

AZERBAIJAN

CAT A/55/44 (2000)

64. The Committee considered the initial report of Azerbaijan (CAT/C/37/Add.3) at its 401st, 404th and 406th meetings on 15, 16 and 17 November 1999 (CAT/SR.401, 404 and 406) and adopted the following conclusions and recommendations.

1. Introduction

65. The Committee welcomes the initial report of Azerbaijan, which, submitted nearly on time, is in full conformity with the Committee's guidelines for the preparation of initial reports. The Committee also welcomes the open dialogue between the highly qualified representatives of the State party and itself.

2. Positive aspects

66. The Committee notes with satisfaction the following:

- (a) The ongoing efforts to establish a legal framework based on universal human values to safeguard fundamental human rights, including freedom from torture;
- (b) The important efforts made to establish relevant selection criteria and methods for the training and education of law enforcement and medical personnel on the prohibition of torture;
- (c) The noticeable decrease in the number of persons arrested in recent years;
- (d) The efforts to improve the conditions in prisons;
- (e) The information given by the delegation of the State party on the right of access to legal counsel from the moment of arrest, and the empowerment of the Courts to sanction arrests;
- (f) The State party's willingness to cooperate closely with international and regional bodies, such as the Office of the United Nations High Commissioner for Human Rights, the Council of Europe and the Organization for Security and Co-operation in Europe, as well as with international and national non-governmental organizations.

3. Factors and difficulties impeding the application of the provisions of the Convention

67. The Committee takes note of the transitional problems currently faced by the State party, as well as of the difficult political situation prevailing in parts of its territory.

4. Subjects of concern

68. The Committee expresses its concern about the following:

- (a) The absence of a definition of torture as provided in article 1 of the Convention in the penal legislation currently in force in the State party, with the result that the specific offence of torture is not punishable by appropriate penalties as required by article 4, paragraph 2 of the Convention;
- (b) Numerous and continuing reports of allegations of torture and other cruel, inhuman and degrading treatment and punishment committed by law enforcement personnel;
- (c) The apparent failure to provide prompt, impartial and full investigation into numerous allegations of torture that were reported to the Committee, as well as the failure to prosecute, where appropriate, the alleged perpetrators;
- (d) The absence of guarantees for independence of the legal profession, particularly members of judiciary, who are appointed for a limited renewable term;
- (e) The use of amnesty laws that might extend to the crime of torture.

5. Recommendations

69. The Committee recommends that:

- (a) The State party fulfil its intention to establish adequate penal provisions to make torture as defined in article 1 of the Convention a punishable offence in accordance with article 4, paragraph 2, of the Convention;
- (b) In view of the numerous allegations of torture and ill-treatment by law enforcement personnel, the State party take all necessary effective steps to prevent the crime of torture and other acts of cruel, inhuman or degrading treatment or punishment;
- (c) In order to ensure that perpetrators of torture do not enjoy impunity, the State party ensure the investigation and, where appropriate, the prosecution of those accused of having committed the crime of torture, and ensure that amnesty laws exclude torture from their reach;
- (d) The State party consider repealing laws which may undermine the independence of the judiciary, such as the provisions relating to renewable term appointments;
- (e) The State party consider making the declarations under articles 21 and 22 of the Convention.

CAT A/58/44 (2003)

84. The Committee considered the second periodic report of Azerbaijan (CAT/C/59/Add.1) at its 550th and 553rd meetings, held on 30 April and 1 May 2003 (CAT/C/SR.550 and 553), and adopted the following conclusions and recommendations.

A. Introduction

85. The Committee welcomes the second periodic report of Azerbaijan, as well as the oral information provided by the high-level delegation. The Committee particularly welcomes the State party's assurances that the concerns and recommendations adopted by the Committee will be pursued seriously.

86. The report, which mainly addresses legal provisions and lacks detailed information on the practical implementation of the Convention, does not fully comply with the reporting guidelines of the Committee. The Committee emphasizes that the next periodic report should contain more specific information on implementation.

B. Positive aspects

87. The Committee notes the following positive developments:

- (a) The efforts by the State party to address the Committee's previous concluding observations through, in particular, the important Presidential Decree of 10 March 2000;
- (b) The declaration under article 22 of the Convention enabling individuals to submit complaints to the Committee;
- (c) The ratification of several significant human rights treaties, in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- (d) The extensive legal and legislative reforms by the State party, including the adoption of a new Criminal Code and a new Code of Criminal Procedure;
- (e) The introduction of the offence of torture in the new Criminal Code, and the State party's report of some convictions for this crime;
- (f) The transfer of remand centres of the Ministry of Internal Affairs to the authority of the Ministry of Justice;
- (g) The creation of the post of Ombudsman;

(h) The assurances by the State party that it is taking action to reduce the incidence of tuberculosis in places of detention;

(i) The agreement concluded with the International Committee of the Red Cross, enabling ICRC representatives to have unrestricted access to convicted persons in places of detention, as well as the State party's assurance that access for non-governmental organizations to visit and examine conditions in penitentiary establishments is unlimited.

C. Subjects of concern

88. The Committee is concerned about:

(a) Numerous ongoing allegations of torture and ill-treatment in police facilities and temporary detention facilities, as well as in remand centres and in prisons;

(b) The fact that the definition of torture in the new Criminal Code does not fully comply with article 1 of the Convention, because, inter alia, article 133 omits references to the purposes of torture outlined in the Convention, restricts acts of torture to systematic blows or other violent acts, and does not provide for criminal liability of officials who have given tacit consent to torture;

(c) The lack of information on the implementation of article 3 of the Convention regarding the transfer of a person to a country where he/she faces a real risk of torture, and on the rights and guarantees granted to the persons concerned;

(d) The substantial gap between the legislative framework and its practical implementation;

(e) The apparent lack of independence of the judiciary despite the new legislation;

(f) Reports that some persons have been held in police custody much beyond the time limit of 48 hours established in the Code of Criminal Procedure, and that in exceptional circumstances, persons can be held in temporary detention for up to 10 days in local police facilities;

(g) The lack, in many instances, of prompt and adequate access of persons in police custody or remand centres to independent counsel and a medical doctor, which is an important safeguard against torture; many persons in police custody are reportedly forced to renounce their right to a lawyer, and medical experts are provided only on the order of an official and not at the request of the detainee;

(h) The fact that, despite the recommendation of the Special Rapporteur on torture, the remand centre of the Ministry of National Security continues to operate and that it remains under the jurisdiction of the same authorities that conduct the pre-trial investigation;

(i) Reports of harassment and attacks against human rights defenders and organizations;

- (j) The particularly strict regime applied to prisoners serving life sentences;
- (k) Reports that the ability of detained persons to lodge a complaint is unduly limited by censorship of correspondence and by the failure of the authorities to ensure the protection of the complainants from reprisals;
- (l) The reported failure of the State party to provide prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment, as well as insufficient efforts to prosecute alleged offenders;
- (m) The fact that no independent body with a mandate to visit and/or supervise places of detention has been established, and that access by non-governmental organizations to penitentiary facilities is impeded;
- (n) The fact that very few victims have obtained compensation;
- (o) Reports that, in many instances, judges refuse to deal with visible evidence of torture and ill-treatment of detainees and do not order independent medical examinations or return cases for further investigation.

D. Recommendations

89. The Committee recommends that the State party:

- (a) Ensure that the offence of torture in national legislation fully complies with the definition provided in article 1 of the Convention;
- (b) Guarantee that, in practice, persons cannot be held in initial preventive detention (police custody) longer than 48 hours, and eliminate the possibility of holding persons in temporary detention in local police facilities for a period of up to 10 days;
- (c) Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of detaining authorities has been obtained. The State party should ensure the full independence of medical experts;
- (d) Transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice, or discontinue its use;
- (e) Fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary;
- (f) Ensure the prompt creation of the new bar association and take measures to guarantee an

adequate number of qualified and independent lawyers able to act in criminal cases;

- (g) Ensure the full independence of the Ombudsman;
- (h) Ensure the full protection of non-governmental human rights defenders and organizations;
- (i) Ensure that all persons have the right to review of any decision about his/her extradition to a country where he/she faces a real risk of torture;
- (j) Intensify efforts to educate and train police, prison staff, law enforcement personnel, judges and doctors on their obligations to protect from torture and ill-treatment all individuals who are in State custody. It is particularly important to train medical personnel to detect signs of torture or ill-treatment and to document such acts;
- (k) Ensure the right of detainees to lodge a complaint by ensuring their access to an independent lawyer, by reviewing rules on censorship of correspondence and by guaranteeing in practice that complainants will be free from reprisals;
- (l) Review the treatment of persons serving life sentences to ensure that it is in accordance with the Convention;
- (m) Institute a system of regular and independent inspections of all places of detention and facilitate in practice, including by issuing instructions to appropriate authorities, access by non-governmental organizations to these places of detention;
- (n) Ensure that prompt, impartial and full investigations into all allegations of torture and ill-treatment are carried out and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure that the Presidential Decree of 10 March 2000 is implemented in this respect;
- (o) Ensure that in practice, redress, compensation and rehabilitation are guaranteed to victims of torture;
- (p) Widely disseminate in the country the reports submitted to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages.

90. The Committee requests the State party to provide in its next periodic report:

- (a) Detailed information, including statistical data, on the practical implementation of its legislation and the recommendations of the Committee, in particular regarding the rights of persons in police custody and pre-trial detention, the implementation of the 1998 Compensation Act or other relevant legislation, the implementation of article 3 of the Convention, and the mandate and activities of the

Ombudsman;

(b) Detailed statistical data, disaggregated by crime, geographical location, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences.

91. The Committee welcomes the assurances given by the delegation that complementary written information will be submitted regarding the questions that remained unanswered.

92. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 89 (c), (f), (h), (i) and (n) above.