



AZERBAIJAN

Mid-term Report - Review of the implementation of recommendations concerning the freedom of expression, freedom of peaceful assembly and right to participate accepted by Azerbaijan during the UPR in 2018

By Election Monitoring and Democracy Studies Center

1. Introduction

The Election Monitoring and Democracy Studies Center (EMDS) is a non-governmental organization working to hold free and fair elections, as well as the development of civil society and democracy in Azerbaijan. EMDS was established by founders and members of Election Monitoring Center (EMC), the registration of which was annulled in 2008.

Within international election observation missions of the European Network of Election Monitoring Organizations (ENEMO), European Platform for Democratic Elections (EPDE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), members of EMDS have observed presidential, parliamentary elections and referenda held in Albania, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Spain, Turkey and Ukraine.

Besides, EMDS (previously as EMC) has implemented programs on human rights education focusing on political rights (freedom of expression, freedom of peaceful assembly and freedom of association, right to participate, electoral rights etc.) citizen participation in public policy, increasing accountability of local and central administrative bodies, as well as protection of political rights

2. Executive Summary

Azerbaijan received and supported 4 recommendations during the UPR 2018 regarding the freedom of assembly and association and right to participate in the public affairs.¹ These set of rights are well-known cornerstones for democratic societies and well-recognized by respected international human rights documents such as Universal Declaration on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and International Covenant on Civil and Political Rights among others.

This mid-term review submission by Election Monitoring and Democracy Studies Center analyses to which extent the recommendations Azerbaijan received and supported are implemented in between the UPR cycles three and four. Overall, the submission demonstrates that Azerbaijan has failed to adequately implement the recommendations it received and supported regarding the freedom of assembly and association and right to participate in the public affairs. Restrictive NGO legislation, constant disallowance and dispersal of peaceful meetings and irregularities in held elections alongside lack of will to adequately amend the Election Code in line with international standards and recommendations have been the main reasons.

3. UPR Recommendations accepted and level of implementation by Azerbaijan

a. Freedom of assembly and association

Recommendations:

During the UPR 2018, Azerbaijan received and supported 3 recommendations regarding the freedom of peaceful assembly and association calling for adopting measures to improve the level of enjoyment of the rights also by cooperating closely with civil society:

¹ United Nations, Human Rights Council, 'Matrix of Recommendations, Third Cycle, (2018), <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AZIndex.aspx>

- a. 141.42 Review administrative and legislative provisions and projects, including on defamation, to fully guarantee the enjoyment of freedom of expression, assembly and association (Austria)
- b. 140.69 Continue to take measures to grantee freedom of association and to engage closely with civil society in upholding human rights protection (Myanmar);
- c. 141.71 Ensure that all governmental authorities, in cooperation and consultation with the Bar Association and with lawyers themselves, take steps to ensure that lawyers are protected from intimidation and harassment or other improper interference in their work (Slovenia);

Implementation level:

The freedom of peaceful assembly and association has been one of the fundamental human rights under constant threat, especially after the restrictive NGO legislation adopted in 2013-14 in Azerbaijan. Following the subsequent restrictive amendments introduced in 2016-7, under the new legislation, the procedures of registration and receiving foreign grants for domestic NGOs have been tightened which alongside burdensome reporting requirements pushed some “NGOs to operate on the fringes of the law”.² Both international and domestic right groups stress the “Widespread use of criminal law and restrictive NGO legislation as a weapon against critical voices is an ongoing hallmark of the human rights situation in Azerbaijan”³

As a result of the restrictive laws, the government holds the right, among others, to arbitrarily decide on the fate of the grants which renders the work of a number of independent NGOs complicated, if not impossible.⁴ Space for civil society actors in Azerbaijan is considered as closed for several years in a row, including since 2018.⁵

The restrictive amendments also played a role in the imprisonment in the case of several human rights defenders and civil society actors in whose cases European Court of Human Rights later found the rights of the applicants were violated.⁶ Under the general measures necessary to cure the root causes of the troubling pattern, Azerbaijan, among others, is recommended to amend NGO legislation.⁷

Freedom of assembly is another pertinent element to the democracy and network of human rights and recognized by both international and national legislation of Azerbaijan. However, it

² European Human Rights Advocacy Center, ‘Council of Europe must urge Azerbaijan to improve situation for human rights defenders’, (3 July2020), <https://ehrac.org.uk/news/council-of-europe-must-urge-azerbaijan-to-improve-situation-for-human-rights-defenders/>

³ European Implementation Network, ‘Joint statement regarding the non-implementation of ECtHR judgments against Azerbaijan in cases of politically motivated prosecution’, (17 November 2020), paragraph 1, <https://www.einnetwork.org/blog-five/2020/11/16/joint-statement-regarding-the-non-implementation-of-ecthr-judgments-against-azerbaijan-in-cases-of-politically-motivated-prosecution> (Joint Statement)

⁴ International Center for Non-profit Law, ‘Civic Freedom Monitor: Azerbaijan, (30 September 2020), <https://www.icnl.org/resources/civic-freedom-monitor/azerbaijan> (ICNL)

⁵ CIVICUS civic space monitor, ‘2020 findings’, <https://findings2020.monitor.civicus.org/europe-central-asia.html>

⁶ Joint Statement

⁷ Joint Statement, para.9-11

has been repeatedly curtailed in Azerbaijan. While national law of Azerbaijan on freedom of peaceful assemblies ensure the enjoyment of the rights, practice proves otherwise. International principles on the freedom of assembly demands states to allow enjoyment of the freedom of assembly and provide protection where necessary.⁸ In practice, there are ongoing issues on the ground regarding both matters.

Law requires the participants and or organizers of the meetings and others that fall under the scope of the freedom in question to inform the local executive authorities 5 days prior to the event in written form.⁹ While the intention of this is explained as just informing the authorities, in practice, local executive authorities misinterpret the law and often holds the final say on the fate of the events according to the grounds that are not reflected in the law.¹⁰ Since 2018, dozens of requests for such meetings by main opposition forces in Azerbaijan have been mostly rejected on grounds such as expediency and/or disruption on the ‘public’s right to rest etc’.¹¹

Moreover, the law of the Republic of Azerbaijan on the freedom of peaceful assembly contains unnecessary opportunities for local executive authorities to disallow the events in case of important international events.¹² However, the language of the provision is broad and open for manipulation by authorities whereas such restrictions must be absolutely necessary and proportionate for the legal aim.¹³

While international principles on the law demand state to limit the enjoyment of the freedom of assembly only when necessary and with proportionate measures, these often rejections for the peaceful assemblies leads to a situation where peaceful protesters are consequently deemed as in violation of the laws. This in turn is usually followed by the disproportionately aggressive police force to interfere with the events which are in violation of both domestic law and international law. Additionally, the organizers and possible participants of demonstrations with political messages are reportedly regularly summoned to the police stations and threatened

⁸ Office of High Commissioner for Human Rights, ‘Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly’, (23 July 2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en

⁹ Legislation online, ‘The law of the Republic of Azerbaijan on the freedom of assembly’, article 5 <https://www.legislationline.org/download/id/4285/file/AZERBAIJAN_FoAssembly_law_2012_am_en.pdf#:~:text=Participants%20shall%20enjoy%20the%20right,of%20the%20Republic%20of%20Azerbaijan.&text=Only%20the%20participants%20of%20an.can%20be%20brought%20to%20responsibility> (Law on Freedom of Assembly)

¹⁰ Ibid

¹¹ EMDS, ‘Fact-Sheet on the situation of human rights in Azerbaijan, 2018’, (1 February 2019), pages 7-8, <https://smdtaz.org/wp-content/uploads/2019/02/EMDS-FACT-SHEET-2018.pdf>;

EMDS, ‘Fact-Sheet on the situation of human rights in Azerbaijan, 2019’, (1 April 2020), pages 5-7, <https://smdtaz.org/wp-content/uploads/2020/04/06.01.2020.pdf>

Contact.az, ‘NCDF Put Forward Demands on Authorities’, (9 October 2019), <https://www.contact.az/ext/news/2019/10/free/politics%20news/en/84356.htm>

¹² Law on Freedom of Assembly, article 8.4

¹³ Office of High Commissioner for Human Rights, ‘Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly’, (23 July 2020), section IV: Restrictions on the right of peaceful assembly, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en

and/or detained prior to or afterwards the large opposition rallies by local police stations as a mean of intimidation of peaceful protesters.¹⁴

On the number of times, peaceful protests, especially ones with political meanings have faced harsh police interference where police officers beat, insult or even reported to torture the detainees afterwards. On 19 October 2020, the National Council of Democratic Forces (NCDF) as one of the main opposition forces organized a protest in central Baku next to 28 May subway station. Subway station, buses passing nearby and all means of transportation stopped operating in the area, the internet connection throughout the central Baku was shut down, all roads leading to the central square for the protest was blocked by police officers.¹⁵ Moreover, the protest was violently disrupted by police officers where the number of protesters got bodily injuries whereas dozens were detained and arrested. A couple of organizers were arrested and reported to be tortured in police stations afterwards.¹⁶

The feminist protests dating 8 March 2019¹⁷, 2020¹⁸ and 20 October 2020¹⁹ were all dispersed by police officers where participants, especially in the latest event faced aggressive police behaviour, suffered from bodily injuries.²⁰ On 14 July 2020, thousands marched towards central Baku protesting the death of high-ranking commander in the latest escalations and showed support to the army. However, after a group of demonstrators broke into the parliament building, the mostly peaceful demonstration was dispersed by the police by using rubber bullets, water cannons and tear gas.²¹ At least 70 people detained throughout the scene on the

¹⁴ US. Embassy in Azerbaijan, 'Azerbaijan 2018 Human Rights Report, (3 may 2019), Freedom of peaceful assembly, <https://az.usembassy.gov/azerbaijan-2018-human-rights-report/>

OC Media, 'Detentions as a tool of political pressure 'on the rise' in Azerbaijan', (26 August 2019), <https://oc-media.org/detentions-as-a-tool-of-political-pressure-on-the-rise-in-azerbaijan/>

Freedom House, 'Freedom in the world, 2020, Azerbaijan', E1, <https://freedomhouse.org/country/azerbaijan/freedom-world/2020>

¹⁵ Freedom House, 'Azerbaijan: Government must respect freedom of peaceful assembly', (21 October 2019), <https://freedomhouse.org/article/azerbaijan-government-must-respect-freedom-peaceful-assembly>;

EMDS, 'EMDS issued a statement on rallies of 19-20 October 2019 in Baku, (21 October 2019), <https://smdtaz.org/en/emds-issued-a-statement-on-rallies-19-20-october-in-baku/>

¹⁶ EMDS, 'EMDS issued a statement on rallies of 19-20 October 2019 in Baku, (21 October 2019), <https://smdtaz.org/en/emds-issued-a-statement-on-rallies-19-20-october-in-baku/>

Human Rights Watch, 'Azerbaijan, Peaceful Rallies Dispersed Violently', (22 October 2020), <https://www.hrw.org/news/2019/10/22/azerbaijan-peaceful-rallies-dispersed-violently>;

Voice of America, 'Azerbaijan Police Detain Scores of Protesters, Including Opposition Party Leader', (19 October 2020), https://www.youtube.com/watch?v=f4bWFr6w3U&ab_channel=VOANews

Radio Free Europe, 'Police Detain Dozens At Baku Protest', (19 October 2020),

https://www.youtube.com/watch?v=qZgzvJscqt8&ab_channel=RadioFreeEurope%2FRadioLiberty

Radio Free Europe, 'Opposition Leader Says He Was Tortured by Baku Police ', (20 October 2019),

<https://www.rferl.org/a/azerbaijani-opposition-leader-claims-he-was-tortured-by-baku-police/30254785.html>

¹⁷ OC Media, 'Police in Azerbaijan break up women's day march', (9 March 2019), <https://oc-media.org/police-in-azerbaijan-break-up-women-s-day-march/>;

¹⁸ Radio Free Europe, 'Police briefly detained dozens at feminist rally in Azerbaijan', (9 March 2020),

<https://www.rferl.org/a/police-briefly-detained-dozens-at-feminist-rally-in-azerbaijan-release-them-outside-capital/30477692.html>

¹⁹ Radio Free Europe, 'Azerbaijani activists protest violence against women', (20 October 2020), <https://www.rferl.org/a/azerbaijani-activists-protest-violence-against-women/30226512.html>

Human Rights Watch, 'Azerbaijan, Peaceful Rallies Dispersed Violently', (22 October 2020), <https://www.hrw.org/news/2019/10/22/azerbaijan-peaceful-rallies-dispersed-violently>;

²⁰ Ibid

²¹ EMDS, 'Press Release on the rally of 14-15 July and aftermath', (15 July 2020), <https://smdtaz.org/en/press-release-on-the-rally-of-14-15-july-and-aftermath/>

night of demonstration alone while detentions continued afterwards and 70 people, mostly opposition members and activists were arrested and charged with trumped-up administrative and criminal charges for the event.²²

Human rights lawyers, especially those take part in politically sensitive cases in Azerbaijan often suffer from retaliatory moves from the authorities, including the Bar Association wherein several cases disciplinary measures are initiated to intimidate and render the work of lawyers for time-being impossible.²³ This issue is better covered ‘Joint report of Lawyers for Lawyers and The Law Society of England and Wales’ in their midterm report submission to the UPR process regarding the implementation level of recommendations Azerbaijan received and supported in UPR 2018.²⁴

Improvements

Since the 2018 UPR processes, Azerbaijan has made few amendments in the NGO legislation.²⁵ Accordingly, the opportunity is created for NGOs to submit necessary documentation online which eases the process of reporting. However, regardless the mean of reporting, the unchanged reporting requirement per se remains burdensome and changes into law fails to have substantive value since it does not dismiss the power of relevant authorities to decide on the receipt of the grant in the light of ongoing issues and recommendations.

On another initiative, government representatives have met with heads of reportedly more than 200 NGOs online and discussed several matters throughout 2020. While rarely happening dialogue opportunities between the state and civil society organizations are appreciated, the meetings lacked clear mandate concerning the improvements in the NGO legislation and situation of work of NGOs and the benefits from the meetings as specific improvement are yet to be delivered.

On the other hand, there have been no amendments made into the law of the Republic of Azerbaijan on freedom of peaceful assembly or any no national action plan accordingly since 2018. Overall, no legislative or administrative steps have been taken to implement the recommendations given and supported during the UPR 2018 review processes.

HRW, ‘Azerbaijan: relentless crackdown on opposition’, (19 August 2020),

<https://www.hrw.org/news/2020/08/19/azerbaijan-relentless-crackdown-opposition>

AzeriWatchDog, ‘Number of people detained in relation with support for Karabakh rally increased to 69 LIST,

<https://gozetc.az/az/the-number-of-people-detained-in-relation-with-support-for-karabakh-rally-increased-to-69-list/>

²² Ibid

²³ Human Rights House Foundation, Azerbaijani Bar Association must halt reprisals against Human Rights Lawyers’, (8 December 2019), <https://humanrightshouse.org/letters-of-concern/azerbaijani-bar-association-must-halt-reprisals-against-human-rights-lawyers/>

²⁴ Lawyers for Lawyers (L4L) and The Law Society of England and Wales, ‘Azerbaijan: Mid-term Report - Review of the implementation of recommendations with respect to the rule of law and the role of lawyers accepted by Azerbaijan during the UPR in 2018, (2020),

https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/MidTermReview_UPR_AZERBAIJAN_Law_Society.pdf

²⁵ E-qanun.az, ‘Changes into the law of Republic of Azerbaijan on the NGOs’, <http://e-qanun.az/framework/45662> [Available only in Azerbaijani];

E-qanun.az, ‘Changes into the law of Republic of Azerbaijan on the grants’, <http://e-qanun.az/framework/45625>, [Available only in Azerbaijani];

Joint Statement, para.22

i. Right to participate in public affairs

Recommendations:

During the UPR 2018, Azerbaijan received and supported 1 recommendation regarding the right to participate in the public affairs calling for adopting measures to improve the level of enjoyment of the rights of citizens to take part in political life:

140.87 In line with the Human Rights Committee, take specific measures for the exercise of political participation in the plural and competitive elections (Costa Rica)

Implementation level:

According to the general comment 25 of the Human Rights Committee, rights of citizens to participate in public affairs of the country entitles beneficiaries, without any discrimination, among others, to participate in free and fairly held elections without fear or intimidation.²⁶

Since UPR 2018, Azerbaijan held two elections. 23 December 2019 Municipal Elections and 9 February 2020 early Parliamentary Elections were held under conditions where the right to public affairs and other supporting rights were repeatedly restricted.

Domestic election observation NGO EMDS statistics-based observation missions to both elections and produced preliminary and final reports accordingly. Moreover, the OSCE Office for Democratic Institutions and Human Rights also observed the Parliamentary Elections in Azerbaijan. Both reports highlight the troubling patterns regarding the right to participate in public affairs.

Both elections were held in an atmosphere where restrictive laws and politically discriminative pattern of persecutions rendered the of civil society organizations and opposition political parties unable to function properly and reach out to the public to effectively disseminate their messages.²⁷ Opposition candidates and coalitions suffered from discriminatory and illegal barriers in all stages of the elections, usually accompanied by prolonged registration issues, groundless rejections in the nomination processes, undue restrictions on propaganda efforts and intimidation from workplaces or local executive authorities to withdraw candidacies.²⁸

Election days in both elections were accompanied by series of serious violations, such as ballot stuffing, multiple voting, group voting, intimidation and harassment of representatives and observers of opposition forces and independent candidates and so on which effectively

²⁶ Human Rights Committee, 'General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, (12 July 1996), para.11-13

<https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

²⁷ OSCE ODIHR, 'Election Observation Mission Final Report on Azerbaijan, Early Parliamentary Elections 9 February 2020', (17 July 2020), Executive Summary, https://www.osce.org/files/f/documents/7/e/457585_0.pdf (OSCE Final)

EMDS, 'Final Report of the Election Monitoring and Democracy Studies Center (EMDS) on the results of monitoring of the 9 February 2020 Early Parliamentary Elections in Azerbaijan, (22 June 2020), Executive Summary, https://smdtaz.org/wp-content/uploads/2020/09/EMDS_FR_220620.pdf (EMDS Final)

EMDS, 'Preliminary Statement of the Election Monitoring and Democracy Studies Center (EMDS) on the results of the monitoring of 23 December 2019 Municipal Elections in Azerbaijan, (24 December 2019), Executive Summary, <https://smdtaz.org/en/emds-issued-the-preliminary-report-on-the-23-december-municipal-elections-in-azerbaijan/>

²⁸ EMDS Final, pages 9-16;

damaged the integrity of elections.²⁹ Local courts in charge of reviewing election complaints granted 0 cases in total in Parliamentary Elections and either rejected and solved the issue in favour of authorities in all cases.³⁰

Moreover, right to participate in the public affairs strives under conditions where all supporting rights and freedoms to it such as freedom of expression, freedom of peaceful assembly and association among others are effectively upheld by States.³¹ During the election periods in both elections, freedom of expression and press was under dire conditions in Azerbaijan. Journalists constantly faced pressure from authorities for their professional work whereas local independent media outlets continued to suffer from blockage of access to their websites.³² International stakeholders alongside domestic right defenders repeatedly pointed out the systemic problems in the protection of freedom of expression in Azerbaijan, including during the time of elections.

Following the elections that are reported to be marred with traditional irregularities and E-day violations, citizens, observers and candidates organized post-election protests on 11, 16 and 21 February in front of the Central Election Committee and demanded the investigation of irregularities and new elections. However, all three protests were disrupted by police officers where dozens of activists were beaten, detained and removed from the scene where the number of participants, including Rabiyya Mammadova got bodily injuries as a result.³³ Moreover, authorities used politically motivated persecutions after the elections as a tool to punish the active participants of elections and post-election protests where opposition candidate Ruslan Izzatli, activist Fuad Ismayilov and others became victims of retaliatory move in following months.³⁴ Such tactics to intimidate citizens for taking an active part in the public affairs are in the breach of the international principles.³⁵

Improvements

There have been neither administrative nor legislative measures by Azerbaijan, especially to the Election Code, regarding the improvement of the level of enjoyment of the right to participate in public affairs. Azerbaijan has been repeatedly called by and both domestic and international election observation organizations to amend the Election Code among others to be in line with its obligations before the international law, however to no avail.³⁶ Recommendations are given by

²⁹ EMDS Final, pages 19-22; OSCE Final, pages. 23-5

³⁰ EMDS Final, pages 28-9;

³¹ HRC, 'General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, (12 July 1996), para.8, 25

<https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

³² EMDS Final, pages 5-6; OSCE Final, pages. 16-8;

³³ EMDS Final, 30-31; OSCE Final, pages. 26-7;

Eurasianet, 'Azerbaijani police violently break up post-election protest, (12 February 2020),

<https://eurasianet.org/azerbaijani-police-violently-break-up-post-election-protest>

Council of Europe, 'Commissioner concerned about disproportionate interference with the right to freedom of peaceful assembly in Azerbaijan', <https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-disproportionate-interference-with-the-right-to-freedom-of-peaceful-assembly-in-azerbaijan>

³⁴ EMDS Final, pages. 30-31;

³⁵ Human Rights Committee, 'General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, (12 July 1996), para.11-13

<https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

³⁶ EMDS Final, pages 7-8, 32; OSCE Final, pages. 1, 27-8,

4. Summary of the Review and Recommendations by EMDS

Overall, Azerbaijan displayed little to no advancement concerning the recommendations it received and supported during the UPR 2018 processes. A number of insignificant changes into the law failed to solve the problematic patterns on the protection of human rights in question and bring the domestic legislation in line with international obligations and UPR recommendations.

Considering the situation regarding the recommendations from UPR 2018 as stated above, EMDS recommends the following

- The law on freedom of peaceful assembly and association must be amended to bring it in line with international legislation by, among others, eliminating unnecessary restrictions on the work of NGOs and the organization of peaceful events.
- Election Code should be amended to improve the situation of handling of post-election complaints, the composition of election commissions and electronic solutions should be introduced into the election system to ease the technical matters such as nomination, registration etc.
- Current laws and practices should be revised and changed to deprive the authorities of deciding on the fate of receipt of grants and more specific measures should be introduced for ground on which peaceful events can be disallowed
- Azerbaijani authorities should effectively address the lack of independence in the judiciary that enables and condones arbitrary arrests and prosecutions; to end the politically motivated prosecution of members of civil society and all arbitrary restrictions on their work; to stop reprisals for legitimate human rights work.³⁷

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Eurasianet, 'Azerbaijani police violently break up post-election protest, (12 February 2020),

<https://eurasianet.org/azerbaijani-police-violently-break-up-post-election-protest>

³⁷ Joint Statement, paragraph 11