



Promotion and  
glamour abroad

# BREAKING POINT IN AZERBAIJAN

Repression and  
imprisonment at home



HUMAN RIGHTS HOUSE  
NETWORK



FREEDOM NOW

The Friend of Journalists Award presented to President Ilham Aliyev (© News.Az).  
Arrest during a protest on Nizami Street (© Institute for Reporters' Freedom and Safety, IRFS).

**Breaking point in Azerbaijan**  
**Promotion and glamour abroad**  
**Repression and imprisonment at home**

**May 2015**

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## FREEDOM NOW

Freedom Now is a nonpartisan, nonprofit organization that works to free prisoners of conscience through legal, political, and public relations advocacy. Based in Washington, D.C., Freedom Now serves individuals who have been wrongly imprisoned all over the world, seeking their freedom from detention and justice for the violation of their most sacred human rights.

Freedom Now represents individual prisoners of conscience as pro bono clients. Since 2001, we have represented more than 100 individuals in 24 countries. We strategically sequence legal, political and public relations advocacy to free clients from illegal detention. Our legal advocacy on behalf of our clients includes representing them before international fora, such as regional courts, commissions, and bodies of the United Nations. We use political advocacy to mobilize support for our clients from influential figures and institutions, such as members of the U.S. Congress and European Union. We rally attention to our clients' plights through public relations advocacy, which ranges from issuing press releases to publishing op-eds in newspapers worldwide. We coordinate with family members of our clients and their domestic lawyers and collaborate with other organizations to amplify our impact and secure the release of our clients as quickly as possible.

Since 2001, Freedom Now has helped free 77 individuals. Each of these individuals represents a life saved and a voice restored.

Freedom Now has worked on Azerbaijan for more than five years, including providing legal assistance to prisoners of conscience, engaging in targeted political advocacy, and monitoring and reporting on human rights abuses. Among Freedom Now's former clients are Bakhtiyar Hajiyev, Adnan Hajizade, and Emin Milli, all prisoners of conscience who have since been released.

The Human Rights House Network (HRHN) unites 90 independent human rights organizations in 18 Human Rights Houses in 13 countries in Eastern and Western Europe, Caucasus and the Balkans. HRHN's aim is to protect, empower and support human rights defenders and their organizations locally and unite them in an international network of Human Rights Houses.

HRHN has worked extensively on human rights issues in Azerbaijan for more than a decade, in close cooperation with local non-governmental organizations (NGOs). It supported the establishment of a Human Rights House in Baku, which served as an important meeting place and resource center for human rights. In 2010 more than 6000 human rights defenders, youth activists, independent journalists and lawyers used the facilities and the House became a focal point for promotion of human rights in Azerbaijan. In 2011, the authorities ordered the Human Rights House Azerbaijan to close and to cease all activities.

The Human Rights House Foundation (HRHF), based in Oslo with an office in Geneva, is HRHN's secretariat. HRHF is international partner of the South Caucasus Network of Human Rights Defenders. HRHF has consultative status with the United Nations and HRHN has participatory status with the Council of Europe

In close cooperation with members of the Network, HRHF is the co-author of this report.



## HUMAN RIGHTS HOUSE NETWORK



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## GLOSSARY

<b>CoE</b>	Council of Europe
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 <i>Also called European Convention on Human Rights</i>
<b>ECtHR</b>	European Court for Human Rights
<b>HRDs</b>	Human Rights Defenders
<b>ICCPR</b>	International Covenant on Civil and Political Rights of 16 December 1966
<b>NGO</b>	Non-governmental organization (a term that includes civil society organisations, CSOs)
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>UN</b>	United Nations
<b>UNWGAD</b>	United Nations Working Group on Arbitrary Detention
<b>U.S.</b>	United States of America
<b>Venice Commission</b>	European Commission for Democracy through Law of the Council of Europe





## **EXECUTIVE SUMMARY**

Recent years have brought an intensified crackdown on the exercise of fundamental human rights in Azerbaijan that has shocked even seasoned observers. Without any regard for protections under domestic or international law, the authorities in Azerbaijan have targeted journalists, political opposition leaders, grassroots activists, and human rights defenders (HRDs), including lawyers. Central to the government's strategy to suppress criticism is the employment of politically-motivated criminal prosecutions and detentions. To do so, it has amended its legislation since 2009 in order to restrict rights to freedom of expression, association, and peaceful assembly. As a result, civil society in the country has been devastated.

This report shines a light on the wrongful imprisonment of independent activists in Azerbaijan by investigating and providing in-depth analysis of both the criminal laws that are being used to justify the detentions and the international standards that the state violates when it imprisons its own citizens for peacefully exercising their basic human rights.

International attention has turned to Baku on a number of occasions. However, events like the 2012 Eurovision contest and the upcoming 2015 European Olympic Games all too often become a source of repression at home while the government grandstands its achievements abroad. President Aliyev has boasted that the world will see a "strong, growing and modern state" during the Games. In rounding up and imprisoning civil society leaders, Mr. Aliyev has sought to ensure that no criticism will be heard from inside the country during the summer games.

The focus on Azerbaijan's "strength," is contrasted by the conduct of the 2013 presidential election. Observers found that the election, in which President Aliyev purportedly gained 85 percent of the vote, failed to meet international standards. Before the election had even begun, political opposition leader Ilgar Mammadov was detained on trumped-up charges. The Election Observation Mission sent by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) found that the poll was "undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for the candidates" and local monitors documented a series of violations. After the election, the authorities turned its attention to those who criticized the election – including by arresting and jailing critical election monitors like Anar Mammadli.

Similarly, statements about "growth" in Azerbaijan must be viewed in light of increasing restrictions on activities of civil society groups, especially those that investigate corruption. While the president points to significant economic growth, observers point to oil and gas revenues rather than genuine business sector growth. Corruption continues to undermine actual economic development. Instead of tackling this problem, authorities have gone after those exposing government corruption. Investigative journalist Khadija Ismayilova, for example, was detained in response to her work uncovering corrupt deals involving the well-connected. The government has also undertaken a campaign that is sure to curtail growth: eliminating independent monitoring bodies and non-governmental organizations (NGOs). Especially problematic are a series of administrative laws and amendments passed since 2009 that place draconian restrictions on the registration, operation, and funding of independent groups; laws that are used to seize the assets of watchdog groups and jail their leaders.

As with claims of growth, President Aliyev's invocation of a "modern" state reflects only the paint and polish of new buildings in Baku, and not democratic progress. During the 2012 Eurovision contest, the authorities seized the opportunity to launch a publicity campaign to display the country's wealth, while HRDs and journalists used it to highlight ongoing rights violations. Although they were successful in bringing their message to the world, the government responded harshly with a crackdown that has since that time only intensified. Many have been jailed and their organizations shuttered, effectively turning the lights off on independent civil society. The government has ensured that there will be no locally-directed human rights campaign during the 2015 European Olympic Games in June.

The targeting and imprisonment of dissidents has long been a problem in Azerbaijan; however, the current crackdown is notable. Both the scope of the individuals being targeted, including internationally-known and respected HRDs, and the seriousness of the charges and length of prison sentences that are being imposed against them, set the current crackdown apart from past repression. Despite Azerbaijan's commitments under international law, and its repeated promises to the international community to address wrongful imprisonment, it keeps going. In response, various international mechanisms established under the Council of Europe (CoE) and the United Nations (UN) have found that the imprisonment of peaceful advocates in Azerbaijan violates international law.

During 2014, the authorities rounded up the country's most well-known civil society leaders and audaciously even targeted those who monitored and documented the cases of political prisoners. While this report does not present a comprehensive list of prisoners of conscience in Azerbaijan, as it has no authority to compile, it highlights a number of cases that are representative of most of those wrongly detained, including: Intigam Aliyev, Leyla and Arif Yunus, Rasul Jafarov, Emin Huseynov, Anar Mammadli, Ilgar Mammadov, Hilal Mammadov, Omar Mammadov, Rauf Mirkadirov, and a number of activists associated with the N!DA youth movement. At the time of press, some of these people are still held on pre-trial detention, a problem described in this report. Others, such as Intigam Aliyev and Rasul Jafarov, were recently sentenced in April 2015 to lengthy periods of imprisonment.

It has been observed that the Azerbaijani authorities use three strategies in imprisoning its critics; its aim being to punish and silence them. First, authorities rely on "patently politically-motivated charges," such as inciting hatred, mass disorder, and treason. Second, authorities have been known to resort to "fabricated charges," including drug and weapon charges, hooliganism, embezzlement, and service forgery. Although here authorities attempt to hide its true motivation, procedural violations and the political context reveal the concealed motivations. Third, the government has more recently confounded and alarmed international observers through the use of special "organization-directed charges" that have targeted primarily the heads of prominent NGOs in Azerbaijan. Such charges include illegal business activity, tax evasion, and abuse of office, and rely upon a deeply flawed legal theory. At their core, these cases involve both an attempt to limit the ability of NGOs to operate and impose criminal charges in response to the good faith perseverance of these groups.

The legal backdrop for this third category of cases, so-called NGO-directed cases, is the sustained refusal of the government to register certain human rights groups (those which are critical of the government) and the increasingly restrictive administrative laws that impose barriers to the registration, operation, and funding of NGOs in Azerbaijan. Although the European Court of Human Rights (ECtHR) has repeatedly criticized the failure of Azerbaijani authorities to timely register NGOs often arbitrarily prolonging the process rather than formally rejecting applicants, the practice has continued. The parliament has also adopted a raft of highly restrictive amendments to the country's administrative laws regulating organizations. Although the Venice Commission of the Council of Europe criticized the legal regime in 2011, authorities adopted additional provisions that entered into force in 2013 and 2014 that further restrict the ability of such groups to operate – critically restricting access to grants for unregistered groups and imposing a variety of onerous reporting requirements.

The government's flawed legal theory depends, at least in part, on this overly restrictive environment that is itself a violation of international standards. First, the government claims that a particular organization has failed to meet some requirement of the administrative law, such as failing to register a grant. Second, instead of subjecting the organization or its officers to the most relevant administrative penalties (which were controversially strengthened but do not include imprisonment), the authorities instead charge the head of the organization with unrelated provisions of the Criminal Code, such as laws on illegal business activity or abuse of office. Discriminatorily applied against HRDs, this arbitrary basis for organizationally-directed charges is the foundation for many of the most recent detentions of prominent civil society leaders who have received long prison sentences.

Whatever the charges employed by the authorities in any particular case, these detentions violate Azerbaijan's obligations under international law because they are politically motivated and intended to silence and punish the peaceful exercise of a fundamental right. International law prohibits arbitrary detention and Azerbaijan is a party to both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), which are legally binding on the state. The politically motivated imprisonment of peaceful HRDs, journalists and activists in Azerbaijan violates the prohibition on arbitrary detention (including the legally unjustified use of pretrial detention), procedural fair trial rights, and a number of substantive human rights, such as freedom of expression, association, and assembly.

In order to minimally comply with its international obligations, Azerbaijan must immediately and unconditionally release all prisoners of conscience, it must drop all charges against human rights NGOs and media organisations, and their leaders, and it must allow peaceful independent groups to operate in the country without arbitrary interference.

## **I. METHODOLOGY**

This report has been produced in the hopes that it will provide more clarity on the politically-motivated detentions undertaken in Azerbaijan. In 2014, HRDs in the country compiled a list of nearly 100 political prisoners<sup>1</sup> they determined were being wrongly imprisoned on political grounds. Many of the individuals involved in the preparation of the list were interviewed during a trip to Baku undertaken by the authors of this report. The work of NGOs in Baku contributed significantly to the information contained in this report. Many of those NGO leaders with whom the authors met – including Leyla and Arif Yunus, Rasul Jafarov, and Intigam Aliyev – were arrested a short time later.

**“Prisoner of Conscience” vs. “Political Prisoner:”** While these terms are often used interchangeably by the media and by some international actors, there are some important definitional distinctions between them. A “prisoner of conscience” is narrowly defined as an individual who has been detained for exercising a fundamental human right, such as free expression or political participation, or because of the detainee’s race, ethnicity, language, or other trait – and the detainee has not used or advocated the use of violence.<sup>2</sup> By contrast, the term “political prisoner” is broader. A political prisoner may include someone who is detained in violation of a fundamental right, for purely political reasons, on the basis of discrimination, after a political and unfair trial. It may also include someone who is subjected to a disproportionately long or harsh criminal sentence for purely political reasons.<sup>3</sup>

Each of the individuals highlighted in this report qualify as both prisoners of conscience and political prisoners (because each imprisonment is a purely political response to the peaceful exercise of a basic human right). As a matter of practice, however, this report will generally use the term *prisoner of conscience*.

This report is intended to complement the reporting of Azerbaijani HRDs, journalists, and NGOs, as well as other international NGOs, which have identified politically-motivated prosecutions and produced reports that provide an overview of the failures of the Azerbaijani judicial system. Rather than add to the documentation of human rights violations in the country, this report seeks to provide more detailed analysis of the government’s targeted use of its law and discriminating misuse of its judicial system to imprison its critics. Because the focus is on the application of the law, the report highlights only a few select cases that are emblematic of the wider crackdown on civil society in Azerbaijan. The fact that other specific cases are not highlighted in this report should not be viewed as a statement about those cases or as a judgment by the authors toward any specific type of political prisoner.

1 *The List of Political Prisoners in Azerbaijan*, Working Group led by Leyla Yunus and Rasul Jafarov (August 2014), available at [http://eap-csf.eu/assets/files/List\\_of\\_Political\\_Prisoners\\_AZ-%28%29-%281%29.pdf](http://eap-csf.eu/assets/files/List_of_Political_Prisoners_AZ-%28%29-%281%29.pdf).

2 See *Black’s Law Dictionary*, 8<sup>th</sup> Edition (2005) at 1002.

3 The definition cited by the CoE – as drafted by independent experts for the Secretary General and affirmed by Parliamentary Assembly of the Council of Europe (PACE) – provides: “A person deprived of his or her personal liberty is to be regarded as a ‘political prisoner’: a) if the detention has been imposed in violation of one of the fundamental guarantees set out in the ECHR, in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association; b) if the detention has been imposed for purely political reasons without connection to any offense; c) if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offense the person has been found guilty of or is suspected of; d) if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.” See Resolution 1900 (2012) (“The Definition of Political Prisoner”), PACE, adopted 3 Oct. 2012.

**Names and Numbers:** It can be extraordinarily difficult to develop a comprehensive list of all politically motivated prosecutions in any particular country for a variety of reasons. This is especially true in Azerbaijan. The experience of Rapporteur Christoph Strässer – who faced criticism over his report because the list he compiled differed from lists produced by other experts and organizations – is instructive. First, because the Azerbaijani authorities have increasingly relied upon serious or complicated criminal charges, the process of vetting each case, identifying substantive and procedural violations, and then monitoring the criminal proceedings requires significant time, expertise, and resources. Difficulties in vetting political cases are further exacerbated when the government limits access to documents or prevents observers from monitoring some criminal proceedings by holding trials in small courtrooms packed with government supporters.

The most recent list of prisoners of conscience compiled by reliable sources documented nearly one hundred cases of potentially political prosecutions (with some releases and new arrests occurring since publication of the list in 2014). Because of the difficulties in documenting every case, this report does not include a comprehensive or exhaustive list of cases. The cases highlighted in this report are included as well-vetted and symbolically illustrative examples of the broader trend in the country.

The report was compiled in accordance with the Guidelines on International Human Rights Fact-Finding Visits and Reports (Lund-London Guidelines). Moreover, HRHF was guided by the HRHN Code of Conduct in the production of this report.<sup>4</sup>

## A. INFORMATION AND SOURCES

For many years, this report's authors have been advocating, along with Azerbaijani NGOs, on behalf of prisoners of conscience in Azerbaijan and for a change in heavy-handed government practices and burdensome legislation aimed at curtailing freedom of expression, association, and assembly in the country. It is these relationships and the ready exchange of information that forms the bedrock of information contained in this report.

Secondary sources consulted for the report, include ECtHR case-law and NGO and governmental reports, such as those produced by the OSCE, ODIHR, CoE, Parliamentary Assembly of the Council of Europe (PACE), and the UN.

Citations for all sources are provided unless doing so would endanger a source or their colleagues or families. In those instances, the notation "source on file" is provided.

## B. FACT-FINDING MISSION AND TRIAL OBSERVATION

The authors conducted a fact-finding visit to Baku between 30 June and 5 July 2014 in order to assemble information, sources, and material for this report. The trip was made at the invitation of Azerbaijani NGOs and the authors' visas were sponsored by these organizations.

During this trip, the authors met with Azerbaijani NGOs and journalists, diplomatic missions in Baku, families and lawyers of detained human rights defenders, and a number of individuals who have since been detained. The authors visited the Baku Court of Grave Crimes and were present at the final hearing and sentencing of youth activist Omar Mammadov.

<sup>4</sup> Human Rights House Network Code of Conduct, available at <http://humanrightshouse.org/noop/file.php?id=16377>.

At the end of the mission to Azerbaijan, representatives from each author organization were interviewed by Radio Free Europe/Radio Liberty<sup>5</sup> and the newspaper “Azadliq.”<sup>6</sup>

Since early 2015, HRHN has trained and sent outside lawyers to observe and monitor court hearings of political cases in Azerbaijan. Lawyers have attended as many hearings as feasible and have provided immediate feedback and in-depth analysis, which has contributed to the production of this report. HRHN observers attended the trials of Rasul Jafarov and Intigam Aliyev, which began in January 2015 and ended with convictions for both in April 2015.

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5 *Azərbaycana siyasi məhbus missiyası gəlib*, Radio Free Europe/Radio Liberty (RFE/RL) (4 July 2014), available at <http://www.azadliq.org/content/article/25445523.html>.

6 *“Azərbaycanda vəziyyət artıq bundan pis ola bilməz”*, Azadliq (5 July 2014), available at <http://www.azadliq.info/musahibe/314-muesahib/48484-beynlxalq-insan-haqlar-muedaficilri-azadlqn-qona-oldu.html>.



## II. INTRODUCTION

The Republic of Azerbaijan is located in the Caucasus region on the western shore of the Caspian Sea and situated along the strategically important intersection of Eastern Europe and Western Asia. Azerbaijan promotes itself as a stable, secular state surrounded by hostile radical neighbours. It has an abundance of natural energy resources and hosts oil pipelines and logistical supply routes that are sought after by Europe. Owing to its vast energy resources and strategically critical location, the country is viewed by many in the West and East as a valuable partner, and the nearly 10 million citizens of Azerbaijan, as critical allies.



(Creative Commons, Wikimedia)

Shortly after declaring independence from the Soviet Union in 1991, Azerbaijan became engaged in a protracted conflict involving combatants from Azerbaijan, Armenia, and the long contested region of Nagorno-Karabakh. A ceasefire agreement ended formal hostilities in 1994. However, periodic fighting between the sides, the occupation of Azerbaijani territory by Armenian forces, and the internal displacement of Azerbaijani citizens all continue to be highly sensitive issues for Baku. While the peace process drags on,<sup>7</sup> the dispute remains central to understanding domestic and foreign policy decisions by the government. Serving as the perfect public relations pretence, Azerbaijani authorities often react to any criticism, especially as it relates to human rights violations in the country, by accusing independent civil society leaders of collaborating with outside agents, principally Armenia or Armenian “forces,”<sup>8</sup> but more recently extending to the United States of America and European Union member states.

7 The peace process has largely focused on the “Minsk Group” of the OSCE – spearheaded by France, Russia, and the United States of America. Despite continued efforts of the Minsk Group, however, spikes in violence continue to occur between Armenia and Azerbaijan. See e.g. *Statement by the OSCE Minsk Group Co-Chairs*, OSCE, (19 Nov. 2014), available at <http://www.osce.org/mg/126923>.

8 *Azerbaijan Tightens Screws on Civil Society*, Radio Free Europe/Radio Liberty (RFE/RL) (9 Sep. 2014), available at <http://www.rferl.org/content/squeezes-civil-society-media/26574692.html>.

President Ilham Aliyev has led Azerbaijan since 2003, when he replaced his father, Heydar Aliyev, who had led the country since independence. National elections in the country have repeatedly failed to meet international standards – including the 2010 parliamentary elections<sup>9</sup> and the 2013 presidential election.<sup>10</sup> The ruling New Azerbaijan Party, founded by the elder Aliyev and now headed by his son, “has dominated the political playing field in all electoral contests since its founding in 1995.”<sup>11</sup> Azerbaijan’s unicameral National Assembly (Milli Majlis), which shares legislative authority with the executive branch, now lacks any genuine opposition party representation for the first time since independence.<sup>12</sup> As a result, legislative outcomes in Azerbaijan are reportedly under the control of the president.

Courts in Azerbaijan lack the capacity and independence to effectively uphold rule of law in the country, including ensuring adherence to international treaty obligations. This lack of independence has paved the way in recent years for the arbitrary arrest and imprisonment of HRDs in the country. Among others, the International Bar Association’s Human Rights Institute has documented how criminal law is misused in cases involving freedom of expression and how the right to a fair trial is violated.<sup>13</sup> Courts have also been ineffectual in protecting those in detention from mistreatment. As Freedom House noted in its 2014 report:

The judiciary is corrupt, inefficient, and subservient to the executive branch. Arbitrary arrests and detention are common, particularly for members of the political opposition. Detainees are often held for long periods before trial and their access to lawyers is restricted. Police abuse of suspects during arrest and interrogation reportedly remains common; torture is sometimes used to extract confessions. Prison conditions are severe, with many inmates suffering from overcrowding and inadequate medical care.<sup>14</sup>

In addition to procedural judicial rights, fundamental civil and political rights have been greatly curtailed through legislation, government harassment, and arbitrary detention. The Azerbaijani government has grown increasingly authoritarian and freedoms of expression, assembly, and association are no longer tolerated when they are exercised in opposition to President Aliyev or his policies.<sup>15</sup> Excessive restrictions on such rights take a number of forms, including the use of arbitrary detention (discussed in greater detail in Section IV, following) as a means of punishment for activism.

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9 *Election Observation Mission Final Report (Republic of Azerbaijan Parliamentary Elections 7 November 2010)*, OSCE/ODIHR (25 Jan. 2011), available at <http://www.osce.org/odihr/75073>.

10 *Election Observation Mission Final Report (Republic of Azerbaijan Presidential Election 9 October 2013)*, OSCE/ODIHR (24 Dec. 2013), available at <http://www.osce.org/institutions/110015>.

11 *Freedom in the World 2014*, Freedom House (28 Jan. 2014) at para. B, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2014>.

12 During the 2010 parliamentary election, the ruling National Azerbaijan Party was allocated 71 of 125 seats in the legislature. The remaining seats are now held by unaffiliated candidates and “soft opposition” groups, which in practice do not operate as a genuine opposition to the National Azerbaijan Party. While the two major opposition parties, Musavat and Parties of the People’s Front of Azerbaijan, held eight seats previously – neither party is currently represented. *Elections in Azerbaijan; Embarrassment for the West*, Center for Eastern Studies (17 Nov. 2010), available at <http://www.osw.waw.pl/en/publikacje/analyses/2010-11-17/elections-azerbaijan-embarrassment-west>.

13 *Azerbaijan: Freedom of Expression on Trial*, International Bar Association (April 2014), available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=E1192B49-6A7C-410D-A833-A17F5FD4BCBB>.

14 *Freedom in the World 2014*, Freedom House (28 Jan. 2014) at para. F (rule of law).

15 *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, Human Rights Watch (Sep. 2013), available at [http://www.hrw.org/sites/default/files/reports/azerbaijan0913\\_ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/azerbaijan0913_ForUpload_0.pdf).

Other restrictions include criminal defamation laws,<sup>16</sup> both *de-facto* and *de-jure* restrictions on the ability of independent groups to protest or otherwise demonstrate,<sup>17</sup> an ever-increasing constellation of over regulation of NGOs,<sup>18</sup> and limitations on the ability of HRDs, journalists, and activists to travel abroad.<sup>19</sup> Religious freedom in Azerbaijan is similarly constrained by both law and practice, especially for religious minority groups.<sup>20</sup>

Corruption is an endemic problem in Azerbaijan. In a 2014 report, Transparency International ranked Azerbaijan 126 out of 174 countries on its corruption index.<sup>21</sup> Despite moves to reign in “petty corruption,” higher-level corruption remains a challenge – with the NGO sector unable to perform a much-needed watchdog role.<sup>22</sup> Of particular note are reports – especially from the now imprisoned Radio Free Europe/Radio Liberty investigative journalist Khadija Ismayilova – which indicate that President Aliyev and members of his family and inner circle are secretly involved in a series of businesses that easily obtain lucrative government contracts.<sup>23</sup> In recognition of such high-level corruption, the Organized Crime and Corruption Reporting Project named President Aliyev “Person of the Year” in 2012.<sup>24</sup>

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16 *Azerbaijani President Signs Law Criminalizing Online Defamation*, RFE/RL (6 June 2013), available at <http://www.rferl.org/content/azerbaijan-internet-defamation-law-criminal-aliyev/25008799.html>.

17 *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, Human Rights Watch (Sep. 2013).

18 *Ibid.*

19 *Award-Winning Reporter Barred From Leaving Azerbaijan*, Committee to Protect Journalists (17 June 2013), available at <https://www.cpj.org/2013/06/award-winning-reporter-barred-from-leaving-azerbai.php>.

20 *2014 Annual Report*, U.S. Commission on International Religious Freedom (28 July 2014), available at <http://www.uscirf.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf>.

21 *Corruptions Perception Index 2014*, Transparency International, available at <http://www.transparency.org/cpi2014/results>.

22 *Azerbaijan National Integrity System Assessment 2014*, Transparency International (3 July 2014)

23 See e.g., *Azerbaijani President’s Family Benefits from Eurovision Hall Construction*, RFE/RL (9 May 2012), available at [http://rferl.org/content/azerbaijan\\_first\\_family\\_build\\_eurovision\\_arena/24575761.html](http://rferl.org/content/azerbaijan_first_family_build_eurovision_arena/24575761.html); *Azerbaijani Government Awarded Gold-Field Rights to President’s Family*, RFE/RL (3 May 2012), available at [http://www.rferl.org/content/\\_gold-field\\_contract\\_awarded\\_to\\_presidents\\_family/24569192.html](http://www.rferl.org/content/_gold-field_contract_awarded_to_presidents_family/24569192.html); *Azerbaijani President’s Daughters Tied to Fast-Rising Telecoms Firm*, RFE/RL (27 June 2011), available at [http://www.rferl.org/content/azerbaijan\\_president\\_daughters\\_tied\\_to\\_telecoms\\_firm/24248340.html](http://www.rferl.org/content/azerbaijan_president_daughters_tied_to_telecoms_firm/24248340.html).

24 *Azerbaijani President Aliyev Named Corruption’s ‘Person of the Year,’* RFE/RL (2 Jan. 2013) available at <http://www.rferl.org/content/azerbaijan-ilham-aliyev-corruption-person-of-the-year/24814209.html>.

### **III. PROMOTION ABROAD, REPRESSION AT HOME**

The Azerbaijani authorities go to great lengths to present the country as a modern prosperous European nation. Indeed, the government expends considerable resources promoting the country's wealth and power for observers at home and abroad, while at the same time curtailing fundamental rights and impeding actual progress in the country.

There have been a number of recent occasions where Azerbaijan garnered considerable international attention. These were events where the Azerbaijani government could have showcased itself by embracing fundamental rights, the principles of democracy, and progressive leadership. Instead of promoting rights and democracy, however, the authorities used these occasions to crack down on dissent at home while grandstanding to observers abroad. Examples of missed opportunities that instead became a basis for repression include:

- The May 2012 Eurovision Song Contest. The government targeted those who brought international attention to human rights violations and to property that was destroyed during a campaign to “beautify the city;”
- The October 2013 presidential election. Deemed neither free nor fair by outside observers, the arrests of key political figures, such as Ilgar Mammadov, Anar Mammadli, and Bashir Suleymanli, bookended the election; and
- The May-November 2014 chairmanship of Azerbaijan in the CoE Committee of Ministers. The imprisonment of human rights defenders and journalists escalated during this period.

It was announced on 8 December 2012 that Baku would host the world's first European Games. The Games will be a multi-sport event for athletes from all over Europe and are designed and regulated by the European Olympic Committees and coordinated with the support of the Baku 2015 European Games Operation Committee. On 3 September 2014, President Ilham Aliyev tweeted about what he hoped to achieve with his country's hosting of the first ever European Games.



The Games will be yet another high profile stage for Azerbaijan, and come soon after its chairing of the CoE and less than three years after its hosting of the Eurovision Song Contest. Although President Aliyev cited his country's strength, growth, and modernity as key benchmarks by which he wants his country to be judged, observers and activists in the country have experienced a different reality as to how their government has shown its strength and pursued growth and modernity. Having endured other special occasions, citizens fear what this will mean for them, where: “strength” signifies the government's entrenched power, intolerance to criticism, and heavy-handedness in dealing with dissenters; “growth” narrowly describes a portion of the economy without acknowledging growing repression against civil society and the independence of anti-corruption campaigners; and “modernity” is evidenced only by a façade of new construction and coats of paint, while elements of a truly modern society, such as rule of law and respect for human rights, are virtually non-existent.

## A. DISPLAYING “STRENGTH” THROUGH REPRESSION

Displaying strength is an essential part of the rhetoric, both at home and abroad, for President Ilham Aliyev. An essential tool of his apparent strength is the electoral process. His power is dependent upon presidential and parliamentary elections that appear democratic and unify the Azerbaijani people.

### 1. A Presidential Election to Display Strength

While President Aliyev indeed points to his re-election in 2013 – albeit a victory without any campaigning on his part – as evidence of the country’s strength, information reported from NGOs on the ground during the election tell a different story. President Aliyev was elected to a third term with 85 percent of the vote on 9 October 2013; a new term made possible only by a dubious referendum that removed a constitutional limitation on consecutive presidential terms.<sup>25</sup> The election was described by the Election Observation Mission of ODIHR as having been “undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates.”<sup>26</sup>

Prior to the election, various restrictions were imposed on the candidates. Most limiting, presidential candidates were allowed to campaign for only 22 days. Moreover, candidates had to demonstrate that they had been in residence for at least ten years,<sup>27</sup> had a university degree, and had collected 40,000 signatures from registered voters.<sup>28</sup>

During the permissible campaign period, opportunities to assemble supporters were severely limited for candidates. Azerbaijan’s Central Election Commission issued a list of 152 indoor and outdoor venues where presidential candidates could hold campaign events free of charge. Authorities interpreted this list as exhaustive and prohibited the use of any other venue; as a result the ODIHR mission noted that the right to freedom of assembly had been impacted and unreasonably limited.<sup>29</sup> This concern was underlined by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, who said at the time that “peaceful demonstrations in Azerbaijan have increasingly been targeted in the context of the forthcoming elections of October 2013.”<sup>30</sup>

In its Statement of Preliminary Findings and Conclusions, ODIHR observers remarked that “continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign. Significant problems were observed throughout all stages of election day processes.”<sup>31</sup> Local Azerbaijani NGO, the Election Monitoring and Democracy Studies Centre (EMDS), also found serious violations, including examples of ballot interference, cases

25 *Opposition Condemns Changes to Azeri Constitution*, Institute for War and Peace Reporting (13 April 2009), available at <https://iwpr.net/global-voices/opposition-condemns-changes-azeri-constitution>.

26 *Election in Azerbaijan undermined by limitations on fundamental freedoms, lack of level playing field and significant problems on election day, international observers say*, OSCE (10 Oct. 2013), available at <http://www.osce.org/odihr/elections/106908>.

27 This was believed to be aimed at eliminating Oscar-winning film-maker Rustam Ibragimbekov from running after he announced he would stand in the election and gained support from all opposition parties.

28 More information on the conditions of the presidential elections is available in the ODIHR Needs Assessment of 12 July 2013, available at <http://www.osce.org/odihr/elections/103561?download=true>.

29 *Republic of Azerbaijan, Presidential Election*, OSCE/ODIHR Election Observation Mission Final Report (9 Oct. 2013).

30 *Rights to freedom of peaceful assembly and of association*, UN Doc. A/68/299 at para. 19.

31 *Republic of Azerbaijan, Presidential Election*, 9 October 2013, OSCE/ODIHR Election Observation Mission Final Report.

where voters were being influenced, violations of the secrecy of voting, and inconsistencies during voting and counting of ballots.<sup>32</sup>

The presidential election was marred not only by campaigning limitations and polling irregularities, but also by a controversy over the premature release of poll results. The Central Election Commission created an application conveniently allowing citizens to track the election results via their mobile phones. The day before the election a reporter at Berlin-based Meydan TV discovered the application had already released the election outcome in the district of Hacigabul-Kurdamir, awarding President Aliyev 72,76 percent of the vote. The application's designer claimed it was a test run using data from the 2008 elections. However, observers were quick to note that the application provided the names of the current presidential candidates.<sup>33</sup>

Despite the negative assessment by many observers including the widely-respected team from ODIHR, a joint delegation of parliamentarians from the European Parliament and PACE deemed the election process had been “free, fair and transparent.”<sup>34</sup> This was despite their own acknowledgement that the decision of the president not to conduct a campaign was “disappointing,” that they had been told about “a number of alleged incidents of candidate and voter intimidation,” as well as their recognition of the fact that “freedom of expression remains a serious concern in Azerbaijan.”

## 2. Repression Throughout the Electoral Period

While the election itself was marred by numerous inconsistencies and deemed by many observers as lacking in the necessary safeguards to be judged free and fair, the authorities' actions targeting opposition and civil society leaders were unambiguously repressive. Government reprisals against those who displayed criticism and dissent during the electoral period were harsh and swift. The arrest of opposition politician Ilgar Mammadov in February 2013 highlights that repression not only followed the presidential election, but persisted throughout the electoral period.

The crackdown against those who raised their voices during the electoral period continued immediately afterwards. The first target of the government's retribution was the only independent election monitoring group in Azerbaijan, EDMS, which had published critical findings of the election. It had operated without official legal status – having been denied registration under discriminatory NGO regulations – and thus was staffed with observers who were accredited individually. The ODIHR Mission noted that some EDMS-hosted training sessions, which were conducted in private homes, were interrupted by officials, thereby infringing on their right to free association.<sup>35</sup> Furthermore, the office of EDMS was searched on 31 October 2013 and authorities confiscated two computers, print materials, press releases, reports, and financial documents.<sup>36</sup> Shortly thereafter, the organization's chairman Anar Mammadli and director Bashir Suleymanli were arrested and charged with

32 *Elections in Azerbaijan: Aliyev's frozen time*, HRHN, Tatiana Pechonchik (19 Oct 2013), available at <http://humanrightshouse.org/Articles/19740.html>.

33 *App-Gate and Azerbaijan's Presidential Election*, The Central Asia-Caucasus Analyst (16 Oct. 2013), available at <http://www.cacianalyst.org/publications/field-reports/item/12832-app-gate-and-azerbajians-presidential-election.html>.

34 *Observation of the presidential election in Azerbaijan*, PACE, Doc. 13358 (21 Nov. 2013), available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20259&lang=EN>.

35 *Republic of Azerbaijan, Presidential Election*, OSCE/ODIHR Election Observation Mission Final Report (9 Oct. 2013).

36 *Head of Independent Election Monitoring Group Must Be Released*, HRHN (17 Dec. 2013), available at <http://humanrightshouse.org/Articles/19866.html>; *Harassment of the Azerbaijani Election Monitoring and Democracy Studies Centre*, HRHN (12 Nov. 2013), available at <http://humanrightshouse.org/Articles/19744.html>.



tax evasion, illegal business activities, and abuse of office. In a joint statement, the UN Special Rapporteur on freedom of assembly and association and the Rapporteur on HRDs said: “We are seriously concerned that the [...] HRDs are being prosecuted in retaliation for their legitimate work in documenting alleged widespread irregularities and human rights violations around the presidential elections of 9 October 2013.”<sup>37</sup>

The arrest of Mr. Mammadli and Mr. Suleymanli, who were later convicted and sentenced, resonated with a larger campaign against independent media during the election period. On 4 October 2013, for example, a group of journalists from opposition media outlets was attacked by a pro-government mob whilst covering a sanctioned opposition rally in the Sabirabad region. Police officers stood by at the scene as journalists were assaulted, and their equipment damaged by the mob.<sup>38</sup> Earlier in the year, between March and July 2013, youth activists associated with the opposition movement N!DA, the REAL movement, and the Free Youth movement were also arrested and detained on charges that include drug and gun possession, hooliganism, and not obeying police orders; some members remain in prison.<sup>39</sup>

As noted by the UN Special Rapporteur Maina Kiai, in his report to the UN General Assembly in October 2013, “electoral periods are such an important time to build democratic, responsive, and accountable institutions and that very strict and clear safeguards should be put in place by States to prevent undue interference in public freedoms, in particular in the rights to freedom of peaceful assembly and of association.”<sup>40</sup> The Azerbaijani government, however, has shown little interest in implementing or even acknowledging such recommendations. Tana de Zulueta, Head of the ODIHR Mission summed up the situation: “citizens of Azerbaijan deserve better.”<sup>41</sup>

## B. “GROWING” CONTROL OVER NON-GOVERNMENTAL ACTORS

Azerbaijan’s economy has experienced significant growth since independence; however, endemic corruption and the suppression of independent civil society continues to threaten the sustainability of that expansion.

### 1. Highlighting Economic Growth and Hiding Corruption

To illustrate Azerbaijan’s good performance, authorities regularly invoke economic growth. Azerbaijan’s economy and its recent growth are closely tied to the energy industry, which accounts for 40 percent of gross domestic product and 95 percent of exports.<sup>42</sup> Despite improvement in some areas, however, inequality and corruption remain primary concerns for many Azerbaijani citizens.<sup>43</sup>

37 *UN Experts urge Azerbaijan to drop charges against HRDs*, OHCHR (9 May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14582&LangID=E>.

38 *Azerbaijan’s president run turns ugly over media crackdown*, HRHN (5 Oct. 2013), available at <http://humanrightshouse.org/Articles/19622.html>.

39 *An extensive campaign against independent voices*. HRHN (9 Oct. 2013), available at <http://humanrightshouse.org/Articles/19626.html>.

40 *Rights to freedom of peaceful assembly and of association*. UN Doc. A/68/299 at para. 56.

41 *Citizens of Azerbaijan deserve better*, HRHN (11 Oct. 2013), available at <http://humanrightshouse.org/Articles/19641.html>.

42 *Aliyev’s Party*, *The Economist* (2 May 2015), available at <http://www.economist.com/news/europe/21650180-dubious-host-first-european-games-appals-human-rights-lobby-aliyevs-party>.

43 Reports focus especially on regional income disparities, for example, 40 percent of the population remain low-wage earners, and there are great income disparities between genders. See, *Statement at the end of visit to Azerbaijan*, United Nations Working Group on Business and Human Rights (27 Aug. 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14965&LangID=E>.

Acknowledging that economic growth cannot come at any price, the World Economic Forum has underlined that corruption remains the principle challenge to doing business in Azerbaijan.<sup>44</sup> The country receives very poor corruption rankings by independent bodies, such as Transparency International.<sup>45</sup> While President Aliyev has declared a commitment to fighting corruption, civil society groups – many of which work to document corruption and seek to hold corrupt officials accountable – face severe retaliation for doing so.

The case of investigative journalist Khadija Ismayilova, for example, shows just how far the authorities are willing to go to prevent independent groups from reporting on corruption. Ms. Ismayilova, an award-winning reporter associated with Radio Free Europe/Radio Liberty and the Organized Crime and Corruption Reporting Project, has faced repeated attempts by authorities to stop her investigations into high-level corruption in Azerbaijan. Despite harassment, a smear campaign, and even attempted blackmail, Ms. Ismayilova continued her work until authorities finally resorted to arresting her on 5 December 2014.<sup>46</sup>

Ms. Ismayilova is not the only one to challenge her government's approach to corruption and portrayal of its economic record. The closure of the Public Association for Assistance to Free Economy,<sup>47</sup> a leading NGO investigating economic issues and member of the Extractive Industries Transparency Initiative (EITI) NGO Coalition is yet another sign of the government's willingness to silence those who investigate and publically highlight corruption and government control over the country's economy.

In April 2015, the EITI downgraded Azerbaijan from a “compliant” country to a “candidate.”<sup>48</sup> The EITI substantiated its decision by stating that “work is needed to ensure that civil society in Azerbaijan can participate in the EITI in a meaningful way.” This downgrade in status is particularly significant in light of Azerbaijan's strong reliance on the energy industry and a reflection of the possible economic consequences that flow from its actions against civil society.

## 2. Eliminating Space for Independent Non-governmental Organizations

More than just targeting anti-corruption campaigners, the Azerbaijani authorities have systematically eliminated space for independent civil society. This has been achieved through two primary mechanisms:

- Implementing legislation that discriminately regulates and controls NGOs; and
- Imprisoning NGO leaders that are critical of the government.

44 Nearly twenty percent of respondents identified corruption as the most problematic factor in doing business in Azerbaijan. See, *Global Competitiveness Report 2014-2015*, World Economic Forum (2014), available at <http://www3.weforum.org/docs/GCR2014-15/AZE.pdf>.

45 Azerbaijan consistently places near the bottom of rankings for global corruption. Transparency International ranks Azerbaijan 126 of 174 countries (Corruptions Perception Index 2014, available at <http://www.transparency.org/cpi2014/results>), the World Bank rates Azerbaijan's “control of corruption” in the 16th percentile (World Governance Indicators 2014, available at <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>), and Global Integrity rates Azerbaijan's implementation of anti-corruption and good governance mechanisms as “Very Weak” (Global Integrity Report 2011, available at [https://www.globalintegrity.org/global\\_year/2011/](https://www.globalintegrity.org/global_year/2011/)). Similarly, Azerbaijan received only 10 out of a possible 100 points from the World Bank Control of Corruption Index.

46 *Azerbaijan Jails Reporter Who Angered Top Officials*, New York Times (5 Dec. 2014), available at <http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html>.

47 Information about the current status of the NGO in Azerbaijan on file with the authors.

48 *Azerbaijan downgraded to candidate country*, EITI (15 April 2015), available at <https://eiti.org/news/azerbaijan-downgraded-candidate-country>.

As will be discussed in considerable detail in Section IV(A)(3), the government relies on provisions contained within a constellation of separate laws and their amendments – referred to collectively in this report as the NGO Regulation Laws – to harass and imprison civil society leaders.<sup>49</sup> According to Human Rights Watch, “the government has made it so difficult [for civil society] to operate that a majority of independent organizations involved in EITI have suspended their activities and some may soon be forced to close. Their leaders fear they may be next to face arrest, following the recent arrest of three of the country’s top HRDs. Attacks on independent groups seriously compromise EITI process in Azerbaijan.”<sup>50</sup> Indeed, the strict application of laws affecting NGOs adopted since 2009, which excessively limit the right to freedom of association, have been used to root out independent NGOs and their leaders.

The Venice Commission expressed concern regarding the degree to which Azerbaijan regulated NGOs and issued a series of recommendations in 2011; however, the government responded by tightening the laws even further in a number of areas. Amendments that entered into force in 2013 and 2014 provide the government with the discretion to dissolve, impose financial penalties on, and freeze the assets of NGOs for infractions of administrative regulations.<sup>51</sup> In addition to stiffened penalties, the government also broadened reporting requirements – a critical change that is central to the prosecution of a number of NGO leaders.

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49 The complex web of laws and amendments that govern the establishment and operation of NGOs in Azerbaijan include: the Law on Non-Governmental Organizations, the Law on Grants, the Law on Registration and the State Registry of Legal Entities, the Code of Administrative Offences, the Civil Code, and the Tax Code.

50 *Azerbaijan: Transparency Group Should Suspend Membership*, Human Rights Watch (14 Aug. 2014), available at <http://www.hrw.org/news/2014/08/14/azerbaijan-transparency-group-should-suspend-membership>.

51 These new rules and penalties include:

- Copies of a grant agreement to the Ministry of Justice must be submitted 30 days after the signing of the agreement or a subject to a fine of 5’000 to 7’000 AZN (€6’300). NGO managers can be fined an additional 1’000 to 2’500 AZN (€2’200);
- All projects must have a grant agreement or are subject to a fine of 8’000 to 15’000 AZN (€13’000). NGO assets can be seized and NGO managers can be fined an additional 2’500 to 5’000 AZN (€4’300);
- All financial reports must include information on donations and be submitted to the correct government agencies or a fine of 5’000 to 8’000 AZN (€7’000) is levied. NGO managers can be fined an additional 1’000 to 2’500 AZN (€2’200);
- Accepting cash donations higher than 200 AZN is subject to a fine of 7’000 to 10’000 AZN (€8’700) for the NGO manager, while the NGO is liable to a fine ranging from 1’000 to 2’500 AZN (€2’200);
- NGOs can receive donations from a foreign donor only if the foreign donor has an agreement with the Ministry of Justice;
- Foreign entities must have an agreement with the Ministry of Justice, a registered office in Azerbaijan, and the right to make a grant in Azerbaijan before grants to Azerbaijani NGOs can be made;
- An opinion on the “financial-economic expediency” of a grant by a competent executive body is required before a grant can be transferred;
- The Cabinet of Ministers will define the procedure for registering as a donor (but has not done so yet);
- Local and foreign NGOs are required to submit information on their donors and donations to the Ministries of Justice and Finance;
- All banking and donation operations must be reported to the Ministry of Justice;
- NGOs must conclude a contract for the provision of any service and fulfillment of any work;
- NGOs must register with the Ministry of Justice all service contracts with a foreign entity. The Cabinet of Ministers has not yet determined the penalty for noncompliance.

*Request for Enhanced Supervision (Ramazanova and Others v. Azerbaijan (Application No. 44363/02))*, Communication from 7 NGOs (5 Sept. 2014), DH-DD(2014)1163, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2611588&SecMode=1&DocId=2188924&U sage=2>. See also, *Laws on Amendments to the Law on Non-Governmental Organisations (Public Unions and Foundations) and Amendments to the Law on Grants*, Venice Commission, Opinion No. 787/2014, CDL-REF(2014)053, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2014\)053-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)053-e).

In 2014, the Commission published a follow-up opinion on the new amendments,<sup>52</sup> arguing that the further restrictions “seem to be intrusive enough to constitute a *prima facie* violation of the right to freedom of association.”<sup>53</sup> The Commission added that “in general, the enhanced state supervision of NGOs seems to reflect a very paternalistic approach towards NGOs and calls again for sound justification. The same holds for new and enhanced penalties that can be imposed upon NGOs even for rather minor offences.”<sup>54</sup> The Commission concluded further that “globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law.”<sup>55</sup>

As reported by NGOs at the 28<sup>th</sup> session of the UN Human Rights Council, the result of implementation has been severely detrimental to civil society:<sup>56</sup>

Many NGOs have been forced to cease their activities and are subjected to legal prosecution. Bank accounts of more than a dozen NGOs are blocked and their offices are being searched and in some cases sealed. Many more HRDs have fled the country. Since May 2014, authorities have frozen the bank accounts of at least 50 independent organizations and, in many cases, of their staff members, while numerous others have been interrogated and otherwise harassed, forcing them to suspend their activities. In addition, several international NGOs operating in Azerbaijan, with longstanding partnerships with local civil society in the country, have been forced to leave Azerbaijan or suspend operations.

### 3. Difficulty for International Rights Groups to Operate

While pursuing a campaign to eliminate locally-based NGOs, the government has also made it increasingly difficult for international NGOs to monitor the human rights situation. Since 2011, almost all international human rights monitors have been forced to stop operating inside Azerbaijan, including the Human Rights House Azerbaijan (March 2011),<sup>57</sup> the National Democratic Institute (2013), IREX (September 2014), and RFE/RL (December 2014). The bank account of Transparency International has been frozen, along with those of many other international NGOs.<sup>58</sup>

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52 *European Commission for Democracy through Law, Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, Venice Commission (December 2014), available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)043-e) (Venice Commission 2014 Report).

53 *Ibid* at para. 91.

54 *Ibid* at para. 92.

55 *Ibid* at para. 93.

56 *NGOs call for the end of systematic punishment of leaders of civil society in Azerbaijan*, HRHN (17 March 2015), available at <http://humanrightshouse.org/Articles/20807.html>.

57 The idea of establishing a Human Rights House in Baku was conceived in 2003. In 2007, the Human Rights House Azerbaijan was registered as HRHF’s international branch in Azerbaijan, and officially opened in 2009. In accordance with an order to close and cease all activities issued by the Ministry of Justice issued on 10 March 2011, the activities of HRH Azerbaijan ceased. The government requested that HRHF subject all its activities to government approval, which the partner NGOs of HRH Azerbaijan and HRHF refused to do, as independent NGOs. As a result, HRH Azerbaijan is closed since March 2011. *Three years since the authorities ordered closure of the Human Rights House Azerbaijan*, HRHN (25 March 2014), available at <http://humanrightshouse.org/Articles/20037.html>.

58 In May 2014, investigations were opened against major international NGOs, which resulted in their bank accounts being frozen. More information on such cases is on file with the authors.

International actors outside the country seeking to monitor human rights have also experienced difficulty travelling to Baku and engaging in efforts on the ground. Journalists have been denied visas,<sup>59</sup> representatives from well-regarded international NGOs have been turned back at Baku's airport,<sup>60</sup> and organizations seeking to host events have faced government interference even while trying to make arrangements with private companies.<sup>61</sup>

#### 4. Reprisal Against Human Rights Defenders

In addition to blocking access of the international community, the government interferes with its citizens accessing international mechanisms for redress. Although international law<sup>62</sup> prohibits government retaliation, authorities in Azerbaijan have consistently taken logistical and punitive measures against individuals who cooperate with international or regional human rights bodies. Travel bans are often imposed on individuals seeking to travel outside of the country to places where they will give testimony, speak to international media, and provide evidence of human rights abuses.

Many of the local HRDs that cooperated with the Office of the Commissioner for Human Rights of the CoE have been detained or forced into hiding.<sup>63</sup> Since the appointment of Pedro Agramunt and Joseph Debono Grech as rapporteurs on Azerbaijan for the CoE Monitoring Committee, the HRDs and journalists they met are now imprisoned or have been forced into hiding or exile. For example, in June 2014, a number of Azerbaijani



Intigam Aliyev and Malahat Nasibova (in the back) being arrested at the peaceful protests in Baku on 26 January 2013. On 23 January 2013, Intigam Aliyev was one of the speakers at a side-event at the Parliamentary Assembly of the Council of Europe in Strasbourg. (© Institute for Reporters Freedom and Safety).

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- 59 Prior to the Eurovision contest in 2012, for example, the Swiss journalist Marlène Schnieper with *Sonntagszeitung* was not granted a visa, likely due to the fact that she had repeatedly visited the country in the 1990s and reported on the Nagorno-Karabakh conflict. See, *Aserbajdschan blockt*, *Sonntagszeitung* (29 April 2012).
- 60 Most recently, Human Rights Watch's Senior Researcher for the Caucasus, Giorgi Gogia, was prevented from entering the country on 30 March 2015. *Azerbaijan: Rights Group Representative Refused Entry*, Human Rights Watch (31 March 2015), available at <http://www.hrw.org/news/2015/03/31/azerbaijan-rights-group-representative-refused-entry>.
- 61 In May 2014, the local Institute for Reporters' Freedom and Safety had planned to host an event at Baku's Fairmont Hotel. Although a contract had been signed and was paid in full, the organizers were informed two days before the event that the reservation had been cancelled – specifically at the request of the government.
- 62 ECHR, art. 34 (“The Court may receive applications from any person, [NGO] or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”); Human Rights Council Resolution 12/2 (UN Doc. A/HEC/RES/12/2), which calls on governments to prevent and refrain from reprisals, covers those who “(a) Seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them; (b) Avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose; (c) Submit to have submitted communications under procedures established by human rights instruments, and all those who have provided legal or other assistance to them for this purpose; [and] (d) Are relatives of victims of human rights violations or of those who have provided legal or other assistance to victims.”
- 63 Commissioner Nils Muiznieks, Facebook statement, 24 November 2014, available on the Commissioner's Facebook page at [https://www.facebook.com/permalink.php?story\\_fbid=369984526510797&id=118705514972034](https://www.facebook.com/permalink.php?story_fbid=369984526510797&id=118705514972034).

HRDs, including Emin Huseynov, Rasul Jafarov, and Intigam Aliyev organized a side-event in Strasbourg when President Aliyev addressed the PACE. Two months later, Mr. Jafarov and Mr. Aliyev were arrested, and shortly thereafter Mr. Huseynov fled to the Swiss embassy in Baku for protection against his own impending arrest. Khadija Ismayilova was likewise arrested shortly after meetings with the PACE and the OSCE.

Authorities likely took umbrage with these individuals' advocacy more generally, but efforts to bring attention abroad have been viewed as a primary trigger for the arrests. While there has been widespread attention paid to such retaliation by the international community<sup>64</sup> – including PACE<sup>65</sup> and the CoE Committee of Ministers<sup>66</sup> – Azerbaijani rights defenders who have sought to hold their government accountable remain in detention.

## 5. Pressure Against Lawyers

The harassment and use of disciplinary sanctions against independent lawyers in Azerbaijan is a cause for serious concern. Threats of disbarment or temporary suspension are used to discourage lawyers from taking on politically sensitive cases and from filing appeals, which is a necessary precondition to filing an application for redress with the ECtHR. Pressure on lawyers from the Presidium of the Azerbaijan Bar Association first appears in the form of a verbal warning against taking on a particular client or case. Authorities then threaten disciplinary action against a lawyer, which could result in temporary or permanent suspension from the Bar. Once a lawyer is disbarred they can no longer serve as defence counsel in a criminal case at any level of review. The threat of disbarment hangs over the heads of any lawyer and threatens their very livelihood and that of their families. This form of harassment has been very successful at reducing the number of lawyers in the country who are willing to risk their careers and their own security.<sup>67</sup>

In the most extreme case of government harassment of lawyers, well known lawyer Intigam Aliyev was arrested in 2014 and recently sentenced to seven and one-half years in prison on politically-motivated charges. Mr. Aliyev's detention is discussed in greater detail in Section IV(A)(3).

Past harassment of Mr. Aliyev, and his colleague Annaghi Hajibayli, is also illustrative of the campaign against independent lawyers. Both lawyers were refused membership in the Bar Association in 2009. The two lawyers proceeded to sue the Bar Association for failing to comply

64 For example, the UN Special Rapporteur on violence against women, its causes and consequences reported concerns about the numerous cases of reprisals against independent activists following her visit to Azerbaijan in December 2013. *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashia Manjoo*, UN Doc. A/HRC/26/38/Add.3 at para. 33, available at <http://www.ohchr.org/Documents/Women/A.HRC.26.38.Add.3.pdf>. Similarly, the Estonian Member of the Parliament Mailis Reps also reported acts of intimidation and reprisals against lawyers of applicants to the ECtHR. *The situation of HRDs in Council of Europe member States*. PACE Doc. 12957 (11 June 2012). Available at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=18750&Lang=EN>.

65 The PACE admonished Azerbaijan for acts of reprisal against HRDs in Resolution 1571. PACE Resolution 1571 at para. 7, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17576&lang=en>.

66 In December 2014, the Committee of Ministers reiterated its concern regarding the lack of information on the criminal charges pending against Intigam Aliyev and reiterated its request for more information about the case. Decisions of the Committee of Ministers at its 1214<sup>th</sup> meeting on 4 December 2014 available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1214/2&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1214/2&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

67 Further details about the situation of lawyers available in report prepared for the European Parliament by the Legal Education Society, South Caucasus Network of HRDs, and HRHF, May 2013, available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/droi/dv/613\\_elechrhune\\_/613\\_elechrhune\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/613_elechrhune_/613_elechrhune_en.pdf).

with existing legislation. Following the lawsuit, which the lawyers lost, the Bar Association filed a civil suit against Intigam Aliyev demanding 200'000 AZN (approximately €175'000) because of articles about the Bar Association leadership that Intigam Aliyev had published. Outcry from Azerbaijani civil society and international NGOs were successful in pressuring the authorities to drop the charges. Later, however, a Sheki Appeal Court judge filed another civil suit against Mr. Aliyev and his organization, the Legal Education Society, demanding 20'000 AZN (approximately €17'500) for defamation. The court ruled that Intigam Aliyev should pay 2'000 AZN (approximately €1'750) in damages. Both Mr. Aliyev and Mr. Hajibayli have yet to be admitted to the Bar Association.

In addition to imprisonment, disbarment, and smear campaigns, the government uses other inventive ways to interfere with defendants' rights to counsel. In the cases of Leyla Yunus and Intigam Aliyev, the prosecution has called members of their legal team as witnesses for the prosecution, thereby precluding them from acting as defense counsel.<sup>68</sup> On 6 November 2014, Alaif Hasanov, Mrs. Yunus' lawyer, was sentenced to 240 hours of community service due to his public statements about the detention conditions of his client. The pressure against Mr. Aliyev's lawyers continues, including through government-controlled media.

## C. CONSTRUCTION OF “MODERN” BUILDINGS, NOT DEMOCRACY

Large economic, cultural, and sporting events are organised in Azerbaijan and promoted abroad as a demonstration of its modernity. The promotion of the European Games combines references to Azerbaijan's modern society, its state of the art infrastructure, and its proximity to Europe. This international promotion masks the real concerns of Azerbaijanis who have been silenced and imprisoned in advance of the Games.

### 1. The Eurovision and the “Beautification” of Baku

To go along with its image of strength and growth, the Azerbaijani government has undertaken an impressive campaign to modernize itself, albeit often limited to the capital of Baku. Baku was on stage for many to see during the Eurovision Song Contest in 2012. Playing host to this popular European event gave the country an unprecedented opportunity to display its wealth and modernity to the world. The government initiated a publicity campaign called: “Land of Fire.” Advertisements on billboards and public transport were erected all over major cities in Western Europe. Images of London-style taxis on the streets of Baku were readily visible in British media.<sup>69</sup> Expensive apartment buildings and shopping centres were constructed, including the concert venue Crystal Hall, estimated to cost between \$277 and \$721 million.<sup>70</sup>

Among the items the Azerbaijani government used to present its shiny modern image to the world were newly constructed buildings, high-end retail stores, opulent street lighting, and a renovated *Icheri Sheher* (Old Town). Many Azerbaijani human rights organizations,

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68 In the case of Intigam Aliyev; Fariz Namazli, Alayif Hasanov, Khalid Bagirov and Adil Ismayilov, four of the five lawyers who have been representing Intigam Aliyev since his detention on 8 August 2014, were removed from the case on 30 September 2014. In the case of Leyla Yunus, she was deprived of her lawyer, Javad Javadov, following his criticism of the judicial process against Leyla Yunus at a hearing on 24 October 2014.

69 *Take a taxi from London to Baku: Azerbaijan hails the black cab*, The Guardian (25 May 2012), available at <http://www.theguardian.com/tv-and-radio/2012/may/25/take-taxi-from-london-baku>.

70 *Baku in her finest*, The Economist (19 May 2012), available at <http://www.economist.com/blogs/easternapproaches/2012/05/eurovision-2012-diary>.

especially the Public Association for Assistance to Free Economy,<sup>71</sup> however, documented the destruction of private homes carried during the efforts to “beautify” Baku. The government response to this documentation, which was more widely distributed by Human Rights Watch, was to place the organization under investigation. It also did this to Leyla Yunus’ Institute for Peace and Democracy, which itself had its offices destroyed on 11 August 2011.<sup>72</sup>

Leading up to the Eurovision Song Contest, two young HRDs in the country, Emin Huseynov and Rasul Jafarov, both at the time working at the Institute for Reporters’ Freedom and Safety, launched a campaign called “Sing for Democracy,” which quickly became a rallying cry for human rights in the country. In spite of the government’s best efforts to use the contest to promote itself positively, HRDs, and journalists took the opportunity to gain international attention and a platform from which to assert their varied claims of government abuse.

During Eurovision, civil society campaigns and the ensuing over-reaction by the government prompted international media to shift focus from the song contest to shedding more light on the situation in the country. Between February and May 2012, more than 3,000 articles appeared discussing the human rights situation in Azerbaijan in the context of Eurovision, including coverage by *The Independent*, *The New York Times*, *The Sydney Morning Herald*, *Al Arabiya*, and *Deutsche Welle*.<sup>73</sup> While such coverage gave Azerbaijani HRDs hope that they would soon see progress, the resulting crackdown – in which the government embarked on a campaign to halt the activities of civil society and imprison HRDs and journalists – ultimately resulted in mass imprisonment.



“Rasul Jafarov arrested at the occasion of one of the “Sing for Democracy” peaceful demonstrations in Baku during the Eurovision Song Contest. Rasul Jafarov was at the time the coordinator of the “Sing for Democracy” campaign.”

71 The Public Association for Assistance to Free Economy has published various reports on property rights. It also led a programme training lawyers on property and housing rights on 19-20 April 2014. However, following the wave of arrests of August 2014, the organization pre-emptively removed all of this information from its website to avoid government harassment. Nevertheless, the organization is under investigation, its bank account has been blocked, and some of its staff members have decided to flee the country.

72 *Condemning the demolition of HR defender Leyla Yunus’ house in Baku*, HRHN (29 Aug. 2011), available at <http://humanrightshouse.org/Articles/16879.html>.

73 *Singing in Azerbaijan – but not for democracy*, *The Independent* (12 May 2012), available at <http://www.independent.co.uk/news/world/europe/singing-in-azerbaijan--but-not-for-democracy-7737804.html>; *Where a Glitzy Pop Contest Takes Priority Over Rights*, *New York Times* (27 April 2012), available at [http://www.nytimes.com/2012/04/28/world/europe/28iht-letter28.html?\\_r=0](http://www.nytimes.com/2012/04/28/world/europe/28iht-letter28.html?_r=0); *A vision of hell, or just a few sour notes?*, *The Sydney Morning Herald* (27 May 2012), available at <http://www.smh.com.au/entertainment/stage/a-vision-of-hell-or-just-a-few-sour-notes-20120526-1zc2p.html>; *Evictions tarnish Azerbaijan’s Eurovision glitz*, *Al Arabiya News* (1 Feb. 2012), available at <http://english.alarabiya.net/articles/2012/02/01/191880.html>; *Eurovision spotlights human rights in Azerbaijan*, *Deutsche Welle* (17 May 2012), available at <http://www.dw.de/eurovision-spotlights-human-rights-in-azerbaijan/a-15956267>.



## D. A HISTORY OF ARBITRARY DETENTION

The widespread prevalence of wrongful imprisonment in Azerbaijan is well-documented. Although arbitrary detention is a tactic that has been utilized by Azerbaijani officials with frequency over many years, the scope and circumstances of the current crackdown is notable for a number of reasons. First, the government is targeting an ever wider set of independent actors that includes civil society leaders and internationally-respected HRDs. Second, the nature of the criminal charges used and the length of prison sentences imposed indicates a higher degree of punishment towards those who are critical of the government. Finally, the government's increasing intransigence to outside criticism, unwillingness to engage on its worsening human rights record, and complete disregard for its international obligations represents a considerable backslide.

### 1. International Attention on Prisoners of Conscience

The international community has been trying to address Azerbaijan's use of arbitrary detention for more than two decades. In a case that arose shortly after Azerbaijan's independence, the UN Working Group on Arbitrary Detention (UNWGAD) held that the detention of ethnic Armenians from neighbouring Georgia, without any charge, violated the government's obligations under international law.<sup>74</sup> Other cases of arbitrary detention in the earlier 2000s involved fabricated charges, such as hooliganism and military draft evasion – often targeting youth activists and bloggers. In the case of Adnan Hajizade and Emin Milli, for example, the government responded to the production and online publication of a satirical video mocking corruption in the country by accusing the pair of criminal hooliganism in 2009 after the HRDs were the victims of a violent attack. Authorities held the pair for over one year following a fraudulent trial and ultimately released them after sustained international attention to the case.<sup>75</sup>

Despite a systematic practice to the contrary, the Azerbaijani government has publicly committed itself to ending arbitrary detention inside the country. Most notably, as part of the accession process in joining the CoE, the government was called on to end the wrongful imprisonment of activists in the country<sup>76</sup> and “release or grant a new trial to those prisoners who are regarded as ‘political prisoners’ by human rights protection organizations.”<sup>77</sup>

As a member of the UN,<sup>78</sup> the Azerbaijani government has publicly embraced its international obligations, specifically its adherence to international human rights treaties. The government's 2011 National Action Plan, prepared for the UN High Commissioner for Human Rights,

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74 *Oganessov and Mirzoyan v. Azerbaijan*, UNWGAD, Opinion No. 31/1993 (28 Sep. 1993), available at <http://www.unwgadatabase.org/un/Document.aspx?id=2509>.

75 For more information about these cases, see [www.freedom-now.org/campaign/emin-milli](http://www.freedom-now.org/campaign/emin-milli) and <http://www.freedom-now.org/campaign/adnan-hajizade>.

76 The obligations noted in this section apply in addition to the specific rights and obligations that arise under the ECHR, which is covered in detail in Section IV(B).

77 *Opinion: Azerbaijan's Application for Membership of the Council of Europe*, PACE (Committee on Legal Affairs and Human Rights) Doc. No. 8775 revised (27 June 2000) at para. 13(iv)(a).

78 The UNWGAD, for example, found in late 2013 that the continued imprisonment of the minority rights defender Hilal Mammadov on fabricated drug charges violated his right to freedom of expression and minimum requirements of due process. Although the UNWGAD called for his immediate release and ordered that compensation be paid for the violation of his basic rights, Mr. Mammadov remains in prison. *Hilal Mammadov v. Azerbaijan*, UNWGAD, Opinion No. 59/2013 (22 Nov. 2013).

reaffirms the Azerbaijan's commitment to civil and political rights while also recognizing the importance of international monitoring efforts.<sup>79</sup> Similarly, during the latest Universal Periodic Review before the UN Human Rights Council, Azerbaijan accepted a series of recommendations broadly embracing the rights to freedom of expression and association. The government accepted recommendations made by UN member states that it investigate torture, ensure the protection of journalists and HRDs, cooperate with independent UN experts (for example the UNWGAD), and remove arbitrary restrictions on the activities of NGOs. Most relevant to this report was Azerbaijan's acceptance of the need to "release individuals incarcerated for publicly expressing their opinions and ensure due process for other detainees."<sup>80</sup>

Such promises to the international community mirror other agreements made in the context of regional and security arrangements. The government has undertaken a commitment to protect fundamental rights as part of its Partnership and Cooperation Agreement with the European Union,<sup>81</sup> as part of the European Neighbourhood Policy Action Plan,<sup>82</sup> as a condition of its membership in the OSCE<sup>83</sup>, as a State Party to the ECHR, and as a member state of the CoE.

In light of these comprehensive commitments, the international community has established a number of mechanisms by which to monitor respect for basic rights in Azerbaijan. Within the CoE, for example, the institutions that have exercised jurisdiction over the matter of arbitrary detention include the ECtHR, PACE, and the CoE Committee of Ministers.

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- 79 *National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan* (2011) at para. 1.2, available on the website of the UN High Commissioner for Human Rights at <http://www.ohchr.org/Documents/Issues/NHRA/NPAAzerbaijan.pdf>. ("Acceding to the international treaties on human rights and freedoms, the Republic of Azerbaijan has undertaken a commitment to ensure the rights and freedoms of everyone within its jurisdiction. As a part of a procedure to monitor the fulfillment of this commitment, it is important to implement the opinions and recommendations, of the specialized agencies of the United Nations, the Council of Europe and other intergovernmental organizations, on periodic reports on protection of human rights and freedoms submitted by the Republic of Azerbaijan. Furthermore, in the framework of execution of the judgments of the European Court of Human Rights, it is envisaged to undertake measures to improve national legislation.")
- 80 The Azerbaijani government accepted all of the recommendations made, except those submitted by Armenia, including the recommendation number 109.125 (United States of America) that it release individuals imprisoned for exercising fundamental rights. *Addendum to the Report of the Working Group on the Universal Periodic Review (Azerbaijan)*, UN Human Rights Council (19 Sep. 2013), UN Doc. A/HRC/24/13/Add.1 at para. 1.
- 81 The partnership agreement embraces the parties' existing human rights obligations (at articles 2 and 71) and affirms that the agreement "shall foresee that the Parties endeavour on matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, and the respect and promotion of human rights, particularly those of persons belonging to minorities and shall hold consultations, if necessary, on relevant matters." *Partnership and Cooperation Agreement Between the European Communities and Their Member States, of the One Part, and the Republic of Azerbaijan, on the Other Part*, Vol. 2104, I-36574 (22 Apr. 1996) at art 5.
- 82 Among the priorities outlined in the action plan is the commitment to "Strengthen the protection of human rights and of fundamental freedoms and the rule of law, in compliance with international commitments of Azerbaijan (PCA, CoE, OSCE, UN)," and specifically, to "Promote growth of civil society and its organized forms (human rights NGOs, associations, etc)." European Neighbourhood Policy Action Plan (European Union/Azerbaijan Action Plan) (Nov. 2006) at p 4 available at [http://eeas.europa.eu/enp/pdf/pdf/progress2008/sec08\\_391\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/progress2008/sec08_391_en.pdf).
- 83 The obligation to respect and implement fundamental human rights is contained within the OSCE's "Human Dimension" and is based upon supportive instruments, including the founding Helsinki Final Act, which provides that "The participating States... Will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms... [and] recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all states." *Conference on Security and Co-operation in Europe Final Act*, OSCE (1975) at para. 1(a)(VII).

## 2. Undermining the European Court of Human Rights

During his appearance before PACE on 24 June 2014, in an answer to the Member of the Irish Parliament Michael McNamara, President Ilham Aliyev remarked: “Azerbaijan is a member of the European Court of Human Rights. All issues relating to prisoners can be addressed there. We respect the decisions of the European Court of Human Rights. Therefore, once again, the attempts to attack our country are absolutely groundless.”<sup>84</sup>

The ECtHR, for its part, has adjudged individual cases involving arbitrary detention – including a decision finding the pre-trial detention of opposition leader Ilgar Mammadov politically motivated.<sup>85</sup> As critical as the Court is in providing a means to obtain justice for aggrieved individuals, the effectiveness of the Court is undermined by the Azerbaijani government’s failure to enforce judgments and engage in the follow-up procedures.

Despite President’s Aliyev’s suggestion, Azerbaijan’s record on implementing Court decisions is far from exemplary. At its meeting on 4 December 2014, the Committee underlined that “in view of the number of outstanding questions that it is essential to obtain, as a matter of priority and urgently, tangible results in the areas [of defamation and of the arbitrary application of the criminal law to limit freedom of expression].”<sup>86</sup> The Committee further underlined the importance of the Azerbaijani government’s full cooperation with the Venice Commission, which is an essential tool for the follow up of judgments.

The Committee of Ministers has repeatedly asked Azerbaijan to provide information about the execution of judgments but has not received much in return. We learned that following the end of its chairmanship, Azerbaijan has periodically ceased sending its Ambassador to meetings of the Committee of Ministers.<sup>87</sup>

Although the Committee has emphasized the importance of addressing systematic violations identified in cases by the Court,<sup>88</sup> such problems persist in Azerbaijan. In cases specifically involving arbitrary detention, even when a successful applicant has been released, as in the case of Eynulla Fatullayev,<sup>89</sup> the underlying conditions that resulted in the arbitrary imprisonment remain unchanged.

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84 *Report of the 21<sup>st</sup> Sitting of the 2014 Ordinary Session*. PACE, Doc. No. AA14CR21, available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2014/E/1406241000E.htm>.

85 *Ilgar Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (13 Oct. 2014), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144124>.

86 *Decisions of the Committee of Ministers at its 1214<sup>th</sup> meeting*, Council of Europe (4 Dec. 2014), available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1214/2&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1214/2&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

87 Anonymous source on file with the authors.

88 *Resolution of the Committee of Ministers on judgments revealing an underlying systemic problem*, CoE (Committee of Ministers), Resolution (Res(2004)3) (12 May 2004) and *Recommendation of the Committee of Ministers to member states on the improvement of domestic remedies*, CoE (Committee of Ministers), (Rec(2004)6) (12 May 2004).

89 *Fatullayev v. Azerbaijan*, ECtHR, Application No. 40984/07 (Judgment) (4 Oct. 2010).

### 3. Blocking PACE Investigation

The PACE has a particularly long history of monitoring the problem of arbitrary detention and “political prisoners.”<sup>90</sup> In addition to passing resolutions on wrongful imprisonment in Azerbaijan in 2002, 2004, and 2007,<sup>91</sup> the PACE has empowered two of its committees to monitor such issues in Azerbaijan moving forward: the Committee on the Honouring of Obligations and Commitments<sup>92</sup> and the Committee on Legal Affairs and Human Rights<sup>93</sup> – which both continue to monitor the human rights situation in Azerbaijan.<sup>94</sup>

While the government publicly embraces its international human rights obligations and regularly promotes itself within international bodies, it also frequently fails to cooperate with the institutions and experts that are tasked with monitoring rights abuses – especially when those investigations involve wrongful imprisonment. One of the most regularly used tactics is to interfere with the ability of monitors to conduct fact-finding missions to the country. A Rapporteur appointed by the PACE Committee on Legal Affairs and Human Rights to investigate political imprisonment in Azerbaijan, Christoph Strässer, was denied a visa to enter the country after it was conditioned on a promise that he “discuss only the theoretical definition of political prisoners and not the alleged Azerbaijani cases.”<sup>95</sup> When the PACE subsequently discussed and debated Mr. Strässer’s report, members of the Azerbaijani delegation seized the opportunity to criticize the Rapporteur for not visiting the country during the fact-finding process.<sup>96</sup>

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90 As early as 1956, the problem of “political prisoners” was a critical issue for the PACE. See *Action to Secure the Release of Political Prisoners in Eastern Europe*, PACE, Resolution No 207 (1956).

91 *Political Prisoners in Azerbaijan*, PACE, Resolution No. 1272 (24 Jan. 2002), *Political Prisoners in Azerbaijan*, PACE, Resolution No. 1359 (27 Jan. 2004); *Follow-up to Resolution 1359 (2004) on Political Prisoners in Azerbaijan*, PACE, Resolution No. 1457 (22 June 2005).

92 The Committee on the Honouring of Obligations and Commitments (Monitoring Committee) oversees the compliance of new Member States with the obligations undertaken upon accession to the CoE. There are currently ten Member States subject to review by the Committee, which issues periodic reports. In January 2013, the PACE adopted the most recent full report by Rapporteurs Pedro Agramunt and Joseph Debono Grech on the situation in Azerbaijan. Regarding the continued problem of political imprisonment in Azerbaijan, the PACE called on the government to “review the cases of HRDs, activists and journalists detained on criminal charges following trials whose conformity with human rights standards has been called into question by civil society and the international community; use all available legal tools to release those prisoners whose detention gives rise to justified doubts and legitimate concerns; release on humanitarian grounds alleged political prisoners whose state of health raises concerns; [and] fully implement the resolutions of the Assembly related to alleged political prisoners in Azerbaijan.” *The Honouring of Obligations and Commitments by Azerbaijan*, PACE, Resolution No. 1917 (adopted 23 Jan. 2013) at para. 18.4.

93 The Committee on Legal Affairs and Human Rights produced a report by Rapporteur Christopher Strässer entitled *Follow-up to the Issue of Political Prisoners in Azerbaijan* (Doc No. 13079), which was rejected by the PACE on 23 January 2013 by a vote of 79 in favour and 125 opposed. While specific guidelines for the definition of “political prisoner” were adopted in 2012, some members opposed what they claimed were “ambiguities” in the definition. *Report on Azerbaijani Prisoners Voted Down in Council of Europe*, RFE/RL (23 Jan. 2013), available at <http://www.rferl.org/content/pace-azerbaijan-prisoners/24881872.html>.

94 The most recent informational note published by the Monitoring Committee regarding Azerbaijan was released in August 2014. The document highlights continued human rights challenges in the country and recent arrests targeting civil society leaders. The Committee on Legal Affairs and Human Rights, for its part, has been tasked with developing another report, entitled *Azerbaijan’s Chairmanship of the Council of Europe: What Follow-up on Respect for Human Rights?*, with Pedro Agramunt as Rapporteur for the report. However, no country visits for the report have been scheduled.

95 *The Follow-up to the Issue of Political Prisoners in Azerbaijan*, PACE (Committee on Legal Affairs and Human Rights) (14 Dec 2012), Doc. No. 13079 at para. 3.

96 *2013 Ordinary Session, 6<sup>th</sup> Sitting*, PACE (23 Jan 2013) available at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1301231530E.htm>.

## **IV. IMPRISONMENT OF CIVIL SOCIETY ACTORS**

## CASE STUDY

**Emin Huseynov** is a prominent and internationally-recognised HRD and leader of the Institute for Reporters' Freedom and Safety (IRFS). IRFS is the leading media rights organization in Azerbaijan. It has advocated for hundreds of journalists, bloggers, and HRDs under threat in Azerbaijan and across the region. Mr. Huseynov has worked as a HRD for over a decade and has been a victim of harassment and threats since 2003.



Mr. Huseynov was stopped at the Heydar Aliyev International Airport on 5 August 2014. The authorities prevented him from travelling to Istanbul, Turkey, where he was due to receive medical treatment for a broken arm. No explanation was provided for the travel ban. Three days later, police searched his home, where his mother also lives. The IRFS offices were also searched; all organizational documents and equipment were seized.<sup>97</sup> Since 8 August 2014, Mr. Huseynov has been forced into hiding in order to avoid arrest. On 18 August 2014, he went into the Embassy of Switzerland in Baku, where he has stayed since.<sup>98</sup> He is in poor health as a result of a spinal injury caused by police brutality during a demonstration in 2003. He was declared to have a second-degree disability because of cerebral trauma and he also suffers from high blood pressure.<sup>99</sup>

Mr. Huseynov faces charges of abuse of office, tax evasion, and illegal business activity. The same charges have also brought against other HRDs arrested during the same period. Charges were brought separately against IRFS, however, the organization maintains evidence supporting its contention that all grants were registered despite having been deleted from the Ministry of Justice's website.<sup>100</sup>

97 *Unprecedented repression in Azerbaijan: key civil society leaders imprisoned*, HRHN (9 Aug. 2014), available at <http://humanrightshouse.org/Articles/20335.html>.

98 *Emin Huseynov forced into hiding in Azerbaijan*, HRHN (11 Feb. 2015), available at <http://humanrightshouse.org/Articles/20730.html>.

99 Source about the Emin Huseynov's health on file with authors.

100 *Reporters' Freedom and Safety on trial*, HRHN (10 April 2015), available at <http://humanrightshouse.org/Articles/20882.html>.

As authorities in Azerbaijan create an ever more repressive society, scores of brave Azerbaijanis have joined grassroots movements committed to building a government responsive to the people's needs and respectful of their rights. These independent voices represent a broad spectrum of civil society in Azerbaijan: journalists who report on corruption, minority rights defenders who fight marginalization, youth leaders who mobilize public demonstrations through social media, political oppositionists who proffer an alternative governing approach, peace activists who promote citizen dialogue, and HRDs who monitor rights abuses and seek redress domestically and internationally.

The authorities in Azerbaijan have responded harshly to the increased engagement by their citizenry. The most alarming tactic used by the authorities in quashing public dissent has been the arrest and imprisonment of civic leaders on a large-scale. In fact, it is the very individuals who have committed themselves to moving the country forward in line with President Aliyev's dream of a strong, growing, modern society – that now languish behind bars, unable to continue their work because of long prison sentences meted out by courts that are neither fair nor impartial.

During the summer of 2014, the government toppled independent civil society in the country when it embarked on a spree to round up and imprison the country's most internationally respected and locally engaged civic leaders. The latest arrests come on top of an already documented list of nearly 100 political prisoners, and includes the list's authors. The number and diversity of political prisoners in Azerbaijan signals a zero tolerance policy to criticism by the government. Complete in its goal to eradicate civil society, it has arrested and imprisoned HRDs, journalists and activists, including lawyers and youth activists. The following cases illustrate the authorities' tactic of imprisoning leaders from all sectors of civil society.

## **A. ILLEGAL USE OF CRIMINAL CHARGES TO SILENCE CRITICISM**

The imprisonment of individuals for peacefully exercising their fundamental human rights – most commonly, freedom of expression, association, and assembly – is a flagrant violation of international law. And yet, the Azerbaijan government uses its domestic criminal laws to imprison members of civil society and to silence independent voices in the country. Steadily since 2012, and increasingly in 2014, activists and critics have been rounded up one by one and imprisoned on spurious charges. The authorities have invoked a variety of laws from the Azerbaijani Criminal Code to justify these arrests, which have effectively shut down civil society in the country. Putting aside the diversity of charges used, all cases cited in this report and those of many others documented by Azerbaijani civil society, have been politically manufactured by the authorities with the intent to silence criticism; a very grave and outrageous violation of the human rights of these citizens.

Presented in this section are the most common criminal charges utilized by authorities in Azerbaijan against HRDs, journalists, and political activists. The purpose of this section is to cut through the veneer of legality that the Azerbaijani authorities hide behind when they use seemingly legitimate criminal laws to wrongly imprison HRDs. Also provided is a brief summary of the relevant international standards, discussed at length separately in Section IV(B).

Political criminal charges in Azerbaijan can be described as falling into one of three categories: patently politically-motivated, common fabricated, and organization-directed.

### **1. Patently Politically-Motivated Charges**

In a number of cases lodged against members of civil society, the authorities have used laws that are patently politically-motivated. In essence, these are charges that on their face go right to the heart of a fundamental human right, such as free expression. Patently politically-motivated charges are the most straightforward of all types of charges discussed in this report because there is a direct, observable link between the criminal charge and the protected human right. Charges that are clearly politically-motivated involve allegations wherein the

## CASE STUDY

**Leyla and Arif Yunus** are long-time civil society actors who have worked to protect human rights and promote peace in Azerbaijan since the country was part of the Soviet Union. Mrs. Yunus is a co-founder of the Baku-based Institute for Peace and Democracy and has served as the organization's director since 1995. Mr. Yunus, an academic, headed the Institute's Peace and Migration



Studies program for nearly three decades. In 2011, municipal officials demolished the organization's offices, with the group's equipment and documents still inside, after she campaigned against forced eviction in Baku.<sup>101</sup>

Undaunted, the couple continued their work – focusing especially on the worsening problem of arbitrary detention and building people-to-people connections between Azerbaijanis and Armenians. In an attempt to foster understanding between citizens of the two counties and find a peaceful resolution to conflict over the Nagorno-Karabakh region, the Institute partnered with an Armenian NGO (“Region”) to launch a website in 2012 aimed at facilitating citizen diplomacy through online discussions.<sup>102</sup>

In response to this work, authorities charged Mrs. and Mr. Yunus in July 2014 with treason, in addition to other alleged Criminal Code violations. During the interrogation, investigators accused the couple of conspiring with Armenian intelligence officials to recruit and pass secrets. Strikingly, the investigators specifically named the head of Region as the supposed “agent” involved in the conspiracy.<sup>103</sup> At the time of this report's release, the trial has yet to even commence.

101 *Condemning the Demolition of HR Defender Leyla Yunus House in Baku*, HRHN (29 Aug. 2011) available at <http://humanrightshouse.org/Articles/16879.html>.

102 *Azerbaijan Gets Tough in Bid to Silence Its Loudest Critics*, RFE/RL (8 Jan. 2015) available at <http://www.rferl.org/content/azerbaijan-activist-arrest-yunus-treason-rights/25476875.html>; the website is available at <http://publicdialogues.info/node/768>.

103 *Institute For Peace and Democracy Statement On The Arrest Of Leyla Yunus*, Institute for Peace and Democracy (1 Aug. 2014), available at <http://www.awid.org/Library/Institute-for-Peace-and-Democracy-Statement-On-The-Arrest-of-Leyla-Yunus>.



authorities essentially admit that the detainee's speech, association, assembly, or political activities is the reason for the arrest.

In Azerbaijan, patently politically-motivated charges<sup>104</sup> have most commonly included:

- **Inciting Hatred** (Criminal Code 283): acting for the purpose of exciting “national, racial or religious hostility, humiliation or national advantage;” punishable by up to five years in prison.
- **Mass Disorder** (Criminal Code 220): organization, incitement, or participation in a “mass disorder” involving violence, arson, the destruction of property, the use of weapons or armed resistance; punishable by up to 12 years in prison.
- **Treason** (Criminal Code 274): deliberately damaging the sovereignty, territorial integrity, or national security of Azerbaijan by siding with an enemy, conducting espionage, distributing state secrets, or rendering support to a foreign entity engaged in a hostile act; punishable by up to life in prison.

When HRDs, journalists, and activists are imprisoned in response to their peaceful activities, Azerbaijan violates its obligations under international law. Such violations may implicate a number of substantive rights, including the rights to freedom of expression, association, assembly, and political participation. While each of these substantive rights are addressed separately in Section IV(B)(1), the following provides an introduction to international law as it relates to each of the patently politically-motivated charges frequently employed by the authorities in Azerbaijan.

A state may not punish the peaceful exercise of fundamental rights by falsely claiming that the expression or association constitutes treason or the incitement of hatred – even when the authorities strongly disagree with the speech or opposes the goals of a particular organization.<sup>105</sup> The ECtHR has recognized that allegations against peaceful activists on the grounds that their work threatens national security – in the absence of any evidence that they used or advocated the use of violence to achieve their goals – will violate the state's obligations under international law.<sup>106</sup> That the authorities rely on charges relating to terrorism, national security, or treason will not absolve it of the duty to demonstrate that the imprisonment is consistent with international human rights standards. A “particularly intense review” must be conducted where HRDs are the subject of such prosecutions.<sup>107</sup>

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104 While there may be little attempt by the government to hide its true motivations when using patently-politically motivated charges, it is essential to examine the facts of each case to confirm that the activity was indeed protected. After all, there may be circumstances in which the government has, for example, legitimately invoke national security laws. Although international law provides broad protection for the exercise of fundamental rights, it also incorporates exceptions that governments may rely on – albeit in exceptional circumstances – in curtailing the rights of its citizens. As a result, the merits of each case must be considered.

105 The ECtHR has emphasized that the right to freedom of expression “is applicable 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 that pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’” *Surek and Ozdemir v. Turkey*, ECtHR, Application Nos. 23927/94 and 24277/94 (Judgment) (8 July 1999) at para. 57.

106 *Sidiropoulos and Others v. Greece*, ECtHR, Application No. 26695/95 (Judgment) (10 July 1998) at para. 43 (rejecting the argument that the petitioner's organization constituted a threat to the state and noting that “although the applicants had indeed stated that they had a “Macedonian” national consciousness, there was nothing to indicate that they had advocated the use of violence or of undemocratic or unconstitutional means.”). See also, *Bojolyan v. Armenia*, ECtHR, Application No. 23693/03 (Admissibility Decision) (11 Nov. 2009) at para. 58 (applying a wide margin of appreciation to treason charges involving the alleged passing of secret information to foreign security services because although the applicant worked as a journalist during the alleged violation, the substance of the treason allegations against the applicant were, in fact, unrelated to that work).

107 *Nega v. Ethiopia*, UNWGAD, Opinion No. 62/2012 (21 Nov. 2012) at para. 39.

## CASE STUDY

**The N!DA Youth Activists** are young Azerbaijani activists who organized to promote democratic reform in the country.<sup>108</sup> In particular, the group came to prominence for organizing a series of demonstrations in early 2013 to protest the death of Azerbaijani military conscripts from alleged hazing and bullying.<sup>109</sup> On 7 March 2013, just three days before a planned protest, police arrested three leaders of the N!DA group and accused them of possessing drugs and weapons.

The detainees and family members have insisted – and allege having witnessed – that the police planted drugs and Molotov cocktails during these searches.<sup>110</sup> Evidence allegedly obtained during these searches was not sealed or labelled and search warrants had missing or incorrect addresses.<sup>111</sup> One family member reported that she caught an investigator attempting to plant drugs and another reported that family members were prevented from observing the police as they brought items – believed to be the Molotov cocktails – into the home.<sup>112</sup> During the search of one detainee’s home, an investigator told a family member “it is because of the computer that your son has all these problems” and then “you as his mother do not know what your son is writing on the internet?”<sup>113</sup> Authorities then interrogated the three detainees, without access to an attorney, solely about their political activism and plans for the upcoming protest.<sup>114</sup> Two days after their arrests, the three activists had their “confessions” broadcast on television across the country – confessions that were obtained after the activists were reportedly beaten and threatened.<sup>115</sup> The three activists and five of their colleagues were ultimately sentenced to between five and eight years in prison.

Following the release of three of the N!DA members in October 2014, the authorities paraded them before the cameras – filming their expressions of support for the government before accompanying them to the grave of the former president Heydar Aliyev, where they left flowers – a ceremony forced on many released political prisoners.<sup>116</sup> Two more members were released in December 2014 as international outrage over the case continued.<sup>117</sup>

116 The group’s website is available at [www.nihavh.org](http://www.nihavh.org). According to the group, which is not affiliated with any political party, its mission is “to defend the constitutional and human rights of the society, and preserve the democratic and republican values. N!DA also aims to attract citizens, especially, you and students into the socio-political processes of the country in order to democratize Azerbaijan and increase their influence in the processes.”

109 Arzu Geybullayeva, *Azerbaijan: N!DA Activists Face 6-8 Years in Prison*, Global Voices (9 May 2014), available at <http://advocacy.globalvoicesonline.org/2014/05/09/azerbaijan-nda-activists-face-6-8-years-in-prison>.

110 *Behind Bars: Silencing Dissent in Azerbaijan*, Amnesty International (2014) at p 11, available at [http://www.amnesty.eu/content/assets/Doc2014/euro55042014en\\_Azerbaijan\\_-\\_Behind\\_bars.pdf](http://www.amnesty.eu/content/assets/Doc2014/euro55042014en_Azerbaijan_-_Behind_bars.pdf).

111 Source on file with authors.

112 Source on file with authors.

113 Source on file with authors.

114 *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*. Human Rights Watch (2 Sep. 2013), p 21.

115 *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*. Human Rights Watch, p 21. See also, Arzu Geybullayeva, *Bringing the Bottle: Youth Activists Behind Bars in Azerbaijan*, Global Voices (17 April 2014), available at <http://globalvoicesonline.org/2014/04/17/bring-the-bottle-youth-activists-behind-bars-in-azerbaijan>.

116 *News Clips: Three Azerbaijani Youth Activists Released from Prison*, RFE/RL (20 Oct. 2014), available at <http://www.rferl.org/media/video/azerbaijan-political-prisoners/26646784.html>; *Azerbaijani Government Makes Political Prisoners Bow to Founder of Dictatorship in Azerbaijan*, AzeriReport (20 Oct. 2014), available at [http://azerireport.com/index.php?option=com\\_content&task=view&id=4433&Itemid=1](http://azerireport.com/index.php?option=com_content&task=view&id=4433&Itemid=1).

117 *Ilham Aliyev Pardons 87 People*. Azadliq Radiosu (RFE/RL) (29 Dec. 2014), available at <http://www.azadliq.org/content//26768059.html>.

In cases such as that of Leyla and Arif Yunus, the imprisonment of these individuals for their peace building efforts fails to meet this test. In that case, authorities targeted the peace activists because of their decades of work promoting human rights and attempting to foster peace with Armenia through people-to-people dialogue. As noted in the case study, their work touched on issues that are sensitive for the government – particularly wrongful imprisonment and the politically charged issue of the Nagorno-Karabakh region. However, their work promoting peace and human rights was always peaceful. They neither used nor advocated the use of violence and operated for years in the public sphere. As explained in more detail in Section IV(B)(1)(v), their peaceful activism is just the kind that is protected under international law and not to be silenced on the basis of vague references to national security.

As with treason charges, the use of charges such as inciting hatred or violence must be subject to review under international law. The ECtHR has emphasized that statements that are part of a pluralistic debate – whose purpose is not to propagate racist views but instead to address an issue of public interest – must be protected.<sup>118</sup> While some limitations have been permitted where the speech amounts to “an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which have manifested themselves in deadly violence,” this is a very high bar for the authorities to meet.<sup>119</sup> Even in a country struggling with violent unrest, the “right to openly discuss difficult problems” – including one-sided accounts of the causes of and responsibility for such conflicts – must be protected.<sup>120</sup> The use of inciting hatred charges against minority rights journalist Hilal Mammadov, for example, falls well outside the righteous charge of incitement because Mr. Mammadov’s writings and speeches merely criticized the government’s treatment of Azerbaijan’s Talysh minority and expressed concern that they were being forcibly assimilated.<sup>121</sup>

The use of criminal charges against those involved in protests and demonstrations, including “mass riot,” must also comply with international standards regarding the right to freedom of association and assembly. International law broadly protects the right to peacefully demonstrate, particularly where demonstrators express opinions about questions of public interest.<sup>122</sup> While some registration, authorization, or notification requirements may be permissible, they “must operate fairly and in accordance with the law.”<sup>123</sup> Certainly, violence

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118 *Jersild v. Denmark*, ECtHR, Application No. 15890/89 (Judgment) (23 Sep 1994) at para. 33.

119 *Jersild v. Denmark*, ECtHR, Application No. 15890/89 (Judgment) (23 Sep 1994) at para. 33.

120 *Contrast Surek v. Turkey (No. 1)*, ECtHR, Application No. 26682/95 (Judgment) (8 July 1999) at para. 62 and *Surek and Ozdemir v. Turkey*, ECtHR, Application No. 23927/94 and 24277/94 (Judgment) (8 July 1999) at para. 61. See also, *Mondragon v. Spain*, ECtHR, Application No. 2034/07 (Judgment) (15 Mar. 2011) at paras. 53-54.

121 Source on file with the author. Similarly, in the comparable case of *Fatullayev v. Azerbaijan*, the court said: “... the relevant passages of the applicant’s article could be considered a matter of legitimate public concern which the applicant was entitled to bring to the public’s attention through the press. The mere fact that he discussed the social and economic situation in regions populated by an ethnic minority and voiced an opinion about possible political tension in those regions cannot be regarded as incitement to ethnic hostility. Although the relevant passages may have contained certain categorical and acerbic opinions and a certain degree of exaggeration in criticising the central authorities’ alleged treatment of the Talysh minority, the Court considers nevertheless that they contained no hate speech and could not be said to encourage inter-ethnic violence or to disparage any ethnic group in any way.” *Fatullayev v. Azerbaijan*, ECtHR, Application No. 40984/07 (Judgment) (4 Oct. 2010) at para. 126.

122 Harris, et al, *Law of the European Convention on Human Rights*, (Oxford University Press, 3<sup>rd</sup> Ed. 2014) at pp 521 – 522 (While in some cases the government may be given a degree of latitude in assessing the necessity of restrictions, where the protest “concerns the expression of opinions on a question of public interest the necessity of for the restriction has been more closely examined” by the ECtHR) (citing *Stankov v. Bulgaria*, ECtHR, Application No. 29221/95 and 29225/95 (Judgment) (2 Oct. 2001)).

123 Jacobs et al at 467 (citing *Kuznetsov v. Russia*, ECtHR, Application No. 10877/04 (Judgment) (23 Oct. 2008)).

at such protests is not protected; however, government forces must not overreact to unauthorized demonstrations and the right to assembly will be violated where a disproportionate response by the government leads to tensions or even violence.<sup>124</sup> Further, even if some disorder ensues during an otherwise peaceful demonstration – protesters who remain peaceful and the organizers will be protected by the right to freedom of assembly provided that they did not, themselves, incite or participate in the violence.<sup>125</sup>

## 2. Common Fabricated Charges

Fabricated charges are criminal allegations that are not, at least on their face, directly related to the exercise of a fundamental right. These charges can be the most difficult to identify because they involve “standard” or “ordinary” criminal allegations that are not obviously connected to the detainee’s expression, association, assembly, or other protected activities. In Azerbaijan, these types of charges are frequently levelled against youth activists and those who utilize social media to mobilize public attention.

Common fabricated charges have included:

- **Drug Charges** (Criminal Code 234): illegal manufacture, possession, or distribution of narcotics or psychotropic substances; punishable by up to 12 years in prison.
- **Weapons Charges** (Criminal Code 228): illegal purchase, possession, or transfer of fire arms or explosives; punishable by up to eight years in prison.
- **Hooliganism** (Criminal Code 221): using violence, threats, or destruction of property to break the social order or express disrespect for society; punishable by up to seven years in prison.
- **Embezzlement** (Criminal Code 179): theft of property entrusted to the defendant by another individual; punishable by up to 12 years in prison.
- **Service Forgery** (Criminal Code 313): falsifying an official document; punishable by up to two years in prison.

Although the use of fabricated charges can make designation of political cases more difficult, the procedural violations and political context present in such cases is key to determining the true motivation of authorities. For example, in many cases involving allegations of drugs or weapons possession, detainees have reported being interrogated primarily about their political views, online activities, and associations. The planting of drugs or illicit material has been observed by those being arrested and family members during searches. Moreover, significant deficiencies in the investigation and trial are observed and recorded. When well-known government critics or groups of individuals who are openly organized for the purpose of civic activism are accused of such charges, their convictions appear to be pre-determined and the trials – often observed by independent parties, including members of the diplomatic community in Baku – are a mere formality.

In addition to criminal charges, such as drugs, weapons, and hooliganism, the courts in Azerbaijan also fabricate financial charges, such as embezzlement and forgery, against

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124 *Aldemir and Others v. Turkey*, ECtHR, Application Nos. 32124/02, 32126/02, 32129/02, 32133/02, 32137/02, and 32138/02 (Judgment) (18 Dec. 2007) at paras. 45, 46. See also *Oya Ataman v. Turkey*, ECtHR, Application No. 74552/01 (Judgment) (5 Dec. 2006) at para. (“where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance”).

125 See *Gun and Others v. Turkey*, ECtHR, Application No. 8029/07 (Legal Summary) (June 2013).

independent civil society leaders. While such charges are often combined with organization-directed charges (discussed in Section IV(A)(3)), they are distinct and appear to be based on a separate legal theory.

In general, the government's claims appear to be relatively similar across the various cases outlined in this report. Essentially, prosecutors accuse the NGO leader of accepting a grant and then spending less than that grant amount, thus keeping the difference of funds for themselves (i.e. embezzlement). In response to records kept by the NGO leaders, authorities claim that false receipts and records are prepared to cover their criminal activity (i.e. forgery). As in other cases of fabricated charges, deficiencies during the investigation, such as preventing the suspect from cataloguing the documents seized during a search (as described in the case of Intigam Aliyev in the next section) are frequently observed. Similarly, irregularities during the trial, such as the failure of the court to take into consideration evidence that supports assertions made by the defence, indicate these charges are fabricated.

Indeed, it is the fabrication of embezzlement and forgery charges in particular that has led to the confusing spectacle in Azerbaijani courts of supposed “victims” denying the existence of a crime before detainees are ultimately convicted and sentenced. In the case of Anar Mammadli for example, 19 of the alleged victims contested that status, with some denying that they even knew the defendant.<sup>126</sup> Further, the court was presented with a letter from one of Mr. Mammadli's primary funders, the National Democratic Institute, stating that it had conducted a full review and the grants cited by the prosecution were, in fact, allocated properly.<sup>127</sup> Despite such exculpatory evidence, however, the court simply moved forward with convictions, apparently disregarding such evidence and failing to address the glaring inconsistencies in the government's case.

International bodies have consistently recognized that such a wrongful underlying purpose will render the detention arbitrary under international law – even where supposedly “ordinary” criminal laws are used.<sup>128</sup> As the ECtHR has noted, “in assessing the lawfulness of any deprivation of liberty, the Court is not confined to the declared, ostensible purposes of the arrest or detention in question, but looks at the real intent and purposes behind it.”<sup>129</sup>

For example, in examining the pre-trial detention of Azerbaijani opposition leader Ilgar Mammadov, the ECtHR held that although the government had accused him of inciting violence after observing and criticizing the government's handling of unrest in the countryside, the “actual purpose of the impugned measures was to silence or punish the applicant for criticizing the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide.”<sup>130</sup> Such detentions, regardless of the particular charges used, are arbitrary under international law.

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126 Source on file with the authors.

127 Source on file with the authors.

128 See e.g. *Cebotari v. Moldova*, ECtHR, Application No. 35615/06 (13 Nov. 2007) at para. 53 (embezzlement charges brought for the purpose of pressuring the applicant to terminate proceedings before the ECtHR); *Turgunov v. Uzbekistan*, UNWGAD, Opinion No. 53/2011 (11 Nov. 2011) at para. 48 (extortion charges against a well-known activist “to prosecute and punish him for his human rights and political activities”); *Umarova v. Uzbekistan*, UN Human Rights Committee, Communication No. 1449/2006 (3 Nov. 2010) at para. 8.8 (fabricated economic charges used to punish peaceful political activities).

129 *Tymoshenko v. Ukraine*, ECtHR, Application No. 49872/11 (Judgment) (30 Apr. 2013) at para. 263.

130 *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (22 May 2014) at para. 143.

## CASE STUDY

**Intigam Aliyev** is one of the most widely-respected human rights lawyers in Azerbaijan.<sup>133</sup> He has been at the forefront of rights advocacy in the country for two decades as a human rights lawyer and head of the officially registered Legal Education Society, an organization that promotes awareness of the law and provides legal support to individuals and organizations. In that time, he was one of the first Azerbaijani lawyers to utilize the ECtHR and has submitted hundreds of cases – including approximately a dozen cases, which are currently pending. His cases have involved freedom of expression and association, democratic rights, the prohibition of torture, and due process rights. Mr. Aliyev has also advocated regularly before a number of international institutions, including the CoE, the UN, and the OSCE.<sup>134</sup>



On 24 June 2014, Mr. Aliyev was the keynote speaker at a side event during a session of the PACE, where he strongly criticized Azerbaijani policies and highlighted ongoing human rights violations committed by the authorities. President Ilham Aliyev spoke during the same session and when asked about political prisoners in his country, he said simply that “unfortunately, Azerbaijan is subject to deliberate provocations. We know the source and we know the reason. It has nothing to do with human rights and democracy. It is political.”<sup>135</sup> Just over two weeks later, tax authorities initiated an audit of the Legal Education Society.<sup>136</sup>

Prosecutors claim that the Legal Education Society failed to properly register grants from the HRHF and US-based National Endowment for Democracy. According to Mr. Aliyev’s domestic legal team, of the 13 grants at issue, the registration of which is disputed by the prosecution, seven were obtained before the law required such registration.<sup>137</sup> Further, although copies of the relevant registration applications were on file at the headquarters of the Legal Education Society, files, computers, and flash drives were seized during the government’s search of the premises and Mr. Aliyev’s private home with no distinction made as to the kind of document seized. During the search, investigators refused to allow Mr. Aliyev to make a record of seized documents and the courts subsequently failed to compel the authorities to provide the defence team access to some of those specific documents (although some other materials have allegedly been handed over).<sup>138</sup> The prosecution further claimed that Mr. Aliyev failed to register his name as head of the organization, a legal obligation which is in dispute because his re-election as chairman – according to his legal team – did not change the statutes of the organization in a way that would require such notification.

The officials sealed the office of Legal Education Society and refused to reopen it, despite the motions submitted by the defence lawyers at trial hearings.

Mr. Aliyev was arrested on 8 August 2014 and charged with illegal entrepreneurship, tax evasion, and abuse of office. The charges of forgery and embezzlement were added on 15 December 2014.<sup>139</sup>

*continued on page 48*

### 3. Organization-Directed Charges

A new tactic in Azerbaijan, and one that has left international observers especially confounded and alarmed, is the imprisonment of civil society leaders through special legislation governing the business and management of NGOs. Since 2009, the Azerbaijani government has implemented multiple laws ostensibly aimed at strengthening the government's oversight of NGOs operating in the country. These laws were criticized at the time as being overly burdensome on these organizations and a measure intended not for better governance but to hinder the activities and independence of civil society.<sup>131</sup> It is the critical and independent NGOs, especially those that receive foreign funding, that have been the focus of the government's campaign to clamp down on NGO operations.

The charges against civil society leaders in this category incorporate both the country's Criminal Code – as the basis for imprisonment – and provisions of the restrictive and bewildering administrative laws that regulate NGOs (referred in this report collectively as the NGO Regulation Laws) – as a basis for the infractions.<sup>132</sup>

The cases in this category can be understood as a hybrid between patently politically-motivated and completely fabricated charges. In these cases, the government's allegations clearly relate to the protected activity (e.g. the association of an NGO). The government's very accusations of criminal activity are tied to the individuals' leadership of an NGO, wherein it claims that the individual's mismanagement of the NGO and failure to adhere to regulations is so grave that imprisonment is the necessary punishment. However, the actual criminal charges invoked by the authorities are only indirectly related to that alleged mismanagement and include outright fabricated claims.

Such charges have included:

- **Illegal Business Activity** (Criminal Code 192): business activity without the required registration or license, or in violation of licensing conditions, which causes “significant” damage and results in “significant” or “large” income; punishable by up to five years in prison.
- **Tax Evasion** (Criminal Code 213): evasion of taxes by an individual or group in a “significant” or “large” amount by distorting or failing to disclose income; punishable by up to three years in prison.
- **Abuse of Office** (Criminal Code 308): deliberate abuse of official power by the representative of a government body or other commercial or non-commercial organization that causes harm to the rights or interests of citizens, organizations, or the state; punishable by up to three years in prison.

In each case involving organization-directed charges in Azerbaijan – which currently includes those of Anar Mammadli and Bashir Suleymanli, Intigam Aliyev, Rasul Jafarov, Leyla and Arif Yunus, Khadija Ismayilova, and charged but not in government custody

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131 See e.g. *Azerbaijan: New Legislative Amendments Further Erode Rights to Freedom of Expression and Peaceful Assembly*, International Partnership Group for Azerbaijan (17 May 2013), available at [http://www.civilrightsdefenders.org/files/IPGA-statement\\_16-05-2013\\_Final.pdf](http://www.civilrightsdefenders.org/files/IPGA-statement_16-05-2013_Final.pdf). See also, *Council of Europe Should Condemn Repressive NGO Legislation in Azerbaijan*, Institute for Reporters' Freedom and Safety (10 Feb. 2014), available at <http://www.civicsolidarity.org/article/892/council-europe-should-condemn-repressive-ngo-legislation-azerbaijan>.

132 The laws and amendments relevant to the operation of NGOs in Azerbaijan include: the Law on Non-Governmental Organizations, the Law on Grants, the Law on Registration and the State Registry of Legal Entities, the Code of Administrative Offences, the Civil Code, and the Tax Code.

## CASE STUDY

## Intigam Aliyev (continued)

The detention conditions of Mr. Aliyev raise concerns, also having an impact on his already poor health. He suffers from severe chronic headaches in addition to nerve pain and has reportedly been denied of appropriate health care during the first six months of his detention; only in 2015 did he received proper pain medication, but remains without appropriate medication for the treatment of his diseases.<sup>140</sup> Furthermore, there is insufficient ventilation and heating in the cell and hot water is allowed only twice a week. Inadequate space in the prison cell makes it nearly impossible for him to walk and access to proper nutritional food is restricted. Moreover, he can meet his family only through a glass barrier once a week over a telephone.

Mr. Aliyev's trial began on 23 January 2015. His lawyer made a number of motions, including a request that handwriting analysis be conducted on fund transfers allegedly approved by Mr. Aliyev, that the Ministry of Justice's list of registered grant agreements be entered into evidence, and that the files seized during the search of Mr. Aliyev's apartment and office be returned. All of these motions were denied.<sup>141</sup>

When asked to make a statement during his trial Mr. Aliyev said that there was no legal ground for the accusations against him and added: "There is no greater injustice than that which is perpetrated in the name of the law!"<sup>142</sup>

Mr. Aliyev was convicted on 22 April 2015 and sentenced to seven and one-half years for tax evasion, abuse of office, illegal entrepreneurship, embezzlement, and forgery. In addition to the prison term, he is banned from holding public office for three years.<sup>143</sup>

133 In recognition of his legal work and human rights advocacy, Mr. Aliyev received the Homo Homini Award from the Czech NGO People in Need in 2012.

134 Source on file with the authors.

135 *Speech by the President of the Republic of Azerbaijan Ilham Aliyev on PACE Session*, Embassy of the Republic of Azerbaijan to the Kingdom of the Netherlands (24 June 2014), available at <http://www.azembassy.nl/?options=content&id=110>.

136 Source on file with the authors.

137 According to domestic legal experts, registered organizations were not required to register their grants with the Ministry of Justice until 1 January 2010.

138 Source on file with the authors.

139 *Call for an immediate end to crackdown against human rights defenders*, Observatory for the Protection of Human Rights Defenders (18 Dec. 2014), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/16682-azerbaijan-call-for-an-immediate-end-to-crackdown-against-human-rights>.

140 Source on file with the authors.

141 The court, however, did allow Mr. Aliyev to sit next to his lawyers during the trial. See, *Intigam Aliyev was freed from cage*, HRHN (9 Feb. 2015), available at <http://humanrightshouse.org/Articles/20711.html>.

142 *Intigam Aliyev's Emotional Statement*, HRHN (8 April 2015), available at <http://humanrightshouse.org/Articles/20878.html>.

143 *Intigam Aliyev sentenced to 7.6 years in prison*, APA (22 April 2015), available at <http://en.apa.az/news/226091>. The authorities also imposed separately from the criminal case against Mr. Aliyev a fine under the tax code against the Legal Education Society, but did not impose any administrative fines for its alleged failure to register grants at issue in the criminal case.



Emin Huseynov – the government has employed a combination of the previously-referenced criminal provisions. At the time of their arrests, each of the detainees were highly-respected civil society leaders who led independent organizations promoting human rights and government accountability. The similarity of charges against each of them and the proximity in time of the arrests immediately raised flags in the international community about the true nature of these arrests. Even more suspicious was that two of them – Rasul Jafarov and Leyla Yunus – were actively documenting and disseminating information about political arrests in Azerbaijan.

Before explaining exactly how the authorities are wrongfully using the Criminal Code in these cases, it is necessary to understand the increasingly restrictive environment in which civil society has been operating in Azerbaijan and lay out the relevant provisions of the NGO Regulation Laws that, cross-sectioned with the Criminal Code, are being used to imprison civil society leaders.

## i. NGO Registration and Regulation

Under the law, Azerbaijan has set up a mechanism by which an organization must register itself with the authorities in order to carry out some formal activities, such as opening a bank account in its name. This initial hurdle forms the crux of the conundrum in which independent NGOs have found themselves. Numerous independent NGOs and foreign NGOs with offices in the country have been unable to complete the registration process. Azerbaijani authorities have an established track record of interfering with the registration of certain NGOs by prolonging the application process (as opposed to formally rejecting it). This tactic often involves repeated, arbitrary requests for clarification and more documentation and in some cases complete silence from authorities.<sup>144</sup>

The Venice Commission, a body within the CoE that advises governments on legal and constitutional questions, commented about the registration process in Azerbaijan in 2014:

[R]egistration is still a lengthy and cumbersome process, though this is linked more to the implementation of the legislation than to its content. According to the recent expert reports, the applicants are often required by the registering department to submit additional documentation not required under national legislation; they often receive repeated requests for corrections of the documents, although such requests must be submitted at once; the deadline for issuing the decision on the registration is not always respected; and the automatic registration, in case the Ministry of Justice does not respond to the applications within the statutory timeline, does not seem to be respected.<sup>145</sup>

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144 In 2013 alone, 20 Azerbaijani NGOs submitted complaints to the ECtHR regarding the repeated return of registration application materials, including the Public Association for Democratic Initiatives and Social Development which had its application for registration returned on six different occasions over two years. *Aliyev and Others v. Azerbaijan (Communication from the Legal Education Society)*, ECtHR, Doc. No DH-DD(2014)39 (27 Nov. 2013). See also, *Opinion on the Law of the Republic of Azerbaijan in the Light of Amendments Made in 2009 and 2013 and Their Application (Opinion Prepared by Jeremy McBride)*, Expert Council of NGO Law of the Conference of INGOs of the Council of Europe (September 2014), OING Conf/Exp (2014) 1 at para. 40, available at [http://www.coe.int/t/ngo/Source/OING\\_CONF\\_EXP\\_2014\\_1\\_Revised\\_Opinion\\_Azerbaijan\\_NGO\\_Law\\_en.pdf](http://www.coe.int/t/ngo/Source/OING_CONF_EXP_2014_1_Revised_Opinion_Azerbaijan_NGO_Law_en.pdf).

145 Venice Commission 2014 Report at para. 46.

The ECtHR has not only found this tactic highly questionable, it has ruled in at least four cases that Azerbaijan violates the organization's right to freedom of association.<sup>146</sup>

In 2013 and 2014, a number of amendments to the NGO Regulation Laws entered into force that significantly hindered the operations of all NGOs with a presence in Azerbaijan, whether foreign or domestic.<sup>147</sup> For example, expanded reporting and oversight requirements now require NGOs to inform the government of any change in the number of group members (potentially even covering unaffiliated individuals who participate in demonstrations or other events) as well as changes to the terms of employment for managers and deputy managers and authorizes the government to monitor compliance of the organization with its own statutes. While the mechanism for such monitoring is not entirely clear, the Venice Commission has noted that although authorities may monitor compliance with domestic law, it should generally be the NGO itself, and not the government, that monitors compliance with an organization's own statutes.<sup>148</sup>

In addition to increased registration, reporting, and oversight obligations, the revised NGO Regulation Laws provide for expanded liability in the event that an NGO fails to meet these increasingly onerous regulations. Authorities are now authorized to suspend or terminate an NGO's operation if more than two written communications have been sent by the authorities to the NGO regarding its violation of an administrative requirement.<sup>149</sup> Fines are imposed for administrative violations, such as: the failure to maintain a registry of members;<sup>150</sup> failing to register a grant within 30 days (a penalty of between 5'000 and 7'000 AZN for organizations and 1'000 to 2'500 for individuals; amounts roughly equivalent to €840 to €5'900); and implementing unregistered grants.<sup>151</sup>

Most directly relevant to the cases addressed in this report, however, are amendments regulating the transfer and registration of foreign grants – which are crucial to funding the work of charitable organizations in Azerbaijan. These amendments have had a devastating

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146 *Ramazanova and Others v. Azerbaijan*, ECtHR, Application No. 44363/02 (Judgment) (1 Feb. 2007), *Ismayilov v. Azerbaijan*, ECtHR, Application No. 4439/2004 (Judgment) (17 Jan. 2008), *Nasibova v. Azerbaijan*, ECtHR, Application No. 4307/04 (Judgment) (18 Jan. 2008), *Aliyev and Others v. Azerbaijan*, ECtHR, Application No. 28736/05 (Judgment) (18 Mar. 2009).

147 For example, HRH Azerbaijan, which is a registered branch of the HRHF was forced to close by the Ministry of Justice in 2011 – without any prior notice or complaints about the organization's regular reports to the government.

148 Venice Commission 2014 Report at paras. 69 – 74, 77.

149 According to the Venice Commission, under Article 31(3)(1) of the revised Law on Non-Governmental Organizations, an organization can be suspended for failure to remedy a violation. According to domestic lawyers, there is nothing to prevent the government from sending multiple notifications or communications regarding a violation within a short period of time – thereby subjecting the NGOs to the possibility of suspension or liquidation for a single violation.

150 Venice Commission 2014 Report at para. 87. Fines are can be imposed for failure to adjust organizational documents so that they meet domestic legislation, “creation of obstacles” during an investigation of the NGO, failing to answer questions or providing false information, and failing to remedy violations identified by the government.

151 Art. 223-1.4 of the Code of Administrative Offenses, as added, provides that “Due to the bank and other operations on non-registered grant agreements, concluding contracts on these grants and implementation of other organizational events, non-governmental organizations, branches and representatives of foreign non-governmental organizations in Azerbaijan, as well as physical persons are fined from 2'500 to 5'000 AZN, legal entities are fined from 5'000 to 8'000 AZN.” For other fines now imposed under the amended Code of Administrative Offenses, see *Communication from the Legal Education Society*, (*Aliyev and Others v. Azerbaijan*, ECtHR, Application No. 28736/05, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2014\)39&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)39&Language=lanEnglish&Site=CM)).

impact on groups that have sought in good faith for years to formalize their status without success. As highlighted by local HRDs,<sup>152</sup> the two important amendments related to grants are:

- Grants must now be sent by bank transfer in the name of the organization: Previously, because unregistered organizations were not able to open a bank account, unregistered groups received grants in the name of the director or as sub-grants from associated registered groups.<sup>153</sup> This arrangement is no longer possible under the amended NGO Regulation Laws; the intended, if not immediately apparent, result is that non-registered organizations no longer have access to the grants that for years have supported their important work in Azerbaijan.
- Unregistered NGOs and individuals must now register each grant they receive with the Ministry of Justice (according to local lawyers, registered organizations have been required to do so since 1 January 2010). Although there was reportedly not a clear requirement prior to 2014 that individuals or unregistered groups had to register their grants with the authorities, this is now affirmatively required under the law.<sup>154</sup> As noted above, it is already functionally impossible for unregistered groups to obtain grants; however, the requirement that such grants be registered is now being used to support criminal charges against unregistered civil society leaders who relied on grants to carry out their work – an apparent retroactive application of the revised NGO Regulation Laws.

## ii. Abuse of Administrative Laws to Imprison NGO Leaders

Although the increasingly draconian restrictions on the operation of NGOs in Azerbaijan are themselves inconsistent with international norms – and in the case of delayed registration an unlawful restriction of the right to freedom of association – the imprisonment of civil society actors is a separate and most outrageous violation. The complexity of the administrative and criminal laws involved in these cases have given some observers pause. Indeed, the complicated laws regulating NGO activity and the arbitrary practices of regulatory authorities in Azerbaijan have long frustrated local groups that have tried to fulfil their important mandates while also complying with the law. The authorities purposefully introduced this complicated system and exploit the lack of clarity in the law to target activists, some of whom have operated in the public sphere for decades. Further complicating matters is the fact that the government itself has not clearly explained or justified its application of these laws – either during criminal proceedings or in response to questions posed by the international community. A close examination of the charges and the trials, some of which have concluded, exposes a deeply flawed legal foundation that has been used to rationalize the detention of peaceful activists in

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152 Sources on file with authors. See also, *Request for Enhanced Supervision (Ramazanova and Others v. Azerbaijan)*, ECtHR, Application No. 44363/02, Communication from 7 NGOs (5 Sept. 2014), DH-DD(2014)1163, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2611588&SecMode=1&DocId=2188924&Usage=2>.

153 Non-registered organizations were able to receive grants in the name of their founder or chairperson because Article 3 of the 1998 Law on Grants indicated that individuals “may be a recipient of a grant.” Venice Commission 2014 Report at fn 30. See also, *Azerbaijan: Letter from Imprisoned Human Rights Activists Rasul Jafarov*, Index on Censorship (20 Aug. 2014), available at <http://www.indexoncensorship.org/2014/08/azerbaijan-letter-imprisoned-human-rights-activist-rasul-jafarov>.

154 Source on file with the authors. See also, *Overview of the Changes to NGO Legislation Adopted of 17 December 2013 by the Parliament of the Republic of Azerbaijan*. Guluzade and Bourjaily (prepared for the International Center for Not-for-Profit Law) (19 Feb. 2014), available at <http://dev01.icnl.org/programs/eurasia/Overview%20of%20Dec%2017%20Law.pdf>.

## CASE STUDY

**Rasul Jafarov** is an internationally respected HRD and advocate on the issue of wrongful imprisonment in Azerbaijan. After forming the Human Rights Club in December 2010, Mr. Jafarov sought to register the group with the Ministry of Justice; however, on three occasions the application was returned. The first two rejections were accompanied by requests for additional documents allegedly missing from the application – even though Azerbaijani law requires that all deficiencies must be identified in a single communication.<sup>156</sup> On the third occasion, the government demanded additional information not required by Azerbaijani law.<sup>157</sup> By this time, five months had elapsed since the Human Rights Club first submitted its materials to the Ministry of Justice. As result, Mr. Jafarov filed a complaint with the Baku Administrative-Economic Court seeking an order that the Ministry grant the application. After repeated delays, the court rejected the complaint on 19 February 2013. The Baku Court of Appeal upheld the lower court's decision on 15 May 2013 and the Supreme Court finally rejected the appeal on 18 September 2013. With domestic remedies exhausted, the Human Rights Club submitted a complaint to the ECtHR, which is still pending.

Mr. Jafarov, however, continued his advocacy despite official efforts to block his registration of the Human Rights Club. His grant-funded work was supported by a variety of prominent funders, including the National Endowment for Democracy, the Open Society Foundations, the German Marshall Fund, and the OSCE. In response to this work authorities arrested him on 2 August 2014 and placed him in pre-trial detention.<sup>158</sup>

Although Mr. Jafarov attempted to comply with Azerbaijan's increasingly restrictive administrative laws – and despite the fact that he has continued to seek registration for the Human Rights Club – the authorities accused him of failing to register the grants that supported his work. The authorities, however, did not charge Mr. Jafarov under the NGO Regulation Laws for failing to register the particular grants at issue. Instead, based on the flawed legal theory described above, the authorities treated the grants as commercial income to a business, assessed an additional tax liability against him on 17 October 2014, and charged him with a raft of unrelated Criminal Code violations, including tax evasion, illegal business activity, and abuse of office, and later added forgery and embezzlement.

In addition to the flawed legal theory that serves as a basis for Mr. Jafarov's prosecution, the imposition of the criminal charges in his case are also contradictory. For example, the authorities charged him with illegal business activity. The theory supporting this charge, also applied in the case of Intigam Aliyev, appears to be that because of an alleged failure to register grants, Mr. Jafarov was illegally operating the Human Rights Club as business (which must be registered under Azerbaijani law). At the same time, however, the authorities claimed that Mr. Jafarov abused his authority as the head of the NGO by signing and implementing the very grant agreements at issue in the case.<sup>159</sup> In essence, he is accused of running either a business or an NGO (two very different types of organizations under Azerbaijani law) at the very same time, and failing to comply with the regulations of both.

*continued on page 54*

Azerbaijan. In spite of the dizzying lack of clarity in the laws themselves and how the government is applying them, the following material attempts to explain, in a step by step description, the government's "legal theory" when it charges NGO leaders with crimes such as tax evasion or abuse of office. These prosecutions against civil society leaders have emerged as follows:

In its first step, the government alleges that the NGO – and its leader who stands accused – failed to comply with certain provisions of the NGO Regulation Laws. The alleged NGO infractions are a mix of those that appear to be entirely fabricated by the prosecution and those that are a result of playing "gotcha" with laws that are unclear and purposefully enacted to frustrate the operation of the NGO.

An example of a fabricated violation can be seen in the case of Intigam Aliyev. His organization, the Legal Education Society, was a registered NGO and submitted registration of international grants it received to the government. During the trial, the prosecution accused Mr. Aliyev of failing to register his grants. It asserted this allegation even though authorities seized the registration documents during a raid of his offices – and falsely claimed that the grants had never been registered. Even when Mr. Aliyev's legal team produced evidence of the registration that had been posted on a government website (which they were able to obtain even though it had been subsequently removed by the Ministry of Justice), the court dismissed the evidence and ultimately found him guilty.<sup>155</sup>

In other cases, the alleged administrative failure is based upon the government's efforts to erect every possible barrier to the operation of independent NGOs in the country – targeting the very organizations that tried in earnest to comply with the bewildering requirements of the NGO Regulation Laws. In the case of Rasul Jafarov and the Human Rights Club, which is described in more detail in a case study, the authorities arbitrarily withheld registration from the organization. Following the common practice in Azerbaijan, Mr. Jafarov continued to operate the Human Rights Club as an unregistered organization – which is legal in Azerbaijan – in his individual capacity and often in partnership with registered groups. Although Azerbaijani legal experts report that before 2014 there was no clear legal requirement for unregistered groups to register their grant information with the authorities, Mr. Jafarov submitted each of his grants to the Ministry of Justice out of caution. The authorities, however, did not respond. He paid taxes on the individual income received from the grants through his personal tax identification number. Ignoring these facts, the prosecution applied the NGO Regulation Laws retroactively and accused him of failing to register the grants, even though during this time the law did not prohibit him from receiving grants as an individual or require registration of those grants.

While the particular minutia of inquiry varies from case to case, the critical point is that due to the purposeful and discriminatory malfeasance of the authorities, civil society leaders are being convicted and sentenced to prison terms because of failure to meet *administrative* requirements under the law. To be clear, the NGO Regulation Laws do not include imprisonment as a punitive measure for violations. For that, the authorities are turning to the Criminal Code and using laws, such as tax evasion and illegal business activity – all of which are predicated on the alleged failures to comply with the NGO Regulation Laws.

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155 *New evidence weakens prosecution*, HRHN (18 March 2015), available at <http://humanrightshouse.org/Articles/20815.html>.

## CASE STUDY

Rasul Jafarov (continued)

Mr. Jafarov's trial began on 15 January 2015. His defence lawyers made a number of motions throughout his trial. The only motion the court granted was the request for Mr. Jafarov to sit next to his lawyers. During the course of the trial at least seven individuals identified by the court as "victims" of embezzlement said they had no complaints against Mr. Jafarov, and asked the court to release him. At least two "victims" never appeared at the trial to testify.<sup>160</sup> Mr. Jafarov's lawyers also produced a letter from 20 donor organizations stating that all grants were spent according to the terms of the grant agreements.<sup>161</sup>

The Baku Grave Crimes Court convicted Mr. Jafarov of tax evasion, abuse of office, illegal business activity, embezzlement, and forgery and sentenced him to six and one-half years in prison on 16 April 2014.<sup>162</sup> In addition to his prison term, Mr. Jafarov is banned from holding public office for three years<sup>163</sup> and must reimburse the court 350 AZN (€310) for the use of expert witnesses.<sup>164</sup>

156 Venice Commission 2014 Report at para. 46 (citing Article 8(3) of the Law on Registration).

157 On the third occasion, the government returned the application citing the need for the Human Rights Club to identify a legal representative; however, the law on grants only requires the applicant disclose the name of the legal representative in the event that one is appointed – in this case no representative had been appointed. Article 5.1.4 of the Law on Registration provides that "the regulations of the legal entity approved by the founders of the structure wishing to obtain the status of a legal entity, or *his (their) legal representative*, decision on establishment of the structure and ratification of its regulations (the decision will include the purpose of the establishment of the structure, wishing to obtain the status of a legal entity, its founders, terms of reorganization of the establishment of new legal entity, its founders, terms of reorganization of the establishment of new legal entity during association, separation and division, approval of the regulations, *legal representative in the event of his appointment and his authority*, as well as other issues considered necessary by the founders) such decision will be signed by all founders." (emphasis added).

158 *Azerbaijan: Rasul Jafarov sentenced to 6.5 years of jail for human rights work*, World Organization Against Torture (16 April 2015), available at <http://www.omct.org/human-rights-defenders/statements/azerbaijan/2015/04/d23093>.

159 In addition to the organizational charges, Mr. Jafarov also faces fabricated charges related to forgery and embezzlement.

160 *Azerbaijan: Still ongoing judicial harassment against Mr. Rasul Jafarov*, The Observatory for the Protection of Human Rights Defenders (2 April 2015), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/the-observatory-azerbaijan-still-ongoing-judicial-harassment-against>.

161 *Ibid.*

162 *Court announces judgment on Rasul Jafarov*, APA (16 April 2014), available at [http://en.apa.az/xeber\\_court\\_announces\\_judgment\\_on\\_rasul\\_jafaro\\_225802.html](http://en.apa.az/xeber_court_announces_judgment_on_rasul_jafaro_225802.html).

163 *Rasul Jafarov Sentenced to 6.5 Years in Jail*, Contact (16 April 2015), available at <http://www.contact.az/docs/2015/Politics/041600112841en.htm#.VT43hdJVikq>.

164 *Azerbaijan: Rasul Jafarov sentenced to 6.5 years of jail for human rights work*, World Organization Against Torture (16 April 2015), available at <http://www.omct.org/human-rights-defenders/statements/azerbaijan/2015/04/d23093/>.

Second, the authorities are accusing these individuals of infractions of the NGO Regulation Laws, but then actually charging them with separate violations of the Criminal Code, and using the administrative violations as supporting evidence of the crime committed. To illustrate, authorities begin with the claim that a particular grant was not properly registered. However, the authorities do not charge the organization or its officers under the directly relevant administrative laws (which includes sanctions that were controversially strengthened but do not include the prospect of imprisonment) – although in some cases, additional tax liabilities have been levied much later. Instead, the authorities charge the civil society leaders with unrelated Criminal Code violations, such as laws against illegal business activity (e.g. operating a for-profit business that is not registered when such registration is required), tax evasion (e.g. failure to pay taxes on “entrepreneurial” activity), and abuse of office (e.g. operating an NGO as a personal business and not a charitable organization).

The prosecution’s criminal case appears to rely upon the idea that administrative rule violations, of whatever type, do not implicate the directly relevant administrative sanctions but instead render the activity of the organization “entrepreneurial,” thereby subjecting it to entirely different regulatory and tax treatment than the government generally applies to non-commercial organizations or activities.<sup>165</sup> Prosecutors then allege that the organization failed to comply with these obligations, which then give rise to criminal liability. This theory, which has been observed to apply discriminatorily to independent NGO leaders critical of the government, appears to have no basis in Azerbaijani law, which distinguishes between commercial and non-commercial activity based upon the nature of the activity and not compliance with administrative regulations on grants or grant reporting.<sup>166</sup>

Such an approach empowers authorities – ostensibly through the law – to punish and silence government critics while appearing to use generally applicable provisions of the Criminal Code.

The authorities’ use of organizational charges, as with the use of patently politically-motivated and fabricated charges, are simply a blatant attempt to put independent NGOs out of operation and punish their leaders. Importantly, this means that the sentences

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165 The tax status of grants under Azerbaijani law has been the subject of some debate. At least one translation of the Tax Code available on a government website explicitly exempts “grants, membership fees and donations received by non-commercial organizations.” See Article 106.1.2, available at [http://www.taxes.gov.az/modul.php?name=qanun&cat=3&lang=\\_eng](http://www.taxes.gov.az/modul.php?name=qanun&cat=3&lang=_eng). By contrast, some experts have indicated that the law only exempts “charitable monetary transfers, membership fees, and donations.” However, those experts have also recognized that the actual practice of the government has been to treat grants as exempt under the theory that they qualify as “donations,” which are expressly exempt from tax but are not specifically defined elsewhere in the law. See *Guilty of Defending Rights: Azerbaijan’s Human Rights Defenders and Activists Behind Bars*, Amnesty International (March 2015) at 9, available at [http://www.amnestyusa.org/sites/default/files/azerbaijan\\_report\\_eur\\_5510772015.pdf](http://www.amnestyusa.org/sites/default/files/azerbaijan_report_eur_5510772015.pdf) (citing Gubad Bayramov, *Registration and Operation of NGOs, Taxing of NGOs, Public Funding of NGOs and NGO Participation of in Decision-Making, Azerbaijan*, Economics Research Center (2009), available at <http://blacksea.bcnl.org/en/articles/17-registration-and-operation-of-ngos-taxation-of-ngos-public-funding-for-ngos-and-ngo-participation-in-decisionmaking-azerbaijan.html>).

166 Article 13 of the Civil Code of the Republic of Azerbaijan defines “entrepreneurial activity” as “a person’s activity conducted independently and for the main purpose of receiving obtaining [sic.] profit from the use of property, sale of goods, and performance of works or provision of services.” See also Article 13.2.26 of the Tax Code. Non-commercial activity, by contrast, is defined under Article 13.2.27 of the Tax Code as “a conduct of legal activity the purpose of which is not generation of profit and that stipulate the use of income received in non-commercial purposes only, including the purposes of its charter. Otherwise such activity shall be considered as commercial.”

## CASE STUDY

**Ilgar Mammadov**, the opposition leader and head of the Republican Alternatives (REAL) political party, was arrested on 4 February 2013 after investigating unrest in the countryside and criticizing the government's response to demonstrators. He was charged with breach of public order and resisting arrest. On 30 April 2013, charges of mass disorder and violence to public officials were added.



Authorities subjected Mr. Mammadov to nearly ten months of pre-trial detention without presenting any justification apart from the prosecutor's allegations of wrongdoing. While in detention, he was unable to register as a presidential candidate in the 2014 national elections.

The ECtHR, which issued a decision in the case in 2014, determined that his pre-trial detention failed to meet procedural requirements under the ECHR (discussed in further detail in Section IV(B)(2)(ii)) and notably that the government's motivations behind the detention were political and thus the detention of Mr. Mammadov violated international law. The Court found, from the specific circumstances of the case, that "the actual purpose of the impugned measures was to silence or punish the applicant for criticizing the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide."<sup>167</sup>

The trial was ongoing during the 2013 presidential election, which Mr. Mammadov was unable to participate in, and the court ultimately sentenced him to seven years in prison on 17 March 2014.<sup>168</sup>

<sup>167</sup> *Mammadov v. Azerbaijan*, ECtHR, Application No 15172/13 (Judgment) (22 May 2014) at para. 142.

<sup>168</sup> *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (Judgment) (22 May 2014) at paras. 27-55.



handed down are not merely “disproportionate” – as might be true if the alleged infractions were not entirely the fault of the authorities or if the violations were a fair accusation and the punishment of fines were imposed under the NGO Regulation Laws. Instead, the sentences in these cases are completely without merit because they are based on a deeply flawed legal theory that misuses domestic law to punish the legitimate work of civil society groups in Azerbaijan.

The arbitrary use of organizational charges to imprison civil society actors has been recognized to violate international law. In the case of the Belarusian human rights defender Ales Bialiatsky, for example, the UNWGAD found that his imprisonment on tax evasion charges was arbitrary and therefore violated his right to freedom of association. In coming to this conclusion, the UNWGAD specifically acknowledged the fact that the government had wrongly shuttered the Viasna human rights organization, which Mr. Bialiatsky led until his arrest, and that his subsequent arrest in response to his fundraising activities on behalf of the organization violated the state’s obligations to respect his fundamental rights under international law.<sup>169</sup> Similarly, arbitrary attempts to detain political opponents of the government on charges of “abuse of office” have also been rejected by the ECtHR.<sup>170</sup>

Regardless of the specific tactic used by the Azerbaijani authorities to detain critics, the continued imprisonment of peaceful activists is arbitrary and therefore violates the state’s obligations under international law. This conclusion remains true whether or not the authorities employ patently politically-motivated charges, fabricated charges, or use a legal slight-of-hand to obtain the same result.

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169 *Bialatski v. Belarus*, UNWGAD, Opinion No. 39/2012 (31 Aug. 2012) at paras. 39 – 50 (citing *Belyatsky et. al. v. Belarus*, UN Human Rights Committee, Communication No. 1296/2004 (24 July 2007) (holding that the dissolution of the Viasna organization on charges that it violated provisions of the electoral code during its monitoring of elections constituted a disproportionate, and therefore illegal, limitation on the right to freedom of association under Article 22(1) of the ICCPR).

170 In the case of *Tymoshenko v. Ukraine*, for example, the ECtHR looked to the decision of the government to subject the applicant – a prominent opposition activists accused of abusing office when she was in the government – to pre-trial detention. In that case, the majority applied the “exacting standard of proof” applicable to allegations of wrongful imprisonment and found a violation because the government relied on the claim that she had demonstrated disrespect towards the court during preliminary proceedings (which is not a legitimate reason under the ECHR). While the court avoided the larger question of whether the government’s ultimate motivation for the prosecution was political, the concurring justices would have addressed that question, which is now the subject of a separate case. *Tymoshenko v. Ukraine*, ECHR, Application No. 49872/11 (Judgment) (30 Apr. 2013) at paras. 298-299.

## B. INTERNATIONAL LAW AND THE PROHIBITION OF ARBITRARY DETENTION

Azerbaijan is a party to both the ECHR and the ICCPR.<sup>171</sup> The obligations arising under these agreements – including the protections for the rights to free expression, association, assembly, and political participation – are binding on Azerbaijan.<sup>172</sup> As such, the government is obligated to protect these rights of its citizens and refrain from imposing impermissible limitations on their exercise. Moreover, enshrined in both of these instruments is the right to liberty of person and freedom from arbitrary detention. Indeed, the prohibition on arbitrary detention has been recognized as a universal *jus cogen* norm established by customary international law.<sup>173</sup> Critically, UN and European law prohibit governments from punishing or curtailing the exercise of substantive rights through the use of arbitrary detention.<sup>174</sup>

The detention of an individual is “arbitrary” under international law when it is imposed, in whole or in part, because of the peaceful exercise of one or more fundamental human rights – including the right to freedom of expression, the right to freedom of assembly and association, or the right to political participation.<sup>175</sup> The prohibition against arbitrary detention under international law applies not only to criminal imprisonment, but also to other instances where the government limits an individual’s liberty, such as pre-trial detention, house arrest, immigration control, and civil commitment.<sup>176</sup> Importantly, it is the government’s ultimate motivation – and not the allegations under law or the stated motivation – that determines whether a particular detention is arbitrary.

The systematic imprisonment of HRDs, journalists, and activists is a serious violation of the prohibition on arbitrary detention. Because the detainees described in this report were targeted

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171 Azerbaijan acceded to the ICCPR without reservations or declarations on 13 August 1992. Status of Ratification of the ICCPR, UNTC Chapter I(V), available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en). Azerbaijan ratified the ECHR and the First Optional Protocol to the ECHR on 15 April 2002. Status of Ratification of the ECHR, CETS No. 005, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=&CL=ENG> (the government’s reservations and declarations to the ECHR are not relevant to this analysis).

172 Vienna Convention on the Law of Treaties, art. 11 (“The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.”).

173 *Xiaobo v. China*, UNWGAD, Opinion No. 15/2011 (5 May 2011) at para. 20 (citing General Comment No. 29, Human Rights Committee, UN Doc CCPR/C/21/Rev.1/Add.11 (31 Aug. 2000) at para. 11 and *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Int. Court of Justice (30 Nov. 2010) at para. 79).

174 Arbitrary detention is specifically prohibited by Article 9(1) of the ICCPR (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”) The ECHR also prohibits arbitrary detention through Article 18: “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.” See e.g. *Tymoshenko v Ukraine*, Application No. 49872/11 (30 July 2013) at paras. 294 – 295.

175 In executing its mandate, the UNWGAD considers a particular detention arbitrary “When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7 [equal protection], 13 [movement], 14 [asylum], 18 [religion], 19 [expression], 20 [assembly and association], and 21 [political participation] of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12 [movement], 18 [religion], 19 [expression], 21 [assembly], 22 [association], 25 [political participation], 26 [equal protection] and 27 [culture] of the ICCPR.” Revised Methods of Work, UNWGAD, U.N. Doc A/HRC/16/47 at Annex para. 7.

176 General Comment No. 8, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.7 (12 July 1996) at para. 1; See also, UNWGAD Report (Question of the Human Rights of all Persons Subjected to Any Form of Detention or Imprisonment), UN Doc. C/CN.4/1993/24 (12 Jan. 1993) at para. 20.

in response to their peaceful exercise of fundamental civil and political rights, such as freedom of expression, the state has also violated those substantive rights. Many cases in Azerbaijan also involve procedural violations that in some cases alone render an imprisonment arbitrary. The upcoming sections present applicable international laws and protections and examine in-depth how the government frequently uses imprisonment and mistreatment to violate the fundamental rights of its peaceful critics.

## 1. Systematic Violation of Civil and Political Rights

### i. Freedom of Expression

**ICCPR Article 19(2):** “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information 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.”

**ECHR Article 10(1):** “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers...”

The fundamental importance of the right to free expression has been repeatedly affirmed by authoritative international bodies. The UN Human Rights Committee has stated that the right to freedom of opinion and expression “constitute the foundation stone for every free and democratic society” and “form a basis for the full enjoyment of a wide range of other human rights.”<sup>177</sup> In its leading case on the issue, *Handyside v. United Kingdom*, the ECtHR noted that free expression constitutes one of the “essential foundations” of a democratic society.<sup>178</sup> The right to free expression is so universally accepted that provisions protecting expression can be found in most state constitutions.

The protection of the right to freedom of expression covers a broad spectrum of expressive activities, including political and cultural commentary, human rights advocacy, teaching, and journalism.<sup>179</sup> Further, the right is “applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb the State or any sector of the population.”<sup>180</sup>

***Special protection for journalism and political speech:*** Because a free press and robust political debate are critical components of a well-functioning democratic society, journalism and political discourse are given special protection under international law. This is especially true where the government seeks to limit such activity through imprisonment – a response that will be “particularly hard to justify” and in the context of public debate will require “exceptional circumstances” that threaten to seriously impair other fundamental rights.<sup>181</sup>

177 General Comment No. 34, UN Human Rights Committee, UN Doc. CCPR/C/GC/34 (12 Sep. 2011) at para. 2 and 4.

178 *Handyside v. UK*, ECtHR, Application No 5493/72 (Judgment) (7 Dec 1976) at para. 49.

179 General Comment No. 34, UN Human Rights Committee, UN Doc. CCPR/C/GC/34 (12 Sep. 2011) at para. 11.

180 *Handyside v. UK*, ECtHR, Application No 5493/72 (Judgment) (7 Dec 1976) at para. 49.

181 *Cumpana and Mazare v. Romania*, ECtHR, Application No. 33348/96 (Judgment) (17 Dec. 2004) at para. 115.

In *Castells v. Spain*, the ECtHR reiterated the importance of protecting public debate from arbitrary action by government agents who attempt to limit domestic criticism by prosecuting critical voices:

“The 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 the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.”<sup>182</sup>

The imprisonment of HRDs, journalists, and activists in response to criticism of government policies in Azerbaijan violates the clear protection of such expression under international law. In nearly every politically-motivated prosecution in Azerbaijan, the right to freedom of expression – which is protected by Article 47 of the Constitution of the Republic of Azerbaijan – is implicated.<sup>183</sup> While the Azerbaijani authorities are prohibited from arbitrarily limiting this right – especially in the context of journalism and political expression – they consistently violate this obligation by harassing and imprisoning individuals who criticize the government and its policies.

## ii. Freedom of Association

**ICCPR Article 22(1):** “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

**ECHR Article 11(1):** “Everyone has the right to freedom [] of association with others, including the right to form and to join trade unions for the protection of his interests.”

Broadly protected under domestic<sup>184</sup> and international law, the right to freedom of association protects “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.”<sup>185</sup>

The protection of freedom of association therefore covers many groups, including “civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties,

182 *Castells v. Spain*, ECtHR, Application No. 11798/85 (Judgment) (23 April 1992) at para. 46. See also *Nega v. Ethiopia*, UNWCAD, Opinion No. 62/2012 (21 Nov. 2012) at para. 40.

183 Article 47 of the Constitution provides that “(I) Everyone may enjoy freedom of thought and speech. (II) Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions. (III) Propaganda provoking racial, national, religious and social discord and animosity is prohibited.”

184 Article 58 of the Constitution provide that “(I) Everyone is free to join other people. (II) Everyone has the right to establish any union, including political party, trade union and other public organization or enter existing organizations. Unrestricted activity of all unions is ensured. (III) Nobody may be forced to join any union or remain its member. (IV) Activity of unions intended for forcible overthrow of legal state power on the whole territory of Azerbaijan Republic or on a part thereof is prohibited. Activity of unions which violates the Constitution and laws might be stopped by decision of law court.”

185 *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai*, U.N. Doc A/HRC/20/27 (21 May 2012) at para. 51 (citing *Report of the Special Representative of the Secretary-General on HRDs, Hina Jilani*, U.N. Doc A/59/401 (1 Oct. 2004) at para. 46.

trade unions, foundations or even online associations as the Internet has been instrumental, for instance, in ‘facilitating active citizen participation in building democratic societies.’<sup>186</sup> The ECtHR has recognized that the free participation of citizens in such organizations, through a vibrant civil society, is a critical component of an inclusive and well-functioning democratic process.<sup>187</sup>

While associations may be regulated, the state’s power to regulate is limited under international law. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that freedom of association equally protects registered and non-registered associations.<sup>188</sup> To that end, the ECtHR has reiterated “that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.”<sup>189</sup>

**Special role of HRDs:** While all kinds of organizations – formal and informal – are protected by the right to freedom of association, the work of HRDs is afforded special protection. To this end, in 1998 the UN General Assembly passed the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>190</sup> The resolution affirms in Article 1 that “Everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” The Declaration specifically protects the right of HRDs to associate with one another for the purposes of gathering information about human rights abuses and presenting that information to the public, as well as to seek legal redress from national and international bodies.<sup>191</sup> Critically, the Declaration also affirms the right of HRDs to seek financial support to fund their activities:

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186 *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai*, U.N. Doc A/HRC/20/27 (21 May 2012) at para. 52 (quoting *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, U.N. Doc. A/HRC/17/27 (16 May 2011) at para. 2).

187 *Islam-Ittihad Association and Others v. Azerbaijan*, ECtHR, Application No. 5548 (Judgment) (13 Nov 2014) at para. 40 (“While in the context of Article 11, the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interactions of persons and groups with various identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”)

188 *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai*, U.N. Doc A/HRC/20/27 (21 May 2012) at para. 56.

189 *Sidiropoulos and Others v. Greece*, Application No. 26695/95 (10 July 1998) at para. 40.

190 *Resolution on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN General Assembly, UN Doc A/RES/53/144 (8 Mar. 1999) (Declaration on HRDs). See also, UN Human Rights Council Resolution 22/6, UN Doc. A/HRC/RES/22/6 (12 April 2013).

191 *Ibid.* at arts. 5, 6, 9, and 12.

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with [domestic laws that are consistent with the government's international obligations].<sup>192</sup>

In the specific context of arbitrary detention, the imprisonment of HRDs will be subjected to heightened scrutiny. The UNWGAD, for example, “subjects interventions against individuals who may qualify as HRDs to particularly intense review.”<sup>193</sup>

The ECtHR has found in more than a dozen cases that Azerbaijan violates the right to freedom of association.<sup>194</sup> Especially relevant to the current imprisonment of civil society leaders in the country are four cases in which the ECtHR held that significant delays in the registration of civil society organizations – especially where legal status was critical for pursuing certain activities – violated the right to free association.<sup>195</sup> This pattern has only continued despite these judgments, as evidenced by the experience of groups like the Human Rights Club, whose director Rasul Jafarov was unable to obtain timely registration despite repeated efforts to do so – that violation is now also pending before the ECtHR. Further, amendments passed to the NGO Regulation Laws have only exacerbated arbitrary limits on the right to freedom of association in Azerbaijan. As outlined in Section IV(A)(3)(i), the additional restrictions that entered into force in 2013 and 2014 place even more constraints on the registration, operation, and reporting requirements of international and domestic groups in the country. While the ECtHR has not yet had the opportunity to pass judgment on amended the NGO Regulation Laws, the Venice Commission has noted that the amendments fail to address previous concerns regarding the regulation of NGOs in Azerbaijan and that “some of these obligations seem to be intrusive enough to constitute a *prima facie* violation of the right to freedom of association.”<sup>196</sup>

The most striking violation of the right to freedom of association, however, is the politically-motivated detention of civil society leaders. In the case Mr. Jafarov, for example, the authorities sentenced him to six years and six months in prison on charges that included tax evasion, illegal business activity, and abuse of office. As discussed in Section IV(A)(3)(ii),

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192 *Ibid.* at art. 13 (emphasis added). Critically, the Declaration on HRDs does not specify the sources of funding – domestic or international – that defenders may seek. Both the Special Rapporteur on the Situation of HRDs and the Special Representative of the Secretary-General on the Situation of HRDs have affirmed that defenders should be allowed to obtain funding from abroad. *Report of the Special Rapporteur on the Situation of HRDs*, UN Doc A/66/203 (28 July 2011) at para. 70; *Report of the Special Representative of the Secretary-General on the Situation of HRDs*, UN Doc A/59/401 (1 Oct. 2004) at para. 82. For additional information on the right of NGOs to international funding, see *Violations of the Right of NGOs to Funding: from harassment to criminalization*, OMCT and FIDH (2013), available at <https://www.fidh.org/International-Federation-for-Human-Rights/human-rights-defenders/annual-reports/obs-annual-report-2013-violations-of-the-right-of-ngos-to-funding-from-12892>.

193 *Nega v. Ethiopia*, UNWGAD, Opinion No. 62/2012 (21 Nov. 2012) at para. 40.

194 Venice Commission 2014 Report at para. 38; See also, *Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists Behind Bars*, Amnesty International (March 2015) at 8, available at [http://www.amnestyusa.org/sites/default/files/azerbaijan\\_report\\_eur\\_5510772015.pdf](http://www.amnestyusa.org/sites/default/files/azerbaijan_report_eur_5510772015.pdf).

195 *Ramazanova and Others v. Azerbaijan*, ECtHR, Application No 44363/02 (Judgment) (1 Feb. 2007), *Ismayilov v. Azerbaijan*, ECtHR, Application No. 4439/2004 (Judgment) (17 Jan. 2008), *Nasibova v. Azerbaijan*, ECtHR, Application No. 4307/04 (Judgment) (18 Jan. 2008), *Aliyev and Others v. Azerbaijan*, ECtHR, Application No 28736/05 (Judgment) (18 March 2009).

196 Venice Commission 2014 Report at paras. 41, 91.

such charges are based upon the fact that the government impeded Mr. Jafarov from registering his group and then relied upon a deeply flawed legal theory that essentially equates alleged violations of the administrative code with unrelated provisions of the criminal code.

The imprisonment of such peaceful activists – who have been targeted merely for participating in rights groups – on the basis of politically-motivated charges, fabricated charges, or NGO Regulation Laws that themselves violate international law is a clear limitation on the right to freedom of association.

### iii. Freedom of Assembly (Right to Peaceful Protest)

**ICCPR Article 21:** “The right to peaceful assembly shall be recognized...”

**ECHR Article 11(1):** “Everyone has the right to freedom of peaceful assembly...”

The right to freedom of assembly, protected under international law and Article 49 of the Constitution of the Republic of Azerbaijan,<sup>197</sup> plays “a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy.”<sup>198</sup> When combined with the right to freedom of expression, the right to freedom of assembly affirmatively protects the right of peaceful protest.<sup>199</sup> As the UN Human Rights Council has noted, states should “facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment.”<sup>200</sup> The right also extends beyond public protest to include private events as well as mobile and stationary events.<sup>201</sup>

In the context of political protests, there must be a “presumption of legality” in favour of such demonstrations, which constitute a “vital aspect of effective and unhindered exercise of the freedom of assembly and freedom of expression.”<sup>202</sup> Because the right to freedom of association – as with other fundamental civil and political rights – is critical to a vibrant democracy, states have both a negative obligation to refrain from interfering with the right and a positive obligation to “secure the effective enjoyment of these freedoms.”<sup>203</sup> This is especially true when the viewpoints expressed are unpopular or belong to minority groups.<sup>204</sup>

197 Article 49 of the Constitution provides that “(I) Everyone has the right for meetings. (II) Everyone has the right, having notified respective governmental bodies in advance, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets.”

198 *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai*, UN Doc. A/HRC/20/27 (21 May 2012) at para. 24.

199 Jacobs, et al., *The European Convention on Human Rights* (Oxford University Press, 6<sup>th</sup> ed., 2014) at 465.

200 Resolution 25/38, UN Human Rights Council, UN Doc. A/HRC/25/L/20 (24 March 2014) at para. 4.

201 Joseph, et al, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. (Oxford University Press, 2<sup>nd</sup> ed., 2004) at 19.05 and 19.06.

202 *Baczowski v. Poland*, ECtHR, Application No 1543/06 (Judgment) (24 Sep. 2007) at para. 67.

203 *Ibid* at para. 64.

204 *Ibid* at para. 64.

Despite this protection, the Azerbaijani authorities consistently limit the right to peaceful protest. While governments may regulate assembly in narrow circumstances, in cases involving expression of opinion about questions of public interest, the government's degree of latitude is narrower.<sup>205</sup> In such circumstances, the ECtHR has rejected a wider margin of appreciation for governments, even where demonstrations may lead to tension or heated exchanges between opposing views. The ECtHR has noted that:

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realization is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of assembly as well as by other lawful means.<sup>206</sup>

Far from the narrow circumstances proscribed under international law, the Azerbaijani government broadly limits, and indeed suppresses, the right of its citizens to peaceful assembly. From the *de facto* ban on assemblies in central Baku<sup>207</sup> to the violent response to the peaceful protests held by members of N!DA,<sup>208</sup> the government's policy fails to meet the very strict standards established under international law. Further, by imprisoning individuals who participate in protests – whether through patently politically-motivated charges or fabricated allegations – the state violates the right.

#### iv. Right to Political Participation

**ICCPR Article 25:** “Every citizen shall have the right and the opportunity, without [distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...”

**ECHR Optional Protocol Article 3:** “The high contracting parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

The Constitution of the Republic of Azerbaijan,<sup>209</sup> the ICCPR, and the ECHR embrace a broad protection of the right of citizens to participate in the public life of a nation, including – but not limited to – participation in the electoral process. The “conduct of public affairs”

<sup>205</sup> See e.g. *Stankov v. Bulgaria*, ECtHR, Application Nos. 2922/95 and 29225/95 (2 Jan. 2002).

<sup>206</sup> *United Macedonia Organization v. Bulgaria*, ECtHR, Application No. 59489/00 (20 Jan. 2006) at para. 64.

<sup>207</sup> In October and November 2014, authorities allowed opposition supporters of the National Council of Democratic Forces of Azerbaijan to rally at the Yasmal sports complex – which is located in the “outskirts” of Baku. *Is the Clock Ticking for Azerbaijan's Leadership?*, RFE/RL (22 Oct. 2014), available at <http://www.rferl.org/content/is-the-clock-ticking-/26649958.html>; *Antigovernment Protesters Rally in Baku*, RFE/RL (9 Nov. 2014) available at <http://www.rferl.org/media/video/azerbaijan-protest-baku/26682162.html>.

<sup>208</sup> *Azerbaijan: Unnecessary Police Force at Peaceful Protests*, Human Rights Watch (12 March 2013), available at <http://www.hrw.org/news/2013/03/12/azerbaijan-unnecessary-police-force-peaceful-protests>.

<sup>209</sup> Article 54(1) of the Constitution of the Republic of Azerbaijan provides that “Citizens of the Azerbaijan Republic have the right to take part in the political life of society and state without restrictions.”



broadly refers to the exercise of legislative, executive, and judicial functions and also covers local, regional, national, and international policy and its implementation.<sup>210</sup>

Crucially, the right to political participation is not limited to elections. The UN Human Rights Committee has specifically linked the right to free expression, association, and assembly and noted that “[c]itizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.” In the context of such public debate, each of these civil and political rights relies upon one another. As the Committee highlighted:

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in ... the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, 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.

In the context of elections, international law protects both the right to vote (sometimes referred to as the “active element”) and the right to stand for office (alternatively referred to as the “passive element”).<sup>211</sup> Importantly, this requires that individuals be allowed to participate in “genuine periodic elections” to ensure that “the authority of the government continues to be based on the free expression of the will of the electors.”<sup>212</sup>

Despite the firmly established right of citizens to political participation, political leaders, and activists continue to face limitations on these rights as a result of wrongful criminal prosecutions. Ilgar Mammadov, for example, was unable to participate or campaign in the 2013 presidential election while he was under pre-trial detention – a period of detention that the ECtHR later found to violate international standards.<sup>213</sup> Further, some prisoners of conscience in Azerbaijan will be restricted from participating in the political process even after they are released. Rasul Jafarov, for example, is an ambitious and promising young activist in Azerbaijan; however, he will be barred from running for office for three years after he is released from prison.<sup>214</sup>

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210 General Comment No. 25, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev/1/Add.7 (12 July 1996) at para. 5.

211 Jacobs et al at 538.

212 General Comment No. 25, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev/1/Add.7 (12 July 1996) at para. 7, 9.

213 *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (Judgment) (22 May 2014) (in its opinion, the Court discusses at length the unsuccessful attempt by Mr. Mammadov to register as a candidate while in pretrial detention at paras. 62 - 67).

214 *Rasul Jafarov's Conviction: Latest Human Rights Violation in Azerbaijan*, Index on Censorship (17 Apr. 2015), available at <https://www.indexoncensorship.org/2015/04/rasul-jafarovs-conviction-latest-human-rights-violation-in-azerbaijan/>.

By preventing opposition leaders from taking part in elections and imprisoning individuals who attempt to monitor elections in Azerbaijan, as in the case of Anar Mammadli, the use of arbitrary detention by the state violates the fundamental right of these individuals to political participation.

## v. Wrongful use of Limiting Principles

Individual civil and political rights are not all absolute rights; indeed certain restraints are tolerated where they are needed to balance the broader interests and security of the society. In a commonly cited example, the state may protect the public from an individual who falsely shouts “fire” in a crowded theatre – a use of speech that would certainly create a clear and imminent threat to public safety.<sup>215</sup> However, in each case outlined in this report, the narrow limitations permitted under international law do not apply.

By way of background, both the ICCPR and ECHR have incorporated narrow limitations on the exercise of individual civil and political rights.<sup>216</sup> Specific limitations invoked by states are subject to a “strict test of justification” and must therefore meet a very high burden of proof.<sup>217</sup> As such, the UN Human Rights Committee and the ECtHR have adopted a three-part test, which requires that the limitation be: 1) established under domestic law; 2) for the protection of a legitimate purpose (such as national security, public order, or the rights and reputations of others); and 3) “necessary” to achieve the state’s legitimate purpose.<sup>218</sup>

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215 See *Schenck v. United States*, U.S. Supreme Court, 249 U.S. 47 (1919); *Brandenburg v. Ohio*, U.S. Supreme Court, 395 U.S. 444 (1969).

216 Regarding limitations on the right to freedom of expression, the ICCPR provides at Article 19(3) that “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the 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.” Similarly, Article 10(2) of the ECHR establishes that “The exercise of [free expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Similar language is employed regarding freedom of association (ICCPR art 22(2); ECHR art 11(2)), assembly (ICCPR art 21; ECHR art 11(2)). The right to political participation is not subject to specific limiting clauses in either the ICCPR or ECHR; however, both are subject to the general limiting principles that no one may act to undermine the fundamental rights established under international law (ICCPR art. 5(1); ECHR art. 17).

217 See e.g. *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc CCPR/C/64/D/6287/1995 (20 Oct. 1998) at para. 10.3.

218 While the limiting provisions that pertain to each substantive right are attached to the relevant article and in some cases differ slightly in language – both the ECtHR and the UN Human Rights Committee have adopted a consistent approach to permissible limitations on civil and political rights in general. In the context of free expression, see *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No 926/200, UN Doc CCPR/C/80/D/926/2000 (16 Mar. 2004); *Castells v. Spain*, ECtHR, Application No 11798/85 (23 Apr. 1992). In the context of freedom of assembly and association, see *Elena Zalesskaya v. Belarus*, UN Human Rights Committee, Communication No 1604/2007 (28 Apr. 2011) at paras. 10.5, 10.6; *Aleksander Belyatsky at al. v. Belarus*, UN Human Rights Committee, Communication No 1296/2004 (24 July 2007) at para. 7.3; *Veniamin Tymoshenko and Others v. Ukraine*, ECtHR, Application No 48408/12 (Judgment) (2 Oct. 2014) at para. 79. In the context of political participation, see General Comment No 25, UN Human Rights Committee, UN Doc CCPR/C/21/Rev.1/Add.7 at paras. 4, 14; *Karimov. Azerbaijan*, ECHR, Application No 12535/06 (Judgment) (25 Sep. 2014) at para. 36.

When applying the three-part strict test of justification, it is not enough for the government to merely identify a particular interest; instead, the government must satisfy each element. Although governments frequently invoke such limiting principles in the context of arbitrary detention, the latitude afforded to them in curtailing fundamental rights is quite narrow. The UN Human Rights Committee has emphasized that restrictions “may not put in jeopardy the right itself.”<sup>219</sup> Even when invoking legitimate interests such as national security, the government must “specify the precise nature of the threat” posed by the protected activity<sup>220</sup> and then demonstrate the proportionality of the limitation by establishing a “direct and immediate connection” between the exercise of the individual’s fundamental rights and the threat posed.<sup>221</sup> In short, general allegations claiming that an individual’s expression or association threatened national security or public order – without evidence of a specific threat and a proportional response – will not meet this high burden.<sup>222</sup>

Limitations on the exercise of fundamental rights will be subjected to additional scrutiny where they involve promoting democratic ideals or the rights of others. The UN Human Rights Committee has noted that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets, [or] human rights.”<sup>223</sup> Even in countries struggling with violent unrest, “the right to openly discuss difficult problems” must be protected, even where accounts of a conflict could be

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219 General Comment No. 34, UN Human Rights Committee, UN Doc CCPR/C/G/34 (12 Sep. 2012) at para. 21.

220 *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/OP/5 (adopted July 19, 1995) at para. 10.4.

221 General Comment No. 34, UN Human Rights Committee, UN Doc CCPR/C/G/34 (12 Sep. 2012) at para. 35. See also, *de Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002 (29 May 2005) at para. 6.8. In determining whether an accreditation scheme that operated to exclude journalists from observing parliamentary proceedings was necessary and proportionate, the Committee held that “the accreditation scheme should be specific, fair and reasonable, and their application should be transparent.” *Gauthier v. Canada*, Communication No. 663/1995, UN Doc. CCPR/C/65/D/633/1995 at para. 13.6 (7 April 1999). See also *Sohn v. Republic of Korea*, *supra* note 221 at para. 10.4 (finding that “reference to the general nature of the labor movement” and “alleging that the statements issued by the author in collaboration with others was a disguise for the incitement to a national strike” was insufficiently precise to meet the necessity requirement).

222 In *Kim v. Republic of Korea*, the Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for protecting national security. The Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) “benefit” that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, UN Human Rights Committee, Communication No. 574/1994, UN Doc. CCPR/C/64/D/574/1994 (3 Nov. 1998) at para. 12.4. In looking to the necessity requirement – where the ECtHR places most of its emphasis – the Court conducts a substantive determination as to “whether the interference in issue was ‘proportionate to the legitimate aims pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient.’” *Zana v. Turkey*, ECtHR, Application No. 18954/91 (Judgment) (25 Nov. 1997) at para. 51.

223 *Mukong v. Cameroon*, UN Human Rights Committee, Communication No. 458/1991, UN Doc. CCPR/C/51/D/548/1991 at para. 9.7.

**CASE STUDY**

**Rauf Mirkadirov** is a journalist and since 2009 was the Ankara, Turkey correspondent of the Baku-based Russian-language newspaper *Zerkalo*. Mr. Mirkadirov quickly gained the attention of both countries, as his articles were often critical of the Azerbaijani authorities and the Turkish government. In addition to being a journalist, he participated in Azerbaijani-Armenian citizen diplomacy programs organized by HRD Leyla Yunus.

On 19 April 2014, Mr. Mirkadirov was detained in Turkey and deported to Azerbaijan, shortly afterwards his press credentials were revoked. In Baku, he was arrested upon arrival. This arrest came days after Turkish Prime Minister Recep Tayyip Erdogan's visit to Baku.<sup>224</sup>

Mr. Mirkadirov was charged with treason, specifically passing classified information about Azerbaijan to Armenian intelligence during meetings in Armenia, Georgia, and Turkey. The Armenian agent that Mr. Mirkadirov supposedly contacted is Laura Bagdasrian, a journalist known for her work with Leyla Yunus. Prior to her own imprisonment, Mrs. Yunus was questioned by Azerbaijan authorities about her connections with Ms. Bagdasrian and Mr. Mirkadirov.<sup>225</sup>

Mr. Mirkadirov faces life in prison, but has waited for more than a year for his trial to begin. His pretrial detention has been extended several times.<sup>226</sup>

224 *Will Journalist's Arrest End Azerbaijani-Armenian Diplomacy?*, EurasiaNet.org (22 April 2014), available at <http://www.eurasianet.org/node/68297>.

225 *Detained (2014): Rauf Mirkadov*, Article 19, available at <http://azerbaijanfreexpression.org/campaigns/imprisonment/detained-2014-rauf-mirkadirov>.

226 *Custody extended for Azerbaijani journalist*, Trend (21 Nov. 2014), available at <http://en.trend.az/azerbaijan/society/2335686.html>.

considered one-sided or provocative.<sup>227</sup> This right is particularly important in Azerbaijan as charges of treason have been filed against civil society leaders and journalists who partner with Armenian organizations.

Although the Azerbaijani government often makes passing reference to these limiting principles as justification for these detentions, the narrow limitations simply do not apply. While the government may believe that discussion of democratic reform or accountability for human rights abuses threatens the interests of the current ruling elite, these are not legitimate reasons under international law to restrict the free exercise of fundamental rights. Indeed, the promotion of democracy and human rights are the very activities for which international law provides its most robust protection, regardless of whether that activity is favoured by the government or not. As such, the continued imprisonment of Azerbaijani citizens who peacefully exercised their fundamental rights is neither “necessary” nor for a “legitimate purpose” and therefore violates the government’s freely undertaken obligations under international law.

## 2. Mistreatment and Procedural Violations

In addition to civil and political rights, the Azerbaijani authorities impinge on a number of critically important procedural protections – including the right to be free from torture, the right to a fair trial, the right to the presumption of innocence, and the right to legal counsel. While the violation of these rights can themselves render a detention arbitrary, they do not on their own indicate that a case is politically motivated. However, when considered in the context of the individual and the case, these deficiencies often lend strong supporting evidence to the contention that a charge is politically motivated.

Not all of the procedural rights outlined here are implicated in every case; however, the widespread violation of these rights in a number of the observed cases indicates that it is a systematic component of arbitrary detention in Azerbaijan.

### i. Torture and Other Mistreatment

**ICCPR Article 7:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**ECHR Article 3:** No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

<sup>227</sup> *Mondragon v. Spain*, ECtHR, Application No. 2034/07 (Judgment) (15 Mar. 2011) at paras. 53 - 54. Contrast *Surek v. Turkey (No 1)*, ECtHR of Human Rights, Application No 26682/95 (Judgment) (8 July 1999 at para. 62 (Highlighting the heavy loss of life in the conflict in southeastern Turkey and finding that references to the “fascist Turkish army” and “hired killers of imperialism” along with references to “massacres” demonstrated a “clear intention to stigmatise [sic.] the other side of the conflict.”); *Surek and Ozdemir v. Turkey*, ECtHR, Application Nos. 23927/94 and 24277/94 (Judgment) (8 July 1999) at para. 61 (Finding that publication of interviews by combatant leaders that “They want to annihilate us” their expression contained “hard-hitting criticism of official policy and communicated a one-sided view of the origin and responsibility for the disturbances,” but was nonetheless protected expression).

**Convention Against Torture (CAT) Article 2(1):** Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<sup>228</sup>

Article 2 of the CAT defines torture as any act that is:

1. Intentional;
2. Causes severe physical or mental pain or suffering;
3. Is carried out by a public official; and
4. Seeks to achieve a specific purpose, such as obtaining information or punishing, intimidating, or coercing the victim.

International law also prohibits other serious mistreatment that rises to the level of “cruel, inhuman, or degrading treatment.”<sup>229</sup> Various UN bodies have found a violation of the prohibition on torture or mistreatment when the victim is deprived of food; placed in an overcrowded or prohibitively small cell; denied basic sanitary and medical attention; threatened with torture, rape, or death; held incommunicado; or subjected to beatings, electric shocks, hanging by the hands, or waterboarding.<sup>230</sup> Importantly, international law prohibits the use of testimony or evidence that has been obtained through torture or coercive means – such use can render a conviction null and a detention arbitrary.<sup>231</sup>

Unlike some substantive fundamental freedoms discussed previously, no justification may be invoked for violating the prohibition on torture, including any based on public emergency or orders from superiors.<sup>232</sup> Further, where there has been a violation, domestic law must provide the victim with a mechanism or redress and competent authorities are obliged to promptly and impartially investigate such mistreatment.<sup>233</sup>

Despite this international directive, credible allegations of mistreatment of detainees abound in Azerbaijan. Such mistreatment appears to be pervasive especially when individuals are detained outside of Baku. Youth activists are also particularly at risk.

In the case of Hilal Mammadov, plain-clothed officers detained the journalist without a warrant and reportedly beat him until he lost consciousness. It was at this time that

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228 Azerbaijan acceded to CAT on 16 August 1996. Status of Ratification of the CAT, UNTC Chapter IV(9), available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-9&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9&chapter=4&lang=en#EndDec).

229 ICCPR art 7, ECHR art 3, CAT art 16.

230 Sarah Joseph, et al, *Seeing Remedies for Torture Victims: A Handbook on the Individual Compliant Procedures of the UN Treaty Bodies*, World Organization Against Torture (4<sup>th</sup> ed., 2006) at Part III, available at [http://www.omct.org/files/2006/11/3979/handbook4\\_full\\_eng.pdf](http://www.omct.org/files/2006/11/3979/handbook4_full_eng.pdf).

231 CAT Article 15 provides that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Article 14(3)(g) of the ICCPR similarly established the right “Not to be compelled to testify against himself or to confess guilt.”

232 General Comment No. 20, UN Human Rights Committee, UN Doc HRI/GEN/1/Rev.6 at para. 3. See also, General Comment No 2, Committee Against Torture, UN Doc CAT/C/GC/2 (24 Jan. 2008) at para. 5.

233 CAT at art 13; See also General Comment No. 20, UN Human Rights Committee, UN Doc HRI/GEN/1/Rev.6 at para. 14.

authorities claimed to have discovered narcotics on him. Authorities held him without access to food or water for two days, repeatedly threatened him, and insulted his political views and ethnic identity. Although Mr. Mammadov's lawyer complained of the mistreatment during pre-trial proceedings, the government rejected those complaints without conducting a thorough and impartial review.<sup>234</sup>

Similar allegations of mistreatment have been reported by imprisoned youth activists in Azerbaijan. Omar Mammadov, the imprisoned activist and blogger who maintained the "Selections from AZTV" satirical website, reported that in order to obtain a confession from him, investigators repeatedly punched him in the stomach and made threats against his family.<sup>235</sup> The N!DA activist Mahamad Azizov reported similar mistreatment at the hands of investigators on two occasions – once to extract a confession and once to force him to implicate others. He later recalled that:

The investigator got confused. He left to speak on the phone. A man named Azer took me to the room and started beating on me. He called someone on the phone and said, "bring the bottle." A man arrived with a baton. I was glad it was not a bottle. He beat me on my head, on different parts of my body. The beating continued for 15 – 20 minutes. Then they called another man and took me to his room. His name was Mamay; they addressed him as "boss." Mamay continued beating me with his fists and kicking me, while Azer beat me with the baton. They beat me continuously for an hour. They said I had to testify against [N!DA member] Rashad [Akhundov]. I said I would not do it. Then Mamay said I had to choose between being raped by a person, or with a bottle. I said I didn't want either. He rested a bit, then continued beating me..."<sup>236</sup>

The description above is a clear example of mistreatment that rises to the level of torture under international law. However, authorities failed to conduct an investigation of the mistreatment.<sup>237</sup> Despite the state's obligations under international law, authorities who mistreat detainees do so with complete impunity. Indeed, when confronted about widespread mistreatment, especially in political cases, one member of the Azerbaijan parliament privately told Freedom Now: "It is a practice that we inherited from the Soviets."

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234 On 31 July 2012, the trial court rejected Mr. Mammadov's complaint of mistreatment, citing article 449 of the Criminal Procedure Code, which simply provides authorization for such complaints but does not specify any specific standards, and without taking into consideration the arguments of the defence team. In a closed hearing at the Nizami District Court on 29 August 2012, the Deputy General Prosecutor denied Mr. Mammadov's motion to file a complaint against the authorities for the mistreatment he suffered during his arrest and detention. Regarding the mistreatment of Mr. Mammadov, the UNWGAD found that "the response from the Government does not adequately address the source's allegations of ill-treatment to which Mr. Mammadov has been subjected in detention..." *Mammadov v. Azerbaijan*, UNWGAD, Opinion No. 59/2013 (22 Nov. 2013) at para. 67.

235 *Behind Bars: Silencing Dissent in Azerbaijan*, Amnesty International (May 2014). His lawyer indicated five days later that there was no signs of physical mistreatment on Mr. Mammadov; however, family members subsequently confirmed that Mr. Mammadov was in fact beaten while in police custody.

236 Arzu Geybullayeva, *Bringing the Bottle: Youth Activists Behind Bars in Azerbaijan*, Global Voices (17 April 2014).

237 The U.S. State Department noted in the 2013 Human Rights Report regarding mistreatment that: "Impunity remained a problem [in 2013]. Authorities reportedly maintained a de facto ban on independent forensic examinations of detainees who claimed mistreatment and delayed their access to an attorney." *Country Reports on Human Rights Practices for 2013*, U.S. Department of State, at para. (1)(c).

## ii. Abuse of Pre-trial Detention

Irrespective of what charges the authorities ultimately use to unlawfully imprison HRDs, journalists, and activists in Azerbaijan, the imposition of pre-trial detention is a common feature of almost all politically-motivated prosecutions.<sup>238</sup>

Article 5(1)(c) of the ECHR authorizes the detention of an individual “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.” The ECtHR has held that “reasonable suspicion” requires “the existence of facts or information which would satisfy an *objective observer* that the person concerned may have committed the offense.” Further, what is “reasonable” will depend upon the circumstances of the particular case. When conducting this analysis, the ECtHR has looked to, in particular, the length of the pre-trial detention.<sup>239</sup>

Helpfully, Azerbaijan’s domestic law is more instructive and requires the state provide reasonable grounds to believe that the suspect is likely to hide from investigators; obstruct the investigation by influencing parties or tampering with or hiding evidence; commit another criminal act or create a public threat; fail to comply with a lawful order; or prevent the execution of a court judgment. Further, in determining whether to impose pre-trial detention or a less restrictive measure, such as house arrest or bail, the courts are required to consider the seriousness of the offense; the defendant’s personality, age, health, occupation; his or her family, financial, and social situation; and criminal history.<sup>240</sup>

Despite the safeguards under international law and the very specific requirements provided in domestic law in Azerbaijan, the government consistently subjects HRDs, journalists, activists, and other outspoken government critics to long periods of pre-trial detention without meeting the legal criteria. In issuing the order for pre-trial detention in individual cases, the courts merely provide a generic statement without detailing sufficient evidence or justification in support of the decision.

In the case of Ilgar Mammadov, for example, the ECtHR held that the authorities failed to establish a “reasonable suspicion” of criminal activity because the decision to detain him was not based on any evidence except for the charging document and the prosecution’s request to hold him in pre-trial detention. The ECtHR looked to the circumstances of the case, including that Mr. Mammadov is an outspoken opposition leader who had been critical of the government in the run-up to an election, in finding that the pre-trial detention imposed failed to meet the “high level of scrutiny” required.<sup>241</sup>

Flouting this judgment, the government continues to subject HRDs, journalists, and activists to pre-trial detention without adequate justification and instead of imposing bail

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238 The notable exception to this general rule is the case of Bashir Suleymanli – the head of the registered Public Association for International Cooperation Volunteers Union – who was released on bail pending a guilty verdict. This variation may have been motivated by the fact that, at the time, the use of organizational charges was relatively new; however, recent cases involving similar charges have resulted in pre-trial detention orders.

239 *Fox, Campbell and Hartley v. United Kingdom*, ECtHR, Application No. 12245/86 (30 Aug. 1990) at para. 32; *Mammadov v. Azerbaijan*, Application No. 15172/13 (22 May 2014) at para. 88.

240 For a detailed description of the Criminal Procedure Code, see *Farhad Aliyev v. Azerbaijan*, Application No. 37138/06 (9 Nov. 2010) at paras. 89 – 95.

241 *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (22 May 2014) at paras. 87 – 102.



or a less restrictive alternative, such as house arrest. In the decision to detain Rasul Jafarov, for example, during the pre-trial phase, a Baku court cited the applicable standards under domestic and international law – but then failed to provide any specific detail whatsoever about the facts that supposedly supported its decision. The court merely recited the criteria and stated that those factors were present. The court ignored a number of factors clearly weighing in favour of less restrictive measures as provided by Mr. Jafarov’s counsel, including the fact that Mr. Jafarov returned from abroad despite knowing that he was under investigation, that he complied with all previous orders to produce documents and submit to questioning, and that he is a widely-respected leader with deep ties to the community.<sup>242</sup> Moreover, the court’s assertion that the seriousness of the allegations (which in no way involve any allegation that he used or advocated any kind of violence) warranted his confinement in pre-trial detention appears wholly unsupported.

The use of pre-trial detention in cases where HRDs, journalists, and activists suffer from pre-existing health problems is especially worrying. Intigam Aliyev, since convicted, and Leyla Yunus, who remains in pre-trial, have serious chronic illnesses that are reportedly being exacerbated by their continued confinement. Mr Yunus suffers from a severe case of hyper tension. Mrs. Yunus also has a number of serious health conditions, including diabetes and medical problems related to her kidneys. Reports have indicated both Mr. Aliyev and Mrs. Yunus have been denied adequate medical treatment.<sup>243</sup>

By imposing pre-trial detention in nearly all cases involving HRDs, journalists, and activists (indeed, all but one known case) – and without providing sufficient justification for such restrictive measures – Azerbaijan is in violation of the ECHR and its own law. Moreover, it is yet another sign that the true motivation behind its actions is indeed political and intended to put a stop to independent advocacy in Azerbaijan.

### iii. Right to a Fair Trial

**ICCPR Article 14(1):** In the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

**ECHR Article 6(1):** In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

<sup>242</sup> Decision on the Detention on Remand of the Accused, Case #4-(006)-513/2014 (2 Aug. 2014) (translation on file with authors).

<sup>243</sup> *Intigam Aliyev Spent His 52<sup>nd</sup> Birthday in Prison in Azerbaijan*, HRHN (30 Nov. 2014) available at <http://humanrightshouse.org/Articles/20594.html>. See also, *Leyla Yunus Health Deteriorates in Prison*, Medyan TV (4 Oct. 2014), available at <http://www.meydan.tv/en/site/news/3267/Leyla-Yunus-health-deteriorates-in-prison.htm>; *Azerbaijan: Ongoing Arbitrary Detention and Deterioration of the Health Condition of Ms. Leyla Yunus*, FIDH (18 Aug. 2014), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/15918-azerbaijan-ongoing-arbitrary-detention-and-deterioration-of-the-health>.

## CASE STUDY

**Anar Mammadli** and **Bashir Suleymanli** are civil society leaders who were the Chairperson and Director, respectively, of the Election Monitoring and Democracy Studies Centre. The Centre, which was unregistered, partnered with a registered organization on a grant-funded project to monitor the 2013 presidential elections in Azerbaijan. Because the government



had previously de-registered the Centre, this arrangement was a good faith attempt to facilitate the grant so that the project would comply with the restrictive administrative laws governing NGO activities. After releasing a critical report alleging electoral irregularities, the two men were charged with a series of crimes including illegal business activities, tax evasion, and abuse of office; they were later also charged with embezzlement and forgery. While Mr. Suleymanli was released pending trial, Mr. Mammadli was arrested on 16 December 2013 and placed in pre-trial detention.

Despite the diversity of charges, the outcome of the trial appears to have been predetermined. Although the defence team was permitted to participate in the proceedings and cross-examine witnesses, striking irregularities existed that seemed to have had no impact on the outcome. For example, the government's own expert witness from the Ministry of Taxes was unable to explain how the NGO activity was "commercial" – the lynchpin of the government's organizational charges – or even explain the specific charges against the defendants. Similarly, 19 of the 20 "victims" presented by the government on the charges of forgery and embezzlement indicated that they were not victims of any wrongdoing – with some testifying that they didn't even know the defendants. Some also indicated that the prosecution pressured them to testify and that officials had falsified their signatures on documents used as evidence. The government even publicly criticized witnesses who failed to testify against the defendants.<sup>244</sup> The sole witness against the detainees, a former employee, merely claimed that he had not been paid the agreed salary after his employment was terminated. Further, while the government claimed that the defendants had misappropriated grant funds, the National Democratic Institute, the entity that made the grant, submitted a letter indicating that it had monitored the implementation of the project and found no irregularities.

In convicting Messrs. Mammadli and Suleymanli on 26 May 2014 and sentencing Mr. Mammadli to five and one-half years in prison and Mr. Suleymanli to three and one-half years, the court ignored all of the inconsistencies and irregularities and simply rubberstamped a predetermined verdict. Mr. Suleymanli was released in March 2015 after sustained international attention to his case.<sup>245</sup>

244 Source on file with the authors.

245 *Bashir Suleymanli released after almost 10 months of arbitrary detention, whilst others remain in jail*, FIDH (23 March 2015), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/azerbaijan-bashir-suleymanli-released-after-almost-10-months-of>.

### a. Independent and Unbiased Proceedings

The UN Human Rights Committee has opined that the right to a fair trial “is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.”<sup>246</sup> This basic protection applies regardless of the particular legal tradition of the country involved.<sup>247</sup> In other words, it is not sufficient that domestic law establishes certain procedural protections or that the authorities claim that they respect the rule of law in all cases. Instead, where minimum international standards are in question, it is essential that the domestic law and facts of each case be reviewed to ensure that they comport with the requirements of international law.<sup>248</sup>

At its core, the fairness standard requires that criminal trials be conducted by a competent, independent, and impartial tribunal that is established by law.<sup>249</sup> This standard must be measured by an objective “reasonableness standard” – that is, the court must appear to a reasonable observer to be impartial.<sup>250</sup> If, for example, a court fails to prevent or remedy serious procedural mistakes – such as failing to consider evidence or address witness testimony favourable to the defendant – this would indicate to a reasonable observer that the proceedings are not “fair.”

Far from the independent, unbiased proceedings that are required under international law, the criminal prosecutions of activists in Azerbaijan cases are orchestrated from the beginning to reach a guilty verdict, as evidenced in from the prosecutions of Anar Mammadli (facing page), Intigam Aliyev (see Section IV(A)(3)), and Rasul Jafarov (see Section IV(A)(3)(ii)).

The failure of the courts to deal with the parties fairly, refusal to address contradictory evidence, and the reported bias of judges in these proceedings indicates that they are not fair from the perspective of a “reasonable observer.” As such, they fail to meet the requirements established by international law.

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246 General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 2.

247 *Ibid* at para. 4.

248 See e.g. *Nguyen Hoan Quoc Hung, Do Thi Minh Hanh, and Doan Huy Chuong v. Vietnam*, UNWGAD, Opinion No. 42/2012 (14 Nov. 2012) at para. 29 (reiterating that the Working Group “is required to ensure that national law is consistent with relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law.”).

249 General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 25.

250 *Ibid* at para. 21.

## CASE STUDY

**Khadija Ismayilova** is an award-winning Azerbaijani journalist for Radio Free Europe/ Radio Liberty and has reported widely on corruption and human rights abuses – including the increasing use of arbitrary detention in the country.<sup>251</sup> In response to this work, she has been defamed in the pro-government press and even been subjected to blackmail.<sup>252</sup> Already the subject of ongoing libel allegations herself, Ms. Ismayilova was detained for four hours in October 2014 after returning to Baku from Strasbourg, where she had spoken publicly about ongoing rights abuses in Azerbaijan.<sup>253</sup> A travel ban followed shortly afterward and she was prevented from travelling to the United States to speak before the Helsinki Commission in November.<sup>254</sup>



On 5 December 2014, authorities arrested Ms. Ismayilova and bizarrely accused her of inciting the attempted suicide of a friend and former colleague. The day before the arrest of Ms. Ismayilova, the Head of the Presidential Administration, Ramiz Mehdiyev, issued a 60-page document that accused employees of RFE/RL of treason and specifically singled out Ms. Ismayilova as the “best example,” claiming that she “puts on anti-Azerbaijani shows, makes absurd statements, openly demonstrates a destructive attitude towards well-known members of the Azerbaijani community, and spreads insulting lies.” “This is treason,” the high-ranking author concluded.<sup>255</sup>

In April 2015, her accuser dropped the charges of inciting suicide.<sup>256</sup> However, Azerbaijani authorities had already brought new charges of illegal business activity, tax evasion, abuse of office, and embezzlement on 13 February 2015.<sup>257</sup>

Her ongoing pre-trial detention is based on those new charges and the proceedings in that case have not yet begun; however, in a separate case, Ms. Ismayilova was convicted of libel on 23 February 2015 and fined 2’500 AZN (€2’200).<sup>258</sup>

251 *Azerbaijan Jails Reporter Who Angered Top Officials*, New York Times (5 Dec. 2014), available at [http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html?\\_r=0](http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html?_r=0).

252 *Would-Be Repressors Brandish ‘Ethics’ as Justification*, Committee to Protect Journalists (12 Feb. 2014), available at <https://cpj.org/2014/02/attacks-on-the-press-ethics.php>.

253 *Journalist Khadija Ismayilova, 4 Hours Detention at Baku Airport*, Contact.az (4 Oct. 2014), available at <http://www.contact.az/docs/2014/Politics/100300092403en.htm#.VNZbd-ZnBVg>.

254 *U.S. Helsinki Commission Chairman Deeply Concerned by Arrest and Detention of Journalist Khadija Ismayilova*, U.S. Commission on Security and Cooperation in Europe (8 Dec. 2014), available at [http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord\\_id=1170&ContentType=P](http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=1170&ContentType=P) (“Ms. Ismayilova was scheduled to testify in front of the U.S. Helsinki Commission on November 19, 2014, but was prevented from attending due to a government-imposed travel ban related to a different legal case. The current charge levied against Ms. Ismayilova of ‘incitement to suicide’ is just an escalation of the years of harassment by the authorities that she has endured.”)

255 *Azerbaijan Jails Reporter Who Angered Top Officials*, New York Times (5 Dec. 2014), available at [http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html?\\_r=0](http://www.nytimes.com/2014/12/06/world/asia/azerbaijan-jails-reporter-who-angered-top-officials-.html?_r=0).

256 *Jailed Azerbaijani Journalist Ismayilova’s Accuser Drops Complaint*, RFE/RL (8 April 2015), available at <http://www.rferl.org/content/ismayilovas-plaintiff-wihdraws-complaint/26944698.html>.

257 *New Charges Brought Against Azerbaijani Journalist Ismayilova*, RFE/RL (13 Feb. 2015), available at <http://www.rferl.org/content/azerbaijan-ismayilova-rferl-new-charges/26848343.html>.

258 *Jailed Azerbaijani Journalist Ismayilova Fined in Libel Case*, RFE/RL (23 Feb. 2015), available at <http://www.rferl.org/content/ismayilova-fined-in-a-libel-case-in-baku/26864433.html>.

## b. Right to Presumption of Innocence

Under international law, criminal defendants are “to be presumed innocent until proved guilty according to law.”<sup>259</sup> This requirement creates obligations for the government inside and outside the courtroom. At trial, the defendant must enjoy the benefit of the doubt and should be considered innocent until he or she is proven guilty.<sup>260</sup> Further, outside the courtroom, the authorities are under an obligation to “refrain from pre-judging the outcome of a trial;” specifically this means that officials must “abstain from making public statements affirming the guilt of the accused.”<sup>261</sup> This requirement is violated where, for example, “public statements made by high ranking law enforcement officials portraying the [defendant] as guilty [are] given wide media coverage.”<sup>262</sup>

It is especially striking that in Azerbaijan, senior government officials consistently use their pulpit to portray the work of NGOs and HRDs as threats to national security. Indeed, government officials and pro-government media have publicly smeared many of the detainees highlighted in this report – repeatedly and often before any criminal proceedings are even initiated and well before they are concluded.

In addition to the broader campaign to discredit the work of HRDs, Azerbaijani authorities undermine the right to the presumption of innocence by publicly pre-judging the outcome of criminal trials in politically-motivated cases. In the case of Ilgar Mammadov, the ECtHR found that the state violated the presumption of innocence when the Prosecutor General’s office and the Ministry of Internal Affairs issued a public statement indicating that “it had been established” that Mr. Mammadov had urged local residents to resist police and block roads during unrest in the Ismayilli region – essentially pre-judging the outcome of the criminal proceedings.<sup>263</sup> In a striking violation of the right to the presumption of innocence, the coerced confessions of three N!DA Activists were broadcast on television across Azerbaijan just days after the activists were arrested and beaten and long before the trial began (see Section IV(A) (2)).

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259 Article 14(2) of the ICCPR provide that “Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.” Similarly, Article 6(2) of the ECHR provides that “Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law.”

260 General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 30.

261 *Ibid* at para. 30. See also, *Daktaras v. Lithuania*, ECtHR, Application No 42095/98 (Judgment) (10 Oct. 2000) at para. 41 (The right to presumption of innocence “will be violated if a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even if in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty.”).

262 *Gridin v. Russian Federation*, UN Human Rights Committee, Communication No. 770/1997 (20 July 2000) para. 8.3.

263 *Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13 (Judgment) (22 May 2014) In that case, the ECtHR rejected the government’s arguments that it was merely “providing information to the public about the status of the investigation and countering the dissemination of inaccurate and distorted information.” It also held that the inclusion a sentence indicating that the case would be “fully and thoroughly investigated and [would] receive legal assessment” was not enough negate the unqualified statement of guilt. *Id.* at paras. 125 – 127.

## CASE STUDY

**Hilal Mammadov** is a minority rights defender and chief editor of Azerbaijan's only Talysh-language newspaper, *Talyshi Sado* (Voice of the Talysh). As an editor and HRD, Mr. Mammadov spoke out in support of Talysh rights and was critical of what he considered the government's discrimination against minority groups.

In May 2012, Mr. Mammadov received considerable attention after he posted a video online that featured individuals singing a *meykhana* – a traditional Azerbaijani rap – at a wedding. The song repeated the phrase “Who are you? Come on, goodbye,” a popular meme used by Russian protesters to challenge President Vladimir Putin. Due to the video's popularity with Azerbaijani and Russian media, a Russian film crew interviewed Mr. Mammadov about the song. Furthermore, at his invitation, the film crew attended a Talysh folklore party on 13 June 2012 – which Azerbaijani authorities had warned him to cancel. During the event, Mr. Mammadov criticized the Azerbaijani government's handling of the 2012 Eurovision song contest and highlighted the marginalization of the Talysh people.<sup>264</sup>

Eight days later, plain-clothed individuals arrested Mr. Mammadov and questioned him about his political views and ethnic identity. The officers beat Mr. Mammadov until he lost consciousness – at which point it is believed narcotics were planted on his person. Authorities prevented Mr. Mammadov from meeting with his lawyer until the following day and prevented his lawyer from observing a search of Mr. Mammadov's home – when more contested evidence was seized. In addition to drug charges, the government accused Mr. Mammadov of treason and “incitement of national, racial, or religious hatred.”<sup>265</sup>

Mr. Mammadov was later charged with treason and inciting racial hatred, crimes that carry a life sentence. He was convicted after a trial plagued with procedural irregularities and sentenced to five years in prison on 27 September 2013.<sup>266</sup> The UNWGAD has since ruled Mr. Mammadov's detention as arbitrary and called for his immediate release.<sup>267</sup>

264 *Azeri Journalist Charged with High Treason Could Face Life Sentence*, Reporters Without Border (5 July 2012), available at <http://en.rsf.org/azerbaijan-azeri-journalist-charged-with-high-05-07-2012,42963.html>.

265 Source on file with the authors.

266 *Azerbaijan: Sentencing to five years in prison of Mr. Hilal Mammadov*, Observatory for the Protection of Human Rights Defenders (23 Sept. 2013), available at <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/azerbaijan-sentencing-to-five-years-in-prison-of-mr-hilal-mammadov>.

267 *Hilal Mammadov v. Azerbaijan*, UNWGAD, Opinion No. 59/2013 (22 Nov. 2013).

### c. Right to Assistance of Legal Counsel

Both the ICCPR and the ECHR protect the right of criminal defendants to have the assistance of legal counsel.<sup>268</sup> While neither international nor European law specify at exactly what point detainees are to be afforded legal assistance, it is clear that the “right to communicate with counsel requires that the accused is given prompt access to counsel.”<sup>269</sup> To that end, the ECtHR has observed that, “[a]s a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it can be demonstrated in light of the particular circumstances of [the] case that there were compelling reasons to restrict this right.”<sup>270</sup> The rights of the defence will in principle be irrevocably prejudiced where incriminating statements made during police questioning without access to a lawyer are used to secure a conviction.<sup>271</sup>

Despite the essential importance of the right to the assistance of legal counsel, access to an attorney of one’s own choosing has been denied or delayed in Azerbaijan at critical points in the prosecution of political detainees.<sup>272</sup> Most worrying is the interrogation of detainees following arrest – when many have complained of mistreatment or the planting of evidence.

Similar circumstances were observed in the case of the N!DA activists, when three of the activists – including a minor – were arrested and interrogated without the assistance of a lawyer.<sup>273</sup> In these cases, there were no extenuating circumstances that would allow the authorities to interrogate the detainees, including a minor, without a lawyer. Indeed, the mistreatment they suffered while in custody points to the very reason that access to an attorney from the point of interrogation is so critical.

In addition to limiting access to a lawyer during interrogation, Azerbaijani authorities have a history of taking action against the lawyers who have represented defendants in politically-motivated prosecutions. In some cases, the authorities have disqualified lawyers by claiming that they are “witnesses” – as in the case of Intigam Aliyev who had

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268 Article 14(3) of the ICCPR provides that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [and] (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Article 6(3) of the ECHR provides that “Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

269 General Comment 32, UN Human Rights Committee, UN Doc. CCPR/C/GC/32 (23 Aug. 2007) at para. 34. Similarly, Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that “notwithstanding the exceptions [allowed in extenuating circumstances] communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”

270 *Omelchenko v. Ukraine*, ECtHR, Application No 34592/06 (Judgment) (7 July 2014) at para. 46.

271 *Blokhin v. Russia*, ECtHR, Application No 47152/06 (Judgment) (14 Nov. 2013) at paras. 159 – 160.

272 *Country Reports on Human Rights Practices for 2013*, U.S. Department of State, at para. 1(d).

273 *Behind Bars: Silencing Dissent in Azerbaijan*, Amnesty International (May 2014) at p 11.

four of his five lawyers removed from the case.<sup>274</sup> The Azerbaijan Bar Association has also asked a court to disbar Mr. Khalid Bagirov, who serves as the lawyer for a number of prisoners of conscience, including Rasul Jafarov, Leyla and Arif Yunus, and Ilgar Mammedov. Although the formal disbarment will take some time, this action effectively ends his ability to proceed with the cases and as the PACE President has noted, “against the background of increasing intimidation of HRDs in Azerbaijan, such clear pressure on independent lawyers defending civil society leaders is unacceptable.”<sup>275</sup>

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274 *Intigam Aliyev spent his 52<sup>nd</sup> birthday in prison in Azerbaijan*, HRHN (30 Nov. 2014), available at <http://humanrightshouse.org/Articles/20594.html>.

275 *Pressure on Ilgar Mammadov’s lawyer is unacceptable*, PACE (10 Dec. 2014), available at <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5347&lang=2&cat=15>.



## **V. CONCLUSION AND RECOMMENDATIONS**

The Azerbaijani government's continued use of arbitrary detention as a means to silence HRDs, journalists, and activists constitutes a straightforward violation of its freely undertaken obligations under international law. Such imprisonment violates the rights to freedom of expression, peaceful assembly, association, and political participation. Importantly, it also violates their right to be free. This is the case whether the charges are patently-politically motivated, completely fabricated, or based on the detainee's relationship to an NGO. The motivation of the arrest is to punish the exercise of fundamental rights and not to punish the commission of a legitimate crime. Further, cases of individual prisoners of conscience may also involve serious due process violations – including the reported use of torture.

In order to minimally comply with its international obligations, Azerbaijan must immediately and unconditionally release all prisoners of conscience, it must drop all charges against human rights NGOs and media organizations, and their leaders, and it must allow peaceful independent groups to operate in the country without arbitrary interference.

In light of the above, Freedom Now and Human Rights House Network issue the following recommendations:

## **A. RECOMMENDATIONS TO THE GOVERNMENT OF AZERBAIJAN**

- Put an end to the unprecedented repression against civil society. Immediately and unconditionally release and rehabilitate the civil and political rights all prisoners of conscience. Drop all charges and investigations pending against journalists, political opposition leaders, grassroots activists, human rights defenders, lawyers, and their organizations.
- As a matter of basic humanitarian principles, provide medical care to those people in detention and ensure that they are receiving complete and necessary treatment for all medical concerns.
- Conduct a prompt, thorough, and impartial investigation into all cases of detention, torture, and other human rights abuses directed against human rights defenders, journalists and activists, and provide appropriate compensation to the victims of such violations.
- Ensure that all detainees have immediate access to legal counsel of their own choosing and that all rights to due process are fully respected. Immediately cease the persecution and all forms of harassment of lawyers who are providing assistance to prisoners of conscience and those serving those human rights defenders and journalists still operating .
- Fully execute the judgments of the European Court of Human Rights and the opinions of the United Nations Working Group on Arbitrary Detention. Immediately, comply with the recommendations of the Council of Europe Venice Commission, especially in regard to legislation on the operation and funding of NGOs. Implement recommendations made by bodies of the United Nations and the Council of Europe. Invite the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association for an unhindered visit to the country.
- Take concrete steps to prevent and stop the use of legislation to unduly hinder the ability of human rights defenders, journalists and activists to exercise their work, in compliance with standards set in the resolution 22/6 of 21 March 2013 of the United Nations Human Rights Council.

## **B. RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY**

- All political leaders and institutions should publicly and privately call for the immediate and unconditional release of all leading civil society actors.
- Political leaders of all states, the European Union, and regional and international organizations must stop honouring events organised in Azerbaijan with their presence at opening and closing ceremonies, as long as the government has not taken clear steps to fulfil its obligations under international law and its commitments to the Council of Europe to release prisoners of conscience.
- In the present circumstances and given the lack of good faith in its interaction with Council of Europe institutions, especially in regard to the execution of European Court judgments, suspend the credentials of the delegation of Azerbaijan to the Parliamentary Assembly of the Council of Europe. Establish a rapporteur group on Azerbaijan at the Committee of Ministers to follow-up on the implementation of the Council of Europe Plan of Action adopted in 2014.
- Request that the United Nations High Commissioner for Human Rights present to the Human Rights Council, in an interactive dialogue, a comprehensive report on the human rights situation in Azerbaijan and the environment for human rights defenders in the country.
- Apply targeted sanctions against those responsible for the misuse of law to imprison human rights defenders, journalists and activists, including restricting rights to travel abroad and freezes of personal assets of those violating the rights of individuals, such as prosecutors and judges.



President Ilham Aliyev chairing the ceremony awarding him with the “Person of the Year 2013” award, 17 January 2014 (© www.a-r.az).

Arrest during a protest on fountain square (© Tofik Babayev/AFP/Getty Images).

Recent years have brought an intensified crackdown on the exercise of fundamental human rights in Azerbaijan. Without any regard for protections under domestic or international law, the authorities in Azerbaijan have targeted journalists, political opposition leaders, grassroots activists, and human rights defenders, including lawyers. To do so, it has amended its legislation since 2009 in order to restrict rights to freedom of expression, association, and peaceful assembly. As a result, civil society in the country has been devastated.



This report shines a light on the wrongful imprisonment of leading civil society actors, such as human rights lawyer Intigam Aliyev, human rights defenders Rasul Jafarov, Leyla Yunus, and her husband Arif Yunus, independent election observer Anar Mammadli, investigate journalist Khadija Ismayilova, opposition leader Ilgar Mammadov, as well as N!DA activists. The report investigates the cases and provides in-depth analysis of both the criminal laws that are being used to justify the detentions and the international standards that the state violates when it imprisons its own citizens for peacefully exercising their rights.



Events like the 2012 Eurovision contest and the 2015 European Olympic Games all too often become a source of repression at home while the government grandstands its achievements abroad.

President Ilham Aliyev has boasted that the world will see a “strong, growing and modern state” during the Games. In rounding up and imprisoning civil society leaders, the President has sought to ensure that no criticism will be heard from inside the country.

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