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COMMITTEE AGAINST TORTURE
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Concluding observations of the Committee against Torture

AZERBAIJAN

1. The Committee considered the third periodic report of Azerbaijan (CAT/C/AZE/3) at its 907th and 909th meetings (CAT/C/SR.907 and CAT/C/SR.909), held on 9th and 10th November 2009, and adopted, at its 920th meeting, held on 18 November 2009 (CAT/C/SR.920), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Azerbaijan and the written responses to the list of issues (CAT/C/AZE/Q/3) submitted by the State party.

3. The Committee notes with appreciation the extensive dialogue with the high-level delegation sent by the State party and the replies to the questions raised during the dialogue. It welcomes the State party's constructive attitude towards implementation of its recommendations by adopting numerous legal and policy reforms.

B. Positive aspects

4. The Committee welcomes the recent legislative and other measures taken by the State party since the consideration of its previous report, namely:

- a) Adoption of the law on “Fight against Human Trafficking” in 2005, the amendment of the Criminal Code (2005) and the creation of a relief fund for victims of human trafficking;
 - b) Adoption of a Presidential Order “On modernization of judiciary” on 19 January 2006 and application of the law on “Amendments” dated 19 January 2006, establishing regional courts of appeal which address legal assistance to individuals, as well as adoption of a State Program on Development of the Azerbaijani Justice System for 2009-2013, which, *inter alia*, envisages improvements for convicted persons;
 - c) The ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2009;
 - d) The ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2009.
5. The Committee also notes with satisfaction the following developments:
- (a) Adoption of a National Plan of Action for the Protection of Human Rights on 28 December 2006;
 - (b) Launching of a prison reform program in 2006;
 - (c) Establishment of a Public Committee to monitor penitentiary institutions;
 - (d) Establishment of the Council of State Support to non-governmental organizations under the President’s administration in 2007 and allocation of additional resources to NGOs;
 - (e) The efforts made in order to improve the conditions of detention of prisoners and the measures taken resulting in the substantial reduction of the rate of mortality from tuberculosis in prisons since 1995.
6. The Committee welcomes the commitment of the State party delegation to make public reports on the findings of the three visits since 2005 of the European Committee for the Prevention of Torture to Azerbaijan.

C. Main subjects of concern and recommendations

Overarching considerations regarding implementation

7. Despite the Committee’s requests for specific statistical information in the list of issues and the oral dialogue with the State party, the Committee regrets that this was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel, as well as concerning detention conditions, abuses by public officials, and domestic and sexual violence

severely hampers the identification of possible patterns of abuse requiring attention (arts. 2 and 19).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender, age, geographical region and type and location of place of deprivation of liberty, as well as information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuses by public officials, administrative detention, and domestic and sexual violence, and outcomes of all such complaints and cases. The State party should provide the Committee with the above-mentioned detailed information, including on the number of complaints of torture that have been submitted since 2003.

Definition of torture

8. The Committee welcomes the commitment by the State party to amend article 133 of the Criminal Code in order to bring the definition of torture into full compliance with the definition provided in article 1 of the Convention. The Committee reiterates its concern that the definition of torture in article 133 of the current Criminal Code omits the references to the purposes of torture set forth in the Convention, such as “for any reasons of discrimination of any kind” and lacks provisions defining as an offence torture inflicted with the consent or acquiescence of a public official or other person performing official functions. (arts. 1 and 4)

Bearing in mind the obligation of the State party to bring its legislation into conformity with article 1 of the Convention, the State party should fulfil its commitment made during the interactive dialogue with the Committee to bring its definition of torture fully into conformity with the Convention, so as to ensure that it is possible to prosecute all public officials and others responsible for torture under article 133 of the Criminal Code.

Torture and ill-treatment

9. The Committee remains concerned about the numerous continued allegations of use of torture and ill-treatment of suspects and other detainees, which reportedly commonly takes place between the moment of apprehension and formal registration at remand centres. The Committee is also deeply concerned about allegations that authorities are reluctant to initiate criminal proceedings for alleged acts of torture or ill-treatment, and notes with concern that officials who allegedly committed acts of torture or ill-treatment are not charged with these crimes, but rather are charged with “excess of authority”, “negligence” and “minor, serious or serious harm to health out of imprudence.” The Committee is concerned that such practices contribute to a culture of impunity among law enforcement officials, and is particularly concerned that despite numerous allegations of torture and ill-treatment by law enforcement officials, not a single case against an official was initiated under article 133, part 3, of the Criminal Code. The Committee values the fact that the Government prosecuted 161 cases of domestic violence under article 133 since 2001, but notes that there were no prosecutions under this article against persons acting under colour of authority. (arts. 2, 15 and 16)

The State party should adopt all necessary measures to ensure that, in practice, all allegations of torture are subjected to a prompt, impartial and effective investigation and, as appropriate, prosecute and if found responsible, punish accordingly.

Ombudsman's office

10. The Committee regrets the lack of information provided on the number of allegations or complaints of specific acts of torture or ill-treatment that were received and investigated by the Ombudsman's Office, as well as information on the number of investigations into torture or ill-treatment that this mechanism has initiated on its own accord. Notwithstanding the 'A' rating received by the Ombudsman's Office from the body that oversees implementation of the Paris Principles, the Committee is deeply concerned at the information from the State party that the Ombudsman's office is not permitted by its founding documents to monitor all state organs- The Committee is concerned that the Ombudsman lacks the requisite level of independence to be the national institution responsible for investigating complaints of torture and other human rights violations, as well as to serve as the National Prevention Mechanism under the OPCAT. (art. 2, 11 and 16)

The State party should take effective measures to ensure that the Ombudsman's Office is in practice a functioning, independent body, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134, especially with regard to its independence. The State party should inform the Committee on all cases of torture or ill-treatment investigated by the Ombudsman and the outcomes of such investigations.

Insufficient basic legal safeguards

11. Notwithstanding the State party's efforts to improve the system of registration of detainees, the Committee notes with concern the allegations of widespread and routine use of torture or ill-treatment of detainees in police custody, including before their official registration and during pre-trial detention. The Committee is also concerned over the inadequate legal safeguards for detainees, that include *inter alia*, restricted access to independent doctors and public defenders and failure to notify detainees of their rights at the time of detention, including their rights to contact family members, as alleged in the cases of Emin Milli and Adnan Hajizade, and Kamil Saddredinov. The Committee is also concerned over the shortage of public defenders in the State party, and the allegations that the quality of legal aid is low as a result of inadequate resources. In addition, the Committee notes with concern allegations that suspects are purposefully detained for delayed periods as witnesses and are thus denied basic legal safeguards, and only later have their status changed into that of a suspect. (art. 2 and 16)

The Committee also regrets the lack of information provided with regard to the mechanism or legal provision through which detainees may request a medical examination by an independent doctor, and remains concerned over allegations that access to medical care is frequently denied, in practice, as was reportedly the case for detainee Mahir Mutafayev who suffered 2nd and 3rd degree burns and was not granted access to medical attention until 11-12 hours after the incident, and Novruzali Mammadov. (art. 2 and 16)

The State party should take prompt and effective measures to ensure that individuals are registered from the actual moment of deprivation of liberty, and that they are not subjected to acts in breach of the Convention when they are under custody, but not yet registered as a detainee. A central registration system for all detainees should be improved in accord with the recommendations of the European Committee for the Prevention of Torture. The State party should ensure that suspects are presented to a judge as soon as possible, calculated from the actual moment of deprivation of liberty, so as to determine the legality of their detention. The systematic use of audio and video equipment in police stations and detention facilities should be implemented, particularly in interrogation rooms and for all interrogation of minors.

The State party should also take effective measures to ensure that in practice, all detainees in all detention and remand centers, are guaranteed, *inter alia*, immediate access to independent legal counsel and to an independent medical examination. Additionally, steps should be taken to establish and clarify the procedure in place by which detainees, their legal counsel, or a judge may demand such an examination. The State party should also continue to take measures to address the shortage of public defenders, including by ensuring that public defenders are adequately paid for their work.

Independent monitoring of places of detention

12. The Committee particularly welcomes the establishment of the Public Committee, consisting of representatives of non-governmental organizations, which is mandated to monitor penitentiary institutions. Notwithstanding the State party's insistence that such visits are unrestricted, the Committee is concerned however, that the Public Committee is unable to make unannounced visits to detention facilities, because under the order by the Minister of Justice of 25 April 2006, the visits are subject to internal disciplinary regulations which, in practice, reportedly require providing 24 hours notice prior to visits. It is also concerned that the one year term of the Public Committee members unduly limits the application of the expertise developed by these monitors. The Committee is also concerned that the Public Committee is not granted access to pre-trial detention centres and the remand centre under the Ministry of National Security. (arts. 2, 11 and 16)

The State party should guarantee the Public Committee the unrestricted right to conduct unimpeded and unannounced visits to all places of detention in the country, including pre-trial detention facilities and the remand centre under the Ministry of National Security.

Conditions in places of deprivation of liberty and deaths in custody

13. The Committee welcomes the efforts by the State party to improve the conditions in penitentiary institutions and remand facilities including significant improvements in the conditions for persons serving life sentences, increasing the number of visits, telephone calls, the amount of monthly allowance and establishing medical units. The Committee also welcomes the construction of new prisons in Saki, Ganja, Lenkaranand, Nakhichevan and other regions as well as construction of remand centres such as the one in Baku in order to improve the conditions for

detainees. Nevertheless, the Committee remains concerned at the number of deaths and suicides committed by inmates and at the alleged restrictions on independent forensic examination into the causes of such deaths. It is also concerned at allegations of State party's use of prolonged solitary confinement. (art. 11)

The State party should promptly, thoroughly and impartially investigate all incidents of death in custody and prosecute those allegedly responsible for any deaths. The State party should provide information to the Committee on any cases of death resulting from torture, ill-treatment or wilful negligence leading to any of these deaths.

Families of victims should be provided with adequate compensation and rehabilitation.

The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. The State party should also identify reasons leading prisoners to committing suicides, provide appropriate remedies and review the legislation in this regard. It should allow independent forensic examinations and accept its findings as evidence in criminal and civil cases.

14. The Committee remains concerned that the remand centre of the Ministry of National Security continues to operate and is being used for detention of convicted persons. (art.11)

The Committee reiterates its previous recommendation that the State party should transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice or discontinue its use.

Involuntary placement in psychiatric institutions

15. The Committee is concerned about numerous reports of forced confinement in psychiatric hospitals in Nakhchivan, of persons for reasons other than medical. (art. 11 and 16)

The State party should take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical. Where hospitalization is required for medical reasons, the State party should ensure that it is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed.

16. The Committee is concerned about poor conditions in psychiatric institutions outside Baku. It also notes with concern the absence of an independent body to monitor conditions in psychiatric institutions. (arts. 11 and 16)

The State party should establish an independent monitoring and inspection system for such facilities. It should improve the living conditions for patients in psychiatric institutions, ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights.

Independence of the judiciary

17. The Committee notes with satisfaction the significant improvement in the judicial system. It also welcomes the President's Decree of 17 August 2006 increasing the number of judges in the State party by half as well as other reforms in the process of selection of judges. Nevertheless, the Committee remains concerned at the lack of independence of the judiciary from the executive branch and its susceptibility to political pressure. (art. 14)

The Committee reiterates its previous recommendation that the State party should guarantee the full independence and impartiality of the judiciary in accordance with the Basic principles of independence of judges.

18. While recalling the decision by the Plenum of the Supreme Court of 10 March 2000, instructing all courts not to accept evidence obtained by the use of torture, abuse or physical or psychological coercion, the Committee notes with concern that the State party could not name a single incident when a court refused to accept evidence obtained through unlawful methods. The Committee is concerned at allegations that, on the contrary, in several cases courts relied as evidence on statements that were allegedly made under duress. (art.14)

The State party should take immediate steps to ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings. The State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. The State party should establish a mechanism to ensure that any persons convicted on the basis of coerced evidence or as a result of torture or ill-treatment are afforded a new trial and adequate remedy, reparation and/or compensation.

Domestic Violence

19. The Committee notes with satisfaction the awareness raising campaigns on domestic violence as well as adoption of a declaration on combating violence against women, including domestic violence. However, it remains concerned that there continue to be allegations of widespread domestic violence not only against women, but also against children, and that the adoption of the draft law on domestic violence has been delayed. It is also concerned at the lack of safe shelters for victims of domestic violence.

The Committee regrets the lack of statistical information on the overall complaints of domestic violence reported and the number of investigations, convictions and punishments meted out. (arts. 2 and 16)

The State party should ensure protection of women and children by speedily enacting the draft law on domestic violence and adopting measures to prevent in practice such violence. The State party should provide for protection of victims, access to medical, social and legal services, temporary accommodation, and compensation and rehabilitation. Perpetrators should also be punished in accordance with the gravity of their crimes.

The State party should compile information on the number of cases of domestic violence that have been reported, the number of such complaints that were promptly, impartially and independently investigated, the number of investigations which led to trials and the outcomes of the trials, including punishment meted out and compensation provided to victims.

Trafficking

20. While noting with satisfaction the adoption of legislative and policy measures taken regarding trafficking in human beings, the Committee remains concerned at the prevalence of the phenomenon in Azerbaijan. (arts. 2, 10, 12 and 16).

The State party should ensure that legislation on trafficking is fully enforced and should continue its efforts to investigate, prosecute, convict and punish persons found responsible, including government officials complicit in trafficking.

Violence against journalists and human rights defenders

21. The Committee is concerned about allegations of continuous pressure on the media, particularly at reports of harassment and beatings of journalists and human rights defenders which have not been investigated. The Committee is also concerned at allegations of restraints of due process in the recent conviction of individuals who had allegedly expressed opinions in non-conventional media. (arts. 2, 10, 12 and 16).

The State party should fully guarantee and protect the right of freedom of opinion and expression of journalists and media representatives and introduce legal mechanisms and practical measures to that effect. The State party should conduct prompt and impartial investigation into allegations of violence against journalists and human rights defenders, and prosecute and punish perpetrators. The Committee refers to the general comment No. 2 (CAT/C/GC/2, para. 21), that the State party should ensure the protection of members of groups especially at risk of ill-treatment, including by prosecuting and punishing all acts of violence and abuses against such individuals and ensuring implementation of positive measures of prevention and protection.

Non-refoulement

22. The Committee is concerned at cases of extraordinary rendition such as rendition of Chechens to the Russian Federation, based on bilateral extradition agreements, and Kurds to Turkey, where they may face a real risk of torture. The Committee regrets the lack of data provided on asylum applications and refugees, the number of expulsions, refoulement and extradition cases as well as on the number of cases subjected to judicial administrative review.

The Committee also regrets the absence of information on diplomatic assurances and any post-return monitoring procedure established for such cases. (art. 3)

The State party should ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture and that persons whose applications for asylum have been rejected can lodge an effective appeal with suspensive effect. The State

party should compile and provide the Committee with detailed statistical data, disaggregated by country of origin, on the number of persons who requested asylum or refugee status, and the outcomes of these applications, as well as the number of expulsions, deportations, or extraditions that have taken place and the countries these individuals were returned to. The State party should take all measures to ensure that individuals who may face a risk of torture in their countries of origin are not returned, extradited, or deported to these countries. The State party should avoid the systematic use of diplomatic assurances, and should provide detailed information on the content of any such agreements and the minimum standards for guarantee they provide.

Training

23. The Committee notes with appreciation the training courses on human rights and prohibition of ill-treatment introduced in the curricula of mandatory courses for prison staff, including medical staff, as well as the publication of manuals on prohibition of torture and translation of the manual “Human Rights and Prisons” into Azeri. However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on the impact of the training conducted for all relevant officials, including law enforcement officials, prison staff and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment. (art. 10)

The State party should further develop educational programmes to ensure that all officials, including law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant medical personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to all personnel involved in the detention or imprisonment of persons as well as to all personnel involved in investigation and documentation of torture. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Redress and compensation, including rehabilitation

24. While welcoming the information provided by the State party that victims of torture have a legal right to obtain compensation, the Committee is concerned, nevertheless, at the lack of examples of cases in which individuals received such compensation. (art.14)

The Committee reiterates its previous recommendation that the State party should provide redress and compensation, including rehabilitation to victims in practice, and provide examples of such cases to the Committee.

Minors

25. The Committee is concerned about the reported cases of ill-treatment and torture used to obtain incriminating confessions and testimonies from minors and that no effective investigation is conducted in respect of such allegations. (arts. 2, 11 and 16)

The State party should ensure that minors have a lawyer and a trusted adult present at every phase of a proceeding, including during questioning by a police officer, whether or not the minor has been deprived of liberty. The State party should halt all practices involving abuse of minors in places of detention and punish perpetrators, and ban holding of under-age detainees together with adult detainees.

Violence in the armed forces

26. The Committee is concerned at the reported prevalence of violence and ill-treatment of conscripts in the army, commonly called “Dedovshchina” (hazing or bullying), which has reportedly led to serious injuries, and of large number of unexplained deaths of conscripts, including suicides. (arts. 2 and 16)

The State party should initiate prompt and effective investigations into every case of non-field related deaths, including suicides, of soldiers in the armed services, and should prosecute and punish any perpetrators of actions leading to these deaths and take measures to prevent such incidents in the future.

27. The State party is encouraged to consider becoming a party to the International Convention for the Protection of All Persons from Enforced Disappearance, and to the Rome Statute of the International Criminal Court.

28. The State party is encouraged to disseminate widely the reports it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

29. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

30. The Committee requests the State party to provide, within one year, information on its response to the Committee’s recommendations contained in paragraphs 9, 11, 12 and 26.

31. The State party is invited to submit its next periodic report, which will be the fourth report, by 20 November 2013.
