

ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Azerbaijan

UPR Session and Date of Review: 30th session (May 2018)

Background

Azerbaijan has been a participating State in the former Conference for Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Azerbaijan, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Azerbaijan and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Azerbaijan.

Overview of this Submission

This submission contains a brief overview of election related activities undertaken by ODIHR in Azerbaijan in the past 4 years.

There are also short references to data on Azerbaijan in the area of tolerance and non-discrimination.

Finally, there is a short overview of ODIHR assessments and activities in the area of legislation, arbitrary detention and treatment in detention, fair trials, human rights defenders, access to information of public interest and whistleblowers, freedom of the media, access to funding and resources, right to participate in public affairs, right to access and communicate with international bodies and protection of human rights defenders in other OSCE participating States and beyond the OSCE region.

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

Election-related activities

ODIHR observed nine elections in Azerbaijan, with no restrictions imposed up to 2015. Last observed elections were presidential election in 2013.²

The findings of the Final Report of the 9 October 2013 presidential election Election Observation Mission's (EOM) are summarized below.

The EOM final report on the 9 October 2013 presidential election concluded that the election “was undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates. 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 and underscored the serious nature of the shortcomings that need to be addressed in order for Azerbaijan to fully meet its OSCE commitments for genuine and democratic elections.”

Key recommendations and background from the final report are:

Legal amendments made in 2012 and 2013 to a number of laws increased sanctions for public order offenses, including organizing and participating in unauthorized demonstrations. They also introduced additional burdensome procedures for non-governmental organizations to register and receive funding, and increased penalties for non-compliance with these procedures. These amendments further limited the freedoms of expression and assembly and restricted the functioning of civil society and are contrary to OSCE commitments and international standards.

A review of the current legal framework for freedom of assembly, expression and association should be undertaken to bring national legislation in line with international standards. Consultations on the current legislation and necessary amendments should be conducted through a public and inclusive process.

All election commissions are permanent bodies appointed for five-year terms. Decisions at all levels require a quorum of no less than two-thirds of appointed members and need to be supported by a qualified majority of two-thirds of members present. CEC members are elected by the parliament. All lower level commissions are appointed by higher commission. One third of CEC members each are proposed by the parliamentary majority, minority, and by independent deputies. By law, chairpersons of all commissions are nominees of the parliamentary majority while secretaries represent the parliamentary minority and the independent deputies. The parliamentary majority therefore holds a *de facto* decision-making majority in all election commissions. As a result of this, opposition representatives expressed a lack of confidence in the impartiality of the election administration.

The Election Code should be amended through an inclusive process to revise the composition of election commissions at all levels, with the aim of enhancing impartiality and public confidence in the work of the election administration.

² See ODIHR Election observation Mission Final Report on the 9 October 2013 presidential election in Azerbaijan is available at <http://www.osce.org/institutions/110015>.

The election timeline provided for in the Election Code is condensed and, at times, insufficient to ensure adequate preparations and allow for legal remedy when necessary. Administrative obstacles in the approval of nomination documents for certain potential candidates meant that they had less time than others to collect signatures, while candidate registration appeals that were still pending more than half-way into the campaign caused a delay in the ballot printing and would have limited the campaign period for successful appellants. Furthermore, the deadline for finalizing the election results protocol and submitting it to the Constitutional Court does not allow for exhaustion of the time for appeal, and appeals were still pending when the protocol was forwarded to the Constitutional Court.

The election timeline should be extended to provide greater opportunities for the participation of potential candidates, as well as the effective administration of elections. In particular, deadlines should be adjusted to allow sufficient time for legal remedy when necessary.

The Election Code addresses candidates' rights on direct access to the media by providing for free and paid airtime. However, it does not recognize editorial coverage, which many ODIHR EOM interlocutors stated has been interpreted in a way that limits the media's right to freely report on the campaign in news and current affairs programs. Furthermore, the Election Code defines mass media as a mean to conduct election campaign, thereby *de facto* equating coverage of the campaign with campaigning in favour of a candidate.

The Election Code should address the right of voters to receive comprehensive and diverse information about political alternatives through the media. Public service media and private broadcasters should be legally obliged to provide fair, balanced and impartial coverage of the election campaign in their news and current affairs programs. Such provisions should be overseen by an independent body competent to conduct media monitoring.

The Criminal Code was amended on 4 June 2013 to explicitly extend the application of defamation provisions to internet content. Furthermore, recent amendments to the legal framework unduly restrict constitutional guarantees on access to information.

Consideration should be given to repealing criminal defamation provisions in favour of civil sanctions designed to restore the reputation harmed, rather than compensate the plaintiff or punish the defendant; sanctions should be strictly proportionate to the actual harm caused and the law should prioritize the use of non-pecuniary remedies.

The next presidential elections will be held in Azerbaijan on October 17, 2018. ODIHR stands ready to deploy a Needs Assessment Mission ahead of these elections upon official invitation from the authorities.

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the ODIHR supports states in their implementation of those commitments. In this context, the ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

Azerbaijan last reported hate crime data to ODIHR for the 2011 Hate Crime Report³. Azerbaijan’s hate crime laws are a combination of a general penalty-enhancement provision and a substantive offence. Hate crime data are collected by the Ministry of Interior.

Roma and Sinti issues

N/A

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Migration and Freedom of Movement

Azerbaijan was among those sixteen OSCE participating States, which representatives of key national authorities participated in the international conference “On migrants in an irregular situation, whose return or removal has been postponed, in line with OSCE commitments, international legal standards and good practices” organized by ODIHR in Riga on 22 -23 March 2017. The good practices for managing situations where the removal or voluntary return of irregular migrants has been postponed and the rights and guarantees of such persons were the focus of the conference discussions.⁴

Democratic Governance and Gender

ODIHR regularly organizes regional Young Policy Advisor’s courses for young policy professionals (under age 35) working in state institutions in the Eastern Partnership countries, i.e. Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The course curriculum contributes to this group’s better understanding of their role as policy advisers and tasks that are at the heart of deliberating, shaping and implementing policies, including the OSCE 1990

³ Available at <http://tandis.odihhr.pl/hcr2011/>.

⁴ It brought together 76 participants (47 women and 29 men), mostly officials responsible for migration management issues. Participants came from a range of OSCE participating States: Armenia, Austria, Azerbaijan, Belgium, Croatia, Estonia, Georgia, Germany, Latvia, Lithuania, Luxembourg, Moldova, Norway, Poland, Slovenia and Ukraine. Experts from the European Commission, the Council of Europe, the International Organization for Migration, the UNHCR Regional Representation for Northern Europe, and the Secretariat of the Council of the Baltic Sea States, as well as representatives from specialist civil society organizations and academia, also participated in this event.

Copenhagen commitments that are of key relevance to democratic governance. To deliver these two courses, ODIHR established partnerships with the Folke Bernadotte Academy (FBA), the School of Public Policy at the Central European University (CEU), as well as other institutional partners. The curriculum relies on iterative improvements realized through lessons learned from each successive training session. During the past four years 10 individuals from Azerbaijan have participated in the course.

Azerbaijan was represented at the International Forum of Women Leaders "Equal Opportunities for a Better Future" held in Minsk in June 2016, as a joint effort of ODIHR, the Belarusian State University, Council of Europe (CoE) Information Point in Minsk, the Executive Committee of the Commonwealth of Independent States (CIS), United Nations Development Programme (UNDP) in Belarus, United Nations Population Fund (UNFPA) in Belarus, and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, and with the support of the Ministry of Labour and Social Protection of the Republic Belarus and the Ministry of Foreign Affairs of the Republic of Belarus. The event gathered more than 100 participants from 21 OSCE participating States, including all the CIS countries.

Criminalization or arbitrary and abusive application of legislation related to human rights defenders

ODIHR has received reports that authorities have leveraged courts to conduct politically motivated criminal prosecutions against human rights defenders in OSCE participating States, including Azerbaijan and Kazakhstan, without recourse for alleged procedural violations. In Azerbaijan, ODIHR has received consistent reports from human rights defenders and international organizations of a widespread pattern of politically motivated criminal prosecutions against human rights defenders in retaliation for their activities. During the reporting period, ODIHR was informed of 20 cases of human rights defenders who were allegedly convicted of fabricated charges of drug possession, in some cases based on forced confessions obtained through torture and other ill-treatment.⁵ Activists from the NIDA youth movement have reportedly been especially targeted with such prosecutions.

In its November 2016 concluding observations on Azerbaijan, the UN Human Rights Committee voiced serious concern about this pattern of abuse, which it described among "extensive restrictions on freedom of expression in practice," including: "*Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred, etc.*"⁶

In two cases, on 25 October and 8 December 2016 respectively, the NIDA youth activists Bayram Mammadov and Giyas Ibrahimov were convicted and sentenced to 10 years in prison for drug possession.⁷ The two students were arrested on 10 May 2016 following their alleged

⁵ Human Rights Watch has also reported extensively on the prosecution of activists based on fabricated drug charges. See, Human Rights Watch statement, "Azerbaijan: Activists Face Bogus Drug Charges" (13 May 2016), available at: <http://www.hrw.org/news/2016/05/13/azerbaijan-activists-face-bogusdrug-charges>.

⁶ Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), UN Doc. CCPR/C/AZE/CO/4, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2fAZE%2fCO%2f4&Lang=en.

⁷ Information on these cases was confirmed by the activists' lawyer, as well as by other human rights

painting of political graffiti on a statue of the former President of Azerbaijan on the anniversary of his birthday, which was caught on CCTV. They reportedly refused the police's initial order to publicly apologize on video in front of the vandalized statue, as a condition for their release. Instead, they were then reportedly tortured to extract forced confessions of drug possession, which they later recanted in court. On 16 January 2017, the NIDA youth activist Elgiz Gahraman was convicted and sentenced to 5.5 years in prison on charges of drug trafficking. Following his arrest in August 2016, Mr. Gahraman was reportedly subjected to torture and other ill-treatment in order to extract a forced confession. His arrest and prosecution followed a critical and ironic Facebook post he made about Azerbaijan's 2016 referendum. Other NIDA activists who were convicted on drug charges include Shahin Novruzlu, Omar Mammadov and Mammad Azizov, who were among those released in a series of presidential pardons in December 2014, March 2015 and March 2016.

Arbitrary detention and treatment in detention

During the reporting period, in its concluding observations on the periodic reports of Azerbaijan,⁸ Kazakhstan and Turkey, the UN Committee against Torture voiced serious concerns over the numerous and grave allegations of arbitrary detention, torture and ill-treatment against human rights defenders in those OSCE participating States.

In 2014 and 2015, Azerbaijan declined requests by ODIHR to visit imprisoned human rights defenders, in order to conduct private interviews with them on their cases and assess their detention conditions.⁹ Since the rejection of those requests, ODIHR issued a series of public statements in 2015 and 2016 welcoming the release and pardoning of some human rights defenders by the Government of Azerbaijan, while also calling on authorities to release those defenders who remained in detention.¹⁰ In 2016, ODIHR individually interviewed six Azeri human rights defenders who had been detained during the reporting period, including four political prisoners who were pardoned by the president in March 2016.

defenders in Azerbaijan, both in interviews and written inputs.

⁸ See, Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan (27 January 2016), UN Doc. CAT/C/AZE/CO/4, at paras. 10-11. The Committee reported that it was "deeply concerned about consistent and numerous allegations that a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities. Among those human rights defenders are Leyla and Arif Yunus, Ilgar Mammadov, Intigam Aliyev, Mahamad Azizov, Rashadat Akhundov and Rashad Hassanov." Citing numerous credible reports by international organizations and independent experts of politically motivated restrictions, prosecutions, arbitrary detentions and ill-treatment, the Committee called on Azerbaijan to: "(a) Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest, denial of adequate medical treatment and torture or ill-treatment of human rights defenders, including those listed above, prosecute and punish appropriately those found guilty and provide victims with redress; (b) Release human rights defenders who have been deprived of their liberty in retaliation for their human rights work; (c) Amend and bring into line with international standards its legislation to facilitate the registration of human rights organizations and financial grants for the work of such organizations and change its practice to ensure that all human rights defenders are able to freely conduct their work."

⁹ In two October 2014 letters, ODIHR requested to visit the then-imprisoned human rights defenders Leyla Yunus, Arif Yunus, Anar Mammadli, Rasul Yafarov and Intigam Aliyev. In two May 2015 letters to the Ombudsperson and Minister of Justice of Azerbaijan, respectively, ODIHR again requested to visit Rasul Yafarov and Intigam Aliyev in detention. Authorities declined each of the requests.

¹⁰ Some of those ODIHR public statements include: "ODIHR Director Link commends release of Arif Yunus" (13 November 2015): <http://www.osce.org/odihr/199841>; "ODIHR Director Link praises release of Leyla Yunus" (9 December 2015): <http://www.osce.org/odihr/208366>; "ODIHR Director Link welcomes pardon of human rights defenders, activists and journalists in Azerbaijan" (19 March 2016): <http://www.osce.org/odihr/229061>; "ODIHR Director Link welcomes lifting of travel ban for Azerbaijani human rights defenders" (20 April 2016): <http://www.osce.org/odihr/235076>; and "OSCE media freedom representative, human rights chief welcome release of Khadija Ismayilova" (25 May 2016): <http://www.osce.org/fom/242746>.

All of the interviewed human rights defenders from Azerbaijan described their detentions as part of a widespread and on-going crackdown on civil society, which intensified in October 2013, following their criticism of alleged fraud in Azerbaijan's disputed elections. Reflecting the political motivation of their detentions, three former prisoners recounted explicit warnings by authorities of pre-trial detention facilities and prisons not to engage in any political speech or other human rights-related activity while in detention. One former prisoner said the prison chief overtly threatened retaliation if he became aware of any such activities. The defenders described consistently poor detention conditions, as well as worse treatment in Azerbaijan's prisons for human rights defenders based on their political activities. For instance, they were forbidden from receiving opposition newspapers and books, and had their written communications heavily restricted and often confiscated. Human rights defenders and their lawyers continued to smuggle out letters to international organizations and the diplomatic community regarding their situation, as well as statements to commemorate Human Rights Day from prison, to be presented before human rights bodies or to be posted on Facebook. In two cases, prison authorities threatened consequences against the human rights defenders when their communications were discovered. When one defender transmitted four statements through his lawyer, he was then reportedly subjected to ill-treatment and harassment, and was disallowed from communicating with his family. When another defender transmitted communications out of the prison through his lawyer, the government complained to the Bar Association, which issued him a warning for violating prison rules, putting him and his lawyer at risk of losing their law licenses.¹¹

The human rights defenders interviewed who were previously imprisoned in Azerbaijan consistently reported the use of torture and other ill-treatment, especially during initial detentions by police. They reported that torture was often used to extract forced confessions, through beatings and ill-treatment, including humiliating acts that were photographed in some instances. Two former prisoners also described rampant torture and abuse inside the prisons, which one of them experienced directly. He described being tortured and beaten so badly during his initial detention that he could not walk for two weeks, and could not hear properly for three months. When sent to prison after his conviction, he described being beaten by over 50 other prisoners, and claimed that it was the "project" of prison directors to ensure worse treatment for political activists. He noted that other prisoners told him they recognized the abuses against him were on account of his previous political activity, which he believed was particularly harsh due to the visibility of his activism and work with other activists. However, he described the worst mistreatment to be against gay and transgender people, who he reported were quarantined to a specific part of the prison, where they were subjected to daily beatings, as well as sexual assault and other ill-treatment.¹²

In the preliminary findings of the UN Working Group on Arbitrary Detention following its country visit to Azerbaijan in May 2016, it reported widespread allegations of the use of torture, including to extract forced confessions, and documented detention conditions appearing to amount to ill-treatment. The Working Group also reported the apparent political motivation of detentions and ill-treatment of human rights defenders, as a violation of the rule of law intended to silence their political criticism: *"The Working Group holds the view that human rights defenders, journalists, political and religious leaders continue to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. These practices constitute an*

¹¹ HRD report, para. 122.

¹² HRD report, para. 123.

abuse of authority and violate of the rule of law that Azerbaijan has agreed to comply with."¹³

Fair trial

In Azerbaijan, three human rights lawyers provided examples of intimidation, harassment, threats and retaliation against attorneys representing human rights defenders. Two human rights defenders reported the dismissal of lawyers from the Bar for actively defending persons arrested on politically motivated charges. In its decision on the case of Rasul Jafarov v. Azerbaijan, the European Court of Human Rights similarly found that “the suspension of his representative’s licence to practise law had been politically motivated”, and “that his representative had been refused permission to meet with him in the prison”, resulting in a violation of the complainant’s right to appeal to the Court (Article 34 ECHR).¹⁴

The defense attorney of several human rights defenders in Azerbaijan, Elchin Sadigov, reported being subjected to harassment by authorities, apparently in retaliation for his legal representation of human rights activists. In October 2016, following harshly critical closing remarks in court by a human rights defender he was representing (Giyas Ibrahimov), Mr. Sadigov reported that he was under “constant pressure” by the Bar Association and law enforcement agencies, among others. His email and Facebook accounts were reportedly subjected to hacking attempts, following which both those accounts and his phone became blocked for six hours.¹⁵

Two student members of the NIDA pro-democracy youth movement in Azerbaijan, who were represented by Mr. Sadigov – Bayram Mammadov and Giyas Ibrahimov – reported to Mr. Sadigov that they were forced through ill-treatment and threats of violence to make written confessions of drug possession.¹⁶ During their initial detention at Baku’s Narimanov district police station, police reportedly beat the two youth activists and threatened them with sexual violence (rape with a bat), in order to compel the confessions. When their lawyer met with the activists two days after their detention, both Mr. Ibrahimov and Mr. Mammadov reportedly complained of serious pain and had visible bruises on their bodies.

During its country visit to Azerbaijan on 16 to 25 May 2016, the UN Working Group on Arbitrary Detention met with Mr. Ibrahimov and Mr. Mammadov in pre-trial detention, and reported that it “observed what seemed to be physical sequels of such treatment” as “both reported having been subjected to violent interrogation techniques at a police station” before their transfer to pre-trial detention facilities. ODIHR was informed by their lawyer and a human rights defender that Mr. Ibrahimov and Mr. Mammadov also complained of the torture and ill-treatment at their remand hearing, and recanted their allegedly forced confessions. The handwritten remarks that Mr. Ibrahimov prepared for his final hearing while in prison were also reportedly confiscated from him en route to the court, for which reason he was unable to read a final statement in his own defense, and instead had to deliver them

¹³ See, UN Working Group on Arbitrary Detention, “UN Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16–25 May 2016)”, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2--21&LangID=E>.

¹⁴ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (application no. 69981/14), Decision of 17 March 2016, at paras 172, 173, 186.

¹⁵ See also the following accounts in the news media of harassment and intimidation against the lawyer: <http://www.contact.az/docs/2016/Social/110200173701en.htm?66#.WB0DRtSLRko>; and <http://www.contact.az/docs/2016/Social/110300173758en.htm?37#.WBxSHS0rKJA>.

¹⁶ See explanation note 4.

orally without full preparation. On 25 October and 8 December 2016, respectively, Mr. Ibrahimov and Mr. Mammadov were each convicted and sentenced to 10 years in prison on charges of drug possession.

Smear campaigns against human rights defenders

Human rights defenders reported being subjected to smear campaigns in **Azerbaijan**. Human rights defenders also reported constant smear campaigns against them in the pro-government media of several OSCE participating States, including **Azerbaijan**.

Access to information of public interest and whistleblowers

Human rights defenders reported online and offline censorship, among other restrictions on freedom of expression, in several OSCE participating States including **Azerbaijan**.

In **Azerbaijan, Belarus, Kazakhstan, Tajikistan** and the Transnistria region of **Moldova**, human rights defenders reported the blocking of websites of human rights organizations, apparently to obstruct public access to their reporting. Ukrainian human rights defenders also noted the blocking of websites in **Crimea** and lack of access to information in the areas of eastern **Ukraine** not controlled by the government.

Freedom of the media

Human rights defenders also reported restrictions and violations of the freedom of the media, in some instances based on political or other opinion in Azerbaijan.

In Azerbaijan, a human rights defender and journalist described the working environment of media professionals as dangerous and challenging, with most mass media fully controlled by the State. As a result, the journalist reported that mass media would not carry the stories of independent journalists, or report on human rights-related activities. Independent journalists were reportedly denied access to official events, and were regularly searched in the airport on departure or arrival. The journalist reported that the government repeatedly smeared human rights defenders as a “fifth column”, and had prosecuted and imprisoned numerous journalists and bloggers. In 2014 and 2015, the OSCE Representative on Freedom of the Media raised repeated concerns over cases of unlawful attacks, restrictions, arrests and prosecutions of media professionals and human rights defenders in Azerbaijan.¹⁷ At the end of his first visit to Azerbaijan in September 2016, the UN Special Rapporteur on the situation of human rights defenders also expressed alarm that, “At least 20 journalists and bloggers have been sanctioned in some way for the expression of critical views, and independent media outlets have had their licences revoked.”¹⁸ In November 2016, the UN Human Rights Committee voiced concern over a range of human rights violations by Azerbaijan against journalists and bloggers, as well as “arbitrary interference with media freedom”.¹⁹

¹⁷ See, RFoM statements on: the case of the prominent free expression advocate Rasul Jafarov (<http://www.osce.org/fom/122389>; and <http://www.osce.org/fom/151301>); searches and seizures of media properties and assets (<http://www.osce.org/fom/122481>); and the January 2015 attack on media lawyer and IRES deputy chair, Gunay Ismayilova (<http://www.osce.org/fom/136806>).

¹⁸ See, OHCHR statement, “UN human rights expert calls on Azerbaijan to rethink punitive approach to civil society” (22 September 2016), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20554>.

¹⁹ As manifestations of that arbitrary interference, the Human Rights Committee identified: “the reported revocation of broadcast licenses, allegedly on political grounds (e.g. of Radio Free Europe/Radio Liberty and ANS TV/Radio), allegations

Access to funding and resources

In Azerbaijan, three human rights NGOs reported that foreign funding restrictions and frequent allegations of financial crimes had threatened the life of their NGOs, and subjected them individually to financial penalties and hardship.²⁰ All the NGOs were criminally prosecuted for financial crimes related to their use of international grants, which resulted in the freezing of their personal and professional bank accounts, as well as the accrual of large fines and interest.²¹ Unable to pay the fines and interest without access to funds in their frozen accounts, the NGOs reported being at risk of further penalties. The heads of two of those three NGOs, who were convicted and jailed on those among other charges, were interviewed by ODIHR following their releases from detention in 2016.

In two 2014 decisions shared with ODIHR, a court in Azerbaijan found the third NGO guilty of money laundering for reportedly not having provided three grant letters to the Ministry of Justice, two of which were signed with the OSCE Office in Baku before its abrupt closure by authorities in 2014. The NGO president reported that the criminal allegations were demonstrably false and without factual basis, as the website of the Ministry of Justice had listed the contracts as registered. Additional to those fines and asset freezes, the NGO president reported that he was subject to a travel ban, impeding his ability to do human rights work abroad, and that his personal bank account was frozen following the receipt of payments from the European Court of Human Rights for his legal services, which were also deemed to be laundered funds.²²

In November 2016, the UN Human Rights Committee called on Azerbaijan to end its “crackdown on public associations [so] that they can operate freely and without fear of retribution for their legitimate activities”, including by “ensuring that legal provisions regulating NGO grants allow access to foreign funding and do not put at risk the effective operation of public associations due to overly limited or overly-regulated fundraising options”. The Committee voiced with particular alarm the application of: “*restrictive legislation negatively impacting the exercise of freedom of association, including stringent registration requirements for public associations/NGOs, broad grounds for denial of registration and temporary suspension or permanent closure of NGOs, restrictive regulations on grants and donations received by public associations/NGO, including the ban on foreign funding, and heavy penalties for violations of relevant legislation. The Committee is further concerned about threats against NGO leaders, including a high number of criminal investigations against NGOs, freezing of their assets and those of their members, as well as*

of politically motivated criminal proceedings against independent media outlets (e.g. online news outlet Meydan TV and its journalists) and alleged financial pressure on the Azadliq independent newspaper.”

²⁰ Legislative measures restricting operations and foreign funding of NGOs were introduced in 2013, and entered into force in 2014, since which time there have been several new amendments and regulations. For background on regulatory developments during the reporting period, *see*: Guluzade and Bourjaily, *Foreign funding in Azerbaijan: challenges and perspectives* (2016), available at:

<http://www.icnl.org/research/resources/foreignfund/Article%20Guluzade%20foreign%20funding%20in%20Azerbaijan%20fv.pdf>.

²¹ Even following the pardoning of Azeri human rights defenders convicted of “financial crimes”, they reported to ODIHR that their personal bank accounts remained frozen, following years since their convictions, and in some cases multiple formal requests to release the funds.

²² Prior to its recent difficulties, the NGO reported submitting 294 complaints to the European Court of Human Rights, primarily on electoral rights, fundamental freedoms of association, assembly and expression, and protection from arbitrary arrests. Decisions reportedly remained pending on 127 of those communications, at the time of reporting.

*the significant number of NGOs that have been closed.”*²³ In May 2016, the Steering Committee of the Open Government Partnership (OGP) resolved to suspend the membership of Azerbaijan “due to unresolved constraints on the operating environment for Non-Governmental Organizations.” Azerbaijan was an OGP member since 2011, and is the first member to be suspended under the OGP Policy on Upholding the Values and Principles of OGP.²⁴

Right to participate in public affairs

In **Azerbaijan**, [Belarus, Hungary and Kazakhstan], human rights defenders consistently reported weak inclusion of civil society in consultations on draft laws and policies, and noted preferential treatment was given to pro-government NGOs in this regard.

Freedom of movement and human rights work within and across boundaries

Human rights defenders have also reported unlawful and/or disproportionate restrictions on their right to freedom of movement in **Azerbaijan**.

In Azerbaijan, six human rights defenders separately provided details to ODIHR on a variety of restrictions on their right to freedom of movement. Given the timing of when such restrictions initiated, all of those limitations appeared to be motivated to obstruct their legitimate human rights-related activities. The human rights defenders all informed ODIHR that they were subjected to either (1) travel bans; or (2) extensive searches, questioning and delays at airports and land borders, upon arrival and departure, when traveling abroad.

Four human rights defenders reported that they are routinely searched and interrogated by authorities whenever traveling abroad from Azerbaijan, including two who were pardoned and released from detention in March 2016. In addition to thorough searches of their luggage, the defenders reported being asked before and after travel to present all their credit cards and currencies, which they considered to be intended to prevent them from bringing additional funds into Azerbaijan from abroad. 309. One of the human rights defenders from Azerbaijan now lives in exile in the EU, where he has received refugee status. Nonetheless, in April 2016, he reported being detained by border officers at Boryspil Airport in Kyiv during his visit, and being held for 20 days on an INTERPOL international arrest warrant for “theft”, based on facts he disputes and charges he alleged were politically motivated. He reported being visited by Azerbaijani law enforcement authorities in detention, who sought to compel his “voluntary return” to Azerbaijan, yet said he refused and was ultimately released and allowed to return home from Ukraine. In November 2016, the UN Human Rights Committee expressed concern over reports in Azerbaijan that “journalists, opposition politicians, human rights defenders and lawyers are allegedly subjected to travel bans in retaliation for their professional activities”. The Committee moreover called on Azerbaijan to: “*ensure that any travel ban is justified under article 12(3) of the Covenant and lift those not complying therewith, refrain from imposing travel bans against journalists, opposition politicians, human rights defenders and lawyers arbitrarily and guarantee full respect for their freedom*

²³ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), at paras. 40–41.

²⁴ See, OGP, “Azerbaijan Made Inactive in Open Government Partnership” (4 May 2016), available at: <http://www.opengovpartnership.org/blog/anonymous/2016/05/04/media-briefing-azerbaijan-madeinactive-open-government-partnership>.

to leave the country.”²⁵ In April 2016, ODIHR welcomed the lifting of travel restrictions for some human rights defenders in Azerbaijan.²⁶

Right to access and communicate with international bodies

ODIHR has observed cases of reprisals and restrictions against human rights defenders (and in some cases their families), apparently in retaliation for their active participation in the OSCE Human Dimension Implementation Meeting (HDIM). The HDIM is the flagship OSCE human dimension event, which ODIHR organizes annually in Warsaw. During the reporting period, ODIHR received information on such instances of reprisals and other forms of retaliation against human rights defenders in Azerbaijan.

Following her participation in the September 2014 HDIM, Azeri human rights defender Khadija Ismailova faced criminal charges upon her return to Azerbaijan, apparently in retaliation for her statements at the HDIM. In October 2014, ODIHR transmitted a letter of concern to authorities about her situation, though they denied any connection between her statements and her prosecution. ODIHR also raised the allegedly retaliatory and politically motivated prosecution of Ms. Ismailova in a 30 October 2014 report to the OSCE Permanent Council, and in a public statement²⁷ on that intervention released the following day. The Government of Azerbaijan responded²⁸ critically to the interventions, denying any connection between the criminal charges faced by Ismailova and her journalistic activities or human rights-related statements at the HDIM. The OSCE Representative on Freedom of the Media also publically condemned²⁹ the later arrest of Ms. Ismailova. Ms. Ismailova was released in May 2016, but remained subject to a travel ban in Azerbaijan at time of reporting.³⁰

Protection of human rights defenders in other OSCE participating States and beyond the OSCE region

Several of the human rights defenders interviewed or corresponded with in the research for this report were living in exile in OSCE participating States that had given them safe haven from political persecution in their home countries (**Azerbaijan**, **the Russian Federation**, Tajikistan and **Uzbekistan**).

Other assessments and recommendations contained in ODIHR reports on thematic human issues

N/A

²⁵ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), at paras. 30–31.

²⁶ See, ODIHR statement, “ODIHR Director Link welcomes lifting of travel ban for Azerbaijani human rights defenders” (20 April 2016): <http://www.osce.org/odihr/235076>.

²⁷ See, ODIHR statement, available at: <http://www.osce.org/odihr/126225>.

²⁸ See, Azerbaijan statement, available at: [http://www.azembassy.at/files/osce/Statement by Azerbaijan in response to ODIHR director on HDIM \(PC 30 October 2014\).pdf](http://www.azembassy.at/files/osce/Statement%20by%20Azerbaijan%20in%20response%20to%20ODIHR%20director%20on%20HDIM%20(PC%2030%20October%202014).pdf).

²⁹ See, RFoM statement, “Arrest of journalist latest case of crackdown of free media in Azerbaijan, says OSCE Representative” (5 December 2014), available at: <http://www.osce.org/fom/130076>.

³⁰ See, ODIHR/RFoM joint statement, “OSCE media freedom representative, human rights chief welcome release of Khadija Ismayilova” (25 May 2016), available at: <http://www.osce.org/fom/242746>. See also, RFoM report, “Regular Report to the Permanent Council for the period from 11 March 2016 to 1 December 2016” (December 2016), available at: <http://www.osce.org/fom/285506>.