



**SUBMISSION OF
THE INTERNATIONAL COMMISSION OF JURISTS
IN VIEW OF THE UN COMMITTEE AGAINST TORTURE'S ADOPTION OF A LIST
OF ISSUES TO BE TRANSMITTED TO THE REPUBLIC OF AZERBAIJAN PRIOR
TO THE SUBMISSION OF ITS FIFTH PERIODIC REPORT UNDER ARTICLE 19 OF
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT**

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Submission of the International Commission of Jurists in view of the UN Committee against Torture's adoption of a List of Issues to be transmitted to the Republic of Azerbaijan prior to the submission of its Fifth Periodic Report under Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1) Introduction

1. During its 63rd Session, from 23 April 2018 to 18 May 2018, the UN Committee against Torture ('the Committee') will prepare and adopt a List of Issues (known as list of issues prior to reporting - LOIPR) to be transmitted to the Republic of Azerbaijan (hereafter Azerbaijan) prior to the submission by the State party of its 2nd Periodic Report under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention') with a view to assisting Azerbaijan in the preparation of the said report, which, in turn, will form the basis of the Committee's review of the country's implementation of and compliance with provisions of the Convention. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of its LOIPR on Azerbaijan.
2. In particular, this submission will address the availability of an independent legal profession in the country as an essential guarantee for the prevention of torture and other cruel, inhuman or degrading treatment (hereafter other ill-treatment). Under articles 2 and 16 of the CAT,¹ as this Committee has noted, the right to prompt, independent legal assistance is a basic and necessary safeguard to prevent torture and other ill-treatment that should be guaranteed to all persons deprived of their liberty. In addition, such a right is key in ensuring effective access to judicial remedies to obtain redress for violations of the Convention's rights.²
3. The observations made in this submissions are based on the ICJ's report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*", published in September 2016 following a research mission to the country.³ The report analyses Azerbaijan's legislation governing the legal profession; the situation of lawyers in practice, in particular, in relation to the lack independence of the legal profession; as well as the role that the Bar Association plays in attacks on lawyers. The ICJ appends its report to this submission, and hopes that its findings and recommendations will assist the Committee in the preparation of its LOIPR for Azerbaijan.

2) Harassment of lawyers

4. In Azerbaijan, the legal profession lacks independence; individual lawyers often face harassment for exercising their functions, including through criminal prosecutions, disciplinary action, and other administrative measures. Disbarments of lawyers who work to protect human rights, along with criminal prosecutions, searches and measures such as freezing of assets of such lawyers, are part of a wider picture of harassment of human rights

¹ See, *General Comment no. 2 - Implementation of article 2 by State Parties*, Committee against Torture, UN Doc. CAT/C/GC/2, 24 January 2008, para. 13, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Annual Report 2003 to the Commission on Human Rights*, UN Doc. E/CN.4/2004/56, 23 December 2003, para. 32.

² CAT, *General Comment no. 3, op. cit.*, para. 30.

³ This submission is largely based on the ICJ report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*" (hereinafter "ICJ report"). Whenever reference is not provided in this submission, sources and citations can be found in the report at <https://www.icj.org/azerbaijan-the-independence-and-role-of-lawyers-must-be-respected-icj-report-says/>. The said report is annexed to this submission.

defenders, including not only lawyers, but also journalists, NGO workers and others.

5. Independent lawyers, especially those representing clients in “sensitive” cases, may face disciplinary action that penalises them for carrying out their professional duties of lawyers in accordance with international standards.⁴ Disciplinary measures may, for example, follow allegations by a lawyer that his or her client has been tortured in detention, as was the case, recently, with respect to Yalchin Imanov, a human rights lawyer disbarred after making public allegations that his client had been tortured.⁵
6. Disciplinary procedures are not carried out on the basis of objective criteria, and lack predictability and transparency. As detailed in the ICJ report mentioned above, the organization found that disciplinary, as well as criminal proceedings, are used against lawyers in ways that amount to harassment of, or reprisals against, lawyers for the proper exercise of their professional duties, and are premised on the identification of lawyers with the causes of their clients, contrary to international standards on the independence of lawyers.⁶
7. The ICJ report raises concern regarding the lack of clear criteria in law, guidance or practice for the imposition of the most severe disciplinary penalty against lawyers, namely, their disbarment. The absence of such criteria leads to problems in practice, opening the way for uneven, arbitrary or discriminatory standards in the award of the qualification necessary to become a lawyer,⁷ and for arbitrary attacks against lawyers through disciplinary proceedings. Even where clear procedures are in place, compliance with them is typically poor. For example, although it is welcome that the rights of lawyers in disciplinary hearings are enshrined in the Charter on the Disciplinary Commission,⁸ in practice, these rights are often disregarded, contrary to both Azeri legislation and international human rights law.⁹
8. The ICJ report analyses a series of cases of harassment of lawyers; its conclusions are that, in practice, the proceedings before the Disciplinary Commission and Presidium of the Collegium regularly do not meet international standards on the right to a fair hearing.¹⁰ For example, there is evidence of disregard for the equality of arms principle in such proceedings. Particularly worrying are reports that lawyers are disbarred without even being notified about a hearing that may culminate in their disbarment, and that they are not afforded access to relevant documents in the possession of the Collegium. Another common problem is that lawyers are often not provided with decisions in their case, inhibiting their ability to appeal against

⁴ See, *Basic Principles on the Role of Lawyers*, welcomed by UN General Assembly resolution 45/166, 1990.

⁵ "IBAHRI calls on Azerbaijan Bar Association to reinstate human rights lawyer immediately", available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4fbb3e64-c89d-44ac-a165-339f854bd74b>.

⁶ ICJ Report, page 30 and following. See, *UN Basic Principles on the Role of Lawyers*, Principle 18

⁷ See, *Law On Advocates and Advocates' Activity*, of 28 December 1999, No. 783-IQ, articles 8 and 13(IX).

⁸ See, *Charter on the Disciplinary Commission*.

⁹ See, ICJ Report, Chapter II at page 21 and following.

¹⁰ Notably, in ICJ Report, Chapter III, those of Intigam Aliyev, Gurban Mamedov, Alaif Ghasanov, Namizad Safarov, Hidayat Suleymanov, Latifa Aliyeva, Osman Kazimov, Khalid Baghirov, Muzaffar Bakhishov, Elchin Namazov, Shafiga Naghiyeva and Yalchin Imanov. See, *Law On Advocates and Advocates' Activity*, *op. cit.*, article 22.

such decision to the courts. Moreover, recourse to the courts in these cases does not appear to be an effective remedy against arbitrary decisions.

9. The ICJ also found that, following the adoption of the law on Advocates and Advocates Activity in 1999, the end result of the work of the Bar Association's Qualification Commission is **a dramatic shortage of lawyers in the country**. The qualification process to become a practising lawyer itself suffers from a lack of objective criteria for the evaluation of candidates, and its application is mired in arbitrariness. Rules and guidelines, both for the members of the Qualification Commission and candidates seeking to join the profession, are key in ensuring a level of objectivity and the qualification system's fairness.

3) Lack of Independence of the Bar Association

10. In its report the ICJ concluded that, despite a detailed legal framework, the Bar Association suffers from serious institutional weaknesses, and does not operate as an independent self-governing institution. Constituent bodies of the Bar Association are under the direct influence of its leadership, and appear to have insufficient leeway to carry out their functions in an independent manner. There are serious failings in regard to transparency, accountability to its members, and democratic participation of lawyers in the governance of the Bar Association. On 7 December 2017, the Bar Association held the first Conference of lawyers after many years; at the conference it elected Mr Anar Bagirov as its President, as well as the members of its Presidium. The fact that the conference was held ends years of disregard of the Bar Association's legal obligations to hold regular Conferences of lawyers, a disregard that had called into question the legitimacy of some of its governing bodies, such as the President and the Presidium, since they had not been re-elected within the time period provided by law.¹¹ Notwithstanding the fact that the election of a new President of the Bar Association in December 2017 is a positive signal, urgent measures are however needed to address the problem of participation of independent lawyers in the self-governance of the profession.
11. The ICJ report details how the Bar Association's lack of independence has affected the ability of lawyers to discharge their proper role in the protection of human rights, including their clients' right to a fair trial.¹² For example, the Bar Association has so far failed to strive to protect its members from harassment, in particular from abusive disciplinary proceedings. To the contrary, because of its lack of independence, in practice, it has functioned as an instrument of the executive to repress the independence of lawyers, rather than to defend it.

4) Legislative Amendments restricting rights of legal representation

12. The ICJ is further concerned at recent amendments to Azerbaijan's Civil and Administrative Codes, and about the law "On lawyers and lawyers' activity", which entered into force on 1 January 2018, and which prohibits anyone who is not a member of the Bar Association from representation in court, with the

¹¹ See, ICJ Report, Chapter I, at p. 10 for more detailed findings.

¹² Article 14 ICCPR

sole exception of representing close relatives, such as parents, siblings and children, grandparents and grandchildren.

13. Under the previous legal regime, lawyers needed to qualify as members of the Bar Association only to represent clients before the courts in criminal cases, leaving space for representation of individuals by non-members of the Bar Association in civil and administrative cases. This flexibility had in practice allowed the system to partially mitigate the negative impact in access to justice caused by the shortage of available lawyers.
14. In principle, limiting court representation to members of the bar association is not inconsistent with any international standards on the independence of lawyers. Indeed, it aligns with the practice in many States where only members of a bar association can represent persons in court.
15. However, the introduction of these amendments in the current context in Azerbaijan, where the Bar Association is not independent of the government, and where there is already an acute shortage of lawyers, raises concerns over the independence of the legal profession and access to justice.
16. The apparent lack of any transitional arrangements for the coming into force of the amendments, which would have allowed lawyers time to regularize their situation, exacerbates these concerns.
17. The amendments risk worsening problems related to access to justice and the independence of lawyers in two respects:
 - a. The shortage of lawyers will be further aggravated, since the flexibility of the previous system is no longer there. This may also significantly increase the costs of legal services, further undermining access to justice.
 - b. Because of the Bar Association's lack of independence and, because of its use as instrument of harassment of lawyers, the new legislation will make all lawyers, now forced to register as members of the Bar association, open to abusive disciplinary proceedings. The Amendments will also have an impact on lawyers, including some of Azerbaijan's leading human rights lawyers who have already been disbarred, but who, until now, have been able to continue their legal practice outside of the framework of the Bar Association to some extent.
18. **The net effect of the Amendments may therefore be to seriously inhibit victims of violations of human rights, including torture and ill-treatment, from accessing justice and remedies** before national or international courts.
19. The ICJ is particularly concerned at reports that, within days of the amendments being passed by Parliament, lawyers who are not members of the Bar Association were threatened by law enforcement officials that continuing their practice could lead to prosecution.

5) Latest findings by international human rights bodies

20. The ICJ notes that, since the publication of its report in September 2016, the UN Human Rights Committee has expressed concern "about reports of

physical attacks, politically motivated criminal charges and other adverse repercussions, such as disbarment, against lawyers who make critical statements about State policies and State officials and against lawyers representing victims of torture, human rights defenders, activists and journalists. It is further concerned about the alleged practice of calling lawyers as witnesses in cases in which they are representing a defendant with a view to removing them from the case for alleged conflict of interest".¹³

21. Furthermore, the UN Working Group on Arbitrary Detention, following its 2016 visit to the country, found that many detainees with whom it had met had never had access to a lawyer, and that, "this situation may be the result of either a low number of lawyers available to represent accused persons, the inability of lawyers to adequately advise individuals facing criminal justice or their possible lack of independence. The delegation received abundant information related to the denial or obstruction of the right of accused or convicted persons to be legally represented and to communicate freely with their lawyer, in particular by the administration of some detention centres, especially those dealing with the most serious offences."¹⁴

6) Conclusions

22. **The ICJ therefore considers that Azerbaijan's legal system does not provide independent or effective access to a lawyer, especially to those persons that claim to be victims of human rights violations, including torture or other cruel, inhuman or degrading treatment or punishment and those held in detention.**
23. **This situation seriously undermines the State party's ability to fulfill its obligations to ensure that people under its jurisdiction enjoy basic safeguards against torture and other ill-treatment, consistent with articles 2 and 16 of the CAT,¹⁵ and to ensure effective access to judicial remedies to obtain redress for violations of Convention's rights.¹⁶**

7) Recommendations

24. In light of the above, the ICJ recommends that the following questions be included in the LOIPR for the examination of Azerbaijan:

On Harassment of lawyers

- i. **What measures has Azerbaijan put in place to ensure that no executive or judicial authority initiate or threaten lawyers with criminal, administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics proper to the legal profession?**

¹³ Human Rights Committee, *Concluding Observations on Azerbaijan*, UN Doc. CCPR/C/AZE/CO/4, 16 November 2016, para. 29

¹⁴ *Report of the Working Group on Arbitrary Detention on its mission to Azerbaijan*, UN Doc. A/HRC/36/37/Add.1, 2 August 2017, para. 60.

¹⁵ See, CAT. *General Comment no. 2, op. cit.*, para. 13; UN Special Rapporteur on torture, *Annual Report 2003, op. cit.*, para. 32.

¹⁶ CAT. *General Comment no. 3, op. cit.*, para. 30.

- ii. **What measures has Azerbaijan taken to ensure that lawyers are protected from intimidation, hindrance, harassment or other improper interference in their work?**

On access to justice

- iii. **What measures has Azerbaijan put in place to ensure that there is a sufficient number of advocates providing legal advice in all regions of the country so as to uphold the principle of access to justice and the right to an effective remedy for violations of human rights, including torture or other cruel, inhuman or degrading treatment or punishment?**
- iv. **Have the authorities introduced any transitional arrangements for the implementation of the new law on lawyers to ensure that sufficient, qualified lawyers are available to adequately ensure access to justice and the protection of human rights?**

On independence of the bar association

- v. **What measures has Azerbaijan taken to ensure that the Bar Association's internal governance can be relied on to respect and protect the independence of all lawyers and their right to represent clients, including before the court?**
- vi. **Has the Bar Association undertaken any measure or is planning to do so to initiate, through a consultative process, an internal reform based on the principles of independence of the profession, high standards of legal practice, the protection of lawyers from threats, harassment and hindrance in their work, and the democratic participation of its members?**
- vii. **Has the Bar Association undertaken any measure to ensure that elections to all the elected positions within the institution are held in a timely manner; that no official position is occupied after the expiry of the term of office prescribed by law; and that independent candidates, including those who defend clients in "sensitive" cases, are allowed to run for elected positions?**

Attachment: ICJ's report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*"