

12 August 2021

**Stakeholder Submission
to the UN Human Rights Committee
in Advance of Its Adoption of the List of Issues Prior to Reporting for Azerbaijan
(133rd Session, 11 October 2021 - 5 November 2021)**

Justice for Journalists Foundation and Khaled Aghaly are pleased to offer this submission to the Human Rights Committee ahead of the adoption of the List of Issues Prior to Reporting (LOIPR) for Azerbaijan at its 133rd Session.

Justice for Journalists Foundation (JFJ) is a British non-governmental organisation created in 2018. JFJ has been monitoring, analysing, and publicising attacks against media workers¹ that took place since 2017 in 12 post-Soviet states, including Azerbaijan. The monitoring is based on data collected by content analysis of open sources. In addition, expert interviews with media workers are used to monitor cases that have not been publicly reported. All information is verified using at least three independent sources. JFJ also funds journalistic investigations into violent crimes against media workers and helps professional and citizen journalists to mitigate their risks.

Khaled Aghaly is a lawyer specialising in media law. Mr Aghaly has been working in the field of media law in Azerbaijan since 2002. He is one of the founders of the Media Rights Institute (MRI Azerbaijan). The Media Rights Institute was forced to suspend its activities in 2014. Since then, Mr Aghaly has been working individually. He is the author of more than ten reports and studies on media rights in Azerbaijan.

The focus of this submission is the **persecution of media workers and media outlets since the consideration of Azerbaijan’s fourth periodic report in October 2016** and Azerbaijan’s compliance with its obligations enshrined in **Articles 7, 9, 14, 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR)**.

Section I contains brief information about the persecution of media workers and media outlets. For additional details and examples, please see reports on JFJ’s website.² Sections II-IV outline relevant Concluding Observations of the Human Rights Committee, Universal Periodic Review (UPR) recommendations, and recent concerns of the Special Procedures. Finally, in Section V we propose questions for the LOIPR.

¹ In this submission, the term “media workers” refers to journalists, camerapersons, photojournalists, and other employees and managers of traditional and digital media, as well as bloggers and online activists.

² https://jfj.fund/report-2020_1/#az; <https://jfj.fund/attacks-on-journalists-bloggers-and-media-workers-in-central-asia-and-azerbaijan-2017-2019/#azerbaydzhan>

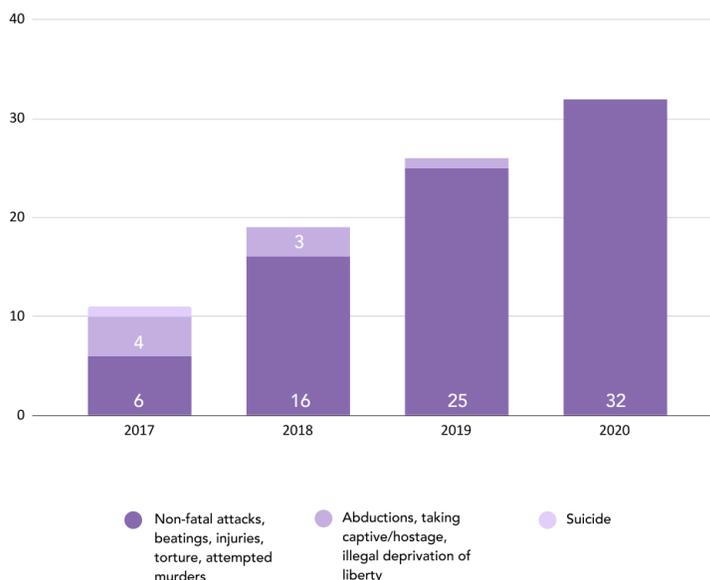
I. Persecution of media workers and media outlets (Articles 7, 9, 14, 17, 19)

Since consideration of Azerbaijan's previous periodic report in 2016, the environment for journalism has further deteriorated, both online and offline. The country has lost four positions in Reporters Without Borders' World Press Freedom Index and ranks 167 out of 180 countries ("very serious situation").³ Freedom House's Internet Freedom Score for Azerbaijan has also deteriorated, from 43 ("partly free") to 38 ("not free").⁴

In 2017-2020, Justice for Journalists Foundation documented 684 cases of persecution of media workers and media outlets in Azerbaijan and on Azerbaijani journalists abroad. Eighty-eight of them were physical attacks and threats, 86 – non-physical attacks and threats online and offline, and in 510 instances, judicial and economic means were used to exert pressure. In a majority of cases (about 61 %), the perpetrators were representatives of the authorities. The main targets were media outlets that criticised the government, independent media workers, their relatives and loved ones.

The graphs below illustrate the consistent distribution of cases over the years and the most widely used types of persecution within each category:

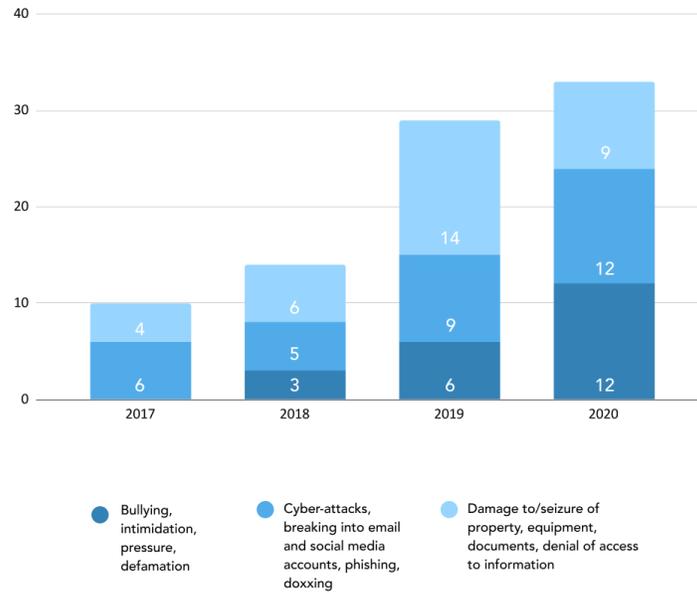
a) Physical attacks and threats



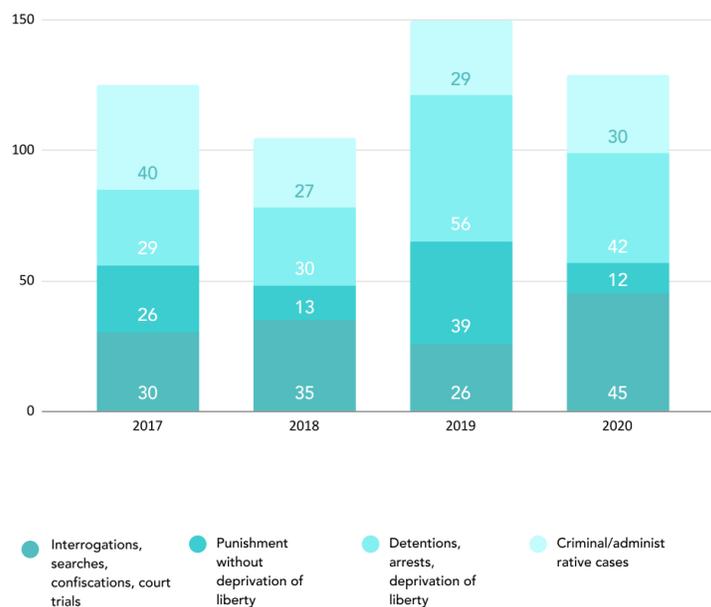
b) Non-physical attacks and threats online and offline

³ <https://rsf.org/en/ranking/2016>, <https://rsf.org/en/ranking/2021>

⁴ <https://freedomhouse.org/country/azerbaijan/freedom-net/2016>, <https://freedomhouse.org/country/azerbaijan/freedom-net/2020>



c) Use of judicial and economic measures



Furthermore, in at least 71 documented cases in 2020, the persecution of media workers and media outlets had a “hybrid” nature, i.e. it was carried out using two or more categories of pressure described above. The majority of such “hybrid” cases (45 cases) targeted the same seven journalists. This shows the authorities’ deliberate and systematic attempts to silence particularly critical voices or force them into exile.

In 2021, at least 13 physical attacks and threats, 27 non-physical attacks and threats online and offline, and 60 instances of judicial and economic attacks have been documented as of 12 August 2021.

Attacks against media workers and media outlets are not effectively investigated, including both recent ones and those that happened years ago. A prominent example is the investigation into the murder of a journalist Elmar Huseynov in 2005. Journalistic investigation supported by JFJ discovered a trail of obfuscations and missteps in the official investigation.⁵

Article 163 of the Criminal Code of Azerbaijan provides for criminal liability for obstructing the professional activities of journalists. However, it has not been applied since 2005.

Articles 374 and 382 of the Code of Administrative Offenses of Azerbaijan provide for the administrative liability for violation of the legislation on access to information and for not responding to journalists' requests for information. However, no officials have been held liable under them in the past 15 years.

The necessity to amend defamation laws – in particular, abolish criminal liability for defamation and insult – has been raised in the European Court of Human Rights judgments on Azerbaijan. However, Azerbaijan has not amended the laws, and this issue is not on the parliament's agenda.

Some of the significant developments since the previous periodic review included:

1) Website blocking

The Law “On Information, Informatisation and Protection of Information” has been widely used to block the websites of independent media outlets through court proceedings.

In 2017, it was amended to allow the Ministry of Communications to extrajudicially block websites deemed to pose a danger to the state or society. These amendments were used to block dozens of websites, including those of independent media outlets *Radio Azadlıq*, the *Azadlıq* newspaper, the *Azərbaycansaatı* programme, *Meydan TV*, and the *Turan* internet television channel.

Some critical websites are blocked without a decision of a court or the Ministry of Communications. The complaints of blocked websites are not effectively investigated.

2) Misuse of COVID-19 restrictions

In 2020, Azerbaijan introduced harsh restrictions under the pretext of COVID-19.⁶ The legitimacy of adopted measures was disputable: the country's legislation allows for the application of such measures in the event of a state of emergency; however, a state of

⁵ <https://www.occrp.org/en/investigations/fbi-case-file-shows-how-azerbaijan-botched-investigation-into-journalists-death>

⁶ <https://www.icnl.org/covid19tracker/?location=8&issue=&date=&type=>

emergency was not declared. Moreover, the authorities misused COVID-19 measures to further target media workers. We documented at least one physical attack on a media worker connected to COVID-19 and 23 instances of persecution using judicial and economic means.

3) Privacy violations targeting journalists and activists

According to the investigation published by OCCRP, Forbidden Stories and Amnesty International in July 2021, the Azerbaijani authorities may have used Pegasus software for surveillance on journalists and activists. At least 42 Azerbaijani journalists were on the leaked Pegasus list, indicating that they were potential targets of the software.⁷

II. Relevant Concluding Observations of the Human Rights Committee

In its 2016 Concluding Observations (CCPR/C/AZE/CO/4), the Human Rights Committee expressed concern about:

- “extensive restrictions on freedom of expression in practice, including:

(a) Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.;

(b) Reports of arbitrary interference with media freedom, including revocation of broadcast licences allegedly on political grounds (e.g. of Radio Free Europe/Radio Liberty and ANS television and radio outlets), allegations of politically motivated criminal proceedings against independent media outlets (e.g. the online news outlet Meydan TV and its journalists) and alleged financial pressure on the independent newspaper Azadliq;

(c) Criminalization of defamation” (Paragraph 36);

- “consistent reports of torture and ill-treatment, including of journalists [...] that have reportedly led to death in several cases” (Paragraph 18); and

- “reports that [...] journalists [...] are allegedly subjected to travel bans in retaliation for engaging in their professional activities” (Paragraph 30 (c)).

In this connection, the Committee recommended that Azerbaijan should:

⁷ <https://cdn.occrp.org/projects/project-p/#/countries/AZ>

- “take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice”, “take immediate steps to end any repression against the above-mentioned categories of persons, provide effective protection against persecution or retaliation and ensure that any restrictions on the exercise of their freedom of expression comply with the strict requirements of article 19 (3) of the Covenant”, “consider decriminalising defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind, as provided in the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression, that imprisonment is never an appropriate penalty for defamation” (Paragraph 37);

- “take effective measures to eradicate torture and ill-treatment, including by:

(a) Ensuring that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent and impartial body, that perpetrators are prosecuted and, if convicted, are punished with adequate sanctions, and that victims are provided with effective remedies and full reparation, including appropriate compensation;

(b) Conducting the reforms necessary to ensure that regular monitoring and inspection of all places of deprivation of liberty is carried out by an independent and effective mechanism, and consider involving NGOs in such a process” (Paragraph 19); and

- “ensure that any travel ban is justified under article 12 (3) of the Covenant and lift bans not in compliance with that article, refrain from imposing travel bans arbitrarily against journalists, opposition politicians, human rights defenders and lawyers and guarantee full respect for their freedom to leave the country” (Paragraph 31).

III. Relevant UPR Recommendations

Recommendations made during the third cycle of the UPR of Azerbaijan in May 2018 included the following:

Supported

- 140.68 Continue its work to develop freedom of speech, support the independence of the media and boost the professionalism of journalists and strengthen their social protection (Russian Federation) (Supported; A/HRC/39/14/Add.1, Paragraph 140);

- 141.28 Investigate all allegations of torture and ill-treatment of journalists, human rights defenders and activists, and bring perpetrators to justice (Slovakia) (Supported; A/HRC/39/14/Add.1, Paragraph 19);

- 141.51 Continue ensuring that human rights defenders and journalists are protected from any act of intimidation or reprisal or any other impediment to their work (State of Palestine) (Supported; A/HRC/39/14/Add.1, Paragraph 20);

Noted

- 141.32 Release all activists, journalists and bloggers held on politically motivated charges, and dismiss the criminal charges against those individuals that have already been released (Australia) (Noted; A/HRC/39/14/Add.1, Paragraph 21-24);

- 141.36 Ensure the right to freedom of expression, including by revoking its decision from 2017 to block the websites of several independent and opposition media (Sweden) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

- 141.38 Immediately and unconditionally release all individuals in custody for exercising their fundamental freedoms, including the rights to freedom of expression, association, assembly and religion (United States of America) (Noted; A/HRC/39/14/Add.1, Paragraph 21-24);

- 141.41 Remove libel and defamation as criminal offences and take further steps to ensure journalists may work freely and without fear of retribution (Australia) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

- 141.44 Create the environment for a free and independent media and take effective measures to ensure that the press and media can work free from oppression, intimidation or reprisals (Slovakia) (Noted; A/HRC/39/14/Add.1, Paragraph 27-28);

- 141.46 Ensure full respect for freedom of expression in line with its international commitments, including by ensuring that all journalists may work freely and without fear of retribution, allowing foreign media broadcasts without undue restrictions, ensuring unfettered access to the country for journalists and ending the travel restrictions against independent journalists, NGO leaders and opposition members (Greece) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

- 141.52 Permit peaceful civic activity by ending cases against NGOs and independent media, removing undue restrictions to accessing foreign grants and amending laws regarding the registration, operation, and funding of NGOs, in accordance with the recommendations of multilateral institutions, and ending the blocking of independent and opposition websites (United States of America) (Noted; A/HRC/39/14/Add.1, Paragraph 26);

- 141.53 Repeal the recent legislation that restricts freedoms of expression, peaceful assembly and association, and ensure a safe environment for journalists, activists and human rights defenders (Spain) (Noted; A/HRC/39/14/Add.1, Paragraph 26);

- 141.54 Take measures to guarantee the safety of journalists, in conformity with resolution 33/2 of the Human Rights Council, and ensure prompt, impartial and thorough investigations (Chile) (Noted; A/HRC/39/14/Add.1, Paragraph 27-28);
- 141.55 Ensure freedom of expression and media freedom, including by promptly and thoroughly investigating all allegations of the torture and ill-treatment of journalists, human rights defenders and youth activists, and prosecute perpetrators (Estonia) (Noted; A/HRC/39/14/Add.1, Paragraph 20);
- 141.74 Enhance the protection of journalists, human rights defenders and NGOs by removing undue restrictions to access foreign grants and amending NGO legislation, particularly regarding the registration, operation and funding of NGOs (Netherlands) (Noted; A/HRC/39/14/Add.1, Paragraph 27-28);
- 141.78 Investigate all allegations and prosecute perpetrators of torture and ill-treatment of journalists and political opponents, and strengthen the training of relevant public authorities and staff on human rights (Republic of Korea) (Noted; A/HRC/39/14/Add.1, Paragraph 19);
- 141.80 Ensure effective, prompt and independent investigations of all cases of harassment and violence against journalists and human rights defenders and bring perpetrators to justice (Austria) (Noted; A/HRC/39/14/Add.1, Paragraph 19);
- 141.81 Enhance efforts to investigate all allegations of torture and ill-treatment, in particular against human rights defenders, journalists and members of religious groups, and hold perpetrators accountable (Brazil) (Noted; A/HRC/39/14/Add.1, Paragraph 19);
- 141.84 Investigate allegations of arbitrary arrests of human rights defenders and journalists, and ensure that freedom of opinion and expression is not unduly restricted on grounds of extremism, defamation or “humiliation of honour” (Czechia) (Noted; A/HRC/39/14/Add.1, Paragraph 20); and
- 141.86 Ensure prompt, effective, independent and impartial investigations into all allegations of arbitrary detention, torture and ill-treatment of human rights defenders, civil society activists and journalists (Ireland) (Noted; A/HRC/39/14/Add.1, Paragraph 19).

IV. Relevant Concerns of the Special Procedures

Since the consideration of the previous periodic report, the persecution of media workers has been the subject of communications sent by the Special Procedures to Azerbaijan on 11 May 2017 (AL AZE 1/2017), 8 November 2017 (AL AZE 4/2017), and 29 November 2017 (UA AZE 5/2017). They concerned cases of the travel ban, freezing of bank account, torture and ill-treatment, lack of due process, lack of investigation into the allegations of torture, and the conviction of a journalist on charges of defamation against the police for denouncing torture against him.

In addition to case-specific concerns expressed in these communications, the Special Procedures expressed “serious concern [...] at the larger context of judicial harassment of journalists through prosecution on charges of defamation, which seriously hampers the independence of media in Azerbaijan by silencing journalists, restricting access to information, and limiting the free flow of ideas.”⁸

V. Questions for the LOIPR

We encourage the Human Rights Committee to ask the following questions:

- How many criminal, administrative and disciplinary cases for attacks and other forms of persecution of media workers have been registered and investigated since the previous periodic report? How many responsible people, including those with direct and supervisory responsibility, have been brought to justice? If some cases have been opened, but no one brought to justice, please explain why.
- How many media websites have been blocked since the previous periodic report, on which basis, and how are these blockings compatible with Azerbaijan’s obligations under the ICCPR?
- How many media workers were surveilled by Azerbaijan using the Pegasus software, on which basis, and how is this surveillance compatible with Azerbaijan’s obligations under the ICCPR?
- What measures will be taken to ensure the reversal of restrictions on the freedom of opinion and expression under the pretext of COVID-19, and when will they be taken?
- What specific steps does the government of Azerbaijan envisage to release media workers detained or imprisoned for exercising their right to freedom of expression; cease physical attacks and all other forms of persecution of media workers and media outlets; counter impunity; and ensure that media workers can carry out their legitimate work in a safe and enabling environment without fear of harassment, prosecution, threats or acts of intimidation of any kind?

⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23113>