



## **International Bar Association's Human Rights Institute**

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## **Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review**

### **Azerbaijan: 30th Session**

#### **About the IBAHRI:**

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of over 55,000 individual lawyers and 206 bar associations and law societies spanning all continents and has considerable experience in providing assistance to the global legal community.

The IBAHRI was established in 1995 and works across the IBA helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and legal profession worldwide. The IBAHRI holds that lawyers and judges play a fundamental role in facilitating access to justice, ensuring accountability of the state and upholding the rule of law. When the legal profession is not able to function independently or effectively, this gives rise to human rights violations, impunity and injustice.

#### **1. Methodology**

- 1.1. Since Azerbaijan underwent its 2<sup>nd</sup> UPR cycle on 5 July 2013, the IBAHRI has undertaken a fact-finding mission to Azerbaijan to assess the extent to which fair trial rights are adhered to during so-called 'freedom of expression' cases. The resulting report, published in May 2014, urged Azerbaijan to ensure that fair trials are conducted by an independent judicial body.<sup>i</sup>
- 1.2. Since 2016, the IBAHRI has been working closely with young Azerbaijani lawyers. In 2017, the IBAHRI launched its first ever Mentorship Programme with the aim of bringing junior and senior Azerbaijani lawyers together to work on human rights cases.
- 1.3. The information and recommendations in this submission are based on the IBAHRI's work and engagement with legal profession in the country, and consultation with local partners.

## **2. Introduction**

- 2.1. In 2014, right after the Azerbaijan's review in the 2<sup>nd</sup> UPR cycle on 5 July 2013, Azerbaijan started a severe crackdown of an unprecedented scale against human rights defenders, journalists, civil society and lawyers in the country. Throughout 2014 and onwards, dozens of human rights activists and political opposition actors were imprisoned or had to flee the country, lawyers were disbarred, local and international NGOs faced criminal charges, had their accounts frozen, equipment confiscated and were forced to close down and cease all their activities. Independent media outlets were also closed.
- 2.2. In 2014, the Council of Europe Parliamentary Assembly Rapporteur on strengthening the role and protection of human rights defenders, stated that the situation of human rights defenders in Azerbaijan had dramatically deteriorated since 2013 and that fundamental freedoms were persistently breached.<sup>ii</sup>
- 2.3. Since 2015, Azerbaijan has been affected by an economic crisis, which has resulted in major currency devaluation and inflation. These economic problems were accompanied by continuing violations of civil and political rights, such as lack of free elections and freedom of expression and assembly, on-going persecution of civil society, lawyers, journalists and other human right defenders.
- 2.4. In November 2015, parliamentary elections were held in Azerbaijan, which resulted in a victory for the ruling New Azerbaijan Party. Due to government restrictions, the international monitors from the OSCE did not observe the vote.<sup>iii</sup> In 2016, a Constitutional referendum took place, which resulted in extension of the presidential powers. In October 2018, Azerbaijan will hold a presidential election.

## **3. Normative Framework**

### **Scope of international obligations**

- 3.1. Azerbaijan is a party to all main United Nations (UN) human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

- 3.2.** Azerbaijan underwent its 2nd cycle UPR in 2013. Recommending states called Azerbaijan to ‘ensure that human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal, obstruction or legal and administrative harassment’ (Sweden).<sup>iv</sup> Azerbaijan supported these recommendations.

#### **4. Legal profession in Azerbaijan**

- 4.1.** The situation of the legal profession in Azerbaijan is alarming. The number of qualified lawyers is disturbingly low, i.e. a country of 9.7 million people has only around 900 lawyers. That means there is one lawyer for more than 10 thousand Azerbaijani citizens. In order to guarantee effective implementation of the right of access to a lawyer for everyone,<sup>v</sup> it is crucial to increase the number of qualified lawyers.

##### **Admission to the legal profession**

- 4.2.** Admission to the legal profession should be stipulated in law and should be transparent and objective. States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such admission processes.<sup>vi</sup>
- 4.3.** A bar association should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession, but should operate as a professional association, working to protect the rights of its members and, in so doing, fostering the rule of law. Situations where the State, in particular the executive branch, controls all or part of a bar association, or its governing body, and where membership in such an organisation is compulsory, are clearly incompatible with the principle of the independence of the legal profession.<sup>vii</sup>
- 4.4.** The *Law on Advocates and Advocate Activities* stipulates admission requirements to the Azerbaijani Bar Association (ABA). A person can become a member of the bar if he/she has 3 years of work experience as a lawyer or scientist/academic in the field of law and has successfully passed an examination held by the ABA and State Examination Centre. The examination consists of two parts – written exam and an interview.<sup>viii</sup> The Law does not regulate on the frequency of the exam. In practice, however, the exams are held once or twice per year.
- 4.5.** The Special Rapporteur on the Independence of Lawyers and Judges has often expressed concerns about situations where the entry into or continued practice within the legal profession is conditioned or controlled by the executive branch. The Special Rapporteur is of the opinion that licensing systems managed by State institutions are against international standards on the independence of the legal profession. The legal profession is best placed to determine admission requirements and procedures, and it should be responsible both for the administration of examinations and other requirements and for the granting of professional licences.<sup>ix</sup>
- 4.6.** For example, human rights defender Rasul Jafarov submitted his request to take the bar exam, required for the entry into the Azerbaijani Bar Association in 22 November 2016. He has not received any response since.

- 4.7. Furthermore, government retains influence over the ABA membership through the Qualification Commission of Advocates. This Commission is formed to ‘determine the professional preparedness of candidates to become advocates’.<sup>x</sup> Six of the nine Commission members are chosen by the executive branch and by the judicial branch, which in turn, is influenced substantially by the executive authorities.

#### **Lack of independence of the legal profession**

- 4.8. The best guarantee of independence of legal profession is a self-governing body, understood as an organization independent from the State or other national institutions.<sup>xi</sup> The Special Rapporteur on Independence of Judges and Lawyers has repeatedly highlighted the importance of independent and self-regulating bar associations to oversee the process of admitting candidates to the bar, provide for uniform codes of ethics, and conduct and enforce disciplinary measures, including disbarment.
- 4.9. The IBAHRI submits that the Azerbaijani Bar Association does not act as a self-governing institution and therefore lacks independence. Though the law provides that the ABA is independent of the Ministry of Justice and any other state control,<sup>xii</sup> it can be claimed that like most semi-public institutions in Azerbaijan, the ABA is *de facto* under the influence of the executive branch. In places where bar associations are controlled by the State, lawyers often become the target of attacks from the very organisations that should be protecting them.
- 4.10. Furthermore, on many occasions, the ABA has proven to follow the instructions of the state authorities and act against its members, human rights lawyers. The most recent case concerns the disciplinary proceedings initiated against Mr Yalchin Imanov, ABA member, under the request of Prison Service of the Ministry of Justice for him speaking out on ill-treatment of his clients in prison.

#### **Continuous legal education (CLE), including on human rights law**

- 4.11. Quality legal education and training for lawyers are essential so that they may be properly equipped to represent their clients independently, adequately, effectively and in full compliance with their ethical duties.<sup>xiii</sup> *‘Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.’<sup>xiv</sup>*
- 4.12. Currently, there is no CLE being provided by the ABA which included human rights law and practice.

#### **Safety and security of lawyers**

- 4.13. The UN Basic Principles require States to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions *‘without intimidation, hindrance, harassment or improper interference’.<sup>xv</sup>*
- 4.14. As examples provided below demonstrate, since 2013, a handful of Azerbaijani lawyers have been arrested, detained and convicted on false charges. As stated by the Special Rapporteur,

where attacks on the liberty of lawyers are frequent or systematic, they may undoubtedly have a chilling effect on the whole category of legal practitioners.<sup>xvi</sup>

### **Disciplinary proceedings**

- 4.15.** According to the *Law on Advocates and Advocate Activities*, if an ABA member 'is found guilty of violating the <...> Law while performing the duties, he/she can be brought to disciplinary liability'.<sup>xvii</sup> The disciplinary measures include notification, reprimand, suspension of the attorney's licence and disbarment.
- 4.16.** In Azerbaijan, however, the disciplinary proceedings are used as a political tool to silence critical voices. In 2017, the UN Special Rapporteur on the Situation on Human Rights Defenders stated: '*For those lawyers who are members of the [Azerbaijani] Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities. There are cases of several lawyers whose disbarment and sanctioning were unjustified and politically motivated*'.<sup>xviii</sup>
- 4.17.** The cases listed below serve to prove the severe crackdown against human rights defenders in Azerbaijan, as well as the fact that the ABA acts against its members by initiating politically motivated disciplinary proceedings against them.
- **Khalid Bagirov**, a prominent human rights lawyer, ABA member since 2004, with duration. He has brought a number of human rights cases before national and European courts. He was disbarred in 2015.
  - **Alaif Hasanov**, a human rights lawyer who has represented other human rights defenders in criminal cases. He was disbarred in 2015 because of a defamation lawsuit against him where he was sentenced to community service.
  - **Aslan Ismayilov**, human rights lawyer, was disbarred in 2013 for his allegedly critical comments towards the state authorities.
  - **Yalchin Imanov**, a prominent human rights lawyer, ABA member since 2007. In February 2016, under the request of ABA, a court filed a complaint against the lawyer requesting disciplinary sanctions for "unethical" behaviour. Just recently, in September 2017, the ABA under the request of the Prison Service initiated disciplinary proceeding against Mr. Imanov for allegedly spreading false information about the ill-treatment and torture of his clients in prison. The decision is pending.

## **5. Judicial independence**

- 5.1.** UN Basic Principles on the Independence of the Judiciary provide that '*the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason*'.<sup>xix</sup>

**5.2.** The numbers of politically motivated convictions by national courts serve to prove the lack of judicial independence in the country. To add to the list above, the IBAHRI notes the following cases against the most vocal and critical human rights defenders in Azerbaijan:

- **Intigam Aliyev**, a prominent human rights lawyer who has submitted more than 200 applications to the European Court of Human Rights (ECtHR) in cases of election rigging, violations of free speech and right to fair trial. He was refused membership of the ABA in 2009. In 2015, he was convicted for tax evasion and abuse of power and sentenced to 7 years in prison. Released in March 2016.
- **Khadija Ismayilova**, a journalist who investigated and reported cases of governmental corruption. She was arrested in 2014 and sentenced to 7.5 years of imprisonment in September 2015. Released in May 2016.
- **Leyla Yunus**, director of the Institute for Peace and Democracy, detained in April 2014, sentenced in August 2015 to 8.5 years of imprisonment on false charges of treason, fraud and tax evasion. Released in December 2015.
- **Arif Yunus**, a human rights activist, detained in April 2014 and sentenced to 7 years imprisonment on false charges of treason, fraud and tax evasion. Released in November 2015.
- **Rasul Jafarov**, a prominent human rights activist detained in 2014 and sentenced to 6.5 years imprisonment on false charges of tax evasion, illegal business activities and abuse of authority. Released in March 2016.
- **Anar Mammadli**, human right activist engaged in protection of free election rights. He was detained in 2015 and convicted to 5.5 years imprisonment. Released in March 2016.
- **Ilgar Mammadov**, member of the Azerbaijani political movement REAL. He was arrested in February 2013 on charges stemming from anti-government riots and sentenced to 7 years in prison. In 2014, ECtHR found that his arrest was politically motivated, and trial process was not fair.<sup>xx</sup> In 2015, the Committee of Minister obliged Azerbaijan to immediately release Mr. Mammadov.<sup>xxi</sup> Despite that, Mr. Mammadov still remains in prison to date.

#### **Recommendation 1**

**Extend a standing invitation to the Special Rapporteur on the Independence of Judges and Lawyers to undertake fact-finding country visit with respect to the situation of judiciary and legal profession in the country**

#### **Recommendation 2**

**Ensure effective implementation of the right of access to a lawyer for everyone protected by Article 14 of the ICCPR, by working to increase the number of practicing lawyers i.e. lifting the *de facto* restrictions and limitations for persons to join the national bar and facilitating the**

**access to legal profession**

**Recommendation 3**

**Refrain from government control of the legal profession and ensure the independence and self-regulation of the Azerbaijani Bar Association by withdrawing from appointing members of the Qualification Commission of Advocates**

**Recommendation 4**

**Ensure appropriate and quality, continuous legal education for the legal profession, including on human rights and fundamental freedoms in accordance with UN Basic Principles on the Role of Lawyers**

**Recommendation 5**

**Ensure the independence of the Azerbaijani Bar Association by not using it as a tool to silence human rights lawyers by initiating disciplinary proceedings against them or disbarring them**

**Recommendation 6**

**Refrain from initiating lawsuits and other sort of reprisals or harassment against human rights defenders, and put an end to the practice of detaining them**

i IBAHRI Report, Azerbaijan: Freedom of Expression on Trial, April 2014, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=E1192B49-6A7C-410D-A833-A17F5FD4BCBB>

ii Council of Europe, Azerbaijan: rapporteur expresses concern at human rights defenders' situation, 2014, <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5080&lang=2&cat=5>

iii OSCE, Restrictions imposed by Azerbaijan compel cancellation of parliamentary election observation mission, says ODIHR Director Link, 2015, <http://www.osce.org/odihr/elections/azerbaijan/181611>

iv HRC, Report of the Working Group on the Universal Periodic Review on Azerbaijan, 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/65/PDF/G1315465.pdf?OpenElement>

v Guaranteed in a number of international and regional legal documents, including the International Covenant on Civil and Political Rights, Convention on the Rights of a Child, European Human Rights Convention, etc. Also, the UN The Basic Principles on the Role of Lawyers include a number of provisions to ensure prompt and effective access to a legal counsel in criminal matters.

vi Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 77

vii Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 86

viii Law of the Azerbaijan Republic on Advocates and Advocate Activities, No. 783-IQ, 28 December 1999, Article 8

ix Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 76

x Law of the Azerbaijan Republic on Advocates and Advocate Activities, No. 783-IQ, 28 December 1999, Article 13

xi Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 33

xii Law of the Azerbaijan Republic on Advocates and Advocate Activities, No. 783-IQ, 28 December 1999, Article 9

xiii Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 89

xiv UN Basic Principles on the Role of Lawyers, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>, Principle 9

xv UN Basic Principles on the Role of Lawyers, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>, Principles 16 and 17

xvi Report of the UN Special Rapporteur on the independence of judges and lawyers, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>, para 69

xvii Law of the Azerbaijan Republic on Advocates and Advocate Activities, No. 783-IQ, 28 December 1999, Article 22.1

xviii Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan, 2017, <http://undocs.org/A/HRC/34/52/Add.3>

xix The UN Basic Principles on the Independence of the Judiciary, 1985, UN Doc A/COND.121/22/Rev.1., Principle 2

xx ECtHR, *Ilgar Mammadov v. Azerbaijan*, Application no. 15172/13, 22 May 2014, [http://www.menschenrechte.ac.at/orig/14\\_3/Mammadov.pdf](http://www.menschenrechte.ac.at/orig/14_3/Mammadov.pdf)

xxi Committee of Ministers, *Committee of Ministers adopts interim resolution on Azerbaijan*, 24 September 2015, Ref. DC 122(2015), <https://rm.coe.int/168071f653>