerbaijan. According to non-official data, 80% of women in Azerbaijan are subjected to domestic violence. The Law on Domestic Violence has not been adopted. It is necessary to enact the legislation protecting women and children against domestic violence and ensure effective mechanisms of implementation.<sup>2</sup>

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<sup>1</sup> See Concluding observations of the Human Rights Committee: Azerbaijan. 12/11/2001 (UN Doc.: CCPR/CO/73/AZE §17).

<sup>2</sup> “Take all measures to grant access to justice for all women victim of violence, and take measures for their protection and the rehabilitation, and to train police authorities on violence against women” is one of the recommendations made to Azerbaijan during the last UPR review and accepted by Azerbaijan (UN Doc.: A/HRC/WG.6/4L.6, § 96, no. 8 & A/HRC/11/20/Add.1). See also A/HRC/WG.6/4L.6, § 96, no. 9 for further recommendations on this matter.

3. There are no shelters for victims of domestic violence. There is urgent need for the creation of shelters for victims of domestic violence and for the implementation of special programmes for rehabilitation of victims of domestic violence.<sup>3</sup> It is advisable that the shelters for victims of domestic violence and shelters for victims of trafficking of human beings be separate.
4. There are no sufficient shelters for victims of trafficking of human beings, who in the majority of cases are women. It is important to create an adequate number of such shelters. In practice, only victims of trafficking who obtained the “status of victim” under the criminal procedure legislation have access to a shelter. Access to shelters should be equally provided to victims of trafficking who are without the officially recognised status of victim.
5. The Criminal Code does not specifically criminalize domestic violence, but it should. According to the Criminal Procedure Code, criminal cases concerning certain offences shall be opened by a prosecutor only on the basis of complaint by a victim (for example, infliction of light harm to health under Article 128 of the Criminal Code). The criminal procedure legislation must provide for the cases where criminal proceedings are initiated not only on the basis of complaints by victims of domestic violence but also on the basis of complaints lodged by other interested persons (inter alia relatives, neighbours, social workers, workers of medical institutions).
6. In practice, resistance to sexual act is considered a decisive factor for proving rape. It is necessary to amend legislation and change practice so that “absence of consent to sexual act” is regarded as a critical aspect instead of “existence of resistance”.
7. The Gender Equality Act of 2006 sets forth norms prohibiting sexual harassment. However, the mechanism for implementation of these norms is weak. It is necessary to provide effective remedies against sexual harassment under clear-cut legislative norms. Also, even though the definition of sexual harassment covers employment relations and provision of services, the legislation does not clearly cover sexual harassment in other fields, such as education and politics.
8. It is important to take practical measures for the elimination of certain traditions (customs) constituting gender discrimination and violence against women, such as

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<sup>3</sup> “Victims of domestic violence should have possibility to use appropriate means of redress and access to shelters” is one of the recommendations made to Azerbaijan during the last UPR review and accepted by Azerbaijan (UN Doc.: A/HRC/WG.6/4L.6, § 96, no. 9 & A/HRC/11/20/Add.1).

early marriages and forced marriages, limitations in employment and education imposed on women (and girls) by family members.

9. Under Azerbaijan legislation, the marriage age for men is 18 and the age for women is 17. It is necessary to set equal marriage ages for men and women.
10. In addition, it should be mentioned here that in order to protect women against discrimination, it is also necessary to adopt legislation on reproductive health. According to official data, only app 3.5% of women takes part in policy-making. It is necessary to take measures to increase the number of women participating in policy-making. Women constitute only app 11.5% in the parliament and only app 4% in municipal institutions. It is important to increase the representation of women in the parliament and municipalities.

#### **Right to a fair trial by an independent and impartial tribunal (art. 14)**

**Section prepared by the International Student Cooperation, the Legal Education Society<sup>4</sup>, the Public Association for Assistance to Free Economy, and the Institute of Peace and Democracy**

*List of Issues, 5 November 2008, § 13*

*In addition to the information contained in the report (paras. 25, 360 and 365 et seq.), please provide further information on measures taken to ensure that the judiciary is independent from the executive branch, free from political pressure and protected from corruption.*

11. The juridical system of Azerbaijan is currently under the supervision of the executive branch, and this fact has been proved during the majority of trials. It is particularly evident in the proceedings where the lawsuits are filed against government bodies. Although the authorities claim that courts are independent, the courts adopt decisions under the influence of the executive power...”
12. In October 2006, a student of the Independent Azerbaijan University and International Students Cooperation Public Union Chairperson, Elnur Mammedov, filed a lawsuit against the police of Jalilabad Region and Nasimi District Police Department 19.

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<sup>4</sup> Source for this section: *Trial Monitoring in Azerbaijan 2007*, Final Report, “Giso” Publishing Company, Baku (Azerbaijan), 2008

However, under various pretexts, the application was returned, and subsequently left without consideration.

13. In March 2009, Parviz Asimov was expelled from Lenkaran State University. Protesting that he was illegally expelled from the university, Parviz Azimov appealed to the Lenkaran City Court. But after some time, the lawsuit was returned. At present, the case is pending, but all motions filed by P.Azimov's lawyers were rejected, casting doubt on the possibility of a fair trial.
14. In 2005, eighty-seven families decided to protect their rights and sent a letter against the new construction plans at "Khudu Mamedov Street," house 21. Lawyer Sayara Rovshan Geydarova, the advisor and organizer of the families, took action. On 1 April 2005, Geydarova was accused of beating four men on one occasion near Khudu Mamedov Street. On 12 July 2005, Geydarova was brought in front of court for not cooperating with the pre-trial investigation, despite her claims that she had never received a summoning. The court decided to hold her under arrest for 2 months. Geydarova spent 28 days in jail, and was released early, because the victims did not show up in court. From the 8th to the 10th of August 2005, Judge Tair Ismailov tried to hold a judicial session, but the victims never came and the judge reduced her sentencing and freed her from the hall on 10 August 2005. On 16 February 2006, the judge of the Surakhansky regional court, Shovket Nadzhafova, found Geydarova guilty of beating the four men and sentenced her to 3.5 years according to article 221 (hooliganism) of Azerbaijan's criminal code, even though only one of the victims (Alim Babaev) attended the hearing. Geydarova addressed the appellate court on 4 March 2006. The appellate court judge repealed the first sentence. However, after a year and eight months, Geydarova was called to court and on 9 November 2007, Judge Lyatif Nabiev upheld the original verdict and sentenced her to 12 days in prison. Instead, they took her to a psychiatric ward in Mashtagi, where she was illegally held for 12 days. After 12 days, her escort delivered her to court on 21 November 2007, and another judge of the Surakhansky regional court carried out the decision to arrest Geydarova as a preventive measure. On 22 April 2009, the

Surakhani District Court found S.Heydarova guilty of hooliganism and sentenced her to three years of conditional imprisonment.<sup>5</sup>

15. On 24 June 2008, Novruzali Mamedov, editor of the Talysh minority-language newspaper *Talyshi Sado* and head of the Talysh Cultural Center, was convicted of treason under Article 247 of Azerbaijan's Penal Code for the 'distribution of Talysh nationalist ideas and attempt to destroy the foundations of the Azerbaijani state' and was sentenced to 10 years in prison in a closed trial. Emil Mammedov, son of Novruzali Mammedov, was arrested on 17 June 2008, seven days before the sentencing by the court that had original jurisdiction over his father, with the aim of blackmailing him. Emil Mammedov was charged with possession of drugs. On 26 December 2008, the Court of Appeals announced its verdict for the case of Novruzali Mammedov, thus upholding the sentencing of the court that had original jurisdiction. The case was reportedly based on allegations that Mr Mamedov had received money from Iran to publish the newspaper, but prosecutors have not publicly explained or commented on these charges. The verdict was handed down in the absence of Mr Mamedov's defence attorney, relatives and the press.
16. Legal norms regulating the activity of the Judicial-Legal Council are vague and contradictory. The Judicial-Legal Council is under the advisement and chairmanship of the Minister of Justice, who controls court proceedings. Unlike other countries, it does not present itself as a self-regulating organ of judges, but as a structure within the relevant executive organ. Legislation does not ensure independence of the Judicial-Legal Council from executive power nor does it establish the Council as a self-regulating and effective mechanism. Pursuant to new rules, the Judicial-Legal Council can submit applications to the relevant executive organ in the event of terminating the service of a judge for lack of professional skills. Additionally, there is a lack of proper legal norms for nominating candidates to the Judicial-Legal Council. The discussion of candidates is held in narrow circles, without proper and open discussions.
17. Legislation does not provide means for the evaluation of the judges' service and it opens possibilities for abuse. Legislation must have clear-cut standards. Legislation does not contain proper regulation for the appointment of judges after specialty exams.

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<sup>5</sup> Source: <http://groups.yahoo.com/group/lawyers-az/message/1738> & <http://www.irfs.az/content/view/2229/lang,eng/>

As a result, the Judicial-Legal Council invents many of its own procedures, and lacks strict standards for abuse, corruption and violations.

18. The nomination of judges should be conducted based on transparent procedures through open discussions with all judges and the legal community. Legislation should provide for a collegial organ to deal with appointments through open processes:
  - Norms on the status of judge associations should be stipulated in legislation.
  - Excessive workload and lack of judges negatively influence the quality of the right to a fair trial. Necessary measures should to be taken to increase the number of judges and decrease their workload.
  - Judge elections should be conducted based on objective criteria, and election procedures should be limited to exams or oral interviews regulated by legislative norms.
  - Judge associations should have extended authorities on the nomination of judges, training, the determination of rules of judge ethics, and other issues.
  - Disciplinary actions, such as “transfer to lower position” and “transfer to another position,” are inconsistent with the status of judge.
  - Appointment of judges to higher courts and courts of grave crimes by the executive power, without considering the opinion of the Judicial-Legal Council, should be eliminated.
19. It is necessary to implement reforms in the following directions:
  - The court on grave crimes, which is not compliant with the structure of the judicial system and has no professional distinction, should be abolished. Jury systems should be introduced instead. Even though the establishment of these courts is envisaged in the Law on Courts and Judges, no specific actions have been undertaken in this field.
  - The existence of the Supreme Court of the Nakhchivan Autonomous Republic contradicts the judicial system of the country.
  - Discussion about the structure of the judicial system may continue based on the practices widely employed by a number of countries in the world -- using specialized courts for civil, criminal, tax, administrative, labor, etc.

- Administrative-Procedural Code is being drafted and, according to the authorities, plans to be adopted by the end of the year.
- Judge corpus for administrative disputes should be established.
- Special regulations should be drafted for participation in open hearings in order to solve existing problems. Such regulation should determine principles and rules for participation -- open hearings and procedures for complaints in case of violations of regulations.
- Necessary steps should be made to provide public access to all court decisions, without exception. Legislative requirement should be implemented and all decisions of the court should be published on the Internet.
- The discretion of the court's presidents to allocate cases among judges leads to the dependence of judges on the president as well as promoting illegal actions and arbitrariness. Use of the principles excluding subjective factors in the allocation of cases (such as allocation by means of random computer selection of a judge) seems necessary in terms of prevention.

20. We would further like to recommend:

- Court premises should be constructed in such a way that corresponds to the objectives of administration of justice. The design of the building should promote the principle of adversarial process. There should be separate rooms for witnesses.
- All court halls should have room for deliberations and the importance of having only one door in such rooms should be considered. This is one of the factors contributing to the status of the courts.
- Hearings should be recorded via technical means and related documents should be made available for participants and third parties.
- Specialization among judges, in the field of civil and criminal law, family, taxes, labor, etc, will contribute to the quality of the administration of justice.
- Normal conditions should be established in the country in order to make the Constitutional Court a supreme constitutional justice body; the agents and subject matter of the constitutional proceedings should be expanded.

- It is necessary to improve legislation concerning the relations between the Constitutional Court and the general jurisdiction courts; clarify their competence; determine the boundaries of trying cases at the cassation level on one hand and in the Constitutional Court, on the other hand; procedures for re-trying the cases, where the judgments were overturned by the Constitutional Court, and mode of implementation of court decisions; execution of court decisions in general and the retribution of executed court decisions.
- The Government should not limit its obligations to payment of compensation to victims of violation due to decisions of the European Court of Human Rights regarding Azerbaijan, but implement measures of general character (legislative and practical) and make the decision public.

21. The following recommendations are given for the improvement of legislation in the field of disciplinary liability of judges and the practice of implementation:

- Entitlement of the citizens to apply to the Judicial-Legal Council to initiate administrative liability of the judges should be regulated in legislation.
- Pursuant to Article 112 of the Law on Courts and Judges, for the commissioning of acts provided by Article 9 of the Fight against Corruption Act of the Republic of Azerbaijan, judges may be punished by being demoted or transferred to a different judicial post.
- Legislation should determine the specific definition of “grave offence.” In the cases where complainants consider acts as “grave offences”, state organs tend to judge arbitrarily on such labelling and leave the applications un-reviewed.
- Legislation does not contain explicit norms on the investigation of applications by the Judicial-Legal Council. Legislation should be exhaustive regarding applications to state organs and officials for disciplinary proceedings, procedures for reviewing applications, making decisions, and further applications to the JLC.
- Based on the decisions of the European Court of Human Rights regarding Azerbaijan on violations of the right to a fair trial, there should be a procedure to govern disciplinary liability of a judge infringing this right.
- Legal norms should stipulate basis and rules for early termination of judge service.

22. It is also important to mention that the candidacy of 6 judges to the Judicial-Legal Council (JLC) is presented by judge associations. Although officially called district and regional judge associations, economic court judge associations exist and neither the public nor the judges know about them. Several attempts to obtain information from the JLC about time, place of holding meetings, and the rules for nominating the candidates to the JLC were unsuccessful. The confidentiality that shields the activity of the JLC, its decisions, and the activity regarding judge elections should be removed and the process should be made transparent and accessible for the public. Violation of this principle of transparency should be evaluated as evidence of corruption. In Azerbaijan, the activity of judge associations is not considered serious, and only has limited mentioning in legislation (article 105.1 of the Law on Courts and Judges).

*List of Issues, 5 November 2008, § 14*

*Please describe the legal aid scheme in place to guarantee, in law and in fact, that indigent detainees have access to a lawyer, including outside Baku (para. 208).*

23. It is necessary to take measures of legislative and administrative character in order to ensure that admission to the Collegium of Advocates (lawyer associations) is conducted by transparent and objective procedures, since the access for legal professionals to obtain licenses to provide legal aid to clients in Criminal Cases is restricted to Bar members only and membership depends fully on the internal decision of the Collegium. This problem influences the right to a fair trial, since the clients have limited access to lawyers.
24. After changes were made on 3 June 2005 to the law on “Lawyers and Lawyers Activities” and membership in the collegium started to be granted to tests given by licensed legal specialists, the lawyer Integam Aliyev began to attempt to formalize his membership in the collegium. However, the Lawyers Collegium Presidium refused to recognize this right in a meeting held on 19 November 2005. Aliyev filed a lawsuit against the collegium in December of 2005. According to a 19 December 2005 decision of the court, the lawsuit was returned back stating the reason that the court was not supposed to consider such cases. On 23 August 2008, I. Aliyev appealed to the Court Rights Board and other authorized organs, stating that the refusal to consider his case was illegal. After this appeal, a hearing was held in the Nasimi District Court on Aliyev’s case and a trial on this matter was scheduled to take place on 6 November 2008. However, the hearing was not held. On 9 March 2007, the collegium filed a

lawsuit against I. Aliyev, accusing him of publishing unfounded information about the collegium.

25. Experts from international organisations should be involved in the preparation, discussion and adoption of the Charter of Collegium of Advocates, regulations of Specialty Commission, Disciplinary Commission, and normative acts regulating procedure of admission to the Collegium. The Government and the Collegium should abstain from discrimination or interference, but respect the freedom of the legal profession and take necessary measures for its protection.

### **Freedom of opinion and expression (Article 19)**

#### **Section prepared by the Institute for Reporters' Freedom and Safety & the Media**

#### **Rights Institute**

*List of Issues, 5 November 2008, § 16*

*Please provide detailed information, including specific case examples, on measures taken by the State party to ensure that all crimes targeting media professionals are investigated promptly and impartially, including when committed by law enforcement officials, perpetrators prosecuted and adequately sanctioned and victims compensated (report, paras. 472-480).*

26. Case 1: Murder of Elmar Huseynov (March 2005), editor-in-chief *The Monitor* magazine
  - From 2005 to 2009, 2 journalists have died after attacks and the responsible persons have not been brought to justice. The *Monitor* magazine editor-in-chief Elmar Huseynov was killed on 2 March 2005 near the entrance of his house. *Yeni Musavat* newspaper photographer Alim Kazymly died on 19 June 2005, after 6 months suffering from paralysis caused by beatings in Narimanov Police Department, Baku.
  - Despite the fact that the investigation on the murderers of Elmar Huseynov lasted four years, Georgian citizens - Teymuraz Aliyev and Tahir Hubanov suspected of committing the crime have not been punished yet.
  - In July 2006, during a court trial of a former employee of Azerbaijan's Ministry of Internal Affairs, Department on Operations Against Crimes, Haji Mammadov, confessed that he had murdered Elmar Huseynov, and stated that former Minister

of Economic Development, Farhad Aliyev, ordered him to murder Elmar Huseynov. Despite the fact that almost 3 years have passed since this statement, there is no result from the investigation.

27. Case 2: Violent attack on Alim Kazymly (June 2005), photographer at *Yeni Musavat* newspaper

An investigation in connection with the death of Alim Kazymly, which was conducted by the leadership of Ministry of Internal Affairs, concluded with giving special reprimand to Narimanov Passport Office Head, Abil Mamedov, who brutally assaulted the journalist. Furious about what was happening in the Passport Office, he then hit the journalist on his head using a telephone handset and drove away from the office. As a result of the incident, the journalist suffered from paralysis and died after 6 months.

28. Case 3: Attack on Sarvan Rizvanov (Nov. 2005), *Turan* news agency photographer

- On 9 November 2005 during protest rallies before the parliamentary elections, *Turan* news agency photographer Sarvan Rizvanov was severely beaten with a rubber bludgeon by Yasamal Police Department's chief, Chingiz Mamedov. As a result of the beating, the journalist sustained head and brain trauma. Despite numerous appeals to the law enforcement agencies and the courts, the guilty party has not been punished.
- During the rallies other journalists, Fareed Teymurhanly (*Zerkalo* newspaper), Idrak Abbasov (*Ayna* newspaper), Ramiz Najafli (*Boz gurd* newspaper), were also severely beaten by police.

29. Case 3: Attack on Ramiz Najafly (March 2005), journalist for *Azadlig* newspaper

On the night of 5-6 March 2005, *Azadlig* newspaper journalist, Ramiz Najafly, was abducted and stabbed by unknown people. Although a criminal case was instituted, the perpetrators have not been found.

30. Case 4: Kidnapping of Bahaddin Haziyeu, (May 2006), editor-in-chief, *Bizim Yol* opposition newspaper

On the night of 18-19 May 2006 *Bizim Yol* opposition newspaper editor-in-chief, Bahaddin Haziyeu, was kidnapped by unknown people and subjected to inhuman torture and his leg was broken. Despite numerous appeals to the Ministry of Internal Affairs, Prosecutor's Office, Ministry of National Security, the investigation has not

yielded any results. Every time after being questioned, the editor-in-chief was told by the Ministry of Internal Affairs that investigation into the case was being conducted in Absheron District Police Office.

31. Case 5: Attack on Nijat Daglar, (Dec.2006), journalist for *Azadlig* newspaper

On 25 December 2006 *Azadlig* newspaper journalist, Nijat Daglar, was beaten by four unidentified officers near his home. Despite appeals to Baku City, Nizami District 19<sup>th</sup> Police Department criminals have yet to be found.

32. Case 6: Attack on Uzeir Jafarov, (April 2007), editor for *Gundalik Azerbaijan*

At midnight 20 April 2007 *Gundalik Azerbaijan* newspaper editor, Uzeir Jafarov, was attacked by an unknown person. He suffered several blows to the head with a blunt object, then the suspects fled the scene. A criminal case under Article 132 Criminal Code of Azerbaijan Republic was instituted on the attack. However, the victim, referring to the words of a forensic expert, said that they tried to not just beat him, but to murder him, and demanded that the investigation be conducted on a different article of the Criminal Code for “an attempt on his life.” The journalist stated that the people who attacked him had been recorded by a camera of the International Bank, located near the scene. Subsequently, Uzeir Jafarov identified one of the attackers as Captain Nabi Najafov, an officer working with minors in Yasamal District Police Office, Ministry of Internal Affairs and a senior officer of the Air Force of Azerbaijan. However, the Minister of Internal Affairs, Ramil Usubov, accused the journalist of mutilating himself. The attackers are still not brought to justice.

33. Case 7: Ill-treatment of Hakimeldostu Mehtiyev (September 2007), regional correspondent *Yeni Musavat* newspaper

On 22 September 2007, the *Yeni Musavat* newspaper’s regional correspondent, Hakimeldostu Mehtiyev, was arrested by law enforcement officers and the same day released in the Nakhichevan autonomous Republic of Azerbaijan. But the next day he was again arrested by police and Ministry of National Security Departments of Sharur District in Dzhaililkend Village. He was taken to the court where he was charged with disobeying the authorities, and the court decided to sentence the journalist to 15 days imprisonment. While in the detention facility, according to most journalists, he was subjected to various kinds of insults and beatings, in which he had broken ribs. Heads

of law enforcement agencies failed to investigate these facts, and no one has ever been held responsible for these committed acts.

34. Case 8: Attack on Agil Khalil, (February 2008), correspondent for *Azadlig* newspaper  
On 22 February 2008, *Azadlig* newspaper correspondent, Agil Khalil, was beaten while fulfilling his professional duty. Agil Khalil was beaten by two men, including an officer from the National Security Ministry, while trying to investigate the cutting down of trees in the Zeytun Baglari (Olive Gardens) in Baku. He managed to take their pictures, but his finger was broken. He was then stabbed in the chest on 13 March 2008 by two people, and targeted by a vicious government-orchestrated black “public relations campaign” on a local television channel. Soon the investigation was conducted and presented a suspect, who confessed to the stabbing of the correspondent. However, Agil Khalil did not recognize him, and stated that he was a completely different person.
35. Case 9: Attack on Afgan Muhtarli (January 2009), journalist for *Yeni Musavat* newspaper  
Afgan Muhtarli from *Yeni Musavat* newspaper was beaten by a group of policemen on 7 January 2009, while observing and taking photos from a rally of protesters. The journalist’s hand was broken and his leg was injured seriously after he was beaten by a policemen under the order of the police chief. Then he was arrested, his camera was seized, and his photos destroyed. No proper investigation was made.
36. Case10: Attack on Hakimeldostu Mehtiyev, Mekhman Mehtiyev, and Elman Abbasov (January 2009), regional correspondents for Institute for Reporters’ Freedom and Safety and Malahat Nasibova (January 2009) correspondent for radio “Freedom” and “Turan” information Agency  
On 16 January 2009 the Institute for Reporters’ Freedom and Safety regional correspondents, Hakimeldostu Mehtiyev, Mekhman Mehtiyev, and Elman Abbasov, and radio “Freedom” and “Turan” information Agency correspondent, Malahat Nasibova, were attacked by representatives of local authorities and sustained physical injuries. Despite the fact that, the names of the attackers were reported to law enforcement authorities, no decision was accepted against them.

37. None of the crimes committed against journalists have been properly investigated and the perpetrators have not received any punishment to this day.<sup>6</sup>

*List of Issues, 5 November 2008, § 17*

*In light of numerous reports on politically motivated trials and convictions of journalists and other media professionals critical of the government, who have allegedly been arrested and detained on fabricated charges, convicted without a fair trial and sentenced to excessive prison terms, especially in the context of criminal libel suits, please indicate whether the State party considers decriminalizing defamation, libel and insult by repealing articles 147, 148 and 323 of the Criminal Code and replacing them by civil defamation laws (report, paras. 421-424), as well as by declaring an amnesty for media professionals convicted of defamation, libel or insult. Please also indicate whether efforts are undertaken to discourage members of the government and other political and public figures from systematically suing journalists and to encourage them to accept public criticism and scrutiny.*

38. In the period from 2006 to the end of 2007 there were 9 imprisoned journalists in Azerbaijan, 5 of them (Eynulla Fatullaev, Rovshan Kyabirli, Yashar Agazade, Samir Sadagatoglu and Rafiq Tagi) were sentenced to various prison terms in connection with defamation. However, in late December 2006, the President of the Republic of Azerbaijan, Ilham Aliyev, signed a pardon decree, and then 4 journalists convicted of defamation were released, except Eynulla Fatullayev. In addition, in March 2009, the “Amnesty Act” was adopted by the parliament of the Republic of Azerbaijan. As a result of this, the *Azadlig* newspaper satirist and journalist, Mirza Sakit (Sakit Zakhidov), who had been convicted in June 2006 of fabricated charges of illegal possession of drugs and sentenced to 3 years, was released, as was *Ideal* newspaper editor-in-chief, Ali Hasanov, who had been sentenced to 6 months imprisonment for conviction of defamation on 14 November 2008.
39. At the moment, 4 journalists remain imprisoned on spurious charges against them for doing their professional career.
40. In February 2007, on charges of collaboration with Iranian Intelligence Service *Tolishi Sado* chief editor, Novruzali Mamedov, was arrested and according to the decision of the Grave Crimes Court of the Republic of Azerbaijan on 24 June 2008, he was sentenced to 10 years imprisonment. Novruzali Mamedov was found guilty of treason.

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<sup>6</sup> See also the UPR recommendation on this matter accepted by Azerbaijan: “Effectively investigate and prosecute crimes and violations against journalists and human rights defenders, and that those responsible are punished.” (UN Doc.: A/HRC/WG.6/4L.6, § 96, no. 16 & A/HRC/11/20/Add.1)

We note that the verdict was read without the participation of counsel for the accused. At the moment he is being held in #15 prison.

41. On 20 April 2007 *Gundelik Azerbaijan* and *Realniy Azerbaijan* newspapers' editor-in-chief, Eynulla Fatullayev, was detained. Eynulla Fatullayev was sentenced to 2 ½ years of imprisonment on 21 April 2007 for insulting honour and dignity. Later he was convicted under articles 214.1 (threatening terror), 283.2.2 (incitement of ethnic/national, social or religious hatred abusing authority), and 213.2.2 (tax evasion) of the Criminal Code and was sentenced to 8 ½ years of imprisonment on 30 October 2007.
42. On 24 July 2007 *Bizim Yol* newspaper correspondent, Mushfig Huseynov, was arrested by the employees of the National Security Ministry and two days later a 3 months pre-trial detention was issued. Mushfig Huseynov was convicted under Article 311.1 (receiving of a bribe) of the Criminal Code and on 21 January 2008 was sentenced by Grave Crimes Court Judge, Jamal Ramazanov, to 6 years of imprisonment, followed by a 2 year ban on his writing activity. However, this sentence was reduced to 5 years through a decision adopted by Appellate Court Judge, Sahibkhan Mirzayev, on 4 April 2008.
43. On 10 November 2008, *Azadlig* newspaper editor-in-chief Ganimet Zahidov was arrested due to an incident that occurred on 7 November 2008 in Azerbaijan Publication House, where the newspaper was located. Ganimet Zahid was convicted under articles 127.2.3 (hooliganism with intentional infliction of minor bodily harm) and 221 (hooliganism) of the Criminal Code and imprisoned for 4 years.
44. All four journalists were known as the harshest critics of the ruling regime, administrative arbitrariness and corruption in the country. Monitoring conducted by various local and foreign non-governmental organizations proved that all cases against the arrested journalists were fabricated and targeted at silencing their activities as journalists.
45. Since the adoption of the list of issues (November 2008) the Law on mass media has been amended. Since then, the clear tendency of limitation of freedom of expression rights of the media has been observed. This law gives several Ministries (Ministry of Internal Affairs, Ministry of National Security, Ministry of Justice) and Press Council the ability to initiate the termination of newspaper activities in some vaguely depicted

circumstances. In April 2009 new amendments were enacted which established new sanctions, like the temporary ban for publication. According to those new restrictions the same ministries obtained a right to file cases for a temporary ban.<sup>7</sup>

## **Freedom of Association and Assembly (arts. 21 and 22)<sup>8</sup>**

### **Section prepared by the Society for Humanitarian Research and the Institute for Freedom and Safety**

*List of Issues, 5 November 2008, § 18*

*Please comment on reports regarding unlawful restrictions on freedom of assembly. Such violations reportedly consist in the prohibition of peaceful political rallies of opposition parties and youth movements, their restriction to remote designated locations, dispersion of peaceful political rallies, as well as harassment of opposition officials by security forces with impunity, especially during election campaigns.*

46. Azerbaijan Republic's Law on Freedom of Assembly, which was adopted on 13 November 1998, has many barriers that limit the right of free assembly, as well as increase control over law enforcement agencies to conduct similar activities.
47. Paragraph I of Article 7 of the Law of Republic of Azerbaijan on Freedom of Assembly states that "No restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
48. However, in many cases the Government of Azerbaijan is misusing the abovementioned law. There were many instances when pickets, various forms of protest, collective festivities, collective reading of newspapers, etc. have been stopped and members of these random meetings have been detained by police, and in most cases with respect to the applicable administrative actions.

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<sup>7</sup> The Government of Azerbaijan did accept the following recommendation made during the UPR of Azerbaijan: "Ensure that its media regulations promote diversity among media outlets in line with international standards and best practices" (UN Doc.: A/HRC/WG.6/4L.6, § 96, no. 15 *in fine* & A/HRC/11/20/Add.1)

<sup>8</sup> The Government of Azerbaijan did not accept the following recommendation made during the UPR of Azerbaijan: "Take all necessary measures to ensure that the law 'on freedom of assembly' is not applied in an unduly strict manner by the local authorities, to consider abolishing the pre-approval requirement for public assemblies altogether and to replace it with an obligation of notification for the organisers of public assemblies." (UN Doc.: A/HRC/WG.6/4L.6, § 96, no. 18 & A/HRC/11/20/Add.1)

49. Here are given several cases, which illustrates the limitation of freedom of assembly:
- On 26 September 2007, 17 members of Dalga Youth Movement tried to hold a peaceful event -- a barefoot march to demand for reforms in the education system. As a result of this they were detained by Sabayil 39th district Police Department.<sup>9</sup>
  - On 30 June 2009, approximately 50 NGO representatives gathered in Azizbekov Square to protest against amendments to the Law on NGOs that intended to go to parliament. However, the police blocked their way and suggested that only one participant go further. The police blocked their way stating that the action was not sanctioned by authorities. Special Task Police prevented civil society members from holding a picket in front of the Azerbaijan Parliament.
  - A previous demonstration on 10 May 2009 also saw members of the public beaten by police and approximately 50 peaceful demonstrators were detained for a number of hours on that day.
  - On 8 July 2009, at approximately 8:00 p.m., “Alumni Network” Youth Organization Coordinator, ANTV Online TV Leader Emin Milli and one of “OL” Youth Organization’s coordinators, well-known video-blogger Adnan Hajizade had been severely beaten by unidentified persons while dining with several other young adults. The men who looked like sportsmen insulted them, and demanded that they stop talking about politics. Then they attacked Emin Milli and Adnan Hajizade, causing physical injuries. Adnan Hajizade and Emin Milli sustained several injuries. Although they appealed to the police for assistance as victims, the police detained Adnan Hajizade and Emin Milli under article 221.2.1 (hooliganism) of the Criminal Code and after five hours of interrogation let the attackers go. For 17 hours the youth were deprived of the opportunity to meet with their lawyers. Police did not provide any official information concerning the detention of Hajizade and Milli. On the charges of hooliganism, the young activists could be imprisoned for up to five years according to Azerbaijan’s Criminal Code. The last incident illustrates that the reaction towards peaceful gatherings and meetings have become even more severe.
51. Amendments to the law on religious freedom have been adopted 30 June 2009, despite the protest of believers and other actors in the civil society. Thus, under the

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<sup>9</sup> Source: <http://www.eng.kavkaz-uzel.ru/articles/6393>

amendment to article 21, persons with a foreign education cannot manage the religious ceremonies. Under an amendment to article 8, the appointment of religious managers should be carried out in consultation with State Committee for Affairs on Religious Structures.

*List of Issues, 5 November 2008, § 19*

*Please provide information on the legal provisions regulating the funding of NGOs by foreign as well as domestic donors.*

52. The final amendments to Law on Non-governmental Organizations (Public unions and Funds) was adopted during a meeting in the Azerbaijan Parliament Milli Mejlis 30 June 2009.
53. Due to international and national protest, some proposed changes to the Law that would have limited the work of NGOs were removed, such as regulations for prohibition on NGOs' activities without registration, restriction of NGO's funding from foreign sources and the requirements of regional branches in 1/3 of the territory to be registered as a nationwide organization have been removed. Nevertheless, several articles that are contradictory to national and international legislations and could create serious problems in the work of public unions and funds, have been approved.
54. Among the concerns regarding the amendments to the Law are:
  - Article 9.1.1 stating that foreigners with permanent residency in Azerbaijan and people without citizenship cannot found non-governmental organizations in the Republic of Azerbaijan;
  - Article 12.1-1 stating that during the creation of a foundation, its authorized capital cannot be less than 10,000 AZN -- this amount is large for non-commercial organizations and will create obstacles for creating funds;
  - Article 12.3 stating that in the Republic of Azerbaijan, the opening of branches and representations of non-governmental organizations of foreign countries or non-governmental organizations that are permanently funded by foreign governments or foreign legal or physical entities is only allowed if there exists an international agreement between the organisation and the Azerbaijani authorities, but it is not defined clearly what should be written in this agreement;

- Article 13.3 stating that it is not permitted for non-governmental organizations to in their charter usurp the powers of state and local self-regulation agencies, to interfere in these powers, or to envisage state oversight and control functions that will create obstacles as the change prohibits investigations and monitoring by NGOs.

55. Finally, we recommend the Government of Azerbaijan:

- To allow freedom of assembly and association, to immediately withdraw the changes and amendments of the law and to liberalize further the existing legislation and establish an “effective” system for the registration of NGOs.
- To mitigate the requirements of Article 14 of the Law on Freedom of Assembly, which deals with the powers of bodies of police in connection with convening an assembly. Law enforcement bodies use this Article to justify their severe treatment in the climate of impunity towards the demonstrators.
- To cancel local authorities’ requirements to restrict pickets to 50 people.
- To demand that the authorities stop the pressure on the pickets and the participants of other forms of protest.
- To revise Article 9, the restriction or prohibition of date and place for peaceful assembly.
- To cancel the requirements of local authorities to hold rallies and pickets in the places provided by the authorities in the outskirts of the city and not suitable for conducting such activities.