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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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.

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1 February 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received on **the arrest of 63 participants in a peaceful protest held in Baku, of whom 26 were sentenced to administrative detention or heavy fines.**

According to the information received:

On 26 January 2013, a large group of persons participated in a peaceful protest in Baku aimed at expressing solidarity with recent demonstrations in Ismayilli. The following persons were arrested by law enforcement authorities: **Intiqam Aliyev**, human rights defender; **Yegana Hajiyeva**, Musavat Party; **Nargiz Yaqublu**, Musavat Party Youth Group; **Elchin Jarullazade**, Musavat Party Youth Group; **Elnur Asgerov**, Musavat Party Youth Group; **Matin Naghiyev**, Musavat Party Youth Group; **Turgut Gambar**, NIDA Citizen Movement; **Shamil Beydulla**, Musavat Party Youth Group; **Aygun Panjaliyeva**, NIDA Citizen Movement; **Ziya Bayramov**, NIDA Citizen Movement; **Nurlan Jafarov**, NIDA Citizen Movement; **Azer Haqverdiyev**, young activist (no affiliation); **Abdulla Mahmudov**, Popular Front Party; **Mursal Aliyev**, young activist (no affiliation); **Rustam Salahli**, young activist (no affiliation); **Vusal Hajiyev**, young activist

(no affiliation); **Allahverdi Khanaliyev**, young activist (no affiliation); **Nijat Shukurov**, Citizen Solidarity Party; **Elvin Zeynalov**, young activist (no affiliation); **Malahat Nasibova**, human rights defender; **Shahvalad Chobanoglu**, journalist; **Khadija Ismayıl**, journalist; **Turkhan Karimov**, journalist; **Gozal Bayramlı**, Popular Front Party; **Nazlı Panjaliyeva**, NIDA Youth movement; **Emin Milli**, blogger; **Emil Bağırov**, Citizen Solidarity Party; **Javid Afandi**, NIDA Citizen Movement; **Atabey Agalarbayli**, NIDA Citizen Movement; **Ikin Rustamzadə**, Free Youth organization; **Hikmat Abdullayev**, Popular Front Party; **Abulfaz Gurbanlı**, Popular Front Party Youth Movement; **Mardana Huseynova**, Popular Front Party; **Kamala Bananyarlı**, Popular Front Party; **Tamella Ahmadova**, Popular Front Party; **Vusal Bayramov**, Popular Front Party; **Nadir Alma**, NIDA Citizen Movement; **Nijat Kamal**, Citizen Solidarity Party; **Turkel Rustamkhanlı**, Citizen Solidarity Party; **Aynur Imranova**, Umid Party; **Zaur Gurbanli**, NIDA Citizen Movement; **Bakhtiyar Hajiyeu**, Positive Changes Youth Organization; **Elchin Ibadov**, REAL Movement; **Sahib Karimli**, Popular Front Party; **Nihad Huseyn**, Popular Front Party; **Elshan Hasanov**, Musavat Party; **Elnur Jarchiyev**, young activist (no affiliation); **Orkhan Jarchi**, Popular Front Party; **Tofiq Dadashov**, Popular Front Party; **Safa Atakishiyev**, young activist (no affiliation); **Aygun Panjaliyeva**, NIDA Citizen Movement; **Jamil Hajiyeu**, Azerbaijan Democrat Party; **Khatai Gafarli**, NIDA Citizen Movement; **Mahammad Abulhasanov**, Popular Front Party; **Kamaladdin Rahimov**, Popular Front Party; **Huseyn Fakhraddinov**, Popular Front Party; **Gulnaz Mammadli**, NIDA Citizen Movement; **Shahla Hajiyeu**, Azerbaijan Democrat Party; **Elshan Shahbazov**, Azerbaijan Democrat Party; **Zaur Akbar**, young activist (no affiliation); **Rufat Ahmazdzade**, young activist (no affiliation); **Elvin Elkhan**, young activist (no affiliation); and **Ilgar Nasibov**, journalist.

On the same day, immediately after the peaceful protest, all the aforementioned individuals were brought before the Nasimi District Court and the Sabayel District Court, with the exception of Zaur Gurbanli and Nargiz Yaqublu, who appeared before these courts on Monday 28 January 2013. The courts applied articles 298.1 ('Violation of order of organization and conducting of meetings, demonstrations, street processions and pickets') and 298.2 ('Violation of order of participation in meetings, demonstrations, street processions and pickets') of the code of the Azerbaijani Republic on administrative offences.

The following people were sentenced as follows:

1. Emin Milli: 15 days in an administrative detention;
2. Abulfaz Gurbanli: 13 days in an administrative detention;
3. Rufat Abdullayev: 13 days in an administrative detention;
4. Turkel Alisoy: 13 days in an administrative detention;
5. Tunjay Guliyev: 13 days in an administrative detention;
6. Turqut Gambar: 2,500 AZN fine;
7. Gozel Bayramli: 2,000 AZN fine;

8. Kamala Bananiyarli; 2,000 AZN fine;
9. Bakhtiyar Hajiyev; 600 AZN fine;
10. Elshan Hasanov; 600 AZN fine;
11. Elchin Jarullazade; 600 AZN fine;
12. Ziya Bayramov; 600 AZN fine;
13. Elnur Jarchiyev; 600 AZN fine;
14. Zaur Gurbanli; 550 AZN fine;
15. Nargiz Yaqublu; 500 AZN fine;
16. Jamil Hajiyev; 500 AZN fine;
17. Nihad Huseyn; 500 AZN fine;
18. Orkhan Jarchi; 500 AZN fine;
19. Sahib Karimli; 500 AZN fine;
20. Tofiq Dadashov; 450 AZN fine;
21. Khadija İsmayil; 400 AZN fine;
22. Safa Atakishiyev; 400 AZN fine;
23. Aygul Panjaliyeva; 400 AZN fine;
24. Emil Bagirov; 400 AZN fine;
25. Javid Afandi; 300 AZN fine; and
26. Khatai Gafarli; 300 AZN fine.

According to reports, the arrests occurred a few days after a delegation of Azerbaijani human rights defenders, including Ms. Nasibova, returned from an advocacy trip at the Council of Europe in Strasbourg, France. On 23 January 2013, the Parliamentary Assembly of the Council of Europe (PACE) reportedly adopted a resolution on the human rights situation in Azerbaijan in which it expressed “its deep concern” in relation to the “preoccupying” situation related to the rights to freedom of peaceful assembly, association and expression. On the same day, the delegation of Azerbaijani defenders held a press conference welcoming this resolution.

Serious concerns are expressed that the arrest of the aforementioned human rights activists, and the subsequent sentencing of many of them, may be linked to their legitimate human rights activities, in the exercise of their rights to freedom of peaceful assembly and of opinion and expression. Further concerns are expressed for their physical and psychological integrity while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to refer your Excellency's Government to 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."

Similarly, we would like to remind your Excellency's Government of article 21 of the 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 interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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."

In this connection, we would 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 9, paragraph 4, which states that "(a) (...) everyone has the right, individually or collectively, in conformity with applicable international instruments and procedures, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms."

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the aforementioned persons in compliance with the above international instruments.

Moreover, since 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, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest of the aforementioned persons, and the subsequent sentencing of many of them. Please indicate how these measures are compatible with international human rights norms and standards as stated, inter alia, in the UDHR, the ICCPR, and the Declaration on Human Rights Defenders.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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