

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

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Key facts	1
Opening remarks by the delegation	1
Overview of key issues	2
Freedom of expression	2
Treatment of persons deprived of liberty	3
Protection against arbitrary expulsion	5
Improvement of standard of living of internally displaced persons	5
Conclusions and next steps	6

Key facts¹

Ratification	Reservations	Party to Optional Protocols	Other core treaties ratified	Date of previous examination, submission of present report
1992		1 st OP (individual communications) – 2 nd OP (death penalty) -	ICCPR, ICESCR, CAT, CRC, CEDAW, CMW, CRPD, CERD, CRC-OP- AC, CRC-OP-SC, OP CAT	2001, 4 October 2007.

Opening remarks by the delegation

Mr Khalaf Khalafov, Deputy Minister for Foreign Affairs led the delegation of Azerbaijan. He was supported by a large delegation consisting of representatives of the Ministry of Internal Affairs, Ministry of National Security, Ministry of Justice, Ministry of Youth and Sport, Ministry of Labour and Social Protection, Ministry of Foreign Affairs, the Permanent Mission in Geneva, and others. Six of the 14-member delegation were Deputy Ministers of their Departments and three were representatives from the Permanent Mission.² Two

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Mr Oruj Zalov, Deputy Minister of Internal Affairs; Mr Ali Shafiyev, Deputy Minister of National Security; Mr Togrul Musayev, Deputy Minister of Justice; Mr Intigam Babayev, Deputy Minister for Youth and Sport; Mr Ilgar Rahimov, Deputy Minister of Labour and Social Protection of the Population of the Republic of Azerbaijan; Mr Ismayil Asadov, First Secretary of the Ministry for Foreign Affairs, Mr Murad Najafbeyli, Head of International Law and Treaties Department of the Ministry for Foreign Affairs;

were women. Mr Khalafov had already headed the delegation of Azerbaijan to the universal periodic review (UPR) of the Human Rights Council, under which the country was reviewed in February 2009.³

In his opening remarks, the head of the delegation highlighted the consultation of non-governmental organisations (NGOs) in the preparation of the State report. He updated the Committee on developments that had taken place since the submission of the report, for example constitutional reforms and the ratification of the Optional Protocol to the *Convention against Torture*. He provided responses to some, though not all, points raised on the list of issues. He emphasised measures to improve gender equality, reduce domestic violence, counter human trafficking and improve the penitentiary system. He also highlighted reform of the judicial system and measures to strengthen the functioning of the media. He concluded that the biggest problem facing Azerbaijan was the conflict with Armenia over Nagorny Karabakh.

Overview of key issues

The following overview addresses four of the Committee's concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year.⁴ Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

The delegation interacted in a cooperative manner with the Committee and almost all members took the floor. However, there was significant overlap among the responses provided by different members of the delegation, and repetition of information. It seemed that many responses were not to the satisfaction of Committee members. Several responses were also relatively lengthy, while not adding anything substantively new to the dialogue. Despite the comparatively low quality of the dialogue, it was necessary to hold an unanticipated third session during the afternoon of 21 July. At all times the delegation emphasised its willingness to engage in dialogue. However, one question, that of Ms Wedgwood concerning the ethnic composition of the delegation, encountered a direct refusal to answer, with Mr Khalafov claiming that there are no different ethnicities in Azerbaijan.

Freedom of expression

'The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Legislation on defamation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression. In this respect, the State party is urged to consider finding a balance between information on acts of so called "public figures", and the right of a democratic society to be informed on issues of public interest. The State party is also urged to effectively protect media workers against attempts on their integrity and life, and to pay special attention and react vigorously if such acts occur. The State party should not unreasonably restrain independent newspapers, as well as local broadcasting of radio stations. Finally, the State party should treat users of non-conventional media in strict compliance with article 19 of the Covenant.'

In his opening comments, Mr Khalafov addressed the issue of **independence of the media** and declared that the Government was taking measures to strengthen the media and ensure its independence. Such measures included reducing the tax burden, writing off debts, and providing financial assistance. However, Committee

Mr Elchin Amirbayov, Permanent Representative, Ambassador of the Republic of Azerbaijan to the United Nations Office and other international organisations in Geneva, Mr Habib Mikayilli, Third Secretary of the Permanent Mission, Ms Samira Safarova, Attache of the Permanent Mission; Mr Rustam Usubov, First Deputy of the General Prosecutor of the Republic of Azerbaijan Mr Chingiz Asgarov, Head of sector of Protection of Human Rights Issues of the Department on Work with the Law-Enforcement Bodies of Administration of the President of the Republic of Azerbaijan; Ms Sadaqat Qahramanova, Deputy Chair of the State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan.

³ See ISHR's report on the examination of Azerbaijan, available at <http://www.ishr.ch/content/view/404/511>.

⁴ Paragraph 22 of the concluding observations. <http://www.2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>.

member Mr Thelin, asserting that independence of the media is one of the fundamental pillars of democracy and the rule of law, expressed his concern at NGO and civil society reports about a lack of independence of the media in Azerbaijan. Ms Wedgwood also raised this issue and highlighted the fact that according to Freedom House, the press is 'not free'. She questioned the 'banning' of BBC, Voice of America and others from FM radio and raised the fact that during the 2008 presidential elections, the OSCE had labelled Azerbaijan as a 'restricted media environment'. Mr Khalafov clarified that foreign broadcasts such as the BBC are not in fact prohibited in Azerbaijan; rather they are not permitted on FM radio. He pointed out that people can access such broadcasts either through the internet or on shortwave radio and that the law had been subjected to analysis by the Council of Europe. He did not specify what the Council of Europe's findings were. The restrictive granting of broadcasting licences to foreign radio providers was also criticised repeatedly by the UPR Working Group.

Regarding the subject of **libel and defamation**, Mr Khalafov informed and Mr Usubov of the General Prosecutor's Office reiterated that a special working group comprised of judges, lawyers and legal experts was currently working on proposals to amend legislation. Mr Musayev of the Ministry of Justice elaborated that although the working group is considering the removal of the two relevant articles, this is not widely supported because of the perceived preventive effect of the law for the whole of society. However, he also remarked that only a small minority of cases are brought under the Criminal Code. Committee member Ms Motoc insisted that the two concerned articles run counter to freedom of expression and are not in conformity with Article 19 of the Covenant and she expressed an interest in knowing the number of prosecutions that have taken place for material published in the press. She also found a contradiction in the claim that society supported keeping the articles in the Criminal Code despite the fact that most cases are dealt with through the Civil Code. Mr Musayev highlighted the preventive effect of keeping the articles in the Criminal Code even if they were not applied and refuted the argument that it was contradictory to do so.

Mr Musayev and Mr Usubov, in response to Committee concerns about **violence against and imprisonment of journalists** conceded that journalists have been convicted. However, they claimed that convictions have not been due to their professional activities but rather based on 'hooliganism' and 'narcotics and other criminally-related charges'. Mr Musayev also reiterated the claim of the head of the delegation that a number of journalists have been released under amnesty acts. Ms Motoc and Sir Rodley queried why people seeking to exercise their right to freedom of expression were being imprisoned for hooliganism and Ms Wedgwood seemed unconvinced of the delegation's claims that journalists are being attacked because of having allegedly committed other crimes. She drew attention to the ranking of Azerbaijan as the 'fifth highest jailer of journalists' in the world and remarked that it is easy to pin a crime on someone. In a somewhat questionable remark she also warned that 'it is easy for Soviet times to return'. Sir Rodley, noting that there appears to be a large proportion of opposition journalists who become victims of ordinary crimes and are attacked on the streets, enquired of the delegation whether the same was true for mainstream, non-opposition journalists. Ms Wedgwood reminded the State Party of its obligation to protect all journalists from violence. Finally, Ms Motoc enquired how the safety of journalists could be improved and expressed concern at reports that law enforcement officials were committing these offences.

Mr Usubov from the General Prosecutor's Office provided details about the investigation into the killing of a newspaper editor in 2005 and insisted that a thorough inquiry was being conducted. This included the questioning of over six hundred witnesses and the sending of six extradition requests to Georgia, which have not been granted. He also cited the example of a journalist who had been beaten up for writing an article, claiming that the case was brought to court and the responsible person sentenced to several years of imprisonment.

Treatment of persons deprived of liberty

'The State party should establish without delay an independent body with authority to receive and investigate all complaints of use of force incompatible with the Code of Conduct for Law Enforcement Officials (General

Assembly Resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Firearms by Law Enforcement Officials (1990), and other abuses of power by law enforcement officials. The State party should ensure that all complaints relating to torture or ill-treatment are examined promptly and thoroughly and that the victims are compensated. Those responsible should be prosecuted and punished. The State party should ensure that all places of detention are subject to regular independent inspection. The State party should provide adequate training to its law enforcement and prison officials and ensure that the rights under the Covenant are fully protected. The introduction of a systematic use of audio and video equipment in police stations and detention facilities should also be seriously considered.'

In his opening statement, Mr Khalafov, explained that a **monitoring** inspectorate exists which provides for direct access to penitentiary institutions and meetings with convicts for the Ombudsman and other bodies. He highlighted the preventive nature of the Ombudsman established only in January 2009 by Presidential Decree, who can visit and monitor any prison without warning. He also elaborated on the monitoring function of the Public Committee (established by the Ministry of Justice), and reported that it had conducted 90 monitoring operations in 2008. Mr Amor asked several questions regarding monitoring visits such as whether such visits are carried out in the presence of prison officials, how prisoners are selected for meetings, if recommendations are made when violations are discovered, and whether a legal case could then be brought in addition to such recommendations. He enquired whether cases can be brought against prison officers, under which conditions NGOs are permitted to conduct prison visits, and whether there is a distinction between national and international NGOs. Mr Musayev reiterated that the Public Committee was set up by the Ministry of Justice to exercise control over the work of penitentiary institutions. He explained that reports are drawn up which consider proposals for reform, that there is an agreement with the ICRC providing unimpeded access for visits, and that prison officers can and have been punished. He said it is planned to set up special administrative courts to deal with complaints against officers. Mr Shafiyev, from the XXX, provided additional information on the right of the ICRC to visit remand cells and hold interviews. He claimed that these rights are unlimited in timing and number and that meetings could be held without restrictions. He said that the Ombudsman and the OSCE have also visited remand cells. Sir Rodley reminded the delegation that a lack of complaints was not conclusive evidence of a lack of cases of ill-treatment because it could be due to fear or people not feeling that the visits are truly unsupervised.

Mr Khalafov reminded the Committee that Azerbaijan is a party to the *European Convention on the Prevention of Torture* and has ratified the Optional Protocol to the *UN Convention against Torture*. He insisted that allegations of torture are dealt with by the 'appropriate inspectorate' and that a number of persons have been removed from their positions on the basis of allegations. Sir Rodley expressed dissatisfaction with the response of the delegation in its written report regarding investigations of police killings and sentencing and requested further information covering the period of time since the last report. Ms Chanet drew attention to the criticisms of the European Court of Human Rights regarding Azerbaijan's argument before the court in two cases of ill-treatment and torture. The State had claimed that the ill-treatment could have occurred 'beforehand' or 'elsewhere'. Mr Zalov from the Ministry of Internal Affairs responded to the issue of police killings and declared that there have been no cases of police killings over the last three years. He claimed that in 2008 all fourteen communications by NGOs regarding police killings were investigated. There were three cases of suicide on police premises but no case of police killing was confirmed. Sir Rodley raised the issue of police killings a second time during the dialogue and requested information about the numbers dying in police custody. He acknowledged that suicides could occur but insisted that more stringent preventive measures should be taken. He also suggested that it is generally easy to stage suicides when in fact people have been killed. He asked if and what independent investigations have taken place and Mr O'Flaherty enquired whether there are codes of conduct for law enforcement and prison officials.

Protection against arbitrary expulsion

‘The State party should not extradite, expel, deport or forcibly return aliens to a country where they would face the real risk of torture or ill-treatment. The Committee recalls that article 2 requires that States Parties should respect and ensure the Covenant rights for all persons in their territory and all persons under their control. It, therefore, entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed (General Comment No. 31). The Committee further recalls that the relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters. The State party should also establish a mechanism allowing aliens who claim that their forced removal would put them at risk of torture or ill-treatment to file an appeal with suspensive effect.’

In his opening comments, Mr Khalafov spoke about the rights of foreigners and those without citizenship. He explained that under the 2006-2008 State Migration Programme, laws on the status of migrants had been established and clarified. Modifications were made in the area, for example the inclusion of provisions for temporary residence. A Presidential decree of March 2009 allowed for the simplification of migration procedures and is intended to enable online applications in the future. Later in the dialogue, Mr Khalafov stated that there is a UNHCR office in Azerbaijan with which the Government of Azerbaijan cooperates. He affirmed support for the actions of that office while pointing out that Azerbaijan cannot receive a great number of refugees on its territory. He explained that 50,000 refugees have nevertheless already been received from the central Asian republics since the collapse of the Soviet Union. Regarding Chechen refugees, Mr Khalafov said that the Government is working to respect their status in accordance with the international convention and domestic law.

Despite these explanations, Committee member Mr Amor expressed concern at the excessive number of expulsions from Azerbaijan and asked the delegation to provide information on the procedure underlying expulsion orders, guarantees for the asylum seeker. He also sought to know whether an individual could contest the refusal of asylum, and remain in Azerbaijan to contest, especially if the expulsion is contrary to the principle of non-refoulement. He further enquired as to whether the legislation allows for ‘flexibility and humanity’ on a case-by-case basis. Mr Asgarov from the President’s Office underscored on two occasions Mr Khalafov’s vague assertion that the Government ‘takes UNHCR into account’ when dealing with refugees and said that it sought a disciplined, rigorous approach to the status of refugees. However, Mr Amor’s questions remained largely unanswered.

Improvement of standard of living of internally displaced persons

‘The State party should simplify its address registration procedure, so as to enable all individuals who reside legally in Azerbaijan, including internally displaced persons, to fully exercise their rights and freedoms under the Covenant.’

In his opening statement, Mr Khalafov identified the legacy of the conflict with Armenia in Nagorny Karabakh as Azerbaijan’s greatest problem. He later elaborated that the 750,000 internally displaced persons (IDPs) and refugees confront the Government with a legal, political, social and economic problem. He explained that the Government was carrying out major work to improve the living conditions and provide jobs to IDPs and that one of its main tasks was to set up a project for the return of IDPs to their native lands. Although emphasising that the current ‘no peace, no war stalemate’ was totally unacceptable Mr Khalafov provided little detail about current specific actions being undertaken. He highlighted the significant difficulties involved in resettling people from tents and camps and in providing employment and stressed that the involvement and assistance of the international community was required. However, he pointed out that

efforts of the international community had not yielded results. He commented that the Government was cooperating with UN and European Union (EU) bodies to develop a plan for the re-integration of IDPs.

Ms Keller asked the delegation if there were any specific measures in place to take into account the particular situation of women and children IDPs, while Ms Wedgewood queried the progress of plans for the restitution of property, reconstruction and compensation. Responding to Ms Wedgewood, Mr Asgarov declared that since 2001, 61 new residential areas had been built under the State Programme for Abolition of Tent Camps. He claimed that there are no longer any tent camps remaining on Azeri territory. He provided figures on the numbers of IDPs who had gained employment, been admitted to communal work and received social assistance. He also provided figures on the budgetary allocations to IDPs and the progress of mine clearing.

Conclusions and next steps

In his closing statement Mr Khalafov reminded the Committee of the progress Azerbaijan has made so far and remarked that the human rights situation is improving year by year. He acknowledged remaining problems and flaws, but countered that these exist in all countries. He highlighted the radical legal reform that is taking place but admitted that ‘totalitarian systems cannot be changed overnight’. He affirmed Azerbaijan’s commitment to democracy and human rights and committed to disseminating the recommendations of the Committee.

In its concluding observations, the Committee welcomed several positive developments in Azerbaijan such as efforts to align domestic legislation with international obligations, the agreement with the ICRC, action to combat domestic violence and gender inequality, and steps to combat human trafficking. It requested the State Party to include in its fourth report, due by 1 August 2013, up-to-date information on follow-up action taken on all the recommendations made and on the implementation of the Covenant as a whole.

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