

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: AL AZE 3/2023

(Please use this reference in your reply)

13 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 52/4, 51/8, 52/9, 50/17 and 51/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged harassment and arbitrary detention of human rights defender Dr. **Gubad Ibadoghlu** and his wife in Baku, Azerbaijan.

According to the information received:

Dr. Gubad Ibadoghlu has allegedly been under surveillance by the Government of Azerbaijan since 2013, after Azerbaijan joined the Extractive Industries Transparency Initiative (EITI) and a broad NGO Coalition was formed inside the country to take part in consultations on the generation and distribution of oil and gas revenues. In 2013 and 2014, the government made several amendments to legislation relating to NGOs. In total, 26 such changes were made, including some which tightened regulations around registration and foreign funding. In the summer of 2014, a wave of arrests of human rights defenders, based on charges including tax evasion and illegal drug possession, swept the country. Among those human rights defenders who were allegedly targeted by the government were members of independent groups working to promote transparency of public revenues in Azerbaijan.

In June 2014, the business account of the Economic Research Center (ERC) and the personal bank account of Dr. Ibadoghlu were both frozen, and Dr. Ibadoghlu was summoned to the Prosecutor General's Office for questioning as a witness in a case against a number of local and foreign NGOs. According to the information received, the government allegedly withdrew 85005 manat (US \$5000) from the ERC's organizational bank account, which has still not been returned.

On 12 May 2015, the offices of the ERC were searched by staff of the prosecutor's office. Financial documents and accounting records of the Centre,

the Extractive Industries Transparency Initiative (EITI Coalition), and the National Budget Group were seized.,

A criminal case against Dr. Ibadoghlu was opened in 2015 and remains ongoing. Dr. Ibadoghlu was charged with abuse of power, tax evasion, and illegal business. The activity of the ERC between 2010 and 2015 was claimed to be illegal because the organization failed to pay Value Added Tax (VAT), although civil society organizations are exempt from paying VAT in Azerbaijan. Approximately 20 other organizations were also included in the criminal case.

Dr. Ibadoghlu was then allegedly subject to a smear campaign where several newspapers and online resources published potentially defamatory articles alleging that he is a foreign agent.

In June 2018, Dr. Ibadoghlu lost his teaching position at the Azerbaijan State University of Economics, allegedly as a direct result of his work as a human rights defender.

On 23 July 2023, Dr. Ibadoghlu was traveling by car in Baku when he was stopped and surrounded by vehicles, forcibly removed from his car by more than 20 individuals claiming to be government officials and beaten. Dr. Ibadoghlu was charged with manufacturing and selling counterfeit money as part of an organized group. He was initially taken to the Main Directorate for Combating Organized Crime (MDCOC) in Baku.

Dr. Ibadoghlu is reportedly being held in the Kurdekhani pretrial detention center outside of Baku. Family members were unsuccessful in delivering toiletries, clothing, and other necessities to him on 25 July. In an initial court decision in late July, Dr. Ibadoghlu was sentenced to 3 months and 26 days of “preventive detention” while the investigation is ongoing. Dr. Ibadoghlu has been able to meet with family members once since his imprisonment. Dr. Ibadoghlu is reportedly being detained with five other detainees in a cell that measures less than 20 square meters.

According to the information received Dr. Ibadoghlu’s health, already fragile due to diabetes and high blood pressure, is at immediate risk as he has been denied regular access to critical medication. He has also allegedly been denied regular access to clean drinking water and has developed additional health problems.

Gubad Ibadoghlu's lawyer has filed numerous unsuccessful appeals against the decision by the court to detain him until his court date and has also been denied requests for Dr. Ibadoghlu to be placed under house arrest rather than in prison.

The eyesight in Dr. Ibadoghlu’s left eye has deteriorated significantly since his arrest. He already had a condition in his right eye causing blurry vision.

Without prejudging the accuracy of the above allegations, we wish to express our serious concern in response to the arrest of Dr. Gubad Ibadoghlu, which appears to

be linked to his legitimate human rights work on promoting transparency and democratic control of the gas and oil industries.

We are further concerned at what seems to be a pattern of harassment against human rights defenders, including frequent detentions, harassment, interrogations, restrictions on receiving grants, searches and confiscations, and travel bans of human rights activists working in the field of transparency in the extractive industries.

The detention of human rights defenders is of serious concern. We also note that human rights defenders with pre-existing health conditions are at increased risk of serious illness in detention if not properly treated; this may violate their rights to life and to health. We regret that other alternatives, such as house arrest, were not assessed for Dr. Ibadoghlu's case.

We remind your Excellency's Government that the criminalization of the legitimate defense of the human rights of others and exercising the right to freedom of opinion and expression would be incompatible with international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As 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 observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal bases for the detention of Dr. Ibadoghlu in July 2023, and explain how these actions comply with Azerbaijan's obligations under International Human Rights Law.
3. Please explain why other alternative measures, such as house arrest, were not considered in case of Dr. Ibadoghlu, giving attention to his deteriorating health condition.
4. Please provide information about the current health condition of Dr. Ibadoghlu in pre-trial detention. Please also provide information about the measures taken to ensure his physical integrity and appropriate access to continuous health care.
5. Please indicate what measures have been taken to ensure individuals, including civil society leaders and human rights defenders, can exercise their right to freedom of association and freedom of expression, free

from intimidation or persecution, and in line with international human rights standards.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Matthew Gillett
Vice-Chair on communications of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We recall article 9 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Azerbaijan on 13 August 1992, which provides, that "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 procedure as are established by law." Furthermore, we recall that a deprivation of liberty may be arbitrary when it results from the peaceful exercise of the rights or freedoms guaranteed by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19. (GC34 paragraph 23)

We also remind Your Excellency's Government that article 22 of the ICCPR protects the right to freedom of association, including the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

We would also like to refer to article 9.3 ICCPR which states, among others, that it shall not be a general rule that persons awaiting trial shall be detained in custody. The Human Rights Committee in its general comment 35, has interpreted that it should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime (para. 38). According to the same general comment (paragraph 17) and the jurisprudence of the Working Group

on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We would like to further refer to ICCPR article 6 that protects the right to life. The Human Rights Committee, in its general comment No. 36 (CCPR/C/GC/36) establishes that this right concerns the entitlement to be free from acts and omissions that are intended or may be expected to cause unnatural or premature death, as well as to enjoy a life with dignity. This applies to all without any distinction, including persons suspected or convicted for crimes (para. 3). Accordingly, States have the duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty, including providing them with the necessary medical care and the appropriate regular monitoring of their health (para. 25). States have the responsibility to take appropriate measures to address conditions, such as the prevalence of threatening diseases, that may directly threat life or prevent individuals from enjoying their right to life with dignity.

In this connection, we would like to recall your Excellency's Government's obligations under article 12 of the International Covenant on Economic Social and Cultural Rights, which Azerbaijan acceded to on 13 August 1992. Article 12 protects the right to health and imposes the obligation on States to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, CESCR, general comment 14, para. 34).

Further, the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), adopted unanimously by the UN General Assembly (A/RES/70/175), establish States' responsibility to provide healthcare for prisoners (rules 24 to 35); to evaluate, promote and protect the physical health of detainees, paying particular attention to prisoners with special health-care needs (rule 25(1)), and ensure continuity of treatment and care (rule 24.2), as well as prompt access to medical attention in urgent cases and to specialized treatment where needed (rule 27.1).

We would like to also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would also like to recall the following articles: - article 5 (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 6 (b) and c) which provide for the right to freely 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 to draw public attention to those matters; - article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

We would like to recall that during his visit to Azerbaijan in 2016 (A/HRC/34/52/Add.3), the Special Rapporteur on the situation of Human Rights Defenders noted that there are no specific policies or mechanisms to protect human rights defenders from attacks, threats or harassment. He expressed concerns at the way NGOs and human rights activism in general are projected, which leads to the delegitimization of critical views and voices. On this occasion, the Special Rapporteur recommended that the Government consider adopting national guidelines on the protection and promotion of human rights defenders, followed by a concrete action plan to strengthen the environment in which they operate (para. 97).