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**Report to the Human Rights Committee, Azerbaijan Country Report Task Force
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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 80,000 individual lawyers and 190 bar associations and law societies spanning all continents, and has considerable experience in providing assistance to the global legal community.

The IBA's Human Rights Institute (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.

1. Legal profession in Azerbaijan

- 1.1. Law of the Azerbaijan Republic on Advocate and Advocate Activities entered into force on 27 January 2000, and sets out the framework for the functioning of the legal profession. The law establishes the Collegium of Advocates, as ‘a nongovernmental independent self-governing collegium of advocates comprising all advocates operates in the Republic of Azerbaijan. Persons who are not members of the collegium of advocates cannot carry out the activity of an advocate.’¹
- 1.2. The Collegium of Advocates is under the strong influence from the government and the executive branch.² The Qualifications Commission of the Collegium of Advocates which accepts applications from perspective lawyers grants lawyers’ status is widely seen to be strongly influenced by the government³. The current Chairman of the Collegium of Advocates was appointed in the Soviet-era and has been re-elected unchallenged several times since then. The Chairman of the Presidium is perceived as an extension of the government, and the government ‘continues to play a large role in the formation and implementation of the Collegium’s activities.’⁴
- 1.3. Although a Bar Association’s monopoly over rights of audience is not unusual in international terms, the monopoly held by the Collegium of Advocates of Azerbaijan is unusual in that it controls the flow of casework to its members.⁵ Thus, the Collegium of Advocates may choose to reduce the number or type of cases allocated to a member, or even refuse to allocate them cases entirely.⁶ It is therefore in a position to exert considerable influence over the professional conduct of its members. The IBAHRI found that in some cases the Collegium ‘reserved the right to remove lawyers from criminal cases, and sometimes did so for reasons that observers believed were questionable.’⁷
- 1.4. Independent and human rights lawyers have been under attack in Azerbaijan for their professional work since the crackdown on civil society started in 2013. The Azerbaijani government has jailed most of its opponents and shut down civil society organisations.⁸ The climate for freedom of expression – along with human

¹ Law available at:

http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/Eastern%20Partnership_Report%20on%20Lawyers_English_Final%20version_15%2005%202012.pdf; accessed on 4 December 2015

² International Commission of Jurists(ICJ), Azerbaijan – Attacks on Justice, eleventh edition, p 37.

<http://www.refworld.org/pdfid/48a3f02bd.pdf> (last accessed 30/11/2015).

³ Sarah Paulsworth, ‘A Call for Reform: Azerbaijan’s Repression of Controversial Lawyers’, *The Jurist*, 3 November 2011, available at <http://jurist.org/dataline/2011/11/sarah-paulsworth-azerbaijan-bar.php>; International League for Human Rights, *Restrictions on the Independent Legal Profession in Azerbaijan* (September 1999) available at www.ilhr.org/ilhr/reports/legal/restrict.html; accessed on 30 November 2015

⁴ IBAHRI, *Azerbaijan: Freedom of Expression on Trial* (2014 IBAHRI), p 35.

⁵ Article 92.1, Code of Criminal Procedure of the Republic of Azerbaijan, 14 July 2000, available at:

<http://legislationline.org/download/>; accessed on 1 December 2015
action/download/id/1659/file/dddecee81440fa5295fc11e6b2b1.htm/preview

⁶ International League for Human Rights, *Legislative Regulation of the Legal Profession in Azerbaijan*, available at www.ilhr.org/ilhr/reports/legal/leg_reg.html; accessed on 1 December

⁷ Original information from US State Department, *Country Reports on Human Rights Practices for 2009: Azerbaijan* (11 March 2010), available at www.state.gov/j/drl/rls/hrrpt/2009/eur/136020.htm. Cited in IBAHRI, *Azerbaijan: Freedom of Expression on Trial* (2014 IBAHRI), p 35.

⁸ FIDH and OMCCT., ‘Azerbaijan Crackdown on human rights defenders intensifies as Baku games Approach: international fact-finding mission report’, 2015; available at https://www.fidh.org/IMG/pdf/report_azerbaijan_english_final.pdf, accessed on 14

rights more broadly – has been steadily deteriorating for many years, as the government worked to silence all forms of criticism and dissent. In recent years, an unprecedented crackdown on NGOs took place, portrayed as ‘allied of foreign enemies’, forcing many to close down. Lawyers being associated with the cause of their clients have been collateral victims of this climate of repression.⁹

1.5. The Collegium of Lawyers remains an active instrument at the hands of Government of Azerbaijan to actively pursue disciplinary measures against BAA members acting on behalf of some journalists, to the detriment of both freedom of expression and the right to a fair trial.

1.6. Under the magnifying glass of problems faced by independent representatives of legal profession is Khalid Bagirov’s case. Khalid Bagirov is a criminal defence lawyer from Azerbaijan, who has defended high profile political cases in Azerbaijan. He was disbarred from the Collegium of Advocates twice: first in 2011 and second in 2014. Mr Bagirov had his license reinstated after a year of court proceedings, and his claim is awaiting review in the European Human Rights Court (ECtHR). In parallel to these proceedings he was disbarred again in December 2014 and Mr Bagirov’s case remains under dispute at national courts. Lawyers who have defended high-profile, jailed human rights activists and defenders continue to be exempted from the Collegium of Lawyers, some on the ground of disciplinary measures,¹⁰ others as part of their criminal investigation.¹¹

1.7. The IBAHRI documented in the fact-finding report on Azerbaijan, that Azerbaijan’s Bar Association (Collegium of Advocates) is not an independent institution capable of protecting the interests of the legal profession in Azerbaijan.¹² Instead, it is acting as an arm of government, frequently subjecting members involved in politically motivated trials to biased disciplinary proceedings resulting in disbarment. Moreover, the disbarment of Mr Bagirov appears to be in line with the Azerbaijan authorities’ attempts to suppress critical voices and stamp out any form of dissent; in short, to silence civil society.¹³

1.8. In light of the above, the IBAHRI recommend that the List of Issues adopted by the Committee for the examination of the fourth periodic report of Azerbaijan should address the independence, intimidation and harassment lawyers; in particular, the IBAHRI suggests the following questions that the Committee could include in the list of issues:

- ***What procedures will the State Party take to ensure the right of lawyers to form and maintain independent professional associations and safeguard the***

December 2015; also Human Rights Watch; “Tightening the Screws Azerbaijan’s Crackdown on Civil Society and Dissent”, 2013., available at https://www.hrw.org/sites/default/files/reports/azerbaijan0913_ForUpload_0.pdf, accessed on 14 December 2015

⁹ IBAHRI, *Azerbaijan: Freedom of Expression on Trial* (2014 IBAHRI), p 37.

¹⁰ IBAHRI calls on Azerbaijani court to overturn disbarment of defence lawyer Khalid Bagirov., 4 July 2015; available at: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=aedca0d9-30d5-4c68-ac47-7f4f03276ced> accessed on 12 December 2015; Also, News release: Death Threats from Police to Lawyer Aslan Ismayilov., available at: http://www.contact.az/docs/2013/Politics/053000038090en.htm#_VgKFfMtVhHw Accessed 13 November 2015.

¹¹ <http://www.icj.org/azerbaijan-disbarment-of-a-lawyer-undermines-independence-of-the-legal-profession-2/> [Accessed 13 November 2015]

¹² IBAHRI calls on Azerbaijan court not to disbar defence lawyer Khalid Bagirov (news release):

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=75837d74-a430-41bf-9e0f-09999050fc69>; accessed on 14 December 2015

¹³ IBAHRI calls on Azerbaijan court not to disbar defence lawyer Khalid Bagirov (news release):

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=75837d74-a430-41bf-9e0f-09999050fc69>; accessed on 14 December 2015

autonomy of bar associations?

- ***What steps is the State taking to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference in accordance with the UN Basic Principles on the Role of Lawyers?***

2. Access to legal aid

2.1. The ability to access legal advice is an essential part of the right to a fair trial, provided for in Article 14 of the International Covenant on Civil and Political Rights. ‘The Special Rapporteur considers that the aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system. Accordingly, the definition of legal aid should be as broad as possible. It should include not only the right to free legal assistance in criminal proceedings, as defined in article 14(3)(d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations.’¹⁴ Principle 25 of the UN Basic Principles on the Role of Lawyers also guarantees that ‘professional associations of lawyers shall cooperate with governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognised professional standards and ethics.’

2.2. The Constitution of the Republic of Azerbaijan (the ‘Constitution’) while providing for the right to qualified legal assistance stipulates that it should be provided free of charge.¹⁵ Azerbaijan has initiated a large-scale programme of judicial legal reforms in order to bring its legal aid system in line with international and European standards. These reforms include building the capacity of the court system and reforming their legal aid system.¹⁶ This however seems to have had a very little effect on the guarantee for access to justice and fair trial standards for the citizens of Azerbaijan.

2.3. Legislative guarantees are not sufficient for ensuring access to justice in Azerbaijan, especially when there are less than 10 defence lawyers in the country who undertake human rights related cases, and even then are under threat of persecution and harassment by the government. The state funded legal aid is only provided in cases where involvement of a legal counsel is mandatory under the law,¹⁷ which means that legal aid is provided only in

¹⁴ UN HRC, Report of the Special rapporteur on the independence of judges and lawyers, Gabriela Knaut (15 March 2013) UN doc. A/HRC/23/43, para.27.

¹⁵ Report by the Minister of Justice of Azerbaijan to the Council of Europe 28th conference of Ministers of Justice., 25-26 October 2007. Available at [http://www.coe.int/t/dghl/standardsetting/minjust/mju28/MJU-28\(2007\)09E-Azerbaijan.pdf](http://www.coe.int/t/dghl/standardsetting/minjust/mju28/MJU-28(2007)09E-Azerbaijan.pdf) accessed on 13 December 2015

¹⁶ CEPEJ Report on ‘European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice’, available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf accessed on 12 December 2015

¹⁷ *Ibid*

criminal cases and only for the representation in the court. No other legal advice is offered, including in criminal matters.¹⁸

2.4. Such a scale of state ignorance of the constitutional guarantee to provide imminent access to justice is particularly worrying in Azerbaijan as it faces an extreme deficit of defence lawyers. With 64 administrative regions, Azerbaijani government offers legal consultation via its offices in only 25 of them, and with nine advocates for 100 000 persons.^{19/20}

2.5. In addition to this discrepancy in the legal aid system, the Collegium of Lawyers, which enjoys a monopoly over rights of audience in criminal cases, presently has only 834 members, more than two thirds of whom work in Baku.²¹ There is a shortage of defence lawyers, especially outside the capital city. This number gets particularly slim when considering the harassment and persecution pursued by Azerbaijani government over lawyers who undertake human rights or what is considered as ‘politically sensitive’ cases. A small number of defence lawyers willing to undertake such cases are forced to go underground, give up the work, or remain silenced over human rights violations. By actively controlling the lawyers’ activities and their human rights-related cases, the government directly deprives its citizens from accessing justice and the guarantee of a fair trial.

2.6. To address the issues highlighted above, the IBAHRI recommends that the Committee considers asking the Azerbaijani government the following:

- ***What measures is the State party considering to ensure that people unable to afford legal representation and access to the court system are given the financial and physical means to receive legal aid in order to effectively access justice? What measures is the State party considering to ensure that lawyers, in a sufficient number and with the necessary mission and protection measures, can fulfil their mission and provide legal aid with no discrimination in the country, in accordance with Article 2 and 14 of the ICCPR?***
- ***Is the State ready to consider ending the monopoly over rights of audience in criminal cases currently detained by the collegium of lawyers, which in practice create discrimination in violation of Article 2 and 14 of the ICCPR?***

¹⁸ *Ibid*

¹⁹ Azerbaijan Law Reform Centre (ALRC), 2013., available from <http://www.lawreform.az>, accessed on 13 December 2015

²⁰ CoE European Commission for the Efficiency of Justice, Efficiency and Equality of Justice (2010). See also p 31 of the OSCE/ABA CEELI 2005 report, which noted that ‘as many as 10 regions [of Azerbaijan] do not have any advocates’, while many other regions had only a handful: ‘In Lankaran, 5 advocates represent a population of 194,800 people. In Jalilabad, 177,700 people depend on 5 advocates. In Masalii, 3 advocates exist for 180,300 people. In Nakhchivan, there are 5 advocates for 367,100 people but three live in Baku leaving only 2 advocates in the entire territory’. Although the absolute number of advocates has increased since 2005, a number of respondents told the delegation that the shortage of advocates in the regions remained acute.

²¹ ‘General Information’, Bar Association of the Republic of Azerbaijan website, www.barassociation.az.