

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the grave challenges faced by NGOs to freely conduct their activities within the context of the provisions contained in the 2009 Law on Non-Governmental Organizations (NGOs) as well as the *de facto* ban on peaceful assemblies in Baku.**

The closure of the Human Rights House Azerbaijan association was the subject of a previous communication sent to your Excellency's Government on 16 March 2011 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. We acknowledge receipt of the response which was transmitted by your Excellency's Government on 5 May 2011.

According to the information received:

On 19 January 2012, representatives of the Institute for Reporters' Freedom and Safety (IRFS) received a warning letter from the Ministry of Justice. The organization is reportedly accused of diffusing biased and false information about the Nakhchivan Autonomous Republic via the website *www.nakhchivan.org.az*, and of failing to report its new board composition to the concerned Ministry. According to the information received, IRFS, however, has not made any changes to the association's founding documents.

The warning letter is reportedly based on article 31.2-1 of the 2009 Non-Governmental Organizations Law. It is reported that some provisions of the 2009 NGO law and of the 2011 Government Decree No. 43 may unduly restrict the right to freedom of association. Should the information be corroborated, serious concerns are expressed regarding various provisions of these new regulations, in particular:

- Article 12.3 of the 2009 Law on NGOs, State registration of branches and representations of foreign NGOs in the Republic of Azerbaijan shall be carried out on the basis of an agreement signed by State authorities with the concerned international NGOs. In order for an agreement to be reached, the organisations must “respect national-moral values” and must not be involved in “the political and religious propaganda” (articles 3.2.2 and 3.2.4 of the Decree No. 43 implementing the 2009 Law). These conditions, which are not further defined in the text, are vague and may lead to arbitrary restrictions.
- Should associations contravene to the aforementioned article 12.3, article 3.2 of the NGO Law provides that the concerned association will be subject to liquidation. In light of the reported concerns expressed regarding article 12.3, this provision may lead to arbitrary closure.
- Article 31.2-1 of the NGO law reportedly stipulates that non-governmental organisations that fail to submit necessary information, or submit false information, for the State registry of legal entities shall be warned by the relevant authorities. Article 31.4 of the NGO law reportedly stipulates that if a non-governmental organization is given a written warning or instruction to eliminate violations more than twice within one year, such non-governmental organization may be liquidated by court decision. As the involuntarily dissolution of associations is the severest type of restrictions on freedom of association, such provision may lead to arbitrary closure based on minor infringements of the law.

It is further alleged that warning letters issued in the recent months, notably against the IRFS, may be part of a broader campaign aimed at intimidating and silencing human rights NGOs in Azerbaijan. It is reported that since 2008, the new established Election Monitoring and Democracy Studies has received three negative answers from the Ministry of Justice, based on minor discrepancies leading to delays in registration. On 10 March 2010, Human Rights House Azerbaijan was ordered by the Ministry of Justice to cease all activities on the grounds that they had failed to comply with registration requirements. On 11 August 2011, the office of Leyla Yunus, Director of the Institute for Peace and Democracy, was destroyed, a few days after she had spoken against government-endorsed forced evictions in Baku as part of a reconstruction project. It is reported that the demolition was carried out without any prior notice by construction workers supervised by the police and despite a court order banning any demolition attempts on the property until a court hearing to take place on 13 September 2011.

Since the beginning of 2012, the State-owned press has reportedly published defamatory articles against the IRFS, accusing the association of acting for the opposition, including misappropriating grants to fund the political opposition and inciting and organizing protests. In early February 2012, the Democracy and NGO's Development Resource Center in Nakhchivan received a warning via a phone call from the Ministry of Justice. The association was reportedly accused of being separatist and was warned about the material posted on the website: www.nakhchivan.org.az

Furthermore, it is reported that authorities have put a *de facto* ban on any peaceful demonstrations and public meetings since early 2006. Several requests of the political opposition or civil society to hold demonstrations have reportedly been denied; and when authorised, they had to take place in remote areas outside Baku. It is reported that in March and April 2011, several peaceful protests demanding democratic reform and greater respect for human rights met with excessive use of force. 16 persons are reportedly imprisoned for their participation in the 2011 spring mobilization.

Serious concerns are expressed that the restrictive measures against various human rights NGOs may be part of a broader campaign aimed at intimidating and silencing human rights NGOs in Azerbaijan. Concerns are expressed that numerous provisions contained in the 2009 NGO Law and in 2011 Decree No. 43 may be used to hamper the legitimate work of NGOs, notably those working for the promotion of human rights. Concerns are also expressed about repeated denials to authorize peaceful assemblies in Baku.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (*ordre public*), the protection of public health or morals of the protection of the rights and freedoms of others."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "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".

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights,

and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We wish to refer to the recommendations issued by the Human Rights Committee where it encouraged Azerbaijan to “re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant, and make sure that the exercise of this right is not subjected to restrictions other than the ones permissible under the Covenant.” (UN Human Rights Committee, Concluding Observations on Azerbaijan, 3 August 2009, § 16).

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In addition, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; as well as (ii) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship.

In this connection, we would further like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

article 5, points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the concerned individuals or associations?
3. Please provide the details, and where available the results, of any investigation or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate how you ensure the 2009 NGO Law and 2011 Decree No. 43 are implemented in a way that allows associations to operate freely and without undue limitations, as prescribed by international standards related to freedom of association.
5. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed and respected.
6. Please provide details on how the actions undertaken by public authorities/officials regarding this case are compatible with the international norms

and standards on the right to freedom of opinion and expression and the related right to peaceful assembly and association.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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