

# AZERBAIJAN

The Republic of Azerbaijan gained independence in 1991 after the fall of the Soviet Union. Today the population totals around nine million, 96% of which are Muslims: approximately 65% Shia and 35% Sunni. These two communities are considered by the state to be the country's 'traditional' religions. Other groups, such as Baha'is, Roman Catholics, Hare Krishna, Jehovah's Witnesses, Molokans (Russian Orthodox Old Believers), and various Protestant denominations are also present in the country but have limited legal recognition.

Azerbaijan is sometimes referred to as the first secular republic in the Muslim world. Even still, religious observance is relatively low, and Muslim identity tends to be more grounded in culture and ethnicity than in religion practice.

In Azerbaijan's 1995 Constitution, internationally recognised human rights are guaranteed and fully supported. In Article 151, the constitution goes as far as to prioritise international treaties and international law over the domestic national law if the two are to conflict.

As a participatory state in many international agreements, the status of human rights and religious or belief prisoners should in theory be protected by the Azerbaijani state. In practice, however, various criminal codes and laws contravene these rights and restrict the freedom of association, worship, and assembly of non-registered religious organizations, the production and import of religious literature, and conscientious objection to military service on religious grounds.<sup>1</sup> In 2016, these restrictions have resulted in the imprisonment of Jehovah's Witnesses and Muslims, Sunni and Shia alike, as well as followers of the Turkish theologian Said Nursi.

## Jehovah's Witnesses in Prison

On 17<sup>th</sup> February 2015, two Jehovah's Witnesses, thirty-eight-year old **Valida Jabrayilova** and fifty-four-year old **Irina Zkharchenko**, were arrested in Baku and criminally charged with illegally distributing religious literature without permission. The two women were ruled by the judge to be a 'threat to the public'<sup>2</sup> and sentenced to three months of pre-trial detention in the Ministry of National Security (MNS) prison. A court date was set for 4th July 2015.

On 4<sup>th</sup> July 2015, their pre-trial detention was extended yet again until 4th September 2015 when they were again to appear in court. At this hearing their pre-trial detention was extended for a third time until 17th December 2015. Both women filed appeals asking to be transferred

<sup>1</sup> HRWF *Annual Report 2014*. Page 9.

<sup>2</sup> Human Rights Council, Working Group on Arbitrary Detention.

to house arrest, but the court denied all such appeals.

During their months in prison, MNS agents searched Jabrayilova and Zkharchenko's homes, confiscating literature, notebooks, laptops, and a phone. As an extension of the investigation, they also searched the homes of ten other Jehovah's Witnesses as well as the group's place of worship. At least twenty members were interrogated. Family members were concerned for the physical and mental health of the two prisoners, especially for Zkharchenko, who is physically disabled. It was reported that both prisoners were only allowed visits from female attorneys and their families could only send items, such as clothes, medicine, and hygiene goods once a month. The families have tried to send the two women Bibles while in prison, but the MNS refused to allow this.<sup>3</sup>

In December 2015, the UN Working Group on Arbitrary Detention and the UN Human Rights Committee issued statements that deemed the arrests to be arbitrary and called for Zkharchenko to be transferred to house arrest in light of her deteriorating health.<sup>4</sup> Jabrayilova and Zkharchenko were both released from prison on 28th January 2016 and received fines of 7,000 manat (3,932 euro). The fines were eventually reversed since the women had spent eleven months in prison.<sup>5</sup>

### **Said Nursi Followers in Prison**

In 2016, five Said Nursi Readers remained in prison in Azerbaijan for having attended a meeting in April 2014 to study the works of Turkish theologian Said Nursi. The five – **Eldeniz Hajiyev, Shahin Hasanov, Ismayil Mammadov, Zkariyya Mammadov, and Revan Sabzaliev** – were arrested on 7<sup>th</sup> October 2015 and given sentences ranging from 1½ to five years for participation in an 'illegal' religious group and distributing religious literature that had not undergone the state's pre-publication religious censorship procedures (formally criminal code Articles 167-2.2.1, 168.1, and 168.2).

Hajiyev, Hasanov, I. Mammadov and Z. Mammadov were charged under Criminal Codes 167-2.2.1, 168.2 and 168.1, resulting in a prison sentence of four years and five months for Hajiyev, five-years for Hasanov and Z. Mammadov, and five years and five months for I. Mammadov.<sup>6</sup> Twenty-one year old Sabzaliev was sentenced to 1 ½ years in prison under the Criminal Code Article 168.2.<sup>7</sup>

---

<sup>3</sup> European Association of Jehovah's Christian Witnesses.

<sup>4</sup> JW.org, "Azerbaijan Convicts and Releases Irina Zakharchenko and Valida Jabrayilova".

<sup>5</sup> JW.org, "Irina Zkharchenko and Valida Jabrayilova Released from Unjust Imprisonment".

<sup>6</sup> Corley. "Azerbaijan: Conscientious objector (again) one of 20 current prisoners of conscience"

<sup>7</sup> Corley. "Azerbaijan: Five latest freedom of religion or belief prisoners of conscience"

### **Sunni Muslims in Prison**

In 2016, Sunni Muslims, **Azad Gafarov**, **Eyvaz Mammadov** and **Imam Mubariz Qarayev**, remained in Baku's NSM secret police investigation prison for the selling of religious material without authorisation. The three were arrested in late February 2015 in Baku and charged under Criminal Code Article 167-2.1. They remained in pre-trial detention until their rulings in July 2015.

In early July 2015, Gafarov and Qarayev both received sentences, of which reports vary on the length, suggesting sentences ranging from six to fifteen months. In late July 2015, Mammadov was sentenced to nine months in prison by Judge Rashad Abdulov.

All three men are connected with the Sunni Lezgin Mosque in Baku's Old City, where Imam Qarayev led prayers. The mosque is one of several that the government intends to shut down.

In Azerbaijan, the Caucasus Muslim Board (CMB) is a state-sanctioned institution that oversees the activities of registered Islamic organisations, including the appointment of leaders, monitoring sermons and organising pilgrimages. Unregistered religious organisations may be outlawed and its activities considered illegal. Authorities have targeted for closure Sunni mosques, such as the Lezgin Mosque, which refuse to join the CMB.<sup>8</sup>

### **Shia Muslims in Prison**

On 10<sup>th</sup> March 2015, **Jeyhun Jafarov** was arrested in Baku and charged with treason under Criminal Code Article 274 for 'state betrayal.' He is believed to have been arrested for his work as a translator of Islamic works and public broadcasts. Under Azerbaijani law he could be sentenced to life imprisonment. He remains in pre-trial detention.

In November-December 2015, dozens of Shia Muslims were arrested in Nardaran and elsewhere in Azerbaijan for their association with the Muslim Unity Movement, which advocates for non-violent change and the spread of democratic values. It is an unregistered political movement that is frequently linked with imam Taleh Bagirzade. Due to the movement's nature as predominantly political rather than religious, HRWF does not consider these detained Shias to be FoRB prisoners.<sup>9</sup>

**Elshan Mustafaoglu Mustafayev** was arrested in Baku in December 2014 under the accusation of treason and spying for Iran. He is held in Baku under Criminal Code Article 274

<sup>8</sup> HRWF, *Annual Report 2015*. Page 70.

<sup>9</sup> <https://www.osw.waw.pl/en/publikacje/analyses/2015-12-02/azerbajjans-government-strikes-shiite-opposition>

(Betrayal of state to detriment of the sovereignty, territorial integrity, state security or defense of the Republic of Azerbaijan), which provides for prison terms from 12 up to 20 years or life imprisonment with or without confiscation of property. He had been sent by Azerbaijan's Education Ministry to study in Iran in the 1990s and defended his dissertation in 2007. In 2001, he founded the public organization Spiritual Purity and established a research center in 2005. He also anchored a series of religious programs on various Azerbaijani TV channels. In 2011, Mustafayev co-founded the Initiative Group for the Support of the Human Rights of Religious Citizens, which helped organize a petition to President Ilham Aliyev against the 2010 ban on the hijab in schools and universities. After two years studying in Norway, he returned to Baku in early 2014 and worked with the state-backed Spiritual Board of Muslims of the Caucasus.

The full list of documented cases of FoRB prisoners for each denomination is available on the USB key attached to this report and on our website: <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/>

## **Laws Used to Criminalize Religious Activities**

The constitution of Azerbaijan ensures freedom of religion and belief. This is reinforced through the country's national laws as well as a commitment to international treaties; however, lower-level laws have contradicted these rights. The state has utilized these laws to imprison individuals and leaders of various religious groups.

The following criminal codes are the laws that have been used to deliberately target religious individuals and groups:

Criminal Code Article 167-2.1: Production, sale, and distribution of religious literature, religious items, and other informational materials of religious nature with the aim of import, sale, and distribution without appropriate authorisation. Sentences for first time offenders acting alone are a fine of 5,000 to 7,000 Manats or up to two years imprisonment.

Criminal Code Article 167-2.2.1: Production, sale, and distribution of religious literature, religious items, and other informational materials of religious nature with the aim of import, sale, and distribution without appropriate authorisation when conducted by an organised group.<sup>10</sup>

Criminal Code Article 168.1: Creation of a group carrying out activity under the pretext of spreading a religious faith and carrying out religious activity and by this illegally harming social order, or harming the health of citizens or violating the rights of citizens irrespective of the form

---

<sup>10</sup> Corley, Felix. "Azerbaijan: 'We Forbid Religious Books, But This Isn't Religious Discrimination'"

of infringement, as well as distracting citizens from performance of duties established by law, as well as leadership of such a group or participation in it. Fines are between 7,000 and 9,000 Manats (1,000 Manats, the equivalent of about 860 Euros or 950 US Dollars), with a maximum prison term of two years.)<sup>11</sup>

Criminal Code Article 168.2: When cases of Criminal Code Article 168.1 ('Creation of a group carrying out activity under the pretext of spreading a religious faith and carrying out religious activity and by this illegally harming social order or harming the health of citizens or violating the rights of citizens irrespective of the form of infringement as well as distracting citizens from performance of duties established by law, as well as leadership of such a group or participation in it.') involves children, which carries a maximum punishment of three years imprisonment.<sup>12</sup>

Criminal Code Article 274: 'State betrayal, that is deliberate action committed by a citizen of the Azerbaijan Republic to the detriment of the sovereignty, territorial integrity, state security or defensibility of the Azerbaijan Republic: changeover to the enemy side, espionage, distribution of state secrets to a foreign state, rendering assistance to a foreign state, foreign organization or their representatives in realization of hostile activity against the Azerbaijan Republic.'<sup>13</sup>

## **National Standards for Detention Conditions**

In the Constitution of Azerbaijan, Article 46, entitled 'Protection of Honour and Dignity,' states that: 'Nobody can be tortured or tormented. Nobody shall suffer a treatment or punishment humiliating to human dignity. Nobody can be experimented upon-medically, scientifically or in any other way without his or her consent.'<sup>14</sup>

In addition to this constitutional guarantee, the state enacted the 2012 'Law on the rights and freedoms of individuals kept in detention facilities.' Within this legal framework prisoners have the right to the use of phone, a daily walk, meetings with defence counsellors, close relatives or persons of legal interest, religious ceremonies and worship, and religious supplies and literature. They are also guaranteed the provision of meals, an individual bed and bedding, the ability to receive post and packages once a week (for disabled persons, there is no limit), adequate medical services, and attention to sanitation.<sup>15</sup>

In respect to religious worship, literature, and supplies, Article 24.1 and 24.2 read:

24.1 The right to freedom of religion and conscience of the detained or arrested individuals shall be guaranteed. They can worship and use religious literature and

---

<sup>11</sup> Corley, Kinahan.

<sup>12</sup> Corley, Felix. "AZERBAIJAN: Five years imprisonment for 'normal Muslims' who 'simply conduct prayers'?"

<sup>13</sup> European Stability Initiative.

<sup>14</sup> Azerbaijan, *Constitution of 1995 with Amendments through 2009*. Page 10.

<sup>15</sup> Azerbaijan, "Law on the rights and freedoms of individuals kept in detention facilities".

supplied in the detention facility. Management of the Detention facilities creates relevant conditions for religious worship. Religious worships shall not violate rights of others.

24.2 The individuals can worship with the participation of religious officials from the religious community registered in accordance with the legislation of the Republic of Azerbaijan, who are invited by the management of the detention facilities and whose security is guaranteed.<sup>16</sup>

The state also revised Criminal Code Article 293 to provide criminal sanctions for both cruel, inhuman, or degrading treatment or punishment, and for torture committed by or at the instigation or with consent or acquiescence of a public official or other person acting in an official capacity. The revision redefined the concept of torture to include ‘severe pain or suffering, whether physical or mental, intentionally inflicted on a person for such purposes as obtaining him or her for an act he or she or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind.’<sup>17</sup>

## **National and International Reports on Prison Conditions in Azerbaijan**

### **National Reports**

**The Commissioner for Human Rights (Ombudsman)** and other officials visited various places of detention in Azerbaijan throughout 2014. The office held confidential meetings with persons kept in the detention facilities to consolidate a report on their detention conditions, treatment, and rights. They concluded that the detainees did not typically face violence or rude treatment and had no complaints about the treatment by authorities. It was also reported that new facilities had been constructed and older ones had been adequately maintained.

The reporting team visited 244 places of deprivation and restriction of liberty and held confidential meetings with 237 detainees at temporary detention facilities. Posters were displayed in police departments and divisions to solicit information on any incidents of torture along with a hotline number to the Ombudsman’s office. The final report documented no complaints from detainees about their treatment or the employees of the facilities. Any irregularities noted were corrected, according to the report, following the intervention of the Commissioner.<sup>18</sup>

---

<sup>16</sup> Azerbaijan, “Law on the rights and freedoms of individuals kept in detention facilities”.

<sup>17</sup> United Nations, Committee Against Torture.

<sup>18</sup> The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

## **International Reports**

International reports have conveyed a very different assessment of prison conditions in Azerbaijan. In January 2016, the **UN Committee against Torture** published its fourth periodic report, which noted that despite some improvements at a legislative level since 2012, responses to earlier recommendations have been overall insufficient. Specifically, there have been persistent allegations of torture and ill-treatment by law enforcement and investigative officials, often aimed at extracting confessions or information for criminal proceedings.

The committee report expressed concern that from 2010-2015 not a single individual had been prosecuted for torture or ill treatment, despite hundreds of official complaints: 334 during 2009-2010 and 984 to the Ministry of Internal Affairs and 678 filed to the Office of the Procurator General during 2010-2013.

The report also stated that detainees are not allowed to contact family members or lawyers immediately following their arrest. The extraction of forced confessions is a frequent practice employed by police officers. There are also numerous and consistent allegations that such confessions, although extracted through torture and ill-treatment, have been admitted as evidence in court.

In addition, the committee is concerned about the numerous reports of abuse in custody and deaths in detention, some of which are alleged to have resulted from torture or ill-treatment. Inadequate conditions of detention are likewise a persistent concern, particularly in Prison No. 6 and 14.<sup>19</sup>

**The US State Department Bureau of Democracy, Human Rights, and Labor** published its report on Azerbaijan for 2015:

Problems reported included physical abuse in the military; torture or other abuse of detainees at time of detention and during interrogation; abuse of inmates in prison; harsh and sometimes life threatening prison conditions; and detentions for several days without warrants or with individuals held incommunicado... There were reports of arbitrary government invasions of privacy, incarceration of religious figures, and restrictions on the religious freedom of some unregistered Muslim and Christian groups... The government did not take steps to prosecute or punish most officials who committed human rights abuses; impunity remained a problem...

According to human rights defenders, there were four cases of torture or other physical abuse during the year that led to death... Reports from human rights activists indicated that

---

<sup>19</sup> United Nations, Committee against Torture

most mistreatment took place while detainees were in police custody. Authorities reportedly used abusive methods to coerce confessions...

Authorities reportedly maintained a de facto ban on independent forensic examinations of detainees who claimed mistreatment and delayed their access to an attorney, practices that made it easier for officers to mistreat detainees with impunity...

Lawyers and others reported abuse of inmates in prisons...

According to a reputable prison-monitoring organization, prison conditions were sometimes harsh and potentially life threatening due to overcrowding, inadequate nutrition, deficient heating and ventilation, and poor medical care. While the government continued to construct facilities, some Soviet-era facilities still in use did not meet international standards...

Prisoners at times claimed they endured lengthy confinement periods without opportunity for physical exercise. They also reported instances of cramped, overcrowded conditions; inadequate ventilation; poor sanitary facilities' and insufficient access to medical care. Although the law permits detainees to receive daily packages of food to supplement the food officially provided, authorities at times reportedly restricted access of prisoners and detainees to family-provided food parcels. Some prisons and detention centers did not provide access to potable water...

Human rights advocates reported that guards punished prisoners with beatings or by holding them in isolation cells.”<sup>20</sup>

**The UN Office of the High Commissioner for Human Rights** issued a statement following the 16-25 May 2015 visit to Azerbaijan of the Working Group on Arbitrary Detention:

The Working Group observed dire conditions of living and high levels of negligence in the institution for women: some of the residents were living behind bars in a building in a state of disrepair with walls covered with mold, some of them with physical disabilities were on a fourth floor with no elevator. In addition, the centre was in extremely unhygienic conditions with only two toilets and two showers for 50 women per floor. During the visit, the Working Group witnessed that there was no light in the toilets, no protection of privacy in the bathroom, waste water in the bath. Most of the women were lying on their respective bed due to the absence of any organised activity in the institution. The Working Group could also observe that restrictions were imposed in both institutions on the freedom of movement of these persons...

Everyone charged with a criminal offence has the right not be compelled to give incriminating evidence or to confess guilt. Any statement which is established to have been made or any other evidence obtained as a result of torture or other cruel, inhuman or degrading treatment shall not be accepted as evidence in any proceedings...

---

<sup>20</sup> United States Department of State, Azerbaijan 2015 Human Rights Report

The Working Group received a large number of testimonies during its mission from juveniles, women and men about the torture and ill treatment they had been reportedly subjected to, while in custody before different authorities...

This practice aims in most of the cases at obtaining confession from the detainees or at coercing them to sign the police “protocols” in administrative offences. Such violence was reported to the Working Group by persons currently detained or previously detained in all detention places visited which were related to the criminal justice. The interviewees described having a gun pointed at their head, severe beatings, sometimes lasting several hours, verbal abuse and psychological pressure, practices such as standing on one’s knees for long hours, threats of physical and sexual abuse as well as threats to arrest family members. The delegation received various testimonies of adults and juveniles who reported having been the victims of torture and ill treatment on the 2nd and 6th floors of the building of the Temporary Detention Centre and pre-trial prison under the auspices of the State Security Service.

In one of the detention facilities, the Working Group sought access to the basement of the facility where torture was reported by highly reliable sources. When asked, public officials recognized misconducts by the previous administration of the facility which led to the ongoing legal proceedings against the previous head of the facility without further details. The Working Group is of the strong view that the conditions in which detainees, including children are held in this facility amount to inhuman and degrading treatment (state of despair of the buildings, squalid sanitation installations, presence of rats in cells and corridors, extreme lack of ventilation in overcrowded cells where inmates are forced to take turns to sleep on a bed, etc.)...

The Working Group received information from officials that numerous investigations on torture were taking place, but nevertheless did not receive exact data on the investigations conducted and their outcome, including sentencing of the perpetrators. The delegation also received frequent allegations that the hotline provided by the Ombudsman to denounce instances of torture and located in some of the facilities does not work at all. The delegation could also observe that posters on the hotline were inexistent or inaccessible to detainees in most of detention centres visited.”<sup>21</sup>

## **Conclusions**

Muslim communities affiliated to the state-backed Caucasian Muslim Board and twenty-one non-Muslim religious groups function legally in Azerbaijan. However, for ‘non-traditional’ religions, restrictions on their activities can be harsh. There is particular state hostility directed toward proselytizing and toward groups that promote Salafist practices and allegiance to Iranian shi’ism. Some Sunni groups who refuse to join the Caucasian Muslim Board are also put under

---

<sup>21</sup> United Nations, Office of the High Commissioner for Human Rights.

pressure. For years, Sunni Muslims who are followers of the Turkish theologian Said Nursi have been harassed, arrested, and imprisoned.

The Azerbaijani government has presented the country as a neutral and secular state which accommodates all religions equally. It has initiated actions that foster interfaith understanding and tolerance between religions that have been historically present in Azerbaijan. At the same time, there is resistance at several levels toward newer religious movements. Their members are suspected of 'harming social order' for simply exercising their rights to freely assemble and have access to religious literature of their choice.

No improvement in law or practice could be registered in 2016. The fundamental rights to share one's beliefs in public, freedom of association, freedom of assembly, freedom of worship as well as the right to conscientious objection are still dramatically impeded.

Azerbaijan would do well to further liberalize its policies toward religious practitioners within its borders. It is only when the reality on the ground corresponds to the rhetoric advanced at an official level that the country can become a leader among the young democracies in the region.