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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
AZE 5/2012

10 December 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **amendments to the legislation increasing fines and criminalizing breaches of the regulations regarding the organization and participation in peaceful assemblies, which may be contrary to the fundamental right to freedom of peaceful assembly.**

According to the information received:

On 2 November 2012, the Parliament of Azerbaijan adopted new amendments to the law on Freedom of Assembly, the Administrative Offences Code and the Criminal Code, which introduced additional restrictions on the right to freedom of assembly. Those amendments came into effect after being signed by the President of the Republic of Azerbaijan on 10 November. According to the information received if the location, timing and route have not been agreed with the authorities the gathering is regarded as unlawful.

The amended version of the Criminal Code (article 169, para. 1) states that if an unlawful gathering violates the rights and legitimate interest of citizens, the organization, conduct and participation shall be punished by a fine from 5,000 – 8,000 manat (1 manat = 1.27 USD), (it was up to 300 manat before the amendment), or by correctional work for up to two years, or by imprisonment for up to two years.

According to the amended Code on Administrative Offences (article 298 paragraph 1), natural persons organizing an unlawful gathering can be fined up to 500 up to 3000 manat or alternatively, depending on the circumstances of the person, 200 – 240 hours of public works may be imposed. For officials organizing an unauthorized gathering the fine is 3,000 to 6,000 manat and for legal entities 5,000 to 30,000 manat.

Furthermore, participants in an unauthorized rally can be fined between 500 to 1,000 manat, or depending on the particular circumstances of the case and the alleged offender, 160 – 200 hours of public work, or an administrative detention of up to 15 days may be imposed (Code on Administrative Offences article 298 para. 2).

Consequently, the grounds to impose administrative detention were expanded. Now according to the amended Code on Administrative Offences (art 398), an administrative arrest may also be imposed for violations of the rules on organizing and conducting gatherings, meetings, demonstrations, street marches or pickets.

This instance illustrates a pattern of restrictions on the right to freedom of assembly that has taken place in recent years in the country, whereby a number of requests for authorizing peaceful assemblies were allegedly refused and peaceful assemblies forcefully dispersed. In this regard we would like to remind your Excellency's Government of the joint letter of allegations sent to you on 5 March 2012 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders. In this letter, we expressed our concern about reports of repeated denials to authorize peaceful assemblies in Baku. Several requests of the political opposition or civil society to hold demonstrations were allegedly denied and even when authorized, they had to take place in remote areas outside Baku. In the same letter, we also raised our concern about allegations that in March and April 2011, several peaceful protests demanding democratic reform and greater respect for human rights met with excessive use of force. 16 persons are reportedly imprisoned for their participation in the 2011 spring mobilization. We regret that no reply has been received from your Excellency's Government to this joint letter of allegations.

Serious concern is expressed regarding the reported amendments in the regulatory framework related to the exercise of the right to freedom of peaceful assembly which would lead to a criminalization of those who organize and/or participate in peaceful gatherings, including spontaneous assemblies. Such amendments seem neither necessary nor reasonable and would seriously undermine the fundamental right to assemble peacefully.

While we do not wish to prejudge the accuracy of this information, we would like to draw the attention of your Excellency's Government to relevant international standards that are applicable to the issues brought forth by the situation described above.

We would also like to remind your Excellency's Government of article 21 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." The amendments introduced disproportionate increases in the fines and punishments (administrative arrest, public work and even criminal prosecution) for organising or participating in unauthorised peaceful assemblies. These punishments and fines are expected to a dissuasive effect on the exercise of the right to freedom of peaceful assembly and cannot be considered as a legitimate restriction of the right to freedom of peaceful assembly.

Furthermore, in his report to the Human Rights Council (A/HRC/20/27, para 84 c) the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that States have to ensure that "no one is criminalized for exercising the right to freedom of peaceful assembly and of association..." We would also like to mention recommendation 90 of the same report, which states that "[t]he exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be burdensome. In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court." The amendments also seem to undermine the possibility to hold spontaneous peaceful assemblies. We wish to draw the attention of your Excellency's Government to the fact that State authorities are held to protect and facilitate such assemblies and that national legislation should allow for spontaneous peaceful assemblies without sanctioning its participants in anyway.

In this connection, regarding the impact that these amendments would have on those individuals and/ or organizations which organize or participate in peaceful assemblies to defend and promote human rights and fundamental freedoms, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and

implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government article 5 point a) of the Declaration which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

Further, as we continue to monitor and clarify the circumstances surrounding the recent amendments of the law, we would be interested in knowing the views of your Excellency’s Government on the accuracy of the information contained in this letter, and we would be grateful to receive any additional information your Excellency’s Government may deem relevant. In particular, we would like to know further information about:

1. Are the facts as stated accurate in respect of the amendments to the Code on Administrative Offences and the Criminal Code?

2. If and how in the process leading to the adoption of the amendments, consideration was given to international human rights standards concerning the rights to freedom of peaceful assembly?

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee the right to freedom of peaceful assembly. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts and to ensure that legislation relating to the right to freedom of peaceful assembly is in conformity with the obligations of the Republic of Azerbaijan under international human rights law.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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