

Name: Human Rights Watch (HRW)

Country: Global

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QUESTIONNAIRE

On the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

Q2 - Measures taken to ensure national security-related laws (on public order, public safety, respect for morals, counter-terrorism) are not used unduly against HR defenders & how they respect the right to Freedom of expression & opinion.

CHINA:

“Since its founding in 1997, China’s Chengguan Urban Management Law Enforcement, a para-police agency tasked with enforcing non-criminal urban administrative regulations, has earned a reputation for excessive force and impunity”¹. “The legal basis for the creation of the chengguan is the Law of the People’s Republic of China on Administrative Penalty (hereafter, Administrative Penalties Law), passed in March 1996”². However, “a November 2011 report by the nongovernmental organization Chinese Human Rights Defenders argued that the chengguan’s ambiguous legal basis facilitates “violence, brutality, law-breaking, corruption and human rights abuses” by chengguan personnel”³.

EGYPT:

“Egypt’s Penal Code and press law contain articles that provide prison terms and fines for peaceful speech, notably speech deemed defamatory not only toward individuals but also to state institutions; and speech deemed liable to disturb the public order, or deemed harmful to Egypt’s image. These content-based provisions allow a court to convict any person whose speech it deems to be ‘insulting’ or ‘harmful’”⁴.

ETHIOPIA:

“The government in 2009 adopted two alarming pieces of legislation that have a significant impact on core political freedoms enshrined in the Ethiopian constitution and international law, particularly freedom of expression, association, and assembly. These were the Charities and Societies Proclamation (CSO law) and the Anti-Terrorism Proclamation”⁵.

“An Ethiopian court’s conviction of two Swedish journalists on charges of supporting terrorism after an unfair trial demonstrates that the country’s anti-terrorism law is fundamentally flawed and being used to repress legitimate reporting. In the absence of genuine evidence against the journalists, the government should immediately drop the terrorism charges against them. The law’s vague prohibition on “moral support” of terrorism is contrary to international standards on the principle of legality,

¹ HRW (2012) “Beat Him, Take Everything Away”: Abuses by China’s Chengguan Para-Police, p. 1.

http://www.hrw.org/sites/default/files/reports/china0512ForUpload_1.pdf

² *Ibid.*, p. 10

³ *Ibid.*, p. 14

⁴ HRW (2012) *The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament*, p. 16-17.

<http://www.hrw.org/sites/default/files/reports/egypt0112webwcover.pdf>

⁵ HRW (2010) “One Hundred Ways of Putting Pressure”: Violations of Freedom of Expression and Association in Ethiopia, p. 19. <http://www.hrw.org/sites/default/files/reports/ethiopia0310webwcover.pdf>

which requires that individuals be able to determine what acts would constitute a crime. Only journalists have been charged under this article”⁶.

IRAQ:

“In May 2011 the Council of Ministers approved a Law on the Freedom of Expression of Opinion, Assembly, and Peaceful Demonstration that authorizes officials to restrict freedom of assembly to protect ‘the public interest’ and in the interest of ‘general order or public morals’”⁷.

Q3 - Measures taken to ensure criminal code is not discriminating against HR defenders.

ALGERIA:

“On March 16, 2011 in the city of Mostaganem authorities arrested and held overnight Dalila Touat of the unrecognized National Committee to Defend the Rights of the Unemployed for handing out leaflets and charged her with violating article 100 of the criminal code, which prohibits “any direct instigation ... by distributing written matter, of an unarmed gathering.” A court in Mostaganem acquitted her on April 28, 2011”⁸.

BAHRAIN:

“According to new amendments to the Penal Code approved by the cabinet in late October 2011, publishing or airing “false or fabricated news or forged photos” that could harm “national security, public order, public health, public interest or incite violence or erode confidence in Bahrain’s financial position” would be considered a criminal offense [...] In November 2008 the Interior Minister Rashid bin Abdullah Al Khalifa threatened to prosecute several opposition figures who had held meetings in Washington, DC. The Bahraini Penal Code sets a minimum of three months imprisonment and/or fines for anyone who fails to obtain government permission to attend meetings abroad to discuss Bahraini affairs that might “undermine financial confidence in the state” or who “exercises...activities that are harmful to the national interests”⁹.

BELARUS:

“There are deep concerns about recent and ongoing moves to curtail the rights to freedom of association and expression of non-governmental organizations (NGOs) and other civil society actors to operate independently and effectively. An amendment to the Criminal Code adopted by Parliament in October 2011 establishes criminal liability for receiving foreign grants or donations in violation of Belarusian law”¹⁰.

EGYPT:

“Egypt’s Penal Code and press law include provisions that criminalize speech that “spreads false information,” “harms public morals,” or advocates change to the existing political order. In contrast, it is a norm of international law that freedom of expression is best protected by decriminalizing all acts

⁶ HRW, *Ethiopia: Journalists Convicted Under Unfair Law*, 21 December 2011.

<http://www.hrw.org/news/2011/12/21/ethiopia-journalists-convicted-under-unfair-law>

⁷ HRW, *Iraq: Intensifying Crackdown on Free Speech, Protests*, 22 January 2012.

<http://www.hrw.org/news/2012/01/22/iraq-intensifying-crackdown-free-speech-protests>

⁸ HRW, *World Report 2012: Algeria*. <http://www.hrw.org/world-report-2012/world-report-2012-algeria>

⁹ HRW, *UPR Submission on Bahrain*, 21 November 2011. <http://www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain>

¹⁰ Joint NGO Advocacy Briefer: *Belarus*, June 2012. <http://humanrightshouse.org>

of speech except those that constitute incitement to imminent violence. In order to ensure the full enjoyment of the rights protected by Article 25 of the ICCPR, the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”¹¹.

Q4 - Countries with laws governing the registration, functioning and funding of NGO + how they comply with freedom of association.

ALGERIA:

“The Council of Ministers on September 12, 2011 adopted a draft law on associations that allows authorities to oppose the creation of an association they deem to be contrary to “the public order” or “good morals.” It also makes it easier for authorities to dissolve an association without a court order and harder for an association to receive funding from abroad. Under the proposed law, administering an “unapproved” association would remain a crime. Authorities required organizations to obtain authorization from the local governor before holding indoor public meetings. The government in June banned two events organized by the Algerian League for the Defense of Human Rights: a conference on the occasion of the Day of the Child scheduled for June 1 in the *wilaya* (governorate) of el-Taref and one to be held in Algiers on June 10 about corruption in the Arab world”¹².

BAHRAIN:

“Over the last four years Bahrain has targeted for harassment or shut down non-governmental organizations (NGOs) that are critical of the government or its policies. Freedom of association is restricted by Law 21/1989, which allows significant interference into the affairs of NGOs. The law empowers authorities to replace board members of NGOs and prohibits NGOs from engaging in political activities. The Ministry of Social Development and Human Rights continues to deny legal status to independent human rights organizations like the BCHR, which it shut down seven years ago. In April 2010, the Lower Criminal Court fined Mohamed al-Maskati, president of the Bahrain Youth Society for Human Rights (BYSR) US\$1,325 for operating an unregistered NGO. Since 2005, BYHRS has applied to register with the ministry but has not yet received a response”¹³.

BELARUS:

“In October 2011 the Belarusian parliament adopted restrictive amendments to a number of laws that seemed aimed at banning silent demonstrations. The amendments included restrictions on where demonstrations can be held, and introduced a more complicated procedure for obtaining permits for public gatherings. Also according to the new legislation, actions directed at spreading or sharing information about a planned gathering may constitute an offense unless the gathering had already been approved by the authorities”¹⁴.

“Involvement in an unregistered organization constitutes a criminal offense under Belarusian law. The authorities continue to routinely deny registration to most civil society groups for arbitrary reasons, making activists constantly vulnerable to prosecution. In January and June 2011 the Belarusian Helsinki Committee, Belarus’s only nationally registered human rights group, received two politically motivated warnings from the Ministry of Justice. Under Belarusian law, two official warnings may lead to suspension of an organization’s activities. Belarusian authorities continue to severely curtail the right to assemble peacefully. In 2011 the political opposition held “silent” demonstrations to protest Lukashenka’s government or express support for political prisoners. Police disperse,

¹¹ HRW (2012) *The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament*, p. 16-17. <http://www.hrw.org/sites/default/files/reports/egypt0112webwcover.pdf>

¹² HRW, *World Report 2012: Algeria*. <http://www.hrw.org/world-report-2012/world-report-2012-algeria>

¹³ HRW, *UPR Submission on Bahrain*, 21 November 2011. <http://www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain>

¹⁴ HRW, *World Report 2012: Belarus*. <http://www.hrw.org/world-report-2012/world-report-2012-belarus>

sometimes harshly, protesters who do nothing more than stroll silently or clap their hands. Many were sentenced to up to 15 days of administrative detention for ‘hooliganism’¹⁵.

EGYPT:

“The actual law, the Law on Associations, enables the government to interfere with the registration, governance, and operation of NGOs and impedes the right of Egyptians to form and operate independent associations. The government has yet to remove the restrictions on NGOs in the Law on Associations and has instead initiated a broad-based criminal investigation targeting human rights organisations that the Mubarak government excluded from registration under the law”¹⁶.

“The Mubarak government severely restricted freedom of association using a complex set of interlocking laws, decrees, and emergency powers to stifle the exercise of that right. This included restricting the right to form new political parties, trade unions, and NGOs and associations. The Egyptian parliament should amend the Law on Associations to:

- 1) Abolish penalties for conducting legitimate activities in unregistered NGOs.
- 2) Ensure that any involuntary dissolution of an NGO takes place by judicial order”¹⁷

EQUATORIAL GUINEA:

“A number of provisions in the relevant laws and presidential decrees pertaining to civil society formation and operation effectively enable the government to monitor the activities of civil society organizations, infringe upon the constitutionally guaranteed freedoms of association and assembly, and limit civil society’s ability to operate independently of the state. The registration requirements for legalization are complex, unclear, and inadequately formalized, making it difficult for organizations to successfully navigate the registration process and obtain legal recognition. The legal code also makes it difficult for international NGOs to assist local civil society organizations. Local civil society groups are unable to affiliate themselves with international organizations—or adopt names that allude to them—without government authorization. The government required that a civil society organization remove “human rights” from its organizational objectives before it could receive legal authorization”¹⁸.

ETHIOPIA:

“The restrictive Charities and Societies Proclamation, adopted in 2009, which prohibits organizations receiving more than 10 percent of their funding from abroad from carrying out human rights and governance work, continues to severely hamper basic rights monitoring and reporting activities. Two former leading rights organizations, the Ethiopian Women’s Lawyers Association (EWLA) and the Human Rights Council (HRCO, formerly EHRCO), have had to slash their budgets, staff, and operations. Their bank accounts, which the government arbitrarily froze in December 2009, remain frozen”¹⁹

IRAN:

“In April 2011 Iran’s parliament passed several articles of a draft bill which severely limits the independence of civil society organizations, and creates a Supreme Committee Supervising NGO Activities chaired by ministry officials and members of the security forces. Authorities had already banned or severely restricted the independence of several professional organizations not covered by the draft bill, including the Journalists’ Association and the Bar Association. Dozens of activists

¹⁵ *Ibid.*, <http://www.hrw.org/world-report-2012/world-report-2012-belarus>

¹⁶ HRW (2012) *The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament*, p. 31.

<http://www.hrw.org/sites/default/files/reports/egypt0112webwcover.pdf>

¹⁷ HRW, *Egypt: Government Moves to Restrict Rights and Democracy Groups*. 26 September 2011.

<http://www.hrw.org/news/2011/09/26/egypt-government-moves-restrict-rights-and-democracy-groups>

¹⁸ EG Justice (2011) *Disempowered Voices: The Status of Civil Society in Equatorial Guinea*, p.14.

<http://www.pambazuka.org/images/articles/520/Disempowered%20Voices%20The%20Status%20of%20Civil%20Society%20in%20Equatorial%20Guinea.pdf>

¹⁹ HRW, *World Report 2012: Ethiopia*. <http://www.hrw.org/world-report-2012/Ethiopia>

affiliated with banned opposition political parties or student groups are currently serving time in prison”²⁰.

SAUDI ARABIA:

“Saudi Arabia does not allow political or human rights associations. In February intelligence forces arrested six persons who planned to found the kingdom’s first political party. The 2009 outcome report of the UPR recommends that Saudi Arabia promulgate a law regulating NGOs in compliance with international standards, and that the rights to freedom of expression, association and peaceful assembly be fully respected for human rights defenders”²¹.

SINGAPORE:

“The Societies Act requires any organization with more than 10 members to register. However, registration may be denied on grounds that an organization’s “purposes [are] prejudicial to public peace, welfare or good order” or that registration would be ‘contrary to the national interest’. Only political parties or organizations are permitted to engage in ‘political activities’”²².

Q5 - Countries with sanctions for HR defenders who undertake activities individually.

EQUATORIAL GUINEA:

“Individuals—particularly those perceived to be opponents or critics of the government—are periodically detained without an arrest warrant, a trial, or access to a lawyer, in direct violation of Law No. 18/1995 and the International Covenant on Civil and Political Rights, to which Equatorial Guinea acceded in 1987”²³.

MOROCCO:

“Local and international human rights organizations operate with few impediments in the major cities, but individual activists sometimes pay a heavy price for whistle-blowing. Chekib el-Khayari, president of the Association for Human Rights in the Rif, served two years of a three-year term for “gravely insulting state institutions” and minor currency violations, before the king pardoned him in April. The authorities jailed el-Khayari after he accused certain Moroccan officials of complicity in narcotics trafficking”²⁴.

*Q7 - Measures taken to avoid false accusations of **defamation, slander, blasphemy** to restrict freedom of opinion & expression of HR defenders + laws on **printing, publication, media and censorship***

ALGERIA:

“In July 2011 parliament revised two articles of the press code to eliminate prison terms—but not fines—as punishment for the offense of defaming or showing contempt for the president, state

²⁰ HRW, *World Report 2012: Iran*. <http://www.hrw.org/world-report-2012/world-report-2012-iran>

²¹ HRW, *World Report 2012: Saudi Arabia*. <http://www.hrw.org/world-report-2012/world-report-2012-saudi-arabia>

²² HRW, *Singapore UPR Submission*, 18 October 2010. <http://www.hrw.org/news/2010/10/18/singapore-upr-submission>

²³ EG Justice (2011) *Disempowered Voices: The Status of Civil Society in Equatorial Guinea*, p.18. <http://www.pambazuka.org/images/articles/520/Disempowered%20Voices%20The%20Status%20of%20Civil%20Society%20in%20Equatorial%20Guinea.pdf>

²⁴ HRW, *World Report 2012: Morocco*. <http://www.hrw.org/world-report-2012/morocco-and-western-sahara>

institutions, or courts. In September the Council of Ministers approved a draft press code that, if adopted, would eliminate prison as a punishment for speech offenses; however prison sentences for speech offenses remain present in the penal code”²⁵.

CHINA:

“The government continued in 2011 to violate domestic and international legal guarantees of freedom of press and expression by restricting bloggers, journalists, and an estimated more than 500 million internet users. The government requires internet search firms and state media to censor issues deemed officially “sensitive,” and blocks access to foreign websites including Facebook, Twitter, and YouTube. However, the rise of Chinese online social networks—in particularly Sina’s Weibo, which has 200 million users—has created a new platform for citizens to express opinions and to challenge official limitations on freedom of speech despite intense scrutiny by China’s censors”²⁶.

EGYPT:

“Article 179 of the Egyptian Penal Code calls for the imprisonment of “whoever affronts the President of the Republic”. Article 184 states that “whoever insults or libels the People’s Assembly, the Shura Council, any other state institution, the army, the courts or the authorities shall be punished with imprisonment and a fine of not less than 5000 Egyptian pounds. These type of provisions shields government officials from public criticism by allowing courts to jail those who are deemed to have “insulted” or “affronted” them, or “attacked” their “dignity”, “honour” or “reputation”. The Mubarak government used these Penal Code provisions Penal Code provisions to crack down on legitimate criticism of the government’s human rights record or criticism of the political situation”²⁷.

IRAN:

“Authorities continue to shut down newspapers and target journalists and bloggers. On September 5, 2011 the Ministry of Islamic Culture and Guidance’s Press Supervisory Board shut down the weekly *Shahrvand* (Citizen) and daily *Ruzegar* (Time) for insulting the authorities and “propaganda against the state,” among other crimes. On September 5 and 6, Intelligence Ministry forces raided the offices of Majzooban-e Noor, a website affiliated with the Nematollahi Gonabadi Sufi order, and arrested at least 11 members of its editorial staff on unknown charges [...] The Ministry of Science, backed by the Supreme Council of the Cultural Revolution, implemented regulations to limit social science course offerings at various universities as part of an Islamicization program. Authorities also issued restrictive quotas to limit the courses and majors that women students could take at certain universities. State universities prevented some politically active students from registering for graduate programs despite test scores that should have guaranteed them access”²⁸.

IRAQ:

“In April 2011 Iraq’s parliament approved a Journalists’ Protection Law, intended to protect media workers and compensate them for injuries sustained while working. Critics say the law does not do enough to ensure proper protections for journalists [...] In May 2011 the Council of Ministers approved a draft of the “Law on Freedom of Expression of Opinion, Assembly, and Peaceful Demonstration,” which contains provisions that would criminalize speech, with penalties of up to 10 years in prison. Under article 13, anyone who “attacks a belief of any religious sect or shows contempt for its rites”, or publicly insults a “symbol, or person who is held sacred, exalted, or venerated by a religious sect” would face up to one year in jail and fines of up to 10 million Iraqi dinars (US\$8,600). The law provides no guidance about what might constitute an unlawful insult”²⁹.

MOROCCO:

²⁵ HRW, *World Report 2012: Algeria*. <http://www.hrw.org/world-report-2012/world-report-2012-algeria>

²⁶ HRW, *World Report 2012: China*. <http://www.hrw.org/world-report-2012/world-report-2012-china>

²⁷ HRW (2012) *The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament*, p. 23. <http://www.hrw.org/sites/default/files/reports/egypt0112webwcover.pdf>

²⁸ HRW, *World Report 2012: Iran*. <http://www.hrw.org/world-report-2012/world-report-2012-iran>

²⁹ HRW, *World Report 2012: Iraq*. <http://www.hrw.org/world-report-2012/world-report-2012-iraq>

“Morocco’s independent print and online media investigate and criticize government officials and policies, but face prosecution and harassment when they cross certain lines. The press law includes prison terms for “maliciously” spreading “false information” likely to disturb the public order or for speech that is defamatory, offensive to members of the royal family, or that undermines “Islam, the institution of the monarchy, or territorial integrity,” that is, Morocco’s claim on Western Sahara”³⁰.

SAUDI ARABIA:

“In April 2011 King Abdullah amended the 2000 Press and Publications Law to further prohibit speech that “contradicts rulings of the Islamic Sharia [law] or regulations in force,” or “call[s] for disturbing the country’s security, or its public order, or ... caus[es] sectarianism or ... damage[s] public affairs in the country.” New restrictions also include a prohibition on damaging the reputation of the chief mufti, members of the Council of Senior Religious Scholars, or any other government official or government institution”³¹.

SINGAPORE:

“Restrictions in Singapore’s Constitution facilitate censorship of broadcast and electronic media, films, video, music, sound recordings, and computer games. The Newspaper and Printing Presses Act requires yearly renewal of registration and allows government officials to limit circulation of foreign newspapers they deem “engage in the domestic politics of Singapore.”³²

“The Films Act authorizes the banning, seizure, censoring, or restricting of written, visual, and musical offerings should their content be deemed to threaten stability, offend morality, or further racial or religious animosity. It authorizes the police to search a home for unlicensed materials and take into custody alleged offenders. All films must be approved by the Board of Film Censors. Although a March 2009 amendment permits endorsement of a political party or politician and allows on-line undramatized election advertising. MICA is still empowered to ban a film on the broad grounds that it runs contrary to public interest”³³.

Q8 - Any other type of legislation used to regulate the activities of HR defenders and how the application of this legislation affects the activities of the HR defenders.

AZERBAIJAN:

The atmosphere for human rights defenders in Azerbaijan is hostile, and government initiates criminal cases on trumped-up charges to harass and silence many who criticize the government. In the following cases provisions of the Criminal Code have been used to target rights defenders.

Taleh Khasmammadov

Legislation used:

Article 221.2.2 of the Criminal Code of the Republic of Azerbaijan (hooliganism)

Article 221.3 of the Criminal Code of the Republic of Azerbaijan (hooliganism)

³⁰ HRW, *World Report 2012: Morocco*. <http://www.hrw.org/world-report-2012/morocco-and-western-sahara>

³¹ HRW, *World Report 2012: Saudi Arabia*. <http://www.hrw.org/world-report-2012/world-report-2012-saudi-arabia>

³² HRW, *World Report 2012: Singapore*. <http://www.hrw.org/world-report-2012/world-report-2012-singapore>

³³ HRW, *Singapore UPR Submission*, 18 October 2010. <http://www.hrw.org/news/2010/10/18/singapore-upr-submission>

Article 315.1 of the Criminal Code of the Republic of Azerbaijan (violent resistance to a public official)

Case summary:

Blogger and human rights defender Taleh Khasmammadov of the Law and Order group, from the town of Goychay, was arrested on November 12, 2011 on charges of hooliganism (articles 221.2.2 and 221.3 of the Criminal Code) and violent resistance to a public official (article 315.1 of the Criminal Code). On April 20, 2012 a court sentenced him to four years in prison. Khasmammadov, a lawyer by training, had been investigating allegations of abuses and illegal activities committed by law enforcement officials, mainly in the Goychai and Ujar regions.

On November 12, 2011, police called Khasmammadov and summoned him to the Ujar Police Department in connection with an alleged complaint the police had received about him. Shortly after his arrival to the police department, Khasmammadov was detained on charges of hooliganism and resisting police officers. Police officers maintain that Khasmammadov assaulted them during the course of questioning. Khasmammadov defender denies these allegations. According to his lawyer, Asabali Mustafayev, police had previously called Khasmammadov into the Ujar police station and warned him to stop his investigations.

Vidadi Isganderov

Legislation used:

Article 159.3 of the Criminal Code of the Republic of Azerbaijan (forcing somebody to vote against their will)

Article 160.1 of the Criminal Code of the Republic of Azerbaijan (interference with the activities of the electoral commissions)

Article 132 of the Criminal Code of the Republic of Azerbaijan (battery)

Case summary:

Vidadi Isganderov, the head of Support for Protection of Democracy, a nongovernmental group that carries out a wide range of human rights work, was sentenced to three years in prison on August 27, 2011 by Goychay District Court on charges of interfering with the November 2010 parliamentary election. Isganderov was arrested twice in April 2011 for participating in unsanctioned opposition rallies and convicted of misdemeanor charges of disobeying police orders. He served short administrative sentences for both.

However, when his second administrative sentence was about to expire, instead of releasing Isganderov, the authorities brought criminal charges of electoral interference against him.

Isganderov was a candidate in the November 2010 parliamentary elections for the Agdash-Goychay electoral district. Following the elections he submitted a complaint to the police and prosecutor's office alleging vote rigging in his district. He provided materials, including video footage, in support of his allegations, but the authorities failed to investigate them. Instead, they brought charges against him.

Isganderov was convicted despite the absence of evidence to substantiate the charges and much conflicting evidence. For example, Isganderov was accused of intervening with electoral commission members in three polling stations alleging that they had falsified ballots. However, Isganderov had not visited two of these precincts. Isganderov's lawyer requested that footage from the precincts be made available. Although the judge granted the request, he rendered his judgment without having the footage.

Isganderov was also accused of forcing people to vote against their will. But five witnesses whom the prosecution called, alleging that they did not vote because they were scared off when Isganderov challenged precinct commission members, denied that account and said that they had never seen Isganderov before.

Bakhtiyar Mammadov

Legislation used:

Article 178.3.2 of the Criminal Code of the Republic of Azerbaijan (Fraud)

Article 182.3.2 of the Criminal Code of the Republic of Azerbaijan (Extortion)

Case summary:

Bakhtiyar Mammadov, lawyer who assisted many clients seeking to defend their property against illegal expropriation and demolition, was arrested on December 30, 2011 on charges of fraud and extortion. Initially, Mammadov was sentenced to three months of pre-trial detention. On April 19, 2012, Mammadov's lawyer submitted a motion requesting Mammadov be released, as the three month pretrial detention period had ended at the end of March 2012 and since that time he had been held illegally, without court sanction of the detention. During the April 19, 2012 hearing, the prosecutor did not petition for the extension of Mammadov's arrest, however, the Baku Grave Crimes Court judge stated that the court detains Mammadov "at its own initiative" and that Mammadov would be kept in detention for the duration of the court proceedings." This decision to hold Mammadov in an open-ended pre-trial detention amounts to indefinite arrest, which is a grave violation of Azerbaijani and international law.

Under Azerbaijan's Criminal Procedure Code, a court has on three options with respect to pre-trial detainees:

- A) To release a person;
- B) To extend detention time for a specific period of time (for example for one month or three months; if court proceedings are complete within that period of time, the prosecutor should petition for another extension)
- C) Change the measure of restraint to home arrest.

Because Mammadov had been held illegally from the expiration of his sanctioned pre-trial detention at the end of March 2012 to the time of the hearing on April 19, 2012, there was no pre-trial detention for the court to extend. Only a prosecutor can petition for pre-trial detention as a restraining measure. On May 30, 2012 another court hearing took place. Three alleged victims testified regarding the fraud charges, stating that Mammadov had returned to them all the money they gave him.

Ogtay Gulaliyev

Legislation used:

Article 220.2 of the Criminal Code of the Republic of Azerbaijan (inciting violence and mass disorder)

Case summary:

Human Rights Defender Ogtay Gulaliyev of the Kura Civil Society, had been investigating an alleged misappropriation of the state assistance to the flood victims in the Sabirabad region. Gulaliyev was detained on April 8, 2012 during a meeting with flood victims who alleged the state assistance for rebuilding flood damage had been stolen by public officials. The Sabirabad Regional Court charged Gulaliyev with minor hooliganism and sentenced him to 12 days of administrative detention. On April 19, when his administrative detention was about to expire, the authorities brought criminal charges of inciting violence and mass disorder against Gulaliyev. Gulaliyev was sentenced to two months of pre-trial detention without legal representation. He refused the state-appointed lawyer but his request to be represented by a lawyer of his choice was rejected. Intigam Aliyev, a lawyer working on Gulaliyev's case, alleged the rights defender was mistreated in custody, but no investigation into the reports of ill-treatment has followed. If convicted, Gulayev faces up to three years in prison.

Institute for Reporters' Freedom and Safety (IRFS)

Legislation used:

Article 10 of the Law of the Republic of Azerbaijan on Mass Media (on inadmissibility of abusing freedom of the mass information)

Case summary:

In February 2012 Azerbaijan's Ministry of Justice sent the Institute for Reporters' Freedom and Safety (IRFS), a leading media freedom NGO, an official letter claiming that IRFS committed two violations of article 10 of the Law on Mass Media. One alleged violation cited in the warning relates to disseminating "biased" information. The other alleged violation relates to an alleged failure to inform the Ministry of Justice of changes in the organizations' chairmanship. IRFS has said it made no changes to its founding documents. Following these warnings, the Ministry of Justice may appeal to court to request that IRFS be deregistered.

MOROCCO:

"Responding to the pro-democracy Arab Spring movements and to pro-reform demonstrations in Morocco, King Mohammed VI proposed in June constitutional amendments with substantial human rights guarantees. The new constitution prohibits torture, inhuman, and degrading treatment; arbitrary detention; and enforced disappearances. It also requires any person who is arrested to be informed "immediately" of the reason for his arrest, and to enjoy the presumption of innocence and the right to a fair trial. However at this writing the amendments had yet to transform Morocco's decidedly mixed human rights performance"³⁴.

³⁴ HRW, *World Report 2012: Morocco*. <http://www.hrw.org/world-report-2012/morocco-and-western-sahara>