KEY CONCERNS AND RECOMMENDATIONS ON THE PROTECTION OF FUNDAMENTAL RIGHTS IN AZERBAIJAN

Briefing paper for EU-Azerbaijan Human Rights Dialogue, October 2017
This briefing paper has been prepared by International Partnership for Human Rights (IPHR) as a contribution to the EU-Azerbaijan Human Rights Dialogue, scheduled to take place in October 2017. It provides an overview of current key issues with respect to freedom of association, freedom of peaceful assembly and freedom of expression and the media in Azerbaijan. In the preparation of the briefing paper, IPHR has drawn on information from Azerbaijani partners and colleagues, who are, however, not mentioned as contributors for security reasons. The briefing paper was finalized on 2 October 2017.

International Partnership for Human Rights (IPHR) is an independent, non-governmental organisation founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities in repressive environments.

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Freedom of association

A series of amendments to national legislation adopted since 2009 have seriously restricted the right to freedom of association in Azerbaijan and made it extremely difficult for independent NGOs to operate in the country. Independent NGOs have also been targeted by criminal investigations, raids of their offices, freezing of their accounts and persecution of their leaders. As a result, the country’s once vibrant civil society has significantly declined.

Following amendments adopted in recent years, national legislation now provides for a cumbersome registration procedure for NGOs that allows for wide government discretion; far-reaching restrictions on concluding grant agreements and accessing funding for NGOs, especially foreign funding; extensive state control of the activities of NGOs and excessive reporting obligations for them; harsh penalties for violations of legal requirements applicable to NGOs; and broad grounds for suspending and closing down NGOs.

In the concluding observations adopted after its November 2016 review of Azerbaijan’s compliance with the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee denounced the current crackdown on NGOs, including highly restrictive legislation and practices that prevent them from “operating freely and without fear of retribution for their legitimate activities”. ¹

In the outcome report on his visit to Azerbaijan in September 2016, the UN Special Rapporteur on the situation of human rights defenders said that he was “struck to observe the drastic impediments to the right to freedom of association caused by the legislative amendments to laws regulating civil society operations”. He stated that the “already challenging environment for NGOs has turned into a total crisis”. ²

In its December 2014 Opinion on recent amendments to Azerbaijan’s NGO legislation³, the Venice Commission concluded that “the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law.”

The adoption and implementation of restrictive legislation and policies, combined with stigmatizing language used by government officials have also fuelled negative and hostile public attitudes toward NGOs, especially those working on human rights issues. In a trend similar to that seen in other countries of the region, human rights NGOs and their leaders have been accused of promoting the interests of foreign donors, advocating “non-traditional” values, threatening national security and the like.

Registration of NGOs

The process of registering NGOs is lengthy and complicated and allows for wide government discretion with respect to approving or denying applications. Numerous NGOs dealing with human rights and democracy issues have been unable to obtain registration. At the same time, as a result of legislative amendments adopted in recent years, in particular with respect to obtaining funding (see more below), it is now close to impossible for unregistered NGOs to operate in the country.

The European Court of Human Rights (ECHR) has issued several rulings against Azerbaijan in cases involving the arbitrary denial of registration to NGOs. Earlier this year, the court began its communication with the Azerbaijani government on complaints filed by the representatives of nine NGOs regarding the refusal to register their organisations on various pretexts. The organisations, which work on human rights, legal education, media development and the provision of social and cultural support, argue that their rights as protected by article 6 (the right to a fair trial) and article 11 (freedom of association) of the European Convention on Human Rights were violated. Most of the NGOs are represented by well-known Azerbaijani human rights lawyer Intigam Aliyev. In connection with Aliyev’s arrest in August 2014, law enforcement searched his office and confiscated documents related to the complaint to the ECHR in this case, although these documents were unrelated to the charges initiated against him. For this reason, these organisations also allege a violation of article 34 of the convention, which safeguards the right of individuals to file complaints with the court and obliges states parties not to hinder in any way the effective exercise of this right. Aliyev was sentenced to 7.5 years in prison in April 2015 on politically motivated charges of tax avoidance, illegal entrepreneurship and abuse of power; in March 2016, he was released as his sentence was changed into a suspended one on appeal. He remains subject to a travel ban.

Foreign NGOs are not allowed to operate in Azerbaijan without being registered with the government. The registration process for them also allows for a high level of government discretion and numerous organisations have not been able to obtain registration.

Access to funding

Existing legislation sets out extensive restrictions with respect to accessing foreign funding for NGOs. In order to provide grants to NGOs in Azerbaijan, foreign donors need to have offices registered in the country, obtain approval from the Ministry of Justice, and secure the Ministry of Finance’s opinion on the financial-economic expediency of the grants. All grant agreements, including sub-grants must be registered with the government. Any grants or donations over 200 manat (approx. 100 EUR) must be transferred though banks. At the same time, the conduct of bank or other financial operations in relation to grants is not possible, unless the registration requirements have been fully met.

4 See Application no 11612/10: Elchin Mammad oglu MAMMAD against Azerbaijan and 8 other applications, communicated in January 2017, https://hudoc.echr.coe.int/eng#{%22itemid%22:}%22001-171421%22
In January 2017, the Cabinet of Ministers adopted amendments to the rules on the registration of foreign grants for the stated purpose of simplifying the procedure of registering and obtaining permission to use grants. These new regulations, which do not have the force of law, among others, allow both donors and grant recipients to request permission for donors to issue grants and shortened the periods of consideration of requests to register grants. However, the amendments did not address abolish most of the problematic requirements in place, including the requirement for NGOs to register grants in the first place and the government retains broad powers to approve or deny the registration of grants.

**Government control and oversight**

National law grants wide powers to authorities to oversee and inspect the activities of NGOs, without adequate safeguards against abuse. NGOs are subject to excessive reporting requirements: they are required to provide quarterly reports to the Tax Agency, the Social Protection Fund and the State Statistical Committee, as well as annual reports to the Tax Agency, the Social Protection Fund and the Ministry of Finance. This creates a heavy burden on NGOs and many NGOs experience difficulties in meeting the reporting obligations.

NGOs that fail to comply with reporting requirements or other requirements among the array of existing ones risk penalties, including heavy fines or the suspension or closure of their activities.

**Persecution of NGOs**

In their recent conclusions regarding the situation in Azerbaijan\(^6\), the UN Human Rights Committee and the UN Special Rapporteur on human rights defenders raised particular alarm about the pattern of persecution of individual NGOs and their representatives. This pattern includes intrusive inspections and raids of NGOs; the freezing and blocking of their bank accounts; criminal investigations of NGOs and their leaders; and travel bans, arrests and politically motivated convictions targeting NGO leaders. Because of such harassment, well-known human rights NGOs have been forced to stop their activities.

Currently the bank accounts of numerous NGOs remain blocked, as a result of which they cannot operate. Most leaders of these NGOs have left the country or are subject to bans on travelling abroad, with criminal investigations pending in their cases.

Several international NGOs and donor organisations previously operating in Azerbaijan have also had their accounts frozen as part of spurious criminal investigations and have been forced to close their in-country offices.

**Recommendations**

The authorities of Azerbaijan should be requested to:

\(^6\) A/HRC/34/52/Add.3 and A/HRC/34/52/Add.3.
• Implement the recommendations made by the Venice Commission in its opinion from 2014, as well as the recommendations pertaining to freedom of association made by the UN Human Rights Committee and the UN Special Rapporteur on human rights defenders in their recent findings on the situation in Azerbaijan.

• Fully cooperate with the ECtHR on the consideration of the cases involving allegations of violations of the right to freedom of association and execute the decisions handed down.

• Bring legislation and regulations affecting NGOs into compliance with international human rights standards, including by simplifying the legal framework for NGO and grant registration, as well as the current, onerous NGO reporting requirements; abolishing the harsh penalties for violations of various requirements relating to NGO operation; and allowing both domestic and foreign NGOs to operate without compulsory government registration, if they so wish.

• Lift the blocking of bank accounts of NGOs and NGO leaders; abolish travel bans on NGO representatives; and ensure that NGOs can carry out their activities without undue interference and harassment and that they are not subject to criminal investigations in retaliation for their legitimate activities.

• Refrain from using stigmatizing language against NGOs and their representatives.

Freedom of peaceful assembly

Azerbaijan’s Law on Assemblies requires the organisers of protests to notify authorities at least five days in advance. In practice, this requirement is interpreted as meaning that advance permission is needed. According to the law, assemblies may be banned in the vicinity of government buildings, transportation routes and prisons and military facilities. Assemblies considered to be of a “political” nature may be banned in connection with election days or events of state importance and any assemblies may be prohibited during emergencies. The law also states that authorities may impose other restrictions on the venue, place and time of assemblies, in accordance with the requirements for permissible limitations on the right to freedom of peaceful assembly set out by international law. Moreover, authorities may designate special venues for holding assemblies, among which the organisers are expected to choose one.

Those who hold protests in violation of the requirements of the law may face sanctions, including fines and administrative arrest. Legal amendments adopted in recent years have significantly increased the size of fines and the length of administrative arrest to which those found guilty of violations may be sentenced.\(^7\) Organizing or participating in assemblies in violation of the law may also result in up to two years in prison under the Criminal Code.\(^8\)

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\(^8\) Article 169.1 of the Criminal Code.
Police frequently disperse and suppress peaceful protests using excessive force and detain and bring participants to justice for their involvement in protests held without prior agreement with authorities. In some cases, journalists covering peaceful protests have been briefly detained and warned.

In February 2017, the ECtHR started its communication with the Azerbaijani government on the case of six youth activists, who were detained and fined in August 2014 for participating in a flash mob in the town of Sheki in support of human rights defender Rasul Jafarov, who had been arrested earlier the same month. They were accused of violating the rules for holding assemblies, although they simply gathered to unfold posters with slogans against Jafarov's arrest. Jafarov was sentenced to 6.5 years in prison on trumped-up tax evasion and other charges in April 2015; he was pardoned and released in March 2016, but the charges against him have not been overturned.9

In December 2016, the ECtHR began its communication on another case involving a civil society activist who was targeted in apparent retaliation for exercising freedom of peaceful assembly: Ilkin Rustamzade.10 Rustamzade was detained and placed in pre-trial custody in May 2013 on charges of “hooliganism” after he was accused of recording and posting a video of a Harlem shake flash mob, in which he has denied participating. Later additional charges were initiated against him and in 2014, he was sentenced to eight years in prison, following a trial that human rights defenders consider politically motivated and aimed at penalizing him for his efforts to mobilize peaceful rallies against violence and suspicious deaths in the army.11 In his application to the ECtHR, Rustamzade argues that his right to liberty and security was violated when he was arrested without any evidence that he had committed a criminal offence.

After reviewing the situation in Azerbaijan in November 2016, the UN Human Rights Committee expressed concern about the frequent use of excessive force, detention and administrative and criminal penalties against persons participating in peaceful protests, including protests of the NIDA Youth Movement, the protest organized by the opposition Popular Front Party on 17 September 2016 and other demonstrations ahead of the constitutional referendum of 26 September 2016.12 Ahead of last year’s controversial constitutional referendum, police detained dozens of opposition activists during rallies held to protest against this vote. The Human Rights Committee called for prompt and effective investigations into all cases of violence, excessive use of force by law enforcement officials, arbitrary arrest and detention of peaceful protesters and for bringing the perpetrators to justice. The Committee also expressed concern about the use of various tactics to prevent and deter individuals from participating in peaceful assemblies, including the practices of preventive detention and of “prophylactic conversations” and called for an end to the use of these tactics.13

Similarly, in the report on his September 2016 mission to Azerbaijan, the UN Special Rapporteur on human rights defenders voiced concern about frequent reports of the use of force against peaceful protests and

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11 See more information about his case at: http://iphronline.org/azerbaijan-freeilkin-campaign.html
12 CCPR/C/AZE/CO/4.
13 CCPR/C/AZE/CO/4.
arrests of demonstrators, as well as the use of “preventive measures” ahead of rallies, including assemblies held prior to last year's constitutional referendum.

A peaceful anti-corruption rally held under the slogan “return the money stolen from the people” in Baku on 23 September 2017 gathered several thousand people, according to the organisers. The rally was organised by the National Council of Democratic Forces, an umbrella organisation for opposition forces following the publication of new findings by the Organised Crime and Corruption Reporting Project (OCCPR) regarding high-level corruption in Azerbaijan. The report accuses the country's ruling elite of using a secret slush fund to pay off European politicians, buy luxury goods, launder money, and otherwise benefit themselves, with over 2.5 billion euro channeled through foreign-based companies. The rally had been agreed with local authorities in advance. Nevertheless, human rights defenders reported that over 60 Popular Front activists were summoned, warned and detained ahead of the rally, with part of them taken to court and fined or sentenced to up to 15 days' administrative arrest for alleged violations. Ahsan Nuruzade, a member of the Muslim Union Movement that supported the rally, was reported to have been arbitrarily detained a few days before the protest and sentenced to 10 days' administrative arrest for allegedly failing to obey the lawful orders of police, charges also previously used against him. The head of the Muslim Union, Taleh Bagirzade remains behind bars after being arrested together with other activists during the so-called Nardaran events in November 2015, when police carried out a special operation against this group, and being sentenced to 20 years in prison in January 2017 on multiple serious charges.

During the rally on 23 September, police also used facial recognition cameras to monitor participants. These reports give rise to serious concerns about arbitrary measures taken by authorities to obstruct the rally and to intimidate and penalize participants.

Recommendations

The authorities of Azerbaijan should be requested to:

- Respect the right to freedom of peaceful assembly and refrain from restricting this right in ways that are not compatible with its obligations under international law, including the European Convention on Human Rights.
- Fully cooperate with the ECtHR on the consideration of the cases involving allegations of violations of the right to freedom of peaceful assembly and execute the decisions handed down.
- Implement the recommendations of the UN Human Rights Committee and the UN Special Rapporteur on human rights defenders relating to peaceful assembly. In particular, they should promptly and effectively investigate all cases of excessive use of force, arbitrary arrest and detention of peaceful protesters, including in connection with the rallies held prior to the constitutional referendum in September 2016 and the anti-corruption rally held in September 2017 and bring the

perpetrators to justice, as well as end the use of practices of preventive detention and conversations of protest organisers/participants.

Freedom of expression and the media

Repressive media climate

The media and free speech climate in Azerbaijan is extremely repressive. This is illustrated by the fact that Azerbaijan was ranked on place 162 among 180 countries in the 2017 World Press Freedom Index published by Reporters without Borders.\textsuperscript{17}

There is no editorial independence of state-owned media in Azerbaijan, and self-censorship is widespread among private media, especially on any issues related to the president and his family members. Offending the honour and dignity of the president, including on the internet is a criminal offense and penalties for this offense were recently increased, in particular if committed online.

The authorities have relentlessly cracked down on opposition and independent media.

The Turan News Agency, the last independent media outlet still operating in the country has been subjected to concerted pressure in recent months. At the beginning of August 2017, tax authorities launched a tax evasion investigation against the agency and subsequently raided its office and froze its accounts, forcing it to suspend its activities. On 25 August, the agency’s director Mehman Aliyev was arrested on charges of tax evasion, abuse of power and illegal entrepreneurship because of alleged violations with respect to registering grants received by Turan and paying taxes on them. He was held in pre-trial detention for two weeks until he was released and instead placed under house arrest on 11 September. The investigation against him continues. Turan has filed lawsuits challenging the actions of tax authorities against it.\textsuperscript{18} While at one point dropping the claims of outstanding tax payments against the agency, the tax authorities soon renewed them.\textsuperscript{19}

In mid-May 2017, a Baku court approved a request from the Ministry of Transport, Communications and High Technology to block access to the websites of five independent news outlets: the Azerbaijani service of Radio Free Europe/Radio Liberty (RFE/RL), the Azadliq newspaper, Meydan TV, and the online Turan TV and Azerbaycan Saati. The sites had been blocked already as of late March at the instruction of the General Prosecutor’s Office, which accused them of “threatening” national security and of “posting content deemed to promote violence, hatred, or extremism, violate privacy, or constitute slander.”\textsuperscript{20} Legislation adopted earlier the same month allows for blocking websites without a court decision, as a temporary measure, if the sites...
are deemed to have published “prohibited” material.21 Prior to the blocking, the websites in question had published critical reports about the appointment of the country’s first lady Mehriban Aliyeva as vice president, as well as findings of new investigations into corruption allegations related to members of the president’s family and inner circle.22 The Institute for Reporters’ Freedom and Security condemned the measure as “yet another devastating blow for freedom of expression in Azerbaijan”.23

The blocking was only the most recent step taken by authorities in their attempts to silence the targeted media outlets.

The Azadliq, the last remaining opposition newspaper in the country was forced to cease publication following the arrest of its financial director, Faiq Amirli (Amirov) in August 2016 and the blocking of its accounts. Amirli was charged with inciting religious hatred for allegedly possessing books by Fethullah Gulen, a US-based cleric whom the Turkish government has accused of masterminding last year’s coup attempt in Turkey. Later charges of tax evasion and abuse of office were also brought against him. He was sentenced to three years and three months in prison in July 2017. On 15 September 2017, he was released after his prison sentence was replaced by a suspended sentence on appeal.24 His conviction remains in place and he is not able to leave the country for urgent medical treatment abroad. Journalists working for Azadliq have also been subjected to harassment, including by being summoned, interrogated by police, arrested and imprisoned. Its journalist Seymur Hezi was sentenced to four years in prison on “hooliganism” charges in January 2015 and remains in prison. The newspaper’s regional correspondent Elchin Ismayilli was sentenced to nine years in prison on charges of extortion, abuse of office and bribe taking on 18 September 2017, a conviction that human rights defenders deemed as another politically motivated ruling.25

The RFE/RL’s Baku bureau was raided and sealed by authorities in December 2014 on tax-related claims and was forced to close down in May 2015. The investigation has been dragging on ever since 2014, without resulting in any charges. Given this, the RFE/RL announced in September 2017 that it had filed an appeal with the ECtHR regarding the claims against it, which have hampered its reporting inside Azerbaijan for almost three years.26 RFE/RL journalists have been intimidated, detained, questioned and subjected to travel bans. Prominent RFE/RL investigative reporter Khadija Ismayilova was imprisoned on trumped-up charges of encouraging an attempted suicide and financial crimes in 2014-2016. She is still banned from leaving the country. Already in 2008, RFE/RL was banned from the country’s airwaves, along with other international broadcasters.

The Berlin-based online Meydan TV has been targeted by a criminal investigation opened in April 2016 on charges of illegal entrepreneurship, tax evasion and abuse of power, a classical set of charges used against critical voices in the country. The station's director, Emin Milli called the charges “absurd”, saying that Meydan TV now carries out all its activities in Germany rather than in Azerbaijan and provides fiscal reports to German authorities. Meydan TV terminated its in-country operation in Azerbaijan in December 2014 due to concerns about the safety of its staff. Several Meydan TV journalists reporting from Azerbaijan have been banned from travelling abroad. Several family members of exiled journalists working with Meydan TV were arrested and imprisoned on trumped-up charges in 2015-2016, but were later released.

**Continued crackdown on critical voices**

In the last few years, the Azerbaijani authorities have arrested and imprisoned dozens of human rights defenders, civil society activists, journalists, bloggers and dissidents on politically motivated grounds. While a number of individuals have been released as a result of international pressure, many others remain behind bars and new arrests have been carried out, resulting in what Azerbaijani human rights defenders call a “revolving door” policy. Those released have not had their convictions overturned and some of them, including investigative journalist Khadija Ismayilova, human rights lawyer Intigam Aliyev and Azadliq’s financial director Faqi Amirli (whose cases were already mentioned above) are subject to travel bans. Other critical voices have been forced to leave the country due to persecution and now reside in exile. Family members of exiled activists and journalists have been targeted by harassment and intimidation.

Among those arrested in recent months is well-known blogger Mehman Huseynov, who was sentenced to two years in prison on in May 2017 after he exposed police abuse to which he was subjected when detained earlier the same year. Instead of properly investigating his torture allegations, authorities prosecuted him for defamation. In September 2017, the Supreme Court returned his case for reconsideration at the appeals level, but failed to order his release.

In another recent case, journalist Afgan Mukhtarli was abducted in Georgia in May 2017, only to resurface in Azerbaijani custody, where he has since been held on illegal border crossing and other charges. The Georgian authorities have failed to provide any satisfactory explanation regarding the circumstances of this case. Prior to his abduction, Mukhtarli had prominently reported on corruption allegations involving Azerbaijan’s ruling family.

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The case of the leader of the opposition REAL movement, Ilgar Mammadov is emblematic of the crackdown on government critics. The Azerbaijani authorities have persistently failed to release him, although the ECTHR ruled three years ago that he had been deprived of his liberty because of his criticism of the government and the Committee of Ministers and other Council of Europe bodies have repeatedly called for his release in follow-up to this ruling. Most recently, in November 2016, Azerbaijan’s Supreme Court rejected an appeal submitted by Ilgar Mammadov on the basis of the ECTHR ruling and upheld his seven-year prison sentence. Thus, he remains behind bars for no other reason than speaking out critically about those in power. The Committee of Ministers recently launched an initiative to return the case to the ECTHR for so-called infringement procedures because of the failure of Azerbaijan’s government to comply with its obligation under the European Convention on Human Rights to implement court rulings. This would be the first time in the court’s history that these procedures are used.

The cases mentioned are only a few examples of individuals who have been imprisoned in retaliation for their exercise of freedom of expression and other fundamental rights in Azerbaijan. According to the most recent report released by the Azerbaijani civil society working group documenting cases of political prisoners, there are currently over 150 such prisoners in the country. These include journalists, bloggers, human rights defenders, opposition activists, protest participants, religious followers and others detained on politically motivated grounds. Many of them have allegedly been subjected to torture and ill-treatment in detention, allegations that have not been thoroughly and impartially investigated.

**Criticism by international human rights bodies**

Azerbaijan’s current repressive policies with respect to freedom of expression and the media have been seriously criticized by the international human rights bodies. For example, in the concluding observations adopted following its review of Azerbaijan’s compliance with the ICCPR in November 2016, the UN Human Rights Committee expressed concern about “arbitrary interference with media freedom” and “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”. In the outcome report on his September 2016 visit to Azerbaijan, the UN Special Rapporteur on human rights defenders also denounced the targeting of independent media outlets and the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans against defenders, journalists, lawyers and grassroots activists. He also said that he was “deeply concerned about the intimidation facing the families and relatives of defenders who carry out their activism from abroad”. Both the Human Rights Committee and the Special Rapporteur on human rights defenders issued important recommendations to the Azerbaijani authorities in this respect.

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36 CCPR/C/AZE/CO/4.
37 A/HRC/34/S2/Add.3.
Recommendations

The Azerbaijani authorities should be requested to:

- Stop persecuting independent media outlets, including by closing politically motivated criminal investigations targeting them, stop blocking their websites and enabling them to resume operation in the country.

- Put an end to the ongoing pattern of arrest, prosecution and imprisonment of journalists, bloggers, human rights defenders, civil society activists and dissident voices on politically motivated grounds. Refrain from carrying out any new arrests and release all of those who are currently behind bars in retaliation for their legitimate exercise of freedom of expression and other fundamental rights.

- Carry out prompt, thorough and impartial investigations into any allegations of torture and ill-treatment of individuals held in detention and bring those responsible to justice.

- Lift all arbitrary travel bans imposed on journalists, human rights defenders and activists.

- Ensure that relatives of exiled journalists, human rights defenders and activists are not subjected to intimidation and harassment.

- Comply with the ruling handed down by the ECtHR in the case of Ilgar Mammadov and immediately and unconditionally release him; and constructively cooperate with the ECtHR on all other cases relating to the exercise of freedom of expression examined by the court.

- Take concrete and effective measures to implement the recommendations relating to freedom of expression issued by the Human Rights Committee, the Special Rapporteur on the situation of human rights defenders and other international bodies.