



DEMOCRACY LEARNING PUBLIC UNION (Azerbaijan)

ALTERNATIVE REPORT

for consideration during the adoption of the List of Issues prior to Reporting and review of the 5th periodic report of Azerbaijan.

Democracy Learning Public Union (DLPU) is a national non-governmental organization established in 2006. The mission of the Organization is to support building democratic society in Azerbaijan by strengthening the democratic institutions, enhancing the rule of law and promoting public participation in political and social life of the country. DLPU has gained valuable experience and expertise in the areas of civil society development, good governance and election.

Contact person for the report: Mireli Huseynov, Chairman of the DLPU

Email: mirelihuseynov@gmail.com

Tel: +994 50 349 06 14

TABLE OF CONTENTS

ABBREVIATIONS	2
EXECUTIVE SUMMARY	3
ARTICLE 21: RIGHT TO PEACEFUL ASSEMBLY	4
<i>1. Legal framework</i>	4
<i>2. Practical situation</i>	5
<i>2.1. Refusal from permission to hold meetings</i>	5
<i>2.2. Lack of suitable places for meetings</i>	6
<i>2.3. Persecution and pressure on the participants of the gatherings</i>	6
<i>3. Decisions of the European Court of Human Rights on the violation of freedom of assembly</i>	9
<i>4. Recommendations</i>	9
ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION	10
<i>1. Background information</i>	10
<i>2. Registration of NGOs</i>	12
<i>3. Acces to foreign finance</i>	13
<i>4. State control over NGOs</i>	15
<i>5. Recommendations</i>	17
ARTICLE 25: RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS	17
<i>1. 2018 Prezidential election</i>	17
<i>2. 2020 Parliamentary election</i>	19
<i>3. Recommendations</i>	20
ARTICLE 26: RIGHT TO EQUALITY BEFORE THE LAW	21
<i>1. Legal framework</i>	21
<i>2. Institutional capacity for effective legal protection</i>	22
<i>3. Recommendations</i>	23

ABBREVIATIONS:

BCEP - Baku City Executive Power
NCDF - National Council of Democratic Forces
APFP - Azerbaijan Popular Front Party
ECHR - European Court of Human Rights
NGO - Non-Governmental Organization
MoJ - Ministry of Justice
MoF- Ministry of Finance
CoM - Cabinet of Ministers
OSCE - Organization for Security and Co-operation in Europe
ODIHR - Office for Democratic Institutions and Human Rights
VC - Venice Commission
IEOM - International election observation mission
ABA - Azerbaijani Bar Association
CSSN - The Council on State Support to NGOs under the Auspices of the President of the Republic of Azerbaijan

EXECUTIVE SUMMARY

1. Azerbaijan has signed most international documents on human rights and freedoms. It was always noted by the state from highest levels that its supreme goal is to ensure human rights and freedoms, along with the Constitution. However, the real human rights situation is in no way compatible with the official position. Fundamental human rights and freedoms are either restricted by law or not allowed to be exercised in accordance with the law.
2. The government is generally sensitive to political rights and freedoms. The rights and freedoms enshrined in articles 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, which are the subject of this Report, are also among sensitive issues.
3. Although the problems of freedom of assembly in the country are to some extent related to the legislation, the main problems rise from the government's illegal restriction of the exercise of this right and the exertion of pressure on assembly participants. The practice of not allowing meetings, not allocating places for meetings or allocating inconvenient places, putting pressure on organizers and participants of meetings in various forms, and punishing them with high fines and arrests is quite rife. The above-mentioned illegitimate behaviors became more intensive and rude in 2018-2020.
4. The deteriorating legal and practical environment since 2013 has paralyzed NGOs. Rules and behaviors that do not comply with international standards such as registration, access to foreign finance, inadequate accountability, unlimited state control and interference, high financial sanctions and so on are major problems for freedom of association in the country. Although the government attempted to relatively ease legislation in 2016-2017, it did not address the existing problems. The government's efforts to change the situation in a positive direction in 2019-2020 have not yet yielded any results.
5. The right of citizens to participate in governance through elections is also subject to government interference. Using the authority granted to him by the 2016 referendum, the President scheduled the next Presidential and Parliamentary Elections to be held in October 2018 and November 2020 on April 11, 2018 and February 9, 2020 respectively. The main political forces refused to participate in the elections, saying that the government's intention was to catch the opposition unprepared for the elections. The OSCE election observation mission stated that both elections did not meet international standards.
6. In practice, there is strong discrimination in the protection of the rights of political activists. In addition to the artificial barriers to the protection of the rights of persons convicted of political offenses, there is also discrimination against defense lawyers. This is mainly done by not admitting independent lawyers, and punishing those lawyers defending political activists by expelling from the Bar or in other ways.

ARTICLE 21. RIGHT TO PEACEFUL ASSEMBLY

1. Legal framework

7. Article 49 of the Constitution of the Republic of Azerbaijan defines that everyone has the right to freely assemble together with others upon giving advance notice to the appropriate government bodies. With a referendum in 2016, a restriction was added to the Constitution binding assemblies to an abstract condition of *not disrupting public order and public morale*.

8. The VC's September 2016 preliminary opinion on the proposed constitutional amendments noted it is "almost inevitable" that peaceful gatherings may disrupt public order (for example, by disturbing traffic) or disturb someone's views on morality and yet be permissible under the ECHR. The Commission concluded, "The State should allow such gatherings and even facilitate them provided that those disturbances are not excessive and help convey the message of the public event."¹

9. According to Article 7 of the Law on Freedom of Assembly, freedom of assembly can be restricted in any forms including change of time, venue and route of an assembly, but only for the purposes prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

10. Although Article 8 of the Law provides a fairly broad basis for the prohibition of assemblies, it states the important cases in a democratic society and that assemblies may be prohibited in accordance with the requirements of Article 7 of the Law.

11. Part III of Article 9 of the Law on Freedom of Assembly defines a list of places where conducting of gatherings, meetings, demonstrations and street processions can be prohibited. The law prohibits gatherings in a radius of 200 meters around legislative, executive, and judicial buildings, and within 150 meters of military and penitentiary facilities, and other life-threatening and specially protected areas. Paragraph VI of the same article stipulates that the relevant executive authority must allocate special places in each city and district for holding meetings, rallies and demonstrations.

12. Strict sanctions are envisaged for violating the rules of organizing and holding rallies. According to Article 513 of the Code of Administrative Offenses, violation of the rules of assembly by the organizer of the meeting - officials are penalized in the amount from three thousand manats (\$ 1764) to six thousand manats (\$ 3529), legal entities from fifteen thousand manats (\$ 8823) to thirty thousand manats (\$ 17647), individuals are penalized in the amount from one thousand five hundred manats (\$ 880) to three thousand manats (\$ 1764), or public works for the term from two thousand to two thousand forty hours or administrative detention for up to two months depending on the case as well as taking into account the offender's identity. Participation in a meeting not organized in accordance with the law is punishable by a fine from 300 to 176 manats (\$ 352) or, public works for the term from one hundred sixty to two hundred hours or administrative detention for up to two months, depending on the case and the offender's identity.

13. Article 169 of the Criminal Code envisages penalty for violating the rules of holding meetings at a rate of fine from five thousand manats (2941\$) to eight thousand manat (4705\$) or restriction of freedom for the term up to one year, or imprisonment for the term up to three years. For violating the public order added to the Constitution in 2016, Article 221 of the Criminal Code envisages penalty at a rate of fine from one thousand (588\$) to three thousand

¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)010-e)

manats(1764\$) or corrective works for the term up to one year or imprisonment for the term up to one year and Article 233 envisages penalty at a rate of fine from five thousand manats (\$ 2941) to eight thousand manats (\$ 4705) or corrective works for the term up to two years or restriction of liberty for up to three years or imprisonment for up to three years.

2. Practical situation

14. Access to freedom of assembly in Azerbaijan has always been limited. As a rule, the use of this right by political oppositions has led to a sensitive attitude of the government. This sensitivity is noticeable mainly in the refusal from permission to hold the rallies, providing unsuitable venues for gatherings, harassment of participants, and other illegal and inappropriate behaviors.

2.1. Refusal from permission to hold meetings

15. The organization of meetings in Azerbaijan is based on the principle of notification but not the permission. According to the legislation, the organizers of the meeting must notify the relevant executive authority in writing about the meeting at least 5 days in advance. Random meetings do not require a written notice.

16. In practice, the government interprets this requirement of legislation for notification as a prior permission. In many cases, the BCEP's respond to requests for gatherings due to the Article 7 part 1 of the Law on Freedom of Assembly, which sets out the grounds for restricting gatherings. According to the law, the restriction may take the form of changing the time and place of the gathering, the route of the street processions. Although the BCEP refers to restrictive norm in its responses, it considers meetings to be illegal and does not permit them by responding "we do not consider it purposeful" which not provided by law.

17. The rejection letters of the BCEP to the notification letters of "Karabakh" Committee about the meetings due on November 24 and December 15, 2018 stated that the government works hard to restore the territorial integrity of Azerbaijan, both domestically and internationally and therefore the rallies were not considered appropriate. The rallies that this organization wanted to hold on February 16, March 16, May 4, 2019 were answered the same way.

18. In response to the Musavat Party's request to hold processions on one of the proposed three routes on January 12 and March 10, 2019, the BCEP did not consider it appropriate to hold processions due to the heavy traffic on the routes selected for processions. The BCEP also rejected the party's appeal on April 7.²

19. Prior to the crowded meeting of the NCDF on January 19, 2019, consents were rarely rejected, but after that meeting, the BCEP did not permit the meetings for a long time. The content of the responses to the appeals of the BCEP to hold meetings on January 26, February 9, February 23, March 2, March 28, April 6, May 5, May 11, 2019 was as follows: Residents near the stadium and the capital's police are concerned about the violation of public order during the protests, so it is not advisable to hold meetings.

20. In response to the appeal of Parliamentary candidates Ilgar Mammadov, Ruslan Izzetli, Farhad Mehdiyev, Faraj Karimov and Gunel Safarova to hold a meeting on 16 February 2020, the meeting was not considered advisable as any area for the meeting is a crowded subway exit

² <https://novator.az/2019/05/10/bu-il-13-miting%C9%99-icaz%C9%99-verilm%C9%99yib/>

creating problems to the working harmony of the subway and the free movement of other non-attendants.

*21. Musavat Party's appeal to hold a picket in front of the BCEP building on November 12, 2019, was not considered advisable citing the educational institutions in the area, the density of pedestrians, the intensity of traffic, which would cause difficulty in ensuring public order.*³

2.2. Lack of suitable places for meetings

22. Although the law specifically defines the list of places where gatherings are prohibited, Article VI of the Law provides allocation of special spots for holding the gatherings, meetings and demonstrations in each city and district. In addition to the places where the law prohibits meetings, the scope of the restriction has been further expanded to include special places for meetings. This situation allows the government to well manipulate in restricting the number of meeting places. In accordance with this requirement of the law, meeting places have been allocated in each district and city, the vast majority of which are located outside residential areas and are not suitable for meetings.

23. Before the meeting on January 19, 2019, as usual political meetings had been held in a place called "Mahsul" stadium in Baku. Protesters were checked by Police and allowed to the stadium fenced with iron bars within residential surrounding. Although police said they did so for security, opposition leaders consider this a pressure on protesters.

24. After the crowded meeting on January 19, 2019, the authorities no longer allowed the meetings in this square. Opposition's 11 appeals for a meeting, were replied as not advisable by the BCEP. In September, the stadium was closed for major repairs.⁴ Since then, the BCEP has agreed to hold meetings in the Lokbatan settlement, 20 km outside Baku. The oppositions do not accept the proposal to hold meetings there, as it is outside the city and unsuitable for meetings.⁵

2.3. Persecution and pressure on the participants of the gatherings

✓ Persecution and pressure during sanctioned gatherings

25. Persecution of participants is a main feature of the practice of freedom of assembly. Only few exceptional meetings by oppositions and independent forces, in agreement with local authorities, took place without police interference. Isolation, intimidation, and administrative and criminal prosecution of rally organizers have become commonplace. Police frequently disperse and suppress peaceful protests using excessive force and detain and bring participants to justice for alleged violations. "Preventive" arrests of activists prior to planned protests are also used to obstruct protests. Journalists covering peaceful assemblies are sometimes detained and warned;

26. Police summoned, warned and detained over 60 opposition activists ahead of a peaceful anti-corruption rally, held in Baku on 23 September 2017 in agreement with local authorities. Part of

³ <https://report.az/siyasi-xeberler/daxili-siyaset/bsi-h-musavat-partiyasinin-piketle-bagli-muracietine-cavab-verib/>

⁴ <https://qafqazinfo.az/news/detail/mehsul-stadionu-temire-baglandi-foto-263354>

⁵ <https://modern.az/az/news/212681>, <https://www.amerikaninsesi.org/a/m%C3%BCsavat-patiyas%C4%B1-1%C3%B6kbatanda-miting-ke%C3%A7irm%C9%99k-t%C9%99klifini-q%C9%99bul-etm%C9%99yib-/5154610.html>

them were fined or sentenced by court to up to 15 days' administrative arrest. Facial recognition cameras were used by police to monitor and intimidate participants.⁶

27. The 'Musavat' Party held a rally in front of the NCDF on November 3, 2017. 'Musavat' members participating in the protest called on the government to comply with Article 3 of the Law of the Republic of Azerbaijan "On Freedom of Assembly". Immediately after reading the resolution, 7 Musavat members were detained, given a verbal warning and released 3 hours later.⁷

28. During the rally of the NCDF and the Musavat Party held in Baku on 31 March 2018 in agreement with local authorities, dozens of activists were summoned to the police, three APFP activists - Abdulla Mahmudov and Orkhan Bakhishli - were detained for 30 days each, and Ayaz Gasimov was detained for 15 days.⁸

29. During a joint opposition rally on 19 January 2019, about 100 activists involved in its organization were detained.⁹ After the rally, local authorities and police in various regions of the country called the protesters and demanded them to come to the police, subjecting them to moral pressure. Ali Karimli, the leader of the APFP, said that 26 party functionaries had been arrested. "Loads of people were called not to go to the rally. Those who can be intimidated were threatened, and those who responded severely were asked not to go to rallies again. "Although the ordinary participants were threatened, the organizers of the rally were administratively detained," he said.¹⁰

✓ *Persecution and pressure during unsanctioned meetings*

30. The NCDF requested to hold a rally in the center of Baku on 19 October 2020. The city authorities denied their request to hold an event in central Baku, but permitted a location outside the city center. The opposition coalition then decided to hold the rally in central Baku without official authorization.

31. Before the rally on 19 October 11 active members of APFP were sentenced to between 5 and 30 days of administrative detention on misdemeanor charges of resisting police orders.

- Tofig Mammadov was detained on 10 October and arrested on the same day for 10 days under Article 510.1 (hooliganism) of the Code of Administrative Offenses.
- Aliaga Mammadov was detained on 14 October and arrested for 30 days under Article 535.1 (disobedience to the police) of the Code of Administrative Offenses.

⁶ <http://ilkxeber.info/gundem/8493-mitinqe-gore-polise-chagirilan-ve-hebs-edilen-axcp-feallarinin-syahs.html>

⁷ <https://www.facebook.com/musavatgenc/posts/1494461077258403/>

⁸ <https://novator.az/2018/03/31/31-mart-mitinqi/>

⁹ <https://novator.az/2019/01/19/milli-suranim-19-yanvar-mitinqi/>

¹⁰ <http://www.contact.az/ext/news/2019/1/free/politics%20news/az/78282.htm>

- Sagif Gurbanov was detained on 14 October and arrested the next day for 30 days under Article 535.1 of the Code of Administrative Offenses.
- Nijat Nizamov was detained on 15 October and arrested for 15 days under Article 535.1.
- Murad Sultanov was detained on 15 October and on the same day the court sentenced him 15 days of administrative detention.
- Yalchin Abdullayev was sentenced to 15 days of administrative detention on 15 October.
- Nazim Hasanov was called to the police on 15 October, but was not able to go due to wretched health.
- Kazim Hasanov and Nijat Ibadov were instructed by the police not to attend the rally.
- Atash Huseynov was detained on 14 October and released a day later with a warning.
- Elvin Mammadov was called to the police on 12 October and released after several hours of inquiry.
- In addition, Sahladar Iskenderli (60 days), Zamin Salayev and Elkhan Aliyev (15 days each) were recently detained and sentenced to administrative detention.

32. In preparation for the rally, police cordoned off the area and allegedly shut down internet access. The subway stations near the site were also closed down, preventing people from joining the peaceful demonstration.¹¹

33. Authorities dispersed demonstrations shortly after they began using excessive and disproportionate force against protesters, despite the fact that they had been intended to be peaceful and had been conducted in a peaceful manner. As a result of the ill treatment, some organizers and participants were injured. The head of the APFP Ali Karimli, was violently detained by police in riot gear as he attempted to join the protesters.¹²

34. Hundreds of protesters detained for participating in an unsanctioned opposition rally in the center of Baku. At least 35 APFP political activists were sentenced to up to 60 days in prison on false accusation. Many peaceful protesters were beaten by police and suffered various injuries, fractures and traumas. Ali Karimli, the leader of the APFP, was beaten by police in the detention center and suffered bruises on his head, face and neck. Tofiq Yaqublu, a member of the Musavat party, was allegedly tortured in custody after he was detained at the protest.¹³

35. REAL Chairman I. Mammadov, chairman of the D18 movement R. Izzetli and a group of independent candidates were prevented from holding a rally in front of the Central Election Commission on February 16, alleging violations during early parliamentary elections on February 9, 2020 . Disagreeing with the decision of the BCEP to hold a rally in Lokbatan settlement, located 20 km from the city the organizers of the meeting tried to hold a rally. On the eve of the rally, the organizers, the chairman of REAL I. Mammadov, chairman of the D18 movement I. Ruslanli, Musavat leader A. Hajili and others were detained by police.¹⁴ Overall, more than 100 people were reported to be detained during the rally.¹⁵

¹¹ <https://www.youtube.com/watch?v=Qga-VIIzy0U>

¹² <https://www.youtube.com/watch?v=Y1XeySpB0Pk>

¹³ Information from deputy chairman of PFFA Seymour

¹⁴ <https://www.bbc.com/azeri/azerbaijan-51493073>

¹⁵ <https://www.youtube.com/watch?v=Q5YtMgZtDaw>

36. Authorities did not interfere with the unsanctioned peaceful march in Baku on 14-15 July 2020 against the Armenian military forces attack on Azerbaijani territories in direction of Tovuz region of the Azerbaijani-Armenian state border. However, during the night, a group of people broke into the building of the Parliament and damaged several police cars. Based on this, the government began persecution against the APFP, which it considered its main political opponent. According to the party, although only a few members of the party took part in the rally, there is no evidence proving their involvement in breaking into the parliament or damaging police cars. More than 50 party members were arrested, most of whom had not attended the rally at all. Criminal case launched against against 17 members of the party.

3. Decisions of the European Court of Human Rights on the violation of freedom of assembly

37. ECHR adopted 21 decisions recognizing violations of freedom of assembly in Azerbaijan in 2016-2019. These decisions related to the violations towards the participants during the gatherings in 2010-2014 are as follows:

#	Title of the Cases	Date
1	CASE OF HUSEYNLI AND OTHERS V. AZERBAIJAN	11 February 2016
2	CASE OF IBRAHIMOV AND OTHERS V. AZERBAIJAN	11 February 2016
3	CASE OF AHAD MAMMADLI V. AZERBAIJAN	16 June 2016
4	CASE OF HAJIBEYLI AND OTHERS V. AZERBAIJAN	30 June 2016
5	CASE OF HUSEYNOV AND OTHERS V. AZERBAIJAN	24 November 2016
6	CASE OF BAYRAM BAYRAMOV AND OTHERS v. AZERBAIJAN	16 February 2017
7	CASE OF MAHAMMAD MAJIDLI v. AZERBAIJAN	16 February 2017
8	CASE OF BAYRAMLI v. AZERBAIJAN	16 February 2017
9	CASE OF ABBASLI v. AZERBAIJAN	16 February 2017
10	CASE OF JAMIL HAJIYEV v. AZERBAIJAN	16 February 2017
11	CASE OF BABAK HASANOV v. AZERBAIJAN	16 February 2017

12	CASE OF BAYRAMOV v. AZERBAIJAN	6 April 2017
13	CASE OF MEHTIYEV AND OTHERS v. AZERBAIJAN	6 April 2017
14	CASE OF KHALILOVA AND AYYUBZADE v. AZERBAIJAN	6 April 2017
15	CASE OF HAJILI AND OTHERS v. AZERBAIJAN	29 June 2017
16	CASE OF ABBAS AND OTHERS v. AZERBAIJAN	13 July 2017
17	CASE OF ALISOY AND OTHERS v. AZERBAIJAN	13 July 2017
18	CASE OF BABAYEV AND HASANOV v. AZERBAIJAN	20 July 2017
19	CASE OF MIRZAYEV AND OTHERS v. AZERBAIJAN	20 July 2017
20	CASE OF TURAL HAJIBEYLI v. AZERBAIJAN	28 September 2017
21	CASE OF MAJIDLI AND OTHERS v. AZERBAIJAN	26 September 2019

4. Recommendations:

38. Part VI of Article 9 of the Law on Freedom of Assembly, which prescribes allocation of special venue for rallies, should be removed;

39. To ensure meetings in places other than those prohibited by Part 3 of Article 9 of the Law on Freedom of Assembly;

40. Sanctions for violations of the rules of organization and conduct of meetings should be relieved and adapted to the nature of the act;

41. Put an end to the practice of misinterpretation, notification on meeting as the consent for the meeting;

42. Officials who punish, arrest and instruct inadequate use of force against participants of peaceful assembly, especially during unsanctioned opposition rallies on 19 October 2019 and rallies on 14-15 July 2020, should be held liability;

43. Awareness should also be raised among the public and officials and the significance of freedom of assembly should be promoted;

44. The implementation of the decisions and judgments of ECHR and other international documents should be provided.

ARTICLE 22. RIGHT TO FREEDOM OF ASSOCIATION

1. Background information

45. The constitution defines freedom of association, but the law places some restrictions on this right, and amendments enacted during 2013-2014 severely constrained NGO activities. These restrictions mainly consisted of the following:

- ✓ *Each grant agreement, additions and amendments to the grant agreement, as well as subgrants envisaged in the grant agreement must be registered;*
- ✓ *Contracts for services provided by NGOs with funds received from external sources should be registered;*
- ✓ *Donations over 200 (two hundred) manats must be made by bank transfer and information about donors and the amount of received donations must be submitted to the Ministry of Justice as prescribed;*
- ✓ *In order to conduct banking operations on grants and donations, a notification confirming their registration must be submitted;*
- ✓ *Only foreign and international organizations operating and registered in the country can act as donors;*
- ✓ *The MoJ has been given broad discretionary authorities to interfere with the activities of NGOs under the guise of studying the compliance of the activities of non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations with their charters and legislation of the Republic of Azerbaijan;*
- ✓ *All activities of NGOs are sanctioned with very high fines.*

46. The opinion adopted by the VC dated December 15, 2014 on amendments to the Law on NGOs adopted in 2013 and 2014 stated that “Like the Council of Europe Commissioner on Human Rights has, the Venice Commission finds that the amendments, in an overall assessment, “further restrict the operations of NGOs in Azerbaijan”¹⁶.

47. The amendments to the NGO legislation have been accompanied by the Government’s harsh crackdown on NGOs. The Government started a strong smear campaign against NGO’s. They were publicly called “turncoats”, “traitors of the country”, “bribe takers”, and etc. At the end of 2013, in the framework of a criminal case launched against NGOs by the Prosecutor-General of the Republic of Azerbaijan, tens of NGO’s were brought to an account. Bank accounts of NGO’s were seized and they underwent a tax inspection. Some NGO members who faced a threat of detention had to leave the country. At the same time the heads of independent NGO’s are scrutinized on the border while coming to or leaving the country. Because of such harassment, well-known human rights NGOs have been forced to stop their activities or move their operations into exile. Several international NGOs and donor organizations previously operating in Azerbaijan have also had their accounts frozen as part of spurious criminal investigations and have been forced to close their offices in country.

48. Starting from 2016 the government has weakened its grip on NGOs. In early 2016 the detained NGO representatives were released. In April 2016, the Prosecutor’s Office suspended the sweeping criminal investigation opened in 2014 against dozens of foreign donors and their grantees. At the same time the seizure on bank accounts of many organizations was lifted, tax inspections were abrogated, travel bans were lifted, and intrusive screenings at the Azerbaijani

¹⁶ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)043-e), page 20, clause 93

borders stopped. In October 2016, President signed a decree to simplify the registration of foreign grants through a “single window”.

49. These initiatives, presented by the authorities as positive developments, have not significantly affected the situation of NGOs.

50. After visiting the country in February 2017, the United Nations Special Rapporteur on the situation of human rights defenders reported that “I have been struck to observe the drastic impediments to the right to freedom of association, caused by the 2013-2015 legislative amendments to laws regulating civil society operations. The already challenging environment for NGOs has turned into a total crisis.”¹⁷

51. The plight of CSOs is reflected in USAID's CSO assessment index. Over total 7 points, Azerbaijan's score was 4.7 in 2013¹⁸, 5.9 in 2016¹⁹, 6.0 in 2017²⁰, 5.9 in 2018²¹ and 2019 years. According to this index, Azerbaijan ranks last in Eastern Europe and the former Soviet Union.

2. Registration of NGOs

52. One of the most serious problems hampering development of NGOs in the country is related to their registration. The law does not prohibit the activities of unregistered NGOs, but they may not participate in grant competitions or conduct financial transactions with such a status. Laws regulating the procedure of registration of NGOs and registration practise have an ambiguous and restricting nature and it negatively impacts the process of state registration of NGOs. The most serious problems are related to the length of the registration procedure, vagueness of the reasons for denying registration and possibility of applying the law according to the subjective discretion of state authorities. In contrast to commercial organizations, the procedure of registration of NGOs is very complicated and cumbersome. Thus, commercial entities are registered within 3 days according to the single-window principle, whereas NGOs are required to submit numerous documents for registration. Although the law requires the government to act on NGO registration applications within 30 days of receipt (or within an additional 30 days, if further investigation is required), vague, onerous, and non-transparent registration procedures continued to result in long delays that limited citizens' right to associate.

53. Registration agency often takes a subjective approach based on the mission of an organization or its founders. Officials regularly add new administrative requirements after multiple rounds of review of applications, delaying registration for months or even years.

17

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E>

18

<https://www.usaid.gov/sites/default/files/documents/1863/E%26E%202013%20CSOSI%20Final%2010-29-14.pdf>

¹⁹ https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf

²⁰ <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-regional-report.PDF>

²¹ <https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2018-report-europe-eurasia.pdf>

54. The above problems are commonly faced by NGOs active in the field of protection of human rights and promotion of democracy, which are established by independent people and do not provide support letters from the relevant state authorities. Lack of judicial independence makes it impossible to use the legal mechanisms to solve the problems of registration. In many cases NGOs apply to national court merely with the purpose of exhaustion of national remedies before applying to the European Court on Human Rights.

55. Meanwhile, NGOs that are supported by authority are generally able to register more quickly. Although there is information about 140-160 NGO registrations per year, it is not possible to identify these organizations since the information lack publicity. According to official data, in 2019, the registration of non-profit organizations increased by 19.5%.²² Lack of transparency and honesty makes it difficult to obtain accurate information on the number of registered NGOs. Minister of Justice F. Mammadov said that in 2016 there were 4300²³ non-profit organizations, while in 2017 there were 4,180.²⁴

56. According to MoJ, there were 169 registered NGO branches in 2018 while in 2019, one foreign NGO branch and 109 local NGOs, which makes totally more than 4,500 registered NGOs.

57. Current registration practices, including the tightening of legislation in 2013-2014, have significantly shaken citizens' interest in forming or joining associations. In recent years, there have been almost no reports of initiatives to create new independent NGOs.

58. Pursuant to a law foreign NGOs wishing to operate in the country to sign an agreement and register with the Ministry of Justice. They are not allowed to operate in Azerbaijan without state registration, the process of which also allows for a high level of government discretion and arbitrary denials. Foreign NGOs wishing to register a branch in the country are required to demonstrate they support “the Azerbaijani people’s national and cultural values” and commit not to be involved in religious and political propaganda. The regulation does not specify any time limit for the registration procedure and effectively allows for unlimited discretion of the government to decide whether to register a foreign NGO.

59. Registration rules require a legal representative of a foreign branch or representative office of a foreign non-governmental organization, a foreigner or a stateless person to have the right of permanent residence. Also, according to the legislation, the deputy heads of branches and representative offices of foreign non-governmental organizations must be citizens of the Republic of Azerbaijan. In consequence of all these restrictions, the number of foreign NGOs in the country has significantly decreased. There is no information on foreign NGOs registered in Azerbaijan in 2016-2019 years.

22

http://www.qht.az/index.php?action=static_detail&static_id=37151&fbclid=IwAR2eIxPYEwPawlr2VKc_Y2t2MY1CeVQrm6uTcqwpr1CmjcNNCyQQk-FICdk

²³ <https://novator.az/2017/02/01/qht-l%C9%99rin-sayi-4300-u-kiv-l%C9%99rin-sayi-5100-u-otub/>

²⁴ <https://report.az/media/azerbaycanda-dovlet-qeydiyyatina-alinmis-kutlevi-informasiya-vasitelerinin-sayi-5200-e-catib/>

3. Access to foreign finance

60. Although the legislation envisages various sources of funding for NGOs, in practice grants are the main source of funding. Legislative changes in two directions significantly limited NGOs' access to foreign finance. New amendments to legislation require donors to undergo a multi-tier system of approval, including registering their branches or offices in Azerbaijan, signing an agreement with the MoJ. Other amendments require NGOs to register domestic and foreign grants, domestic and foreign donations, and foreign service contracts with the MoJ and receiving approval for each grant from the MoF.

61. In January 11, 2017 the CoM adopted amendments to the rules on the registration of foreign grants for the purpose of establishing a “single window” mechanism to streamline the grant registration process. According to the new procedures, obtaining grant registration processes for multiple agencies were merged and shortened the period of registration. At the same time, the changes approved in January 2017, allow grant contracts to be registered as service contracts which has a less cumbersome registration procedure. The CoM also approved the changes to the so-called ‘donor registration rules’ on 27 January 2017. The changes simplified the procedure of donor registration by reducing the list of required documents and the timeframe for their consideration.

62. But the changes were minor and did not motivate any foreign donors to apply for registration. The revisions did not eliminate the authorities' discretion to arbitrarily deny grant registration or the entrenched legal barriers to NGOs' operations. Changes made to the above mentioned regulations do not address the legal requirement for NGOs to register grants, do not eliminate the requirement for the MoF to provide an opinion on the expediency of each grant from a foreign donor, and the multi-step complex registration procedure for grants and foreign donors remains in place.

63. The changes to legislation has seriously affected the access to finance of NGOs. The departure of foreign donors and a ban on receiving grants from overseas have reduced the flow of funding to independent NGOs. Many well-known NGOs, which were left without funding and faced persecution, were forced to suspend their activities. Some organizations preferred to maintain their existence by adapting their activities to the new government’s policy.

64. Since 2017, there has been a softening of the government's policy on the registration of grant agreements. Some unregistered grant agreements concluded with foreign embassies and international organizations in the country prior to the change in the legislation as well as new grant agreements were registered.

65. The main source of funding for the vast majority of NGOs is grants from the state budget. Although the amount of these funds is not large, they are able to maintain their existence on this source. Grants for NGOs from the state budget are provided mainly through the CSSN under the President. With the support of this institution in 2017, 487 NGO projects were supported in two grant competitions with a total value of 3,049,900 AZN (approximately 1.6 million EUR) in financing. In 2018, 576 projects were supported in two grant competitions with a total of 3,999,105 AZN (approximately 2.1 million EUR) in financing. The average size of a grant is 3000-10,000 AZN (approximately 1,500-5,000 EUR) per project. Rarely, these grants are for institutional support.²⁵

²⁵<https://csometer.info/wp-content/uploads/2019/12/CSO-Meter-Country-Report-Azerbaijan-ENG-AZE.pdf> page 33

66. The lack of official records on the amount of funds received from foreign grants registered in recent years does not allow a clear idea of the share of foreign funding in the budgets of NGOs. However, the involvement of a very small number of NGOs in these projects and media reports suggest that foreign grants are much lower than in 2013.

67. According to NGOs, the allocated funds are not able to accommodate the needs of more than 4,400 registered NGOs. For comparison, in 2010, when there were about 2,500 NGOs, the budget of NGOs amounted to 30 million (about 37 million US dollars), of which only two million manat was provided through the. CSSN²⁶

4. State control over NGOs

68. NGOs are not able to freely organize and conduct events. Private organizations are unofficially prohibited from providing space to NGOs for events, and all events are held in state-controlled areas. All trainings / seminars held in the regions are required to be coordinated with government agencies. It is impossible to carry out activities without complying with these unlawful requirements.

69. State bodies have broad authorities to interfere and monitor the NGO activities. Any time the MoJ may examine all the activities of NGOs under the guise of studying their activities, send the study results to criminal prosecution bodies, suspend NGOs activities for up to one year, issue a warning, and apply to the court for liquidation after two warnings a year. NGOs must register any changes to their constituent documents, and, like other legal entities, submit quarterly and annual reports to the Tax, Social Protection and Statistics bodies, as well as annual reports to the MoF.

70. The legislation envisages numerous requirements incoherent with the scope of NGO management and severe sanctions for non-compliance to them. These requirements demand high professionalism, attention and responsibility from NGOs. Poor skills and resources pose significant risks to NGOs.

Legal liability and requirements for NGOs

	Liability requirements	Envisaged liability measures
1	Conducting any activity on changes that did not go through state registration as well as subsequent changes to the previously registered facts	Official are fined from 1000 to 2000 AZN, legal entities are fined from 2500 to 3000 AZN.
2	To conduct registry of its members by public association;	
3	To direct the income from entrepreneurial activity to organizational purposes	
4	To sign contracts with volunteers	
5	Conducting activity contrary to aims in the charter;	
6	Creating obstacles for studying by Ministry of Justice the compliance of NGO including failure to reply to questionnaires, failure to	Official are fined from 1000 to 2000 AZN, legal entities are fined from 2500 to 3000 AZN.

²⁶ <https://az.trend.az/azerbaijan/society/1865723.html>

	present required documents and information, and providing false information;	
7	To timely eliminate the deficiencies identified by the relevant state body in the warning or instruction to them;	Official are fined from 1000 to 2000 AZN, legal entities are fined from 2500 to 3000 AZN.
8	Operation of branch or representation of a foreign NGO without state registration	Individuals are fined from 1000 to 2000 AZN Official are fined from 2000 to 3000 AZN, legal entities are fined from 5000 to 8000 AZN.
9	Failure to submit grant contracts and decision for registration to the Ministry of Justice within the periods stipulated by the legislation	Individuals are fined from 1000 to 2000 AZN Official are fined from 1500 to 2500 AZN, legal entities are fined from 5000 to 7000 AZN.
10	Conducting bank and any other operations under contracts (decisions) on the receiving (issuing) a grant, that are not registered.	Officials are fined from 2500 to 5000 AZN, legal entities are fined from 5000 to 8000 AZN.
11	Failure to include information about donor and amount of donations in the annual financial report.	Officials are fined from 1500 to 3000 AZN, legal entities are fined from 5000 to 8000 AZN
12	Accepting of donated money in cash.	Officials are fined from 1000 to 2000 AZN, legal entities are fined from 7000 to 10000 AZN
13	In cases when the law does not define liability for violation of the requirements of the legislation of the Republic of Azerbaijan, as well as the provisions of the charter	NGO, including a representative or affiliate office of a foreign NGO is issued a written warning and instructed to eliminate the deficiency within 30 days.
14	Non-governmental organization, as well as a branch or representative office of a foreign non-governmental organization; 1) obstruction of the elimination of the circumstances that led to the application of the state of emergency; 2) failure to eliminate the violations reported by the relevant executive authority after the organization has been held administratively liable for non-elimination within the specified period; 3) violation of the rights of the members of the non-governmental organization by its executive body	NGO or a representative or affiliate office of a foreign NGO can be suspended for a year by the court decision.
15	Issuance of more than two written warnings or instructions to a non-governmental organization, as well as a branch or representative office of a foreign non-	NGO or a representative or affiliate office of a foreign NGO can be dissolved by the court decision at the appeal of the relevant executive authority.

	governmental organization within a year on elimination of violations	
16	Failure of NGOs to submit annual financial reports in time defined by law	The relevant executive authority issues a written warning to that organization, and instruct it to submit the the relevant report within 30 days. If NGO does not submit the report within this period it shall be liable due to the Code on Administrative Offenses of the Republic of Azerbaijan

71. High state control over NGOs seriously threatens their independent activities. Although sanctions are not imposed in practice for these procedures defined by law, it forces NGOs to refrain from self-censorship and criticism.

5. Recommendations:

72. to simplify the procedure of registration of NGOs and to streamline the legislation in accordance with the procedure of registration of commercial entities;

73. to annul a provision requiring foreign donor organizations to obtain the right to give grants;

74. to annul the requirement of registration of grants, donations and service contracts concluded with foreign donor organizations;

75. to annul the requirements of the law which enable the Government to oversee all work of NGOs under the pretext of familiarization with activities of NGOs;

76. to decrease the scope of sanctions against NGOs and to make the sanctions adequate to the nature of a wrongdoing and its gravity;

77. to provide a free ground of activity for NGOs;

78. to simplify NGO management and free it from additional administrative burdens;

79. to relieve the sanctions for violations of NGO legislation and adapt to the nature of violations.

ARTICLE 25. RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

1. 2018 Presidential election

80. The president of the country have appointed the presidential elections to the 6 month earlier date that should have been held in October 2018 on the basis of the authority to appoint the early presidential elections, which he obtained with the referendum of 26 September 2016.

81. Appointment of early elections was unexpected and has not been unambiguously welcomed in the socio-political sphere of the country. There were different views on the legitimacy and the outcomes of this decision because the order did not specify the grounds for early elections. The complicated situation was related to the content of the amendments made to the Constitution with a referendum on September 26, 2016, which authorized the president to appoint early elections.

82. Thus, there are no provisions in the Constitution on the reasons and situations for holding early presidential elections.

83. The main opposition parties of the country criticized and protested against the appointment of early elections. They connected it with the possibility of deepening the economic crisis in the country by the end of the year and the desire of the authorities not to give enough time to the opposition to prepare for the elections. Oppositions had a negative attitude towards call for early elections. On his interview with VOA, the chairman of the NCDF, Jamil Hasanli, described the call for early presidential elections as an attempt to retain power. Isa Gambar, head of the National Strategic Thinking Center, said the decision was based on the government's awareness of the difficult situation. Arif Hajili, the leader of the Musavat party, said that the decision also meant to deprive the oppositions of the time they needed to prepare for the presidential election and to not give enough time to prepare. Chairman of the APFP A. Karimli related the rescheduling to the desire to prevent opposition's protests and demands for transparent and democratic elections.²⁷

84. It was stated in the preliminary opinion of the OSCE election observation mission that *“The 11 April 2018 early presidential election in the Republic of Azerbaijan took place within a restrictive political environment and under a legal framework that curtails fundamental rights and freedoms, which are pre-requisites for genuine democratic elections. Against this background and in the absence of pluralism, including in the media, this election lacked genuine competition.”*²⁸

85. The Election Code of 2003, which is the fundamental electoral law, has been subject to multiple restrictions. The vast majority of recommendations by OSCE / ODIHR and VC on improving election legislation have not been taken into consideration.²⁹ The recommendations that have been taken into account were often of a technical nature. Problems in the field of organization of election commissions, registration of candidates, campaign period, financial deposit for candidate registration, voters' list and investigation of complaints, which are the most serious problems of election practice in the country, have not been solved. The latest OSCE / ODIHR recommendations of 2013³⁰ were ignored during the amendments made to the Election Code on 15 December, 2017 and were limited to technical improvements as before.³¹

86. Opposition forces such as APFP, NCDF, “Musavat” Party, “Umid” Party, Classic Popular Front Party, REAL, NIDA and Azerbaijan Democracy and Welfare Movement decided not to participate in the elections and announced their decision to boycott the elections.

²⁷ <https://www.amerikaninsesi.org/a/siyasi/4239198.html>

²⁸ Statement of preliminary findings and conclusions

<https://www.osce.org/odihr/elections/azerbaijan/377617?download=true>

²⁹ Joint Recommendations of the electoral law and the electoral administration in Azerbaijan

<https://goo.gl/HVDA1s> 2) Final opinion on the amendments to the Election Code of the Republic of Azerbaijan: <https://goo.gl/YBLtsR>

3) Joint opinion on the draft law on amendments and changes to the electoral code of the Republic of Azerbaijan: <https://goo.gl/jQgMzL>

³⁰ OSCE/ODIHR Election Observation Mission Final Report, Presidential elections 9 october, 2013 <https://goo.gl/yjjueG>

³¹ For the Law on Amendments to the Election Code of the Republic of Azerbaijan, see: <http://eqanun.az/framework/37546>

87. The CEC confirmed candidacy of 15 people of whom only 10 of the candidates submitted to the CEC their signature sheets and other documents, required for the candidate's registration. 8 candidates were registered as a result of the process who are openly supporting the government or loyal to it, have also been nominated for the previous elections and have recognized I.Aliyev's victory.³²

88. In its Final Report ODIHR Election Observation Mission stated that “While election day was conducted in a quiet environment, it was characterized by a widespread disregard for mandatory procedures, numerous instances of serious irregularities, lack of transparency, and cases of hindrance to the work of observers. IEOM observers assessed voting negatively in 12 per cent of polling stations observed and reported numerous serious violations, including indications of ballot box stuffing, multiple voting, and series of seemingly identical signatures. Procedures related to inking, a key safeguard against multiple voting, were frequently disregarded. IEOM observers assessed negatively more than half of the vote counts they observed, largely due to an obvious disregard for prescribed procedures or deliberate falsifications, including of results. Tabulation at ConEC level was assessed largely positively, although again, procedures were frequently not followed.”³³

2. Parliamentary election 2020

89. The next parliamentary elections were scheduled on November 2020. However, the President of the Republic of Azerbaijan signed an order to hold early parliamentary elections, using the powers granted to him by the 2016 constitutional amendment, as he did in 2018. On 5 December 2019, following the appeal of the parliament, and with the consent of the Constitutional Court, the president dissolved the parliament and set early parliamentary elections to be held on 9 February 2020.³⁴ In its appeal to the president, parliament justified the call for early elections by the need to harmonize legislative work with the pace of economic, judicial and social reforms set by the president.

90. The elections were held in a difficult political environment where human rights and freedoms were extensively violated in the country. It was stated in the report of the OSCE election observation mission that “While the authorities stated to the IEOM that there is a political will to organize elections in a free and fair atmosphere, many IEOM interlocutors have expressed serious concerns regarding respect of fundamental rights and freedoms in Azerbaijan. Reports of systematic harassment and criminal prosecution of some of those who express views that are critical of the government raised serious concerns. Some opposition parties, including those gathered around the NCDF, boycotted the elections due to the restrictive environment, in particular related to access to media, and restrictions on freedom of assembly during the campaign. The last authorized political rally was held in Baku in January 2019. On the event of the unauthorized rally of the opposition on 19 October 2019 in Baku, authorities used physical force to disperse it, arresting many activists and opposition leaders.”³⁵ The Azerbaijan

³² <http://seckiler.az/wp-content/uploads/2019/02/DLPU-Final-Report-on-Election-Observation-11-April-2018-AR-Early-Presidential-Election.pdf>, page 16

³³ <https://www.osce.org/odihr/elections/azerbaijan/388580?download=true>

³⁴ <https://president.az/articles/35112>

³⁵ <https://www.osce.org/odihr/elections/azerbaijan/445759?download=true>

Democracy and Welfare Movement and the Classic Popular Front Party has also announced their refusal to run in the elections.

91. The Central Election Commission has confirmed the nomination of 2,358 people. Of these, 2,247 received signature sheets, and 1,774 collected signs and returned with the necessary documents. In the end, 1,560 candidates were registered³⁶. 313 people withdrew their nominations within a very short period of time until February 1, after January 17, when the registration of the candidacy ends.³⁷ Totally 1,314 candidates contested the elections.

92. The pre-election campaign begins 23 days before the voting day and ends 24 hours before the start of voting. As a result of amendments to the Election Code in 2008 and 2010, the reduction of campaign period from 60 days to 23 days before the election, and the ban on campaign opportunities on state television and radio significantly limited the opportunities for campaigning. Reduction of the election period has created serious obstacles to the pre-election campaign, using the legal means available. The lack of favorable conditions for campaigning has led to a dysfunctional campaign period.

93. The cost of mass media was also not available to most candidates willing to participate in paid campaigns. The cost of 5 minutes of airtime for the campaign on Public TV was set between 6600-19500 AZN (\$ 3880 -11470) or 22-65 AZN / 13 \$ -38 \$ per second, depending on the time of broadcasting.

94. The CEC has designated a list of only 272 places (136 outdoor and 136 indoor) in each constituency, with one open and one closed for each constituency, during the pre-election campaign for candidates to meet with voters and to hold meetings. Most of the locations and distances were not suitable for holding meetings with voters.

95. ODIHR Election Monitoring Mission stated that on election day, voting was assessed negatively in 7 per cent of polling stations observed, a statistically high figure which is indicative of serious procedural shortcomings. Mandatory inking of voters was often omitted and observers reported cases of ballot box stuffing and group voting. The vote count was assessed negatively in more than half of the reports, mostly due to a blatant disregard of important reconciliation procedures and limited transparency. PECs often did not conduct numerical cross checks, did not count the signatures on the voter lists and did not record figures prior to the opening of ballot boxes. Tabulation was assessed negatively in 22 of 109 ConECs observed, mainly due to the poor organization of the process and lack of understanding of the procedures by ConEC members. Candidate and party observers as well as citizen observers were present at polling stations throughout the day in significant numbers, but often faced impediments.³⁸

3. Recommendations:

³⁶<https://report.az/siyasi-xeberler/daxili-siyaset/msk-1560-neferin-deputatliga-namizedliyi-qeyde-alinib/>

³⁷ https://apa.az/az/daxili_siyaset/Deputatliga-namizdliyini-geri-goturnlrin-sayi-313-nfr-catib-570005

³⁸ <https://www.osce.org/odihr/elections/azerbaijan/445759?download=true>

96. The major electoral reforms proposed in the previous elections should be reflected in the legislation, particularly the rules for forming election commissions should be revised. Effective representation of election commissions with the participation of all stakeholders and the organization rules ensuring professional, impartial and transparent activity without dependence on political will, should be determined. Also, measures should be taken to increase the transparency of the process of determining the composition of the lower election commissions.

97. Effective measures should be taken to protect human rights, the legal basis on the use of rights of expression, assembly and association should be improved, persecutions based on public-political activity and expression of thought should be stopped;

98. Rules for announcing early elections, should consider reasonable time allowing for technical preparation of the elections, for all interested parties who want to participate in the elections. The legal-political conditions and the grounds, necessary to determine early elections should be clearly defined in the legislation;

99. Political authorities should create conditions for the free and equal representation of all political opponents in state and local government;

100. The implementation of existing legal provisions on candidate nomination and registration should be improved by increasing the transparency of verification rules and procedures, by inviting prospective candidates and their authorized representatives to be present during the verification process, by offering timely information to candidates about the results of the verification and about possible deficiencies in their documentation, and by providing a genuine opportunity to correct them.

101. The pre-election campaign period should be prolonged for ensuring sufficient opportunity to consider enough period for pre-election campaign of candidates, and in inter-election and pre-election campaign period accessibility of the media to all political groups should be improved.

102. Restrictive measures (for example practices that are not envisaged by law, such as determining the list of meeting places) applied by the CEC for the conduct of pre-election campaigns through mass actions should be abandoned. Candidates should be able to meet with their voters in the appropriate place they want. Also, free airtime allocated to candidates should be available to them as they wish.

103. Measures should be taken to ensure genuine and unhindered access of citizen and observers to the entire electoral process, especially free and unhindered movement within polling station and tabulation premises during voting, counting, and tabulation processes. Serious violations of election-day procedures, including cases of ballot-box stuffing and multiple voting, should immediately be investigated as these practices undermine the integrity of electoral processes. Perpetrators, including election commission members who participate in or tolerate such practices, should be prosecuted in accordance with the law.

ARTICLE 26. RIGHT TO EQUALITY BEFORE THE LAW

1. Legal framework

104. Equality and non-discrimination before the law are envisaged in various legislative acts.

105. Article 25 of the Constitution prohibits all forms of discrimination and defines equality for everyone before the law without any discrimination. Article 16 of the Labor Code³⁹ defines the impermissibility of discrimination in employment. Also, article 3 of the Law on Education stipulates that one of the key principles of the national policy on education is creating equal opportunities for all citizens to receive education and providing for the right to education for them. Law of the Republic of Azerbaijan about providing gender (men's and women's) equalities ensures gender equality by eliminating all forms of discrimination on sex. The Law on Non-Governmental Organizations (public unions and foundations) states that access to non-governmental organizations should be open to men and women on equal terms and equal opportunities.

106. Violation of the right to equality and discrimination in the legislation exists in the Labor Code in relation to women. Although Article 16 of the Code provides for impermissibility of discrimination in employment, Article 241 prohibits the use of work of women in certain areas. Based on the requirements of this article, application of work of women is forbidden in Azerbaijan in 678 jobs in 38 areas included in the “List of productions, professions (positions), and also underground works with heavy and harmful working conditions on which application of work of women is forbidden”⁴⁰ approved by the decision of the CoM dated October 20, 1999.

2. Institutional capacity for effective legal protection

107. Azerbaijan does not have the institutional framework to ensure the effective protection of the rights without discrimination for everyone, especially for political activists. According to the amendment to the legislation made on October 31, 2017⁴¹, non-members of the ABA are prohibited from acting as representatives in court.⁴² According to unofficial data, before this amendment to the legislation, about 8,000 people used to act as representatives.⁴³ With the restriction of the institution of representation, the number of human rights defenders has declined sharply and the protection of rights has been at a significant risk.

108. Legal aid in the country is provided by the ABA, which has a non-governmental, independent, self-governing status and includes all the lawyers. According to the data of December 2019, the Bar Association of more than 1,700 members⁴⁴ has 48 branches in Baku and 33 in the regions where 2/3 of the country's population lives.

³⁹ During hiring or a change in or termination of employment no discrimination among employees shall be permitted on the basis of citizenship, sex, race, nationality, language, place of residence,

⁴⁰ <http://www.e-qanun.az/framework/3085>

⁴¹ <http://e-qanun.az/framework/36866>

⁴² The exception is a close relative of an individual and an authorized representative of the legal entity.

⁴³ <https://modern.az/az/news/147643>

⁴⁴ https://azertag.az/xeber/Azerbaycanda_ilk_defe_vekillerin_sayi_1700_u_kechib-1374807

109. To become a lawyer, you are required to pass a qualifying exam which consists of written test and an oral interview. There are allegations that a large number of candidates were not able to be admitted to the bar on political grounds.

110. The monopolistic position of the ABA in the legal assistance service has turned it into a baton of the state against its political rivals. According to the independent experts, the government intends to weaken the effective protection of those accused in political affiliation by punishing or otherwise expelling independent lawyers from the Bar: “..These cases are an attack on independent lawyers by government's political order and intends to weaken an effective defense for political activists, including detainees. The ABA is the main executive tool of this policy.”⁴⁵

111. The expulsion of human rights defenders from the ABA is quite common in the practice of this body.⁴⁶ Since 2016, this negative practice has become more intense and has resulted in the following lawyers being punished:

1. Fakhraddin Mehdiyev

2. Asabali Mustafayev

3. Nemat Kerimli

4. Irada Javadova

5. Elchin Sadigov

6. Yalchin Imanov

7. Aqil Layic

8. Shahla Humatova

112. It was stated Human Rights House's appeal to the ABA President dated December 8, 2019, demanding to cease repression against human rights defenders, “*Our organisations remain deeply concerned about the recent actions by the Azerbaijani Bar Association to disbar, or investigate disbarment possibilities against, these lawyers. This is an on-going campaign to attack them and other human rights lawyers and prevent them from doing their important work.*”⁴⁷

⁴⁵ <https://www.humanrightsclub.net/x%C9%99b%C9%99r%C9%99r/2019/1499/>

⁴⁶ In 2005, two prominent human rights lawyers Intigam Aliyev and Annagi Hajibeyli were denied re-admission to the Bar Association which was reorganised in 1999. In 2005 and 2006 Namizad Safarov, Hidayat Suleymanov and Latifa Aliyeva were disbarred. In 2011 Osman Kazimov and Elchin Namazov, in 2014 Khalid Bagirov and in 2015 Alaif Hasanov were disbarred.

⁴⁷ <https://humanrightshouse.org/letters-of-concern/azerbajjani-bar-association-must-halt-reprisals-against-human-rights-lawyers/>

3. Recommendations:

113. A separate law banning discrimination should be adopted in Azerbaijan;

114. To annul the decision of the Cabinet of Ministers dated October 20, 1999, restricting women's access to the labor market;

115. To make changes in the legislation on establishment of the Alternative Bar Association to liberate the advocacy from the state monopoly;

116. To cancel the oral interview, which gives scene for subjective interference in the admission to the Bar Association;

117. To put an end to the practice of expelling lawyers from the Bar for political reasons and reinstate the expelled lawyers to the Bar;

118. To refrain from the practice of persecuting people for their political views and guarantee their right to quality legal assistance recognized by the Constitution.