



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/1/Add.104
14 December 2004

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Thirty-third session
8-26 November 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

Concluding observations of the Committee on Economic, Social and Cultural Rights

AZERBAIJAN

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Azerbaijan on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.37) at its 41st, 42nd and 43rd meetings, held on 16 and 17 November 2004 (E/C.12/2004/SR.41-43), and adopted, at its 56th meeting held on 26 November 2004 (E/C.12/2004/SR.56), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party, which was prepared in general conformity with the Committee's guidelines. The Committee notes with appreciation the comprehensive written replies to its list of issues, though it regrets their late submission.

3. The Committee welcomes the constructive dialogue with the high-level delegation of the State party, which included deputy ministers and experts in the different areas covered by the Covenant.

B. Positive aspects

4. The Committee notes with appreciation the adoption of the State Programme on Protection of Human Rights in June 1998 by presidential Decree.

5. The Committee welcomes the information provided by the State party that the working group established to prepare the second periodic report to the Committee, consisting of representatives of various ministries and State bodies, as well as experts from non-governmental organizations, will monitor the implementation of the Covenant in accordance with the suggestions and recommendations made by the Committee in the present concluding observations.

6. The Committee welcomes the efforts made to combat economic crime and corruption in the State party, including the adoption of the 2004-2006 State Programme on Strengthening the Fight against Corruption and of the law "On the Fight against Corruption" in January 2004, as well as the establishment of the Department for Fighting Corruption under the General Prosecutor.

7. The Committee welcomes the information provided by the State party on the reform of the judiciary as part of the current revision of the State apparatus in Azerbaijan.

8. The Committee welcomes the adoption of the law on the rights of the child and the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization.

9. The Committee commends the State party for the adoption of the Law on the Protection of Samples of Folklore in May 2003 and of the Legal Protection of Expressions of Azerbaijan Folklore, developed by the Copyright Agency in cooperation with the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization, in August 2003.

C. Factors and difficulties impeding the implementation of the Covenant

10. The Committee is aware that the State party is still faced with the difficulties commonly encountered by countries in transition.

11. The Committee notes that the presence of a large number of refugees and internally displaced persons as a result of the conflict with Armenia continues seriously to hamper the State party's ability to implement the economic, social and cultural rights contained in the Covenant.

D. Principal subjects of concern

12. The Committee notes with regret that no information was provided on specific decisions of domestic courts where reference has been made to the Covenant and its provisions.

13. The Committee is concerned about the lack of independence of the judiciary and the persistence and the extent of corruption in the State party, and once again stresses the importance of an independent judiciary for the enjoyment of all human rights, including economic, social and cultural rights, and the availability of effective remedies in case of violation.

14. The Committee notes with regret that the statistical data provided by the State party do not always allow for a clear evaluation of the implementation of the economic, social and cultural rights enshrined in the Covenant.

15. While noting that the constitutional guarantee of the enjoyment of all rights and freedoms is extended to all foreign citizens and stateless persons, the Committee is concerned about the persistent de facto discrimination against foreign citizens, ethnic minorities and stateless persons in the fields of housing, employment and education. The Committee is also concerned about the legal status of a significant number of long-term residents in the State party who remain stateless.

16. While welcoming the measures taken by the State party to promote equality between men and women, including the establishment of the State Committee on Women's Affairs and the adoption of the National Plan of Action on women's issues, the Committee is concerned about the persistent gender inequalities in Azerbaijan, particularly in the field of employment.

17. While acknowledging the efforts made by the State party to reduce unemployment, including the adoption in 2004 of the Programme for Social and Economic Development of Regions of Azerbaijan for 2004-2008, the Committee is concerned about the persistently high unemployment in the State party, in particular among women, youths, refugees and internally displaced persons.

18. The Committee is concerned about the lack of legislative provisions ensuring access of persons with disabilities to the labour market.

19. The Committee is concerned about the use of forced labour as a corrective measure or as a penal sentence against persons found guilty of a crime, as provided for in the Penal Code and the Labour Code currently in force in the State party.

20. While noting the efforts taken by the State party to increase the minimum wage, the Committee is concerned that the current minimum wage is still insufficient to provide a decent standard of living for workers and their families. The Committee is further concerned that in practice the minimum wage is not always enforced, given the large percentage of the population who work in the informal sector.

21. The Committee regrets the extensive limitations imposed on the right to strike by the Labour Code of the State party, exceeding by far the ILO definition of essential services. The Committee also expresses concern about section 188-3 of the Criminal Code which punishes, including with imprisonment, collective action by trade unions when such action disrupts public transport, and about section 6 (1) of Act No. 792 on trade unions which prohibits all types of political activity by trade unions.

22. The Committee is concerned about the State party's plans to "increase the volume of social benefits by decreasing the number of beneficiaries in order to ensure the appropriate level of life".

23. The Committee expresses serious concern at the lack of legal or policy mechanisms in the State party which specifically address domestic violence, in particular, violence against women. The Committee regrets that insufficient information was provided by the State party in its second periodic report and during the dialogue in this regard.

24. While welcoming the adoption in May 2004 of the National Plan to fight trafficking in human beings and the establishment of the Department to Fight Trafficking in Human Beings under the Ministry of the Interior, the Committee remains concerned that trafficking in persons persists in Azerbaijan and notes that the State party is a country of origin and destination as well as a transit point for trafficking in persons. The Committee is also concerned at the lack of reliable information, including statistics, on the extent of the problem. In this connection, the Committee notes with regret that there is no legislation in the State party that specifically criminalizes trafficking in persons.

25. The Committee is seriously concerned about the reports of children who are illegally adopted from orphanages for the purpose of trafficking in organs.

26. In spite of the efforts made by the State party to improve the economic and social conditions of refugees and internally displaced persons, the Committee is concerned at the fact that they still do not enjoy an adequate standard of living.

27. The Committee is deeply concerned that despite the sizeable amount of foreign investment (14.5 billion United States dollars) and efforts by the State party to eliminate poverty, including the 2003-2005 State Programme on Poverty Reduction and Economic Development, poverty is estimated by the World Bank to affect approximately 50 per cent of the population (2003 data).

28. The Committee is concerned about the illegal occupation by refugees and internally displaced persons of properties belonging to Armenians and other ethnic minorities. The Committee is also concerned about the lack of adequate social housing units, particularly in Baku. The Committee further notes with regret the lack of information about forced evictions and the number of homeless persons in the State party.

29. While welcoming the extensive efforts made by the State party in the area of health, including measures to address the significant regional and urban disparities in health-care provision, the Committee remains concerned that the annual per capita spending on public health has been on the decline in recent years despite the rise in GDP. The Committee is concerned about the high incidence of malnutrition, infant mortality, iron deficiency disorders and malaria, especially among refugees and internally displaced persons. The Committee regrets that reliable statistical data in the field of health were not provided by the State party.

30. The Committee remains concerned about the low level of awareness of the general public in Azerbaijan of sexual and reproductive health issues, in particular with regard to the availability and use of contraceptives. The Committee is particularly concerned that a high proportion of women resort to abortion as the principal method of birth control, and about the high infant and maternal mortality rates. The Committee also regrets that no comprehensive sexual and reproductive health programme exists in the State party. The Committee is particularly concerned that the incidence of sexually transmitted diseases and HIV/AIDS is on the increase.

31. While welcoming the information provided by the State party's delegation that prison medical doctors are now under the supervision of the Ministry of Justice and that cases of human rights violation can be immediately brought to the attention of the Office of the Commissioner

for Human Rights, the Committee is concerned about overcrowding and sub-standard conditions in prisons in Azerbaijan which have given rise to a disproportionately high rate of tuberculosis and other health problems among prisoners.

32. The Committee is concerned that according to “Azerbaijan Figures 2004” published by the State Statistical Committee of the Republic of Azerbaijan, the illicit preparation, storage and sale of narcotics has been on the rise since 1995 and that 2,049 cases were registered in 2003.

33. The Committee is concerned that pursuant to article 19 of the Legal Status of Aliens and Stateless Persons Act, the State party does not provide free compulsory education to non-Azerbaijani children. The Committee also expresses concern that the education standards in the State party have experienced a fall over the last decade owing to a number of factors, including lack of State investment in education.

E. Suggestions and recommendations

34. The Committee welcomes the adoption in December 2001 of the constitutional provision establishing the Office of the Human Rights Commissioner of the Republic of Azerbaijan with competence to receive complaints relating to violations of economic, social and cultural rights. In this connection, the Committee recommends that the State party consider establishing a national commission for human rights on the basis of the Paris Principles (General Assembly resolution 48/134, annex).

35. The Committee requests the State party to attach a copy of the National Human Rights Plan of Action to its third periodic report and to explain how the Plan promotes and protects economic, social and cultural rights.

36. The Committee draws the attention of the State party to General Comment No. 9 on the domestic application of the Covenant and invites the State party to include information concerning case law on the application of the Covenant in its next periodic report.

37. The Committee urges the State party to ensure that legal and judicial training takes full account of the justiciability of the rights contained in the Covenant and promotes the use of the Covenant as a source of law in domestic courts.

38. The Committee strongly urges the State party to continue to take all necessary measures to ensure the independence and integrity of the judiciary and to combat corruption.

39. The Committee would appreciate receiving further information on the impact of privatization of State enterprises on the enjoyment of economic, social and cultural rights in the next periodic report.

40. The Committee encourages the State party to submit in its next periodic report annually collected comparative statistical data, disaggregated by sex, age and urban/rural residence, paying particular attention to the disadvantaged and marginalized groups of society.

41. The Committee recommends that the State party take all measures to ensure that all persons under its jurisdiction enjoy the economic, social and cultural rights enshrined in the Covenant without discrimination and to facilitate regularization of the legal status of foreigners

residing in Azerbaijan whenever possible. Furthermore, the Committee requests the State party to provide in its next periodic report detailed information, including disaggregated statistical data, on the enjoyment of economic, social and cultural rights by ethnic minorities, foreign citizens and stateless persons.

42. The Committee calls upon the State party to adopt all effective measures to ensure equality between men and women in all fields of life, as provided for in articles 2, paragraph 2, and 3 of the Covenant, and to provide information in the next periodic report on the progress made in the field of gender equality, including detailed information on the implementation of the National Plan of Action on women's issues.

43. The Committee recommends that the State party continue strengthening programmes to reduce unemployment, targeting on a priority basis the most affected groups. The Committee calls upon the State party to provide information in its next periodic report on progress made in the field of employment stimulation, including the practical effects of the Programme for Social and Economic Development of Regions of Azerbaijan for 2004-2008. The Committee recommends the State party to consider ratifying the ILO Unemployment Convention, 1919 (No. 2).

44. The Committee recommends that the State party adopt relevant legislation and necessary administrative measures to ensure greater access to the labour market and an adequate working environment for persons with disabilities.

45. The Committee recommends that the State party abolish the use of forced labour either as a corrective measure or as a penal sentence against persons found guilty of a crime, and amend or repeal the relevant provisions of the Penal Code and the Labour Code in accordance with article 6 of the Covenant.

46. The Committee urges the State party to continue to take the necessary measures to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is enforced. The Committee further encourages the State party to establish an effective system of indexation and regular adjustment of the minimum wage to the cost of living.

47. The Committee recommends that the State party take appropriate measures to amend the Labour Code and liberalize the existing limitations on the right to strike. The Committee further recommends that the State party amend or repeal section 188-3 of the Criminal Code and section 6 (1) of Act No. 792 on trade unions, to ensure that the right to collective bargaining and the right to join trade unions are duly respected, in accordance with article 8 of the Covenant.

48. The Committee recommends that the State party undertake measures to ensure that social security benefits are adequate. The Committee further recommends that the State party ensure that targeted social assistance depending on family income is guaranteed to all disadvantaged and marginalized persons, including refugees and internally displaced persons, and that such assistance does not fall below the subsistence level. The Committee also encourages the State party to consider ratifying the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

49. The Committee requests the State party to provide in its next periodic report detailed information on the extent of domestic violence, in particular, violence against women, and the legislative measures and policies adopted by the State party to address that phenomenon, including facilities and remedies provided for victims. The Committee urges that training be provided to law enforcement officials and judges on the serious and criminal nature of domestic violence, in particular, violence against women. The Committee further recommends that the State party allocate resources to ensure that crisis centres are available where victims of domestic violence can obtain safe lodging and necessary assistance.

50. The Committee urges the State party to adopt legislation specifically criminalizing the trafficking of human beings and allocate sufficient resources for the effective implementation of the National Plan to Fight Trafficking in Human Beings, and to ensure that necessary protection and assistance are provided to victims of trafficking.

51. The Committee urges the State party to continue to ensure that perpetrators of illegal adoptions are duly prosecuted.

52. The Committee strongly recommends that the State party continue to take effective measures, including through the allocation of increased resources, to ensure the protection of the fundamental economic, social and cultural rights of refugees and internally displaced persons, in particular with regard to adequate housing, food and water, health services and sanitation.

53. The Committee urges the State party to integrate economic, social and cultural rights into its poverty reduction policies and measures, and in this regard refers the State party to the Committee's statement on poverty adopted in May 2001 (E/C.12/2001/10). The Committee also recommends that the State party allocate larger portions of its oil revenues to the social sector and continue to seek international technical assistance, as provided for in article 23 of the Covenant. In this connection, the Committee calls upon the State party to ensure that its international human rights obligations are taken fully into account when it enters into technical cooperation and other arrangements with international organizations.

54. The Committee recommends that the State party take corrective measures to ensure that Armenians and other ethnic minorities whose properties are illegally occupied by refugees and internally displaced persons are provided with adequate compensation or offered alternative accommodation, in accordance with the guidelines adopted by the Committee and its General Comment No. 7. The Committee also recommends that the State party take the necessary measures to guarantee the right to adequate housing to all persons residing under its jurisdiction and to address the problem of the lack of adequate social housing units in the most expedient manner possible, particularly in Baku. In this connection, the Committee wishes to draw the attention of the State party to its General Comment No. 4 on the right to adequate housing. The Committee further requests the State party to provide, in its third periodic report, detailed information on the number and nature of forced evictions and on the extent of homelessness in the State party.

55. The Committee urges the State party to continue its efforts to improve its health services, inter alia through the allocation of adequate and increased resources. The Committee requests the State party to include information in its next periodic report on how the recently adopted health laws and policies have been implemented and on the progress made. The Committee

encourages the State party to submit in its next periodic report annually collected comparative statistical data, disaggregated by sex, age and urban/rural residence, paying particular attention to marginalized and disadvantaged groups.

56. The Committee recommends that the State party conduct a study on the incidence of sexually transmitted diseases and HIV/AIDS in Azerbaijan and develop a comprehensive sexual and reproductive health programme, including a public awareness-raising campaign about safe contraceptive methods. The Committee also urges the State party to take measures to reduce the maternal and infant mortality rates and to ensure that abortions are carried out under adequate medical and sanitary conditions. In accordance with its General Comment No. 14 (2000) on the right to the highest attainable standards of health, the Committee also recommends that the State party take urgent measures to combat the spread of HIV/AIDS.

57. The Committee recommends that the State party continue to take measures to improve the sanitary and hygienic conditions in prisons and to ensure that the right to mental and physical health of all prisoners in Azerbaijan is respected, in accordance with article 12 of the Covenant.

58. The Committee urges the State party to take effective measures to decrease the availability of illicit drugs in the territory of the State party through, inter alia, combating the root causes, and to provide information on the measures taken in the next periodic report.

59. The Committee calls upon the State party to take effective measures to ensure that all children under its jurisdiction have access to free compulsory education as a right, as stipulated in the Covenant, and to significantly increase the public expenditure on education. In this regard the Committee further encourages the State party to consider amending the Legal Status of Aliens and Stateless Persons Act. The Committee would appreciate receiving further information in the State party's third periodic report.

60. The Committee requests the State party to include in its third periodic report on the implementation of the Covenant all available information on any measures taken and progress made, particularly with regard to the suggestions and recommendations made by the Committee in the present concluding observations.

61. The Committee requests the State party to disseminate widely the present concluding observations among all levels of society and, in particular, among State officials and the judiciary. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussions at the national level prior to the submission of the third periodic report.

62. The Committee requests the State party to submit its third periodic report before 30 June 2009.
